

The Institutional Dilemma of the Missing Guarantee Function in Geographical Indication Trademark Pledge

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Abstract: As a unique intellectual property right connecting regional natural and cultural resources with industrial economy, geographical indication trademarks (GI trademarks) play a significant role in promoting regional economic development. Article 123 of the Civil Code explicitly incorporates geographical indications into the category of intellectual property objects, while Article 440 provides the institutional framework for trademark pledge, thereby bringing GI trademarks within the scope of rights pledge. However, their inherent attributes—the separation of the registrant’s management rights from the user’s usage rights, and their intrinsic linkage to natural and cultural factors of origin—create substantial inherent risks. Undoubtedly, improving supporting measures can promote the GI trademark pledge business, but the core impediment lies precisely in these excessive intrinsic risks. This paper critically re-examines the value orientation of current practices and the legal system governing GI trademark pledges, explicitly informs financial institutions like banks of the involved risks, and provides creditors with sufficient preemptive risk warnings. It proposes rational suggestions to achieve a balance between legal logic and market demand.

Keywords: Separation of Proprietary Incidents; Pledge of Rights; Realization of the Pledgee’s Right; Risk Prevention and Mitigation; Subrogation in Rem

1. Introduction

In the era of knowledge economy, GI trademarks are attracting increasing attention due to their significant property value. Article 123 of the General Provisions of the Civil Code establishes a new type of intellectual property right, explicitly including GI trademarks within the scope of intellectual property objects. Although

Article 440(5) of the Specific Provisions does not directly list GI trademarks, their theoretical suitability for pledge needs urgent justification through the subsumption under trademark pledge provisions and the stipulations in the Trademark Law allowing GIs to be registered as collective or certification marks. Even if theoretical compliance with formal legality is established, doubts persist regarding their practical efficacy. The question then shifts and extends: Can institutional recognition translate into practical efficacy? The collective rights attribute of GI trademarks fundamentally differs from the unitary rights structure of ordinary trademarks. The GI trademark registrant only holds management rights, while users possess usage rights but lack disposition rights. Under this “separation of rights” model, is the pledgor qualified? Can the registrant dispose of the collective right in its capacity as a manager? How can users, lacking a solid rights foundation, become qualified pledgors? Furthermore, GI trademarks are highly associated with natural and cultural factors; can their inherent territoriality meet the liquidity requirements of security interests? Delving deeper, how should the difficulties faced by pledgees in realizing the pledge when the debt secured by a GI trademark pledge matures unpaid be addressed? Does GI trademark pledge possess substantive guarantee functionality? In essence, are the practical obstacles to GI trademark pledge rooted in normative gaps or the inherent limitations of the right’s nature? When the law grants GI trademarks formal pledge eligibility but ignores their special characteristics, how can the sharp contradiction between theoretical suitability and the lack of practical guarantee power be reconciled? This paper aims to provide rational recommendations for this dilemma through systematic theoretical examination.

2. Deconstructing the Legal Characteristics of GI Trademark Pledge

2.1 Basic Meaning of GI Trademark Right Pledge

Legally, a GI trademark is a novel form of intellectual property protection where the geographical indication constitutes the substantive core, and the trademark serves as its manifestation. According to Article 16 of the Trademark Law and its Implementing Regulations, a geographical indication can be registered as a certification mark or a collective mark to indicate that goods originate from a specific region, where a given quality, reputation, or other characteristic of the goods is essentially attributable to its geographical origin. The managers are typically associations with supervisory capabilities, while the users are enterprises or farmers within the region meeting production standards. Under the GI trademark system, the relationship between the registrant and the user is generally termed as licensor and licensee [1]. Based on these institutional characteristics, GI trademark pledge, in short, refers to financing activities secured by pledging the GI trademark. The debtor or a third party pledges the GI trademark as security for the debt; if the debtor fails to perform the obligation, the creditor has the right to be preferentially satisfied from the proceeds of the intellectual property right through discounting, auction, or sale according to law.

2.2 Core Differences Between GI Trademarks and Other Trademarks

GI trademarks are inextricably linked to specific natural or cultural factors, endowing them with a strong public resource attribute. This fundamental nature dictates that both historical authorized use and contemporary pledge financing aim to safeguard regional public interests and share the commercial value of the GI [2]. Registrants, such as industry associations, primarily serve a supervisory and management role rather than seeking proprietary financial gain; they do not obtain exclusive ownership of the GI trademark. Correspondingly, users of GI certification marks or members of GI collective marks enjoy usage rights, which also fundamentally differ from traditional usufructuary rights. Users lack the right to prohibit other qualified entities from concurrently using the mark and cannot transfer or sublicense their usage rights.

2.3 Core Differences from Other Collateral

Ordinary trademark rights encompass multiple specific powers, such as the exclusive right to use, license to use, and assign the trademark, all of which can serve as the subject matter of a pledge. However, under the GI trademark system, the registrant (usually an association or specific organization) is the legal “trademark owner” but is prohibited from using the mark itself. Furthermore, notably, the users of the GI, as the subjects utilizing the indication, do not enjoy any form of assignment or licensing right; this restriction stems from the GI’s inherent nature as a collective, territorial public resource [3]. Moreover, from a practical demand perspective, the founding purpose of registrants as non-profit organizations determines their relatively low urgency for financing. Conversely, enterprises or farmers actually using GI trademarks face pressing capital needs for production, operation, and industrial upgrading. This misalignment between the entities needing financing and those eligible to pledge further undermines the feasibility of the guarantee.

3. The Normative Paradox of Formal Suitability

3.1 Statutory Legitimacy

Statutory legitimacy is a core constitutive element for the subject matter of an intellectual property pledge, directly stemming from the numerus clausus principle of property law. GI trademarks are protected by registering them as certification or collective marks, as clearly stipulated in Article 6 of the Trademark Law Implementing Regulations. Article 440 of the Civil Code explicitly lists trademarks as a type of pledgeable right. Given that GI trademarks are essentially a type of trademark, pledging them can theoretically fall within the scope of this Article, satisfying the statutory requirement for pledge subject matter. Notably, the word “etc.” (deng) in Article 440(5) allows for an expansive interpretation. It not only serves as a catch-all to avoid omissions in enumeration but also reflects the foresight and inclusiveness of legislative technique. Its scope can extend to other types of intellectual property rights, reserving institutional space for other pledgeable objects [4].

3.2 Transferability Requirement

Under the Trademark Law protection model, China’s current normative system explicitly

recognizes the transferability of collective and certification marks. Since GI trademarks are registered as such marks, they are also deemed transferable. Article 4 of the Trademark Law Implementing Regulations not only stipulates that GIs can be registered as certification or collective marks but its supporting rules also imply recognition of GI trademark assignment. Article 16(2) of the Measures for the Registration and Administration of Collective Marks and Certification Marks further stipulates that upon transfer of such a mark, the assignee must possess the corresponding subject qualification. This indirectly establishes, by setting assignment conditions, the legal basis that such trademarks, including GI trademarks, can be transferred upon meeting statutory requirements.

3.3 Value Basis

GI trademarks significantly enhance the market price and consumer recognition of goods by certifying specific origin and quality standards. Their presence or absence directly leads to considerable price differentials. GI trademarks not only guarantee a certain product quality but also indicate its geographical origin, saving consumers' time costs in selection through guaranteed uniform quality. GI trademarks can also generate economic benefits by licensing others to use them and collecting corresponding fees. This phenomenon fully demonstrates the dual value of GI trademarks as a property right: they possess both utility value and exchange value potential. As the scope of use expands, the marginal revenue of GI trademarked products continues to increase. Without long-term, collective use by producers within the region, the geographical indication itself would lack property value; it is the application of the GI to specific goods that generates potential property value [5]. In summary, strictly scrutinized against the statutory requirements for rights pledges established by the Civil Code and other norms, GI trademarks theoretically satisfy the core requirements for pledge subject matter at the jurisprudential level. However, this very process of demonstrating theoretical feasibility profoundly reveals and magnifies the fundamental obstacles insurmountable in actual pledge operations. The crux lies in: First, statutory legitimacy does not equate to liquidity. While the law recognizes their trademark status and limited transfer possibility, this does not

automatically confer the convenience and freedom required for market circulation. Second, transferability does not imply guarantee power. The stringent restrictions on transferring GI trademarks substantially weaken, or may even block, the practical path for realizing the pledge through assignment, discounting, auction, or sale in case of debt default.

4. Failure of Guarantee Power in Practice Models

4.1 Dilemma of Registrant's Lack of Disposition Right for GI Trademark Pledge

Several localities have explored models where the registrant (typically an industry association) acts as the pledgor, pledges the GI trademark right to a financial institution, completes the pledge registration, and the financial institution then provides collective credit lines to authorized users (members). Analyzing the legal relationship involves three parties: the GI trademark registrant (pledgor), the financial institution (pledgee), and the GI trademark licensee (debtor). After the registrant completes the pledge registration, financial institutions usually adopt two approaches. The institution lends directly to the licensee, with the registrant essentially acting as a third party providing security (the GI trademark pledge) to secure the debt; The institution grants a total credit line to the GI trademark association. Licensees can apply for loans from the institution against this line. This collective credit arrangement legally constitutes a maximum amount pledge relationship. According to Articles 439 and 440 of the Civil Code, the pledgor and pledgee can agree to establish a maximum amount pledge. Under this framework, the GI trademark registrant pledges the GI trademark as collateral, the financial institution sets the maximum debt limit (credit line), and agrees to provide general security for unspecified debts occurring continuously within this limit over a certain period. In practice, this model, separating the pledging entity from the financing entity, complicates the foundation of traditional pledge relationships. Users cannot pledge the GI trademark directly; they rely on the registrant to complete the pledge registration to obtain loans. Furthermore, for the non-profit GI trademark registrant, does the commercial profit-seeking nature of pledge financing conflict with its mandate? Does its charter or statutory duties

explicitly include pledging the collective GI trademark for financing? The legal validity of such pledging actions urgently needs clarification.

4.2 Lack of Legal Basis for Pledge of Licensee's Usage Right

A few local practices have explored having the GI trademark licensee act as the pledgor, pledging its authorized right to use the GI trademark as collateral to obtain financing from financial institutions. In terms of legal relationship elements, compared to the registrant pledge model, this involves only two parties: the GI trademark licensee (pledgor) and the financial institution (pledgee). The pledge process is relatively direct: the pledgor creates a pledge right over its authorized usage right obtained via a license contract; the pledge is established upon completion of the statutory registration/publicity procedure; the pledgee provides financing accordingly. Despite such exploratory practices, the core controversy lies in the legal nature of the pledged object and its suitability as pledge collateral. This right (the license to use) has a strong personal dependency. Its grant is intrinsically tied to the specific producer's location and production capacity, inherently lacking free transferability. As a restricted right based on a license contract, its core function is to certify the qualification to use the mark signifying specific quality. Whether this usage right possesses independent property value and satisfies transferability requirements is crucial for legal recognition. Moreover, pledge realization relies on its liquidation value. If the license contract terminates, the value of the pledged object risks vanishing. The legal validity of such pledges is fundamentally questionable; these case-specific breakthroughs lack solid support from higher-level laws.

5. Institutional Roots of the Lack of Substantive Guarantee Function

5.1 Separation of Rights Subjects Leading to Loss of Pledge Foundation

Within the GI trademark system, the registrant's legal status is special and should not be simplistically equated with a full-fledged right holder. Its management actions must be oriented towards the public interest of all members. Directly pledging the GI trademark may breach the legal positioning of a non-profit organization.

Furthermore, pledging constitutes a disposition act directly involving the transfer of trademark ownership, fundamentally conflicting with the GI trademark's inherent collective ownership attribute. Simultaneously, establishing a pledge right presupposes the pledgor's exclusive control over the subject matter. However, the substantive right holder of a GI trademark is the collective concept of "all producers and operators." Civil law requires both subjects and objects of rights to be clear and specific; the group "all producers and operators" is abstract and vague, incapable of being a qualified subject in civil law [6]. Moreover, when licensees pledge their licensed usage right, this right itself struggles to independently support its market value as collateral. The usage right granted by the registrant primarily manifests as a certification right signifying membership or compliance with usage standards. This right lacks the power of disposition; theoretically, it cannot be sublicensed; its very existence depends on the registrant's supervision and management. In essence, the GI trademark usage right, lacking the core disposition power of a property right, fails to meet the basic requirement of being legally transferable and realizable for pledge collateral, rendering it inherently unsuitable in legal nature.

5.2 Inherent Risks to Maintaining Pledge Efficacy

The difficulty in maintaining the value of a pledged GI trademark stems from risks inherent in its rights structure. The collective nature of GI trademarks further exacerbates security risks. The collective characteristic means multiple independent users exist, each bearing responsibility for maintaining the GI's reputation and ensuring standardized use to foster healthy market competition [7]. Otherwise, misconduct by individual users can systemically damage collective goodwill, weakening the GI's market reputation and potentially infringing consumer rights. The open licensing mechanism for GI trademark users conflicts with the inherent stability requirement of pledged collateral. Furthermore, during the pledge period, the GI trademark, as intellectual property, lacks physical form. The pledgee cannot exert direct control through physical possession; exercising its rights heavily depends on the institutional supply of legal rules [8]. Thus, for a security interest created over such a right, with

registration as the means of publicity, designating it as a “mortgage over the right” is more precise and appropriate than designating it as a “pledge of right”. This approach better aligns with the logical structure and systematic coherence required of a civil code as a codified law [9]. Compared to ordinary trademarks, the collective ownership and dispersed usage structure of GI trademarks make it significantly harder for the pledgee to control the collateral. However, according to existing laws, restrictions on the pledgor’s disposition also create conflict. Article 444 of the Civil Code establishes the principle of “prohibition of assignment or licensing” after intellectual property is pledged, allowing exceptions only with the pledgee’s consent. Yet, GI trademarks intrinsically rely on licensing to maintain their value. Restricting licensing hinders value maximization. This means that after pledging a GI trademark to a bank, any further licensing requires the bank’s permission. This provision precisely overlooks the special rule that GI trademarks derive value from licensing.

5.3 Legal and Factual Obstruction of Pledge Realization Paths

The uniqueness of GI trademarks as pledge collateral lies in their territorial dependency and public resource nature. Their value primarily stems from specific geographical environments (e.g., climate) within the region; they cannot be realized independently of their origin, forming a non-transferable value composition. The rights structure of GI trademarks further intensifies transfer difficulties, severely limiting potential assignees. In practices where registrants pledge GI trademarks (as mentioned), registrants are typically social organization legal persons or government-approved management bodies. Assigning the GI trademark requires the assignee to be an identical type of entity—a non-profit organization with product quality supervision capabilities approved by relevant authorities and located within the origin area. Even if, *arguendo*, pledging the GI trademark usage right were viable, qualified users could simply obtain a license or use it legitimately, eliminating the need to acquire the usage right via assignment. Regarding the interface issues arising from Article 4(2) of the Implementing Regulations of the Trademark Law, the substance of this provision indicates that if goods originate from the approved region and

satisfy the other conditions associated with the geographical indication, the user may legitimately employ the GI without authorization. At the very least, the registrant of the collective GI trademark lacks the authority to prohibit such use—even if this interpretation remains contested in judicial practice [10]. Moreover, traditional pledge realization methods are inapplicable. For negotiated settlement, pledgees (usually banks) lack the capacity to supervise trademarks and are prohibited from engaging in such substantive business. They cannot directly hold the trademark, making this realization method unfeasible.

6. Rational Institutional Reconstruction and Bottom-Line Relief for GI Trademark Pledge

6.1 Narrowing the Scope of Pledgeable Subject Matter

The institutional construction of GI trademark pledge is rooted in the civil guarantee framework of the Property Rights Section of the Civil Code, guided by values of equality, freedom, and fairness priority. However, this overlooks the special attributes of commercial guarantees, where commercial entities pledging collateral have core demands for transaction security and efficiency alongside legal compliance [11]. Essentially, the inherent value instability of GI trademarks is the fundamental constraint on their pledge marketization. Based on the aforementioned institutional defects and practical dilemmas, it is recommended that the revision of the Trademark Law explicitly limit the applicability of GI trademark pledges, positioning them as auxiliary security instruments, and mandating financial institutions to conduct thorough risk rating disclosures. Comprehensively considered, the conditions for incorporating GI trademarks into mainstream trademark right pledge financing are immature; a prudent approach is warranted.

6.2 Strengthening Preemptive Risk Warnings to Pledgees

While moral support from financial institutions for GI trademark pledges is commendable, such pledges entail significant and accumulating risks. Their guarantee function is inherently flawed and often devolves into *de facto* unsecured loans. If the pledgor defaults, banks face multiple losses: First, the disposal value of the GI trademark is highly likely to approach zero.

Second, the pledgee may bear the entire debt loss. Third, the cost of judicial proceedings against the GI trademark registrant is prohibitively high, with minimal feasibility. The realization channels for GI trademarks are virtually “elusive.” When the contract expires and the debtor defaults, the intellectual property certificate held by the bank has negligible market value. Pledgors should proactively negotiate with banks to add other collateral, avoiding forced disposal of the GI trademark. Pledgees must deeply understand the risks. Upon debt maturity and default, judicial proceedings should commence immediately to apply for court auction/sale of the pledged trademark, preventing further value depreciation. If the sale proceeds are insufficient to cover the debt, supplementary repayment should be sought from the debtor according to law.

6.3 Breakthrough Interpretation: Applying Doctrine of Subrogation to License Fees

Where GI trademark pledge is impractical, licensing fees generated from GI trademarks offer a complementary relief mechanism. The collective and public nature of GI trademarks necessitates continuous licensed use, which is precisely the foundation of their value. Simultaneously, pledgee interests need balancing by strengthening their control over the collateral’s exchange value. To reconcile the conflict between realizing the security interest and preserving the GI trademark’s function, traditional rules on fruits (*fructus*) can be innovatively expanded by applying the Doctrine of Subrogation (*res in alium dominio est*) to license fees. Include ongoing license fees from normal operations within the scope of the word “etc.” in Article 390 of the Civil Code (“loss, destruction, or expropriation”). While the listed items represent absolute forms of value conversion, the openness of “etc.” allows room for “positive value realization” (license fees), making them the statutory extended object of the original pledge right. The doctrine aims to secure the secured party’s control over the property’s exchange value. License fees are the core value carrier of GI trademarks. As the continuation of the original security right, the pledgee should have priority over the full amount of the fees. Contrast this with the fruits (*fructus*) regime under pledge, where the pledgee only has a right to collect the fruits as security for the debt, not a priority right to them.

Expanding interpretation within China’s current legal system is a suitable approach. Being confined to merely collecting fees under the fruits regime offers weak protection. Extending the priority right of subrogation provides the GI trademark pledgee with essential bottom-line relief, ensuring partial recovery, especially given the high intrinsic risk of non-recovery inherent in GI trademark pledges. The scope of application for the subrogation of security interests under Article 390 of the Civil Code should not be confined to a literal interpretation. Rather, it ought to be comprehensively construed through purposive and systemic considerations, interpreted as appropriately encompassing circumstances of *de facto* extinction resulting from alienation, exchange, and analogous transactions [12]. When the GI trademark itself is difficult to realize due to collectivity and territorial restrictions, license fees, as the most direct monetary conversion of its value, should naturally extend the guarantee effect. Subrogation respects the autonomy of will, facilitates the circulation of intellectual property before pledge realization, expands the space for intellectual property owners to engage in other transactions using licensing proceeds, encourages transactions, and promotes efficient resource utilization [13]. Furthermore, concurrent rights arrangements benefit the mortgagor/pledgor because “dual protection” for the mortgagee/pledgee enhances lending incentives, thereby reducing financing costs [14]. Finally, price subrogation provides more comprehensive protection for the mortgagee/pledgee without constituting overprotection. Similarly, applying the doctrine of subrogation to GI trademark license fees is not overprotection but a balanced outcome safeguarding all parties’ interests.

7. Conclusion

Theoretical suitability does not necessarily translate into substantive guarantee function. The theoretical suitability fails to bridge the gap between the inherent legal attributes of GI trademarks and the essential requirements of security interests. The intrinsic separation of rights, collectivity, and territorial linkage of GI trademarks create significant risks for pledge realization. Looking ahead, a rational and prudent approach is essential. Financial institutions must be mandated to provide robust preemptive risk warnings. The value orientation

must steadfastly prioritize protection to avoid harming the public interest. The true value of GI trademarks lies in the “epic of origin” written with the land as paper and craftsmanship as ink. Only by adhering to the bottom line of protection, fully acknowledging the risks, and exploring limited, risk-controllable financial pathways can a balance between safeguarding the public interest and protecting private rights be achieved.

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