

Study on the Infringement Identification of Geographical Indication Certification Trademark

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Abstract: Compared to ordinary trademarks, geographical indication certification trademark have unique attributes such as separation of use rights and ownership, ability to be named by administrative divisions at or above the county level, and direct indication of product quality. On the basis of clarifying that the scope of rights of the owner of the geographical indication certification trademark includes exclusive rights and prohibition rights, this paper summarizes the relatively fixed judgment ideas formed in current judicial practice on the issue of infringement determination, and points out that there are different views of the courts on the criteria for determining infringement, mainly including the two aspects of judging the confusion potential and reasonable use. In order to improve the infringement identification path of geographical indication certification trademark, it is necessary to clarify the standard of "commodity quality confusion", which requires the degree of confusion to reach the confusion of origin and quality, and at the same time improve the constituent elements of reasonable use. Specifically, it needs to be judged comprehensively from three aspects: objective use method, subjective usage intention and actual use effect. Only when the three conditions are met at the same time can reasonable use be established.

1. Characteristics and Scope of Rights of Geographical Indication Certification Trademark

1.1 Unique Attributes of Geographical Indication Certification Trademark

The types of China's trademark registration is divided into two categories: ordinary trademarks and special trademarks, among which special trademarks include collective trademarks and certification trademarks. A Geographical indication certification trademark can be obtained by registering a geographical indication as a certification trademark. A Geographical indication certification trademark combines the characteristics of a geographical indication with the functions of a certification trademark, including the characteristics that a geographical indication indicates a specific place of origin, quality, reputation, and is determined by natural or human factors in the source region. It also has the function of certifying the specific qualities of goods such as the origin, raw materials, manufacturing methods, quality, and accuracy. [1]

The characteristics of Geographical indication certification trademark can be summarized as follows: firstly, the ownership and use rights of trademarks are separated. The owner of an ordinary

trademark may use the trademark himself or authorize others to use it. If someone uses the same or similar trademark on the same or similar goods without permission, the owner has the right to prohibit. The registrant of geographical indication certification trademark is authorized by the local government and industry authority and licensed by an organization with the ability to regulate quality or services. The organization only has the ownership of the registered trademark, does not have the right to use it. And it may not use the trademark on its own, but only license it to the eligible applicants in that geographic area. Secondly, contrary to the trademark system, which explicitly prohibits the use of place name of administrative divisions at or above the county level, geographical indication certification trademark consists of "place name + goods". This place name can not only be an administrative division at or above the county level, but also a geographical concept with identification, such as the Potala Palace and the Jade Dragon Snow Mountain. [2] Thirdly, unlike ordinary trademark indicating the producers and sellers of goods, Geographical indication certification trademark indicate the quality, reputation or other characteristics of goods, which are mainly determined by natural or human factors in the region and are not possessed by other goods.

1.2 Scope of Rights for Geographical Indication Certification Trademark

Clarifying the scope of the subject's rights is the basis and premise for making an infringement determination. In the dispute over the infringement of geographical indication certification trademark, it is necessary to clarify the scope of rights of the trademark owner before entering the discussion of infringement determination.

Geographical indication certification trademark has both the attributes of geographical indication and certification trademark, so the scope of its rights should not only follow the provisions of the Trademark Law on certification trademark, but also take into account the characteristics of geographical indication itself, which can be divided into two categories: exclusive right and prohibition right.

1.2.1 Exclusive Rights

According to Article 3.3, Article 16.1 of the Trademark Law of the People's Republic of China and Article 4 of the Implementing Regulations of the Trademark Law of the People's Republic of China, geographical indication certification trademark is used to identify the origin of goods and a specific quality, reputation, etc. of the goods, which refers to the origin and quality of the goods. Unlike the exclusive right to use ordinary trademarks, the rights of the registrant of Geographical indication certification trademark are centered on supervising and managing the use of the trademark. They are not allowed to use the trademark themselves, but can only license others to use it, and their licensing right is limited.

On the one hand, if a certain product wants to apply for the use of a geographical indication certification trademark, it needs to apply to the geographical indication management association, which needs to examine the product according to the rules governing the use of the certification mark. Only if the specified conditions are met, can it be granted permission. The review content usually includes the geographical origin of the goods, specific quality, inspection and supervision procedures, conditions of use, etc. Among them, geographical origin and commodity quality are the most important review conditions. On the other hand, when a business operator whose goods meet the conditions for the geographical indication requests the use this certification trademark, the geographical indication management association shall not refuse.

1.2.2 Right to Prohibit

As far as ordinary trademarks are concerned, the trademark owner has the right to prohibit any

person from using a trademark same or similar to his registered trademark on the same or similar goods or services without permission, in order to prevent confusion among the public about the relevant goods or services. Even if the quality of the goods is the same or better than the goods registered by the trademark owner, it shall not be used without the permission of the trademark owner. However, in the field of geographical indication certification trademark, the scope of the trademark owner's right to prohibit others from using the word combination "place name + goods" registered by them without permission, or using a combination of words similar to the place name in the registered trademark and the generic name of the goods, which is easy to cause confusion. The right of prohibition cannot be extended to prohibit others from using one of the elements such as geographical names or generic names alone, or to deprive others of the descriptive use of geographical names or generic names of goods in trademark.

The special nature of the scope of rights of geographical indication certification trademark, resulting in differences in the determination method between geographical indication certification trademark and ordinary trademark in infringement disputes, which are mainly reflected in the two aspects of the criteria for determining infringement and the boundaries of reasonable use. The following will further analyze this.

2. The Judicial Determination Path and Realistic Dilemma of Geographical Indication Certification Trademark Infringement

2.1 The Judicial Determination Path of Geographical Indication Certification Trademark Infringement

Through the analysis of geographical indication certification trademark infringement cases, it is found that judges have formed a relatively fixed path for determining infringement in judicial judgments. Firstly, through the steps of "trademark use → similarity comparison → confusion/misidentification" to determine the facts of infringement, and determine whether the behavior of the alleged infringer constitutes an infringement of the geographical indication registered trademark; If the alleged infringer raises the defense of reasonable use or reasonable source, it needs to enter the path of "the origin and quality do not comply with the regulations on the use of registered trademark → unauthorized" to assist reasoning and supplement the facts of the case.

A typical case is "Bayingolin Mongolian Autonomous Prefecture Korla Fragrant Pear Association (simplified Chinese characters "ku", hereinafter called the "simplified 'ku'") v. Changge City Youduo Fruit Sales Store Trademark Infringement Dispute". First, the court determined whether the use of "place name + goods" by the allegedly infringing trademark constituted trademark use. The trademark "Korla Fragrant Pears and Figure (traditional Chinese character "ku", hereinafter called the "traditional 'ku'") involved in the case was composed of a combination of peacock patterns and the words "Korla Fragrant Pears (traditional 'ku')", but the main identifying function was the text part of "Korla Fragrant Pears (traditional 'ku')", which the alleged infringer used to highlight the origin of the goods, so as to guide consumers to recognize the quality of the goods, and constitute trademark use. Next, determined whether the alleged infringing trademark was similar to the registered trademark involved. The trademark used on the packaging box of the fragrant pear goods was "Korla fragrant pear (traditional 'ku')", which is exactly the same as the content, pronunciation, meaning and order of the "Korla fragrant pear (simplified 'ku')" part in the trademark "Korla Fragrant Pear and Picture (simplified 'ku') of the Korla Fragrant Pear Association (simplified 'ku'), except that the text part is changed from the simplified "ku" to the traditional "Ku", which constituted a similar trademark. Finally, determined whether the allegedly infringing trademark goods were sufficient to confuse or misidentify the general public. The registered trademark "Korla Fragrant Pear (simplified 'ku') " has a certain level of popularity, and the alleged infringer used a highly similar logo on the

fragrant pear fruit box, which was sufficient to make the relevant public mistakenly believe that the fragrant pear products can reach specific qualities of "Korla Fragrant Pear (simplified 'ku')".

In this case, the alleged infringer raised a defense, claiming that their goods were purchased from regular channels and had a reasonable source, which did not constitute infringement. In this regard, the court applied the path of "the origin and quality did not comply with the regulations on the use of registered trademarks→ unauthorized " for further reasoning. The Administrative Rules for the Use of Korla Fragrant Pear Certification Marks (simplified 'ku') stipulates that the use of the "Korla Fragrant Pear (simplified 'ku') " geographical indication certification trademark must meet the following requirements: (1) The production place of the goods is in Korla City, Yuli County, Luntai County, Kuqa County, Xinhe County, Shaya County, Aksu City, Awati County, and state-owned farms distributed in these areas; (2) Submit the membership application form to the Korla Pear Association of Bayingolin Mongolian Autonomous Prefecture and obtain approval. In this case, the alleged infringer only provided the "Korla Fragrant Pear Geographical Indication Authorization Printing Contract" and its purchase slip in Zhengzhou Wanbang Fruit Wholesale Market, without providing relevant evidence to prove that the fragrant pears it sold meet the origin scope and quality standards of Korla fragrant pears, nor did it prove that it had been authorized by the association, so it did not support the legal source defense. The final judgment found that "Korla Pear (traditional 'ku')" constituted infringement of the of the geographical indication certification trademark "Korla Pears and Figures (simplified 'ku') " of the Korla Pears Association.

2.2 The Practical Dilemma of the Standards for Determining the Geographical Indication Certification Trademark

2.2.1 Different Standards for the Determination of “Confusion Potential”

Article 57 of the Trademark Law of the People's Republic of China stipulates the relevant content of "confusion", and as the last step in the determination of infringement, whether it is an ordinary trademark or a geographical indication certification trademark, the infringement must be determined based on the confusion potential. The confusion potential of an ordinary trademark lies in determining whether the trademark will cause confusion among the public about the source of goods and services, and adopting the standard of confusion of product sources. There are different views in practice on which standard to adopt for determining the confusion potential of geographical indication certification trademark.

The first viewpoint holds that infringement of geographical indication certification trademark should adopt the standard of confusion of product sources, just like ordinary trademarks. In Hangzhou West Lake District Longjing Tea Industry Association v. Beijing Beichen Supermarket Chain Co., Ltd. Trademark Infringement Dispute, the court held that when determining whether the logo infringed the plaintiff's "West Lake Longjing" geographical indication certification trademark, it should consider whether the alleged infringement was sufficient to cause the public to mistake the Longjing tea for West Lake Longjing tea, thereby misidentifying the source of the tea.

The second viewpoint holds that the confusion potential in determining that geographical indication certification trademark are different from that of ordinary trademarks, which should adopt standard of commodity quality confusion, focus on whether it leads to confusion among the public regarding the quality and reputation of the goods involved in the case. In the case of the Zhoushan Aquatic Products Circulation and Processing Industry Association v. Beijing Shenmaren Food Sales Co., Ltd. for infringement of trademark exclusive rights, the court of first instance held that when determining whether the alleged infringement infringed on the "Zhoushan Hairy Fish" geographical indication certification trademark, it should not be judged on whether it is likely to cause confusion among the public as to the source of the goods involved in the case, but should determine whether

the act is likely to cause the public to misidentify the origin, quality and other specific qualities of the goods involved in the case, and mistakenly believe that the goods indeed originate from the area limited by the geographical indication, and the quality meets the corresponding standards.

The author believes that the standard of commodity quality confusion can not only achieve the role of the standard of confusion of product sources to prove the source of goods, but also meet the purpose of geographical indication certification trademark to indicate the specific quality of goods. Firstly, the form of a geographical indication certification trademark is "place name + goods", which can identify the origin of the goods from a certain region, playing the basic function of trademark identification of the source of goods. Secondly, geographical indication certification trademark have special characteristics compared to ordinary trademarks. Their main function is not to distinguish the source of goods, but to indicate that the goods come from a certain geographical region and represent a specific quality and reputation, which is unique to the region and not available for goods outside the region. Therefore, the infringement standard should be based on confusion about specific qualities such as the origin, raw materials, manufacturing methods, or quality of the goods.

2.2.2 The Regulations on Fair Use Are Unclear

When the alleged infringer uses the combination of "place name + goods" as a product logo, if it is unauthorized and the goods do not come from a specific region and do not meet the corresponding quality requirements, the behavior naturally constitutes trademark infringement. [3] However, if the alleged infringer does not apply to the geographical indication certification trademark owner for the use of the trademark, but the goods they produce indeed originate from the area where the geographical indication is located and meet specific quality standards, can the alleged infringer raise the defense of reasonable use under Article 59 of the Trademark Law of the People's Republic of China by claiming that the geographical names in the trademark name are descriptive uses? There are two views on this:

The first view holds that the origin and quality of the goods have no effect on the composition of infringement. Even if the products sold comply with specific origin and meet the corresponding quality, as long as they are not authorized by the registrant, their use constitutes infringement. For example, in the appeal case of Hangzhou West Lake District Longjing Tea Industry Association v. Guangzhou Tea Grower Trading Co., Ltd. for trademark infringement, the court held that although the tea planter company could prove that the tea it sold came from a specific producing area of Longjing tea in West Lake, it did not apply for trademark use to the Hangzhou West Lake District Longjing Tea Industry Association and fulfilled the procedures stipulated in the rules for the use and management of geographical indication certification trademark. The use of the same or similar certification trademark as "West Lake Longjing" still constitutes infringement.

The second view holds that if the allegedly infringing goods do meet the conditions for the use of the geographical indication, originate within the designated production area and the quality meets the corresponding standards of the trademark, even without obtaining permission, the geographical indication can still be reasonably used. [4] The object of geographical indication certification trademark protection is goods of specific quality originating from a certain region, with the aim of protecting the social reputation of such goods. When the goods sold meet the requirements of origin from a specific production area and have corresponding quality, they are not significantly different from the licensed goods, will not harm the public interest, nor will they weaken the reputation and social impact of the geographical indication certification trademark, and shall not be deemed to constitute infringement.

The author agrees with the first view, Article 4 of the Implementing Regulations of the Trademark Law of the People's Republic of China reflects the open attitude of the state towards the use of certification trademarks, and the application threshold for the use of geographical indication

certification marks is not high. As long as the goods meet the conditions for the use of geographical indications, their applications should be allowed. The purpose of the procedure is to establish a unified management mechanism for industry associations. Qualified operators who apply to join the association are allowed to use geographical indication certification trademark while accepting supervision and management from the industry association. Through the unified supervision of industry associations, goods can maintain their unique qualities and maintain the market reputation and social influence of geographical indications. If operators are allowed to use geographical indications certification trademark without permission without constituting infringement, the certification trademark protection system will be emptied, and the supervision and management of certification trademark will be meaningless and unable to play the target role.

3. Suggestions on Improving the Rules for Determining Infringement of Geographical Indication Certification Trademark

3.1 Apply Special Infringements Determining Standards

As mentioned above, there is a dispute over the criteria for determining infringement in cases of geographical indication certification trademark. One view is that the "confusion of product source" of ordinary trademark is directly used as the criterion for determining infringement; Another view is that the "commodity quality confusion" standard should be adopted, which requires achieving confusion between the origin and quality of goods.

The author agrees with the latter, the determination of infringement of geographical indication certification trademark should be based on whether it causes the relevant public to mistakenly believe that the goods come from a specific region and have the corresponding quality. At present, there are no special provisions in Chinese law regarding the infringement of geographical indication certification trademark, and the confusion potential of ordinary trademark is uniformly used as the legal basis. In order to meet practical needs, judges usually expand the interpretation of the possibility of confusion within the scope of legal provisions, and expand the recognition standard based on the particularity of geographical indication certification trademark, so as to truly achieve the goal of protecting geographical indication certification trademark.

Geographical indication certification trademark is registered by industry association, and all qualified business operators can apply for use. The registrant and user of such trademarks are separated, with only one registrant responsible for supervising and managing the use of trademarks, and there are countless users, belonging to a dynamic and uncertain group. From a consumer perspective, unlike ordinary trademark that can identify specific provider at a glance, they can only distinguish the origin of goods, and form trust in the quality of goods based on the place of origin. Therefore, geographical indication certification trademark mainly play the function of indicating the origin and quality of goods. When the public misunderstands or confuses the origin and quality of goods, it is considered to constitute infringement of the geographical indication certification trademark. To determine whether it constitutes misidentification or confusion, a comprehensive judgment can be made based on factors such as the quality of the goods, the use of the label, the purpose of use, and the co-purchasers.

3.2 Improve the Constituent Elements of Reasonable Use

The original intention of establishing a reasonable use system is to balance the relationship between right holders and users, avoid the abuse of monopolistic rights by right holders, and meet the reasonable needs of the public to a greater extent. The existing laws in China do not clearly stipulate the constituent elements of the reasonable use of geographical indication certification trademark, and

courts lack uniform application standards in hearing such cases, resulting in the phenomenon of different judgments in the same case. Therefore, it is necessary to set out the constituent elements of reasonable use.

There are two common types of geographical indication: one is a trademark composed of elements such as graphics, letters, words and others; The other is a combination of simple "place name + goods". [5] Reasonable use of the second combination has been discussed above, and the unauthorized use of a geographical indications certification trademark without permission from industry association constitutes trademark infringement. The operator shall not recognize the claim that the source and quality of the goods meet the requirements of the trademark as a defense.

The reasonable use stipulated in Article 59, Paragraph 1 of the Trademark Law of the People's Republic of China is mainly applicable to the first type of combination. The Trademark Law clearly stipulates that the trademark owner has no right to prohibit others from using the generic names of goods and geographical names. Then, regarding the use of geographical indication certification trademark, whether the operator can defend their unauthorized use of geographical indication certification trademark' place name and product names with reasonable use requires comprehensive consideration of multiple aspects such as the user's use method, subjective consciousness, and use results, which can be decomposed into the following three constituent elements:

First, objective use method. The actor uses the relevant identifiers in a descriptive sense to prove that the goods originated from the place of origin identified by the geographical indication. And its use is within a certain limit, without using prominent marking, visually similar and other non-standard methods. [6] If the logo exceeds the necessary limit in the process of use, it is considered to constitute infringement. Secondly, subjective usage intention. The operator's use of this logo is in good faith and not for the purpose of attaching or free-riding, and there is no intention to mislead consumers into believing that there is a certain correlation between their goods and the geographical indication certification trademark goods. Thirdly, the actual use effect. As a results, the use of the logo has not caused public confusion among the public and will not affect the reputation and social impact of the geographical indication certification trademark. When the operator meets the above requirements, it can be considered that its use of the logo complies with the reasonable use stipulated in the Trademark Law and does not constitute infringement.

4. Conclusion

Judges have formed a relatively fixed path for determining infringement in judicial decisions, but there are different views on the possibility of confusion and reasonable use. The author believes that in the determination of infringement, the standard of commodity quality confusion should be adopted, which not only plays the basic function of distinguishing the source of goods, but also meets the particularity of geographical indication certification trademark to indicate the origin and quality of goods. In terms of reasonable use, the combination of "place name + goods" alone cannot be defended by Article 59 of the Trademark Law of the People's Republic of China, and only descriptive reasonable use may constitute the reasonable use of the trademark, which needs to be judged comprehensively from the three aspects: objective use method, subjective usage intention and actual use effect. Only when the three requirements are met at the same time can it constitute reasonable use.

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