

Relevant Issues Regarding the Handling of Public Interest Litigation Cases Involving Geographical Indications by Prosecutorial Organs

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Abstract: Geographical indications possess a public attribute, and their protection primarily falls into two categories: the trademark law model and the specialized law model. However, existing protection models overlook the public attribute of geographical indications. The prosecution organs, acting as “legal supervisors” and initiating public interest litigation, can precisely address this shortcoming. Through case analysis and a comparison of geographical indication protection under the trademark law model and the specialized law model, this paper explores the role and intervention methods of prosecution organs in public interest litigation. It is found that prosecution organs primarily conduct supervision by organizing meetings, issuing procuratorial suggestions, and other means. When handling cases, they face issues such as unclear litigation subjects, disputes over role positioning, ambiguous case acceptance scope, and multiple procedural options. To handle geographical indication public interest litigation cases effectively, it is necessary to improve case handling methods in the field of public interest litigation, clarify the status of litigation subjects, define the scope of geographical indication public interest litigation cases, specify the procedural options for prosecution organs in handling cases, and enhance the multi-subject protection pathways for geographical indications. The different handling methods adopted by prosecution organs for cases under different protection models reflect the emphases of those models and provide insights for improving the geographical indication protection model.

Keywords: Geographical Indication; Public Interest Litigation; Non-litigation Approach;

Public Interest; Prosecutorial Organs

1. The Rationality and Necessity of Prosecutorial Organs Handling Public Interest Litigation Cases Involving Geographical Indications

1.1 The Need for the ‘Public Interest’ Associated with Geographical Indications

The natural or cultural factors inherent in geographical indications (GIs) constitute public resources specific to a particular region. Due to the monopoly on the use of geographical names, conflicts may arise to some extent between public space and exclusive rights [1]. Therefore, the protection of GIs often involves public interests.

Meanwhile, in China, the right holders of GIs are primarily industry associations, which typically serve as applicants, holders, and managers of GIs, rather than operators. Due to the lack of economic incentives and the influence of the mindset of ‘valuing application over use,’ right holders of GIs attach little importance to and have weak capabilities in safeguarding their rights against infringements, mainly manifesting as not initiating lawsuits or initiating a large number of lawsuits collectively. Additionally, the separation of roles between managers and operators results in right holders having a limited understanding of the infringement or risk of infringement of GIs, making it impossible to calculate actual losses. In practice, the actual losses of GIs are mainly determined based on the profits gained by infringers from infringing on GIs, which targets the economic value of GIs rather than serving as a remedy for their natural or cultural factors. The benefits beyond the economic value of GIs require a more holistic approach to the protection of GIs, employing relatively abstract methods to determine the risk of

potential infringement, which embodies the ‘public interest’ associated with GIs.

1.2 Redundancy of the Geographical Indications Protection System

The history of GIs protection in China is relatively short, and it has mainly been influenced by foreign practices. Currently, China’s GIs protection model primarily adopts the trademark law protection model and the specialized law protection model, with significant overlap in protection models and even issues such as inconsistent right holders under different protection models.

From a judicial perspective, infringements of GIs can only be remedied through the Trademark Law and the Anti-Unfair Competition Law. Moreover, due to the lack of substantive regulations on the reputation and credibility of GIs in China, it is difficult to protect GIs by recognizing them as well-known trademarks. The punitive compensation provisions for trademark exclusive right infringements stipulated in the Trademark Law are also difficult to implement in practice, and the compensation amounts in most infringement dispute cases are far from sufficient to compensate for the losses suffered by the infringed parties, let alone corresponding criminal sanctions measures [2]. From an administrative perspective, when GIs are infringed upon, holders can only seek assistance from relevant administrative authorities and do not have the right to sue the infringers. The only responsibility that infringers need to bear is administrative responsibility. The absence of a higher-level specialized law for GIs and the imperfect coordination mechanism between the two protection models are critical issues that need to be resolved urgently in current GIs protection and are also key points that need to be addressed in unified legislation on GIs.

1.3 Exploration in ‘Non-Enumerated’ Areas of Public Interest Litigation

With the continuous advancement of high-level deployment, the statutory scope of public interest litigation has gradually expanded. In 2022, the Supreme People’s Procuratorate called for the ‘steady development of public interest litigation in the field of intellectual property rights.’ Subsequently, the Supreme People’s Procuratorate issued multiple batches

of guiding cases and typical cases, covering several new areas of public interest litigation. Although typical cases cannot be used as a reference for judicial rulings and lack the mandatory force of guiding cases, they actually play a role similar to guiding cases, enabling procuratorial organs to handle cases in ‘similar new areas’ accordingly.

The exploration of public interest litigation concerning GIs still faces numerous shortcomings in both legislation and judicature due to the lack of specific institutional references. Issues such as the role and positioning of procuratorial organs, the nature of procuratorial power in public interest litigation, and the unclear sequence relationship between administrative public interest litigation and civil public interest litigation remain controversial. Additionally, not all cases involving infringement of GIs are suitable for public interest litigation. It is only when the subject is absent that it is justified and reasonable for procuratorial organs to initiate public interest litigation to protect GIs.

2. Dilemmas in Handling Public Interest Litigation Cases Involving Geographical Indications

2.1 Unclear Geographical Indications of Public Interest Litigation Subject

Currently, the legislative and practical frameworks do not stipulate the qualification of litigation subjects in GIs cases. When a third party’s infringement damages GIs, the direct victim, the right holder of the GIs, cannot safeguard their legitimate rights and interests based on relevant documents. In response to infringement, applicants and users of GIs can only report the infringement and request relevant administrative law enforcement agencies to investigate and handle it. The only possible sanction faced by the infringer is administrative punishment, while the infringed party cannot directly obtain judicial relief. The intervention of procuratorial organs can precisely circumvent this issue.

However, there are controversies regarding the role and positioning of procuratorial organs in public interest litigation: The judicial power attribute theory holds that the essential function of procuratorial power is not reflected in its supervisory function, but should be manifested in its litigation function with

judicial power attributes [3]; The administrative power attribute theory believes that procuratorial power possesses many characteristics of administrative power and should be positioned as administrative power; The dual attribute theory of judicial and administrative power argues that procuratorial power has both judicial and administrative attributes, and sometimes these identities are confused [4]; The legal supervision attribute theory maintains that the attribute of legal supervision conforms to the essential characteristics of procuratorial power, and its judicial and administrative attributes cannot represent the whole of procuratorial power, nor can they represent the dominant direction and future research development of procuratorial power [5].

Based on the typical cases published by the Supreme People's Procuratorate, it is evident that procuratorial organs have not directly participated in the protection of GIs, but rather have primarily supervised through organizing meetings, issuing procuratorial suggestions, and other forms. Meanwhile, given that procuratorial organs in public interest litigation can both initiate lawsuits and support prosecutions, and also possess legal supervisory power, they can serve as both plaintiffs and legal supervisors in such litigation. Regarding the precise role and positioning of procuratorial organs in safeguarding public interests, further refinement of laws and regulations is needed to clarify this matter.

2.2 The Unclear Scope of Accepting Cases for Public Interest Litigation Concerning Geographical Indications

When considering whether a case should be included in the scope of protection for public interest litigation, the fundamental criterion for judgment is whether there has been substantial harm to the public interest. Generally, damage to the public interest needs to be considered from both abstract and concrete perspectives [6]. From an abstract perspective, it involves what kind of public interest has been or may be harmed, and such harm is often difficult to quantify. From a concrete perspective, it requires quantifying the damage caused by the infringing behavior. In practice, the actual loss of a geographical indication is mainly determined based on the profits gained by the

infringer through infringing upon the GIs, which needs to be calculated on a case-by-case basis. However, this method of calculating losses only addresses the economic value of GIs and does not constitute a remedy for their natural or cultural factors. The benefits beyond the economic value of GIs require a more holistic protection approach, adopting a relatively abstract method to determine the risk of potential harm to geographical indications. Therefore, equating the quantification of damage caused by infringing behavior with the harmed public interest seems inappropriate.

If we consider only the context of administrative public interest litigation, administrative dereliction of duty often directly equates to damage to the public interest. Therefore, specific criteria for judging whether a case 'involves the public interest' are not the primary focus of discussion in such litigation. However, in the realm of civil public interest litigation, especially based on observations of current judicial practice, procuratorial organs often play a dual role: they are both the prosecutors in criminal cases and the supporters or plaintiffs in civil public interest litigation. Therefore, in civil public interest litigation, the definition and discussion of what 'involves the public interest' are particularly necessary.

2.3 Multiple Procedural Options for Procuratorial Organs in Handling Cases

Regarding the protection of public interests associated with GIs, procuratorial organs have the authority to initiate both civil and administrative public interest litigation. However, the current law does not stipulate the precedence for initiating these two types of litigation. Given that there is a degree of overlap in the scope of accepting cases for both types of public interest litigation, it is entirely possible in judicial practice for individual cases to fall within the scope of both. For instance, when a seller sells products that falsely claim to have a GI, this not only infringes upon consumers' rights but also damages the reputation and market order of genuine geographical indication products, constituting a typical act that harms the public interest and is naturally susceptible to civil public interest litigation. Meanwhile, administrative organs bear the responsibility for supervising the use of GIs and ensuring

quality. If an administrative organ fails to perform or neglects its supervisory duties towards sellers despite receiving procuratorial suggestions, it may be subject to administrative public interest litigation.

One view holds that civil public interest litigation should take precedence over administrative public interest litigation, with the aim of obtaining compensation to offset losses caused by illegal acts [7]. Another view points out that administrative public interest litigation should have priority over civil public interest litigation, as administrative organs have an advantage in safeguarding public interests. When administrative organs fail to fulfill their duties despite being urged by procuratorial organs, procuratorial organs will initiate administrative public interest litigation, rendering civil public interest litigation unnecessary [8]. The author believes that the first view neglects the issue of compensation in administrative public interest litigation and overlooks the fact that procuratorial organs can achieve the purpose of compensating for public interest losses by initiating separate civil litigation, a practice that is recognized in judicial practice. Furthermore, initiating civil public interest litigation requires considering the element of 'harm to public interests,' which is currently difficult to ascertain. In contrast, this issue does not need to be addressed in administrative public interest litigation. Ultimately, as long as administrative organs fail to perform their supervisory duties, the illegal acts of the counterparts will not be stopped, and illegality implies a breach of order, which in turn signifies harm to public interests.

In the protection of GIs, the choice between pre-litigation procedures and public interest litigation procedures, as well as the selection of pre-litigation procedures for which type of public interest litigation, requires in-depth consideration of the efficiency and effectiveness of safeguarding public interests associated with GIs. The pre-litigation procedure for administrative public interest litigation involves procuratorial organs issuing procuratorial suggestions to administrative organs responsible for supervision, requiring them to fulfill their duties in safeguarding public interests. In comparison, the pre-litigation procedure for civil public interest litigation involves issuing a notice of intent to

initiate public interest litigation. If the authorized organs and relevant organizations do not initiate litigation after the notice period expires, procuratorial organs have the authority to initiate civil public interest litigation. Consequently, there are two channels for safeguarding public interests: one through administrative power and the other through judicial power (with the support of procuratorial power and other forces). So, which channel is on the front line of safeguarding public interests?

3. Implications for Handling Public Interest Litigation Cases Involving Geographical Indications

3.1 Clarify the Status of the Plaintiff in Public Interest Litigation Involving Geographical Indications

The parties involved in geographical indication litigation primarily encompass the right holders of GIs (owners and users), administrators, administrative authorities, and other related entities (such as consumers and procuratorial organs). These entities may initiate litigation when GIs are infringed upon. However, this is not conducive to the protection of GIs in practice, necessitating the clarification of the litigation subject for GIs.

As the primary users of GIs, production and operation entities naturally have the right to initiate litigation to safeguard their legitimate rights and interests when harmed. Collectives of production and operation entities, as holders of GIs, may also seek collective remedies for infringements to overcome individual limitations [9]. Additionally, provisions on public interest litigation can be referenced, allowing industry associations to initiate litigation to protect the legitimate rights and interests of actual victims and address issues of eligibility arising from unstable litigation subjects. Meanwhile, clarifying the role of procuratorial organs is particularly crucial in geographical indication public interest litigation. The author believes that legal supervision aligns with the essential characteristics of procuratorial power, and procuratorial organs should play the role of legal supervisors in public interest litigation. The primary purpose of public interest litigation is to protect public interests and uphold social justice. Given procuratorial

organs' responsibilities for safeguarding public interests and maintaining social stability, they possess the corresponding qualification as litigation subjects. Granting procuratorial organs litigation subject qualification can regulate market behavior, maintain market order, and facilitate the implementation of intellectual property protection efforts. Furthermore, leveraging the authority and credibility of procuratorial organs can enhance the effectiveness and influence of public interest litigation, promoting the prevention and crackdown on infringements.

It should be clarified that, in the current context where the system of geographical indication public interest litigation has not yet been fully established, hastily granting procuratorial organs litigation qualification may overwhelm them. Therefore, procuratorial organs should only initiate public interest litigation when the prescribed authorities and organizations fail to do so. The provision of 'pre-litigation procedures' can also be applied in the field of geographical indication infringement litigation, whereby procuratorial organs, upon discovering infringements while performing their duties, may first issue practical procuratorial suggestions if eligible applicants and administrators do not initiate litigation. If the aforementioned parties initiate litigation, procuratorial organs may support their prosecution. If eligible applicants and administrators still fail to initiate litigation due to subjective and objective reasons, procuratorial organs may directly initiate litigation and become plaintiffs.

3.2 Clarify the Scope of Cases Acceptable for Public Interest Litigation Involving Geographical Indications

Whether geographical indication cases should be included in public interest litigation hinges fundamentally on whether the cases have caused substantial harm to public interests [10]. In administrative public interest litigation, the dereliction of duty by administrative authorities is often directly equivalent to the damage to public interests, thus rendering a specific judgment on public interests unnecessary. However, in civil public interest litigation, especially based on current judicial practice observations, procuratorial organs often play dual roles. Therefore, defining and discussing what constitutes 'involving public

interests' is particularly necessary in civil public interest litigation.

Improving the criteria for judging what constitutes 'involving public interests' requires us to consider various factors. The 'public interest' characteristics of GIs are primarily reflected in their public product attribute, the protection of social public interests, the attribute of public resources, the non-replicability of geographical environments, and the allowance for legitimate use of geographical names. Additionally, comprehensive consideration must be given to factors including but not limited to the subjective malice of the infringer, the size of the case's subject matter, the nature and severity of the infringement means, and the infringer's attitude towards admitting fault. During the assessment process, we must adhere to the principle of prioritizing administrative protection measures. For infringements characterized by minor subjective malice, small case subject matter, infringement products primarily sold in a limited scope, and insignificant impact on geographical indication sales, administrative penalties should be the primary means to avoid over-reliance on civil public interest litigation. However, in situations where civil public interest litigation is indeed necessary, we should conduct individualized assessments for each case to determine whether the damaged public interests meet the threshold for initiating civil public interest litigation. In cases of frequent and concentrated infringements, if administrative authorities exhibit dereliction of duty, administrative public interest litigation would be more appropriate to more effectively protect public interests.

3.3 Clarify the Procedural Options for Procuratorial Organs in Handling Cases

The meaning of 'harm to public interests' in the system of public interest litigation concerning GIs differs between civil public interest litigation and administrative public interest litigation. Civil public interest litigation primarily focuses on the harm to consumers' legitimate rights and interests, regional cultural heritage, economic development, and other aspects; whereas administrative public interest litigation mainly concerns the performance of administrative

authorities' duties in protecting GIs. In the collaborative governance of civil and administrative public interest litigation, common rules are crucial for forming a unified force [11]. Public interest litigation should fully respect the administrative enforcement power of administrative authorities when performing duties. Administrative authorities can promptly detect and stop infringements of geographical indications, thus should be preferred. If administrative authorities fail to perform their duties, the case should then proceed to administrative public interest litigation initiated by procuratorial organs. Civil public interest litigation should not be initiated unless there is a field without an administrative authority having regulatory duties.

Therefore, in terms of the sequence of public interest protection channels, the following order should be followed: administrative authorities performing regulatory duties → administrative public interest litigation → initiating civil public interest litigation in a field without an administrative authority performing regulatory duties. In other words, compared with administrative authorities performing regulatory duties and administrative public interest litigation, civil public interest litigation exists as an exception for public interest protection. Meanwhile, the lack of an administrative authority performing regulatory duties in a field is not the norm. Even if it occasionally occurs, corresponding regulatory authorities will emerge with the improvement of legislation, so the situations requiring the initiation of civil public interest litigation are very limited.

In practice, appropriate litigation methods should be selected based on the specific circumstances of each case, combined with the characteristics of GIs and the specific situations of harm to public interests, to safeguard the public interests of GIs. At the same time, the performance of duties and supervision by administrative authorities in protecting GIs should be strengthened to prevent infringements of GIs from occurring at the source and safeguard the legitimate rights and interests and public interests of GIs.

3.4 Perfecting the Multiple Protection Pathway for Geographical Indications

The governance concept emphasizes multi-

stakeholder participation, collaborative co-governance, and maximizing public interests through cooperation, negotiation, dialogue, and other means. Introducing the governance concept into public interest litigation concerning multiple helps build a more scientific, rational, and efficient protection mechanism.

The governance concept requires administrative authorities, industry associations, and other multi-agents to jointly promote the protection of multiple. Governments need to establish local protection plans for multiple and development plans for the geographical indication industry based on local conditions, and provide financial or policy support for the protection of multiple. At the same time, they should strengthen the depth and breadth of publicity for geographical indication protection work and more effectively promote geographical indication products in combination with the Internet and e-commerce platforms. The supervision and management rights of industry associations should be clearly stipulated in geographical indication laws, granting them a certain scope of rights, such as the power to temporarily seize infringing products. Meanwhile, industry associations should be clearly required to fulfill their regulatory obligations to internal members and assist relevant government departments in reviewing the use of multiple and inspecting product quality.

The governance concept emphasizes collaborative co-governance, requiring procuratorial organs to focus on collaboration and cooperation with administrative authorities and judicial authorities in the protection of GIs. Procuratorial organs can urge administrative authorities to fulfill their duties in protecting GIs according to the law by initiating administrative public interest litigation. At the same time, they should establish a linkage mechanism with judicial authorities to jointly combat infringements of GIs and maintain market order and public interests. In addition, procuratorial organs can actively use mediation, reconciliation, and other non-litigation methods to promote the rapid resolution of geographical indication cases. They should also strengthen communication and exchanges with relevant stakeholders, enhance consensus, and form a good atmosphere for jointly protecting GIs.

4. Conclusion

GIs, as a crucial component of intellectual property rights, hold significant importance for fostering local economic development, preserving traditional cultures, and advancing brand construction. However, issues such as the abuse and infringement of GIs have increasingly come to the fore, posing severe impacts on consumer rights, market order, and public interests. Procuratorial organs play a vital role in handling public interest litigation cases concerning GIs. By strengthening legal supervision, refining the public interest litigation system, enhancing interdepartmental collaboration, and promoting social co-governance, procuratorial organs can more effectively uphold the legitimate rights and interests of geographical indications and safeguard public interests from infringement. Additionally, procuratorial organs should prioritize balancing the interests of all parties during the case-handling process to ensure the fairness and rationality of case dispositions.

In the future, with the increasing strengthening of intellectual property protection and the continuous improvement of the public interest litigation system, the role of procuratorial organs in geographical indication protection will become even more prominent. We anticipate that procuratorial organs will continue to leverage their functional advantages, intensify efforts in case handling, and innovate case-handling methods to provide robust legal guarantees for the sustainable development of GIs. Meanwhile, all sectors of society should actively engage in the protection of GIs, jointly fostering a market environment of fair competition and honest operations to promote high-quality economic and social development.

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