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# An Analysis on Overlapping of Geographical Indication and Trademark

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## ABSTRACT

*The clash between trademarks and geographical indications within the prevailing intellectual property rights environment is a hotly debated but contentious topic. The countries have rejected the previous answers to the problem, and various attempts to discover a universally acceptable solution have been made. The prime area of conflict arises when the phrase used as G.I. might have been used as a trademark; there is a contradiction between trademark and G.I. The researcher seeks to address the issue of trademark, and geographical indication overlaps in-depth and provides potential remedies. The study focuses on the issue of trademark and geographical indication overlap, and thus researcher attempted to define the interrelationship between these two I.P. domains, as well as discusses the prime areas of overlap. The researcher further analyses the problem and brings forth a set of approaches for its resolution.*

## I. INTRODUCTION

Trademark is a sign or mark capable of distinguishing the product of one manufacturer and the product of the other manufacturers. It establishes the connection between the product and the manufacturer and assists the consumers in making their choices. It indicates the product's commercial origin where the product's quality and reputation is attributable to the manufacturer, who is the owner of the trademark. The Indian law defines a trademark as a mark capable of being represented graphically and can distinguish the goods and services of one person from those of others and may include the shape of goods, their packaging and combination of colours.<sup>2</sup> Only those marks which are distinctive can be used as trademarks. Distinctiveness can be either inherent or acquired through use.<sup>3</sup>

Although distinctiveness has been prescribed as the essential character of the trademark, other factors may influence the nature of the sign and prevent it from being registered as a trademark. For example, suppose an application is filed to register a trademark, and a prior identical

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<sup>2</sup> Sec 2(zb), The Trademarks Act, 1999

<sup>3</sup> WIPO National Seminar on the Protection of Trademarks and Geographical Indications, Beirut, March 17 to 19, 2003, International Bureau of WIPO, p.4

trademark exists. In that case, the registration of the later mark will be denied, even though the existence of the prior trademark makes it clear that the sig is identical. Words, symbols, characters, fancy devices such as sketches, drawings, two-dimensional representations of items, three-dimensional signs, distinctive odours, and numerals can all be used as trademarks, such as "Coca Cola," "Peugeot," "Marlboro," and "Citibank." On the other hand, the trademark cannot be descriptive or deceptive. Another need for a sign to be used as a trademark is that it can be reproduced graphically.<sup>4</sup> Generic names cannot be used as trademarks; for example, producers or sellers of "apples" cannot use the term apple as a trademark because it is generic when used in that form. Still, the term "apple" can be used by sellers or makers of computers. In general, intellectual property rights in other domains of I.P. are awarded for a set period, whereas trademark rules grant rights for an indefinite period.<sup>5</sup> Geographical indications are the signs which indicate the geographical origin of the product, and it connects the product to the place of its origin. G.I.s are used to distinguish the products originating in one place from other products where the quality and characteristics of the product are attributable to the place of its origin, e.g., "Cognac", "Pilsen", "Tequila" and "Champagne". Geographical indication is sometimes used synonymously with "indication of the source" and "appellation of origin", but the former is broader in the scope. All traders from a particular geographical region enjoy the protection granted to the geographical indication.<sup>6</sup> The international instruments administered by WIPO have distinguished between the "indications of source"<sup>7</sup> and "appellation of origin"<sup>8</sup>. These two I.P. tools regulate the flow of information about the product in the market. The essence of both trademark and G.I. laws is that they determine the use of the signs in the market by enabling their communicative functions.<sup>9</sup> A United Nations Conference on Trade and Development (UNCTAD) study identifies the advantages: "... Geographical indications and trademarks reward producers that invest in building the reputation of a product. They are designed to reward goodwill and reputation created or built up by a producer or a group of producers over many years or even centuries. They reward producers that maintain a traditionally high standard of quality, while as the same time allowing flexibility for innovation and improvement in the context of that tradition..."

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<sup>4</sup> 3 *Id.*, p.5.

<sup>5</sup> WIPO's Standing Committee on the Law of Trademarks, industrial designs and geographical indication, fifth session Geneva, sept 11 to 15, 2000, p.5

<sup>6</sup> WIPO, "What does a trademark do?" Available at <http://www.wipo.org/aboutip/en/about-trade-marks.html>.

<sup>7</sup> The term "indication of source" is used in Articles 1(2) and 10 of the Paris Convention. Also used throughout the Madrid Agreement on indications of source 1891.

<sup>8</sup> The term "appellation of origin" is defined in the Lisbon Agreement for the protection of appellations of origin and their International Registration, of 1958.

<sup>9</sup> Dev Gangjee, *Quibbling Siblings: Conflicts between Trademarks and Geographical Indications*, 82 *Chi.-Kent L. Rev.* 1253 (2007), p. 1254

Geographical indications and trademarks represent legal mechanisms that producers can use to differentiate their products according to criteria such as the sustainability or traditional nature of production, thus appealing to consumers. They have great relevance to developing countries dependent on primary commodity exports.<sup>10</sup> The trademark has been internationally recognised as the I.P. tool by the Paris convention, 1883. The provisions related to it have been made in the Madrid Agreement and the Madrid Protocol, TRIPS, the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks, the Trademark Law Treaty, the Nice Agreement on 1 WIPO is the global forum for intellectual property services, policy, cooperation and information. It was established through an international instrument signed in 1967 in Stockholm and entered into force in 1970 with 186 member states. International Classification and the Singapore Treaty on the Law of Trademarks are international instruments for protecting trademarks worldwide. While it is maintained that Paris Convention has provided for the geographical indications as it contained provisions for the appellations of origin, TRIPS is the first international document that has provided for Geographical indications explicitly in Articles 22 and 23. Lisbon and Madrid's agreements also provide appellation of origin and source indications, respectively.

Trademark law has progressed faster in the countries than the legislation governing geographical indications. Because these two I.P. domains fulfil fundamentally equivalent economic activities, one would wonder if employing one would suffice, and one I.P. form should give way to the other. Whether the existence of both a trademark and a geographical indication is a favourable condition, what would be the dynamics of their connection with each other in that case? Would they be exclusive in respective spheres, or would they support and complement each other's function? Trademarks and geographical indications are mutually beneficial, according to best practices worldwide. There have been cases where the goodwill generated by geographical indications has boosted the reputation of trademarks and aided their recognition. Since the G.I. is collectively owned, the advantage of the G.I.'s goodwill would go to the members of that community or group who are entitled to use it.

In contrast, the benefit of a well-known trademark's goodwill would go to the owner of the well-known trademark. In some cases, even though products originated in a particular geographical location have good qualities and characteristics, protection has not been granted to such products under their respective G.I. laws. In such cases, if a trademark is registered in

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<sup>10</sup> David R. Downes and Sarah A. Laird, Innovative Mechanisms for sharing Benefits of Biodiversity and Related Knowledge; Case Studies on Geographical Indications and Trademark, paper prepared for the UNCTAD bio-trade initiative, 1999, p.6

respect of them and they gain a reputation due to their good qualities, they will be protected under trademark laws. Even while Lipton 8 tea does not grow in the United Kingdom and bananas do not grow in the United States, the two brands have goodwill and a high reputation, even though the quality of the product is still related to the geographical regions in which they originate.

In such circumstances, the trademark goodwill survives, and the geographical indication has no independent goodwill. In the United States, trademark law is sufficiently broad that geographical indicators are protected as certification marks or collective markings under the trademark system. It hasn't set up a different system for registering and regulating G.I.s. Certain types of trademarks are prohibited under the Lanham Act.<sup>11</sup> There have been numerous instances where trademark laws have failed to protect G.I. The term "Kentucky" for whisky, for example, was not allowed to be registered as a trademark even if it was produced in the state. However, in other situations, the geographical markers have been granted protection by U.S. courts.

In most nations, G.I.s and trademarks are not separated, resulting in trademark-geographic indication conflict. The legislation encourages the use of trademarks, which has hampered the efficient application of G.I.s. WIPO and other agencies are holding discussions at the international level to resolve this conflict. There is an ideological conflict between supporters of G.I. protection and trademarks because the former believes that once a right under G.I. has been assigned, it should be considered absolute, regardless of any prior right created concerning the same product under trademark or any other I.P. law. In contrast, supporters of trademark law believe that the conflict between trademark and geographical indications should be resolved using tradition.

## **II. CONFLICT BETWEEN TRADEMARK AND GEOGRAPHICAL INDICATIONS**

Over the last twenty-eight years, the conflict between trademarks has been one of the most discussed and well-known topics in intellectual property debates, international conferences on the trademark and geographical indications framework, regional and national conferences, legislative forensic and academic programmes, and workshops. Remarkably, the controversy arose at the same time as the framework for protecting geographical indications was being

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<sup>11</sup> Section 1052 of this Act was submitted by the US to the WTO as being generally relevant in respect of protection of geographical indications, in listing out certain trademarks which cannot be registered, Sec.1052 reads as follows: "no trademarks by which the goods of the applicant may be distinguished from the goods of other shall be referred registration on account of its nature unless consists of mark which when applied to the goods of the applicant is primarily geographically descriptive or deceptively misdescriptive of them except as indications of regional origin may be registrable under section 1054 of this title".

devised. Conflicts over the exclusive use of a distinguishing sign or symbol usually develop when two or more parties are vying for the same right. When the same subject matter is protected under a trademark, the exclusive use of the product becomes a source of controversy between multiple parties. As a result, the local I.P. legislation would allow qualifying applicants for trademark and G.I. registration and exclusive use of the trademark and G.I., respectively, for the same product. At this point, it's critical to clarify or limit the link between trademark and G.I. holders' rights. Most countries' trademark rules are unambiguous in their reach. Still, the legislation relating to geographical indications (G.I.) is not, making it difficult to determine the breadth of the G.I.'s applicability to the goods. The general assumption is that both act as source identifiers without actually looking at their activities and the generalised language of international instruments, which are among the causes of the conflict. The arguments for maintaining cultural legacy, traditional knowledge and manifestations, the economic perspective, and trade-related and agricultural benefits all play a role in the conflicts. For proponents of geographical indication protection, any priority given to a trademark in respect of a sign that is already registered or used as a geographical indication in another part of the world is an attack on the community's cultural heritage and traditional knowledge because they believe G.I.s should be given universal protection.

While any expropriation or denial of exclusivity granted to a trademark based on the existence of an identical geographical indication in another region, in the opinion of trademark advocates, is nothing more than a violation of the right to private property and simply the confiscation of private property by authorities. The clash between enterprises favouring the state and the conservation of cultural heritage has sometimes given political colour to this overlap dilemma. A conflict is likely to occur when a sign has utilised that ties to the product's geographical origin while simultaneously being protected under trademark law. For instance, the term CAPRI is an Island in Italy, but this has also been protected trademark of Ford car in the 1970s. There's one city in Japan called "Sapporo", but this term was used by a company as its name and also by a big international brewery for the beer that is provided; this brand became the protected trademark of the brewery which and gained much fame after some time, the brand was protected under the trademark law and didn't connote the relation of the beer with the town. It is not uncommon for the businessmen to use the name of the geographical place where their company is situated in the name of their brand or as their brand. Emigration can also give rise to this conflict. When emigrants move to some other places, they use it as their homes, industrial units, and the products they are producing or manufacturing the same name they were using before they emigrated from their original geographical places. Conflict might also arise

when identical names are used for the items by chance. This occurs when the marks include human names, brands, and locations. Sometimes brands or geographical designations compete with one another, resulting in a dispute.<sup>12</sup> The question in such disputes is whether the established methods for determining competing rights under trademark law should be applied or whether new methods or norms for conflict resolution should be developed. The primary points of contention include the scope of protection afforded to a G.I. against trademarks and whether the rights granted to a G.I. holder should go so far as to prevent the registration of a similar trademark in any of the member nations. The exception which has been enumerated under Article 24(5) raise the issues of the interpretation of the term "good faith" and the determination of the authority who will determine whether the goods have been used in good faith; the question that further arises is that would there be protection for unregistered geographical indications or will the trademarks which have not been registered would be entitled to any protection.<sup>13</sup> The standards of proof have to be placed before the Court to prove that the trademark has been registered before the geographical indication and used in "good faith" as required by Article 24 (5). It has to be considered whether a member country can agree with the other country to protect the trademark where the alleged trademark would come in conflict with the geographical indications.

### III. AREAS OF OVERLAP

Overlap occurs mostly in the cases were for the same product, the same sign is used as G.I. and trademarked by different parties. In such a situation, the question arises as to who holds the entitlement to such rights and the conditions, if any, under which such sign can be made and should one right prevail over the other, or there should be coexistence. The other conflicting situation can arise when different parties use the same sign as a trademark, and geographical indication for different goods and one between the trademark or G.I. is a well-known mark as the principle of territoriality cannot be applied in the case of well-known trademarks. Until they are used in their respective sphere, no issues can arise, but in the trademarks law and under the G.I. laws some provisions recognise the fact that there can be the use of the same term as G.I. and trademark. The trademark law provides that the signs used as a trademark must not be descriptive or deceptive. G.I.s are mostly descriptive; this aspect assures that those trademarks that comprise a G.I. cannot be given protection if such trademark is deceptive or misleading to the true origin of the products. Trademark laws exclude the use of the name of any territory,

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<sup>12</sup> *Id*

<sup>13</sup> Suresh S. Shrivastava, Geographical Indications under TRIPS agreement and Legal Framework in India: Part I, Journal of Intellectual Property Rights, Vol 9, p. 19

nation or geographical place from being used on the products; it also prohibits the use of such terms as marks which can be taken to constitute a reference to the origin of the products. The registration gets excluded when the geographical term used as a trademark would be deemed to be perceived by the public to indicate a connection between the origin of the goods and the trademark. But it the use of a geographical term as a trademark is possible when the use becomes arbitrary and doesn't relate the products on which such mark is used to the point of their origin. The geographical indications can also be used as trademarks where that trademark has been descriptive in the beginning but has acquired the secondary meaning or distinctive character through use. Where the protection to the geographical indication is based upon the law of unfair competition or passing off, and the opponent is claiming trademark rights in that indication, the question of whether the use of G.I. would be misleading is decisive. If it is found that the use of such trademark is deceptive as to the place of origin of the product, it would be taken as an act of unfair competition and passing off; the parties would be prohibited from such act. But if such use is not deceptive or misleading, the action under unfair competition and passing off might fail. The trademark then can continue to be used; there may be other situations in which the geographical indication has acquired goodwill only in a small area while the conflicting trademark used has become known in the large territory, in such cases, the use of trademark and geographical indication both has to be allowed, they will co-exist. The conditions might be put on the use and scope of such rights. When the geographical terms have been used in the form of collective or certification marks, they are protected and regulated under the trademark law regime of the country. Conflicts arising out of the competing claims made regarding such rights are taken up and resolved by the trademark law of the country by applying the principle of priority. The trademark law prioritises that right that has been registered or used prior and under certain situations to the mark that has become well known before other contesting claims. The use of the geographical indications is protected by being used as the certification and collective trademark. Their conflict resolution between the individual trademark and the former marks doesn't pose any problem.

#### **IV. RESOLUTION OF CONFLICT**

The traditional approaches followed for resolving the conflict between trademark and geographical indications when a similar or identical sign is used to refer to the same product



are grounded in the principles of priority<sup>14</sup>, territoriality<sup>15</sup> and exclusivity<sup>16</sup>. The question of resolution of the conflict between trademark and geographical indications has taken up many divergent perspectives into account. The member countries have different approaches for the resolution of such conflicts. The position of the European Union in this respect is that "trademark should be abolished which contains wordings that is identical to a geographical name used to describe a trademark wine."<sup>17</sup> The World Intellectual Property Organization's Standing Committee on the Law of Trademarks, Industrial designs and Geographical Indications had dealt with the conflict of trademark and G.I.s and is of the opinion that "a geographical indication is best protected under trademark and unfair competition law. Trademark having acquired in good faith had to be protected against the conflicting geographical indications."<sup>18</sup> The International Association for the Protection of Intellectual property has also discussed the conflict that can arise in some cases between trademark and geographical indications and opined that whenever such a situation comes, the actions taken can be the refusal of registration of the trademark ex officio by the trademark office or the third parties affected by such conflict may file an opposition to the application of registration of a trademark, the parties can also initiate proceedings requesting the cancellation of the registration of the mark and for prohibiting the use of the same. It also recommends that the regional and national legislations of the countries ought to provide for the provisions in respect of the resolution of conflicts between the trademark and geographical indication while considering the principles which are; such legislation would take into account the already operating bilateral and multilateral agreements, the parties whose intellectual property rights

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<sup>14</sup> *Anheuser-Busch Inc. v. Budějovický Budvar*, Case C-245/02 para. 98, [2004] ECR I10989, [2005] ETMR 27 ("Finally, 'priority' of the right in question for the purposes of the third sentence of Article 16(1) of the TRIPs Agreement means that the basis for the right concerned must have arisen at a time prior to the grant of the trade mark with which it is alleged to conflict. As the Advocate General pointed out in point 95 of his Opinion, that requirement is an expression of the principle of the primacy of the prior exclusive right, which is one of the basic principles of trade-mark law and, more generally, of all industrial-property law.")

<sup>15</sup> *Koninklijke Philips Electronics NV v. Lucheng Meijing Industrial Company Ltd and Others and Nokia Corporation v. Her Majesty's Commissioners of Revenue and Customs*, Joined Cases C-446/09 and C-495/09, Opinion of Advocate General Cruz Villalón, delivered on February 3, 2011 ("Furthermore, it is to be borne in mind that protection of intellectual property rights is based on the principle of territoriality. By virtue of that principle, holders may prohibit the unauthorised use of their right only in those States in which it enjoys protection.")

<sup>16</sup> Article 6quinquies(B)(i) of the Paris Convention ("Trademarks covered by this Article may be neither denied registration nor invalidated except in the following cases: (i) when they are of such a nature as to infringe rights acquired by third parties in the country where protection is claimed."); and Article 9 of the Community Trademark Regulation (Council Regulation (EC) No. 207/2009 of February 26, 2009 [2009] OJ L 78/42) ("A Community trade mark shall confer on the proprietor exclusive rights therein."). See also Panel Report, complaint by Australia, WT/D290/R (Mar. 15, 2005), 7.602 et seq. For a discussion of exclusivity with a focus on geographical indications, see Gangjee, *supra* note 1, 1254-1261.

<sup>17</sup> Wine Resolution—Recital 12- Council Regulation (EC) No. 2393/89 of July 24, 1989: General Rules for the Description and Presentation of Wines and Grapes Musts.

<sup>18</sup> Draft Report of the International Bureau of WIPO, Geneva, 13-17 July 1998 at 2.

have been affected adversely should be authorised to intervene in the proceedings directly. If the validity of the trademark registration comes into question, the competent courts or authorities should decide the national and regional laws relating to marks. The U.K. trademark law provides that if the trademarks consist exclusively of signs or designations that indicate the geographical origin, such a mark should not be registered.<sup>19</sup> Under the U.K. regime, the geographical names can be registered as certification and collective marks.<sup>20</sup> In India, the legislation concerning trademark and Geographical Indications is made according to the TRIPS agreement provisions. The Trade Marks Act, 1999 and The Geographical indications of Goods (Registration and Protection) Act, 1999 contain the provisions accounting for the conflict between trademark and geographical indications. The trademark law provides that where the marks consist exclusively of the signs which are indicative of and designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or when the service was taken or some other such characteristics, such mark shall not be registered. The law saves those trademarks from the refusal to registration when it has become well known, or it has by its use has acquired the distinctive character. The trademark law in India has given the criteria to decide the registrar to determine whether the trademark is a well-known trademark.<sup>21</sup> Suppose a trademark has been registered prior to the commencement of the trademark act or has acquired distinctiveness by user in good faith before such commencement. In that case, the provisions of the act cannot question the validity of the trademark registration or right to use that trademark on the ground that such trademark is similar or identical to a trademark. The Geographical Indications of Goods (Registration and Protection) Act, 1999, contains prior trademark and prior use provisions. The geographical indications cannot be registered as a trademark in India. But suppose a trademark comprises of the geographical indication which has been registered or applied in good faith or acquired distinctiveness by user in good faith before the enactment of the law. In that case, the validity of such a trademark will not be questioned. This act is inapplicable concerning goods and classes, which have become the common name of such goods. A person is also entitled to use his name or the name of his predecessors in business except where such a name can potentially cause confusion or mislead the public. It also protects such trademarks consisting of

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<sup>19</sup> Section 3(1)(c), The Trade Marks Act, 1994.

<sup>20</sup> *Id.*, Section 49 and 50

<sup>21</sup> The norms that are to be looked at are: (1) the knowledge or recognition of the trademark in the public including the public knowledge in India obtained due to promotion (2) duration, extent and geographical area of that trademark, (3) the duration and extent of promotion, advertisement, publicity and presentation fair and exhibition of the goods and services to which the trademark applies (4) the duration and geographical area of any registration of or any publication of the trademark, (5) the record of successful enforcement of the rights in that trademark, whether the trademark is recognized and to what extent by the court or registrar under that record.

geographical indications. Still, this fact has been known to the authorised user of such G.I. and he doesn't object within the five years from the date when such use came into his knowledge. After the expiry of such a term, no action against the trademark can be taken. The countries have adopted different methods of resolving the conflict, and the perceptions of the States are different in respect of the debate; it has been influenced sometimes by the already existing practices followed, or inspired by the historical reasons or taken up from the international framework.

## **V. HARMONISING THE RELATIONSHIP BETWEEN G.I. AND TRADEMARK**

There have been many deliberations to resolve the issue of interference of the trademarks and geographical indications in each other's sphere. One of the suggestions put forth to deal with the issue is to ensure their coexistence. The term coexistence can be defined as a legal regime under which a G.I. and trademark can be used concurrently to some extent even though using one or both of them would otherwise infringe the rights conferred by the other.<sup>22</sup> It has been endorsed as the most equitable and expedient solution in the current settings. The TRIPS and WTO panel has also advocated this approach. In the classic case of Budweiser, the WTO panel propagated the adoption of a coexistence mechanism. The report conceded with doctrinal developments at the national and regional level, which in the beginning had defined this compromising situation as the geographical "descriptive use" defence in trademark law. Coexistence becomes important as it can mould this relationship dynamics of conflict between trademarks and G.I. regimes, which has become contentious in the discussions concerning the I.P. laws. The TRIPS agreement has enumerated the method of resolution of the conflict between the trademarks and G.I.s by taking the date of entry into force of the TRIPS agreement for the member states, the commencement of protection of geographical indications in their territory of origin, the date of acquisition of the bona fide trademark rights in similar or the same signs as G.I.s and used on goods for which the G.I. is protected. The TRIPS agreement tries to balance the rights created under the TRIPS and G.I. laws. The AIPPI, at its 37th congress in Rio in 1998 related to the issues of G.I.s, has preferred the coexistence mechanism. It opined that while the FITFIR could be taken as could be a guiding principle for the resolution of conflicts, the principle of coexistence should be applied unless the trademark in question has acquired a prior reputation.<sup>23</sup> This rule has to be applied both in the situation of

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<sup>22</sup> Panel Report, European Communities-Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs, WT/DS 174/R (Mar. 15, 2005), p.115

<sup>23</sup> Question Q62: Appellations of Origin, Indications of Source and Geographical Indications-Resolution, 1998 AIPPI Y.B. 389, available at <http://www.aippi.org> (adopted at the 37th Congress of Rio de Janeiro, May 24-29, 1998).

misrepresentation and misappropriation, except for certain qualifications like the mitigating circumstances, including the extent and bona fide of such usage. E.U. members who have a greater interest in protecting G.I.s advocate the primacy of the G.I.s or the coexistence of both as a resolution method, but the proponents of the trademark law support FITFIR rule prescribing several advantages of it like clarity, predictability and even-handedness.<sup>24</sup> The territorial extent of the G.I. can be restricted to a specific territory owing to the sovereignty. In such cases, some other resolution method has to be used as the FITFIR can be applied within the territory only. WTO has tried to propagate the coexistence mechanism in a dispute that arose between the trademark and the G.I., over concerns regarding E.C. Regulation 2081/92 ("Regulation"). The essence of the dispute was summarised in the initial request for consultations. It remained constant: The coexistence was permitted because G.I. was within the fair use of the geographically descriptive term. The Panel allowed the coexistence though it accepted that it would violate Article 16 of TRIPS. The alleged regulation contained a limited exception in "legitimate interest" proviso, thus justified under Article 17. The Panel, in this case, tried to determine the scope of the exception; it considered the slight lessening of trademark rights, which doesn't lead to a complete cessation of them, not assessing the impacts of such limited derogation standard is followed.<sup>25</sup>

## **VI. CONCLUSION**

The conflict between trademark and geographical indications has been discussed and deliberated on the international and national levels, but the controversy has not been resolved. The standing committee on the trademark, geographical indications, and industrial design has also made efforts to provide a proper solution. Both trademark and geographical indications operate in the brand market, and their functions also coincide in the ways discussed in the previous chapters. The major existing methods of resolution to the problem are the first in time and first in right rule, which causes the exclusion of certain values altogether<sup>143</sup> though. The other way is to let them co-exist by demarcating their scope of operation so that they would operate without friction. It would be difficult for the coexistence approach to work on the root level as inevitably there will be more difficulties in implementing them. The G.I. proponents who regard any trademark adoption that consists of the G.I. as misappropriation would be skeptical about such registration. According to them, G.I.s representing any group or community should be more preferred than trademarks.

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<sup>24</sup> Dev Gangjee, *Conflicts between Trademarks and Geographical Indications*, 82 *Chi.- Kent L. Rev.* 1253 (2007), p.1266

<sup>25</sup> Dev Gangjee, *Conflicts between Trademarks and Geographical Indications*, 82 *Chi.- Kent L. Rev.* 1279 (2007)

On the contrary, the proponents of the trademark system would prefer that no rights created under trademark law be adversely affected by the operation of the geographical indications systems. Although, the trademark system has permitted coexistence in some situations. Coexistence approach, if adhered to staunchly, can add to the confusion in the customers' minds. But no doubt it is the most equitable solution. The provisions of TRIPS have already set the stage for coexistence. The existence of two BUDWEISERS in the U.K. one is a trademark and the other a G.I. shows that they can operate together. The co-operative functioning is possible for unrelated parties using the same signs within registered trademark systems. The interrelationship between trademarks and geographical indications should not be considered a conflict. Rather it can be understood as the strategy of the different manufacturers to expand the use of the product emphasising upon the different advantages of the product. Therefore, coexistence between them is possible. TRIPS agreement has been commendable in that it prescribes minimal standards to be followed by the trademarks and geographical indications separately and, therefore, in solidifying their distinct characteristics. If the appropriate authorities think it fit, they, via legislative enactments, introduce the Statute pertaining to the geographical indications. If the appropriate authorities think it fit, they, via legislative enactments introduce the Statute pertaining to the geographical indications, trademark protection is provided to the individual directly, but the protection in the form of geographical indication can be made available through the intermediaries of the governing body which certifies that the manufacturers' goods belong to a particular geographical area. But it cannot be denied that harmonisation is essential for bringing consensus amongst the different States regarding the laws related to geographical indications and trademarks so that a uniform system of protection of such domain can be achieved. It can be said that the purpose behind the use of a trademark is different from the purposes for which geographical indications are used.

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