

MANUPATRA INTELLECTUAL PROPERTY REPORTS

- While examining the question of misrepresentation or deception, comparison has to be made between the two trademarks as a whole
[*Cadila Healthcare Ltd. v. Aureate Healthcare Pvt. Ltd. & Anr.*] 0145
- Mere variations or modifications, which do not substantially alter a previously published shape or design, which any skill person can make, are not sufficient to bring novelty to the design
[*Tarun Sethi & Ors. v. Vikas Budhiraja & Ors.*] 0180
- If the sufficient cause is shown by the party, Appellate Board is empowered to extend the time for preferring an appeal
[*CYDMAX (India) Pharma Pvt. Ltd. v. M/s Gilead Sciences INC. & Ors.*] SNC 1
- Factual statements made in a party's brief on the case can be given no consideration unless they are supported by evidence properly introduced at trial.
[*Virgin Enterprises Ltd. v. Steven E. Moore*] C-8
- DNA Synthesis: Now Cost-efficient D-1
- Glivec- "The Swiss" in India E-2
- Ponduru Khadi - A Case for Geographical Indication F-11
[*An Article by Dr. Rajendra Mohan Gonela, Filma V and Dr. Sudhir Ravindran*]

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Ponduru Khadi - A Case for Geographical Indication

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In recent years registration of Geographical Indication (GI) in India is a new development. Geographical Indication is the latest entrant of International Property Rights. Several aspects such as geographical region, unique process, skill of the people and quality, preservation status of national geographical indication is meriting this product

Geographical indication (GI) is the latest entrant to the Intellectual Property Rights (IPRs) and is defined as a sign used on goods that have a specific geographical origin and possess qualities, reputation or characteristics that are essentially attributable to that place of origin.¹ GI gives exclusive right to a region (town, province or country) to use a name for a product with certain characteristics that corresponds to their specific location.²

GI is mainly used to identify the agricultural, handicraft, manufacturing goods from the particular territory which has developed a goodwill in the market due to the specific local factors like temperature, humidity, soil, etc., associated with the territory that are unique. GI helps producers differentiate their products from competing products in the market and enables them to build a reputation and goodwill around their products.³ GIs are generally owned by a community which belongs to that particular region.

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1 http://www.wipo.int/geo_indications/en/

2 The Protection of Geographical Indication in India - Case study on 'Darjeeling tea' by Dr. Sudhir Ravindran and Arya Mathew <http://www.altacit.com/pdf/The%20Protection%20of%20Geographical%20Indication%20in%20India%20Case%20Study%20on%20Darjeeling%20Tea.pdf> Last visited on 24th August, 2012.

3 Socioeconomic Implications of Protecting Geographical Indications in India by Kasturi Das http://depot1.gdnet.org/kb/fulltext/Das_Protection%20india.pdf, Last visited on 27th August, 2012

Economic Impact of GIs

GIs have now become major intellectual assets in relation to variety of products as they provide added value to products for which consumers are ready to pay. They can be effectively used as a tool for protecting consumer's interests and bolster quality product but more importantly an economic tool for the development of rural areas. Thereby increasing the production output and enhancing export revenues. The legal protection also generates prospects for investment in a product and region.

In the first instance, the grant of a GI will provide the right owners with the opportunity to get economic benefits from their GI and with the right to exclude non entitled users by creating a barrier to entry into a niche market segment. Subsequently, the economic incentives will then produce other incentives to nurture and sustain traditional methods and know how, which will contribute to inter-generational equity. Other indirect benefits, such as the creation of employment, the retention of the population in rural areas and the possibility to generate tourism will also benefit the owners of a GI and the community as a whole.⁴

It is undisputed that successful GIs could bring a number of economic and social benefits to developing countries. However, the value and benefits of a GI will depend on the way it is exploited, marketed and policed.⁵ They perform an important economic function by way of protecting intangible economic assets like market differentiation, reputation, misappropriation, protecting traditional and indigenous knowledge, quality standards and potential income effect and promote rural development and sustainability.

4 <http://www.iqsensato.org/pdf/iqsensato-wp-3-zografos-dec-2008.pdf>, Last visited 24th August, 2012

5 Ibid

6 Registration details of GI Applications 2003 – 26th July, 2012, <http://ipindia.nic.in/girir> Last visited on 4th September, 2012

Geographical Indication in India

Until early 1990's India did not have a specific law governing GIs of goods, which could adequately protect the interests of producers of such goods. Unless a GI is protected in the country of its origin, there is no obligation under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) for other countries to extend reciprocal protection. In view of this, it was considered necessary to have a comprehensive legislation for registration and for providing adequate protection for GIs. India enacted the Geographical Indications of Goods (Registration and Protection) Act on 30th December, 1999 which came into force on 15th September, 2003. The legislation is administered through the Geographical Indications Registry under the overall charge of the Controller General of Patents, Designs and Trademarks. The Registration of GI is valid for a period of 10 years and it needs to be renewed thereafter.

As on 26th July, 2012, 178 Indian products were registered with the Geographical Indications Registry.⁶

The Karnataka State tops among all the states with 31 products with GI certification, followed by Kerala with 20 products, Andhra Pradesh with 20 products and Tamil Nadu with 18 products. The States Goa, Nagaland and Punjab & Haryana have got one GI each. The north eastern states have not many products with GI certification regardless of the inimitable historical background and repository of skills being used in producing innumerable products. GI have also been granted to the foreign products such as Peruvian Pisco Champagne, Napa Valley, Scot Whisky, Prosciutto di Parma, Por Douro and Cognac.

The Khadi cloth has unique qualities and a good market base across the globe as a result of which it has all the requirements to be registered under GI.

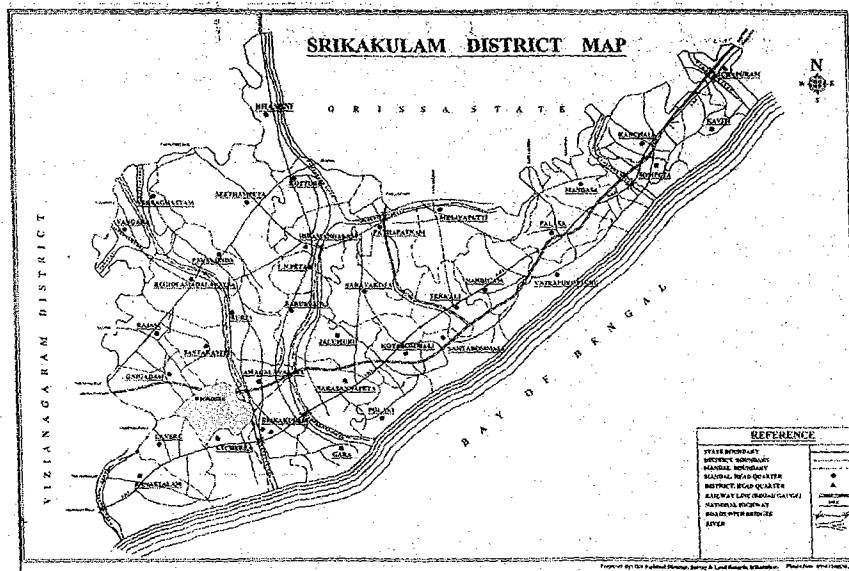
There are many potential products for GI certification in the handicraft, agricultural, horticulture and manufacturing sectors such as Silk and Woolen Carpets, Namdas Apples of Kashmir, Shopian Apples, White Honey, Pampore Saffron, Kashmiri Wazwan, Seabuckthorn of Leh, Apricot of Kargil, Khadi cloth, etc. But our producers are not striving for their GI certification to safeguard their brand reputation in the national and international markets. This is due to the unawareness of the concept of the Geographical Indication as community branding of goods among our producers and the benefits of the GI tags in the national and international markets.⁷

This paper is first among series of articles which analyses various products which merit GI registration. The Khadi cloth which has long and deep roots with the Geographical region Ponduru is famous by way of usage of local raw material, skill of the people and the uniqueness of the process and the product. The Khadi cloth has unique qualities and a good market base across the globe as a result of which it has all the requirements to be registered under GI.

Geographical Area of Production

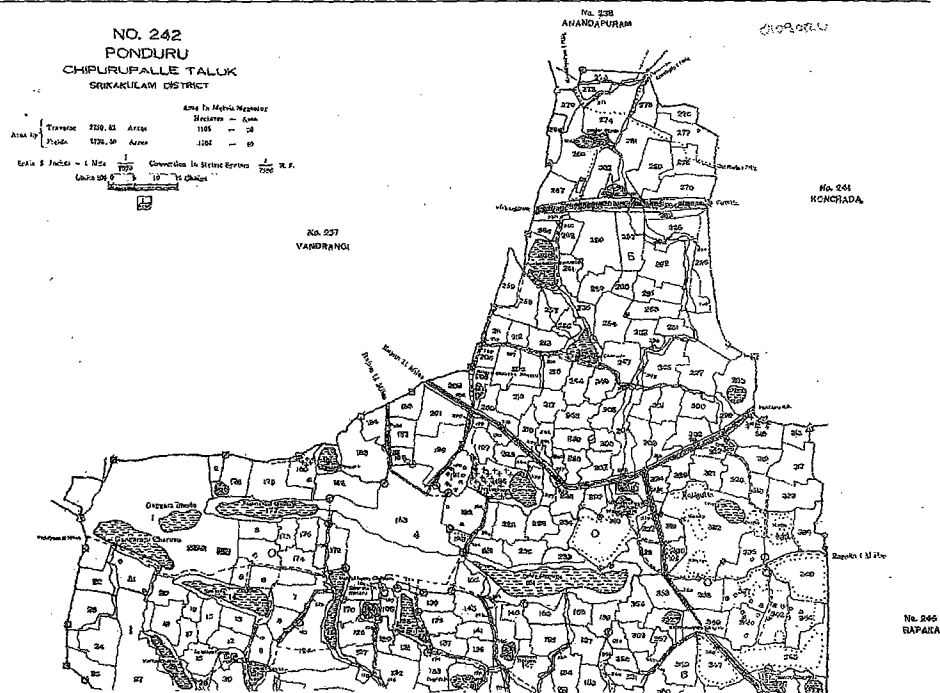
The Ponduru is a village and Mandal headquarters in Srikakulam district of Andhra Pradesh in India. It is located at a distance of 22kms from Srikakulam Town and District in north coastal Andhra Pradesh in India. Ponduru, a small village in Srikakulam is known as the land where the finest khadi is woven. Khadi from Ponduru is famous among Khadi lovers of the entire country. It is exported to US, Denmark, Sweden, Japan etc., and many other countries.

Geographical Area Map



Srikakulam District

7 The Community Branding of Goods by Dr. Mehraju Din Bhat



Ponduru village

Description of Goods

The Ponduru village boasts of weaving the best quality Khadi cloth from a special variety of cotton, namely, Punasa cotton, Hill cotton, both White and Red, of very short staple grown in the District. The farmers in the area raise these indigenous varieties of cotton without usage of pesticides /fertilisers and supply the same for weaving the Khadi cloth. This cotton is ginned with the help of fish jawbone of a specified fish. This is a unique ginning process. An age-old relationship also exists between the farmers and the weavers in this region.

Method of Production

Weaving Process

- 1) The Hill cotton fibre is strong and sticks to the seeds. It cannot be removed by hand.
- 2) The raw seeded cotton is ginned with the Valuga fish jawbone (this fish is available at Dowleswaram and Rajahmundry in East Godavari Dist. The fishermen in

the area supply them to the weavers). The seeds are removed using an iron rod.

- 3) The cotton fibre is combed and purified with the fish jaw
- 4) Cotton is fluffed and smoothened with fine sticks which also remove the waste.
- 5) Silvering is done with a bow and then carded with a wooden machine.
- 6) The silvers are handmade and kept in dried banana stems.
- 7) This is spun up to 120 counts in white and 60 in red cotton on single spindle charkas with 24 spokes.

Uniqueness of Khadi Cloth

The uniqueness of the Khadi cloth produced in Ponduru stems from the following special characteristics:

- 1) The cotton used is indigenous varieties of Punasa cotton, Hill, White and Red cotton, grown in the District,

- 2) The crop is grown by using organic manures. It is of very short staple variety which is highly suitable for No. 100\120 count weave of cloth.
- 3) The cotton is cleaned and combed with Valuga Fish jawbone. This is said to be the main reason for the quality of the cloth by making it soft and silky.
- 4) The skill of the weavers is special and is passed on from generation to generation.
- 5) The woven cloth has a special shine and sheen.
- 6) The end product is of very high quality which does not exist in any other handloom Khadi cloth in the country.

Ponduru village and the Khadi cloth attained its popularity during the pre-independence struggle

Ponduru Khadi's Venture into Limelight

Historical data indicates that it has acquired popularity during our Independence struggle a century ago. But the art must have been in existence much earlier since the human skill could not have been acquired within a short time during pre - Independence days.

Ponduru village and the Khadi cloth attained its popularity during the pre-independence struggle wherein Mahatma Gandhiji gave a call for ban on all foreign goods, including cloth. He propagated the use of Khadi cloth by all Indians. Hearing about the quality and uniqueness of Ponduru Khadi he visited the village and inspected the handlooms. He was impressed by the quality of Ponduru Khadi cloth and even preferred to wear the cloth. This generated lot of

awareness and the demand for the cloth grew enormously.

It is a well known fact that many dignitaries, viz., Mahatma Gandhi, Vinoba Bhave, Indira Gandhi and many others used this cloth. This was gifted to Bill Clinton during his visit to AP in 2003. Legend has it that Queen Victoria was enamored with the quality of the cloth and procured and wore the same.

Reasons for Decline

- 1) Though there is good demand for the cloth, wages are low. Not sustainable as a full time activity.
- 2) Active weavers have dwindled from 2000 about 15years back to only 500 now.
- 3) Mostly done by womenfolk to supplement family income.
- 4) Shortage of Valuga fish and increase in its cost.

Conclusion

Registration of GI in India is relatively a new development, but it has already had significant positive results. It has been reported that Ponduru khadi, famous the world over, may not be available for future generations as weavers are shifting to other professions. The reasons are not far to seek — lack of encouragement from the State government and the lure of good payment — up to Rs.125 per day — even for unskilled workers under the National Rural Guarantee Employment Scheme. Youngsters are not keen on learning the art of weaving fine khadi, which has brought worldwide recognition for Ponduru, a small town 25 km from the district headquarters. The art is disappearing very fast as workers are fed up with meager wages. The historic town of Ponduru may see a further decline in this traditional activity. From 2,000 spinners 15 years ago, there are only about 800 left in the profession. Earlier there were over 150 fine khadi weavers here, now there are only 45-50.⁸

⁸ <http://www.hindu.com/2011/05/07/stories/2011050764060600.htm>, Last visited: 05.09.2012

Although Ponduru khadi cloth is well known, a genuine material and a national product of geographical indication, GI registration would increase the demand and a higher retail price for them, which would in turn fetch a better distribution of economic returns for producers. Broadly speaking there are two factors which have contributed to such an exceptional and distinctive

quality, namely the special variety of cotton grown in the village and unique ginning process. Hence for several aspects such as geographical region, unique process, skill of the people and quality, preservation status of national geographical indication is meriting this product. This would substantially facilitate socio-economic development and sustainability of the region.

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