

GRANT OF GEOGRAPHICAL INDICATION DESIGNATION TO TIRUPATI LADDU: COMMERCIALIZATION OF FAITH?

Meghna Banerjee & Susanah Nausahd*

Geographical Indications (GI) are signs which identify goods as originating in a specific geographic location. Being a collective right, it seeks to protect the economic interests of an entire community of producers from a particular region who specialize in the making or manufacturing of a native product. Although many products of Indian origin such as Basmati are not adequately protected under TRIPS, at the domestic level India ensures that GI protection is uniformly available to all types of products. While such protection has the potential to bring about economic prosperity of marginalized sections of society, the conferment of GI status to products like Tirupati Laddu have raised concerns regarding the standards followed by the authorities while registering a GI. Critics point out that the grant of GI tag to the Laddu dilutes the very essence of GI protection and facilitates the commercialization of faith symbols by a religious shrine. This paper examines the controversial issues surrounding the conferment of GI designation to Tirupati Laddu.

I. INTRODUCTION

Geographical indications (GIs) are a class of intellectual property which is used primarily to identify products as originating from a particular geographical area. In addition to providing consumers accurate information about the origin of a product, they confer exclusive rights on the producers of a geographical region to use distinctive signs for differentiating their products from competing goods in the market.¹ These signs like “Basmati” or “Kashmir Pashmina” elicit expectations of quality or reputation among consumers based on the geographical origin of the goods in question.² GIs also enhance the marketability of the products by assuring

* Students of the 4th and 1st Year respectively, W.B. National University of Juridical Sciences, Kolkata.

¹ Felix Addor, Alexandra Grazioli, *Geographical Indications beyond Wines and Spirits: A Roadmap for a better protection for Geographical Indications in the WTO TRIPS Agreement*, 5 J.W.I.P. 6 available at <https://www.ige.ch/e/jurinfo/documents/PDF-doku3.pdf>. (Last visited on March 3, 2010).

² Consumer expectations maybe based on the reputation acquired by the product in question on account of its cultural connection with a region or environmental conditions such as soil or weather or a combination of both.

the consumers that the product designated by such a sign is authentic. It is evident that in a country like India, which has great diversity in terms of climate, natural resources and cultural heritage, geographical indications have enormous potential for protecting traditional products that are unique to specific geographic locations.

The term “geographical indications” was first used in TRIPS which defines it as any indication that identifies a good as originating from a particular place, where a given quality, reputation or other characteristics of the good are essentially attributable to its geographical origin.³ The definition of GI in the Geographical Indications of Goods (Registration & Protection) Act, 1999 is based on the TRIPS definition with the added criterion that in the case of manufactured goods at least one of the activities of either production or processing or preparation of the goods concerned should take place in the specified geographical area.⁴ Thus, GIs act as a signaling device conveying information about the origin, quality or reputation of products which, on one hand enable indigenous producers to get market recognition and build goodwill around their products and, on the other hand protect consumers from counterfeit goods. Since GI products carry assurance of genuine quality, they often fetch a premium price at the market. A consumer survey conducted in EU has shown that consumers are willing to pay more for products whose brand quality is designated by a GI.⁵ This in turn helps to enhance the income of genuine producers. Unlike other recognized forms of intellectual property, GI has tremendous potential for the upliftment of the poor and marginalized sections of the society. Being a collective right, it can effectively protect the livelihood of the artisans or other local communities who specialize in items unique to particular geographic locations.⁶ Therefore, proper protection of such GIs is very important to

³ Article 22 of the TRIPS states “Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

⁴ Section 2(1)(e) of the GI provides that “geographical indication”, in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be. Explanation.-For the purposes of this clause, any name which is not the name of a country, region or locality of that country shall also be considered as the geographical indication if it relates to a specific geographical area and is used upon or in relation to particular goods originating from that country, region or locality, as the case may be.

⁵ Kasturi Das, *Protection of Geographical Indications, An Overview of Select Issues with particular reference to India*, (Centad Working Paper No. 8, 2007), available at http://www.centad.org/cwp_10.asp. (Last visited on March 2, 2010).

⁶ Madabhushi Sridhar, *GI for the Tirupati Laddu: Whose Interests Protected*, October 2009, available at <http://indiacurrentaffairs.org/gi-for-tirupati-laddu-whose-interests-protected-professor-madabhushi-sridhar/>. (Last visited on March 3, 2010)

prevent commercial organizations (who are not the authorized users of GI) from free riding on the reputation painstakingly built up by indigenous communities.⁷

Given the commercial significance of the GI, India has been actively lobbying for extending the higher level of protection available under TRIPS to all categories of products.⁸ At the domestic level, the Geographical Indications of Goods (Registration and Protection) Act, 1999 (GI Act) provides protection for agricultural as well as industrial and manufactured goods. A substantial number of GIs of Indian origin have been registered with the GI registry after the coming into force of the Act.⁹ These include Darjeeling (tea), 'Pochampalli' Ikat (textiles), 'Chanderi' (saree), 'Kancheepuram silk' (textiles), 'Kashmir Pashmina' (shawls) to name only a few.¹⁰ Although the growing number of GI registrations is favourable for the indigenous producers, it is important to examine the long term ramifications of this phenomenon. Apart from dilution in standards of GI registration, it may encourage formation of undesirable monopolistic practices. The registration of Tirupati Laddu as a GI last year presents an interesting case study in this regard. The Tirumala Tirupathi Devasthanam (TTD), the Trust which administers the ancient temple of Sri Venkateshwara in Andhra Pradesh secured a GI protection for the sacred *prasadam* offered to the devotees under of the GI Act to prevent others from making and marketing laddus under the same name.¹¹ This is arguably the first time anywhere in the world that an offering at a religious shrine has been recognized as a GI.¹² The move on the part of the temple administration has been criticized by many as an example of blatant commercialization of religious affairs.¹³ Critics have also questioned the wisdom of the GI Registry in allowing a single entity to acquire monopolistic control over a divine symbol, which needlessly to say, goes against the spirit of the GI Act.¹⁴ This paper would look into the feasibility of granting GI tag to the *prasadam* offered by Tirupathi temple. In Part A, the paper would discuss the reasons for granting the GI for Tirupati Laddu. Part B

⁷ *Supra* note 5.

⁸ Although TRIPS contain a single identical definition for all GIs, regardless of the types of products, it provides a dual level system of protection (i) the basic protection applicable to all GIs in general (under Article 22); and (ii) an additional protection applicable only to the GIs denominating wines and spirits (under Article 23).

⁹ *Supra* note 5.

¹⁰ *Id.*

¹¹ *Tirumala gets Geographical Indication Certification*, THE HINDU, September 16, 2009, available at <http://www.hindu.com/2009/09/16/stories/2009091652081200.htm> (Last visited on March 1, 2010).

¹² Aysha Shaukat, *SpicyIP Tidbit: GI for the Tirupati Laddu*, November 22, 2008, available at <http://spicyipindia.blogspot.com/2008/11/spicyip-tidbit-gi-for-tirupati-laddu.html> (Last visited on March 2, 2010).

¹³ *Supra* note 6.

¹⁴ V. Venkatesan, *Bittersweet Status*, FRONTLINE, October 10-23, 2009, 26. available at <http://www.thehindu.com/fline/fl2621/stories/20091023262110100.htm> (Last visited on March 1, 2010).

would discuss why the grant of GI in this case is inherently problematic and needs to be revoked. This part would argue that the grant of GI to Tirupati Laddu is violative of certain sections of the GI Act itself. Part C would examine the possible implications of granting Intellectual property (IP) protection to religious symbols in a secular country like India. The paper would conclude by pointing out that the GI registry needs to be more vigilant while handing out GI registrations to ensure that undeserving or unsuitable products do not acquire the GI tag.

II. GI TAG FOR A DIVINE SYMBOL REVERED BY MILLIONS

The Tirumala Venkateshwara temple in Tirupati, which has acquired a unique sanctity in Indian tradition, is believed to be the world's richest Hindu shrine and also the most frequently visited one.¹⁵ In March 2008, TTD, the Trust which manages the temple, applied for a GI certification before the GI Registry in Chennai for the famous Tirupati Laddu, which is offered as *prasadam* (sacred food) to devotees of Lord Venkateshwara (the presiding deity of the temple) for more than three centuries.¹⁶ The increasing demand for these delicious Laddus had given birth to a thriving black market in and around Tirupati during the last two decades.¹⁷ Attempts made by the temple authorities, including raids by its security and vigilance wings, had failed to remedy the situation.¹⁸ According to the temple officials, they were left with no option but to seek GI protection in order to tackle the menace of hawkers and black marketers who were producing fake and spurious Laddus and selling them to unsuspecting pilgrims.¹⁹

The Sri Varu Laddu, popularly known as the Tirupati Laddu, which has been the centre of controversy for quite sometime, is made from boondi mixed with sugar syrup and pure cow ghee and contains a variety of other ingredients such as cashewnuts, cardamom, diamond sugar candies, raisins and almonds.²⁰ They are made in two sizes, the small ones weighing between 170 and 180 grams and the big ones weighing between 700 to 720 grams.²¹ In its GI application, TTD

¹⁵ R. S Praveen Raj, *GI for Tirupati Laddu - Letter Petition to the Supreme Court*, December 19, 2009, available at <http://secularcitizen.blogspot.com/2009/12/gi-for-tirupati-laddu-letter-petition.html>. (Last Visited on March 2, 2010).

¹⁶ *Tirupati Laddus get GI status*, THE DECCAN CHRONICLE, (New Delhi/ Tirupati), September 15, 2009, available at <http://www.deccanchronicle.com/hyderabad/tirupati-laddus-get-gi-status-523>. (Last visited on March 3, 2010).

¹⁷ *Id.*

¹⁸ C.R Sukumar, *Patented Offering: GI Tag soon for Tirupati Laddus*, LIVEMINT.COM (Hyderabad), November 19, 2008, available at <http://www.livemint.com/2008/11/19003200/Patented-offering-GI-tag-soon.html>. (Last visited on March 3, 2010).

¹⁹ Samanth Subramaniam, *The heat in the Religious Sweet*, LIVEMINT.COM (New Delhi) October 16, 2009, available at <http://livemint.com/2009/10/16222409/The-heat-in-the-religious-sweet.html?d=2>. (Last visited on March 3, 2010).

²⁰ *GI Application Number 121*, Geographical Indications Journal (Vol 28), available at <http://iprindia.nic.in/girindia> (Last Visited on March 3, 2010).

²¹ *Id.*

claims that over 1.25 lakh Laddus are prepared everyday in “pottus” or kitchens of the Tirumala temple. While the big Laddus cost Rs 100 each, the small ones are sold for Rs 25.²² Since in its application to the GI Registry, the TTD claims that the approximate number of pilgrims visiting the temple daily is 70,000, it could be earning anywhere between a Rs 17,50,000 to 70,00,000 per day from the sale of the Laddus to the visitors.²³

The size and flavor of the Laddu are its defining characteristics which can be attributed to the use of the highest quality raw materials in adequate proportion and the skill of the cooks at various stages of preparation.²⁴ TTD’s application also mentions that the Laddus are not produced anywhere else apart from the temple and possess distinctiveness in terms of quality, reputation and other characteristics (such as stringent quality checks at various stages) which go into its preparation.²⁵ A few Laddus are offered before the main idol in sanctum sanctorum and after the Puja they are taken to the Pottu where they are mixed with the ingredients to make more Laddus.²⁶ This ensures that the food offered to the Lord as *naiveydam* gets mixed with the rest of the Laddus. Thus, according to TTD, the Laddu, derives its sanctity, reputation and uniqueness from its being offered as *naivedyam* to the Lord.²⁷

In 2008, a panel of experts appointed by the Registrar of Geographical Indications examined the merits of the application and recommended that the Laddu indeed deserves a GI tag.²⁸ Finally, on 15th September, 2009 the Tirupati Laddu was registered as a GI.²⁹ Thus, any infringement of the exclusive rights granted to the TTD as the authorized owner of the GI would amount to a cognizable offence and would attract civil and criminal penalties.³⁰

While it is clear from the above discussion that Tirupati Laddu indeed possesses unique features primarily on account of its association with the temple, this uniqueness may not be a sufficient criterion for granting GI status.

²² *Id.*

²³ Sumathi Chandrashekharan, *Guest Post: Tirupati Laddu or the Lord?*, September 19, 2009, available at <http://spicyipindia.blogspot.com/2009/09/guest-post-tirupati-laddu-or-lord.htm> (Last visited on March 3, 2010).

²⁴ *Supra* note 20.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Supra* note 18.

²⁹ *Issue of Registration Certificate*, Geographical Indications Journal (Vol. 30), available at <http://iprindia.nic.in/girindia> (Last visited on March 3, 2010).

³⁰ Chapter VIII of the GI Act, provides for penalties for GI infringement.

III. IS THE GI DESIGNATION FOR TIRUPATHI LADDU IN ACCORDANCE WITH THE LAW OF THE LAND?

The grant of GI to Tirupati Laddu has raised a host of controversial issues many of which make a strong case in favour of cancellation of the GI registration. In fact the Madras High Court is in the process of hearing a public interest litigation (PIL), filed against the grant of GI to Tirupati Laddu by an individual petitioner. Some of the problematic aspects of the said GI designation have been discussed below.

A. GI GRANT TO A SINGLE PRODUCER.

Geographical indication is a collective right which is given to a community of producers to produce their goods using the GI designation. Thus, the fundamental question which arises is whether the grant of a GI to TTD is permissible under the law given the fact that the latter is a single entity. To answer this question, it is imperative to examine the relevant provisions of GI Act. Section 2(n) of the GI Act, clearly provides that with respect to a geographical indication a registered proprietor means “any association of persons or producers or any organization for the time being entered in the register as proprietor of the geographical indication.” Section 11 (1) further says that the application for GI designation has to be made to the Registrar by “any association of persons or any organization or authority established by or under any law for the time being in force representing the interest of the producers of the concerned goods, who are desirous of registering a geographical indication in relation to such goods.” Rule 32(5) of the Geographical Indications of Goods (Registration and Protection) Rules, 2002 (GI Rules) requires that a statement containing particulars of the producers of the concerned goods proposed to be registered be submitted for registration. It is noteworthy that the rule refers only to “producers” and does not envisage a situation wherein there is a single producer of the good. The requirement of Rule 32(6) (a) makes the intention of the legislature even clearer. This Rule makes it mandatory for the applicant to submit an affidavit to show “as to how the applicant claims to represent the interest of the association of persons or producers.” Rule 32(6) (f) further requires the association of persons or organization or authority representing the interest of the producers to provide its full name and address.

From the above discussion it is clear that the Act allows only a class or group of persons or producers or an association representing the interests of the producers to be the authorized user of a GI. TTD, on the other hand, is a single producer employing salaried or contract workers to make the Laddus inside the temple premises.³¹ As pointed out in the PIL against the grant of GI to Tirupati

³¹ R.S. Praveen Raj, *Collective Community Rights or Private Monopoly Rights?* September 21, 2009, available at <http://www.articlesbase.com/advertising-articles/collective-community-rights-or-private-monopoly-rights-gi-tag-on-tirupathi-laddu-oppugns-the-legislative-intent-of-the-statute-1254579.html> (Last visited on March 4, 2010).

Laddu, even the application filed by TTD mentions the Trust as the sole beneficiary.³² Therefore, the Trust does not represent or further the collective interests of a community of stakeholders which seems to be a precondition for granting GI to an association or a body. The enormous revenue generated from the sale of the Laddus goes entirely into its pocket without having to be shared with other producers.³³ TTD's case is akin to a private enterprise trying to procure exclusive rights to use a particular mark or sign on its products to distinguish them from that of competing producers. While this may be suitable case for granting a trademark, according GI status to the Laddu is inherently problematic for several reasons. The principal rationale behind instituting a system for GIs is the preservation of cultural traditions and traditional know-how by benefiting indigenous communities of producers.³⁴ In India, GI is often termed as the poor man's IP because most of the applicants for GIs are farmers, artisans and craftsmen from the lower economic strata or an organization representing them.³⁵ If a group of cooks in and around Tirupati skilled in the art of making Laddus, prepared these Laddus and supplied them after proper quality checks for distribution among the pilgrims, then the GI registration would have been warranted because then an entire class of people would be benefiting from the use of the GI.³⁶ Even in other jurisdictions such as the European Union, only a group of producers or processors can apply for GI.³⁷ This is because the whole purpose of registering a good as a GI is to ensure that economic benefits are uniformly distributed among all the producers of a geographic region whose products share similar characteristics and quality. It does not seek to protect the business interests of single producer in a particular region.³⁸ Therefore, apart from being *per se* violative of the provisions of the statute, granting GI to a wealthy spiritual institution like TTD goes against the very spirit of the GI Act, which envisages collective ownership of rights rather than monopoly rights owned by a single entity.

It is a matter of deep concern that the GI Registry, in its over eagerness to hand out GI registration to the TTD failed to comprehend that GI is not right

³² PIL filed before the Madras High Court (Writ Petition Number WP 20749/2009), available at <http://www.barandbench.com/userfiles/files/File/IN%20THE%20HIGH%20COURT%20OF%20JUDICATURE%20AT%20MADRAS.doc> (Last visited on March 2, 2010).

³³ *Supra* note 22.

³⁴ Dev Ganjee, *Geographical Indications: Recent Developments*, available at <http://articles.manupatra.com/PopOpenArticle.aspx?ID=05430e04-e049-4439-ad429e90ab3d0a01&txtsearch=Dr.%20Dev%20Gangjee> (Last visited on March 2, 2010).

³⁵ *Supra* note 14.

³⁶ Sumathi Chandreshkharan, *Spicy Tidbit: The Laddu and after*, October, 2009, available at <http://spicyipindia.blogspot.com/2009/10/spicyip-tidbit-laddu-and-after.html> (Last visited on March 3, 2010).

³⁷ Article 1, Council Regulation (EC) No 510/2006 of 20 March 2006 provides that "Only a group should be entitled to apply for registration."

³⁸ Latha Jishu, *God's Laddoos, geography and more*, BUSINESS STANDARD, (New Delhi), November 26, 2008, available at <http://www.business-standard.com/india/news/latha-jishnu-gods-laddoos-geographyand-more/341357/> (Last visited on March 3, 2010).

kind of intellectual property right (IPR) that should be bestowed on a private entity like the temple to acquire monopolistic control over a name.³⁹ It has certain peculiar features which are specifically intended to promote community interests.⁴⁰ For instance, it is a right held in perpetuity and is non-assignable, ie, the authorized user can use the sign but cannot assign it to another party.⁴¹ If the temple is geared towards eliminating competition from other Laddu makers in Tirupati and maintaining a monopoly on the sale of the Laddus, what it should be seeking is a trademark under the Trade Marks Act, 1999 and not a GI. A descriptive trademark maybe entitled to protection if it can show that it has assumed a secondary meaning, which identifies it with a particular product or as being from a particular source.⁴² Given the popularity of the Tirupati Laddu, the geographical name, Tirupati has acquired sufficient secondary meaning or distinctiveness to qualify for a trademark in relation to Laddus under the Trade Marks Act, 1999.⁴³ But the use of GI tag for creation of monopolies is simply unacceptable and may send wrong signals to the public that GIs are available for solo producers as well. Moreover, if such registrations are entertained, then business enterprises carrying on a monopolistic business would be able to secure a GI for its good if it can prove that it is the only producer specializing in the manufacture or production of a commodity having unique features.⁴⁴ For instance, the Bambino Agro Industries which is reportedly the exclusive manufacturer of pasta with durum wheat semolina in India, has recently applied for a GI for Bambino vermicelli.⁴⁵ Since Bambino vermicelli is produced by a single producer in different states, and has a registered trademark, a grant of GI status to it, though not surprising given the casual attitude of the GI Registry, would defeat the purpose of the GI Act.⁴⁶ Further, the trend set by Tirupati Laddu may also prompt religious institutions to join the race for GIs on their temple offerings.

³⁹ R.S. Praveen Raj, *TRIPS Demon Crawls into temples: GI and Tm on Divine Affairs*, May 23, 2009, available at <http://www.articlesbase.com/advertising-articles/trips-demon-crawls-in-to-temples-gi-and-tm-on-divine-affairs-933397.html> (Last visited on March 3, 2010).

⁴⁰ *Supra* note 5.

⁴¹ *Id.*

⁴² Acquired distinctiveness or secondary meaning arises when a symbol not inherently distinctive at the time of its adoption later acquires distinctiveness so that it serves as a mark to indicate the source of the goods. See, Anthony. L. Fletcher, David J. Kera, *The Forty –Forth year of Administration of the Lanham Trademark Act, 1946*, 1991, 81 TRADEMARK REP. 601.

⁴³ *Supra* note 14.

⁴⁴ *Supra* note 23.

⁴⁵ BV Mahalakshmi, *Vermicelli may get GI status*, FINANCIAL EXPRESS, (Hyderabad), September 30, 2009, available at <http://www.financialexpress.com/news/vermicelli-may-get-gi-status/523002/> (Last visited on March 4, 2009).

⁴⁶ *Sweets Galore: From the Laddu to the Shavige*, November 6, 2009, available at <http://spicyipindia.blogspot.com/2009/11/sweets-galore-from-laddu-to-shavige.html> (Last visited on March 3, 2010).

B. LACK OF DISTINCTIVENESS.

A GI as defined under the GI Act, identifies goods as originating or being manufactured in a specific geographic region where a given quality or reputation or other characteristic of such goods are essentially attributable to its geographic origin. For instance, the unique flavour of Darjeeling tea, which is distinct from tea grown in any other region in the world, can be attributed to a combination of various natural factors like soil, climate, rainfall and sloping terrains found in the region.⁴⁷ One can only wonder as to whether Tirupati Laddu is indeed inherently distinct and possesses unique features not found in Laddus produced in other regions. A careful perusal of the TTD's application makes it clear that it is the size of the Tirupati Laddu which primarily distinguishes it from other Laddus. With respect to other characteristics, there is no distinctiveness which sets it apart from Laddus produced elsewhere. The ingredients such as flour, ghee, sugar, almonds, cardamom, etc which are used for making the Laddus are not very different from that used in normal Laddus. Moreover, there is neither any particular enrichment in the Laddu which can be attributed to its geographic origin, nor is the process of production unique to Tirupati. Laddus produced elsewhere are also made in a similar manner. The temple in its application claims that unlike other Laddus, Tirupati Laddus go through a stringent series of quality checks, are prepared by highly skilled cooks and are made of the best quality raw materials.⁴⁸ While the use of such measures point towards the superior quality of the Laddus produced at Tirumala, these do not necessarily imply that they possess uniqueness sufficient to accord them GI status. Of course the TTD claims that divine intervention has a role to play in the unique taste and reputation of the Laddus. However, in the absence of any marked distinctiveness from other Laddus, how could GI registry deem it fit to grant GI status on the Laddu merely because the product is believed to have the divine blessing of the Lord?⁴⁹

Even assuming that Tirupati Laddu is indeed different from Laddus produced in other regions, can the GI tag be used only for the temple's Laddus? GI protection confers exclusive rights on all the producers of a geographical area in respect of goods provided that they adhere to authentic standards of production.⁵⁰ Its main function is to act as an appellation or indicator of the geographical origin of the product in question.⁵¹ In the instant case the GI "Tirupati Laddu"

⁴⁷ Darjeeling was the first product to be registered at the Indian Geographical Indications Registry (Reg. Nos. 1 and 2). The product specifications can be found in the GI Journal (Vol. 1), available at <http://www.patentoffice.nic.in/> (Last visited on March 4, 2010).

⁴⁸ *Supra* note 20.

⁴⁹ *Supra* note 14.

⁵⁰ Symposium, Geographical Indications, World Intellectual Property Organization (WIPO) and State Administration for Industry and Commerce (SAIC) of the People's Republic of China, WIPO/GE/BE/07/13, available at [www.wipo.int/edocs/mdocs/.../en/.../wipo_geo_bei_07_www_81780.doc](http://www.wipo.int/edocs/mdocs/en/.../wipo_geo_bei_07_www_81780.doc) (Last Visited on March 2, 2010). See also, Hazem Abu Hantash, *Geographical Indications Protection and Registration in the United Arab Emirates*, 2007, A.T. Law Update 2007, 190, 19-20.

⁵¹ *Id.*

signifies that the Laddus originate from the Tirupati region. This implies that all the producers from Tirupati region should have the right to use the GI tag “Tirupati Laddu” for their Laddus provided that they are same as the Laddus manufactured by the Trust in terms of terms of delicacy, size, quality and other characteristics which are essentially attributable to the latter. If this is the case, could the temple eliminate competition from a Laddu maker from Tirupati who manufactures Laddus using the same methods of production as those used in the temple?⁵² Generally, a native producer using a geographical indication cannot preclude another similarly placed producer of the same region from using the same GI.⁵³ Thus, logically speaking the temple would have to share the use of the GI with all those Laddu makers who comply with the standards used in the temple to produce identical Laddus. However, the TTD could always argue that the Laddus derive their sanctity from being offered as *Naivedyam* to the Lord, a uniqueness which sets them apart and makes them distinct from all other Laddus produced in Tirupati. Thus, it appears that even in a situation described above, the GI could be used solely by TTD and not by the producers of identical Laddus in the region, based on the notion that the latter lacks the “divine characteristics” which arises from being offered as *Naivedyam*.

C. GENERIC NATURE OF THE NAME

Another substantive requirement for acquiring GI status is that the GI should not have become generic in nature.⁵⁴ For example, the name “*Kolhapuri chappal*” which was originally used for chappals made in *Kolhapur* district in Rajasthan now has become a generic name and refers to a type of leather chappal having a characteristic design.⁵⁵ Explanation 1 to Section 9 of the GI Act clarifies that “generic names or indications, in relation to goods, means the name of goods which, although relates to the place or the region where the goods was originally produced or manufactured, has lost its original meaning and has become the common name of such goods and serves as a designation for or indication of the kind, nature, type or other property or characteristic of the goods.” Explanation 2 further provides that “In determining whether the name has become generic, account shall be taken of all factors including the existing situation in the region or place in which the name originates and the area of consumption of the goods. As observed earlier, Tirupati Laddus are being offered by the temple for centuries.

⁵² *Supra* note 6.

⁵³ Emily C. Creditt, *Terroir v Trademarks: The Debate over Geographical Indications and Expansion of the TRIPS Agreement*, 2009, 11 VAND. J. ENT. & TECH. L. 425.

⁵⁴ A generic term means a term which is freely usable by all. Section 9 (f) of the GI categorically states that geographical indications which are determined to be generic names of goods and are therefore no longer protected in their country of origin or fallen into disuse in that country would not be eligible for registration.

⁵⁵ B. Bowonder, S. Sadhulla, Akshay Jain, *Evolving an ICT Platform for a Traditional Industry: Transforming Artisans into Entrepreneurs*, available at http://planningcommission.ni.in/reports/sereport/ser/stdy_ict/9_leather.pdf (Last visited on March 3, 2010).

Although “Tirupati Laddu” was initially conceived and used by the temple, Laddus which are similar to the ones produced at the temple can be seen everywhere in the temple town. The name “Tirupati Laddu” is widely used by hundreds of independent producers both inside as well as outside the region.⁵⁶ As discussed earlier, the only feature which distinguishes these Laddus from Laddus of other regions is its size.⁵⁷ Thus, it might be possible that people identify all the gigantic Laddus which claim their origin from Tirupati as Tirupati Laddu. Therefore, it can be argued that the term “Tirupati Laddu”, is used commonly to refer to a type of Laddu (large Laddus), regardless of whether it is prepared in the temple. If the name has already acquired a generic status, the grant of GI to Tirupati Laddu is inherently erroneous.

D. PREJUDICE TO RELIGIOUS SENTIMENTS

Finally, no GI could be granted if it hurts the religious sentiments of any section of the society. Section 9 (d) categorically disallows registration of any geographical indication “which comprises or contains any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India. The efforts made by the temple to acquire monopoly over the production and sale of the temple *prasadam* amounts to nothing but an attempt to cash in on the religious beliefs of the people. Such commercialization of faith may not be viewed favourably by many sections of society. Further, under the GI Act, the GI protection is available only for “goods”. The term “goods” is defined in Section 2(1) (f) as “any agricultural, natural or manufactured goods or any goods of handicraft or of industry and includes food stuff”. It is clear that the Act pertains only to commercially significant commodities. For millions of devotees of Lord *Venkateshwara*, the sacred *prasadam* offered by the temple is an object of reverence and exemplifies sanctity and divine blessings. Classifying these Laddus as commercial or manufactured goods would be definitely prejudicial to their religious sentiments.⁵⁸ Ironically GI registry itself has recently issued an order in relation to *Payyannur Pavithra Ring*, a traditional ornament from Kerala, stating categorically that religious sentiments are no bar to registration as a GI.⁵⁹ This order, which may carry precedential value with respect to GI products of religious connotation, could considerably weaken the true import of Section 9(d). After this order, one of the fundamental grounds of opposition to the grant of GI on Tirupati Laddu, which was based on prejudice to religious sentiments, may have become somewhat redundant.

As noted earlier, the sale of these Laddus bring in a huge amount of revenue for the temple. It is a form of faith trading which has grown into a profitable business for this affluent religious shrine. Although the TTD contended that GI protection was sought to protect the interests of the devotees who were being

⁵⁶ *Supra* note 34.

⁵⁷ *Supra* note 20.

⁵⁸ *Supra* note 6.

⁵⁹ *Payyannur Pavithra Ring, Artisans & Devp v K Balakrishnan*, [2009 (41) PTC 719 (GIG)].

duped by unscrupulous elements, one would think that proper notification inside the temple premises regarding the sell of fake Laddus outside the temple complex would have been effective in cautioning the devotees.⁶⁰ Under the garb of GI status, the temple has tried to mask its true commercial interests which would have become more apparent if instead a trademark was sought on the Laddus.

The PIL filed before the Madras High Court, which also opposes the grant of trade mark certification on the image of Attukal deity, highlights many of the problems discussed above particularly with respect to commercialization of religion. The decision of the Court would throw some light on the true purport of GI protection in India. It can be hoped that the Court would appreciate the significance of GI as an instrument of IPR for the marginalized and prevent it from being misused by wealthy private entities seeking commercial gain under the veil of altruism. If the GI registration is not revoked it would set a bad precedent for future GI applications.

IV. FAITH TRADING AND IPR

The grant of GI to Tirupati Laddu is not the only instance where a religious body has tried to stake its claim on a spiritual symbol with the help of IPR. Last year the Attukal Bhagawathy Temple in Kerala secured a trade mark over the pictorial representation of the deity as well as its claim to the title “Sabarimala of Women”, giving rise to a number of troublesome questions about the scope of trade mark protection.⁶¹ Does the image of a deity warrant trade mark protection in the first place? Although the Trade Mark Act, 1999 does not per se prohibit grant of trade mark to religious symbols, Section 9(2) (b) of the Act, which provides for absolute grounds for refusal of registration, clearly specifies that a mark shall not be registered as trade mark if “it contains or comprises of any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India.” Normally, a trade mark prevents the unauthorized use of a mark in the course of trade by any enterprise other than the lawful owner of the trade mark.⁶² However, in this case since Goddess Kannagi is worshipped in other temples in Kerala and the images of the Goddess in those temples may very well resemble the trade-marked image, these temples might have to remodel their images⁶³ if Attukal decides to bring an action

⁶⁰ Dwijen Rangnekar, *A Laddu for penance... or God's own GI!*, ECONOMIC TIMES, April 23, 2009, available at <http://economictimes.indiatimes.com/Opinion/Policy/A-laddu-for-penance-or-Gods-own-GI/articleshow/4437380.cms?curpg=1> (Last Visited on March 3, 2010).

⁶¹ *Trademark for picture, title*, THE HINDU, (Kerala), March 9, 2009, available at <http://www.hindu.com/2009/03/09/stories/2009030954340300.htm> (Last visited on March 4, 2010).

⁶² Keith Aoki, Authors, *Inventors and Trademark Owners: Private Intellectual Property and the Public Domain, Part II*, 1994, 18 COLUM.-VLA J.L. & ARTS 191.

⁶³ R.S. Praveen Raj, *Trademark for deity in Attukal temple (Goddess Kannagi): Serious prejudice to religious freedom*, March 31, 2009, available at <http://secularcitizen.net/2009/03/31/trademark-for-attukal-deity-serious-prejudice-to-religious-freedom-2/> (Last visited on March 5, 2010).

against them on the ground of deceptive similarity.⁶⁴ In addition, Attukal temple may even preclude devotees from using the trademarked image for personal worship without its authorization. Thus, the trade mark certification in this case not only has the potential to hurt religious sentiments of the devotees as envisaged under Section 9(2)(b) of the Trade Mark Act, 1999 but also infringes the right to freedom of religion guaranteed under Articles 25 and 26 of the Indian Constitution.⁶⁵ In *Ratilal Panachand Gandhi v State of Bombay*,⁶⁶ it was observed that “religious practices or performances of acts in pursuance of religious belief are as much a part of religion as faith or belief in particular doctrines” Disallowing devotees to worship the image of Goddess Kannagi without obtaining permission would be certainly tantamount to interfering with their right to perform practices or acts in pursuant to their beliefs. Similarly, the right of other temples devoted to Goddess Kannagi to manage their own religious affairs is hampered by the threat of infringement action by Attukal Trust. Furthermore, the Trade Mark Registry has chosen to interpret “temple services” (one of the classes of services under Fourth Schedule Class 42 of Trademark Rules [2002] in respect of which the mark was claimed) as “service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters”.⁶⁷ Equating a temple with a business enterprise providing commercial services, and placing the worshippers in the same category as potential users of such services, result in unholy mixing of faith and business which is sure to hurt the religious beliefs at least some of the devotees of Goddess Kannagi.⁶⁸

The vital question here is whether such commercialization can be allowed to interfere with the religious freedom of citizens in a secular country given the mandate of Article 25 and 26? Should a symbol of faith worshipped by millions of people be allowed to be appropriated by a temple to facilitate trade interests of the latter? Hopefully, the Madras High Court’s decision would provide satisfactory answers to these questions.

⁶⁴ If a mark is identical or similar to a registered trademark so much so as to confuse the consumers of the registered mark, then the mark is said to be deceptively similar to the registered mark.

⁶⁵ Article 25(1) of the Indian Constitution states that “Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. Article 26 provides “Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-(a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion;(c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law.

⁶⁶ *Ratilal Panachand Gandhi v State of Bombay*, AIR 1954 SC 388.

⁶⁷ Trade Mark Journal No. 1388, March, 16, 2008, available at http://ipindia.nic.in/tmr_new/tm_journal/journal_1388/CLASS_42.pdf (Last visited on March 4, 2010); See also, Sumathi Chandreshkharan, *Religion and IP: The Tales of Tirupati, Attukal and Osho*, March 24, 2009, available at <http://spicyipindia.blogspot.com/2009/03/religion-and-ip-tales-of-tirupati.html> (Last visited on March 4, 2010).

⁶⁸ *Supra* note 63.

GIs, in contrast to trademarks help in the preservation of cultural identities in addition to protecting commercial interests. However, the case of Tirupati Laddu shows how GIs could be used by powerful religious institutions to establish monopolies over divine symbols revered by millions. As discussed earlier, the example set by the Tirumala Temple may be emulated by several other shrines whose offerings are equally famous. In fact the famous Palzhani Murugan Temple in Tamil Nadu may soon apply for a GI on its *Panchamirtham*.⁶⁹ Likewise, “*aravana payasam*”⁷⁰ and “*appam*”⁷¹ offered at the Sabarimala temple or the “*palpayasam*”⁷² from Sri Krishna Temple near Alleppey are also unique in their tastes. But do they deserve GI status? Clearly, if their uniqueness is judged in terms of divine intervention and sanctity, the GI Registry might end up granting them GI status too. However, are the devotees expected to believe that they carry the God’s blessings while the replicas do not?

In a secular country like India, it is the duty of the state to ensure that none of the laws in force hurt the religious sentiments of the people. While the legislations relating to trademark and GI contains provisions ensuring the same, neither the GI Registry nor the Trademark Registry has bothered to adhere to them. In fact, going by the order of the GI Registry in the case of *Payyannur Pavithra Ring*, religious sentiments would no longer be taken into account before granting GI.⁷³ Is dispensing with this criterion conducive for a country such as India inhabited by people of so many diverse faiths? Likewise if religious entities are granted trade mark for religious symbols with out proper checks, any person of any religious faith could claim trademark on the same after making small modifications and use them for trade purposes on any product.⁷⁴ Apart from hurting religious sensibilities, such practices may pose a threat to the communal harmony of the country in the long run.⁷⁵

V. CONCLUSION

⁶⁹ A mixture of Viruppachchi plantains, kandasari sugar from Kangeyam area, dates, honey, sugar candy, cardamom and ghee in proper proportions. See, S Sujatha, *Palani Temple to double Panchamirtham production*, ECONOMIC TIMES, (Palani), October 6, 2009, available at <http://economictimes.indiatimes.com/news/news-by-industry/services/travel/Palani-temple-to-double-panchamirtham-production/articleshow/5094847.cms> (Last visited on March 3, 2010).

⁷⁰ Sweet rice porridge containing jaggery, ghee, raisins, cardamom, cashews, etc offered as sacred food.

⁷¹ Rice porridge containing jaggery, banana, cardamom, ghee.

⁷² Sweet porridge made with milk, ghee and rice offered as sacred food.

⁷³ Sumathi Chandrashekharan, *Payyanur Ring GI: religious sentiments no bar to registration*, February 7, 2010, available at <http://spicyipindia.blogspot.com/2010/02/payyanur-ring-gi-religious-sentiment-no.html> (Last visited on March 3, 2010).

⁷⁴ *Supra* note 63.

⁷⁵ *Id.*

GI protection is very important for India on account of its rich cultural heritage and diverse geography which are responsible for the availability of vast number of native products that are unique to specific regions. Although the GI Act seeks to provide a proper regulatory mechanism for the same, the GI Registry has time and again failed to comply with the minimum requirements laid down under the Act. Given the fact that the legal regime for GI protection in India is still in the nascent stages, it is understandable that the GI Registry would not wish to set too high a standard for eligibility since it may discourage many from even attempting to secure a GI.⁷⁶ However, handing out GI registrations to anything and everything which has a geographical name fails to achieve the broader objectives of instituting a system of GIs.⁷⁷ The lack of vigilance on the part of GI Registry is encouraging individual applicants like Tirupati Laddu whose primary objective is to procure monopoly rights over a product by using a GI. Even prior to this, Reliance Industries Ltd (RIL) had filed GI application for registering “Jamnagar” as a GI for petrol, diesel, LPG.⁷⁸ Like Tirupati Laddu, the application was filed by a powerful enterprise to safeguard its commercial interests.⁷⁹ Although the application was subsequently abandoned by RIL, the fact that such an application was allowed to proceed till the stage of advertisement goes on to show the lax standards of the examination process of the GI Registry which in turn may have grave implications for the future of GI protection.⁸⁰ If the GI Registry does not apply more stringent yardsticks for granting GI, it would become less potent as an instrument of IPR. Greater vigilance on the part of the authorities is needed to ensure that GI continues to remain an effective tool for furthering community rights.

While according GI status to Tirupati Laddu, the GI Registry seems to have overlooked the possibility that the grant of GI to the sacred prasadam of a powerful religious shrine, apart from violating many provisions of law, could pave the way for rampant commercialization of religion. The GI status would enable shrines like Tirupati to claim exclusive rights on sacred objects in order to maximize their profits by eliminating competition from other producers of similar products. While such practices are suitable for a business enterprise, it is unacceptable to allow places of worship to indulge in faith trading. GI Registry needs to be more circumspect regarding the true intention of such religious bodies which seek IPR protection in the guise of altruism.

⁷⁶ Shamnad Basheer, *SpicyIP Tidbits: Indian GIs and the need for “Introspection”*, September 1, 2008, available at <http://spicyipindia.blogspot.com/2008/09/spicyip-tidbits-indian-gis-and-need-for.html> (Last visited on March 3, 2010). See also, Arun S, *GI Protection in India: A time to Introspect?*, FINANCIAL EXPRESS, August 31, 2008, available at <http://www.financialexpress.com/news/GI-protection-in-India-A-time-to-introspect/355400/2> (Last visited on March 3, 2010).

⁷⁷ Latha R. Nair, *Guest Post: The Jamnagar Petrol GI Case*, September 9, 2009, available at <http://spicyipindia.blogspot.com/2009/09/guest-post-jamnagar-petrol-gi-case.html> (Last visited on March 3, 2010).

⁷⁸ Varupi Jain, *Does Jamnagar Diesel Equal Basmati?* INDIA TOGETHER (July 15, 2006) available at <http://www.indiatogether.org/2006/jul/eco-relGI.htm> <http://www.indiatogether.org/2006/jul/eco-relGI.htm> (Last visited on March 3, 2010).

⁷⁹ *Supra* note 77.

⁸⁰ *Id.*

