

# On the Legal Requirement of Geographical Indication as an Intellectual Property Pledge

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## Abstract

**With the continuous development of science and technology, non-traditional intellectual property rights such as geographical indications emerge and become an emerging force to be underestimated. However, relevant laws have not make clear provisions on the protection and application of geographical indications, which makes many obstacles to the pledge financing of non-traditional intellectual property rights such as geographical indications. In the geographical indication pledge financing, the object problem is the foundation. As the qualitative indication object of intellectual property, geographical indication meets the requirements of legality, value and transferability, and it is feasible to pledge geographical indication as an intellectual property pledge financing.**

## Keywords

**Pledge Financing; Geographical Indication; Pledge.**

## 1. Preface

Geographic indications are indicators indicating that a commodity comes from a certain region, and the specific quality, reputation or other characteristics of the commodity are mainly determined by the natural or cultural factors of the region. Geographic indications are regional, like other intellectual property rights, geographical indication products have unique quality, usually is the product of natural and cultural factors.[1] The long history and cultural tradition of China has created a large number of geographical indication resources in China. Under the new situation of strengthening the application of intellectual property, intellectual property pledge financing, as an important way of intellectual property application, plays an increasingly important role in the development of enterprises, especially science-based enterprises. However, the development of intellectual property pledge financing in China is mainly patent right, trademark right and copyright. With the continuous development of social technology, geographical indications and other unconventional intellectual property rights are difficult to enter the object scope of intellectual property pledge financing. In view of the lack of geographical indication protection and application, in August 2019, China Banking and Insurance Regulatory Commission, the State Intellectual Property Office and the National Copyright Administration "Notice on Further Strengthening the Financing of Intellectual Property Pledge" clearly pointed out that to strengthen the innovation of intellectual property pledge financing services, "study to expand the scope of intellectual property pledge, actively explore the feasibility of geographical indications and integrated circuit layout design as an intellectual property pledge, and further broaden the enterprise financing channels". According to Article 440 of the Civil Code, intellectual property pledge should meet the requirements such as legal and effective rights, having property value and being transferred according to law. Based on the relevant laws in China, we summarize the conditions of intellectual property pledge, and thus analyze the feasibility of geographical indication pledge financing, in order to bring the non-traditional intellectual property rights into the scope of intellectual property

pledge financing, so that more enterprises and subjects with such intellectual property rights can make full use of their economic value.

## **2. The Legitimacy Element of Geographic Indication Asintellectual Property Pledge**

From the perspective of China's legal provisions on intellectual property pledge, legitimacy is the primary element that geographical indication can be used as the qualitative right object of intellectual property, which means that the right of geographical indication as a pledge must be a kind of intellectual property recognized and protected by our law. According to the provisions of paragraph 4 of Article 123 of the Civil Code, geographical indications are clearly listed as a class of intellectual property rights and are recognized and protected by China's laws.

### **2.1. Model of Legal Protection of World Geographical Indications**

The diversity of geographical indication protection patterns is a prominent feature of geographical indications. The WIPO (World Intellectual Property Organization) divides the protection model of geographical indications into four categories: First, the anti-unfair competition model, The administrative organ shall stop acts of unfair competition such as abuse or counterfeiting. The model is more of a negative protection, pay attention to maintaining the competition order of the market and the legitimate rights and interests of consumers; Second, the special law protection mode, mainly refers to the geographical indications are protected by specialized laws to protect the name of origin and registered geographical indications, this model gives the relevant subject an exclusive right to the geographical indications, help to safeguard the legitimate rights and interests of the production and operation of geographical indications; Third, the trademark law protection mode, geographic indications may be protected as collective trademarks and certification trademarks through the application book, this model is created because the geographical indication plays the same labeling role as the trademark; Fourth, the mode of administrative system protection, in this mode, only through approval in administrative procedures, geographical indication products can only enter the sales market, but this model is different from the anti-unfair competition model. In this mode, an individual cannot file lawsuits to protect the reputation of geographical indications, protection can only be protected through collective action.[2]

### **2.2. Model of Legal Protection in China**

In China, the collective trademarks and certification trademarks of geographical indications protected through the mode of protection mode of trademark law also belong to the intellectual property rights recognized by the protection of Chinese law. Paragraph 2 and Paragraph 3 of Article 3 of The Trademark Law in China stipulate the collective trademark and certification trademark respectively. Article 4 of the Regulations on the Implementation of the Trademark Law clearly points out that the geographical indication can be registered as a certification trademark or a collective trademark, and clearly defines the rights and obligations between the subject applying and using the mark and its subjects.[3]

At the same time, with a broad understanding of the word "equivalent" of "equal intellectual property" in Item 5 of Article 440 of the Civil Code, it can also conclude that geographical indications belong to the scope of quantifiable intellectual property rights stipulated in the Civil Code, and the geographical indications applying for registration as collective trademarks and certification trademarks also belong to the scope of predictable intellectual property rights. According to the conditions and requirements of intellectual property pledge objects, geographical indications as the target material for collateral financing, to meet the legality requirements.[4]

### 3. The Value Element of Geographic Indication as Intellectual Property Pledge

Value is another important element of geographical indication as the object of intellectual property quality. Geographic indication has an inseparable relationship with the whole society, so that its multiple values in legal, economic and social aspects get the attention and recognized of the society.

#### 3.1. Legal Value of Geographical Indications

The legal value of geographical indication is mainly reflected in its indication function and quality guarantee function.

First, the geographical indication has the indication function. On the one hand, the indication function of geographical indications is reflected in the indication function of geographical sources. When consumers choose goods or services, the source of such goods or services is an important basis for consumers to make a choice. Geographical indication, like the trademark, is important for geographical indication products, which enables consumers to distinguish geographical indication products from the same type of goods, enables consumers to identify the geographical indication products from a certain region or country. On the other hand, reflected in the product quality indication function, consumers choose goods or service, the quality and reputation is also an important basis of consumers. The product quality indication function of geographical indication means that the geographical indication often represents the characteristics of the quality and reputation of the product in a certain region, and this function conveys the quality information of the product to consumers to provide guidance for their choice.

Second, geographical indications have the quality guarantee function. Compared with the general products, the geographical indication products are often easier to be favored by consumers, the reason is that the geographical indication products have unique production technology, higher quality requirements and stricter production process. As a commodity identification, the geographical indication reflects the specific quality and reputation of the commodity, which is regarded as the quality guarantee of the geographical indication products, and plays its unique quality guarantee role.

#### 3.2. Economic Value of Geographical Indications

First, geographical indications can enhance the market competitive advantage of agricultural products. The formation of geographical indication products depends not only depend on the natural conditions of a specific region, such as the climate, soil and other conditions of the region, but also on the cultural conditions of pure production technology formed by the local people after many years of research. It is the unique natural and cultural conditions of the region that make the geographical indication products more unique than the similar products on the market. As the so-called scarcity is expensive, the economic value of geographical indication products has naturally improved, and its competitive advantage in the market has also been enhanced.

Second, geographical indications can promote the development of the local economy. In recent years, the country has been advocating the green economic development mode of "green mountains and clear waters are gold and silver mountains", and promoting the development of China's geographical indication products is an important measure to conform to the trend of the times. The geographical indication products with green, environmental protection and pollution-free characteristics meet the current consumption concept of the broad masses. Efforts should be made to build a geographical indication brand, form an industrial economy with logical indication products as the main body, drive the development of local

related tourism, education and other industries, so as to play the role of geographical indications in promoting the local economic development.[5]

### **3.3. Social Value of Geographical Indications**

For producers, market economic entities use or even fake geographical indications without authorization, which destroys the legitimate and orderly market competition order, confuse the quality of geographical indication products, damage the reputation of geographical indications, and plunder the economic interests brought by geographical indications that should be obtained by the exclusive holder of geographical indications. Therefore, the protection of geographical indications can maintain the reputation of geographical indications, create a benign market competition atmosphere, and protect the legitimate rights and interests of the producers of geographical indication products. For consumers, they are in a disadvantage position in obtaining commodity information, cannot identify the authenticity of the goods when buying the goods, and their legitimate rights and interests are damaged from time to time. The indication function of geographical indication itself can help consumers to make a reasonable judgment on the geographical source and quality of geographical indication products, so as to make correct choices and safeguard the legitimate rights and interests of consumers' right to know and property rights.[6]

## **4. The Transferability Element of Geographic Indications as the Intellectual Property Pledge**

Since the kind of geographical indication protection mode in China is divided into special legal protection mode and trademark law protection mode, the transferability of geographical indication will also be elaborated around the above two modes. Under the special law protection mode, the relevant protection regulations on geographical indications do not make clear provisions on whether geographical indications can be transferred, there are no relevant legal provisions in the process of practice operation as a basis, the relevant subjects are often difficult to take the initiative to try, leading to the difficult for geographical indications to transfer and sell in the market. Under the protection mode of trademark law, geographical indications are registered as a collective trademark and a certification trademark, which is regarded as a trademark type for management and protection. Chinese laws expressly stipulate that collective trademarks and certification trademarks can be transferred according to law. Therefore, the author will discuss the transferability of geographical indications registered as a collective trademark or certification trademark.

### **4.1. Disputes Over the Transferability of Geographical Indications as an Intellectual Property Pledge**

Some scholars have proposed that an important feature of the right to geographical indications is that the right is limited at the time of transfer, and the geographical indications registered as a collective trademark or certification trademark can be transferred according to law, but the assignee of the geographical indication must meet the qualifications and conditions required by law.[7] Some scholars believe that only when the right of geographical indications and geographical indications is mixed, the view that the right of geographical indications is not negotiable, but it is obvious that the right of geographical indications and geographical indications are different concepts.[8] The rights of the registered right holder of geographical indications are different from the users of geographical indications. The former can transfer the geographical indication to the subject with the qualification of geographical indication registration, while the latter can only have the right to use the geographical indication according to law, and cannot license the logical indication to others to use, nor transfer the geographical indication to others. The views of the above two scholars show that the

geographical indications under the trademark law guarantee can be transferred. However, some scholars believe that collective trademarks and certification trademarks cannot be transferred, they believe that collective trademarks can not be transferred, and the certification trademark can not be transferred without the approval of the relevant administrative departments.[9] The reason is that the collective trademark is mainly to show to consumers that the producers of the use of the trademark have common characteristics, proving that the trademark is mainly to prove that the commodity has the quality required by the trademark, the identification function of the two determines its generally non-transferable, otherwise it will damage the rights and interests of consumers and social public interests. Moreover, geographical indications registered as collective trademarks or certification trademarks have not only geographical restrictions on producers and processors, but also qualifications, which reduces the scope of disposal of geographical indications and makes it difficult to play real value in transactions.

#### **4.2. Geographic Indications can be Transferred as an Intellectual Property Pledge According to Law**

The author believes that under the protection mode of trademark law, geographical indications, as a trademark type, with private right property like other trademarks can be transferred and sold according to law. Moreover, China has also made clear provisions on the transferability of geographical indications that are registered as collective trademarks and registered trademarks. According to the provisions of paragraph 2 of Article 16 of the Measures for the Registration and Administration of Collective Trademark and Certified Trademarks, if a collective trademark or certification trademark is transferred, the right successor shall have the corresponding subject qualification and conform to the provisions of the Trademark Law, the Implementation Regulations and these Measures. This regulation lays a legal foundation for the transfer and sale of geographical indications under the protection mode of the Trademark Law, and shows that as long as the right assignee has certain qualifications, the geographical indications under the trademark law protection mode can be transferred according to law. Therefore, the geographical indication under the protection mode of trademark law meets the transferability requirements of intellectual property pledge financing.

### **5. Conclusion**

Geographic indication as a new kind of intellectual property rights, the relative lack of academic research of geographical indication pledge financing, China has not made specific provisions on geographical indication pledge, leading to the financing of geographical indication pledge in China is facing difficulties and obstacles. Therefore, it is very necessary to further deepen the research of geographical indication pledge financing. At present, China's geographical indication protection mode is mainly the special law protection mode and the trademark law protection mode. Under the mode of special law protection, China has not make clear provisions on whether geographical indications can be transferred. Under the mode of trademark law, China clearly stipulates on the transferability of geographical indications registered as a collective trademark or certification trademark. Therefore, the author explores the legal elements of the pledge, combined with the geographical indication trademark law protection mode, from the relevant laws of our country, summarize the conditions of intellectual property pledge, to analyze the feasibility of registered as collective trademark or prove trademark geographical indication pledge financing, in order to provide theoretical basis for our geographical indication pledge financing, to improve the geographical indication pledge financing system to provide useful experience.

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