

Research on the Examination System of Geographical Indications under Trademark Rules

Qianyin Gou

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

Abstract: Geographical indications (GIs) can be protected under trademark law by registering them as certification marks. The Trademark Examination and Trial Guidelines issued in 2020 provide directional guidance for trademark registration examination departments. However, the ambiguous boundary between geographical indications and generic names increases the difficulty of examining GIs. Geographical indications and trademarks are independent intellectual property objects. Against the backdrop of unified recognition of geographical indications, it is essential to improve the examination system for GIs under the trademark framework, ensuring its alignment with the specialized legal system for GIs. This paper focuses on the examination system for GIs, analyzes the challenges in identifying GIs under trademark protection rules, and proposes recommendations to improve the trademark examination system based on the unique characteristics of GIs.

Keywords: Geographical Indications; Trademark Examination; Generic Names; Relevance; Trademark Law

1. Trademark Protection of Geographical Indications

The Trademark Law serves as a crucial legal foundation for addressing infringements on geographical indications (GIs), playing a leading role in their protection. In China, trademark-based protection for GIs can be traced back to the protection of trademarks containing place names. The 1982 Trademark Law did not explicitly prohibit the registration of trademarks containing geographical names. However, the first amendment to the *Trademark Law* in 1993 added a provision in Article 8 stating that "the names of administrative divisions at or above the county level... shall not be used as trademarks." Later,

the 1995 *Measures for the Registration and Administration of Collective Marks and Certification Marks* specified in Article 2 that certification marks could be used to certify the origin of goods. Finally, in the 2001 Trademark Law, the concept of "geographical indications" was formally introduced, allowing GIs to be registered as certification marks and protected under the *Trademark Law*.

However, trademarks and GIs are independent intellectual property objects with significant differences in their concepts, functions, and registration procedures. Despite the relatively well-developed trademark protection system, issues like trademark genericization remain persistent challenges in GI protection. Under trademark protection, GIs often fail to achieve their intended functions and may face additional obstacles in their protection. This mismatch stems from the intrinsic characteristics of GIs, which the trademark examination process struggles to accommodate. Some scholars argue that the registration, use, and supervision of GIs under the trademark framework are subject to significant constraints. [1] The distinguishing function of geographical indications (GIs) is inconsistent with that of trademarks. [2]

2. Challenges in Identifying Geographical Indications under Trademark Rules

2.1 The Blurred Boundary between Geographical Indications and Generic Names

Due to the unique naming characteristics of geographical indications (GIs), the determination of generic names for GIs presents distinct challenges. Article 11 of the *Trademark Law* stipulates that marks consisting solely of generic names of goods cannot be registered as trademarks. The Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Administrative Cases of Trademark

Authorization and Confirmation define generic names as "those legally recognized as generic names of goods according to laws, national standards, or industry standards" (statutory generic names) and "those commonly understood by the relevant public to refer to a category of goods" (customary generic names).

The *Trademark Examination and Trial Guidelines* (hereinafter referred to as the *Guidelines*) follow this framework. Statutory generic names are judged based on relevant laws, while customary generic names are generally determined by the common understanding nationwide. As a type of trademark, GIs registered as trademarks should also adhere to these provisions. However, the lack of a clear delineation between GIs and generic names creates conflicts. In trademark examination, GIs may be deemed generic names of goods, rendering them ineligible for registration.

This ambiguity in determining generic names significantly hampers the development of GI protection in China and poses challenges for international cooperation in GI-related matters. [3] The Guidelines for Determining Generic Names in the Protection of Geographical Indications (Draft for Comments) issued by the China National Intellectual Property Administration (CNIPA) in 2020 define generic names in the context of GI protection as: "Names that, although originally associated with the place, region, or country where a product was first produced or sold, have become commonly used names for the product in China."

According to this provision, most geographical indications (GIs) could theoretically be classified as generic names. [4] As long as a GI has the function of "indicating specific quality," it inherently categorizes goods to some extent. GIs represent the connection between a product's quality and other characteristics with a specific region. Certain GIs with distinctive features are likely to become names for specific product types. For example, "Sichuan Pickles," a GI listed in the China-EU Agreement on Geographical Indications, illustrates this issue.

The unique characteristics of "Sichuan Pickles" are intrinsically tied to Sichuan's

distinctive geographical environment. However, the preparation methods and choice of ingredients vary widely. Their commonality lies in the fermentation and pickling process carried out in Sichuan. Therefore, in general understanding, "Sichuan Pickles" refers to a type of fermented pickled dish originating from Sichuan, analogous to "Korean Kimchi" or "Northeast Sauerkraut," which are all generic names for types of Chinese-style pickled dishes.

To protect the civil rights of GI holders and maintain market order, the boundary between GIs and generic names must be explicitly defined within trademark rules. When GIs are easily classified as generic names, it severely undermines the rights of relevant parties and disrupts market order.

2.2 The Dispute over the Generic Name of "Qin Zhou Huang"

Since generic names cannot be registered as trademarks, marks that comply with geographical indication (GI) regulations may also fail to qualify for trademark registration. This issue is exemplified in the case of "Qin Zhou Yellow Millet," handled by the Supreme People's Court of China and the Shanxi Higher People's Court. Although "Qin Zhou Yellow Millet" is a protected GI product, the term "Qin Zhou Yellow" was deemed a generic name for millet, leading to contradictions. In this case, the court regarded a product from a specific region as a product category and thus concluded that the mark was a generic name.

The ruling allowed other competitors to use the term "Qin Zhou Yellow" as a generic name, enabling malicious "free-riding" behavior to proliferate. Reputation is one of the primary distinctions between ordinary trademarks and GIs. Unlike regular trademarks, which gain reputation through post-registration use, GIs are inherently reputable. By the time a collective organization applies for GI trademark registration, other profit-driven entities often exploit the GI.

The term "Qin Zhou Yellow Millet" was created as a brand name by Shanxi Qin Zhou Yellow Millet Co., Ltd., consisting of two parts: "Qin Zhou" and "Yellow Millet." "Qin Zhou" is a registered trademark, and its fame primarily derives from the trademark owner's business

activities. The justification for treating "Qinzhou Yellow" as a generic name for millet is insufficient. Furthermore, "Qinzhou Yellow Millet" is grown only in specific counties within Changzhi City, and the court did not adequately assess whether the general public nationwide recognizes it as a generic name.

When determining whether "Qinzhou Yellow" is a generic name, the court should have considered the product characteristics and cultivation scope of the GI product "Qinzhou Yellow Millet." The lack of reasoning or explanation in the court's judgment makes the decision unconvincing. [5]

The "Qinzhou Yellow Millet" mark has not been registered as a trademark yet. If the relevant rights holder applies for the trademark registration of "Qinzhou Yellow Millet," the Trademark Office might take the Supreme People's Court's ruling into consideration during the trademark examination process. However, the inherent differences between geographical indications (GIs) and ordinary trademarks necessitate a distinct set of examination standards for GIs.

Traditionally, trademark law emphasizes whether a mark corresponds to a specific source of goods on a one-to-one basis. However, this "one-to-one correspondence" standard should not apply to the examination of marks involving GI protection. [6]

Currently, provisions related to GI trademark registration are primarily recorded in the *Measures for the Registration and Administration of Collective Marks and Certification Marks* (hereinafter referred to as the *Measures*). However, both the current *Measures* and the latest draft for comment fail to provide clear rules for the registration of generic names. Furthermore, the draft has removed Article 7 of the *Measures*, which explains the connection between trademarks and their geographical origins, instead placing greater emphasis on the regulatory responsibilities of collective mark and certification mark holders.

Striking a balance between the examination standards for ordinary trademarks and GIs under the framework of trademark rules is therefore of critical importance. The distinct nature of GIs requires a tailored approach to ensure their unique characteristics and public interest functions are adequately protected during the registration process.

3. Recommendations for Improving Trademark Registration Examination

3.1 Emphasizing the Connection between Geographical Indication Products and Their Places of Origin

Establishing criteria for determining whether a geographical indication (GI) becomes a generic name must rely on the objectively existing connection between the GI product and its place of origin. This connection should not vary arbitrarily based on consumers' subjective perceptions.

First, the product itself serves as the material embodiment of the reputation and unique characteristics of the GI. It is an indispensable component of the GI. While GI products may not necessarily possess the highest quality, they must have distinguishing features that set them apart from other similar products. These distinguishing features may include sensory attributes or physicochemical properties that differentiate them from similar products in the same category.

By emphasizing the objective and tangible link between GI products and their geographic origins, this standard ensures that the unique qualities and reputation of the GI are protected, preventing the erosion of its value into generic use. [7]

To protect geographical indications (GIs), it is essential first to implement a standardized and systematic recognition and supervision system for GI products to ensure the stability of their unique characteristics. GIs represent a collective right, allowing any business entity to use the GI name. Once a GI becomes collectively owned property, it is prone to the "tragedy of the commons." Profit-driven producers and operators may engage in activities such as passing off inferior or counterfeit products as genuine to maximize profits.

Such "free-riding" behavior not only increases the risk of GIs being diluted into generic names but also complicates the supervision of GI products. A comprehensive product quality supervision system is necessary to prevent such acts of infringement on GI rights by producers and operators.

Second, standardized and data-driven

product characteristics can help examiners better identify the authenticity of GIs. In trademark application examinations, emphasis should be placed on data evidence demonstrating the link between GIs and their place of origin. This serves as a critical basis for distinguishing generic names from trademarks. The connection between GI products and their place of origin should not depend on consumer perception.

The *Trademark Examination and Trial Guidelines* primarily consider public perception and the potential for misleading the public as key judgment criteria. However, in practical application, public perception is variable and differs among consumers with varying levels of education and living standards. For instance, some consumers unfamiliar with product origins might view "Champagne" merely as a type of sparkling wine or "Xuan Paper" simply as a traditional writing paper, rather than recognizing them as GI products. Both cases demonstrate the risk of genericization. Additionally, there is no unified standard in China for determining whether a GI has become a generic name. Quantifying public subjective perception through objective criteria is difficult. Therefore, it is necessary to leverage the intrinsic role of GI products and improve the GI registration and examination system.

In terms of examination standards, greater emphasis should be placed on assessing the quality of GI products and determining GIs based on relevant data.

3.2 Establish an Expert Review System

To improve the examination system for geographical indications (GIs), it is necessary to enhance it within the internal framework of trademark law. While GIs can obtain legal protection through trademark registration, relying solely on the Trademark Law is insufficient to achieve comprehensive protection for GIs. Overcoming the limitations of ordinary trademark examination within the existing framework is a key issue that needs to be addressed. Some scholars argue that the lack of an expert review system in China's trademark examination process constitutes a significant institutional defect [8].

China has developed a "dual legal model with

three parallel protection systems" for GI protection by integrating administrative regulations issued by the General Administration of Quality Supervision, [9] Inspection, and Quarantine and the Ministry of Agriculture, along with other legal provisions. However, these three systems have separate and independent examination processes that are incompatible with one another.

For GIs, the process involves both formal and expert reviews. GI products undergo a technical review by an expert committee after the initial formal examination. Agricultural GIs are reviewed by the Agricultural Products Quality and Safety Center of the Ministry of Agriculture, which establishes a Registration Review Committee for Agricultural GIs. After receiving preliminary materials from provincial departments, the center conducts further review and organizes expert evaluations. In contrast, trademarks registered as GIs go through formal and substantive examinations conducted by trademark examiners, who assess distinctiveness and exclusivity. However, GI examination is limited to documentary reviews, such as local gazetteers and historical records, which fail to address the multifaceted functions of GIs, including source identification, reputation, and quality assurance.

In France, the National Institute of Appellations of Origin (Institut National des Appellations d'Origine, INAO) was established to protect appellations of origin for wines and spirits. INAO oversees GI protection and is composed of a permanent committee and three other national committees. INAO submits proposals for appellation approval to the government. To gain protection, industry associations apply to INAO, whose specialized national committee conducts formal and substantive examinations and organizes field investigations. INAO combines compliance checks with an in-depth understanding of the appellation through on-site inspections.

In contrast, China's trademark examinations are conducted entirely by examiners without an expert review system. Examiners rely on documentary standards, such as county gazetteers, to confirm GI trademarks, rather than conducting field investigations. This approach limits the ability to fully assess the objective relationship between GI products and their trademarks.

In Japan, the 2014 Act on Protection of the Names of Designated Agricultural, Forestry, and Fishery Products and Foodstuffs* requires the Ministry of Agriculture, Forestry, and Fisheries to consult with experts after completing formal and substantive reviews for GI registrations. Experts provide comprehensive insights and opinions beyond the capabilities of ordinary examiners.

To implement an expert review system, the following steps are proposed: make expert review an essential step in the GI trademark examination process and ensure the independence of experts, free from administrative constraints or subjective influences, to provide objective and reliable opinions; establish uniform examination standards for different GI protection systems so that trademarks with geographical indications, once they meet trademark criteria, should be approved under the Trademark Law; [10] and have experts primarily focus on verifying the GI collective or certification mark qualifications and confirming their status as registered trademarks. This will enhance the registration quality of GI collective and certification marks and reduce infringement disputes. By incorporating an expert review system, the GI examination process can better align with the unique characteristics of GIs, ensuring higher registration quality and more effective protection.

4. Conclusion

In 2024, China issued the Implementation Plan for the Unified Recognition System of Geographical Indications, mandating a standardized GI recognition system and enhancing its integration with the trademark system. Both trademark protection and protection under specialized laws are essential pathways for safeguarding GIs. Against this backdrop, it is imperative to improve the trademark examination system.

On the basis of respecting the quality standards of GI products, the establishment and refinement of an expert review system should be prioritized. This will ensure that the trademark system aligns and harmonizes with the rules for recognizing GI products, fostering a unified and coordinated approach to GI protection.

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