

## **Peru & Chile face-off in India: by Mr. Rajendra Kumar, RKR & Partners | Intellectual Property Attorneys**

The question whether PISCO is a homonym or a transborder GI between Peru and Chile came up for determination in a long-running legal dispute between Peru and Chile in India going back to 2005. After a long saga of 19 years, on July 7, 2025, the High Court of Delhi held that PISCO is a homonymous geographical indication shared between the two countries, and both could co-exist as 'Peruvian Pisco' and 'Chilean Pisco' to prevent any public confusion. This may not be the final word yet as Peru still has the option to file a further final appeal to the Supreme Court of India.

It may be worth recalling the factual journey of this interesting saga:

On 29 September 2005, Peru filed an application for PISCO as a geographical indication under India's GI law, claiming exclusive rights in the designation as a product of Peruvian origin. A technical expert committee set up to examine the application – based on the specifications for Pisco Peru which had conferred protection at the national level – recommended that PISCO was eligible for protection as a geographical indication. The application thus came to be accepted and published for third party opposition on 1 August 2006.

Predictably, Chile opposed the published application on 16 January 2007, claiming *inter alia* that:

- (a) there is no specific region either in Peru or Chile which is named PISCO.
- (b) a certain region that encompasses certain parts of the Peruvian coastline and certain regions of Chile is termed as the PISCO region.
- (c) the clay pitchers in which the distilled unadulterated grape wine is stored are called "Piscos", causing it to be known as PISCO.
- (d) PISCO has been traditionally produced in a region falling within Peru and Chile, and both have a shared claim therein as a geographical indication.
- (e) the laws enacted in Chile going back to 1916 and free trade agreements entered into between Chile and other countries have recognized PISCO as a geographical indication.
- (f) the Chilean PISCO has a larger production and a greater marketing reach than the Peruvian variety.
- (g) the right to use PISCO, if granted, should be subject to limitations, allowing Chile to use the same.

On 3 July 2009, the Assistant Registrar of Geographical Indications, after reviewing the evidence in the record and hearing the rival oral submissions made on behalf of the parties, held that both the countries have been using the name PISCO; that, if the application was allowed in the form submitted, that is PISCO per se, it would cause confusion and deception in the course of trade among the consumers. Consequently, the Assistant Registrar directed Peru's application be modified and registered as 'Peruvian Pisco'.

Peru challenged the order passed by the Assistant Registrar before the Intellectual Property Appellate Board (IPAB), *inter alia* arguing that:

- (a) Peru has obtained registration of PISCO per se in various countries around the world.
- (b) PISCO has been recognized as an appellation of Peruvian origin in several European countries subject to the rights of Chile recognized by virtue of prior existing Free Trade Agreements signed with Chile. However, these FTA-based recognitions are merely political arrangements without regard for geographic, legal, historical, technical and cultural factors of nexus with the actual GI area of production.

On 28 November 2019, IPAB allowed Peru's appeal, finding that:

- (a) PISCO is undoubtedly a denomination of origin exclusively from Peru supported by the politico-legal division of Peru in 1821, the contemporary existence of the district of Pisco at the time of its independence and the research carried out by lexicographers, chroniclers and historians.
- (b) Chilean Pisco region had been misappropriated by Chile by artificially renaming a region that had been known for many centuries under another name, La Union. The said region was renamed as 'Pisco Elqui' in 1936.
- (c) Chile's 'de-facto' possession of the district of Tacna (part of the traditional producing areas of PISCO in Peru) after the war in 1883 to 1929 can not confer any rights on Chile in geographically extending the area from Peru to Chile.
- (d) the name PISCO cannot be identified as Chilean or Peruvian as the liquors produced by the two countries are totally different in their elaboration, techniques and quality.
- (e) Peru is thus entitled to the registration of PISCO per se and the Assistant Registrar's direction for use of the qualifier 'Peruvian' as a prefix to prevent deception was uncalled for.

Meanwhile, on 3 June 2020, Chile filed its own GI application for 'Chilean Pisco' in India, based on the specifications which had conferred protection in Chile.

In 2021, after three years, Chile challenged the IPAB order dated 28 November 2019 in a constitutional writ before the Delhi High Court. Pending hearing and final disposal of the writ, the High Court directed the Registrar of GIs not to pass any final orders with respect to Chile's pending application for 'Chilean Pisco'. Among the grounds raised by Chile in support of its challenge, it for the first time sought to set up a defense of PISCO being a homonymous indication, a ground it had neither pleaded in its 2007 opposition filed against Peru's GI application nor did it claim it as such in its own 2020 GI application. It might appear to be an afterthought since the defense was introduced at a later stage of the writ proceedings, that is, as part of its rejoinder to Peru's response to the challenge.

Among other submissions, Peru argued that Chile had not even alleged that the Indian consumers and trade identify two kinds of PISCO- one from Peru and another from Chile or that these are known as Peruvian and Chilean PISCO.

Allowing Chile's writ challenge, the Delhi High Court found that:

- (1) the submissions and documents on record clearly bear out that PISCO has a long and well-documented origin in Chile.
- (2) Peru's registrations for PISCO in Europe and in several member countries of the Lisbon Agreement have been subject to Chile's rights recognized in bilateral free trade agreements.
- (3) the pleadings and documents on record point to a conclusion that PISCO from Chile is completely different and distinct from PISCO in Peru and support Chile's claim for recognition of its PISCO as a homonymous indication under the GI law in India.
- (4) the present case is not a case of 'transnational GIs', but that of homonymous GIs.
- (5) because the alcoholic beverage from Chile is also recognized and identified the world over as PISCO, the grant of a GI for PISCO per se in favour of Peru without any designation of Peruvian origin would be detrimental to the legal and legitimate commercial interests of the producers of PISCO in Chile and would also likely deceive and cause confusion.
- (6) Consequently, the GI granted by the IPAB to Peru for PISCO per se be modified to include the prefix 'Peruvian' as a qualifier, that is, Peruvian Pisco.

In allowing Chile's claim for PISCO as a homonymous GI, the judge relied upon the concurrent GI registrations granted in India for a milk-based syrupy sweetmeat called RASOGOLLA, one called 'Banglar Rasogolla' from the state of Bengal and the other 'Odisha Rasogolla' from the state of Orissa in India. Brushing aside Peru's objection that the applications were themselves made for 'Banglar Rasololla' and 'Odisha Rasogolla', the judge accepted these as examples of homonymous GIs in India based on concurrent use. Perhaps, this finding may be open to question since the term 'RASOGOLLA' is a generic name used and understood widely in India to describe a spongy sweetmeat. The term cannot stand on its own as a geographical indication, a requirement for recognition as a homonymous indication under Section 10 of the GI law. In fact, Section 9 of the GI law prohibits registration as a GI such terms which have become the common name of the goods.

Further, the judge seems to have casually brushed over Peru's objection that Chile's case had all along been pleaded as a case of transborder GI rights rather than homonymous GI indication. Beyond a very stray reference to Section 10 in Chile's opposition, the entire pleaded case and the record proceeded on the basis that PISCO is a transnational GI. It is not clear from the judgment whether Peru's registrations elsewhere in the world were subject to Chile's rights and granted with the prefix 'Peruvian' as a qualifier.

Perhaps, this may not be the final word as Peru still has the option to challenge it before the Supreme Court of India.