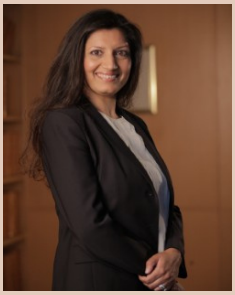
PERU V. CHILE: A SPIRITED CLASH OVER PISCO



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Addressing competing claims, the Delhi High Court has adjudicated a long-standing dispute between Peru and Chile regarding the Geographical Indication (GI) PISCO. The decision clarifies the treatment of homonymous GIs under Indian law and sets a valuable precedent in the largely unexplored domain of cross-border GI conflicts.

Background

On September 29, 2005, respondent no. 4, representing Peruvian interests, filed an application to register the GI 'PISCO' in Class 33 for alcoholic beverages. The petitioner, Asociacion De Productores De Pisco A.G. from Chile, filed an opposition in 2007, claiming shared rights over the term. The Registrar, noting concurrent international recognition of both Peruvian and Chilean PISCO, allowed the application in 2009, but qualified it as 'Peruvian PISCO' to prevent consumer confusion. This was challenged before the (now-defunct) Intellectual Property Appellate Board (IPAB), which, in 2018, referred to Chile's product as 'Chilean liquor' and granted GI protection to 'PISCO' (sans the prefix) in favour of Peru. The petitioner subsequently challenged the IPAB's decision through a writ petition before the Delhi High Court while also filing its own GI application to register 'Chilean PISCO' in 2020.

Competing Claims

The petitioner argued that both Peru and Chile have a long history of producing PISCO - a grape-based spirit stored in traditional clay pitchers known as 'Piscos', 'Puchuchu', or 'Pisquillos'. However, Chilean PISCO was distinct from Peruvian PISCO in composition, technique and quality - they were both homonymous GIs (same name, distinct product) that required geographic qualifiers (e.g., 'Chilean PISCO' and 'Peruvian PISCO') to avoid causing consumer confusion. The earliest record of Chilean production dated back to 1733 and related Chilean legislation could be traced back more than a century. Further, Chilean PISCO had received international recognition and awards, including GI status in Costa Rica (in 2008) and inclusion in several free trade agreements (1997 onwards).

The respondent maintained that Peru's right over PISCO was exclusive, as, unlike Peru, there was no region named PISCO in Chile and no geographical continuity between the production zones. The Atacama Desert separated the regions, making shared GI claims implausible. Thus, unlike Chile, it centred its arguments on the concept of trans-national GIs where the production region extends to more than one country. It was stated that there was no evidence of consumer confusion in India or recognition of the dual origin of PISCO. Further, Chile's association with PISCO stemmed from its occupation of Peruvian territory (1879–1929) and measures such as renaming its town 'La Union' to 'PISCO Elqui' in 1936 were bad-faith attempts to misappropriate the GI. PISCO was registered as an Appellation of Origin (under the Lisbon Agreement) from Peru in 20 countries, and in 2005, WIPO had registered it in favour of Peru in the International Registry for Appellation of Origin (Registration no. 865).

Is 'Chilean Liquor' PISCO?

The Court held that neither was it required to delve into the historical dispute between Chile and Peru, nor was it necessary to determine questions of prior use or alleged dishonesty in Chile's use of the term PISCO. Re Peru's claim there was no region named PISCO in Chile and no geographical continuity between the production zones of the two countries, the court noted that 'production zones' in Peru's GI application itself did not refer to the city of PISCO, but rather various regions in Peru including some at a distance of 800 kilometres from the Pisco Valley. In any case, as explained in detail below, the issue was one of homonymous GIs. The existence of a city called PISCO in Peru, and renaming of 'La Union' as PISCO Elqui' by Chile, had no bearing on the fact that origin of alcoholic beverages by the name PISCO was associated with both Peru and Chile.

Documentary evidence clearly established that PISCO was also geographically associated and identified with Chile. Accordingly, the IPAB's order could not be sustained and its findings regarding misappropriation by Chile were deemed misplaced.

While emphasising that the Indian GI Act did not concern itself with political history, the court noted that considerations for the registration and right to use a GI under the GI Act were entirely distinct from those under the Trade Marks Act. Concepts such as prior use, dishonest adoption, and misappropriation were relevant to trademark law, not GIs. For GIs, the key issue was whether the goods were identified and recognised as originating from a specific territory, region, or locality.

PISCO is a Homonymous GI

The term 'homonymous' means words which are spelled and pronounced the same but have different meanings. In relation to the present context, the court said that 'homonymous GIs' are spelled alike but designate distinct products stemming from different regions. Under Section 10 of the Indian GI statute Act (that echoes TRIPS provisions on the subject), such GIs may be registered subject to conditions that ensure differentiation and avoid consumer confusion. As precedent, the court highlighted the GI registrations in India for Banglar Rasogolla and Odisha Rasagola, granted in recognition of two distinct versions of the sweet linked to two different regions - the states of Bengal and Odisha respectively. Prefixes were added to avoid confusion despite both products sharing the name Rasogolla.

In considering the petitioner's claim for recognition of PISCO as a homonymous GI, the court noted that the historical and geographical link between Chile and PISCO had been acknowledged not only by Encyclopedia Britannica, but also through at least 18 Free Trade Agreements entered into by Chile with various countries. The petitioner had also obtained GI registrations for PISCO in Costa Rica and in Chile itself. And though Peru's Appellation was protected in several Lisbon Agreement jurisdictions, it had faced partial refusals, and conditions of acceptance meant concurrent use of the Chilean Appellation PISCO could not be interfered with. Last, both parties admitted that Chilean PISCO and Peruvian PISCO were distinct from each other.

Ruling

Accordingly, in its ruling of July 7, 2025, the Delhi High Court recognised that PISCO originating from Chile and Peru were homonymous GIs (and not trans-national GIs) that ought to be recognised in India with appropriate geographic qualifiers - Chilean PISCO and Peruvian PISCO. Allowing Peru exclusive rights to the GI PISCO would cause confusion and run contrary to the spirit of GI legislation and protection in the country. The IPAB's order was set aside and the GI granted to respondent no. 4 directed to be modified to 'PERUVIAN PISCO'. Further, the GI Registrar was directed to process Chile's application for 'Chilean PISCO' on its own merit.

GI rights have gained increasing prominence in recent years, with the government actively supporting their registration and promotion. However, when it comes to competing claims, the provisions of India's GI statute are largely untested as there have only been a clutch of GI based litigations so far. This makes the recent ruling a valuable addition to the evolving body of Indian GI jurisprudence.