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DEC' 2025

COVER STORY

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info@knallp.com

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Editor's Note

Charting the IP Landscape, our Cover Story, **"The Shadow of a Bar: Does a Vested Right of Appeal Survive the Statutory Silence?,"** addresses whether a statutory amendment can extinguish a vested right to an intra-court appeal.

This edition highlights pivotal issues: **"IP Justice Accelerated: SC Greenlights Immediate Suits, Bypassing Mediation Barrier"** confirms the Supreme Court's ruling in Novenco Building & Industry A/S v. Xero Energy Engineering Solutions (P) Ltd. that the urgency of a **continuing wrong,** like IP infringement, justifies bypassing mandatory pre-institution mediation. **"Zero Doubt, Zero Delay: How Triple Identity Slams the Door on Digital Infringement"** details the Delhi High Court's use of the **'Triple Identity Test'**

"Beyond Injunction: How Petrofer Used the Companies Act to Force a Rival's Name Change," shows how Petrofer's trademark claim was strengthened by a **prior successful action under the Companies Act** to mandate a corporate name change for the rival. Lastly, **"The High Cost of 'Soiled Hands': When a Trademark Battle Reveals an Abuse of Process"** reminds us of a claimant's **suppression of key facts.**

Finally, the regulatory landscape is shifting with **"The Price of Heritage Just Dropped: India's New GI Rules Unlock the Artisan Economy,"** a policy update introducing an 80% fee cut for Geographical Indication (GI) registrations to empower artisans and drive the national vision

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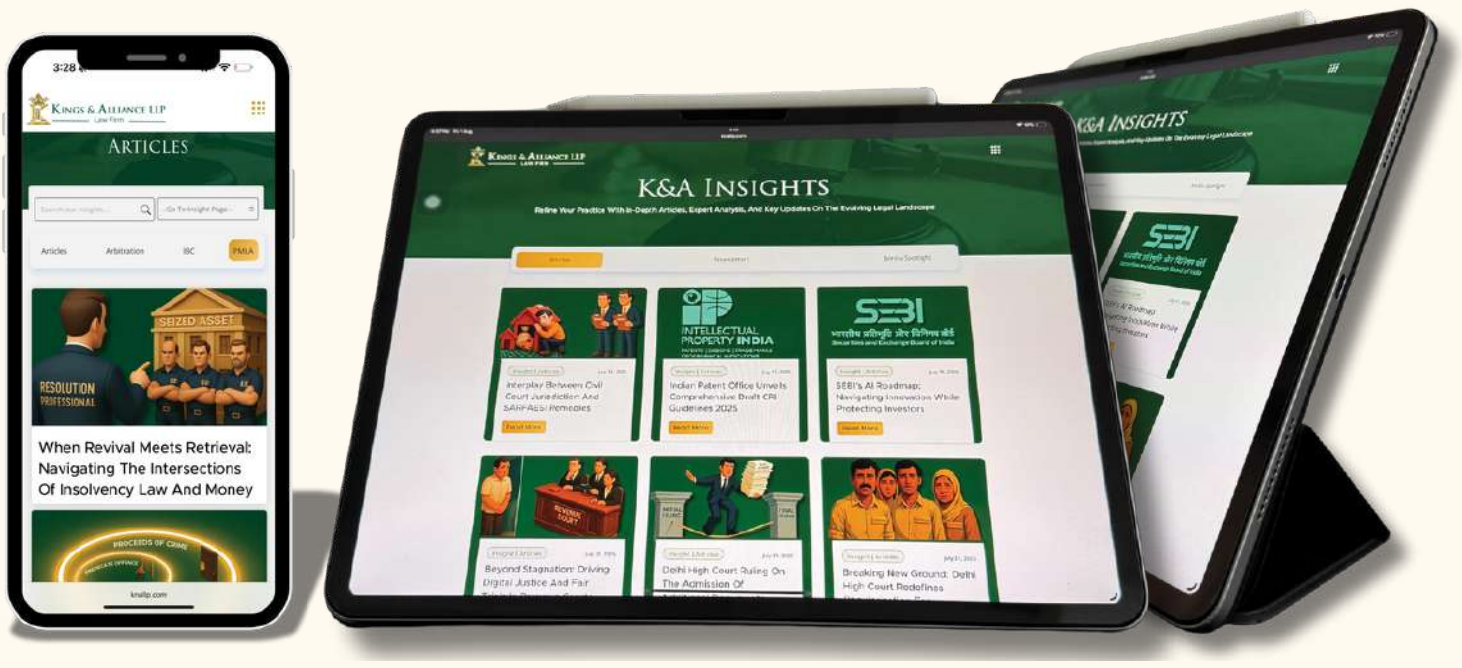

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COVER STORY

The Shadow of a Bar: Does a Vested Right of Appeal Survive the Statutory Silence?

> *Trade Marks Act confers a right of appeal to a High Court and says nothing more about it*

The very architecture of justice is built upon the premise of scrutiny. When an administrative or quasi-judicial body decides on a matter as vital as proprietary rights for instance, the registration of a trademark, does the aggrieved party have an unassailable right to multiple tiers of judicial review, an assurance of appellate grace? Or can a subsequent statutory amendment, a single legislative stroke, extinguish an otherwise vested right to an intra-court appeal? This intricate question lies at the heart of the constant judicial endeavour to reconcile the specific provisions of special legislation with the sweeping procedural mandate of general law, a conflict recently crystallised by the Calcutta High Court in the landmark judgment of Glorious Investment Limited vs. Dunlop International Limited & Anr.

The crux of the matter revolves around the maintainability of a Letters Patent Appeal (LPA) against the order of a Single Judge of the High Court. The appeal before the Single Judge itself originated as a challenge under Section 91 of the Trade Marks Act, 1999, against a decision rendered by the Registrar of Trademarks. The objection raised is potent: the appeal is, in effect, a second appeal, and by virtue of Section 100A of the Code of Civil Procedure (CPC), 1908, no further appeal lies from the judgment of a Single Judge of a High Court that has heard and decided an appeal from an original or appellate decree or order. Historically, the law seemed settled. The Supreme Court, in the seminal 1953 case of National Sewing Thread Co. Ltd. vs. James Chadwick & Bros. Ltd., provided a clear pathway. The principle established was that when a special statute, like the Trade Marks Act, confers a right...

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IP Justice Accelerated: SC Greenlights Immediate Suits, Bypassing Mediation Barrier

> *The urgency does not lie in the age of the cause but in the persistence of the peril*

The Supreme Court of India, in the landmark judgment of Novenco Building & Industry A/S v. Xero Energy Engineering Solutions (P) Ltd., decisively answered this question by clarifying when a commercial suit can bypass the mandatory pre-institution mediation (PIM) requirement under Section 12A of the Commercial Courts Act, 2015. This ruling is particularly vital for cases of Intellectual Property (IP) infringement, establishing that the urgency inherent in a continuing wrong justifies the immediate institution of a suit without mediation. The Court emphasized that for recurring wrongs, the urgency "does not lie in the age of the cause but in the persistence of the peril," ensuring that the procedural requirement of mediation does not aggravate the harm caused by ongoing infringement .

The case stemmed from a dispute between Novenco Building and Industry A/S, a Danish manufacturer of industrial fans, and its former distributor, Xero Energy Engineering Solutions. Novenco, holding patents and design registrations for its 'Novenco ZerAx' fans, alleged that the distributor started manufacturing and selling nearly identical, competing fans under a deceptively similar name and appearance, in direct violation of their agreement. Novenco filed a suit for injunction, but the Himachal Pradesh High Court rejected it, citing a lack of urgency due to a delay in filing, thus mandating compliance with Section 12A mediation. The Supreme Court, however, reversed the High Court's stance. It definitively held that in cases of alleged continuing infringement, the element of urgency is inherent. The Court explained that the urgency in such cases "does not lie in the age of the cause but...

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Zero Doubt, Zero Delay: How Triple Identity Slams the Door on Digital Infringement

> *Degree of cloning is prima facie dishonest and an attempt to ride on the goodwill of the prior user*

Is there any greater threat to a brand's hard-earned goodwill than the quiet, calculated adoption of its very identity by a rival operating in the exact same field? When a plaintiff walks into court with irrefutable evidence of such a complete usurpation, a virtual clone of their brand in the marketplace—does the law possess a mechanism swift enough to avert the immediate and irreparable damage? The answer, as demonstrated in the recent ruling of the Delhi High Court in Promodome Communication Private Limited vs. Promodome Digital LLP, lies in the surgical precision of an ex parte injunction predicated on the clear satisfaction of the 'Triple Identity Test'.

The dispute centered on the Plaintiff's well-established trademarks, primarily 'PROMODOME', 'PROMODOME DIGITAL', and 'PROMODOME COMMUNICATIONS', used for services in the advertising and communication sector. The Defendant, operating under the identical name 'PROMODOME DIGITAL' and the corresponding infringing domain name https://promodome.in, was also engaged in similar services. This striking concurrence presented the Court with a prima facie case of the highest degree of infringement, a scenario where the marks were identical, the services offered were identical, and consequently, the consumer base targeted was also identical. This finding of 'triple identity' left little doubt that the Defendant's activities were designed to create confusion and pass off their services as those of the Plaintiff. Given the Plaintiff's plea of an imminent likelihood that the Defendant might conceal or suppress its digital footprints, the Court acted...

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Chamber - 511, Ad. Complex, Supreme Court of India, New Delhi - 110001

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Beyond Injunction: How Petrofer Used the Companies Act to Force a Rival's Name Change

> *The use of a deceptively similar mark on cognate goods inevitably leads to confusion*

Can a single, distinctive word, protected and nurtured over decades, be adopted by another entity without sparking a protracted legal war? This is the central question at the heart of the contentious dispute between a venerable German chemical company and a relatively newer Indian entity, a legal battle that unfolded in the hallowed halls of the High Court of Judicature at Bombay, highlighting the fierce protection afforded to intellectual property.

The contentious legal dispute, Petrofer Chemie H.R. Fischer GMBH & Co. KG. & Anr. v. United Petrofer Limited, centers on the infringement and passing off of the Plaintiffs' established and registered trademark, 'PETROFER', by the Defendant. The Plaintiffs, a venerable German chemical company and its Indian licensee, built global goodwill under 'PETROFER', which they asserted is a coined and invented word, affording it the highest level of distinctiveness and protection since its Indian registration in 1997. The conflict arose when the Defendant incorporated as 'UNITED PETROFER LIMITED' and began using 'UNITED PETROFER' for identical or cognate goods—industrial chemicals and lubricants—creating an "imminent likelihood of confusion." The Plaintiffs' case was exceptionally strong, not only grounded in their long-standing trademark rights and statutory infringement claims but also bolstered by their successful, prior action under the Companies Act, which legally mandated the Defendant to change its corporate name. Consequently, the Interim Application sought an immediate temporary injunction to restrain the Defendant from using any name or mark containing 'PETROFER', arguing that a registered, distinctive mark, representing years of...

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The High Cost of 'Soiled Hands': When a Trademark Battle Reveals an Abuse of Process

In the competitive landscape of modern commerce, where brand identity is paramount, a company's trademark is its lifeblood

In the competitive landscape of modern commerce, where brand identity is paramount, a company's trademark is its lifeblood. But what happens when the very pursuit to protect that identity becomes tainted by misrepresentation and the suppression of facts? Does a strong claim of infringement truly fall flat when the claimant's hands are not clean? This complex legal question was recently addressed in the case of M/s ME Testing Laboratory (METL) Vs. M/s M.E. Technology. The judgment serves as a stark reminder of the fundamental principle that those who approach the court must do so with unblemished honesty. The plaintiff, initiated a suit for permanent injunction, seeking to restrain the defendant, M/s M.E. Technology, from counterfeiting and infringing upon its registered trademark. The core of the plaintiff's argument was that it had coined and adopted the trademark "Me Testing Laboratory(METL)" since 2011, and that the defendant's subsequent use of the labelmark "M.E. Technology" for similar services was deceptively similar and an act of passing off. The plaintiff claimed to have a registered trademark for "Me Testing Laboratory With Device Of METL".

The dispute was far from a simple matter of trademark infringement, as it was significantly complicated by the plaintiff's suppression of key facts regarding its business relationship with the defendant. Initially, the plaintiff claimed to have only "got wind" of the defendant's similar services and use of the mark "M.E." in March 2020. However, this assertion sharply contradicted the undisputed fact that the two parties had entered into a Memorandum of...

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WWW.KNALLP.COM

SIGNIFICANT CASE LAWS

Court Halts Sale of ELGIMET Over 'Deceptive Similarity' to GLIMET

In the present case of Laboratories Griffon Pvt. Ltd. and Another v. Adwin Pharma and Another, concerns a petition by Laboratories Griffon (Plaintiffs) seeking an injunction to restrain Adwin Pharma (Defendants) from using the trade mark "ELGIMET" for their diabetes drug, asserting it infringes on the Plaintiffs' registered trade marks "GLIMET" and "GLIMET DS". The Plaintiffs, who have marketed medicinal preparations since 1947 and registered "GLIMET" in 1992 for diabetes treatment, established prior use and substantial sales turnover. The Defendants' primary defense was that "GLIMET" is a descriptive mark, being a portmanteau of the pharmaceutical components Glibenclamide/Glimepiride and Metformin, and that their product is a prescription-only drug with different packaging, thus reducing the likelihood of confusion. However, the court noted that the Plaintiffs' registration was under Part A of the Trade and Merchandise Marks Act, 1958, which prima facie indicates distinctiveness in the unique combination of the drug names.The High Court ultimately ruled in favor of the Plaintiffs, finding a prima facie structural and phonetic similarity between "GLIMET" and "ELGIMET". The Court applied the strict test for medicinal products, emphasizing that the resemblance is likely to cause confusion among the average consumer with imperfect recollection. The Court highlighted that merely interchanging the first two letters and prefixing the vowel "E" creates an impugned mark likely to be mispronounced as "gi-met," phonetically similar to "gli-met". Citing the Hon'ble Apex Court, the judgment stressed that public interest supports a lesser degree of proof for confusing similarity in medicinal products. The fact that the drugs are sold under prescription is not sufficient to prevent confusion, especially in India's diverse healthcare infrastructure. Given the "slightest probability of confusion in the case of medicinal products," the Court concluded that the use of "ELGIMET" must be restrained.

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Corporate Office - 13 Ring Road, Lajpat Nagar IV, New Delhi - 110024
Chamber - 511, Ad. Complex, Supreme Court of India, New Delhi - 110001

+91 981 981 5818
INFO@KNALLP.COM
WWW.KNALLP.COM

SIGNIFICANT CASE LAWS

Delhi High Court Blocks Jaipur Hotel's Logo for Similarity to Beverly Hills Polo Club

The Delhi High Court, in the case of Lifestyle Equities C.V. and Anr. v. Hari Shankar Bilwal Trading as Hari Watch and Jewellery Company and Ors., granted an ex parte ad-interim injunction against the Defendants, who operate a hotel and restaurant in Jaipur named "Polo Inn and Suites" and a "POLO LOUNGE". The Plaintiffs, Lifestyle Equities C.V., the registered proprietors of the Beverly Hills Polo Club (BHPC) Logo Mark, sought to restrain the Defendants from infringing their trademarks, specifically the Polo Player Device. The Plaintiffs demonstrated a strong global and Indian reputation, with the earliest Indian registration dating back to 1992 and sales of apparel exceeding ₹190 Crores since FY 2016-17 Crucially, the Plaintiffs hold a registration for the BHPC Logo Mark under Class 43 (services for temporary accommodation, food, and drink), the same classification under which the Defendants are operating.

The Court established a prima facie case in the Plaintiffs' favor, noting that the infringing marks prominently feature a polo player riding a horse, a striking and essential element of the Plaintiffs' logo The Defendants' composite mark, "Polo INN & Suites," used in conjunction with the polo player device, was found to be deceptively similar to the Plaintiffs' mark. The Court was persuaded that the Defendants' unauthorized use would likely cause an unwary consumer to believe the hotel services were affiliated with or authorized by the Plaintiffs, potentially prejudicing the Plaintiffs' substantial goodwill and reputation, especially since negative customer reviews had already been posted for the Defendants' services. Given the Plaintiffs' intent to expand into Class 43 services and the Defendants' failure to respond to cease-and-desist notices and appear in court, the balance of convenience was found to lie entirely with the Plaintiffs, leading to the grant of the ex parte injunction.

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SIGNIFICANT CASE LAWS

Relaxo Vindicates Design Rights as Delhi High Court Upholds Interim Injunction Against Aqualite

In the case of Aqualite Industries Private Ltd. v. Relaxo Footwears Limited, the Delhi High Court's Division Bench dismissed the appeal filed by Aqualite and upheld the interim injunction that restrained Aqualite from manufacturing or selling slippers alleged to infringe upon Relaxo's registered designs. Relaxo had instituted a suit alleging that Aqualite's "hawai" slippers were a fraudulent imitation, or piracy, of its two registered footwear designs (Nos. 325071 and 325074), which feature distinctive vertical ridges along the sides. Aqualite contested the injunction, arguing that Relaxo's designs lacked novelty and were anticipated by prior public knowledge or "prior art" under Section 19 of the Designs Act, 2000.

The Court ultimately sided with Relaxo, ruling that a prima facie case of design piracy had been established. Applying the "instructed eye" test—a standard for design infringement that assumes the viewer is aware of prior art—the Bench found that Aqualite's footwear was identical in shape and configuration to Relaxo's. The Court held that even though there is limited scope for novelty in functional products like footwear, the specific arrangement, configuration, and surface pattern of the side ridges in Relaxo's designs possessed sufficient visual distinctiveness to be protected. Furthermore, the Division Bench noted that Aqualite's challenge to novelty was weakened by its own subsequent application for registration of an identical design. Given the clear resemblance and the failure of Aqualite to successfully challenge the prima facie validity of Relaxo's registrations, the interim injunction was affirmed to protect Relaxo's intellectual property rights during the pendency of the main suit.

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SIGNIFICANT CASE LAWS

CREED vs. Berkeley Beauty: Delhi HC Enforces Ban on Rogue Distributor, Awards Substantial Damages

The case law provided consists of several intellectual property and commercial disputes adjudicated by the High Courts of Delhi and Bombay. In Fontaine Limited v. Berkeley Beauty Brands Private Limited & Ors., the dispute centered on the unauthorized use of the luxury perfume brand CREED's trademark and the disposal of unsold inventory after a Distribution Agreement expired on August 9, 2022. The Plaintiff, Fontaine Limited, sought a summary judgment against the former exclusive distributor and its affiliates, who allegedly continued to sell CREED products at market price through unauthorized channels, including operating a store until April 29, 2023, and using a WhatsApp business account named 'CREED the Chanakya'. The Delhi High Court had previously granted an ex parte ad-interim injunction on August 18, 2023, which was later made absolute. While Defendant No. 1 agreed to a decree for permanent injunction, it contested the Plaintiff's claim for damages (Rs. 37.43 lakhs) and legal costs (Rs. 8 lakhs) for the unauthorized sales.

Separately, the Delhi High Court delivered judgment in Aqualite Industries Private Ltd v. Relaxo Footwears Limited, upholding an injunction in a design infringement suit. The Court affirmed that Aqualite's footwear was identical in shape and configuration to Relaxo's registered designs for its hawai slippers and found that Relaxo's suit designs were not invalid or lacking in novelty. Another IP matter, Laboratories Griffon Pvt. Ltd. and Another v. Adwin Pharma and Another, before the Bombay High Court, concerned trademark infringement for medicinal products, where the Plaintiffs' mark was allegedly infringed by the Defendants' mark "ELGIMET" for drugs used to treat diabetes. The Court found a deceptive phonetic and structural similarity between the marks and emphasized that due to the nature of medicinal preparations, even the "slightest probability of confusion" is sufficient grounds to restrain the use of the product.

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Chamber - 511, Ad. Complex, Supreme Court of India, New Delhi - 110001
+91 981 981 5818
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SIGNIFICANT CASE LAWS

Delhi High Court Blocks Piracy Websites Infringing Saregama India's Music Copyright

In the case of Saregama India Limited v. EN.SSYOU.TUBE & ORS., involves several recent Intellectual Property matters. This specific case was initiated by the owner of the Copyright in musical works and sound recordings to combat the unauthorized reproduction and distribution of copyrighted content through activities commonly known as "stream ripping". The other judgments address different facets of commercial rights enforcement, including a dispute over the piracy of registered designs for a type of footwear, where the court found that the infringing product was identical in shape and configuration to the protected designs. Additionally, a trademark infringement action concerning medicinal preparations required exacting judicial scrutiny due to the high risk of confusion posed by a deceptively similar mark. Finally, a luxury goods company filed a suit against a former distributor, seeking a summary judgment for the unauthorized sale and distribution of its premium fragrances through improper online channels.

A primary procedural thread connecting these cases is the judicial response to the need for swift and decisive relief. In the lead case, the court granted an exemption from the requirement of pre-institution mediation under the Commercial Courts Act, 2015, on the basis that the matter necessitated urgent interim relief. The courts across these matters consistently granted interim injunctions to protect the rights holders, restraining the manufacturing and sale of infringing products and, in a separate commercial matter, issuing an ex-parte ad-interim injunction against unauthorized trading entities. Significantly, the trademark ruling involving pharmaceuticals established that even the slightest probability of confusion between marks is sufficient to warrant restraining the use of a deceptively similar mark. The rulings affirm that the balance of convenience lies with the rights holder when a prima facie case of infringement is established, and a failure to grant an injunction would result in irreparable harm.

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SIGNIFICANT CASE LAWS

Invention Requiring Destruction Of Human Embryos Not Patentable: Calcutta High Court

In the case of Shroff Geeta Vs. Asst. Controller of Patents and Design, the appeal filed under Section 117A of the Patents Act, 1970, challenged an order dated September 24, 2018, that rejected a patent application titled 'Composition comprising human embryonic stem cells and their derivatives, methods of use and methods of preparation'. The primary ground for rejection was Section 3(b) of the Act. The appellant argued that the invention does not necessarily destroy human embryos and that the rejection was based on an erroneous interpretation of Section 3(b) and violated principles of natural justice. The respondent (Asst. Controller of Patents and Design) contended that the invention involved collecting 2 to 7-day-old human embryos, and there was a categorical finding that the invention contemplated the destruction and use of human embryos. This destructive extraction of human embryonic cells was deemed unethical, leading to the rejection of the patent under Section 3(b).

The Calcutta High Court upheld the rejection, confirming that the invention—which involved deriving embryonic stem cells from the human embryo inner cell mass using immunological or mechanical methods—necessarily resulted in the destructive use of human embryos. The court found that this use of human embryos for industrial or commercial purposes was contrary to public order or morality and thus falls within the scope of non-patentable claims under Section 3(b) of the Patents Act. Section 3(b) excludes inventions whose primary use or commercial exploitation could be contrary to public order or morality or which causes serious prejudice to human life or health. The court also noted that the rejection was in conformity with the National Guidelines for Stem Cell Research (2017) and found no illegality or irrationality in the impugned order, dismissing the appeal.

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Chamber - 511, Ad. Complex, Supreme Court of India, New Delhi - 110001
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REGULATORY UPDATE:

The Price of Heritage Just Dropped: India's New GI Rules Unlock the Artisan Economy

अतुल्य भारत की अमूल्य निधि
INVALUABLE TREASURES OF INCREDIBLE INDIA
GEOGRAPHICAL INDICATION (GI)

The Ministry of Commerce and Industry, through the Department for Promotion of Industry and Internal Trade (DPIIT), notified the **Geographical Indications of Goods (Registration and Protection) (Amendment) Rules, 2025**, effective November 3, 2025. This is not just a procedural revision; it is a decisive move to modernise, streamline, and most crucially make the entire GI regime accessible.

The 80% Fee Cut: A Policy Game-Changer The heart of this amendment lies in a radical simplification of the fee structure, replacing the entire First Schedule of the original 2002 Rules. The result is a substantial reduction in costs, which is set to ignite a wave of registrations across the country. The most impactful change is the slashing of the application fee for a new GI from ₹5,000 to a mere ₹1,000. Similarly, the fee for renewing a GI registration has plummeted from ₹3,000 to just ₹500. Even registering an "Authorised User"—a vital step that allows individual members of the producer group to legally use the tag—is now priced at a token ₹10. Empowering the Custodians of CultureThis fee rationalisation is more than an accounting adjustment; it is an act of economic inclusion. Geographical Indication protection is a form of collective intellectual property that is crucial for:Protecting Rural Artisans: High procedural costs often deter smaller producers, cooperatives, and community-based organizations that represent traditional crafts and agriculture. The lower fees make GI protection viable for them, empowering local industries and generating employment...

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Chamber - 511, Ad. Complex, Supreme Court of India, New Delhi - 110001

+91 981 981 5818
INFO@KNALLP.COM
WWW.KNALLP.COM

LEADERSHIP

MOHIT CHAUDHARY

FOUNDER AND MANAGING PARTNER

Former AAG for State of J&K at Supreme Court of India

Advocate on Record, Supreme Court of India

+91 98106 63997

mohit@knallp.com

mohitchaudhary2020@gmail.com

KUNAL SACHDEVA

PARTNER

+91 99536 55270

kunal@knallp.com

kunalsachdeva826@gmail.com

PUJA CHAUDHARY

PARTNER

+91 98106 22198

puja@knallp.com

pujabhaskar1@rediffmail.com

EXPOSITORS

Associate Adv. Anuja Pandit	**Associate** Adv. Archana Shukla	**Associate** Adv. Shreya Mishra

Corporate Office - 13 Ring Road, Lajpat Nagar IV, New Delhi - 110024
Chamber - 511, Ad. Complex, Supreme Court of India, New Delhi - 110001

+91 981 981 5818
INFO@KNALLP.COM
WWW.KNALLP.COM

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Chamber - 511, Ad. Complex, Supreme Court of India, New Delhi - 110001

+91 981 981 5818
INFO@KNALLP.COM
WWW.KNALLP.COM

GET IN TOUCH

+91 981 981 5818

info@knallp.com

www.knallp.com

Kings & Alliance LLP
wa.me/919819815818

LOCATIONS

CORPORATE OFFICE
13 Ring Road, Lajpat Nagar IV,
New Delhi - 110024

CHAMBER
511, Ad. Complex, Supreme Court
of India, New Delhi - 110001

IPR OFFICE
T 518, Sector 99, Supreme Tower,
Noida, Uttar Pradesh - 201303

INSIGHT DIVISION
62/6, Channi Himmat
(Green Belt), Jammu - 180015

KINGS & ALLIANCE LLP
LAW FIRM