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Empirical Investigation of Fraud and Unfair Competition Practices in France and Vietnam: Actors, Types and Drivers

Abstract – The primary function of GIs is to protect the consumers and producers’ interests against fraud and unfair competition practices. This paper investigates the actors, types and drivers of fraud and unfair competition practices in five case studies in France and Vietnam. It shows how fraud practices may derive from both inside and outside the GI system. Within the GI system, many reasons may contribute to fraud practices, including low awareness, conflict or misunderstanding among GI stakeholders, as well as the lack of transparent and efficient quality controls. Outside the GI system, fraud and unfair business practices primarily stem from the commercial success of origin names.

Keywords – Fraud; Unfair competition; Enforcement; Vietnam; France; Empirical research.

Introduction

Referred to as the ‘institutionalisation of reputation’ (Belletti, 2000, 239), geographical indications (GIs) primarily aim to protect the consumers and producers’ interests against fraud and unfair competition practices by preventing name usurpation and diversion of income (Bramley and others, 2009). The producers’ goodwill and the brand’s reputation constitute the underlying ‘valuable intangible that is being protected’ (Gangjee, 2012, 145) against free-rider competitors. The role of GIs in preventing name usurpation has become increasingly important considering the growing number of instances of misappropriation of origin names. For instance, it is estimated that the usurpation of the name ‘Karoo lamb’ (from South Africa) is commonplace (Biénabe and others, 2011) and that about forty million kilograms of tea are sold worldwide as Darjeeling tea every year, while the production of genuine Darjeeling tea is only ten million kilograms (Das, 2006). Unfair business practices, which stem from the commercial success of origin names, result in loss of revenue for the genuine producers while misleading consumers in their purchasing decisions (Das, 2009). This paper explores the following questions: Who are the actors involved in fraud practices? What are their drivers? And are there different types of frauds?

Methodology

Using a qualitative methodology, this paper investigates fraud and unfair competition practices in five case studies in France and Vietnam. These are: Star anise from Lang Son (GI, 2007); Sticky rice from Dong Trieu (origin collective mark, 2013); Conical hats from Hue (GI, 2010); Pélardon cheese (PDO, 2001); and Bouccht mussels from Mont-St-Michel Bay (PDO, 2011). Primary data were collected through semi-structured interviews that were conducted in France and Vietnam in 2014 and by telephone and emails in 2017-2020. Secondary data were generated through desk study of legal texts, product specifications and evaluation reports.

Results

Fraud and unfair competition practices were found in all our case studies across the two countries at different times (pre- and/or post-registration). Before the GI registration, these practices are observed in the French case studies as well as, in Vietnam, for fried calamari from Hà Long. These products share the common characteristic to have established a strong reputation on the market before the GI registration with their name being increasingly used by actors outside the area of origin. For instance, the name ‘Fried calamari from Hà Long’ was being used on products that came from the neighbouring Quang Yên District. Similarly, it was found in the 1980s that the name ‘Pélardon’ was being used on goat cheeses produced in Spain where production costs were lower, which resulted in cheeses sold as ‘Pélardon’ with rock-bottom prices. Likewise, 20,000-30,000 tonnes of mussels were sold every year under the name ‘Mont Saint-Michel’ while only 10,000-12,000 tonnes were - and still are - grown in the area. For these products, the legal protection of the name primarily aimed to protect producers and consumers’ interests against the misuse of the name. The protection also entailed, at least in France where the bottom-up approach to GIs provides a key role to producers, the active involvement of local actors in the elaboration of the product specifications and the establishment of strong quality control mechanisms (Pick and Marie-Vivien, 2021).

After the GI registration, fraud and unfair competition are mainly observed in Vietnam who has adopted a top-down approach to GIs in which GI initiatives are usually designed by external consultants and managed by state authorities. Some producers of fried calamari from Hà Long were found to use more flour and less calamari than prescribed by the product specifications, and several rice farmers in Đông Triều were reported to mix sticky rice with normal rice.
which is easier and less costly to grow, without subsequent adequate controls from the authorities. If fraudulent practices primarily aim to reduce production costs, they may also stem from a disagreement with the requirements of the product specifications. For instance, in the case of conical hats from Huế, the producers’ association sought to sell all types of conical hats with the GI logo because it actively supports its use on all categories of hats, in disagreement with the local authority who registered the GI for a specific type of hats. Fraud practices may also derive from a misunderstanding as per the meaning and function of a GI, as with star anise from Long Sơn. In this initiative, the GI logo was found on the packaging of both star anise and other products, like cinnamon. The company admitted using the GI logo to signal the commercial origin of its products, as if the GI were its private trade or commercial name. Finally, corruption and non-transparent practices by the very ones in charge of the quality controls have been reported in Vietnam, which contributes to the general inefficiency of the quality controls.

DISCUSSION

Our findings show the variety of actors, types and causes of fraud practices. Before the GI registration, fraud and unfair competition practices are usually carried out by external actors who seek to free-ride on the products’ reputation in relation to greater market access and possible price premiums, as often the case with French products. By contrast, most Vietnamese products do not have an established reputation on the market, with a few notable exceptions like Phu Quoc fish sauce and fried calamari from Ha Long whose reputation has benefited from the prestige of the nearby Ha Long Bay, a UNESCO World Heritage Site. In all these instances, it is the perception of a common risk derived from free-riding on the reputation of the name that led local actors to seek a GI protection. After the GI registration, fraud practices are found primarily in Vietnam and show the involvement of actors from inside the GI system. While these practices stem from various reasons, including low awareness, economic interests, conflict or misunderstanding among GI stakeholders, they point to the shortcomings of the Vietnamese top-down approach to GIs which has generally translated in little understanding, adhesion and commitment of local actors (Pick and Marie-Vivien, 2021).

Importantly, fraud practices highlight the inefficiency or lack of quality controls in Vietnam, as has been observed in other emerging and developing countries (Marie-Vivien and Biénabe, 2017). By contrast to France where the establishment of quality control mechanisms based upon the product specifications is a prerequisite for the recognition of GIs, GI applications in Vietnam must include information on self-control mechanisms only. The law does not require the elaboration of internal and external control plans. This significant legal loophole contributes to explaining the inconsistent, inefficient, non-transparent or even non-existent external quality controls and lack of consistency between internal and external controls. Besides, unlike in France where the GI producer groups can choose the certification body in charge of the external quality controls, in Vietnam the law provides for a state management of external quality controls. The high number of state agencies involved in external quality controls with unclear, undefined or redundant functions poses problems of efficiency and coordination which are undermined by the poor institutional quality and non-transparent practices.

In conclusion, fraud and unfair competition practices may derive from both inside and outside the GI system for various reasons. Before the GI registration, outside actors may free-ride on the reputation of the products and the commercial success of the origin names. After the GI registration, these practices may be conducted by inside actors in contexts where the post-registration stage is not adequately organised at both the regulatory and practical levels and where the over-involvement of the state impacts negatively on the producers’ understanding and adherence to the GI initiatives while creating opportunities for non-transparent practices.

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