

Study on expanding the scope of Plaintiff in the infringement Action of Geographical indication Trademark

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Abstract: The subject of the right of geographical indication includes the owner and the user of the right. However, after the infringement case of geographical indication trademark occurs, only the owner, namely the registered person, can file a lawsuit, and the user cannot obtain relief through judicial means. The rights protection power of registrants is weak, and the interests of users are in urgent need of protection. In order to protect the interests of market subjects and public interests of geographical indications, it is necessary to expand the scope of plaintiffs in geographical indications litigation to promote the development of geographical indications.

Keywords: Infringement of geographical indication trademark; Registrant; User; Plaintiff subject qualification.

1. Overview of the subject of geographical indication trademark rights

(1) Categories of subjects of rights

Geographical indications are currently divided into three categories: trademarks of geographical indications, products protected by geographical indications and geographical indications of agricultural products. The research on expanding the plaintiff's qualification elaborated in this text mainly focuses on the geographical indication trademark, because only the geographical indication trademark belongs to the jurisdiction of the Trademark Law, and can be remedied through judicial channels in case of infringement disputes. The protection products of geographical indications and the geographical indications of agricultural products are stipulated by the Provisions on the Protection of Geographical Indications Products and the Measures for the Administration of Geographical Indications of Agricultural Products respectively. They are administrative regulations and are not within the scope of this topic.

There are mainly two types of right subjects of geographical indication trademarks: the owner and the user. The owner here mainly refers to the registrant of the geographical indication trademark. Take the geographical indication certification trademark as an example. After the geographical indication certification trademark is approved, the government organization or industry association applying for registration of the geographical indication certification trademark is the owner. The Trademark Law stipulates that a trademark registrant may authorize others to use its registered trademark by signing a trademark licensing contract. The producer or operator who has applied for the use of the trademark to the registrant in the geographical area and has been approved is the user of the right of use.

(2) The orientation of plaintiff's qualification in existing judicial practice

The difference between geographical indication and traditional intellectual property is that it is not an absolute private right. The public property of geographical indication determines that its development is not only closely related to

the owner, but also directly affects the interests of the user. However, the traditional litigation theory holds that the competent parties need to have the right of litigation enforcement, the basis of which is to have the right to manage and dispose of the subject matter in dispute. Only the ownership person is the competent party, that is to say, when the geographical indication infringement case occurs, only the ownership person can file a lawsuit, and the right user is not qualified to file an infringement lawsuit as the plaintiff.

2. The necessity analysis of expanding the scope of the plaintiff

The provisions of the Supreme People's Court on the Application of the Interpretation of the Civil Procedure Law of the People's Republic of China concerning the initiation and jurisdiction of public interest litigation do not require the plaintiff's qualification to have a direct interest in the case. This new regulation on the plaintiff's qualification has obviously exceeded the traditional standard of the plaintiff's qualification, and even there is a contradiction. [1] This shows that the plaintiff's qualification has shown an expanding trend, but it is difficult to practice due to the limitation of the traditional "interested person" concept. The unscientific and hysteresis of the criterion for the identification of the "direct interest" of the "qualified plaintiff" in the Civil Procedure Law makes it very important for our country to expand the plaintiff's qualification, especially to give some specific subjects the legitimacy to bring suit.

(1) The original prosecution subject is single, and the resistance to rights protection is great

The registrant is lazy in exercising the right to Sue and lacks the motivation to protect his rights. There is no doubt that the registrant is the proper plaintiff in the infringement case of geographical indication, but generally, the registrant of geographical indication is the institution or organization designated by the people's government at or above the county level, which only has the ownership but no right to use. Due to the absence of the right to use, the registrant cannot directly participate in the production and operation of geographical indications. Even if there is an infringement case, the damage to the registrant is at a low level, and it is difficult to touch the

core interests of the registrant. In the face of complex evidence collection and energy consumption, the applicant is usually reluctant to take the initiative to protect their rights, especially in today's "case protracted" has become the norm, such a high time cost often makes the plaintiff prohibitive.

In addition, based on the organizational characteristics of the registrant, it has a certain degree of looseness. However, geographical indication infringement is often distributed. In the vast majority of infringement cases, the place where the infringement occurs is not the location of the geographical indication. Taking West Lake Longjing, a famous geographical indicator of Zhejiang, as an example, 193 cases have been heard and concluded since 2020, covering 19 provinces, municipalities and autonomous regions, among which only 34 cases occurred in Zhejiang, and the other infringement cases were distributed in other provinces and

cities. If the right holder wants to investigate and collect evidence on the infringement of geographical indication, he usually needs to go to other places. Obtaining evidence is costly, time-consuming and difficult.

The registrant is weak and lacks the ability to protect his rights. As has been known above, although the eligible plaintiffs of geographical indications have the right to Sue, they are idle in most cases. Even though this subject regards the development of geographical indication industry as its own duty and is willing to spend a lot of time and energy to carry out rights protection activities, it still needs to face many practical problems in the follow-up process. Under the influence of these problems, it will be difficult for relevant subjects to form a joint force to safeguard their rights, and the effect of safeguarding their rights will be greatly reduced.

Table 1. The effect of safeguarding their rights will be greatly reduced

Geographical indication	Infringement case	Subject of suit
West Lake Longjing	Case of Dispute over trademark Infringement and unfair competition between Longjing Tea Industry Association of Hangzhou and Wuhu Qilin Tea Co., LTD	Xihu Longjing Tea Industry Association
Pixian Douban	"PI County Douban" v. "Zhang County Douban" trademark infringement case	Kidu District Food Industry Association
Wuchang Rice	Dispute over trademark infringement of "Wuchang Rice"	Wuchang Rice Association
Aksu Apple	Aksu Apple Association, Ningbo Yinzhou Zhonggongmiao Duoduo Fruit store trademark infringement dispute civil case of first instance	Aksu District Apple Association
Xinyang Maojian	Xinyang Tea Association and Fujian Zhenghe Huafeng Tea Industry Co., LTD., etc. infringement of trademark rights civil case of first instance	Xinyang Tea Association

The weak litigation strength of the right holder is mainly reflected in its litigation ability. Through the investigation and analysis of many infringement cases of geographical indication trademark, it is found that the infringement of geographical indication trademark is mainly divided into two categories: one is that the producers in other regions use geographical indication trademark without permission or forge geographical indication trademark; the other is that the legitimate users of geographical indication trademark use geographical indication trademark on products that do not meet the relevant quality standards.

In addition, if the right holder wants to participate in the litigation as the plaintiff, it is necessary to fully grasp and correctly use the following procedural rules: first, select the suitable plaintiff; second, determine the jurisdiction of the court; third, clarify the statute of limitations; Fourth, provide evidence to prove the establishment of tort liability; fifth, to decide whether evidence preservation and property preservation and prior execution are necessary; sixth, submit the defense in accordance with the written form, and attend the proceedings on time.[2] If the right holder has not gone through professional legal training, it is difficult to master the above litigation procedures. But as far as the current overall situation is concerned, the right holders have hardly received professional training, which makes it difficult for the protection effect of geographical indications to reach the best state.

(2) The interests of users of geographical indications are in urgent need of protection

The development of geographical indication products industry mainly depends on users, that is, producers and

operators who meet the standards. If the interests of the users of geographical indications are not protected and they cannot obtain relief through judicial channels in the event of infringement disputes, their production enthusiasm will be greatly reduced, which directly affects the normal operation of the market of geographical indications products. However, the protection of geographical indication is not satisfactory under current legal system in our country. When there are infringement cases, geographical indication related people will face many difficulties in the process of safeguarding their rights. In order to further safeguard the interests of people concerned with geographical indication, promote the harmonious development of geographical indication and expand the subject of geographical indication litigation rights can play a key role in the process of safeguarding the rights of geographical indication litigation.

Normally, litigation is the last line of defense after a tort, and judicial relief is sought only when all other remedies have been exhausted and no effective remedy can be obtained. However, when the interests of the right user are damaged, because he is not the proper plaintiff, his last remedy is deprived, and he can only request the relevant proper plaintiff to file a lawsuit. It is not difficult to find that the interest protection of the user is actually based on the premise that the registrant is willing to file a lawsuit. However, combined with the above analysis, in most cases, the applicants are idle in exercising their right of action, which makes the geographical indication field present the legal status quo of "the right user wants to Sue but has no right to Sue, the applicant can Sue but does not want to Sue", and the interests of the users cannot be guaranteed.

3. The feasibility of expanding the scope of plaintiff

(1) Theoretical support

Public Trust Theory and the theoretical basis of Litigation Trust derived from it. [3] It provides enough feasible basis for expanding the subject of litigation right. Based on these theories, some scholars creatively advocate the "environmental trust theory" in the field of environmental protection, which is highly praised by the majority of subjects. Geographical indication public interest litigation has not yet been realized in our country, so the maintenance of interest is still simple. Based on the litigation trust system, anyone can file a lawsuit without being sued by a state agency. Therefore, it is reasonable to expand the subject of litigation right in the field of geographical indication litigation, but it is not completely in accordance with the litigation trust system to expand the subject

(2) The support of judicial practice -- the scope of the plaintiff has been expanding

In the early stage, the civil rights in substantive law were mainly property rights, and the content of property rights was generally management rights or disposal rights, so the management rights or disposal rights in substantive law became the basis of the enforcement rights of civil proceedings. But with the further development of the theory of civil procedure, the trend of the legislative development of civil procedure is to abandon the traditional concept of interested parties and replace it with the purely litigant concept, namely the broad concept of litigant. [4] The generalized litigant's right of action can be based on the rights and obligations of the subject entity, or on legal or arbitrary litigation trust or the third party's litigation responsibility. According to this theory, the user status in the field of geographical indication has broken through the traditional theoretical framework of parties, and fully conforms to the basic requirements of the broad concept of parties.

The development of plaintiff qualification in Chinese administrative litigation can also provide some basis and experience for the expansion of plaintiff qualification in civil litigation. In November 2014, the Administrative Procedure Law was amended, from "citizens, legal persons or other organizations who bring legal proceedings in accordance with this Law have the right to bring legal proceedings" to "the relative meaning of the administrative acts and other citizens, legal persons or other organizations having legal relations with the administrative acts, have the right to bring legal proceedings", which has established a new standard of the legal interests for the plaintiffs in administrative litigation. [5] This expands the concept and extension of the interests, and expands the plaintiff's subject qualification. For reference in the field of civil action, the existing "plaintiff is a citizen, legal person and other organization with direct interest in the case" can be changed into "qualified parties directly linked to litigation interests". Under the concept of restricting civil action, expanding citizens' interests and safeguarding public interests, the future development of plaintiff's qualification in geographical indication civil action can be roughly divided into registrants and users. The reason why the registrant obtains the plaintiff qualification is that the registrant is the subject most directly linked to the geographical indication. The registrant of geographical indication has spent his energy, material resources and financial resources to apply for and obtain the geographical indication, enjoy the rights brought

by the geographical indication and the obligation to maintain the geographical indication. This right and obligation relationship directly makes the registrant obtain the plaintiff qualification. In line with the development path of the plaintiff's qualification.

(3) The advantages of expanding the scope of plaintiff outweigh the disadvantages

The benefits of expanding the subject of litigation rights are mainly reflected in that it can consolidate and highlight the litigation rights of each stakeholder, and realize the maximization of individual interests in the society. At the same time, expanding the subject of litigation right is also based on the specific characteristics of geographical indications to improve the relevant litigation system. Because geographical indication users and registrants are two groups with important interests in the production and management of geographical indication products. However, in practice, users do not have the right of action and cannot protect their rights through judicial channels. Expanding the subject of litigation right can effectively alleviate this problem and fully protect the rights protection appeal of every subject with interest from the system.

The disadvantages of expanding the subject of the right of action are mainly divided into two aspects. On the one hand, it will increase the number of administrative organs responding to litigation and the number of cases accepted by judicial organs. On the other hand, it may cause the phenomenon of indiscriminate litigation. When both the registrant and user of geographical indication have the right to Sue, there will be many negative problems. For example, some subjects of litigation rights or out of consideration of their own interests, or malicious damage to social public welfare, and indiscriminate litigation, will not only cause a waste of administrative judicial resources, but also affect social justice and the prestige of the law.

Through the above analysis, we can find that the benefits of expanding the subject of litigation right is transformative, which can fundamentally solve the problem of single subject of litigation right and poor rights protection. The scope of benefits is the whole process of geographical indication products from registration to production and management, and it is targeted for geographical indication. However, the disadvantages of expanding the subject of litigation right are not significant. There are 345 cases of geographical indication certification trademark in agricultural field in China's website of Adjudicatory Documents from January 1, 2014 to May 31, 2020. It can be seen that the number of geographical indication litigation cases themselves is small, and the workload of related organs is not significantly increased after being distributed to local administrative and judicial organs. The loss of administrative and judicial resources is not very serious. The problem of indiscriminate litigation exists in any field of litigation and is an inevitable problem in the litigation system. Moreover, due to the small number of geographical indication litigation cases, the problem of indiscriminate litigation will not be very serious. It can be seen that the positive impact of the benefits of expanding the subject of litigation rights is obviously greater than the negative impact of its disadvantages, which is a feasible means of protection.

As a regional public brand, geographical indication has regional characteristics. In the case of collective ownership and common use, users use it free of charge, often only pursue the maximization of their own interests, and lack sufficient awareness of the maintenance of geographical indication

itself. Some users even become torts, so that the credibility of the real geographical indications and the interests of the region of origin are damaged. Moreover, in the process of market circulation, due to the brand premium effect of geographical indications, when one enterprise operates a famous geographical indication product, other enterprises gain economic benefits through "free riding", which also becomes the reason and excuse for the maker of tragedy of common land. However, due to the imperfect development of the protection of geographical indications, whether it is insufficient legislation or lack of supervision, it brings great inconvenience to the protection of geographical indications. Therefore, in the process of protecting the rights through litigation, the expansion of the plaintiff qualification of geographical indication needs to be more intense, so we put forward to expand the geographical indication litigation rights of the subject obviously has very sufficient feasibility.

4. The concrete measures to expand the scope of the plaintiff

Expanding the scope of plaintiff mainly means that the subject of geographical indication litigation right is expanded from the original registrant to registrant and user groups. The users include the producers whose announcements have approved the use of special marks for geographical indication products; Including the licensee of geographical indication that has been registered as a certification trademark and has been put on record by the public announcement; Including other users registered and put on record by the State Intellectual Property Office. The inclusion of other licensors in the scope of the subject of the right of complaint can effectively alleviate the plight of the poor rights protection of geographical indications, and fully protect the rights protection appeals of every interested subject from the system. Specifically, the way to expand the scope of the plaintiff is to expand the interpretation of the "direct interest" in the first paragraph of Article 122 of the Civil Procedure Law. [6]

The interpretation of "direct interest" in traditional litigation theory. "Direct interest theory" takes litigation enforcement right as the basis or standard to judge whether the litigant is qualified or not, and the basis of litigation enforcement right is management right or disposition right, that is, whether the litigant has the management right or disposition right stipulated in the substantive law on the object of the lawsuit. [7] In the civil procedure legislation of our country, it is necessary to consider whether the "direct interest" exists between the parties and the tort. Due to the premise of "direct interest", a plaintiff must not only have the ability of litigation rights, but also prove that his lawful civil rights and interests have been violated in order to become a plaintiff in this lawsuit. And with the case has indirect interest in the status of the civil action is no relevant instructions, so in the process of litigation was infringed on the relevant legitimate interests but only defined as indirect interested parties and was dismissed numerous cases are also too numerous to enumeration. It is feasible to correctly clarify the "interested parties" and the parties in order to promote the protection of rights by innovating the standard of the plaintiff's qualification.

This theory requires that the litigant of civil action must be the direct interested person of the case. Since the civil rights in the early substantive law were mainly property rights, the content of property rights was generally management rights

or disposal rights, so the substantive law management rights or disposal rights became the basis of civil litigation enforcement rights. But with the further development of the theory of civil procedure, the trend of the legislative development of civil procedure is to abandon the traditional concept of interested parties and replace it with the purely litigant concept, namely the broad concept of litigant. [8] The generalized litigant's right of action can be based on the rights and obligations of the subject entity, or on legal or arbitrary litigation trust or the third party's litigation responsibility. According to this theory, the status of users in the field of geographical indication has broken through the traditional theoretical framework of parties, and fully meets the basic requirements of the broad concept of parties, so its right of action is also derived from the direct provisions of procedural law.

The Law of Chinese National Procedure does not clearly stipulate that subjects directly linked to litigation interests can file a lawsuit. Therefore, in the field of geographical indication, the subjects of infringement cases are generally associations, but the associations cannot find the infringement cases in the first time. On the contrary, users of geographical indication directly linked to the infringement interests can find the infringement facts in the first time, but because they have no right of action, They cannot realize the right protection relief in the first time.[9] Therefore, in theory, the direct interested parties stipulated in this article can be interpreted expansionistic ally, that is, the user of geographical indication can become the subject of the litigation qualification of geographical indication. As the civil subject, the user of geographical indication has the legal litigation right endowed by the Constitution, and because it is directly linked with the interests of geographical indication, the direct interested party is interpreted as the expansion, and it is interpreted from the original registration subject to the user subject, so as to better protect the private interests of users of geographical indication and the public interests of geographical indication itself.

However, it should be noted that extending the right of action to the user does not mean that the user himself does not have the right to bring a lawsuit. In this paper, it means that in the infringement cases of geographical indication, the interests of tort damage are often directly linked to the specific users of geographical indication. However, due to the provisions of the Law of National Procedure, only the direct interested parties have the right of action, so in the infringement cases of geographical indication.[10] Only the registrant can file a lawsuit, and the ultimate beneficiaries of geographical indications are unable to protect their rights through judicial channels, so in order to maintain the public interests of geographical indications and the user's private interests, make up for this legal loophole, expand the right of action to the user.

5. Conclusion

The geographical indications obtained by our country are not in the minority, which can bring considerable economic gains every year. There is no doubt that geographical indication has become an important medium of agricultural development and an important grasping hand to realize rural revitalization in China. However, it is worth noting that the behavior of "free rider" is not only forbidden, the frequent infringement phenomenon has become a pain point of the industry, right holders have to protect their rights through

judicial channels, but the single subject of litigation has blocked the relevant subject's way of safeguarding their rights from the system. In order to solve the dilemma of safeguarding rights in the field of geographical indication and promote the development of geographical indication industry, it is obviously necessary to expand the scope of geographical indication litigation subjects. But at present, the suitable plaintiff of geographical indication is still the applicant. How to construct a geographical indication litigation system that does not destroy the existing litigation system and can solve the practical dilemma is a proposition that still needs to be discussed and demonstrated by the academic and judicial practice circles.

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