

Legal Protection Status and Prospects of Geographical Indications

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Abstract

With the continuous deepening of economic globalization and international trade, the protection of geographical indications faces increasingly more challenges. However, the regulations on the protection of geographical indications in China are not yet perfect, and there are many shortcomings in the approval system and the infringement redress system. Therefore, it is necessary to unify the system of geographical indication protection and improve the relevant regulations on geographical indication protection from the administrative law level, in order to protect fair market order and consumer interests.

Keywords

Geographical Indications; Intellectual Property; Infringement Remedies.

1. Introduction

In the international community, the protection of geographical indications is mainly regulated and protected by international organisations such as the World Intellectual Property Organisation (WIPO) and the World Trade Organisation (WTO). In China, the protection of geographical indications is mainly regulated by laws and regulations such as the Trademark Law, but the current system for the protection of geographical indications in China is not yet perfect, and there are still shortcomings in the system for establishing and granting rights and the system for dealing with infringements. At present, the phenomenon of counterfeiting geographical indications is becoming more serious, mainly manifested in trademark infringement.

2. Problem Statement: Why is it Difficult to Prohibit Counterfeiting of Geographical Indications?

2.1. Forms of Infringement of Geographical Indications

In the advanced search function of "Beida Fabao" judicial cases, using "geographical indication" and "intellectual property and competition disputes" as keywords, a total of 370 cases related to this topic have occurred from 2022 to the present, of which 346 cases (93.5%) are related to intellectual property ownership and infringement disputes, and 9 cases (0.02%) are related to unfair competition disputes. In the cases related to intellectual property ownership and infringement disputes, 341 cases (98.5%) are related to trademark ownership and infringement disputes, and only 5 cases (1.5%) confirm non-infringement of intellectual property rights. Among the cases related to trademark ownership and infringement disputes, 337 cases (98.8%) are related to trademark infringement disputes. This shows that the forms of infringement of geographical indication intellectual property rights are mainly concentrated in trademark rights. For example, in China's "Pu'er Tea" case and France's "Champagne" case, some enterprises or individuals use methods such as theft, imitation and malicious registration to use others' registered geographical indication trademarks for their own products or services without permission in order to engage in the same or similar business activities, thereby

infringing the legitimate rights and interests of the original intellectual property owner and causing adverse effects on the market order and consumers' rights and interests.

2.2. Problem Statement

Geographical indications indicate the geographical origin of goods and have a unique identification function due to their regional, specific and close links with local culture and history. Unlike ordinary trademarks, the true content of the identification function of geographical indications is precisely the "geographical name + product name" textual expression, which makes geographical indications have obvious characteristics. However, with the rapid development of the Internet, e-commerce has gradually become mainstream, and unlike physical stores, it is difficult to guarantee the authenticity of products sold on e-commerce platforms. Therefore, the phenomenon of counterfeiting geographical indications has been infinitely magnified. For example, the Chinese green tea brand "Longjing Tea" has a geographical indication and a registered trademark, but other local operators also promote their products under the name "Longjing" brand, and the Internet is full of products claiming to be "Longjing Tea," making it difficult to distinguish between genuine and fake. This kind of market environment of mixed fish and dragons and difficulty in distinguishing between true and false not only damages the legitimate rights and interests of the original intellectual property owner but also has adverse effects on market order and consumer rights and interests. In addition, the registration, use, and protection of geographical indications registered under different systems may involve different parties, making it difficult for law enforcement personnel to determine "counterfeiting" and to provide adequate relief to the infringed parties. These problems have brought great challenges to the legal protection of geographical indication trademarks and need to be improved and strengthened..

3. Facing the Predicament: Reasons Why it is Difficult to Prohibit the Counterfeit Geographical Indication Phenomenon

3.1. Existing Problems with the Geographical Indication Protection System

Although the Civil Code has unified the names of geographical indications, the three geographical indication protection systems - geographical indication trademark protection, geographical indication product protection, and agricultural product geographical indication protection - have different provisions for legal terms and concepts related to geographical indications. The essence of the protection of geographical indications through intellectual property rights is to protect the origin of the product and its reputation or popularity, but there is no provision for the reputation of geographical indications in the "Administrative Measures for Geographical Indications of Agricultural Products", and although the "Regulations on the Protection of Geographical Indication Products" has formal provisions, it is not satisfactory in practice. This negligence is inconsistent with the inherent nature of intellectual property protection for geographical indications. In addition, the regulations of the two above-mentioned departments are not part of the current intellectual property legal system and lack legal liability provisions and effective remedies for infringement.

3.2. Geographical Indication Authorization System Needs Improvement

On the one hand, the regulations for geographical indication approval systems in the Trademark Law, the Administrative Measures for Geographical Indications of Agricultural Products and the Regulations on the Protection of Geographical Indication Products are inconsistent, which seriously hinders the registration and management of geographical indications. For example, "Anji White Tea" and "Anxi Tie Guan Yin" have been registered in all three approval systems, each with its own protection measures, resulting in excessive operating costs, wasted administrative resources and not conducive to protecting the rights

and interests of GI owners. On the other hand, China's Trademark Office only conducts formal examination of written materials provided by applicants when examining the registration of geographical indications, and lacks the appropriate technical personnel and technical means to strictly examine the authenticity and reliability of geographical indications, which makes it difficult to stop infringement of geographical indications.

3.3. Geographical Indication Infringement Relief System Needs to be Improved Urgently

The legal effectiveness of GIs in China varies, and some local regulations have a lower hierarchy, making it difficult to effectively ensure that GIs receive effective redress when infringed. In practice, infringers often face administrative sanctions, while the injured party can only file a lawsuit in court to protect its rights, and there is a lack of corresponding criminal sanctions, resulting in a low deterrent effect and low infringement costs, leading to a proliferation of infringements in the market. In some cases, these remedies may not be flexible or timely enough. It is therefore necessary to broaden the scope of remedies, for example by considering the introduction of arbitration or other alternative dispute resolution mechanisms.

4. Recommendations to Address Counterfeit Geographical Indications

4.1. Unifying Geographical Indication Protection System

There are significant differences in the protection mechanisms for geographical indications in China, and the lack of clear regulations makes it difficult to stop infringement of geographical indications. To better protect the legitimate rights and interests of geographical indications, the relevant departmental regulations, such as the "Collective Trademark, Certification Trademark Registration and Management Measures," the "Management Measures for Geographical Indications of Agricultural Products," and the "Regulations for the Protection of Geographical Indication Products," should be integrated into a unified "Geographical Indication Protection Regulation," with legislative status raised to the level of administrative regulations. This will allow for comprehensive supervision and management of the reputation, visibility, and scope of geographical indications, effectively preventing infringement, and enhancing the credibility and commercial value of geographical indications.

4.2. Optimizing Geographical Indication Authorization and Confirmation System

Under the premise of unifying the three protection modes, a specialized institution for geographical indication protection should be established, such as the National Intellectual Property Office coordinating other departments, with the Intellectual Property Office responsible for geographical indication confirmation, effectively addressing conflicts between the three modes of protection. At the same time, in the examination process for geographical indications, experts or technical personnel should be hired to evaluate the authenticity and quality of geographical indications effectively and accurately, in addition to reviewing the documents submitted by the geographical indication applicant. With an emphasis on substantive examination, the quality of geographical indications will naturally improve, and the protection of the rights and interests of geographical indication holders will be further enhanced, while also helping to save administrative costs.

4.3. Improving Geographical Indication Infringement Relief System

To protect the legitimate rights and interests of geographical indication trademarks, it is essential to establish a sound system for infringement relief. We can follow Japan's severe punishment measures for improper use of geographical indications and significantly increase the penalty limit while refining illegal punishment. For example, those who illegally use

geographical indications or similar signs and refuse to correct them will be sentenced to less than five years' imprisonment or fined up to 5 million yen. Groups who steal or leak expert review processes will be sentenced to less than six months' imprisonment or fined up to 500,000 yen. In addition, the National Intellectual Property Office should lead the expansion of the scope of relief and the construction of specialized relief institutions, improve punishment measures for infringement, and compensation standards. Moreover, to better protect the legitimate rights and interests of geographical indication trademark holders, it is necessary to strengthen the supervision and management of infringement, enhance the protection and appeal channels of geographical indication trademarks, and increase the crackdown on infringement.

5. Conclusion

In conclusion, geographical indications have become an indispensable part of intellectual property protection. Based on the formulation of unified geographical indication protection standards, we need to establish a sound system for infringement relief, define punishment measures and compensation standards for infringement, and strengthen the protection and appeal channels for geographical indication trademarks. This will ensure that the legitimate rights and interests of geographical indication trademarks are effectively safeguarded, help to further enhance the credibility and commercial value of geographical indication trademarks, and promote their better market function.

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