

On the Factors for Determining the Fair Use Defense Rule in Geographical Indication Trademark Infringement

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Abstract: Geographical indication trademarks inherently possess weak distinctiveness due to their inclusion of both place names and generic names of goods, which have the attribute of public resources. In related infringement disputes, the proper use of geographical indication trademarks not only constitutes the core defense basis of the accused infringer but is also a highly controversial core issue in judicial practice. This article re-examines the defense rule of "fair use", conducts an in-depth analysis of the key elements influencing the determination of fair use of geographical indication trademarks, and clearly points out that geographical indication certification trademarks and collective trademarks should not be confused. The fair use of certification trademarks should not simply refer to the regulatory provisions on collective trademarks in the "Regulations for the Implementation of the Trademark Law of China". At the same time, non-trademark use is not a sufficient condition for constituting an infringement defense. The determination of fair use does not need to take trademark use as a prerequisite for infringement judgment, and within a certain limit, it can tolerate the risk of confusion.

Keywords: Geographical Indication Trademark; Proper Use; Balance of Interests; Trademark Use; Confuse Possibilities

1. Introduction

Article 59, Paragraph 1 of the Trademark Law of the People's Republic of China clearly stipulates that the trademark owner has no right to prohibit others from using the geographical names contained in the registered trademark in a proper manner. As a public resource, geographical names cannot be monopolized and used by only a few entities. After a geographical indication trademark is registered, the exclusive rights of the trademark owner should also be protected. Therefore, a geographical indication trademark is a quasi-

public good that lies between private goods and pure public goods. [1] The root cause of such geographical indication trademark infringement cases lies in the conflict of interests between the public nature of geographical indication rights and the private nature of trademark rights, that is, the internal legitimate use and the imperfect system of using place names trigger external malicious litigation conflicts. Due to the public interest attribute of place names, in cases of infringement of geographical indication trademarks, the main defense of the accused infringer is the proper use of the geographical indication trademark. However, there is no unified standard for determining the conditions of proper use in China, which leads to the judgment of the proper use of geographical indication trademarks in judicial practice tending to apply the judgment model of ordinary trademarks. It fails to reflect the particularity of geographical indication trademarks. Therefore, this article will delve into the factors for determining the defense rules of fair use in the infringement of geographical indication trademarks, in order to resolve the conflict between the protection of the exclusive right to use geographical indication trademarks and the usage demands of other producers and operators, and to ensure the normal operation of the fair use system of geographical indication trademarks.

2. The Determination of the Scope of Proper use of Geographical Indication Certification Trademarks

There are differences in the attributes of geographical indication certification trademarks and collective trademarks. The rules for the proper use of geographical indication collective trademarks stipulated in the Implementing Regulations of the Trademark Law of China should not apply to geographical indication certification trademarks. The use of geographical indication certification trademarks should be based on procedural compliance rather than merely on substantive compliance.

2.1 Geographical Indication Certification Trademarks and Collective Trademarks should be Distinguished

The Implementing Regulations of the Trademark Law have clearly defined the rules for the proper use of collective trademarks of geographical indications. Some in the academic circle advocate extending similar rules to apply to geographical indication certification trademarks, that is, the proper use of geographical indications does not require the permission of the trademark owner. The author does not support this position. There is an essential difference between certification trademarks and collective trademarks. Referring to the application model will weaken the protection effectiveness of geographical indications.

Firstly, in accordance with Part 7 of the "Trademark Examination and Adjudication Standards": The examination of collective trademarks and certification trademarks reveals that the regulatory rules for certification trademarks are significantly more complex than those for collective trademarks. Users of the latter only need to go through procedural procedures to be admitted, while applicants for certification trademarks must submit certificates of professional institution qualifications and testing equipment to prove that they have the technical ability to supervise and manage the quality of specific goods. In essence, the core value of a certification mark does not lie in the aggregation of personnel, nor is it merely about "indicating" or "identifying" the specific quality of the goods. Instead, it lies in the "proof" provided by the specific entity controlling the quality (the trademark owner).[2] In contrast, a collective trademark is used to indicate the user's membership in a group and has "commonality" or "public utility".[3]

Secondly, the functional realization paths of certification marks and collective marks are fundamentally different. Using certification marks to protect geographical indications is more in line with the inherent requirements of quality assurance functions. Although the collective trademark model provides a connection path for international common practices, in Chinese practice, the proportion of geographical indication applications for certification trademarks far exceeds that of collective trademarks, objectively reflecting the market's priority choice for quality certification mechanisms. Therefore, the claim that certification trademarks should apply the rules of fair use in reference to collective trademarks

essentially stems from a cognitive deviation of the legal attributes of the two types of trademarks and inappropriately expands the scope of fair use.

2.2 The Match between the Place of Origin and the Quality does not Constitute a Defense of Fair Use of a Geographical Indication Certification Trademark

When the actual origin of the goods sold by the operator does not match the claimed geographical source and the operator uses the place name of another person's geographical indication certification trademark for commercial promotion without authorization, such behavior not only constitutes an infringement of the exclusive right to use the certification trademark, but may also trigger the regulatory provisions in the Anti-Unfair Competition Law regarding the prohibition of false promotion. Even if the goods do possess the origin attributes and quality characteristics required by geographical indications, the act of producers using the same or similar certification trademarks without the authorization of the management organization should still be defined as trademark infringement. This determination stems from the legal nature of the certification mark - it is not merely an indication of origin but also a quality certification certificate granted through legal procedures. Therefore, unauthorized use essentially undermines the order foundation of trademark management.

The theory of "regional differentiated regulation" proposed by some scholars advocates easing the usage restrictions within the production areas of geographical indications while strengthening sanctions against abusive behaviors outside the regions.[4] This theory has a fundamental flaw: If only the compliance of the origin of the goods is regarded as a sufficient condition for the use of geographical indication certification trademarks, it will essentially undermine the exclusive protection of the exclusive right to use geographical indication certification trademarks. This kind of institutional design will induce moral hazard - unscrupulous operators may take advantage of loopholes in the rules to sell inferior goods as geographical indication products, such as the "labeling" behavior where the origin is compliant but the quality does not meet the standards, ultimately leading to the collapse of the quality guarantee mechanism of geographical indications. What is more serious is that the collective goodwill of compliant operators within this region will continue to depreciate due to

market confusion, leading to an economic "tragedy of the Commons" - individual speculative behavior causing a systematic collapse of regional brand assets.

On the one hand, the strict regulation of the use behavior that actually meets the standards but has not been licensed originated from the "Measures for the Administration of the Registration and Use of Collective Trademarks and Certification Trademarks" in 2003 (which has become invalid), and was once again confirmed by the "Regulations on the Administration of the Registration and Use of Collective Trademarks and Certification Trademarks" promulgated and implemented in 2024. If producers are allowed to use certification marks without going through the review process, it will cause the supervision system established by industry associations (including production process audits, quality standard monitoring, etc.) to lose its institutional rigidity. The authorization authority granted by law to management organizations has compulsory effect, so they have the right to exercise restrictive power over any user who uses them without permission. It should be particularly emphasized that even if the operator fully meets the origin and quality standards of the geographical indication, they must still complete the legal procedures such as trademark use filing and signing the quality commitment letter before they can obtain the legal right to use the geographical indication - this is the cornerstone for maintaining the credibility of the certification trademark. On the other hand, the essence of protecting a geographical indication certification trademark lies in maintaining its reputation value, which is jointly forged by the attributes of the place of origin and the characteristics of quality. Moreover, the formation of reputation is the crystallization of the historical endowment and collective wisdom of a specific region, far beyond being covered by simple geographical or quality standards. Program supervision holds an irreplaceable institutional value for reputation protection. If unauthorized use by the management organization is allowed, it essentially simplifies the complex reputation formation mechanism into static indicators, leading to the failure of mechanisms such as access review and process monitoring, and causing the determination of responsibility to become difficult. If the use that is substantially compliant but lacks procedures is allowed to continue, it will lead to a fatal degradation of geographical indication trademarks. In the long

run, the combination of place names and generic names will lose its legal protective significance. Therefore, operators within the geographical indication production area who wish to legally use the certification mark must strictly abide by the procedural requirements set by the management organization. This compliance path is not only the institutional cornerstone for implementing the protection of exclusive rights to trademarks, but also an inevitable choice for coordinating the exclusive rights and interests of right holders, the freedom of use of licensees, and the public interests of consumers. Ultimately, it serves the sustainable development of the geographical indication certification trademark system and the maintenance of institutional credibility.

3. The Determination of the Relationship between Fair Use and Trademark Use

Trademark use is the starting point for a trademark to acquire value and also the logical basis for maintaining trademark rights [5]. It focuses on whether the defendant's use of the mark has the function of conveying information about the source of goods or services to consumers.[6] As a fundamental concept of trademark law, the relationship between it and the proper use of geographical indications has not yet reached a consensus in the academic circle and judicial practice. The focus of the dispute is concentrated on two normative levels: First, whether the proper use of geographical indications is equivalent to non-trademark use; Secondly, whether the use of a trademark should be a prerequisite for determining fair use. The essence of this theoretical tension lies in the institutional particularity of geographical indications, which possess both public attributes and private rights characteristics.

3.1 Non-Trademark Use does not Constitute a Sufficient Defense for Infringement of Geographical Indication Trademarks

Article 48 of the Trademark Law stipulates that the use of a trademark must be in the sense of "identifying the source of goods" (i.e., "trademarked use"), but trademark maintenance and trademark infringement are in different contexts. Whether this condition must also be met first to constitute trademark infringement remains controversial. Against this backdrop, the current theoretical tendency in the academic circle to directly equate the legitimate use of geographical indications with non-trademark use actually poses a risk of overgeneralization. Especially for

descriptive fair use, the core of its determination lies in whether the use behavior is a necessary means for the objective description of the product, and it excludes the subjective intention of taking advantage. If the usage goes beyond the scope of simple description, such as suggesting quality associations or origin advantages, it is difficult to fall within the scope of proper use. This criterion for judgment is fundamentally different from the system for identifying trademark use, and the two cannot be simply equated.

At the same time, whether it is the determination of fair use or trademark use, both are confronted with practical difficulties caused by the lack of norms, and the criteria for identifying both types of behaviors are ambiguous. The core of determining whether it constitutes narrative proper use lies in whether the relevant use behavior is merely necessary for achieving an objective description and does not involve any other subjective intentions. If the act of use goes beyond the scope of simple objective description, it is difficult to be recognized as fair use. However, there is a divergence between subjective and objective standards in the determination of trademark use. The former makes it difficult to provide evidence of the subjective state, while the latter emphasizes judgment based on the objective manifestations of the use behavior, but it falls into the predicament of ambiguous judicial discretion standards. This dual uncertainty further weakens the theoretical basis for confusing the two.

According to Article 48 of the Trademark Law, the use of a trademark usually requires the simultaneous satisfaction of three conditions: the use behavior in a commercial environment, the close association with the goods, and the realization of the source identification function. The descriptive proper use of ordinary trademarks usually only meets the first two conditions and essentially does not possess the attribute of trademark use. However, as a regional characteristic product, geographical indication is the result of the interaction between human creativity and specific local natural factors.[7] Its "first meaning" is the name of the region, and under the accumulation of specific natural and cultural factors, it gives rise to a "second meaning" that represents the quality and reputation of the product. This distinctiveness does not stem from the cultivation of the trademark owner, but is the product of historical inheritance and collective labor. The general public often directly associate the marking of

place names with the quality expectations carried by geographical indications. Even if the operators have reasonably marked the place of origin and have no intention of infringement, consumers may still be misled about the quality due to the information of the place of origin. This natural association effect makes non-trademark use unable to be a sufficient condition for defending against infringement of geographical indications. Therefore, non-trademark use may still lead to consumer confusion or misidentification due to the distinctive nature of geographical indication products. The establishment of non-trademark use is not a necessary and sufficient condition for a trademark not to infringe. In the determination of infringement of geographical indication trademarks, special dimensions such as the public welfare attribute of the secondary meaning, historical causes, and consumer cognitive psychology should be given priority consideration. Avoid simply applying the theoretical framework of fair use of ordinary trademarks.

3.2 Proper Use does not Take Trademark Use as a Prerequisite for Infringement

The system of proper use of geographical indication trademarks is essentially a necessary legal restriction on trademark rights and constitutes a legal exception to infringement. However, when determining whether a certain use behavior constitutes a legitimate use of a geographical indication trademark, a key point of contention lies in whether it is necessary to first determine that the behavior is a "trademark use" in order to make it a prerequisite for the determination of legitimate use.

Scholars who hold a positive attitude believe that the judgment procedure should follow the mainstream path for determining the legitimate use of ordinary trademarks: The first step is to confirm that the user's behavior constitutes trademark use, that is, it has the function of identifying the source of goods or services. Only when this prerequisite is met can further assessment be made on whether there is a possibility of confusion and other constituent elements such as the popularity of the trademark be considered [8]. In practice, some courts, when determining that the act of use does not constitute trademark use, directly conclude that it constitutes fair use. The opposing view holds that setting "trademark use" as a threshold requirement for infringement determination has logical flaws and practical risks. If this path is strictly followed, it

may lead to certain behaviors that substantially damage the core function of the trademark, especially the function of identifying the source of goods, but still escape the determination of infringement because they are not classified as "trademark use"[9]. It is worth noting that the position of the Court of Justice of the European Union also supports this critical thinking. Its case law emphasizes that the core criterion for determining trademark infringement should be whether it has caused damage to the function of the trademark, and there is no need to get entangled in the qualitative issue of whether the use behavior constitutes "trademark use" in advance.

As mentioned earlier, even if a user makes descriptive use of a geographical name, they may not automatically be exempted from fair use. The key lies in the purpose and objective effect of their use. If such descriptive use is not intended to truly and objectively indicate the origin of the product, or if its expression incorrectly conveys information about the product's source, causing confusion or misidentification among relevant consumers regarding the geographical origin of the product, then even if the act itself can be formally classified as "non-trademark use", it should not be legally recognized as a legitimate use of a geographical indication trademark.

The foundation of the geographical indication trademark protection system lies in its unique functions and legislative purposes. The original intention of designing this system is not merely to protect an abstract symbol, but to safeguard goods that originate from a specific geographical region and have developed specific qualities, reputations or other characteristics due to the unique natural and cultural factors of that region. Therefore, the core object protected by law is the collective goodwill condensed on the geographical indication and the unique quality of the product it guarantees. Based on this, when determining whether the use of a geographical indication trademark constitutes "fair use", the focus of the judgment must return to the origin of the system. The core of the review should not be whether the "nature" of the user's behavior is trademark use, but should focus on the "effect" produced by such behavior: that is, whether it has substantially damaged the unique quality and collective reputation of the goods carried and protected by the geographical indication trademark and originating from the specific region. Whether the usage behavior may dilute the reputation of the

logo, whether it misleads consumers' perception of product quality, and whether it improperly exploits the long-term accumulated commercial reputation of the region, these are the key factors determining whether fair use is valid or not. It not only avoids the protection loophole of being exempted from liability for non-trademark use due to possible damage to the function caused by pre-determination, but also conforms to the profound value of the geographical indication protection system.

4. The Institutional Balance between the Proper Use of Geographical Indication Trademarks and the Possibility of Confusion

Within the framework of the fair use of geographical indication trademarks, it is necessary to consider the possibility of confusion caused by the use of third parties, in order to provide an exemption space for liability for those acts that, although they may cause a certain degree of cognitive ambiguity, essentially meet the requirements of fair use. However, this tolerance for the possibility of confusion is not without boundaries. When the risk of confusion caused by the specific use of a third party significantly increases to a level that is sufficient to cause the relevant public to have a substantial misunderstanding about the source, quality of the goods or the association with the right holder of the geographical indication, such use behavior has exceeded the legal boundaries of proper use. It should no longer be included in the protection scope of this system.

4.1 Proper Use can Counteract the Possibility of Confusion to a Certain Extent

The fundamental logic of establishing the system for the proper use of geographical indication trademarks lies in providing a legal space for the use behavior of third parties under specific circumstances. This space inevitably includes a concession to a certain degree of confusion possibility. The original intention of the system is to allow market entities within a specific geographical area that meet certain conditions to reasonably use elements such as place names, product names or the geographical indication itself contained in the registered and confirmed geographical indication trademark. Under the current social and economic conditions, if it is required that relevant consumers must possess and exercise a "complete duty of care" to distinguish minor differences, this in itself constitutes a

theoretical demanding requirement. In fact, in the absence of high vigilance, the public has a theoretical possibility of confusion: they may, without careful identification, mistakenly believe that the goods provided by a third party originate from the production area designated by the geographical indication trademark, or mistakenly think that there is some specific connection, such as a license, between the goods and the right holder of the geographical indication trademark. This potential possibility of confusion requires a balance to be struck between market efficiency and rights protection. On the one hand, the smooth operation of the market economy cannot be based on requiring all consumers to pay excessive attention. Excessively high information discrimination costs will significantly suppress transaction efficiency and increase the total social cost. On the other hand, if any use behavior with the possibility of confusion is categorically excluded from the category of fair use, it will cause the fair use system itself to lose its foundation and value for existence. This system aims to safeguard the rights of relevant stakeholders within a specific region to make reasonable use of geographical indications, rather than merely trademark registrants. If the threshold is too high, it actually deprives these subjects of the rights and interests they are entitled to by law, which deviates from the original intention of the system's establishment.

One of the core features that distinguish geographical indication trademarks from ordinary trademarks lies in their distinct public attributes, which have dual dimensions. Firstly, the goodwill carried by geographical indications does not belong to a single enterprise or individual, but is a collective wealth jointly created, accumulated and enjoyed by a group of producers and operators within a specific region that meet the standards. Secondly, the subjects who have legitimate demands for geographical indications themselves and the economic benefits they contain are also collective. Under China's unique "Trademark Law + Specialized Regulations" protection model, the right holder of a geographical indication trademark is not the sole or absolute rights holder. Other producers and operators within the region that comply with production norms also enjoy legitimate rights and interests based on geographical indications. On a deeper level, the specific qualities identified by geographical indications are the crystallization of the long-term interaction between natural conditions and human

factors in a particular geographical area, as well as historical accumulation. The formation of this unique quality is the product of regional collective wisdom and continuous practice, and it is by no means achievable by an individual or a single organization alone. When a good-faith third-party producer located within the geographical area uses the geographical indication on similar products, its behavior will naturally evoke consumers' associations with the production area and quality characteristics represented by the indication, which may in turn enhance consumers' acceptance or preference for its products. The root cause of this association lies in the inherent reputation that geographical indications have accumulated over a long period of time - a reputation that is essentially a kind of "intellectual property" with public attributes. As the result of the joint efforts and wisdom of the vast number of workers within a specific region, including historical predecessors and contemporary practitioners, this collective goodwill should benefit all producers and operators within the region that meet the standards and participate in creating or maintaining this reputation. As an exclusive right, the trademark rights of geographical indications should not be infinitely expanded to completely prohibit such natural public association effects based on the inherent public attributes of geographical indications. In other words, the institutional design should ensure that well-intentioned and compliant producers and operators within the region can share the legitimate benefits brought by the reputation of geographical indications.

In conclusion, whether starting from the inherent balance logic of the system of proper use of geographical indications or based on the essential characteristics of the collective attributes of geographical indications, when constructing and improving the rules for the proper use of geographical indication trademarks, the position that "the system of proper use should be able to counter and accommodate a certain degree of confusion possibility" should be confirmed. When determining whether a certain use behavior constitutes fair use, the possibility of confusion should be regarded as one of the important considerations rather than the decisive threshold for absolutely excluding fair use.

4.2 The Degree of Confusion should be Limited to the Possibility of Confusion

Based on the institutional functions of trademark law, fair use can only tolerate the risk of confusion

within a limited scope, and the specific extent should be limited to a certain downward possibility of confusion.

Firstly, confusion should be limited to the possibility of confusion and must not actually lead to confusion in consumers' cognition; otherwise, it constitutes a fundamental violation of the core protection purpose of the registered trademark, and at this point, the defense of fair use will inevitably become invalid. The legislative purpose of the Trademark Law determines that it is necessary to not only protect consumers from the risk of misidentifying the source of goods and ensure that their purchase decisions based on trademark labels accurately correspond to the expected quality of goods, but also to safeguard the goodwill value accumulated by trademark owners through continuous business investment and prevent others from improperly encroachment on their commercial reputation by means of confusion. This concept of balance determines that the act of proper use can only tolerate cognitive ambiguity within a limited scope - that is, it allows for a certain degree of confusion possibility, but must never cross the bottom line of actual confusion. If the use behavior of a third party leads the relevant public to have a substantial misunderstanding about the origin, quality of the goods or the association with the rights holder, it directly violates the essential requirement of the Trademark Law to protect the exclusive right to use registered trademarks. At this time, regardless of the form of use, it loses the basis for legitimacy.

Secondly, the system of proper use can only counter a certain degree of downward confusion possibility, but does not give way to all confusion possibilities. The value generation mechanism of the exclusive right to use a registered trademark is fundamentally different from that of tangible property. Its property attribute stems from special legal empowerment rather than physical existence. The manifestation of its value highly depends on the actual use of the trademark and the process of accumulating goodwill, and the realization of its value must be based on a sound trademark management order and a fair competitive environment. Article 1 of China's Trademark Law clearly states that the overall legislative purpose is to fully protect the exclusive right to use trademarks and, on this basis, achieve the goals of maintaining a fair competitive order and protecting the interests of consumers, which precisely reflects this compound premise of value

realization.[10] Although geographical indication trademarks have the characteristic of regional sharing, they still need to follow the essential attributes of registered trademarks under the trademark law system. Excessive expansion of the scope of protection will enable the right holders to monopolize public symbol elements such as place names and common names, causing public confusion, suppressing the legitimate demands of market entities for reasonable identification of geographical sources, and forcing consumers to bear excessive information discrimination costs. This not only infringes upon the legitimate rights and interests of specific right holders, It will further undermine the collective goodwill system carried by geographical indications, undermine consumers' trust in origin labels, disrupt the fairness of market competition, and ultimately lead to the alienation of the system's functions.

Finally, the pure actual confusion standard is rigid, and its defect mainly lies in the neglect of the dynamic evolution law of trademark distinctiveness. The trademark involved in the case has not caused immediate confusion. However, it cannot be ruled out that confusion may arise due to the continuous commercial use by the right holder to enhance its reputation. This static judgment model fails to cover the development characteristics of trademark rights and cannot respond to the dynamic enhancement law of trademark distinctiveness, resulting in the inability to effectively prevent potential rights conflicts. If fair use is recognized merely based on the absence of actual confusion at the time of litigation, it may lead to the absence of future rights protection.

To achieve the dialectical unity of free market competition and order maintenance, it is advisable to consider establishing a gradient mechanism for judging the possibility of confusion. For low-level associative confusion naturally caused by the public attributes of geographical indications, it can be tolerated under the premise of meeting the requirements of good faith use, objective description, and not severing the quality association. When the usage behavior may lead to moderate risks such as misjudgment of product categories or bias in the perception of origin, a case-by-case assessment should be conducted by comprehensively considering factors such as the distinctiveness of the usage method, the popularity of the trademark, the level of consumer attention, and subjective intentions. It is particularly necessary to be vigilant against highly substantive

misidentification situations, including behaviors that cause confusion about the certainty of the source of goods, undermine the quality assurance function, maliciously attach to business reputation or significantly disrupt market order. Even if such uses have descriptive forms, they must be excluded from the scope of proper use because they exceed the institutional boundaries. The ultimate institutional framework should establish a dual principle of "limited inclusiveness and strict prohibition", which is distinct from both the rigid model that requires proof of the actual consequences of confusion and the harsh stance that regards any possible confusion as infringement. Inclusiveness is reflected in allowing proper use to counter associative confusion within reasonable limits. Typical situations include the good faith use of place names to identify the true place of origin, the objective description of product features, the non-prominent use of geographical indication elements and the addition of distinguishing explanations, etc. Prohibitive nature requires that when the use behavior may substantially sever the correspondence between geographical indications and specific qualities, lead to the misidentification of definite sources, improperly encroach upon the value of collective goodwill or undermine the fairness of market competition, its legitimacy should be denied regardless of its form of manifestation. This hierarchical response system not only adheres to the core function of trademark law in preventing confusion and protecting business reputation, but also responds to the collective characteristics of geographical indications. Moreover, it is deeply in line with the judicial practice's judgment concept of regulating the exercise of rights and promoting industrial development, providing a scientific legal framework for ensuring the healthy operation of the geographical indication trademark system.

5. Conclusion

The clear definition of the defense rules for the legitimate use of geographical indication trademarks is the key to resolving the conflict between the protection of the exclusive right to use geographical indication trademarks and the legitimate use demands of other producers and operators, and it is also the core issue for ensuring the sustainable operation of the geographical indication trademark system. Regarding the factors for determining the rule of fair use defense in the infringement of geographical indication

trademarks, a strict distinction should be made between geographical indication certification trademarks and collective trademarks in terms of the rule of fair use. The fair use of certification trademarks must be based on procedural compliance. Merely relying on the consistency of origin and quality is not sufficient to constitute a valid defense. This is determined by the particularity of the quality supervision system and reputation value carried by the certification mark. At the same time, the relationship between fair use and trademarked use lies in that non-trademarked use is not a sufficient condition for the defense of infringement of geographical indications, and the determination of fair use does not take trademarked use as a prerequisite. The core lies in judging whether the use behavior has substantially damaged the collective goodwill and the unique quality of the product carried by the geographical indication. Furthermore, the institutional balance between the proper use of geographical indications and the possibility of confusion emphasizes that proper use can tolerate a certain degree of confusion possibility within a limited scope, but it should be based on the bottom line that no actual confusion has occurred. A gradient mechanism for judging the possibility of confusion should also be established to ensure market efficiency while safeguarding the legitimate rights and interests of trademark owners and market order.

This paper aims to more accurately balance the exclusive rights and interests of geographical indication trademark owners, the reasonable use demands of producers and operators in specific regions, and the public interests of consumers. Ultimately, it promotes the scientific protection and effective utilization of geographical indication trademarks, which possess both public attributes and private rights characteristics, and provides ideas for the improvement of the proper use system of geographical indication trademarks in China.

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