

On the Path Analysis of Geographical Indication Applicable Public Interest Litigation System

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Abstract

In recent years, Chinese geographical indication has developed rapidly, and its brand value has contributed a lot to rural revitalization by promoting product appreciation. However, at the same time of development, geographical indication is accompanied by frequent infringement and counterfeiting phenomenon, which seriously disturb the market order and restrict economic development. In order to crack down on the act of counterfeit infringement of geographical indications, and alleviate the predicament of geographical indications falling into the "tragedy of the common land". This paper discusses the necessity of geographical indication, analyzes the essential attributes of geographical indication based on the legal basis of public interest litigation, and establishes a public interest litigation system with geographical indication characteristics.

Keywords

Geographical indication public interest litigation tragedy of common land intangible assets.

1. OVERVIEW OF GEOGRAPHICAL INDICATION PUBLIC INTEREST LITIGATION

(1) Concept of Geographical Indication public interest Litigation

Public interest litigation refers to a kind of objective litigation brought by specific state organs, social organizations and individual citizens in order to safeguard the public interest. Geographical indication public interest litigation refers to an objective lawsuit filed by specific state organs, enterprises, social organizations and individual citizens in order to safeguard the development of the geographical indication industry. [1]

(2) Characteristics of geographical indication public interest litigation

It has certain public properties. Article 22, paragraph 1, of the TRIPS Agreement states the concept of a geographical indication: "A geographical indication referred to in this Agreement is an indication of a good originating in the territory of a Member or in a certain region or region within the territory of a Member whose particular quality, reputation or other characteristics are essentially attributable to its geographical origin." [2]

In terms of the essential attributes of geographical indications, geographical indications depend on local human factors and natural factors, among which the natural factors include geographical factors, climatic conditions and so on. Due to the continuity of the region and the characteristics of the area, it is determined that the growth of geographical indication products is in a certain area, which requires the management of people in a specific area. It also determines that geographical indication has certain public attributes, belonging to the category of public resources.

Protect intangible asset value. Environmental public interest litigation refers to lawsuits filed by legal persons, natural persons or social organizations to the people's courts in order to safeguard the public interest when the public interests of the environment are infringed upon due to the illegal acts or omissions of natural persons, legal persons or other organizations. The public interest litigation on food and medicine protects the public's right to health. However, no matter it is environmental public interest litigation or food and drug safety public interest litigation, the objects they protect are not invisible. Geographical indication public interest litigation is very different from other types of public interest litigation on this point. Geographical indication public interest litigation belongs to the category of intellectual property public interest litigation, which protects more intangible asset value.

It belongs to the category of economic public interest litigation. About economic public interest litigation, there are still some controversies in the academic circle. Some believe that economic public interest litigation specifically refers to the litigation activities in which the courts at all levels judge the infringements of national economic interests brought by the parties according to law in accordance with the requirements of the law. Some believe that economic public interest litigation refers to a kind of litigation activity that can be brought to the court by the parties concerned when the behavior of infringing on the social public economic interests occurs. From the above discussion, we can know that economic public interest litigation is a kind of activity to bring a lawsuit against the violation of national or social public interests, especially economic interests, and who can bring a lawsuit. [3]

The characteristic of economic public interest litigation lies in its pursuit of social and economic fairness and justice. The phenomenon of geographical indication infringement and passing off will undoubtedly disturb the market order and infringe the economic interests of consumers. Due to the late start of the legal construction of public interest litigation and the fact that the geographical indication public interest litigation protects economic interests, compared with the food and medicine safety public interest litigation to protect personal safety, the economic interests of geographical indication public interest litigation protection priority is lower than personal safety. However, even if the priority of economic interests lags behind personal safety, in today's growing economic development, the protection of economic interests and market order is also a very important part. It is also because of the public's neglect of the protection of economic interests that the system of economic public interest litigation has been shelved. Attaching importance to the construction of economic public interest litigation system is conducive to the development of geographical indication public interest litigation.

2. THE NECESSITY OF GEOGRAPHICAL INDICATION PUBLIC INTEREST LITIGATION

According to the 14th Five-Year Plan for the Protection and Application of Geographical Indications, geographical indications provide strong support for rural revitalization. Relying on geographical indications, building regional public brands and developing characteristic industries can effectively promote the high-quality development of regional economy and the steady improvement of national economy. At present, China's geographical indication products are faced with problems such as chaotic market management and frequent infringement phenomenon. Ordinary civil litigation can no longer meet the needs of relevant interest subjects to safeguard their rights, but public interest litigation can solve the problems in the market to a certain extent. Therefore, it is necessary to introduce geographical indication public interest litigation protection.

(1) Geographical indication public interest litigation meets the need to protect the public interest

Geographical indications have public properties. The establishment of the geographical indication public interest litigation system is out of the need to protect public interests. The public interest is for the broad masses of the people and involves a wide range of areas. The brand benefits carried by geographical indications reflect the benefits of collective achievements. If geographical indication products are infringed, the public interest will be damaged. The public nature of geographical indications confirms the importance of safeguarding public interests of geographical indications.

On April 22, 2022, the Procuratorate of Anji County in Zhejiang Province held a public hearing on the public benefit protection case of "Anji White Tea" geographical indication certification trademark. The hearing members asked questions and discussed the hearing matters such as whether the infringer infringed on the legal interests, whether the infringement involved the public interest and the reasonability of the prosecution request to be supported, and made professional comments, "If the infringement acts related to Anji white tea are not contained, the public interests of the local economy will be harmed". It can be seen that the protection of geographical indications has a certain involvement with public interests. Public interest litigation in the field of geographical indication provides a new way to protect public interest and litigation right.

Geographical indications are prone to "tragedy of the Commons". The establishment of geographical indication public interest litigation system is an effective means to solve the "tragedy of the Commons". "Tragedy of the Commons" is an economic theory put forward by Professor Garrett Harding, a British scholar, in his article "Tragedy of the Commons". In short, the Commons is a resource shared by many people, and any co-owner has the right to use the Commons. Every co-owner is a rational economic man who wants to maximize his interests. [4] The field of geographical indications also faces the dilemma of "tragedy of the Commons". In order to pursue their own interests, everyone preposes geographical indication products, which seriously affects the brand image and value of public geographical indications in the region and hinders the development of geographical indication products.

To the "Zhongning wolfberry" as an example, the merchant will not local wolfberry into the printed "Zhongning wolfberry" words in the packaging. Local consumers out of trust "Zhongning wolfberry" this brand to buy, but found its poor quality, no longer trust "Zhongning wolfberry" this brand, "Zhongning wolfberry" brand reputation has declined significantly. Zhongning wolfberry fraud phenomenon is serious, so that consumers are wary of this, which will further cause adverse consequences: "in the future whether authentic Zhongning wolfberry or fake Zhongning wolfberry, will be due to the loss of the brand value of Zhongning wolfberry, in the market competition." And the emergence of this situation, but not timely stop and management, "tragedy of the Commons" produced. The establishment of the geographical indication public interest litigation system can, to a certain extent, realize the universality of the subject of litigation right and form a joint effort to fight against infringement and counterfeiting.

(2) Geographical indication public interest litigation is attributed to the essential nature of geographical indication

The essential attribute of geographical indications that are liable to be infringed. From the essential attribute of geographical indication itself, it is easy to be infringed. First of all, the infringement cost of geographical indication is very low, which is related to the nature of geographical indication itself and legal norms. The technology involved in patent is complex, and it is usually difficult to be copied. Geographical indications, trademarks and Copyrights can be directly imitated and copied, and these types of intellectual property rights are closer to life, increasing the possibility of substantive contact, easier to be copied and imitated.

Secondly, geographical indication is easy to be infringed and the level of legal rank has a certain relationship. The current geographical indication related laws and regulations are still

mainly based on the combination of trademark law and administrative law. Two of these sectoral regulations are blank areas in terms of legal liability provisions and effective tort relief measures. The infringement of geographical indication is weak, which can not contain the behavior of infringer well, and it is difficult to deter the potential infringer, which is not conducive to the right protection of geographical indication. Further speaking, if this situation is not improved, it will greatly encourage the aggressor's arrogance, but also further cause the chaos of geographical indication protection. Through geographical indication public interest litigation, it can not only effectively crack down on bad merchants in the field of geographical indication, but also enhance the awareness of right holders to some extent.

Intellectual property characteristics of geographical indications themselves. From the intellectual property characteristics of geographical indication itself, as a kind of intangible assets, geographical indication has received little attention from the public. At present, it is not uncommon for geographical indications to be fake or fake, which seriously disturbs the market order of fair competition. If we do not strengthen the quality management of geographical indication products, it will lead to their unrestrained use, resulting in the continuous decline of brand value, affecting the reputation and competitiveness of geographical indication products. Therefore, attention should be paid to the quality supervision of geographical indication products and the protection of the added value of products. The establishment of public interest litigation on geographical indications has increased multiple rights subjects and litigation rights, so that more interested parties can protect their rights through legal means, and increased the importance of geographical indications. At the same time, the intangible assets of geographical indication have been fully utilized, and the value and competitiveness of products have been continuously improved, which has accelerated the industrialization development of geographical indication products.

3. THE COUNTERMEASURES OF GEOGRAPHICAL INDICATION PUBLIC INTEREST LITIGATION

(1) Legal Basis of geographical indication public interest Litigation

Extensibility of "interest relationship". Geographical indication public interest litigation, as a unique but common path of public interest litigation, has the most simple feature of public interest litigation -- protecting the public interest. From the perspective of commonality, the deep legal support of geographical indication public interest litigation is a mixture of diversified factors with the protection of public interest as the theoretical origin, geographical indication as the basic core, legal ethics as the main feature, and economic development as the internal motivation.

Public interest is a dynamic and open concept, and its content is mainly defined from the political and social level. Therefore, public interest is closely related to national fairness and justice and social public interests. As the representative of the public interest, the public interest determines that it has the important characteristic of "interest relationship" can be expanded.

There is no doubt that geographical indication public interest litigation also has the extensibility of "interest relationship". In geographical indication public interest litigation, the interests of various subjects are often involved, such as geographical indication right holders, regional governments, public consumers, etc. In the case of Nanfeng Tangerine, because of its sweet and small size, Nanfeng tangerine has attracted a large number of consumers in the market and has a broad marketing market. With the growth of Nanfeng tangerine reputation profit, the market gradually emerged listing, fake tangerine, when the market is difficult to distinguish between true and false, good and bad mixed half of the Nanfeng tangerine sales scene is common, mass consumers are difficult to buy the real goods, many times of cheating consumption makes consumers difficult to trust Nanfeng tangerine, sales reduction is the

product unsalable, It seriously affects the interests of the users of geographical indications -- farmers, enterprises, etc., and is not conducive to the rapid development of the regional government economy. From the case of Nanfeng Tangerine, it is not difficult to know that the extensibility of "interest relationship" of geographical indication requires the establishment of a feasible litigation mode benefiting the public, so it is extremely important to adopt geographical indication public interest litigation.

The relaxation of the qualification to Sue. Under the current legal system, the qualification for prosecution has been relaxed, and the prosecution is no longer strictly limited to the "interested parties" stipulated in the Civil Procedure Law. With the help of environmental public interest litigation regulations, the public, procuratorate, interested parties and other subjects can be included in the scope of prosecution, which undoubtedly gives geographical indication public interest litigation a deeper litigation foundation. It also makes geographical indication public interest litigation more feasible in legal ethics.

(2) Judicial practice of geographical indication public interest litigation.

The idea of geographical indication public interest litigation is not only supported by legal basis, but also demonstrated by judicial practice. Recently, geographical indication public interest litigation has been applied to social practice, among which the most famous cases are "Shanghai Pudong Nanhui 8424 watermelon case" and "Hangzhou West Lake Longjing public interest litigation case".

Shanghai Pudong Nanhui 8424 Watermelon case. In July 2021, several consumers reported the issue to the Shanghai Consumer Rights Protection Commission after discovering that the price of "Nanhui 8424 watermelons" on the market was obviously abnormal and the special logo on the watermelons was different from the official logo. During further investigation, the regulator found that the supplier of the fake watermelons was Shanghai Fruit Distribution Co., LTD. Without the permission of the trademark owner, the company used a trademark similar to the geographical indication collective trademark, which infringed the exclusive right of Pudong Agricultural Association.

At the end of 2021, Pudong Procuratorate noticed the administrative penalty case of "Nanhui 8424 Watermelon" geographical indication collective trademark, so it took the initiative to contact with Shanghai Pudong Agricultural Association. After comprehensive investigation and judgment, the procuratorate believed that geographical indication is a public resource in a specific region, and the collective trademark of geographical indication itself has a collective attribute and belongs to the category of social welfare. Therefore, the People's Procuratorate of Pudong New Area adopted the method of "supporting prosecution to protect the social public interests", formally registered the case for acceptance, and provided strong legal support for the case by comprehensive use of supporting prosecution opinions and other ways.

The "Nanhui 8424 watermelon" case is undoubtedly the precedent of geographical indication public interest litigation. Geographical indication public interest litigation is also in line with the overall value goal of public interest litigation. The Shanghai Pudong People's Procuratorate has explored a new path of "supporting litigation to protect public interests in the field of intellectual property rights", laying a solid judicial foundation for the establishment of geographical indication public interest litigation.

Hangzhou West Lake Longjing public interest Lawsuit. From 2018 to 2021, Yao used titles, pictures and text descriptions with the words "West Lake Longjing" on the online store of the e-commerce platform without legal license, packaged and sold his own tea produced in Zhongtai Street, Yuhang District, Hangzhou, and a small amount of tea purchased under the name "West Lake Longjing" tea. On August 13, 2021, the suspect Yao XX was transferred to the public security organ for investigation and prosecution on suspicion of the crime of counterfeiting registered trademarks. In order to protect the reputation of "West Lake Longjing",

the Procuratorate of Linping District started the public welfare protection of "West Lake Longjing" geographical indication certification trademark simultaneously. In November 2021, the People's Procuratorate of Linping District filed a public prosecution against the defendant Yao XX in the case of counterfeiting registered trademarks. At the end of November 2021, the defendant Yao made an apology to the association in person, and under the auspices of the judge, the original defendant reached a mediation agreement.

In this case, the Linping District Procuratorate upheld the public interest by supporting the prosecution, which was an important step in geographical indication public interest litigation and also provided valuable judicial practice experience for the subsequent development of geographical indication public interest litigation.

In addition to the judicial support of the above two typical cases, there is also the legal support of the local regulations on geographical indications. The Regulations of Guangdong Province on the Protection of Geographical Indications clearly stipulate that "when people's procuratorates discover illegal acts of geographical indications that harm public interests while performing their duties, they may support prosecution or initiate public interest litigation according to law."

(3) Analysis on the path of public interest litigation over geographical indications

The Regulations of Guangdong Province on Geographical Indications, which came into effect on January 1, 2023, clearly states that "when people's procuratorates discover illegal acts of geographical indications that harm public interests in the course of performing their duties, they may support prosecution or initiate public interest litigation according to law." On a practical level, Shanghai and Hangzhou have actively explored and implemented the "Nanhui 8424 Watermelon" and "West Lake Longjing" as models for new approaches to public interest protection of intellectual property rights. However, the geographical indication public interest litigation is still in the preliminary stage of exploration. Due to the lack of written basis and a large number of typical demonstrations, the uncertainty in the specific operation process has increased greatly. It is particularly important to actively explore and constantly improve the concrete implementation path of geographical indication public interest litigation.

In this context, we took the geographical indication public interest litigation as the research object, thoroughly analyzed and diagnosed the existing problems and their causes, and therefore put forward relevant countermeasures and suggestions, in order to promote the further development of our public interest litigation system of geographical indication.

The existing problems and its causes of the public interest litigation system of geographical indication in our country

Lack of concrete and feasible legal norms. Since civil public interest litigation was formally established in 2012, the public interest litigation system has ushered in a period of rapid development. Up to now, the number of environmental public interest litigation cases is the largest, the implementation effect is the best, and the related system is developing the fastest. However, even the environmental public interest litigation that is most likely to become the "leader" still has a lack of legal norms, not to mention the geographical indication public interest litigation that has gradually emerged in recent years.

From the perspective of the content of the regulations, currently more is to follow the provisions of the private interest litigation procedure law, such as the Civil Procedure Law, the Administrative Procedure Law, the People's Procuratorate public interest litigation Handling rules, and the Supreme People's Court on the trial of environmental civil public interest litigation applicable law issues.

In terms of the causes of cases, since the public interest litigation system was confirmed by the legislation in 2012, there has been no clear and uniform cause of case provisions for

geographical indication public interest litigation cases. Local courts have some concerns when confirming the causes of such cases. If this goes on, randomness and confusion will only get worse. Moreover, the collection and aggregation of environmental public interest litigation cases will bring a lot of inconvenience, which is not conducive to the development of relevant thematic research. [5]

The identity of procuratorial organs is controversial. In the case of filing administrative public interest litigation, procuratorial organs enjoy the right of investigation and verification according to law, and when exercising the right of investigation and verification, other subjects including administrative organs have the obligation to cooperate. Compared with ordinary plaintiffs, procuratorial organs obviously have certain advantages, so it will inevitably affect the distribution of burden of proof. [6]

More attention is paid to the compensatory function. Geographical indication public interest litigation includes preventive judicial relief and compensatory judicial relief. Among them, preventive judicial relief means that in order to prevent the infringement and damage of geographical indication, the judicial organs of the state crack down on the infringement of geographical indication in accordance with relevant laws and regulations. Due to the irreversibility of the infringement damage of geographical indication, once infringed, the reputation of geographical indication products will plummet, which will directly affect the development future of geographical indication products, but can not be remedied by compensation for losses. The logical sequence of preventive judicial relief for the acts of geographical indication damage and compensatory judicial relief for the results of damage can better reflect the original value of public interest litigation of geographical indication. However, the current public interest litigation of geographical indication pays more attention to its compensatory function, but generally ignores its preventive function. [7]

The perfect path of geographical indication public interest litigation at present

Public interest litigation of geographical indication is not only of irreplaceable significance to the development of geographical indication products, but also crucial to the improvement and improvement of public interest litigation. Therefore, our country should accelerate the exploration of the geographical indication public interest litigation path, in order to help the geographical indication product development steady. Through the analysis of the current situation of the geographical indication public interest litigation system and the summary of the case practice, it concludes that the system of public interest litigation of geographical indication should be improved from the following aspects:

Actively explore the establishment of relevant regulations on geographical indication public interest litigation. At present, Jiangsu Province, Shanghai and Hangzhou take the lead in the implementation of geographical indication public interest litigation, which not only provides a model for other regions in the country to file geographical indication public interest litigation, but also provides practical experience in the formulation of relevant laws and regulations. Therefore, in the process of exploring the establishment of geographical indication public interest litigation, we should learn from the effective mechanism of typical cases, and address the exposed disadvantages. Formulate coping strategies to perfect the public interest litigation system of geographical indications.

Secondly, it is necessary to establish the case rules applicable to "heterogeneous damage of geographical indication products and consumers' right to consume authentic quality". According to Article 55 of the Civil Procedure Law, the causes of action of public interest litigation are limited to environmental pollution and infringement of the legitimate rights and interests of many consumers. Therefore, there is nothing to be done about the heterogeneous behaviors of some geographical indication products and consumers' original quality consumption right. Therefore, the causes of action of public interest litigation of geographical

indication should be expanded to the existing causes of action of public interest litigation. Among them, the heterogeneous damage of the producers means that the producers of the geographical indication products should have the obligation to protect the original quality of the products. The consumer's right to consume authentic quality means that the consumer has the right to reasonable consumption expectation of the product's quality and safety value. [8]

Clarify the identity of procuratorial organs. First of all, according to Article 14 of the Implementation Measures for the Trial of Public Interest Litigation Cases Brought by the People's Courts, procuratorial organs should be public interest litigants, but their rights and obligations should refer to the rights and obligations of ordinary plaintiffs. Although this provision has been criticized for a long time, it has to be admitted that the identity of procuratorial organs should be clearly defined as public interest litigants. But at the same time, it has its own particularity, and this particularity will be limited to some extent -- the procuratorial organ should follow the principle of equal litigation status of the parties when it brings geographical indication public interest litigation, consciously take the objective principle and legal principle as its own basic criteria, so as to achieve legal justice, moderation and modesty. [9]

For the distribution of the burden of proof, we should distinguish between the evidence of the legitimacy of administrative acts and the evidence outside this. The former is still presented by the defendant, while the latter needs to be determined according to the content of the relevant facts. For example, the burden of proof for the infringement of national and social public interests should be borne by the procuratorial organ. [10]

Improve the implementation of preventive judicial relief in geographical indication public interest litigation. Currently, the preventive relief means of geographical indication public interest litigation is still under the traditional framework, and its deterrence is declining. In addition, as mentioned above, preventive judicial relief should precede compensatory judicial relief in the logical sequence of geographical indication public interest litigation. Therefore, some breakthroughs should be made in the preventive relief means of geographical indication public interest litigation, and new means should be introduced, such as prohibition order or suspension request system, so as to effectively achieve the goal of preventive judicial relief. Specifically, in the case of geographical indication public interest litigation, for the infringer, the court can issue an injunction or support the request for suspension, forcing the enterprise or administrative organ to implement. So as to give full play to the preventive relief function of "organizing or stopping the tort damage of geographical indication that will be carried out, is being woken up or has already been carried out". [11]

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