



IP ITeasers 062:

GIs go graphic

Free Trade Agreements (FTAs) are all the rage at the moment, partly to prove that the UK can go it alone in the world after Brexit. Yet the EU is keen to forge them as well. In its negotiations with India, the EU has departed from its normal approach of keeping Geographical Indications (GIs) within the general chapter on IPRs of any FTA. There are two reasons for this difference in approach. First, the EU (currently) only extends GI protection to agricultural products, while India has a multitude of non-agricultural products protected by its GI regime. Such wider scope includes handicraft artifacts, which typically are very difficult to protect by copyright or design right or the equivalent, partly because of the lack of originality or novelty. Secondly, India adopts only the minimum international standard of protection provided for by the TRIPS Agreement. This permits such usage as “Welsh Whitstable oysters” as there would be no confusion in the minds of a consumer as to the geographical origin of a product so marketed. However, the EU adopts a higher standard of protection that would prohibit any such usage because the non-Kent product’s name would amount to a “misuse, imitation or evocation even if the true origin of the [product] is indicated” contrary to art.13(1)(b) of Regulation 1151/2012/EU. (I will leave the Man of Kent and Kentish Man distinction for a later day.)

Interestingly, in its FTA negotiations with the UK, it would appear that India is now content to adhere to the higher EU standard of protection. Further, the EU is now considering GI protection for non-agricultural products. Both are major developments, but the latter will radically extend the scope of GIs from its traditional first cousin of trade mark protection (in particular, collective and certification trade mark protection) to its second cousin of copyright and design protection.