

Handloom Mark

Understanding the Challenges and Benefits



*D. Narasimha Reddy,
Centre for Handloom Information and Policy Advocacy*

Handloom Mark

Understanding the Challenges and Benefits

By: *D. Narasimha Reddy,*
Centre for Handloom Information and Policy Advocacy

Introduction

World over with growing trade and competition, there is increasing concern over protecting market shares, increasing product coverage and the continuous struggle to 'stay above waters'. In this struggle, one of the facets protecting the credibility of the product from spurious efforts, and benefiting from patent rights. While neo-consumer products, especially fast moving consumer goods, because of recent origin, are able to create brand equities, trade marks and other tools of protection, there are many products which do not have these advantages. Traditional products, mostly from the traditional mode of production, do not have the abilities to such tools of protection. Even if they want to acquire modern legal means of production, there are many challenges. These challenges are as much rooted in their own relations and methods of production, and as much on the discriminatory state policies. Most Indian agricultural products, raw and processed, face this challenge. Similarly, handloom products face problems in protecting their markets and market shares.

However, at stake are the livelihoods of lakhs of handloom weavers, whose daily incomes are dependent on the strength of the markets, and how effective their representative institutions are in securing their rights. With government abdicating its role in protecting such rights, market-based instruments are being suggested. But, will the political economy of current governance rooted in the globalization philosophy help in regulation of textile markets? Are their conditions in the market place which enable equal, if not perfect, competition?

The big problem for handloom markets today is the imitation of handloom designs, piracy of traditional weaving patterns, labeling of non-handloom products as handloom products. Such market behaviour by competing sectors is enabled by the lack of monitoring structures for the handloom sector, lack of support from the government, ineffective implementation of existing protection measures and absence of appropriate legal framework. The very strength of handloom product in the market, innovation, variety and diversity, has become its weakness. Handloom production is not governed by any standards, which every modern trade law requires. Further, attribution of proprietary rights is a difficult process, with so many people innovating and with cross sharing of ideas, knowledge, skills and benefits. Usually, market protection framework is designed to help a monolithic production system, where there is a distinct linearity of responsibility and rights. Traditional products are produced in a more amorphous way, and can be termed as much more participatory, than modern production.

These scenarios are not captured by the modern legal framework, defined by laws on patents, proprietary rights and trade marks. The huge discussion on biodiversity and plant protection rights has brought up such challenges to the fore, but with no appropriate solution.

Trade Mark for protection

Trademarks have been used mainly by Roman traders for a very long time.¹ Trademarks are primarily intended to identify products (goods or services) of one seller and to differentiate them from those of competitors (Kotler 2000: 404). They are legally protected through registration at national or international registration bodies. Three main actors are involved in the processes in which trademarks are used. These are the firm holding a trademark, the consumer and competing firms. An additional fourth actor is the regulator. Trademarks fulfill different roles for the first three actors (Melin 1997: 25-34). Simplistically expressed, the holder of a trademark tries to establish an 'invisible contract' with as many customers as possible. This 'contract' provides customer loyalty in return for e.g. consistent product quality.

For trademark holder, the trademark (brand) is a carrier of information about a product in the communication with consumers. It may also be used as a vehicle in conveying an emotional identity for the product and can help in positioning the product for different consumer groups. In addition, it is a way to bypass the retailers in the communication with consumers and is therefore a competitive tool in the distribution chain. For the trademark holder, a trademark represents an abstract value which may be further exploited by expanding the brand to new products or through licensing. This value is often referred to as *brand equity*.

For the consumers, trademarks make the choice between similar products easier. It reduces the need for repeated evaluations of products from different manufacturers since the one preferred from a previous

¹ I am not sure if Indian history has documented trade marks

evaluation can be repeatedly selected without further evaluation. The trademark then works as a guarantee for the product quality and reduces the risk of the purchase. Trademarks also fulfil a social role as an image creator and may reduce the social risk of a purchase.

Economides (1987) provide an account of the economics of trademarks. Here, the primary reasons for trademark protection are a) facilitate consumer decisions b) create incentives for firms to produce products of desirable qualities even if not observable before purchase (a case of *asymmetric information*). Trademarks facilitate consumer choice among *experience goods* (frequently bought goods; consumers gain experience from first uses and subsequently applies this knowledge) and transmit quality signals for infrequently bought goods (*search goods*). Trademarks also encourage firms to maintain consistent quality and variety standards and supply a spectrum of variety and quality.

Firms may potentially also derive market power from securing the most appropriate symbol or word for a given product area. However, according to Economides (1987), this power is likely to be small and temporary. Most of the value is created by its association with the product.

A trademark's success is a function of a) consumers ability to recall the mark and associated features b) inability for others to use a confusingly similar mark and c) reluctance of firms to change variety and quality features of the trademarked product.

The roots of the legal trademark frameworks can be traced back to guild regulations in late medieval and early modern times. In legal terms, both trademarks and patents are industrial intellectual properties. However, while patents are protecting intellectual achievements in the form of technical inventions, trademarks are protecting distinguishing marks for products, firms etc.

The requirements for a trademark to be registered are instead related to the capability of distinguishing the label from others for the same kind of products. Trademarks are therefore registered for specified product types to enable similar trademarks to be used for entirely different types of products.

Both trademarks and patents have a limited geographical validity. They were originally only valid in the country where they had been registered. The need for ways of expanding the area of protection to other countries was perceived early, and international agreements were established.

Studies in other countries show that the administrative costs for trademarks are lower than for patents, especially when considering the consultancy and translation costs associated with the latter². In the case of trademarks the large investments are not related to the registrations but to the subsequent commercial establishment of a brand through advertising etc.

However, in India, research on trade marks is almost absent. One is not sure about the performance of trade marks in achieving the objectives they are set out for.

Handloom Mark Scheme – in comparison

In this context, government announced handloom mark scheme, in response to demands for protection of handloom markets. However, the hastiness with which this scheme was brought precluded any discussion. This policy reaction is like apply the same balm to every medical problem. It is also perhaps to indicate that it is doing something for the handloom sector. While it is imperative to understand the characteristics of handloom production and the marketing mechanisms in handloom sector, before jumping to any conclusions on the efficacy of handloom mark in solving the problems of handloom markets, equally, one need to know how far trade mark protection is helpful in Indian context. A comparison with another product, such as Darjeeling Tea, would be helpful.

Today, India is the world's largest producer of handloom products with a total production of more than 5,000 Million meters in the year 2005. Among the products produced in India, the most celebrated ones include Jamdani, Ikkat, Kota, Banarasi and Patola. Connoisseurs will assert that without handloom products, India would be like wine without the prestige of Champagne.

Handloom products have been woven and produced in various parts geographically located across India. The unique and complex combination of weaving prevailing in India and the production methods, lends these products a distinctive and naturally-occurring quality and fashion which has won the patronage and recognition of discerning consumers all over the world for well over a century. Handlooms products produced in the India have special characteristics that are for long been known to the trade and the public all over the world.

² Trademarks Statistics as Innovation Indicator? - A Micro Study, Malmberg, Claes (CIRCLE), Lund University, Sweden

In comparison³, tea cultivation in Darjeeling is done in nearly 17,400 hectares in 85 tea gardens producing around 11.5 million kilograms of tea. Tea cultivation is a labor-intensive enterprise, requiring sufficient number of workers to plant, tend, pluck and finally package the produce. The Darjeeling tea industry employs over 52 thousand people on a permanent basis - a further 15,000 persons are engaged during the plucking season which lasts from March to November. A unique feature of this work force is that more than 60 percent are women.

A major part of the annual production of Darjeeling tea is exported. The key buyers of Darjeeling tea are Germany, Japan, U.K., U.S.A. and other E.U. countries such as the Netherlands, France, etc. In the year 2000 about 8.5 Million Kilograms of Darjeeling tea was exported, amounting to a total value of USD 30 Million.

While the tea industry in India is almost completely in the private sector, it is statutorily controlled by the Government since 1933 under various enactments culminating in the Tea Act, 1953. The Tea Board in India is a Board set up under the same Act of Parliament. The Board is administratively under the control of the Ministry of Commerce & Industry of the Government of India (the federal or central government). The Tea Board is vested with the authority to administer all stages of tea cultivation, processing and sale of the tea industry, including the Darjeeling segment through various orders.

Similarly, handloom production is predominantly in the private sector, though there are a number of handloom cooperative societies, supported variously by government funds and personnel. Interestingly, Textile Committee is a statutory body with no links or concern on handloom sector. Much of the work of the Textile Committee is with the rival sector of powerloom.

All its offices across India have been established near places where powerloom production is concentrated. Textile Committee also has the knowledge about violation of legal provisions for protection of handloom products. Officials of the Textiles Committee do sympathise with the contention of non-handloom sector for scrapping current legal protection for handloom products. In such a scenario, one should be surprised if Textiles Committee does an efficient job of implementing the Handloom Mark scheme. It would be also interesting to see how much investment, in terms of time, money and persons, Textile Committee is willing to lay down in implementing this scheme. While the entrusting of implementation to the Textile Committee is major bone of contention for the handloom sector, there are other challenges.

Given that handloom products have a high reputation, both the government and civil society have been involved at various levels in protecting this common heritage. However, while the current effort of the government is essentially limited to authentication of handloom products, Tea Board had wider objectives, including, preventing misuse; delivering the authentic product to the consumer; enable the commercial benefit of the consumer preference to reach the Indian industry and hence the handloom weaver and achieve international status similar to Champagne or Scotch Whisky both in terms of brand equity and governance/administration

Will the Textile Committee take up such objectives in the case of handloom products can be one of the core questions in the minds of the handloom weavers.

How and what of Protection

The Textile Committee is yet to obtain "home protection" by registering the Handloom Mark logo as a Certification Mark under the Indian Trade and Merchandise Marks Act, 1958. Under the new Geographical Indication of Goods (Registration & Protection) Act, 1999, (which has become operational on September 15, 2003), the Textile Committee and the government have been filing applications to register handloom products as a geographical indication. Pochampally and Kota products are already registered under this provision.

Further, there is no statutorily compulsory system of certifying the authenticity of the handloom product being exported under any legal provisions. The current handloom mark system does not require dealers in handloom products to compulsorily enter into a license agreement with the Textile Committee and pay an annual license fee. However, the terms and conditions of the voluntary Agreement provide that the licensees would furnish information relating to production, manufacture and sale of handloom products. The Textile Committee would probably compute and compile the total volume of handloom products produced and sold in any given period.

One would wonder how many dealers, or companies, or master weavers, would authenticate their products. From 2000, over a period of four years, 171 companies dealing with Darjeeling tea have registered with the Tea Board, though the logo itself was registered in 1983. This was possible only after a compulsory registration system was put in place and also because trade in tea is better organized than handlooms. Certificates of Origin are then issued for export consignments. Data is entered from the garden invoices (the first point of movement outside the factory) into a database, and export of each consignment of Darjeeling tea is

³ Rajendra Kumar and Vasundhara Naik, K&S Partners, New Delhi, India,
<http://teaap2.indiateaportal.com/forms/darjeelingtea.pdf>

authenticated by issue of the Certificates of Origin by crosschecking the details. This ensures the supply-chain integrity of Darjeeling tea until consignments leave the shores of India. The Customs authorities in India have, by officially issued instructions, instructed all Customs checkpoints to check for and ensure that Certificates of Origin accompany Darjeeling Tea consignments.

This may not be possible with the Handloom Mark. Certificates of Origin for handloom products would be a daunting task, given the scattered nature of production. The number of weavers/producers is huge – reaching out to each of them or most of them is a task in itself, leave alone 'including' them through awareness education and/or compulsory registration. The cost of reaching is enormous in terms of resources – time, money and personnel. Compulsory registration would mean a licensing system, essentially leading to harassment of genuine handloom weaver and development of a corrupt registration process. In the circumstances and characteristics of the handloom sector, probably enforcement of reservation is the least-cost (for the government and others) and the most efficient method of protection for handloom sector.

The Tea Board has also sought the support of all overseas buyers, sellers and Tea Councils and Associations in so much as they should insist that Certificates of Origin accompany all export consignments of Darjeeling tea. Overseas importers are thus ensured of 100% authentic Darjeeling tea in all their consignments.

Overseas, the Darjeeling logo and word are registered or applied for registration under the relevant laws available in the country where registration is sought. The present position of international registration of Darjeeling and Darjeeling logo is summarized in the chart below.

In addition to the above, the Tea Board has also undertaken efforts to get certification mark/collective mark for "Darjeeling" and/or Darjeeling logo in Australia, Canada, Germany and a number of other countries.

One has to see how Textiles Committee would perform, given that Handloom Mark is yet to be registered, under Indian Trade Marks Act, 1999. Though the Textiles Committee has offices all over India, with a staff of 600, this may not be suitable at all given that all these staff are already assigned specific tasks. These offices are inaccessible to major handloom production centres and weavers. Handloom certification is an entirely new area of operation and expertise. Textile Committee, for that matter, none of the government institutions, does not have complete information on the wide range of handloom products. With no information, one wonders how the Textile Committee is going to certify handloom products as genuine. In addition, handloom production is huge, diverse and widely spread. There are more than 1000 different handloom products. Trade Mark registration requires information on standards of production. There is no documentation on the practices of existing products, leave alone the new products coming into the market. Textile Committee has so far not shown any interest in initiating this process.

Handloom Mark requires worldwide monitoring for conflicting attempted or false certification. A watch agency needs to be appointed. All this entails costs, which have to be allocated either by the Textiles Committee from its funds or the government.

In the case of Darjeeling tea, pursuant to the appointment of the agency, several instances of attempted registrations have been found. Some of these have been challenged through oppositions and cancellations and some through negotiations. Of the fifteen instances, while five have been successfully concluded in countries such as Japan, Sri Lanka and Russia, seven are still pending decision.

For handloom products, the stress on enforcement would be much more in domestic markets than foreign markets. In foreign markets, the local consumer laws would be sufficient. One of the key issues to be faced by Handloom Mark is the design protection and imitations, in addition to the counterfeit products. There is a need to address these issues as well with the Handloom Mark promotion scheme.

Enforcement Difficulties & Inequities

Worldwide, all GIs are primarily faced with two kinds of risk, one arising from their generic use to indicate a class of products without any regional nexus and the other from their diluted use as trademarks on similar or dissimilar goods or services. Such enforcement is further compounded by the difficulties arising from the civil law and common law divide among various jurisdictions, the former insisting on formal registration in the country of disputed use and the other insisting on proof of local reputation and goodwill in the country of disputed use. Similar problems of enforcement are likely to occur within the States, as state governments would be reluctant to enforce a national law, if such enforcement contravenes the local interests. Powerloom products produced in Tamilnadu are sold as counterfeit handloom products in Kerala. Similar situation exists between Tamilnadu and Andhra Pradesh, Karnataka and Andhra Pradesh and Uttar Pradesh and Rajasthan.

Enforcement of Handloom Reservation Act is completely lax, despite hue and cry from the handloom sector. There is no proper allocation for the machinery to enforce. Funds allotted are under-utilised, unspent and diverted by most State governments.

Enforcement of Handloom Mark as a Certification mark would be no exception to these or similar challenges.

Costs of protection and enforcement for the industry and the government

In a period of four years, the Tea Board has spent approximately USD 200,000 on legal and registration expenses, costs of hiring an international watch agency and fighting infringements in overseas jurisdictions. This does not account for administrative expenses including manpower working on the job in the Tea Board, cost of setting up monitoring mechanisms, software development costs etc. "It is a great challenge for every trade mark, or geographical indication, right-holder to incur such expenses for protection."⁴

Protection of handloom products as a geographical indication, or Trade mark, is now the responsibility of the Textile Committee as a statutory body of the Government of India. However, one needs to know if the Textiles Committee, or the government, are ready to spend the required exorbitant and phenomenal resources for worldwide protection and enforcement of Handloom Mark. Given the decline in policy interest in handloom sector, and the negative approach of Textiles Committee to handloom sector, this is unlikely to be done. Textile Committee would consider this a significant drain on their budget. With other public policy objectives, government is unlikely to provide or commit more financial resources. Nevertheless, the government has recognized the importance of protection. One can only hope that, despite the costs, it would strive to ensure that handloom products are protected for the benefit of the producers and consumers.

One also has to examine how Handloom Mark enforcement benefits average handloom weaver. In fact, because of the bureaucratic procedures, a genuine handloom weaver with no resources to reach a Textile Committee office, would find this a tedious and cost consuming process. There would be scope for the growth of intermediary structures, individuals and costs. There is the danger of Handloom Mark becoming a licensing process, adversely affecting the average handloom weaver, which it is supposed to protect. The transaction costs for the genuine weaver, investors, cooperative societies, master weavers, wholesale dealers and the government would have to be included in the costs of the handloom products. Consumers have to accept these costs, if they want genuine handloom products. Consumers might pay these costs, if they are interested in handloom products and they have trust in the handloom Mark certification process. Enormous resources, transparent processes and efficient mechanisms have to be deployed to win this trust. Equally, resources have to be invested on creating awareness among the consumers about the handloom mark.

The whole process, of developing awareness, trust and efficient mechanism, would require sustained commitment and deployment of resources. Results would come only after a minimum period of ten years. One is not sure if either the Textile Committee or the government have developed an estimate of these costs, ad where from such resources would be allocated.

But then, what is the action plan by the government and the Textile Committee to protect genuine handloom products from counterfeits, fakes and imitations? Handloom production is already in crisis because of the lax enforcement of handloom reservation act. There is a huge mistrust in the handloom sector about the genuineness of the government to protect handloom products. Or, is the whole exercise of handloom mark scheme is to develop an alternative and scrap handloom reservation? If yes, then the fate of handloom mark is already decided to doom through the appropriate vehicle of Textile Committee, which puts its heart in the promotion of powerloom sector.

Armchair Protection

The method of handloom mark implementation is now established – a form has to be filled, fee paid, handloom mark stickers collected and label/staple the products with these stickers, and that's it. Anybody can fill this form – from retailer, wholesale trader, master weaver, commission agents and ofcourse, the handloom weaver. In this process, handloom weaver would be the most disadvantaged. He/she does not have the capacity (to pay for the costs of travel and registration), volumes (it would be inefficient for their scale of production) and incentive (they do not market directly) to participate in this process. At the same time, any person/trade body can register and sell any textile product as handloom products.

As per the brochure released on the scheme, to prevent the misuse of the scheme, the applicants will be registered after onsite verification of individual weavers, master weavers, apex and primary handloom weavers' co- operative societies, handloom development corporations, handloom retailers and exporters. Genuine handloom weavers, Master weavers, societies, retailers and exporters will be registered on payment of requisite fee after which an agreement will be signed. Labels will be supplied on the basis of estimated annual production and sale except in the case of exporters (on quarterly basis). In case of exporters, the initial verification will be based on Chartered Accountant's certificate on previous year's performances. The registered users will be required to submit monthly returns.

⁴ Ibid

Reaching out to the entire handloom production, for onsite verification requires huge resources. The coverage has to be progressively increased. However, one needs to plan by what year this coverage/reachout would be complete. It has to be a multi-year planning, within the available financial and human resources. Meanwhile, what happens to the markets? Suicides by weavers are increasing with loss of livelihoods. Any further delay would only increase the distress among the weavers. Government has to give a serious thinking on how fast the protection umbrella can be widened, which means allocations and policy intent.

Under the present method of protection, a handloom weaver is likely to become a non-complying person under a scheme declared to benefit him/her. Fortunately, this Mark is not legal. Whenever it becomes registered one needs to look into how the products of a handloom weaver would become spurious. However, an offender before the handloom mark scheme can become perfectly legitimized. Any non-handloom product can be labeled under the current method of registration. While the Textile Committee can 'earn'/mint money from this scheme, non-handloom products can get a legal stamp for their spurious activities.

Textile Committee has introduced a number of actors in the trade mark, while everywhere only three actors are identified: producer, consumer and competitor. Handloom mark scheme includes anybody as the producer, including the retailer. Thus, there could be distortion of communication between the handloom weaver and the consumer, supposedly guaranteed by the trade mark. Trade mark is a way of bypassing the retailer in communicating product information to the consumer. There could be more confusion with the handloom mark, and blurring of handloom product features. The result is obvious – further shrinking of handloom markets.

The ultimate losers are the handloom weavers and the ever loyal consumers of handloom products, because the existing handloom mark scheme neither benefits the handloom weaver, who is the primary producer, nor the consumer, who always pays more for genuine handloom products. Unfortunately, the vehicle for such distortion is the present UPA government, which has been relatively responsive to the concerns of handloom sector.

Conclusion

The present scheme of handloom mark is not comprehensive. It requires more discussion to improve its efficiency and delivery impacts. Government has to seriously think of resources, allocations and positive policy intent, in order to make this scheme achieve its objective. Textile Committee is not the best of the institutions to implement this scheme. It is the most inappropriate vehicle for such scheme. Trade mark for handloom products may not be the efficient method of protection in the market place. The Trade Mark law and practices are not suited to the needs of the handloom sector. Given the current crises in handloom sector, as indicated by growing number of suicides by weavers, there is a need for positive regulation of textile markets, and protection of handloom products from imitations, fakes and spurious products. Ultimately, protection of handloom markets would lead to the revival of handloom weaver livelihoods, and prevent their slide into absolute poverty. Hence, the least government can do is to protect handloom markets, and it can do the most by enabling the development of handloom markets through innovative schemes and programmes.

To read more articles on [Textile](#), [Fashion](#), [Apparel](#), [Technology](#), [Retail](#) and [General](#) please visit www.fibre2fashion.com/industry-article

To promote your company, product and services via promotional article, follow this link: http://www.fibre2fashion.com/services/featruded-article/featured_article.asp