The Geographical Indications of Goods (Registration and Protection) Act, 1999

Act 48 of 1999. 89 sections. Bare Act with the official footnotes.

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Every section online, with the old and new law side by side and exam questions:
https://www.lawmaker.in/bare-acts/geographical-indications-act-1999

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[30th December, 1999.]

An Act to provide for the registration and better protection of geographical indications relating to goods.

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:-

CHAPTER I PRELIMINARY

Section 1. Short title, extent and commencement

(1) This Act may be called the Geographical Indications of Goods (Registration and Protection) Act, 1999.

(2) It extends to the whole of India.

(3) It shall come into force on such date[1] as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

[1] 15th September, 2003, vide notification no. S.O. 1051(E), dated 15th September, 2003, see Gazette of India, Extraordinary, Part II, sec. 3(ii).

Section 2. Definitions and interpretation

(1) In this Act, unless the context otherwise requires,-

[1]* * * * *

(b) "authorised user" means the authorised user of a geographical indication registered under section 17;

(c) "deceptively similar" A geographical indication shall be deemed to be deceptively similar to another geographical indication if it so nearly resembles that other geographical indication as to be likely to deceive or cause confusion;

(d) "district court" has the meaning assigned to it in the Code of Civil Procedure, 1908 (5 of 1908);

(e) "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;

(f) "goods" means any agricultural, natural or manufactured goods or any goods of handicraft or of industry and includes food stuff;

(g) "indication" includes any name, geographical or figurative representation or any combination of them conveying or suggesting the geographical origin of goods to which it applies;

(h) "name" includes any abbreviation of a name;

(i) "package" includes any case, box, container, covering, folder, receptacle, vessel, casket, bottle, wrapper, label, band, ticket, reel, frame, capsule, cap, lid, stopper and cork;

(j) "prescribed" means prescribed by rules made under this Act;

(k) "producer", in relation to goods, means any person who,-

(i) if such goods are agricultural goods, produces the goods and includes the person who processes or packages such goods;

(ii) if such goods are natural goods, exploits the goods;

(iii) if such goods are handicraft or industrial goods, makes or manufactures the goods,

and includes any person who trades or deals in such production, exploitation, making or manufacturing, as the case may be, of the goods;

(l) "register" means the Register of Geographical Indications referred to in section 6;

(m) "registered" (with its grammatical variations) means registered under this Act;

(n) "registered proprietor", in relation to a geographical indication, means any association of persons or of producers or any organisation for the time being entered in the register as proprietor of the geographical indication;

(o) "Registrar" means the Registrar of Geographical Indications referred to in section 3;

[2]* * * * *

(2) Words and expressions used and not defined in this Act but defined in the Trade Marks Act, 1999 (47 of 1999) shall have the meanings respectively assigned to them in that Act.

(3) In this Act, unless the context otherwise requires, any reference-

(a) to the use of a geographical indication shall be construed as a reference to the use of a printed or other visual representation of the geographical indication;

(b) to the use of a geographical indication in relation to goods shall be construed as a reference to the use of the geographical indication upon, or in any physical or in any other relation whatsoever, to such goods;

(c) to a registered geographical indication shall be construed as including a reference to a geographical indication registered in the register;

(d) to the Registrar shall be construed as including a reference to any officer when discharging the functions of the Registrar in pursuance of sub-section (2) of section 3;

(e) to the Geographical Indications Registry shall be construed as including a reference to any office of the Geographical Indications Registry.

[1] Cl. (a) omitted by Act 33 of 2021, s. 22 (w.e.f. 4-4-2021).

[2] Cl. (p) omitted by Act 33 of 2021, s. 22 (w.e.f. 4-4-2021).

CHAPTER II THE REGISTER AND CONDITIONS FOR REGISTRATION

Section 3. Registrar of Geographical Indications

(1) The Controller-General of Patents, Designs and Trade Marks appointed under sub-section (1) of section 3 of the Trade Marks Act, 1999, shall be the Registrar of Geographical Indications.

(2) The Central Government may appoint such officers with such designations as it thinks fit for the purpose of discharging, under the superintendence and direction of the Registrar, such functions of the Registrar under this Act, as he may from time to time authorise them to discharge.

Section 4. Power of Registrar to withdraw or transfer cases, etc

Without prejudice to the generality of the provisions of sub-section (2) of section 3, the Registrar may, by order in writing and for reasons to be recorded therein, withdraw any matter pending before an officer appointed under the said sub-section (2) and deal with such matter himself either de novo or from the stage it was so withdrawn or

transfer the same to another officer so appointed who may, subject to special directions in the order of transfer, proceed with the matter either de novo or from the stage it was so transferred.

Section 5. Geographical Indications Registry and offices thereof

(1) For the purpose of this Act, there shall be established a Registry which shall be known as the Geographical Indications Registry.

(2) The head office of the Geographical Indications Registry shall be at such place as the Central Government may, by notification in the Official Gazette, specify, and for the purpose of facilitating the registrations of geographical indications, there may be established at such places as the Central Government may think fit branch offices of the Geographical Indications Registry.

(3) The Central Government may, by notification in the Official Gazette, define the territorial limits within which an office of the Geographical Indications Registry may exercise its functions.

(4) There shall be a seal of the Geographical Indications Registry.

Section 6. Register of Geographical Indications

For the purposes of this Act, a record called the Register of geographical indications shall be kept at the head office of the Geographical Indications Registry, wherein shall be entered all registered geographical indications with the names, addresses and descriptions of the proprietors, the names, addresses and descriptions of authorised users and such other matters relating to registered geographical indications as may be prescribed and such registers may be maintained wholly or partly on computer.

(2) Notwithstanding anything contained in sub-section (1), it shall be lawful for the Registrar to keep the records wholly or partly in computer floppies or diskettes or in any other electronic form, subject to such safeguards as may be prescribed.

(3) Where such register is maintained wholly or partly in computer floppies or diskettes or in any other electronic form under sub-section (2), any reference in this Act to any entry in the register shall be construed as the reference to the entry as maintained on computer floppies or diskettes or in any other electronic form, as the case may be.

(4) No notice of any trust, express or implied or constructive, shall be entered in the register and no such notice shall be receivable by the Registrar.

(5) Subject to the superintendence and direction of the Central Government, the register shall be kept under the control and management of the Registrar.

(6) There shall be kept at each branch office of the Geographical Indications Registry a copy of the register and such other documents mentioned in section 78 as the Central Government may, by notification in the Official Gazette, direct.

Section 7. Part A and Part B of the register

(1) The register referred to in section 6 shall be divided into two Parts called respectively Part A and Part B.

(2) The particulars relating to the registration of the geographical indications shall be incorporated and form Part A of the register in the prescribed manner.

(3) The particulars relating to the registration of the authorised users shall be incorporated and form part of Part B of the register in the prescribed manner.

Section 8. Registration to be in respect of particular goods and area

(1) A geographical indication may be registered in respect of any or all of the goods, comprised in such class of goods as may be classified by the Registrar and in respect of a definite territory of a country, or a region or locality in that territory, as the case may be.

(2) The Registrar shall classify the goods under sub-section (1), as far as may be, in accordance with the International classification of goods for the purposes of registration of geographical indications.

(3) The Registrar may publish in the prescribed manner an alphabetical index of classification of goods referred to in sub-section (2).

(4) Any question arising as to the class within which any goods fall or the definite area as referred to in sub-section (1) in respect of which the geographical indication is to be registered or where any goods are not specified in the alphabetical index of goods published under sub-section (3) shall be determined by the Registrar whose decision in the matter shall be final.

Section 9. Prohibition of registration of certain geographical indications

A geographical indication-

(a) the use of which would be likely to deceive or cause confusion; or

(b) the use of which would be contrary to any law for the time being in force; or

(c) which comprises or contains scandalous or obscene matter; or

(d) which comprises or contains any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India; or

(e) which would otherwise be disentitled to protection in a court; or

(f) which are determined to be generic names or indications of goods and are, therefore, not or ceased to be protected in their country of origin, or which have fallen into disuse in that country; or

(g) which, although literally true as to the territory, region or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality, as the case may be,

shall not be registered as a geographical indication.

Explanation 1.-For the purposes of this section, "generic names or indications", in relation to goods, means the name of a 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.-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.

Section 10. Registration of homonymous geographical indications

Subject to the provisions of section 7, a homonymous geographical indication may be registered under this Act, if the Registrar is satisfied, after considering the practical conditions under which the homonymous indication in question shall be differentiated from other homonymous indications and the need to ensure equitable treatment of the producers of the goods concerned, that the consumers of such goods shall not be confused or misled in consequence of such registration.

CHAPTER III PROCEDURE FOR AND DURATION OF REGISTRATION

Section 11. Application for registration

(1) Any association of persons or producers or any organisation 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 shall apply in writing to the Registrar in such form and in such manner and accompanied by such fees as may be prescribed for the registration of the geographical indication.

(2) The application under sub-section (1) shall contain-

(a) a statement as to how the geographical indication serves to designate the goods as originating from the concerned territory of the country or region or locality in the country, as the case may be, in respect of specific quality, reputation or other characteristics of which are due exclusively or essentially to the geographical environment, with its inherent natural and human factors, and the production, processing or preparation of which takes place in such territory, region or locality, as the case may be;

(b) the class of goods to which the geographical indication shall apply;

(c) the geographical map of the territory of the country or region or locality in the country in which the goods orginate or are being manufactured;

(d) the particulars regarding the appearance of the geographical indication as to whether it is comprised of the words or figurative elements or both;

(e) a statement containing such particulars of the producers of the concerned goods, if any, proposed to be initially registered with the registration of the geographical indication as may be prescribed; and

(f) such other particulars as may be prescribed.

(3) A single application may be made for registration of a geographical indication for different classes of goods and fee payable therefor shall be in respect of each such class of goods.

(4) Every application under sub-section (1) shall be filed in the office of the Geographical Indications Registry within whose territorial limits, the territory of the country or the region or locality in the country to which the geographical

indication relates is situated:

Provided that where such territory, region or locality, as the case may be, is not situated in India, the application shall be filed in the office of the Geographical Indications Registry within whose territorial limits the place mentioned in the address for services in India as disclosed in the application, is situated.

(5) Every applications under sub-section (1) shall be examined by the Registrar in such manner as may be prescribed.

(6) Subject to the provisions of this Act, the Registrar may refuse the application or may accept it absolutely or subject to such amendments, modification, conditions or limitations, if any, as he thinks fit.

(7) In the case of refusal or conditional acceptance of application, the Registrar shall record in writing the grounds for such refusal or conditional acceptance and the materials used by him in arriving at his decision.

Section 12. Withdrawal of acceptance

Where, after the acceptance of an application for registration of a geographical indication but before its registration, the Registrar is satisfied,-

(a) that the application has been accepted in error, or

(b) that in the circumstances of the case the geographical indication should not be registered or should be registered subject to conditions or limitations or to conditions additional to or different from the conditions or limitations subject to which the application has been accepted,

the Registrar may, after hearing the applicant if he so desires, withdraw the acceptance and proceed as if the application had not been accepted.

Section 13. Advertisement of application

(1) When an application for registration of a geographical indication has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause the application as accepted together with the conditions or limitations, if any, subject to which it has been accepted, to be advertised in such manner as may be prescribed.

(2) Where after advertisement of an application-

(a) an error in the application has been corrected; or

(b) the application has been permitted to be amended under section 15,

the Registrar may, in his discretion cause the application to be advertised again or instead of causing the application to be advertised again, notify in the prescribed manner, the correction made in the application.

Section 14. Opposition to registration

(1) Any person may, within three months from the date of advertisement or readvertisement of an application for registration or within such further period, not exceeding one month, in the aggregate, as the Registrar, on application made to him in such manner and on payment of such fee as may be prescribed allows, give notice in writing in the prescribed manner to the Registrar, of opposition to the registration.

(2) The Registrar shall serve a copy of the notice on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall sent to the Registrar in the prescribed manner a counter-statement of the grounds on which he relies for his application, and if he does not do so, he shall be deemed to have abandoned his application.

(3) If the applicant sends such counter-statement, the Registrar shall serve a copy thereof on the person giving notice of opposition.

(4) Any evidence upon which the opponent and the applicant may rely shall be submitted in such manner and within the such time as may be prescribed to the Registrar, and the Registrar shall give an opportunity to them to be heard, if they so desire.

(5) The Registrar shall, after hearing the parties, if so required, and considering the evidence, decide whether and subject to what conditions or limitations, if any, the registration is to be permitted, and may take into account a ground of objection whether relied upon by the opponent or not.

(6) Where a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such notice neither resides nor carries on business in India, the Registrar may require him to give security for the costs of proceeding before him, and in default of such security being duly given, may treat the opposition or application, as the case may be, as abandoned.

(7) The Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a counter-statement on such terms as he thinks just.

Section 15. Correction and amendment

The Registrar may, on such terms, as he thinks just, at any time, whether before or after acceptance of an application for registration under section 11, permit the correction of any error or in connection with the application or permit an amendment of the application:

Provided that if an amendment is made to a single application referred to in sub-section (3) of section 11 involving division of such application into two or more applications, the date of making of the initial application shall be deemed to be the date of making of the divided applications so divided.

Section 16. Registration

(1) Subject to the provisions of section 12, when an application for registration of a geographical indication has been accepted and either-

(a) the application has not been opposed and the time for notice of opposition has expired; or

(b) the application has been opposed and the opposition has been decided in favour of the applicant,

the Registrar shall, unless the Central Government otherwise directs, register the said geographical indication and the authorised users, if any, mentioned in the application and the geographical indication and the authorised users when registered shall be registered as of the date of the making of the said application and that date shall, subject to the provisions of section 84, be deemed to be the date of registration.

(2) On the registration of a geographical indication, the Registrar shall issue each to the applicant and the authorised users, if registered with the geographical indication, a certificate in such form as may be prescribed of the registration thereof, sealed with the seal of the Geographical Indications Registry.

(3) Where registration of a geographical indication is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

(4) The Registrar may amend the register or a certificate of registration for the purpose of correcting a clerical error or an obvious mistake.

Section 17. Application for registration as authorised user

(1) Any person claiming to be the producer of the goods in respect of which a geographical indication has been registered under section 16 may apply in writing to the Registrar in the prescribed manner for registering him as an authorised user of such geographical indication.

(2) The application under sub-section (1) shall be accompanied by a statement and such documents of facts as may be prescribed and required by the Registrar to determine as to whether such person is the producer of the goods referred to in that sub-section and such fee as may be prescribed.

(3) The provisions of this Chapter relating to-

(a) the filing and examination of the application;

(b) the refusal and acceptance of registration;

(c) withdrawal of acceptance of application;

(d) advertisement of application;

(e) opposition to registration;

(f) correction or error in an amendment of the application; and

(g) registration,

shall apply in respect of the application and registration of authorised users referred to in sub-section (1) in the same manner as they apply for the application for registration and registration of the geographical indication.

Section 18. Duration, renewal, removal and restoration of registration

(1) The registration of a geographical indication shall be for a period of ten years, but may be renewed from time to time in accordance with the provisions of this section.

(2) The registration of an authorised user shall be for a period of ten years or for the period till the date on which the registration of the geographical indication in respect of which the authorised user is registered expires, whichever is

earlier.

(3) The Registrar shall, on application made in the prescribed manner, by the registered proprietor or by the authorised user and within the prescribed period and subject to the payment of the prescribed fee, renew the registration of the geographical indication or authorised user, as the case may be, for a period of ten years from the date of expiration of the original registration or of the last renewal of registration, as the case may be (which date is in this section referred to as the expiration of the last registration).

(4) At the prescribed time before the expiration of the last registration of a geographical indication or the authorised user, as the case may be, the Registrar shall send notice in the prescribed manner to the registered proprietor or the authorised user, as the case may be, of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained, and, if at the expiration of time prescribed in that behalf those conditions have not been duly complied with, the Registrar may remove the geographical indication or the authorised user, as the case may be, from the register:

Provided that the Registrar shall not remove the geographical indication or the authorised user, as the case may be, from the register, if an application is made in the prescribed form and the prescribed fee and surcharge is paid within six months from the expiration of the last registration of the geographical indication or the authorised user, as the case may be, and shall renew the registration of geographical indication or the authorised user, as the case may be, for a period of ten years under sub-section (3).

(5) Where a geographical indication or authorised user, as the case may be, has been removed from the register for non-payment of the prescribed fee, the Registrar shall, after six months and within one year from the expiration of the last registration of the geographical indication or the authorised user, as the case may be, on receipt of an application in the prescribed form and on payment of the prescribed fee, if satisfied that it is just so to do, restore the geographical indication or the authorised user, as the case may be, to the register and renew registration of the geographical indication or authorised user, as the case may be, either generally or subject to such condition or limitation as he thinks fit to impose, for a period of ten years from the expiration of the last registration.

Section 19. Effect of removal from register for failure to pay fee for renewal

Where a geographical indication has been removed from the register for failure to pay the fee for renewal, it shall nevertheless, for the purpose of any application for the registration of another geographical indication during one year, next after the date of removal, be deemed to be a geographical indication already on the register, unless the [1][Registrar or the High Court, as the case may be,] is satisfied either-

(a) that there has been no bona fide trade use of the geographical indication which has been removed within the two years immediately preceding its removal; or

(b) that no deception or confusion would be likely to arise from the use of the geographical indication which is the subject of the application for registration by reason of any previous use of the geographical indication which has been removed.

[1] Subs. by Act 33 of 2021, s. 22, for "tribunal" (w.e.f. 4-4-2021).

CHAPTER IV EFFECT OF REGISTRATION

Section 20. No action for infringement of unregistered geographical indication

(1) No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered geographical indication.

(2) Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.

Section 21. Rights conferred by registration

(1) Subject to the other provisions of this Act, the registration of a geographical indication shall, if valid, give,-

(a) to the registered proprietor of the geographical indication and the authorised user or users thereof the right to obtain relief in respect of infringement of the geographical indication in the manner provided by this Act;

(b) to the authorised user thereof the exclusive right to the use of the geographical indication in relation to the goods in respect of which the geographical indication is registered.

(2) The exclusive right to the use of a geographical indication given under clause (b) of sub-section (1) shall be subject to any condition and limitation to which the registration is subject.

(3) Where two or more persons are authorised users of geographical indications, which are identical with or nearly

resemble each other, the exclusive right to the use of any of those geographical indications shall not (except so far as their respective rights are subject to any conditions or limitations entered on the register) be deemed to have been acquired by anyone of those persons as against any other of those persons merely by registration of the geographical indications, but each of those persons has otherwise the same rights as against other persons as he would have if he were the sole authorised user.

Section 22. Infringement or registered geographical indications

(1) A registered geographical indication is infringed by a person who, not being an authorised user thereof,-

(a) uses such geographical indication by any means in the designations or presentation of goods that indicates or suggests that such goods originate in a geographical area other than the true place of origin of such goods in a manner which misleads the persons as to the geographical origin of such goods; or

(b) uses any geographical indication in such manner which constitutes an act of unfair competition including passing off in respect of registered geographical indication.

Explanation 1.-For the purposes of this clause, "act of unfair competition" means any act of competition contrary to honest practices in industrial or commercial matters.

Explanation 2.-For the removal of doubts, it is hereby clarified that the following acts shall be deemed to be acts of unfair competition, namely:-

(i) all acts of such a nature as to create confusion by any means whatsoever with the establishment, the goods or the industrial or commercial activities, of a competitor;

(ii) false allegations in the course of trade of such a nature as to discredit the establishment, the goods or the industrial or commercial activities, of a competitor;

(iii) geographical indications, the use of which in the course of trade is liable to mislead the persons as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods;

(c) uses another geographical indication to the goods which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the persons that the goods originate in the territory, region or locality in respect of which such registered geographical indication relates.

(2) The Central Government may, if it thinks necessary so to do for providing additional protection to certain goods or classes of goods under sub-section (3), by notification in the Official Gazette, specify such goods or class or classes of goods, for the purposes of such protection.

(3) Any person who is not an authorised user of a geographical indication registered under this Act in respect of the goods or any class or classes of goods notified under sub-section (2), uses any other geographical indication to such goods or class or classes of goods not originating in the place indicated by such other geographical indication or uses such other geographical indication to such goods or class or classes of goods even indicating the true origin of such goods or uses such other geographical indication to such goods or class or classes of goods in translation of the true place of origin or accompanied by expression such as "kind", "style", "imitation" or the like expression, shall infringe such registered geographical indication.

(4) Notwithstanding anything contained in this section, where the goods in respect of which a geographical indication has been registered are lawfully acquired by a person other than the authorised user of such geographical indication, further dealings in those goods by such person including processing or packaging, shall not constitute an infringement of such geographical indication, except where the condition of goods is impaired after they have been put in the market.

Section 23. Registration to be prima facie evidence of validity

(1) In all legal proceedings relating to a geographical indication, the certificate of registration granted in this regard by the Registrar under this Act, being a copy of the entry in the register under the seal of the Geographical Indications Registry, shall be prima facie evidence of the validity thereof and be admissible in all courts [1][before whom] without further proof or production of the original.

(2) Nothing in this section shall be deemed to be affect the right of action in respect of an unregistered geographical indication.

[1] Subs. by Act 33 of 2021, s. 22, for "and before the Appellate Board" (w.e.f. 4-4-2021)

Section 24. Prohibition of assignment or transmission, etc

Notwithstanding anything contained in any law for the time being in force, any right to a registered geographical indication shall not be the subject matter of assignment, transmission, licensing, pledge, mortgage or any such other agreement:

Provided that on the death of an authorised user his right in a registered geographical indication shall devolve on his successor in title under the law for the time being in force.

CHAPTER V SPECIAL PROVISIONS RELATING TO TRADE MARKS AND PRIOR USERS

Section 25. Prohibition of registration of geographical indication as trade mark

Notwithstanding anything contained in the Trade Marks Act, 1999 (47 of 1999), the Registrar of Trade Marks referred to in section 3 of that Act, shall, suo motu or at the request of an interested party, refuse or invalidate the registration of a trade mark which-

(a) contains or consists of a geographical indication with respect to the goods or class or classes of goods not originating in the territory of a country, or a region or locality in that territory which such geographical indication indicates, if use of such geographical indications in the trade mark for such goods, is of such a nature as to confuse or mislead the persons as to the true place of origin of such goods or class or classes of goods;

(b) contains or consists of a geographical indication identifying goods or class or classes of goods notified under sub-section (2) of section 22.

Section 26. Protection to certain trade marks

(1) Where a trade mark contains or consists of a geographical indication and has been applied for or registered in good faith under the law relating to trade marks for the time being in force, or where rights to such trade mark have been acquired through use in good faith either-

(a) before the commencement of this Act; or

(b) before the date of filing the application for registration of such geographical indication under this Act, nothing contained in this Act shall prejudice the registrability or the validity of the registration of such trade mark under the law relating to the trade marks for the time being in force, or the right to use such trade mark, on the ground that such trade mark is identical with or similar to such geographical indication.

(2) Nothing contained in this Act shall apply in respect of a geographical indication with respect to goods or class or classes of goods for which such geographical indication is identical with the term customary in common language as the common name of such goods in any part of India on or before the 1st day of January, 1995.

(3) Nothing contained in this Act shall in any way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to confuse or mislead the people.

(4) Notwithstanding anything contained in the Trade Marks Act, 1999 (47 of 1999) or in this Act, no action in connection with the use or registration of a trade mark shall be taken after the expiry of five years from the date on which such use or registration infringes any geographical indication registered under this Act has become known to the registered proprietor or authorised user registered in respect of such geographical indication under this Act or after the date of registration of the trade mark under the said Trade Marks Act subject to the condition that the trade mark has been published under the provisions of the said Trade Marks Act, 1999 or the rules made thereunder by that date, if such date is earlier than the date on which such infringement became known to such proprietor or authorised user and such geographical indication is not used or registered in bad faith.

CHAPTER VI RECTIFICATION AND CORRECTION OF THE REGISTER

Section 27. Power to cancel or vary registration and to rectify the register

(1) On application made in the prescribed manner to the [1][High Court] or to the Registrar by any person aggrieved, the [2][Registrar or the High Court, as the case may be,] may make such order as it may think fit for cancelling or varying the registration of a geographical indication or authorised user on the ground of any contravention, or failure to observe the condition entered on the register in relation thereto.

(2) Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the [1][High Court] or to the Registrar, and the [2][Registrar or the High Court, as the case may be,] may make such order for making, expunging or varying the entry

as it may think fit.

(3) The [2][Registrar or the High Court, as the case may be,] may in any proceeding under this section decide any question that may be necessary or expedient to decide in connection with the rectification of the register.

(4) The [2][Registrar or the High Court, as the case may be,], of its own motion, may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2).

(5) Any order of the [1][High Court] rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

[1] Subs. by Act 33 of 2021, s. 22, for "Appellate Board" (w.e.f. 4-4-2021).

[2] Subs. by s. 22. ibid., for "tribunal" (w.e.f. 4-4-2021).

Section 28. Correction of register

The Registrar may, on application made in the prescribed manner by the registered proprietor or the authorised user,-

(a) correct any error in the name, address or description of the registered proprietor or the authorised user, as the case may be, of a geographical indication, or any other entry relating to the geographical indication on the register;

(b) enter any change in the name, address or description of the association of persons or of producers or any ogranisation or authority, as the case may be, who is registered as proprietor of a geographical indication on the register;

(c) cancel the entry of a geographical indication on the register;

(d) strike out any goods or class or classes of goods from those in respect of which a geographical indication is registered from the register,

and may make any consequential amendment or alteration in the certificate of registration, and for that purpose, may require the certificate of registration to be produced to him.

Section 29. Alteration of registered geographical indications

(1) The registered proprietor of a geographical indication may apply in the prescribed manner to the Registrar for leave to add to or alter the geographical indication in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit.

(2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of the opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.

(3) Where leave is granted under this section, the geographical indication as altered shall be advertised in the prescribed manner, unless the application has already been advertised under sub-section (2).

Section 30. Adaptation of entries in register to amend or substitute classification of goods

(1) The Registrar shall not make any amendment of the register which would have the effect of adding any goods or classes of goods to those in respect of which a geographical indication is registered (whether in one or more classes) immediately before the amendment is to be made or antedating the registration of a geographical indication in respect of any goods:

Provided that this sub-section, shall not apply when the Registrar is satisfied that compliance therewith would involve complexity and that the addition or antedating, as the case may be, would not affect any substantial quantity of goods and would not substantially prejudice the rights of any person.

(2) A proposal so to amend the register shall be brought to the notice of the registered proprietor and every authorised user of the geographical indication affected and advertised in the prescribed manner, and may be opposed before the Registrar by any person aggrieved on the ground that the proposed amendment contravenes the provisions of sub-section (1).

CHAPTER VII APPEALS

Section 31. Appeals to the [1][High Court]

(1) Any person aggrieved by an order or decision of the Registrar under this Act, or the rules made thereunder, may prefer an appeal to the [1][High Court] within three months from the date on which the order or decision sought to be appealed against is communicated to such person preferring the appeal.

(2) No appeal shall be admitted if it is preferred after the expiry of the period specified under sub-section (1):

Provided that an appeal may be admitted after the expiry of the period specified therefore, if the appellant satisfies the [1][High Court] that he had sufficient cause for not preferring the appeal within the specified period.

[2]* * * * *

[1] Subs. by s. 22, ibid., for "Appellate Board" (w.e.f. 4-4-2021).
[2] Sub-section (3) omitted by Act 33 of 2021, s. 22 (w.e.f. 4-4-2021).

Section 32. Bar of jurisdiction of courts, etc

[Bar of jurisdiction of courts, etc.] -Omitted by The Tribunals Reforms Act, 2021 (33 of 2021), s. 22 (w.e.f. 4-4-2021).

Section 33. Procedure of the Appellate Board

[Procedure of the Appellate Board.] -Omitted by s. 22, ibid. (w.e.f. 4-4-2021).

Section 34. Procedure for application for rectification, etc., before [1][High Court]

(1) An application for rectification of the register made to the [1][High Court] under section 27 shall be in such form as may be prescribed.

(2) A certified copy of every order or judgment of the [1][High Court] relating to a registered geographical indication under this Act shall be communicated to the Registrar by the [1][High Court] and the Registrar shall give effect to the order of the Board and shall, when so directed, amend the entries in, or rectify, the register in accordance with such order.

[1] Subs. by s. 22, ibid., for "Appellate Board" (w.e.f. 4-4-2021).

Section 35. Appearance of Registrar in legal proceedings

(1) The Registrar shall have the right to appear and be heard-

(a) in any legal proceedings before the [1][High Court] in which the relief sought includes alteration or rectification of the register or in which any question relating to the practice of the Geographical Indications Registry is raised;

(b) in any appeal to the Board from an order of the Registrar on an application for registration of a geographical indication or authorised user-

(i) which is not opposed, and the application is either refused by the Registrar or is accepted by him subject to any amendments, modifications, conditions or limitations, or

(ii) which has been opposed and the Registrar considers that his appearance is necessary in the public interest,

and the Registrar shall appear in any case if so directed by the Board.

(2) Unless the [1][High Court] otherwise directs, the Registrar may, in lieu of appearing, submit a statement in writing signed by him, giving such particulars as he thinks proper of the proceedings before him relating to the matter in issue or of the grounds of any decision given by him affecting it, or of the practice of the Geographical Indications Registry in like cases, or of other matters relevant to the issues and within his knowledge as Registrar, and such statement shall be evidence in the proceeding.

[1] Subs. by s. 22, ibid., for "Appellate Board" (w.e.f. 4-4-2021).

Section 36. Costs of Registrar in proceedings before Appellate Board

[Costs of Registrar in proceedings before Appellate Board.] -Omitted by The Tribunal Reforms Act 2021 (33 of 2021), s. 22 (w.e.f. 4-4-2021).

CHAPTER VIII OFFENCES, PENALTIES AND PROCEDURE

Section 37. Meaning of applying geographical indications

(1) A person shall be deemed to apply a geographical indication to goods who-

(a) applies it to the goods themselves; or

(b) applies it to any package in or with which the goods are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or manufacture; or

(c) places, encloses or annexes any goods which are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or manufacture, in or with any package or other thing to which a geographical indication has been applied; or

(d) uses a geographical indication in any manner reasonably likely to lead to the belief that the goods in connection with which it is used are designated or described by that geographical indication; or

(e) in relation to the goods uses a geographical indication in any sign, advertisement, invoice, catalogue, business letter, business paper, price list or other commercial documents and goods are delivered to a person in pursuance of a request or order made by reference to the geographical indication as so used.

(2) A geographical indication shall be deemed to be applied to goods whether it is woven in, impressed on, or otherwise worked into, or annexed or affixed to, the goods or to any package or other thing.

Section 37A. Adjudication of penalties

[1][The Registrar may, by an order, authorise an officer referred to in section 3, to be adjudicating officer for holding an inquiry and imposing penalty under the provisions of this Act, in the manner as may be prescribed, after giving a reasonable opportunity of being heard.

[1] Ins. by Act 18 of 2023, s. 2 and Sch. (w.e.f. 1-8-2024).

Section 37B. Appeal

(1) Whoever aggrieved by an order of the adjudicating officer under section 37A may prefer an appeal to the appellate authority, who shall be an officer at least one rank above the adjudicating officer, within a period of sixty days from the date of receipt of the order, as the Central Government may by notification authorise in this behalf.

(2) Every appeal under this section shall be preferred in such form and manner as may be prescribed.

(3) An appeal may be admitted after the expiry of the period of sixty days if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within that period.

(4) No appeal shall be disposed of unless the appellant has been given a reasonable opportunity of being heard.

(5) The appellate authority referred to in sub-section (1) shall dispose of the appeal within sixty days from the date of filing.

(6) Notwithstanding anything contained in this Act, if the person fails to comply with the order of the adjudicating officer under section 37A or the order of the appellate authority under this section, as the case may be, within ninety days of such order, he shall, in addition to the penalty, be punishable with fine of one lakh rupees or imprisonment for a term which may extend to one year, or with both.]

Section 38. Falsifying and falsely applying geographical indications

(1) A person shall be deemed to falsify a geographical indication who, either,-

(a) without the assent of the authorised user of the geographical indication makes that geographical indication or deceptively similar geographical indication; or

(b) falsifies any genuine geographical indication, whether by alteration, addition, effacement or otherwise.

(2) A person shall be deemed to falsely apply to goods a geographical indication who, without the assent of the authorised user of the geographical indication,-

(a) applies such geographical indication or a deceptively similar geographical indication to goods or any package containing goods;

(b) uses any package bearing a geographical indication which is identical with or deceptively similar to the geographical indication of such authorised user, for the purpose of packing, filling or wrapping therein any goods other than the genuine goods of the authorised user of the geographical indication.

(3) Any geographical indication falsified as mentioned in sub-section (1) or falsely applied as mentioned in sub-section (2), is in this Act referred to as a false geographical indication.

(4) In any prosecution for falsifying a geographical indication or falsely applying a geographical indication to goods, the burden of proving the assent of proprietor shall lie on the accused.

Section 39. Penalty for applying false geographical indications

Any person who,-

(a) falsifies any geographical indication; or

(b) falsely applies to goods any geographical indication; or

(c) makes, disposes of, or has in his possession, any die, block, machine, plate or other instrument for the purpose of falsifying or of being used for falsifying, a geographical indication; or

(d) applies to any goods to which an indication of the country or place in which they were made or produced or the name and the address of the manufacturer or person for whom the goods are manufactured is required to be applied under section 71, a false indication of such country, place, name or address; or

(e) tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under section 71; or

(f) causes any of the things above-mentioned in this section to be done,

shall, unless he proves that he acted, without intent to defraud, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Section 40. Penalty for selling goods to which false geographical indication is applied

Any person who sells, lets for hire or exposes for sale, or hires or has in his possession for sale, goods or things to which any false geographical indication is applied or which, being required under section 71 to have applied to them an indication of the country or place in which they were made or produced or the name and address of the manufacturer, or person for whom the goods are manufactured or without the indications so required, shall, unless he proves,-

(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offence no reason to suspect the genuineness of the geographical indication or that any offence had been committed in respect of the goods; or

(b) that, on demand by or on behalf of the prosecutor, he gave all the information in his power with respect to the person from whom he obtained such goods or things; or

(c) that otherwise he had acted innocently,

be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Section 41. Enhanced penalty on second or subsequent conviction

Whoever having already been convicted of an offence under section 39 or section 40 is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for adequate and special reason to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year or a fine of less than one lakh rupees:

Provided further that for the purposes of this section, no cognizance shall be taken of any conviction made before the commencement of this Act.

Section 42. Penalty for falsely representing a geographical indication as registered

(1) No person shall make any representation-

(a) with respect to a geographical indication, not being a registered geographical indication, to the effect that it is a registered geographical indication; or

(b) to the effect that a registered geographical indication is registered in respect of any goods in respect of which it is not in fact registered; or

(c) to the effect that registration of a geographical indication gives an exclusive right to the use thereof in any circumstances in which having regard to limitation entered on the register, the registration does not in fact give that right.

(2) If any person contravenes any of the provisions of sub-section (1), he shall be [1][liable to penalty of a sum equal to one-half per cent. of the total sales or turnover, as the case may be, in business or of the gross receipts in profession as computed in the audited accounts of such person, or a sum equal to five lakh rupees, whichever is less].

(3) For the purposes of this section the use in India in relation to a geographical indication of the words "registered geographical indication" or any other expression, symbol or sign like "R.G.I." referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the register, except-

(a) where that word or other expression, symbol or sign is used in direct association with other words delineated in

characters at least as large as those in which that word or other expression, symbol or sign is delineated and indicating that the reference to registration as a geographical indication under the law of a country outside India being a country under the law of which the registration referred to is in fact in force; or

(b) where that other expression, symbol or sign is of itself such as to indicate that the reference is to such registration as is mentioned in clause (a); or

(c) where that word is used in relation to a geographical indication registered under the law of a country outside India and in relation solely to goods to be exported to that country for use in that country.

[1] Subs. by Act 18 of 2023, s. 2 and Sch., for certain words (w.e.f. 1-8-2024).

Section 43. Penalty for improperly describing a place of business as connected with the Geographical Indications Registry

[Penalty for improperly describing a place of business as connected with the Geographical Indications Registry.] - Omitted by The Jan Vishwas (amendment of Provisions) Act, 2023 (18 of 2023), s. 2 and Schedule (w.e.f. 1-8-2024).

Section 44. Penalty for falsification of entries in the register

[Penalty for falsification of entries in the register.] -Omitted by s. 2 and Schedule, ibid. (w.e.f. 1-8-2024).

Section 45. No offence in certain cases

The provisions of sections 39, 40 and 41 shall in relation to a registered geographical indication or authorised user of such geographical indication, be subject to the rights created or recognised by this Act and no act or omission shall be deemed to be an offence under the aforesaid sections if,-

(a) the alleged offence relates to a registered geographical indication and the act or omission is permitted under this Act; and

(b) the alleged offence relates to a registered geographical indication and the act or omission is permitted under any other law for the time being in force.

Section 46. Forfeiture of goods

(1) Where a person is convicted of an offence under section 39 or section 40 or section 41 or is acquitted of an offence under section 39 or section 40 on proof that he acted without intend or defraud, or under section 40 on proof of the matters specified in clause (a) or clause (b) or clause (c) of that section, the court convicting or acquitting him may direct the forfeiture to Government of all goods and things by means of, or in relation to, which the offence has been committed, or but for such proof as aforesaid would have been committed.

(2) When a forfeiture is directed on a conviction and an appeal lies against the conviction, an appeal shall lie against the forfeiture also.

(3) When, a forfeiture is directed on acquittal and the goods or things to which the direction relates are of value exceeding fifty rupees, an appeal against the forfeiture may be preferred, within thirty days from the date of the direction, to the court to which in appealable cases appeal lie from sentences of the court which directed the forfeiture.

(4) When a forfeiture is directed on a conviction, the court, before whom the person is convicted, may order any forfeited articles to be destroyed or otherwise disposed of as the court thinks fit.

Section 47. Exemption of certain persons employed in ordinary course of business

Where a person accused of an offence under section 39 proves,-

(a) that in the ordinary course of his business he is employed on behalf of other persons to apply geographical indications, or as the case may be, to make dies, blocks, machines, plates, or other instruments for making, or being used in making, geographical indications;

(b) that in the case which is the subject of the charge he was so employed, and was not interested in the goods or other thing by way of profit or commission depend on the sale of such goods;

(c) that, having taken all reasonable precautions against committing the offence charged, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the geographical indication; and

(d) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the geographical indication was applied,

he shall be acquitted.

Section 48. Procedure where invalidity of registration is pleaded by the accused

(1) Where the offence charged under section 39 or section 40 or section 41 is in relation to a registered geographical indication and the accused pleads that the registration of the geographical indication is invalid, the following procedure shall be followed:-

(a) if the court is satisfied that such defence is prima facie tenable, it shall not proceed with the charge but shall adjourn the proceeding for three months from the date on which the plea of the accused is recorded to enable the accused to file an application before the [1][High Court] under this Act, for the rectification of the register on the ground that the registration is invalid;

(b) if the accused proves to the court that he has made such application within the time so limited or within such further time as the court may for sufficient cause allow, the further proceedings in the prosecution shall stand stayed till the disposal of such application for rectification;

(c) if within a period of three months or within such extended time as may be allowed by the court the accused fails to apply to the [1][High Court] for rectification of the register, the court shall proceed with the case as if the registration were valid.

(2) Where before the institution of a complaint of an offence referred to in sub-section (1), any application for the rectification of the register concerning the geographical indication in question on the ground of invalidity of the registration thereof has already been properly made to and is pending before the [2][Registrar or the High Court, as the case may be,] the court shall stay the further proceedings in the prosecution pending the disposal of the application aforesaid and shall determine the charge against the accused in conformity with the result of the application for rectification in so far as the complainant relies upon the registration of his geographical indication.

[1] Subs. by Act 33 of 2021, s. 22, for "Appellate Board" (w.e.f. 4-4-2021).

[2] Subs. by s. 22, ibid., for "tribunal" (w.e.f. 4-4-2021).

Section 49. Offences by companies

(1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purposes of this section,-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

Section 50. Cognizance of certain offences and the powers of police officer for search and seizure

(1) No court shall take cognizance of an offence under section 42 or section 43 or section 44 except on complaint in writing made by the Registrar or any officer authorised by him in writing:

Provided that in relation to clause (b) of sub-section (1) of section 42, a court shall take a cognizance of an offence on the basis of a certificate issued by the Registrar to the effect that a registered geographical indication has been represented as registered in respect of any goods in respect of which it is not in fact registered.

(2) No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try an offence under this Act.

(3) The offences under section 39 or section 40 or section 41 shall be cognizable.

(4) Any police officer not below the rank of deputy superintendent of police or equivalent, may, if he satisfied that any of the offences referred to in sub-section (3) has been, is being, or is likely to be, committed, search and seize without warrant the goods, die, block, machine, plate, other instruments or things involved in committing the offence, wherever found, and all the articles so seized shall, as soon as practicable, be produced before the Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be:

Provided that the police officer, before making any search and seizure, shall obtain the opinion of the Registrar on the facts involved in the offence relating to geographical indication and shall abide by the opinion so obtained.

(5) Any person having an interest in any article seized under sub-section (4), may, within fifteen days of such seizure, make an application to the Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be, for such article being restored to him and the Magistrate, after hearing the application and the prosecution, shall make such order on the application as he may deem fit.

Section 51. Costs of defence of prosecution

In any prosecution under this Act, the court may order such costs to be paid by the accused to the complainant, or by the complainant to the accused, as the court deemed reasonable having regard to all the circumstances of the case and the conduct of the parties and the costs so awarded shall be recoverable as if they were a fine.

Section 52. Limitation of prosecution

No prosecution for an offence under this Act shall be commenced after the expiration of three years next after the commission of the offence charged or two years after the discovery thereof by the prosecutor, whichever expiration first happens.

Section 53. Information as to commission of offence

An officer of the Government whose duty it is to take part in the enforcement of the provisions of this Chapter shall not be compelled in any court to say whence he got any information as to the commission of any offence against this Act.

Section 54. Punishment for abetement in India of acts done out of India

If any person, being within India, abets the commission, without India, of any act which, if committed in India, would, under this Act, be an offence, he may be tried for such abetement in any place in India in which he may be found, and be punished therefor with the punishment to which he would be liable if he had himself committed in that place the act which he abetted.

CHAPTER IX MISCELLANEOUS

Section 55. Protection of action taken in good faith

No suit or other legal proceedings shall lie against any person in respect of anything which is in good faith done or intended to be done in pursuance of this Act.

Section 56. Certain persons to be public servants

Every person appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Section 57. Stay of proceedings where the validity of registration of the geographical indication is questioned, etc

(1) Where in any suit for infringement of a geographical indication the defendant pleads that registration of the geographical indication relating to plaintiff is invalid, the court trying the suit (hereinafter referred to as the court), shall,-

(a) if any proceedings for rectification of the register to the geographical indication relating to plaintiff or defendant are pending before the Registrar or the [1][High Court], stay the suit pending the final disposal of such proceedings;

(b) if no such proceedings are pending and the court is satisfied that the plea regarding the invalidity of the registration of the geographical indication relating to plaintiff or defendant is prima facie tenable, raise an issue regarding the same and adjourn the case for a period of three months from the date of the framing of the issue in order to enable the party concerned to apply to the [1][High Court] for rectification of the register.

(2) If the party concerned proves to the court that he has made any such application as is referred to in clause (b) of sub-section (1) within the time specified therein or within such extended time as the court may for sufficient cause allow, the trial of the suit shall stand stayed until the final disposal of the rectification proceedings.

(3) If no such application as aforesaid has been made within the time so specified or within such extended time as the court may allow, the issue as to the validity of the registration of the geographical indication concerned shall be deemed to have been abandoned and the court shall proceed with the suit in regard to the other issues in the case.

(4) The final order made in any rectification proceedings referred to in sub-section (1) or sub-section (2) shall be binding upon the parties and the court shall dispose of the suit conformably to such order in so far as it relates to the issue as to the validity of the registration of the geographical indication.

(5) The stay of a suit for the infringement of a geographical indication under this section shall not preclude the court from making any interlocutory order (including any order granting an injunction, directing account to be kept, appointing a receiver or attaching any property), during the period of the stay of the suit.

[1] Subs. by Act 33 of 2021, s. 22, for "Appellate Board" (w.e.f. 4-4-2021).

Section 58. Application for rectification of register to be made to [1][High Court] in certain cases

(1) Where in a suit for infringement of a registered geographical indication the validity of the registration of the geographical indication relating to plaintiff is questioned by the defendant or where in any such suit the plaintiff questions the validity of the registration of the geographical indication relating to defendant, the issue as to the validity of the registration of the geographical indication concerned shall be determined only on an application for the rectification of the register and, notwithstanding anything contained in section 27, such application shall be made to the [1][High Court] and not to the Registrar.

(2) Subject to the provisions of sub-section (1), where an application for rectification of the register is made to the Registrar under section 27, the Registrar may, if he thinks fit, refer the application at any stage of the proceedings to the [1][High Court].

[1] Subs. by Act 33 of 2021, s. 22, for "Appellate Board" (w.e.f. 4-4-2021).

Section 59. Implied warranty on sale of indicated goods

Where a geographical indication has been applied to the goods on sale or in the contract for sale of any goods, the seller shall be deemed to warrant that the geographical indication is a genuine geographical indication and not falsely applied, unless the contrary is expressed in writing signed by or on behalf of the seller and delivered at the time of the sale of goods on contract to and accepted by the buyer.

Section 60. Powers of Registrar

In all proceedings under this Act before the Registrar,-

(a) the Registrar shall have all the powers of a civil court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of witnesses;

(b) the Registrar may, subject to any rules made in this behalf under section 87, make such orders as to costs as he considers reasonable, and any such order shall be executable as a decree of a civil court;

(c) the Registrar may, on an application made in the prescribed manner, review his own decision.

Section 61. Exercise of discretionary power by Registrar

Subject to the provisions of section 64, the Registrar shall not exercise any discretionary or other power vested in him by this Act or the rules made thereunder adversely to a person applying for the exercise of that power without (if so required by that person within the prescribed time) giving to the person an opportunity of being heard.

Section 62. Evidence before Registrar

In any proceeding under this Act before the Registrar, evidence shall be given by affidavit:

Provided that the Registrar may, if he thinks fit, take oral evidence in lieu of, or in addition to, such evidence by affidavit.

Section 63. Death of party to a proceeding

If a person who is a party to a proceeding under this Act (not being a proceeding before [1]*** a court) dies pending the proceeding, the Registrar may, on request, and on proof to his satisfaction of the transmission of the interest of the deceased person, substitute in the proceeding his successor in interest in his place, or, if the Registrar is of opinion that the interest of the deceased person is sufficiently represented by the surviving parties, permit the proceeding to continue without the substitution of his successor in interest.

[1] The words "the Appellate Board or" omitted by Act 33 of 2021, s. 22 (w.e.f. 4-4-2021).

Section 64. Extension of time

(1) If the Registrar is satisfied, on application made to him in the prescribed manner and accompanied by the prescribed fee, that there is sufficient cause for extending the time for doing any act (not being a time expressly provided in the Act), whether the time so specified has expired or not, he may, subject to such conditions as he may think fit to impose, extend the time and inform the parties accordingly.

(2) Nothing in sub-section (1) shall be deemed to require the Registrar to hear the parties before disposing of an application for extension of time, and no appeal shall lie from any order of the Registrar under this section.

Section 65. Abandonment

Where, in the opinion of the Registrar, an applicant is in default in the prosecution of an application filed under this Act, the Registrar may, by notice require the applicant to remedy the default within a time specified and after giving him, if so, desired, an opportunity of being heard, treat the application as abandoned, unless the default is remedied within the time specified in the notice.

Section 66. Suit for infringement, etc., to be instituted before district court

(1) No suit,-

(a) for the infringement of a registered geographical indication; or

(b) relating to any right in a registered geographical indication; or

(c) for passing of arising out of the use by the defendant of any geographical indication which is indentical on with or deceptively similar to the geographical indication relating to the plaintiff, whether registered or unregistered,

shall be instituted in any court inferior to a district court having jurisdiction to try the suit.

(2) For the purpose of clauses (a) and (b) of sub-section (1), a "district court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or proceeding, or, where there are more than one such persons any of them, actually and voluntarily resides or carries on business or personally works for gain.

Explanation.-For the purposes of sub-section (2), "person" includes the registered proprietor and the authorised user.

Section 67. Relief in suit for infringement or for passing off

(1) The relief which a court may grant in any suit for infringement or for passing off referred to in section 66 includes injunction (subject to such terms, if any, as the court thinks fit) and at the option of the plaintiff, either damages or account of profits, together with or without any order for the delivery-up of the infringing labels and indications for destruction or erasure.

(2) The order of injunction under sub-section (1) may include an ex parte injunction or any interlocutory order for any of the following matters, namely:-

(a) for discovery of documents;

(b) preserving of infringing goods, documents or other evidence which are related to the subject-matter of the suit;

(c) restraining the defendant from disposing of or dealing with his assets in a manner which may adversely affect plaintiff's ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

(3) Notwithstanding anything contained in sub-section (1), the court shall not grant relief by way of damages (other than nominal damages) on account of profits in any case-

(a) where in a suit for infringement the defendant satisfies the court-

(i) that at the time he commenced to use the geographical indication complained of in the suit he was unaware and had no reasonable ground for believing that the geographical indication of the plaintiff was on the register; and

(ii) that when he became aware of the existence and nature of the plaintiff's right in the geographical indication, he forthwith ceased to use the geographical indication in relation to good in respect of which it was registered; or

(b) where in a suit for passing off, the defendant satisfies the court-

(i) that at the time he commenced to use the geographical indication complained of in the suit he was unaware and had no reasonable ground for believing that the geographical indication relating to the plaintiff was in use; and

(ii) that when he became aware of the existence and nature of the geographical indication relating to the plaintiff he forthwith ceased to use the geographical indication complained of.

Section 68. Authorised user to be impleaded in certain proceedings

(1) In every proceeding under Chapter VI or under section 31, every authorised user of a geographical indication to which such proceeding relate, who is not himself an applicant in respect of any proceeding under that Chapter or section, shall be made a party to the proceeding.

(2) Notwithstanding anything contained in any other law, an authorised user so made a party to the proceeding shall not be liable for any costs unless he enters an appearance and takes part in the proceeding.

Section 69. Evidence of entries in register, etc., and things done by the Registrar

(1) A copy of any entry in the register or of any document referred to in sub-section (1) of section 78 purporting to be certified by the Registrar and sealed with the seal of the Geographical Indications Registry shall be admitted in evidence in all courts and in all proceedings without further proof or production of the original.

(2) A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing that he is authorised by this Act or the rules to make or do shall be prima facie evidence of the entry having been made, and of the contents thereof, or of the matter or things having been done or not done.

Section 70. Registrar and other officers not compellable to produce register, etc

The Registrar or any officer of the Geographical Indications Registry shall not, in any legal proceedings to which he is not a party, be compellable to produce the register or any other document in his custody, the contents of which can be proved by the production of a certified copy issued under this Act or to appear as a witness to prove the matters therein recorded unless by order of the court made for special cause.

Section 71. Power to require goods to show indication of origin

(1) The Central Government may, by notification in the Official Gazette, require that goods of any class specified in the notification which are made or produced beyond the limits of India and imported into India, or, which are made or produced within the limits of India, shall, from such date as may be appointed by the notification not being less than three months from its issue, have applied to them an indication of the country or place in which they were made or produced, or of the name and address of the manufacturer or the person for whom the goods were manufactured.

(2) The notification may specify the manner in which such indication shall be applied, that is to say, whether to goods themselves or in any other manner, and the times or occasions on which the presence of the indication shall be necessary, that is to say, whether on importation only, or also at the time of sale, whether by wholesale or retail or both.

(3) No notification under this section shall be issued, unless application is made for its issue by persons or associations substantially representing the interests of dealers in, or manufacturers, producers, or users of, the goods concerned, or unless the Central Government is otherwise convinced that it is necessary in the public interest to issue the notification, with or without such inquiry, as the Central Government may consider necessary.

(4) The provisions of section 23 of the General Clauses Act, 1897 (10 of 1897) shall apply to the issue of a notification under this section as they apply to the making of a rule or bye-law the making of which is subject to the condition of previous publication.

(5) A notification under this section shall not apply to goods made or produced beyond the limits of India and imported into India, if in respect of those goods, the Commissioner of Customs is satisfied at the time of importation that they are intended for exportation whether after transhipment in or transit through India or otherwise.

Section 72. Certificate of validity

If in any legal proceedings for rectification of the register before the [1][High Court] a decision is on contest given in favour of the registered proprietor or, as the case may be, authorised user of the geographical indication on the issue as to the validity of the registration of the geographical indication or the authorised user, the [1][High Court] may grant a certificate to that effect, and if such a certificate is granted, then, in any subsequent legal proceeding in which the said validity comes into question the said proprietor or the authorised user, as the case may be, on obtaining a final order or judgment in his favour affirming validity of the registration of the geographical indication or the authorised user, as the case may be, shall unless the said final order or judgment for sufficient reason directs otherwise, be entitled to his full cost charges and expenses as between legal practitioner and client.

[1] Subs. by Act 33 of 2021, s. 22, for "Appellate Board" (w.e.f. 4-4-2021).

Section 73. Groundless threats of legal proceedings

(1) Where a person, by means of circulars, advertisements or otherwise, threatens a person with an action or proceeding for infringement of a geographical indication which is registered, or alleged by the first-mentioned person to be registered, or with some other like proceeding, a person aggrieved may, whether the person making the threats is or is not the registered proprietor or the authorised user of the geographical indication, bring a suit against the first-mentioned person and may obtain a declaration to the effect that the threats are unjustifiable, and an injunction against the continuance of the threats and may recover such damages (if any) as he has sustained, unless the first-mentioned person satisfies the court that the geographical indication is registered and that the acts in respect of which the proceedings were threatened, constitute, or, if done, would constitute, an infringement of the geographical indication.

(2) The last preceding sub-section does not apply if the registered proprietor of the geographical indication or an authorised user thereof with due diligence commences and prosecutes an action against the person threatened for infringement of the geographical indication.

(3) Nothing in this section shall render a legal practitioner or a registered geographical indications agent liable to an action under this section in respect of an act done by him in his professional capacity on behalf of a client.

(4) A suit under sub-section (1) shall not be instituted in any court inferior to a district court.

Section 74. Address for service

An address for service stated in an application or notice of opposition shall, for the purposes of the application or notice of opposition be deemed to be the address of the applicant or opponent, as the case may be, and all documents in relation to the application or notice of opposition may be served by leaving them at or sending them by post to the address for service of the applicant or opponent, as the case may be.

Section 75. Trade usages, etc., to be taken into consideration

In any proceeding relating to a geographical indication, the [1][Registrar or the High Court, as the case may be,] shall admit evidence of the usages of the trade concerned and of any relevant geographical indication legitimately used by other persons.

[1] Subs. by Act 33 of 2021, s. 22, for "tribunal" (w.e.f. 4-4-2021).

Section 76. Agents

Where, by or under this Act, any act, other than the making of an affidavit, is required to be done before the Registrar by any person, the act may, subject to the rules made in this behalf, be done instead of by that person himself, by a person duly authorised in the prescribed manner, who is,-

(a) a legal practitioner, or

(b) a person registered in the prescribed manner as a geographical indications agent, or

(c) a person in the sole and regular employment of the principal.

Section 77. Indexes

There shall be kept under the directions and supervision of the Registrar,-

(a) an index of registered geographical indications,

(b) an index of geographical indications in respect of which applications for registration are pending,

(c) an index of the names of the proprietors of registered geographical indications, and

(d) an index of the names of authorised users.

Section 78. Documents open to public inspection

(1) The following documents, subject to such conditions as may be prescribed, be open to public inspection at the Geographical Indications Registry, namely:-

(a) the register and any document upon which any entry in the register is based;

(b) every notice of opposition to the registration of a geographical indication, application for rectification before the Registrar, counter-statement thereto, and any affidavit or document filed by the parties in any proceedings before the Registrar;

(c) the indexes mentioned in section 77; and

(d) such other documents as the Central Government may, by notification in the Official Gazette, specify:

Provided that where such register is maintained wholly or partly on computer, the inspection of such register under this section shall be made by inspecting the computer print out of the relevant entry in the register so maintained on computer.

(2) Any person may, on an application to the Registrar and on payment of such fee as may be prescribed, obtain a certified copy of any entry in the register or any document referred to in sub-section (1).

Section 79. Reports of Registrar to be placed before Parliament

The Central Government shall cause to be placed before both Houses of Parliament once a year a report respecting the execution by or under this Act.

Section 80. Fees and surcharge

(1) There shall be paid in respect of applications and registrations and other matters under this Act such fees and surcharge as may be prescribed by the Central Government.

(2) Where a fee is payable in respect of the doing of an act by the Registrar, the Registrar shall not do that act until the fee has been paid.

(3) Where a fee is payable in respect of the filing of a document at the Geographical Indications Registry, the document shall be deemed not to have been filed at the registry until the fee has been paid.

Section 81. Savings in respect of certain matters in Chapter VIII

Nothing in Chapter VIII shall-

(a) exempt any person from any suit or other proceeding which might, but for anything in that Chapter, be brought against him, or

(b) be construed so as to render liable to any prosecution or punishment any servant of a master resident in India who in good faith acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master and as to the instructions which he has received from his master.

Section 82. Declarations as to title of geographical indication not registerable under the Registration Act, 1908

Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no document declaring or purporting to declare any title of a person to a geographical indication other than a registered geographical indication shall be registered under that Act.

Section 83. Government to be bound

The provisions of this Act shall be binding on the Government.

Section 84. Special provisions relating to applications for registration from citizens of convention countries

(1) With a view to the fulfilment of a treaty, convention or arrangement with any country or a country which is a member of a group of countries or union of countries or Inter-Governmental Organisations outside India which affords to citizens of India similar privileges as granted to its own citizens, the Central Government may, by notification in the Official Gazette, declare such country or group of countries or union of countries or Inter-Governmental Organisations to be a convention country or convention countries for the purposes of this Act.

(2) Nothing contained in this Act or the Trade Marks Act, 1999 (47 of 1999) shall prevent a continued and similar use of geographical indication relating to a country or a country which is a member of a group of countries or union of countries or any Inter-Governmental Organisations, as the case may be, notified under sub-section (1) identifying wines or spirits in connection with goods by any citizen or domiciliary of such country who has used that geographical indication in continuous manner with regard to such goods or any goods relating to such goods, as the case may be, in any part of the territory of that country either-

(a) for at least ten years preceding the 15th day of April, 1994; or

(b) in good faith preceding the date referred to in clause (a).

Section 85. Provision as to reciprocity

Where any country or a country which is a member of a group of countries or union of countries or any Inter-Governmental Organisation specified by the Central Government in this behalf by notification in the Official Gazette does not accord to citizens of India the same rights in respect of the registration and protection of geographical indications as it accords to its own nationals, no nationals of such country or a country which is a member of a group of countries or union or countries or Inter-Governmental Organisations, as the case may be, shall be entitled-

(a) to apply for the registration of, or be registered as the proprietor of geographical indication;

(b) to apply for registration or be registered as an authorised user of a geographical indication.

Section 86. Powers of Central Government to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Section 87. Power to make rules

(1) The Central Government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the matters to be included in the Register of Geographical Indications under sub-section (1), and the safeguards to be observed in the maintenance of such register in computer floppies or diskettes under sub-section (2) of section 6;

(b) the manner of incorporation of particulars relating to registration of geographical indications in Part A under sub-section (2) and the manner of incorporation of particulars relating to the registration of the authorised users under sub-section (3) of section 7;

(c) the classification of goods and the manner of publication of the alphabetical index of classification of goods and the definite territory or locality or region for the purpose of registration of geographical indications under sub-section (1) of section 8;

(d) the form in which and the manner in which an application for registration of a geographical indication may be made and the fees which may accompany the application under sub-section (1) and the particulars to be made in the statement of producers of goods who proposes to be initially registered with the registration under clause (f) of sub-section (2) of section 11;

(e) the manner of publication of advertisement of accepted application, for registration of geographical indications, etc., under sub-section (1), and the manner of notifying the corrections or amendments made in the application under sub-section (2) of section 13;

(f) the manner in which and the fee which may accompany an application and the manner of giving notice under sub-section (1) and the manner of sending counter statement under sub-section (2) and the manner of submission of evidence and the time therefor under sub-section (4) of section 14;

(g) the form of certificate of registration under sub-section (2) and the manner of giving notice to the applicant under sub-section (3) of section 16;

(h) the manner of applying for registration as an authorised user under sub-section (1) and the manner of submitting statements and documents along with such application and the fee which may accompany such application under sub-section (2) of section 17;

(i) the manner of making application, the time within which such application is to be made and the fee payable with each application, under sub-section (3) and the time within which the Registrar shall send notice and the manner of such notice under sub-section (4) and the form in which and the fee which may accompany an application for renewal to be made under sub-section (5) of section 18;

(j) the manner of making applications under sub-sections (1) and (2), the manner of giving notice under sub-section

(4) and the manner of service of notice of rectification under sub-section (5) of section 27;

(k) the manner of making an application for correction, etc., under section 28;

(l) the manner of making an application under sub-section (1), the manner of advertising an application under sub-section (1), the time and manner of notice by which an application may be opposed under sub-sections (2) and (3) of section 29;

(m) the manner of advertisement under sub-section (2) of section 30;

[1]* * * * *

(o) the form in which an application for rectification shall be made, under sub-section (1) of section 34;

[2][(oa) the manner of holding inquiry and imposing penalty under section 37A;

(ob) the form and manner of preferring appeal under sub-section (2) of section 37B;]

(p) the manner of making an application for review under clause (c) of section 60;

(q) the time within which an application is to be made to the Registrar for exercising his discretionary power under section 61;

(r) the manner of making an application and the fee payable therefore under sub-section (1) of section 64;

(s) the manner of authorising any person to act and the manner of registration of a geographical indications agent under section 76;

(t) the fee and surcharge payable for applications and registrations and other matters under sub-section (1) of section 80;

(u) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

[1] Cl. (n) omitted by Act 33 of 2021, s. 22 (w.e.f. 4-4-2021).

[2] Ins. by Act 18 of 2023, s. 2 and Sch. (w.e.f. 1-8-2024).

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