

Study on the Trend of Geographical Indication Protection in China

Qianyin Gou

Law School, China Jiliang University, Hangzhou, Zhejiang, China

Abstract: China has rich resources of geographical indications and is a large country of geographical indications. China's protection of geographical indications started from the fulfillment of international conventions responsibilities and obligations, and it has formed a set of unique geographical indications protection system with the intersection of trademark protection and product quality protection. However, under this intersection system, the protection of geographical indications has been characterized by the problems of multi-pronged and confusing management. Against the background of the dual demands of international intellectual property competition and domestic intellectual property development, China should protect Geographical Indications properly. This paper studies the trend of geographical indications protection in China, lists the current situation and problems of geographical indications protection in China, and argues that the formulation of a special law on geographical indications is an inevitable part of the high-level protection of geographical indications. Realizing the synergistic protection of special legislation and trademark law, improving the system of geographical indications protection, and actively promoting the brand building of geographical indications are the trends of legal protection of geographical indications in China.

Keywords: Geographical Indications; Legal Protection; Trademark Law; Specialized Legislation; Regional Public Brands

1. Introduction

The system of geographical indication protection is the result of China's transplantation of foreign legal systems, forming a system of geographical indication protection in which specialized regulations run parallel to the trademark law, and trademark protection and product quality protection

intersect with each other. With the improvement of China's geographical indication protection system, the construction of the system has changed from passive acceptance to active selection, and the construction of a geographical indication protection system is an urgent problem to be solved. Scholars have different opinions on the choice of geographical indication protection system.

Zhang Weijun believes that the trademark system of geographical indications and the protection system of geographical indications should be combined into one and managed under the system of trademark law. ^[1]Meng Xiangjuan and other scholars believe that the geographical indication protection system should be constructed with the geographical indication protection law as the leading one, the trademark law as the basis and the anti-unfair competition law as the supplement. ^[2]Wang Xiaoyan thinks that a protection system based on special law and supplemented by trademark law should be established. ^[3]Zhang Yumin advocates the concurrent protection of trademark law and special law. ^[4]Chen Xing believes that the special law can establish the right of geographical indications by unifying the protection system of geographical indications. ^[5]

2. Origin of Geographical Indication Protection

Geographical Indications (GIs) are imported in China, but as early as the Spring and Autumn and Warring States Periods in China, there was a sense of origin that "to the south of the Huaihe River grow oranges, while to the north grow bitter oranges". There was an abundance of agricultural products. The earliest known protection of product origin began with the French Roquefort cheese, France is the first country in the world to specialize in the legislative protection of product origin. French system of origin protection has had a far-

reaching impact on Europe and even the world. The protection of geographical indications is not only a matter of intellectual property rights, but also an economic issue, assuming the role of developing agriculture and promoting economic development. Behind geographical indications lies great economic interests and cultural values. The emergence of business opportunities then leads to competition for interests, and all kinds of fake and counterfeit products then appear, disrupting market operations, weakening the nature of products of origin, and also infringing on the rights of consumers.^[6] Geographical indications protection began with domestic legislation, and under the trend of globalization, the uneven level of geographical indications protection in various countries will be reflected in international trade and lead to sharp contradictions. With the deepening of international trade, the phenomenon of counterfeiting the origin of overseas products becomes more and more serious. As a result, international cooperation on the protection of geographical indications has begun among countries, with the formulation of international conventions and bilateral and multilateral agreements.

The emergence of geographical indications as independent intellectual property objects cannot be separated from the impetus of international treaties. The Paris Convention for the Protection of Industrial Property juxtaposes "indications of origin" with other intellectual property objects, reflecting the efforts of countries with different standards for the protection of geographical indications, while the Madrid Agreement for the Suppression of False or Deceptive Indications of the Origin of Goods of 1891 provides protection for the practice of false or deceptive indications. The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, on the other hand, focuses on the protection of appellations of origin and is the result of the most serious national efforts to protect geographical indications, establishing a system for the international registration of appellations of origin.

However, the three international conventions mentioned above cannot overcome the problem of different standards of the protection system of geographical indications among countries, reflecting the contradiction

between countries with high level and low level of protection, and failing to form an effective unified protection among countries. The widespread use of the name "geographical indication" began in the 1980s and officially appeared in the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the TRIPs Agreement), which is the most influential convention on the international protection of intellectual property rights in the world nowadays, and provides a minimum standard of protection for the global protection of geographical indications. The TRIPs Agreement is the most influential IPR international protection convention in the world today, providing a minimum standard of protection for global protection of geographical indications. Besides, the General Agreement on Tariffs and Trade (GATT) and the Model Law on Appellations of Origin and Indications of Origin for Developing Countries have all contributed to the international protection of geographical indications. Through the establishment of the above conventions, the international protection system of geographical indications has also been continuously improved, providing a solution mechanism for international protection of geographical indications.

However, the competition and game of geographical indications interests in various countries are still spreading, and different interests, in order to maximize their interests, realize the strong protection of geographical indications through FTA, CPTPP and other agreements on the basis of international conventions. There are mainly three protection modes in the international protection of geographical indications, special law protection, trademark law protection, and anti-unfair competition law and other protection modes. A variety of different geographical indications protection systems in parallel, representing the interests of different subjects, also affects the orientation of the international protection of geographical indications. FTA, CPTPP and other new trends for the international protection of geographical indications reflect the different interests of the main body of the interests of the present further competition, the EU as the representative of the main body of the use of the FTA to make its geographical indications

protection system to gain respect among other countries, to maintain its high level of protection of geographical indications products international competitiveness, and to protect the geographical indications of the international competition. Protecting the international competitiveness of GI products, while the CPTPP restricts the level of GI protection in the hope of maintaining the protection model based on trademark protection, which is in line with the interests of countries with a low level of protection. On the one hand, it promotes the strengthening of the protection of geographical indications in various countries, while on the other hand, it maintains the status quo of geographical indications protection. The two sides run counter to each other, which reflects the dilemma of the international protection of geographical indications. However, the game between different interests also provides an opportunity for China to fight for the right to speak on the international protection of geographical indications.^[7]

3. Overview and Issues of Geographical Indication Protection in China

The development of China's geographical indication protection system started relatively late. Although there has been a sense of origin since ancient times, due to the non-circulating agrarian economy and authoritarian rule, there was no systematic protection system for products with regional characteristics. The protection of geographical indications in China began with the passive fulfillment of international obligations after the accession to the Paris Convention. After the establishment of the market economy system in the 1980s, the barriers between regions were broken down, and commodities were able to flow freely in China, and people began to realize the significance of the protection of geographical indications. Since then, the protection system of geographical indications in China has been gradually established, firstly, the Bureau of Industry and Commerce decided to protect "Danish butter cookie", the appellation of origin prohibit the use of words such as "champagne" on alcoholic beverages, and in 1994, the "Measures for the Registration and Administration of Collective Marks and Certification Marks" came into force to pave the way for the protection of geographical

indications under the Trademark Law, and the "Provisions for the Protection of Geographical Indications of Origin" added protection for quality supervision departments in 1999. protection by the Quality Supervision Department. In order to actively fulfill the obligations of joining the World Trade Organization, the Trademark Law was amended in 2001 to include provisions related to geographical indications, formally determining the trademark protection system for geographical indications. After that, the agricultural department also promulgated the Measures for the Administration of Geographical Indications of Agricultural Products and other norms for the protection of geographical indications of agricultural products. Since then, the protection of geographical indications in China has opened up a situation of "two modes in parallel and three systems together".^[8]In 2018, the State Council institutional reform merged the three parallel modes, and in 2022, the agricultural department stopped accepting geographical indications of agricultural products, and the management right of geographical indications was mainly transferred to the State Intellectual Property Office, forming a more standardized geographical indications protection system. China has a wealth of geographical indications, how to efficiently develop, protect and use geographical indications, and further utilize the advantages of geographical indications is an important part of the construction of geographical indications.

3.1 Conflicts among Three Systems

Despite the gradual unification of geographical indications management institutions after institutional reforms, the incompatibility of the various protection systems prior to the reforms has not yet been resolved. Geographical indications can obtain trademark protection by registering as collective marks or certification marks under the trademark law system, while products of geographical indications and geographical indications of agricultural products can be protected under the other two systems, making the four types of geographical indications co-exist and independent of each other. The difference between the four types of geographical indications leads to chaotic management, and ordinary people are unable to distinguish geographical indications under

different protection systems and do not know the significance of the different systems, which makes consumers feel disturbed.

The three systems are independent of each other, and there are obvious differences in the application systems and criteria. If a geographical indication wants to obtain comprehensive protection, it has to register in many aspects, which increases the cost of protection and results in a waste of resources. At the same time, due to the independence of each system, the registrant of the same geographical indication in different protection systems may be different, and there may be more than one holder of geographical indications in the same system. For example, in the case of "Jinhua Ham", the ordinary trademark of "Jinhua Ham" was held by Zhejiang Food Co. In the case of "Jinhua Ham", the ordinary trademark had been held by Zhejiang Foodstuffs Co., Ltd. for a long time after assignment, while the certification mark of "Jinhua Ham" was held by Jinhua Ham Protection Committee. Trademarks play an important role in the protection of geographical indications, but the parallelism of the three systems often results in conflicts of rights, the most obvious of which is the conflict between trademarks and geographical indications. As trademarks and geographical indications are mutually independent objects of intellectual property, and there are significant differences between them in terms of purpose, function and other characteristics, trademark protection does not provide comprehensive coverage of geographical indications, and the names of geographical indications products are not necessarily registered as trademarks.

The three systems also have different strengths of protection for geographical systems. Trademarks have the most mature protection system for geographical indications, and the Trademark Law has the highest level of protection, with a wide scope of protection, and a clear system of provisions ranging from the confirmation of rights to infringement, with the right holder being able to pursue the infringer's civil, administrative as well as criminal liability. Geographical indications and geographical indications of agricultural products, on the other hand, mainly through administrative penalties to combat infringement. Therefore, it is appropriate to protect geographical indications by favoring

trademarks, but it is not reasonable to entrust geographical indications to trademarks.

3.2 Poor Quality of Management and Use

China's geographical indications of poor quality geographical indications counterfeiting phenomenon is repeatedly prohibited, geographical indications of protection of the specific quality of the product and the link between the region is difficult to identify, need to be confirmed through professional testing methods and testing organizations, and with the rapid development of science and technology and the electronic economy, exacerbated the phenomenon of counterfeiting. Entering the name of a product randomly in a shopping website, there is an overwhelming number of product sales pages appearing, with a mixture of true and false information, making it difficult for ordinary consumers to judge the authenticity of geographical indications. It is also difficult for the relevant right holders to monitor the infringement behavior.^[9]In addition to the difficulty of prohibiting external counterfeiting, it is also difficult to manage internal substandard products. Legal norms, such as the Trademark Law, do not prohibit the reasonable use of product origin names by qualified non-GI trademark licensees. Due to the regional and collective nature of geographical indications, the exclusive right holder of a geographical indication cannot have exclusive rights over it. Users enjoy the reputation of geographical indications but may not necessarily be willing to contribute to the maintenance of the reputation of geographical indications, while individual users may even damage the reputation and collective interests of geographical indications in order to seek momentary benefits.

The protection of intellectual property rights in China has a long way to go, and the concept of geographical indication protection has not yet been popularized, and the actual management has not matured, and in some cases, the rights defense behavior of the right holders may cause extensive disputes. For example, in the case of "Tongguan Rogamo", the Tongguan Rogamo Association intentionally filed a lawsuit for the collection of other people's franchise fee is unreasonable, which also deviates from the proper meaning of the protection of geographical indications, and

makes the geographical indications become a tool for enrichment; however, the association excludes non-Tongguan areas from the use of Tongguan Rogamo, and the defense of the right is in line with the provisions of the law. Under the constraints of public opinion, the Tongguan Rogamo Association stopped the lawsuit of enrichment, but also gave up the defense of rights, which is not in line with the need to protect geographical indications, but in the final analysis, it is still related to the immaturity of China's system of protection of geographical indications.

China's geographical indication system and its operation itself have many special features as mentioned in this paper, but apart from actively registering and protecting geographical indications under the existing registration procedures, the registrants, administrators and users of geographical indications are still at a loss as to how to utilize and protect geographical indications. Geographical indications are natural public brands, and the purpose of protecting geographical indications is to protect the cultural and economic interests of a region and promote the revitalization of the regional economy. However, the actual protection and application of geographical indications is not mature, and it is common for geographical indications to be injected but not used. For operators, the relevant use procedures after the registration of geographical indications are not clearly defined. For example, the requirements for registered geographical indications need to be uniformly printed on the packaging, but such printing adds costs to the operators, and sets up obstacles to actively promote the popularization of the protection of geographical indications, and the protection of the trademark law is more convenient. It seems that the products can be protected through the trademark law for the operators. As for consumers, at present, ordinary consumers do not know much about geographical indications, and there is no general recognition of geographical indications, which prevents them from taking advantage of the advantages of the public brand of geographical indications.

4 Core Issues and Trends in the Future

Intellectual property rights are a condition for gaining access to international trade, and the protection enables international

competitiveness. Geographical indications in China are the product of transplanting foreign systems, which began with the fulfillment of the responsibilities and obligations of international conventions, and the system was established for a relatively short period of time, and the atmosphere for the protection of geographical indications had not been formed before. However, after decades of use, the protection of geographical indications has achieved certain effects, and the protection of geographical indications is in line with the realistic needs of China's development. Geographical indication is an important tool for China to participate in the global competition of intellectual property rights, and it is a bargaining chip in the international game.^[10] China is a globally recognized agricultural country with rich resources of geographical indications. The 2022 Annual Report of the State Intellectual Property Office shows that as of 2022, China has cumulatively approved 2,495 geographical indications products, cumulatively approved 7,076 geographical indications to be registered as collective trademarks and certification trademarks, and cumulatively set up 103 national demonstration zones for the protection of geographical indications products. And in November 2023, the World Intellectual Property Organization released the World Intellectual Property Indicators 2023, which shows that in 2022 China holds the most valid geographical indications in the world, with a total of 9,571 geographical indications. China is a large country of geographical indications, and there is a realistic basis for high water protection of geographical indications.

The path of geographical indications protection should be actively explored to enhance international intellectual property competitiveness. Comprehensively promoting rural revitalization is a major strategy, and geographical indication is an important intellectual property object and a powerful way to promote rural revitalization. Reasonable use of geographical indications is conducive to promoting the development of regional villages, improving the added value of products, and driving the all-around development of regional agricultural, cultural and tourism industries. Geographical indications are the embodiment of the natural and human factors of a particular region, and

should be utilized to develop the regional economy. The Outline for the Construction of a Strong Intellectual Property Rights Country (2021-2035) clearly states, "Promote the organic integration of geographical indications with the development of characteristic industries, the construction of ecological civilization, the inheritance of history and culture as well as the revitalization of the countryside, and enhance the influence of geographical indications brands and the added value of products." The "14th Five-Year Plan for the Protection and Utilization of Geographical Indications" points out that geographical indications are important intellectual property rights, and that the construction of geographical indications is an important way to promote economic development, realize rural revitalization, pass on culture, and promote foreign trade and diplomacy. In order to further protect geographical indications, it is necessary to break the existing three parallel protection modes, improve the relevant administrative system, enact systematic legislation, formulate a special law on geographical indications, and realize the harmony and unity of the special law on trademarks and geographical indications.

The United States and the European Union are opposed to the protection of geographical indications. However, in recent years, China has signed bilateral agreements on geographical protection with both of them. Although the EU has not succeeded in expanding the strong protection of geographical indications globally in international conventions due to the resistance of the US and other countries, it has formulated bilateral agreements with many countries, and has gained certain results in the international protection of geographical indications. China mainly adopts trademark law to protect geographical indications. After the signing of the China-EU Agreement on Geographical Indications, there will be a batch of geographical indications that have not yet gone through the trademark registration procedure in China, and how to appropriately manage such geographical indications and resolve disputes arising from the U.S. requirement of common names of relevant geographical indications in the economic and trade agreements are issues that should be

considered in the current development of the geographical indications protection system. This is also the reason for amending the Provisions on the Protection of Geographical Indications in 2023.

4.1 Legislating a Specialized Law

The 14th Five-Year Plan for the Protection and Utilization of Geographical Indications proposes to "improve a unified system for the protection of geographical indications in which the protection of specialties and the protection of trademarks are coordinated with each other". There is a problem of confusion in the protection system of geographical indications, and to improve the protection of geographical indications, it is necessary to firstly unify the legislation of geographical indications, and the Director General of the State Intellectual Property Office of China, Mr. Shen Changyu, has also put forward the proposal of "strengthening the legislation of geographical indications" at the symposium of the Chinese People's Political Consultative Conference (CPPCC). Therefore, we should make reference to the mature experience of trademark law on the protection of geographical indications and formulate a special law on the protection of geographical indications, release geographical indications from the protection system of trademarks, and formulate a reasonable system of protection of geographical indications. Strengthen the monitoring of geographical indications products and establish a monitoring system for infringement of geographical indications. Conducting professional relevance examination, rationally formulating product quality supervision and management system, and forming a mature quality supervision system. While geographical indication products have unique quality and other characteristics, if the standard is not met, even if the product belongs to the specific region, it cannot be regarded as a geographical indication product. Improve the geographical indication infringement relief system, including the development of standards for the determination of geographical indication infringement and comprehensive relief procedures, and the realization of coordinated judicial and administrative management. A single mode of protection for geographical indications cannot effectively protect

geographical indications in China, which is rich in resources and has a complex national situation; synergistic protection should be carried out through trademark law and specialized law according to the specific situation, and the choice should be made according to the local conditions and the needs of the development of geographical indications.

4.2 Strengthening the Branding of Geographical Indications Brands

With the increasing attention paid to geographical indications in recent years, the number of geographical indications in China has surged, and there is a need for branding of geographical indications to enhance their influence. With the improvement of social production capacity and economic level, consumers are willing to pay for geographical indications products with specific quality and reputation. The government should strengthen the publicity and promotion of geographical indications, guide and support the users of geographical indications to cultivate their brands, and create an industrial chain of geographical indications products. It should supervise the quality of geographical indications from various aspects such as credit, create an honest and trustworthy market business atmosphere, and emphasize the protection of regional natural and human resources. ^[11] Provide a suitable business environment for building geographical indication brands.

5. Conclusion

Geographical indications are independent intellectual property objects. Meanwhile the construction of a strong intellectual property country is the goal of China's intellectual property development. Based on the needs of the development of geographical indications in China, a special law on the protection of geographical indications should be enacted, and a geographical indications protection system synergized with the special law and the trademark law should be established. In case to give full play to the role of geographical indications in enhancing the competitiveness of international trade, promoting the development of the rural economy, and handing down historical and cultural traditions. So as to enable China's geographical indications to go out of China to the world.

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