

Ability of judging the claims of civil liability arising from the violation of Geographical Indications

Saadieh Rashidi Bachay¹, Dr. Faysal Saeidi²

¹Department of Law, Persian Gulf International Branch, Islamic Azad university, Khorramshahr, Iran

².Assistant professor, Ahvaz Branch, Islamic Azad university, Ahvaz, Iran

Abstract: Judgment in claims of civil liability arising from the violation of geographical indications is due to the specific nature of their qualifications and their facilities. It seems that this applies to all claims arising from the handling of intellectual and functional property. Due to the specifying of nature of arbitration in relation with civil liability arising from the violation of geographical indications, it seems that in the claims the beneficiaries of geographical indications of some people aren't determined and limited. So investigating to their claims is not possible by judicial ways, and those who are as a claim to right by arbitrating to reach to their own right. However, this paper tries to investigate this possibility (judgment in claims of civil liability arising from breach of geographical indications). Finally, we should say that the most important problems of judgment in relation to judgment of the judge decisions that issued by arbiter in the field of intellectual property because of the wide range don't include the limitation of special places and times. These issues and challenges will be assessed in this study.

[Saadieh Rashidi Bachay, Faysal Saeidi. **Ability of judging the claims of civil liability arising from the violation of Geographical Indications.** *N Y Sci J* 2015;8(4):34-36]. (ISSN: 1554-0200). <http://www.sciencepub.net/newyork>.

7

Keywords: vote, citizenship, residence of court, judge

Introduction

Geographical indications are a group of symptoms that are inserted on the product to indicate the geographical origin of the goods. These signs as trademarks have distinctions, but they are different, because geographical indications registered in the name of sex (generic) does not change and also to protect it is permanently. The geographical indication of the product because of the qualitative link with a geographical area divided into three categories:

Indications of source, 2 geographical indications in the strict sense, 3- names of origin

In most legal schools is investigated that supports from the creations under an economic right. The former on the theory also the nature of the protective system is explained on the basis of personal rights, property. So the theory is relatively new points, the followers of this theory, which was first presented by Peter Drahavas and more bases of his own idea lie in social interests. The policy in the capitalistic world with new conditions has led to that montafin of sheets of the right of invention is more than inventor.

As you can see most of the foundations of the theory is based on the policy. The policy that always is with the justifications in other parts of intellectual property but in the context of geographical indications not only the policy hasn't any place but also the insisting on it causes the breach of the propose, The main objective of establishing a supportive system of geographical indications in addition to the integration of markets is supporting products that the rural population are as producers them

Some theories of intellectual property conflict with the principle of arbitration

Intellectual property is the sum of many intellectual and philosophical ideas that all of them agree in the principle of support. However, the basis of their attitude may be vary, in the view of some the intellectual property as a personal right can judge and refer the dispute to third parties but the court must also be provided for this purpose, on the basis of the principles, the ruler determines the right from unjustifiable. Theory of personality also known as the theory spiritual rights theory attributed to Hegel and Kant. According to this view, a book, a piece of music or any work that is the product of human creativity is an example of self-expression or Self-actualization of its creator has considered as the kind of development of the creator. Therefore, the work of author is considered as the character of creator since most writers, musicians and artists are claimant of the spiritual and metaphysical relationship with the works of their own creator. Theories of Hegel and Kant state that human intellectual activities are a part of the personality of their own creator. And recognition of property s rights that is the necessity of freedom of spirit and the will of man, are popular, widespread and noticeable.

Against task-oriented the theory, utilitarian theories are under more general theories as result-oriented theory. It looks that in the theory is considered the overall condition of the intellectual effect and its effect in the social system in case the issue of our dispute is where differences need to be judged. The meaning of the arbitration refers to the

dispute does not deal with the public perception of the impact of an intellectual creation. In the realm of legal rules, a utilitarian approach evaluates the fairness of the legal rules with regard to its results. What behavior was enacted in response to the case of approach?

Recognition of private ownership's rights is provided in two ways: correlative motivation for performing efficient and inefficient behavior. On the one hand, respecting for private ownership's rights encourages them to invest more in productive activities, and consequently goes up the level of prosperity and economic development. On the other hand, recognizing the right of private ownership of resources causes an optimal and efficient use of resources, or in other words, it will cause optimal allocation of resources. In terms of historical sequence, the motivation of the capitalistic resource are prior to the motivation of optimal allocation of resources.

The conflict of ruler with national law of creator of the work

When you refer to arbitration to resolve disputes, it must be discussed on the authority of this reference. In this case, it is possible that the judge can with respect to intellectual property judges as he hasn't competent to judge, because intellectual property as a global phenomenon is many miles away with new law. The main issue addressed in the course of intellectual property was subject to vote of judge. The dependence to judge's vote as well as dependence of individuals, in fact, arises from the principle of territorial sovereignty of countries. Granting dependence based on votes of judgment can be likened to the dependence of real individuals according to the criterion soil. The traditional view of the laws of the land, according to the principle of public international law, country has sovereign within their borders. And laws and their courts have the exclusive right that to determine the legal status of physical and legal actions and events conducted within their borders including judgments made on the land. From a practical point of view, also country as the place of arbitration has a legitimate interest in controlling the flow of the vote and guarantee minimum of criteria for the judgment and taking right is undertaken by judge. In fact, the place of the arbitration has a link between the judge and the country's legal system. Therefore, contract of parties cannot alone mandatory vote of judge, and every judgment must necessarily be subject to arbitration of the law of a country. Because any action by any person must be under national sovereignty and obtains the legitimacy and its own strength. That is why the countries of origin have competence of judicial supervision over the judge's vote and to investigate to protests of the votes and their cancellation. And for

the reason other countries cannot recognize such as the inexistence vote after revocation, with considering the majority of domestic and international resources, it can be said that exclusive jurisdiction of country employs the seat of arbitration and judicial supervision over judge's vote and investigates the protest to decisions of the International judgment, and it is a general rule that universally is accepted. And even about it can be a claim to consensus.

Possibility of dependence on judge's vote

When the laws of several countries are associated with the arbitration, each of them has claim of sovereignty over their judgment. In this case, among the laws of the countries will be inconvenient. If the rules of these countries are different in this case creates the conflict. Determining the applicable law, its theoretical aspect is beneficial more that practical aspect. Those who actually do judgment believe that determine the applicable law is not an effective issue. In the view of these people, when a dispute arises, the dispute can be resolve the contents of the contract by business procedures and rarely states to go to the applicable law. The term "international" for cleaning the internal judgments uses judgments that go beyond purely national territory, and because of the presence of foreign elements in them, they are not totally interior. Thus, domestic arbitral votes issues in civil judgments and foreign arbitral votes issues in the form of foreign judgments, the arbitration relates to issues such as the following: Ability to resolve the dispute by judgment, creating the judgment's court, conditions and qualifications required for judges and their scope, powers and duties of judges. How to promote arbitration, the presentation and defense bills, how to go front the claim, to evaluate reasons, attraction of witnesses, to issue a temporary order, the judgments final vote, the condition of issuing the verdict and the execution of judgment vote. the provisions as to the procedures to address that the Court is as the place of civil procedure. And the judge was required to implement it, and basically there is no possibility of violation or change it

The conditions of dependence on judge's vote

Dependence on judge's vote should be made based on certain principles, because the most important feature of dependence on judge's vote is to give functionality to the judgment's vote. In this context we take different theories attribute to the situation creating dependence that each of them is mentioned the following.

Dependence-based Court of judgment

The traditional view is that the binding nature of a vote, necessarily have to be derived from a legal system that has both the exclusive jurisdiction and national competence. And the legal system of the place of the judgment shall be such as this.

In addition to considering the principle of territorial sovereignty, dependence of place of residence of the court in civil procedures can take advantage that the governing regulations corresponds with common expectations of the parties in choosing the place of judgment.

The theory dependence of International judgment

Whenever we bring judge like any other contract out of the international law dependence, we should bring him under the other legal system, because we cannot suspend the international judge. Some lawyers believe that international commercial judge can be removed from the country's sovereignty and dependence and directly locate it under public international law, and attach it beyond dependence.. in the view of The followers of this theory in international commercial judgment, especially if one side (or both sides) is the state, the judgment cannot be governed by the national law, because it is contrary to the fundamental principle of equality of states

Voluntary dependence

According to the first theory, the parties have rights that his willing determine the dependence of judge s vote. The law can be nationality other than citizenship of place of judgment.. Second, judges cannot have nationality other than what the parties employ in judgment.. Otherwise, contrary to the express will of those has been stepped and have been removed the scope of their authority in fact judgment is the establishment of private equity based agreement of the parties and the main distinctive aspect is judicial proceedings.

Conclusion

The result has obtained by a study that is done in the scope of intellectual ownership. One of the problems that exists in this regard, there is no single nationality for judgment. Because according to the legal absolute principle. These cases are addressed. Creature and applicable in the judgment system is specific.. Because the parties on the basis of a single law act in court or arbitration. However, the legal system of intellectual ownership is simply not possible, because in the Court stakeholders may have different nationalities, for the reason they cannot issue a single sentence so the discussion of the dependence of judge seem not to be easy to solve. So this solution of cases requires the extensive planning in order to

provide a single procedure in international convention and competent centers that handles this kind of litigation. For this reason it is recommended that the system of international rule executes the plan and rules in this relation.

Reference

1. Atrak, Hussein: "moral utilitarianism", Journal of Reviews and critics, Spring and Summer 1384 - No. 37 and 38.
2. Skini, Rabiya, Conflict of Laws in International Commercial Arbitration, International Journal of the Legal Office of the Legal Services of the Islamic Republic, No. 11, 1368.
3. Immanuel Kant's "Critique of Practical Reason", translation Anshaalla Rahmati, Tehran, Nouvrl Saghlin, as well as the other translation of M. Saaney Dare Bidi, Tehran, the role of journalist, 1384.
4. Joneidi, Laya, the governing law of international commercial judgment, J publication Dadgostar, printed, 1376.
5. Jonaidy, L., review of comparative law, international commercial arbitration, Tehran, Tehran University Faculty of Law and Political Science, 1999.
6. Hekmatnia, Mahmoud: "Fundamentals of Intellectual ownership", Tehran, published by the Institute of Culture and Islamic thought, first edition, 1386.
7. ShabbirZanjani, Sayyed Hassan: "jurisprudence and intellectual ownership and rights", dissertation of PhD, Private Law, Faculty of Law and Political Science, Tehran University, 1387.
8. Shiro, Abdul, international commercial judgment, publication Samat, first edition, 1391.
9. Wilhelm Friedrich Hegel, "Elements of the Philosophy of Right or summary of the natural law and political science", translated by Mahbod Irani Talab, first print, publication Parvin., Second Edition, published by Ghatre1378.
10. Law Journal, No. 15-14, Office of International Legal Services of the Islamic Republic of Iran, 1370.
11. Nikbakhat, M, Conflict of Laws in International Commercial Arbitration, Theology and Law Journal, vol. 15 and 16, 1384.