

Protection of Fruits through Trademarks: Export Growth in India

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Trademarks are increasingly used to protect intellectual property rights (IPR) on fruits such as Avacados by Dole Company of USA globally. For, trademarks have very long life than plant variety protection with just 25-30 years life. India's fruits export is rising rapidly with mangoes (Alphanso), Apples (Shimla), Banana (G9 i.e. Grand Naine), amongst others. India has started exporting special fruit varieties such as "Nendran" from Kerala to Gulf using special packaging technique. India can benefit by promoting trade mark for uniform colour, size, shape & taste, aroma fruits by agri-enterprises for rapid growth in the fruits export. Similar effort is needed for other fruit species & varieties e.g. Guava (Alahabadi), Pineapple, Black Grapes (Medak), Green Gapes (Nasik) Sapota (Gholvad, Palghar), etc. this will help to improve farmers' income & India's foreign investments & exchange.

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India's Agri-trade & Development

India's agri-exports have soared to \$50 billion in the year 2021-22¹ and formed 12% of Indian export basket of about US \$ 0.45 Trillion.² The agri-export may total about \$60 billion in the year 2023-24 as it has already touched \$28 billion in the first 6 months i.e. April-September 2023-24 (Table 1).³ Fruits & vegetables comprise 5% of it (\$1.6 billion) but registered 10% annual growth, next only to oil-meal (41%) and oilseed (23%), the last 2 together forming \$1.4 billion value segment and India exported 44 million ton of fruits-vegetables in 2023 i.e. only 12% of the total produce.³

The notable economic development globally recently has enabled rising purchasing power, causing fruits & vegetable consumption in India & globally, along with the growing awareness of their health benefits, including higher immunity and lower damage of COVID-19 pandemic in India than the western countries on per million population despite much higher population density and higher exposure risk and poor health facilities.⁴ The fruits & vegetables export comprise \$1,604 million in just first 6 months of FY 2023-24 if extrapolated implies \$3.2 billion (Rs. 25,000 crores) annually (Table 1).⁵ Fruits & vegetables export comprise only 5.7% of Indian agri-export basket but the segment has grown 10% than

the earlier year (2022-23) in the same period with 3rd growth rank after oil meal & oilseed.⁴

India's Fruits Exim Basket

Agri-export is the basic tool for nation's economic growth. It has led to discovery of America and changed world history in the European pursuit of Black Pepper.⁴ India's fresh fruits export has grown 50% from \$516.26 million in 2014-15 to \$768.54 million in 2020-21.⁶ It grew 4% further during 2022-23 to \$1 billion in just first 9 months of the fiscal 2022-23 despite the COVID-19 pandemic.¹ This is due to the robust Indian agri-export policy⁷ and financial stimulus package during the pandemic.⁸ India's fruit export comprises only 2.2% of the global fruit export but its share has doubled during the last 7 years i.e. 2015-2022.⁹

Fruits & vegetables are considered healthy & are costly & their consumption is more in the rich countries/section as healthy diet.¹⁰ It has been analysed that more fruits & vegetable consuming countries in Europe suffered lower COVID-19 damage (prevalence & mortality).¹¹ Hence, increasing fruit export is important for India's economic growth.

Indian Rising Exotic Fruit Imports

India's import of exotic fruits is growing rapidly, valued at Rs. 18,342 crore i.e. \$2.2 Billion per year in 2021-22.² There is scope for trademark rights extent for specified varieties of fruit species Strawberry,

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Table 1 — Agri-export commodity pattern in India⁵

Commodity	Export value (Apr-Sept 2023) in \$millions	% Change over 2022 (Apr-Sept)	Share (%)
Cotton	5,899	1.83	21.1
Rice	5,327	-2.34	19.0
Marine	3,803	-7.66	13.6
Leather	2,236	-12.66	8.0
Meat, dairy, poultry	2,091	-0.31	7.5
Spices	1,952	1.35	7.0
Fruits-vegetables	1,604	10.67	5.7
Cereal prep.	1,389	1.89	5.0
Oil meal	786	41.16	2.8
Tobacco	709	7.6	2.5
Oilseeds	654	23.47	2.3
Coffee	631	3.43	2.3
Tea	387	-5.23	1.4
Other cereals	379	-27.69	1.4
Cashew	157	0.31	0.6
	28,004.44		

Apple, Citrus, Grape, Peach, Pear, Persimmon, Cherries. For, these form the focus of the recent change in the Japanese Law regarding the intellectual property of seeds and saplings.¹² As Japanese agricultural exports, and particularly those of fruits, have increased over the past years, many of the registered seeds and saplings of 36 different product varieties have left the country. Many Japanese registered seeds and saplings are sold without permission on Chinese and Korean-language websites including strawberries, apples, grapes, peaches, pears and cherries. Some of these were developed by agricultural research laboratories or individuals in Japan, or registered in prefectures across the country. The government thus sought partial revision to protect new plant varieties and IP rights of Japanese growers.

Fruits- IPR & Trade Mark Relevance

Intellectual property rights (IPR) protect the novelty, innovation by availing price premium to its holders. IPRs in the context of agri-products are commonly considered 'Plant Breeder's Rights'(PBR) and patents on fruit cultivars and rootstocks but 'trade marks'(TM) has been pursued recently such as 'Pink Lady™' apple.¹³ TM has unlimited life and can be renewed every 10 years, but the plant variety protection (PVP) i.e. PBR or patents last only 25-30 years vide International Union for the Protection of New Varieties of Plants (UPOV).¹⁴ For example, Avocado fruit brand 'Hass', had a plant patent registered in the 1940's. Hass' commercial success came long after the patent had lapsed due to the slow speed of development but

trade mark won it the royalty for the manufacturers thereafter. Recent examples of successfully TM protected avocado cultivars include- Lamb Hass, Merensky 2 Dusa® and Gem, Pink Lady® Apple & ZESPRI™ Gold Kiwi Fruit.¹⁰

European and UK supermarkets and multinational companies differentiate from their competitors and the marketers of protected cultivars use TM as leverage in their price negotiations. For instance, growers clubs can grow new avocado cultivars with exclusive marketing rights. These grower clubs will use global production areas to ensure 12 months of supply to specific exclusive markets at a premium price. The grower will have to decide whether the premium acquired for the protected cultivar is worth the royalty paid to the TM owner company and if yes, enhance its production.

However, the growers can access the newest avocado varieties only if adequate IP protection laws in some countries protect TM. They will progress, but not in countries with weak or no IPR protection, preventing the farmers to legally access to the TM protected varieties and thus lose out.

Indian Government has launched 'Make in India' campaign to invite global investors to make India a manufacturing & export hub. So foreign horticulture companies can use Indian land to produce and market premium fruits if they get trademark protection. This is in line with the emerging global agri-supply chains and even Indian multi-national companies possess farms abroad and import agri-products to India such as Renuka Sugars doing it in Africa.¹⁵

Avocado Fruit Variety Trade Mark in Africa¹³

Westfalia Fruit Estates in sub-Saharan Africa was appointed as agent by University of California (UC) appointed in 2006 through exclusive Master Licensee for the Avocado fruit cultivar '3-29-5' (also known as Gem) charging both tree and production royalties. Royalty includes all classes of fruit, including those sold for processing. UC made conscious change in the policy to maximize royalty returns from their avocado cultivars outside the USA. This provides some return on their investment; and other owners of avocado genetic material may follow the suit.

The challenges in such imports including IPR protection are being debated & developed in new formats such as in Japan.¹⁶ American food and beverage giant PepsiCo sued a group of farmers from Gujarat, claiming that they had been sowing PepsiCo's registered potato variety FL2027, and hence had infringed

PepsiCo's rights under PPVFR (Plant Variety Protection & Farmer's Rights) Act. The PepsiCo, in its suit, demanded hefty compensation of the farmers. The variety FL2027 is sold under the trademark name FC5 and is exclusively cultivated for PepsiCo's potato chips brand 'Lays'. The FC5 has less water content than the other varieties. PepsiCo has licensed thousands of farmers to cultivate FC5 variety, as a breeder of the registered variety under the PPVFR Act. PepsiCo buys back the cultivated and grown FC5 variety at a predetermined rate to produce 'Lays'. Some experts said that the PepsiCo was right in suing farmers, since its rights as a breeder as per PPVFR Act are acknowledged. Others said that the infringement suit was ill-advised, since certain provisions of PPVFR Act (Section 39-1-iv) allow the farmers to grow registered varieties but not sell the said variety under a brand name. Finally, PepsiCo withdrew the case after Government discussion.

Considering the rapidly growing Indian market for exotic fruits companies such as 'Deccan Exotics' are specialising in the production of exotic fruits such as Dragon fruit, a multi-billion \$ business in India. Further, there is growth and export scope such as to Europe where unfavourable weather constraints the production season.¹⁷ Such export-import will be increasingly governed by IPR contracts in future.¹⁸

Fruit Export in India & IPR

India's fruit export is rising rapidly with mangoes (Alphanso), Apples (Shimla), Banana(Grand Nainei.e. G9), amongst others & IPR protection for it is being considered such as geographic Indication- GI.¹⁹ Over 20 million non resident Indian (NRI) settled/ working abroad is a big market for Indian (indigenous) speciality goods like Jackfruit as proven in the basmati rice case earlier.^{20,21} India has started exporting special fruit varieties such as "Nendran" from Kerala to Gulf using special packaging technique.²² India today exports fresh fruits & vegetables mainly to poor or nearby countries such as Bangladesh. But if India enters western country markets, it needs to improve quality & seek IPR protection. Indian fruits are rich in fibre, vitamins and health ingredients called as 'polyphenols' which can be highlighted abroad for enhancing exports.¹⁹ In future, the health ingredients i.e. phytochemical content of the horticulture products may be graded, branded and paid premium such as evident today with 'curcumin', a polyphenol found in Turmeric grown in high rainfall zones & laterite soils such as Aleppy in Kerala, Rajapur in Konkan, Maharashtra state & Phulbani/ Kandhmal in Odisha.²³

Conclusion

India can benefit by promoting trade mark for uniform colour, size, shape taste and aroma fruits by agri-enterprises for rapid growth in the fruit's export. Similar effort is needed for other fruit species & varieties e.g. Guava (Alahabadi), Pineapple, Black Grapes (Medak), Green Gapes (Nasik), Sapota (Gholvad, Palghar), etc. this will help to improve farmers' income & India's foreign investments & exchange. Precision agriculture techniques such as measured water & nutrient inputs such as Potassium rather than Nitrogen can enhance fruit/vegetable/ spice quality and can open new vistas in hinterland for evergreen revolution as suggested by late Prof. M. S. Swaminathan, the father of India's 'Green Revolution'.²⁴ This can also partly help to double the farmers' income- both horticultural export & price premium from IPR, as desired by the Indian Govt.²⁵ However, uniform quality needs to be maintained & high quality in packaging, organic or maximum residue limit (MRL), phyto/sanitary standards & traceability as necessary in export sector. For, Indian Pomegranate is 300 gm weight on average but export markets standard is 500 gm.²⁶

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