A Study on Jurisdictional Issues in Anti-Unfair Competition Law in International Trade

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Abstract: With the globalization of commerce, more conflicts are arising from cross-border unfair competition practices. This study focuses on analyzing current mechanisms from different countries and resolving the problems of jurisdictional overlaps and the expansion of juris-dictional power in international trade. Different jurisdictions adopt various jurisdictional theories to solve the problems. Some countries adopt the Effect Doctrine and others take the Territoriality Principle in regulating extraterritorial unfair competitions, which may cause conflicts. As a result, the paper aims to find methods which can be used internationally. The pathways to improve the problems in cross-border anti-unfair competition law include the following three. First, promoting regional regulatory alignment; second, innovating mechanisms and building global competition law network; third, offering technical assistance to developing economies. The findings provide a framework to determine the jurisdiction and strengthen multilateral co-operation.

1 INTRODUCTION

In the context of economic globalization, economic and commercial relations between countries are becoming closer. The construction of foreign-related legal frameworks across nations also demands sustained refinement. As the law that protects the legal rights and interests of business operators and consumers, the anti-unfair competition law is playing an increasingly prominent role in international trade.

In 2020, Luckin Coffee admitted to deceiving the consumers and relevant public through false and misleading commercial statements. It was forced to delist from NASDAQ under Listing Rule 5250(c)(1) due to its financial fraud. This case contributed to the enactment of the U.S. Holding Foreign Companies Accountable Act (HFCAA), which mandates the U.S. Public Company Accounting Oversight Board (PCAOB) access to audit inspections, imposing additional disclosure obligations on foreign companies listed on the U.S. ex-changes. However, to a certain degree, HFCAA has harmed the interests of foreign companies listed in the U.S. market (Chen, 2023). After the sustained negotiations between China and the United States, PCAOB issued a report on December 15, 2022. In this report, PCAOB confirmed its completion of inspections and investigations for the 2022 assessment period on accounting firms in mainland China and Hong Kong, rescinding its 2021 designation (Li, 2014)

It is evident that anti-unfair competition laws across nations are facing mounting jurisdictional challenges amid increasingly complex commercial practices, which involve both conflicts and cooperation between different countries and corporations. This necessitates international collaboration and consultation to develop solutions that balance interests among states, businesses, and consumers.

Based on these, the research analyses cases and papers from various countries to identify the key conflicts, explores jurisdictional approaches in anti-unfair competition laws across different jurisdictions, and determines useful pathways. The research aims to provide methods for establishing jurisdiction in international trade and explore coordination mechanisms between domestic anti-unfair competition laws and international legal frameworks.

The research methods applied in the study include literature analysis, case analysis and comparative legal analysis. Firstly, by reviewing legal documents and papers from various countries and international organizations on anti-unfair competition laws, the study identifies jurisdictional issues in anti-unfair competition laws and evaluates existing solutions.

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This analysis provides a foundation for proposing further recommendations for solutions. Secondly, examining cases of international anti-unfair competition enforcement to reveal current legal practices and highlight potential problems. This approach ensures that the research reflects actual judicial and administrative enforcement, offering practical solutions. Finally, comparing jurisdictional rules on extraterritorial anti-unfair competition laws across different jurisdictions clarifies countries' legal characteristics and priorities. This method illustrates diverse approaches to resolving jurisdictional conflicts, which offers in-sights to the establishment of appropriate jurisdictional standards in cross-border anti-unfair competition cases.

2 LITERATURE REVIEW

Under these economic and social circumstances, exploring solutions to improve jurisdictional issues in competition law, analyzing the extraterritorial effectiveness of anti-unfair competition legislation, and investigating how nations can collaborate and negotiate have become indispensable topics in building a more open and secure international economic order.

Scholars have proposed diverse approaches to addressing jurisdictional challenges in international trade and competition governance. Some argue that states should incorporate international influence when formulating trade and competition policies, comprehensively evaluating the possible ways the policies may interact and the potential legal effects, in order to minimize jurisdictional conflicts at the legislative level (Janow, 2005). Others advocate adopting Conspiracy Jurisdiction in judicial practice, which means courts may assert jurisdiction over unfair practices (e.g., commercial bribery, false advertising) if collusion among conspirators demonstrates a tangible link to the forum state (Price & Jar-vis, 2024). Additionally, scholars emphasize replacing unilateral mechanisms with multilateral treaties (e.g., UN Conventions) to prevent the expansion of domestic law extraterritoriality and allow more participation from Global South participation in shaping new juris-dictional principles (Yoon, 2024). Notably, academic literature is urged to serve as a Binding Agent for fragmented treaty regimes by bridging theory with practice (Byrne, 2024).

Depending on this literature, the main arguments of this research are as follows. First, national competition laws should balance local conditions and transboundary impacts. Next, States should collaborate to clarify jurisdictional boundaries and applicable laws. Last but not least, the international community should provide targeted safeguards for developing economies in trade contexts.

3 CURRENT JURISDICTIONAL PRACTICE AND EMERGING ISSUES IN CROSS-BORDER ANTI-UNFAIR COMPETITION LAW

3.1 Current Jurisdictional Practice of Cross-Border Anti-Unfair Competition Law

The Paris Convention for the Protection of Industrial Property (1883), adopted by the World Intellectual Property Organization (WIPO), obligates member states to impose legal restraints on acts of unfair competition. Specifically, Article 10bis of the Convention prohibits acts of confusion (misleading the public about commercial origins), discrediting competitors' goodwill, and false or misleading representations.

Furthermore, Article 10ter stipulates that-where permitted under national law-relevant industries, producers, or trade associations may seek judicial remedies through domestic courts. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), adopted on April 15, 1994, and entering into force on January 1, 1995, requires World Trade Organization (WTO) members to comply with the provisions of the Paris Convention for the Protection of Industrial Property concerning anti-unfair competition practices. Additionally, Article 39 of TRIPS introduces specific protections for trade secrets and undisclosed test data, thereby filling in a gap in international regulations regarding the protection of confidential business information.

Moreover, Part III of the TRIPS Agreement stipulates that member states must ensure their domestic laws provide effective legal remedies against the infringements outlined in the agreement.

Building on this framework, the World Intellectual Property Organization (WIPO) issued the Model Provisions on Protection Against Unfair Competition in 1996. These provisions include five categories of unfair competition practices. Causing Confusion with Respect to Another's Enterprise or Its Activities, damaging Another's Goodwill or Reputation

misleading the public discrediting Another's Enterprise or Its Activities and Unfair Competition in Respect of Secret Information.

In April 2020, Luckin Coffee issued an announcement admitting to financial fraud, in-volving fabricated transactions worth $310 million, which drew widespread attention in both China and the United States.

Following this self-disclosure in April 2020, the U.S. Securities and Exchange Commission (SEC) immediately launched an investigation. The SEC ultimately determined that Luckin had violated the anti-fraud provisions of the Securities Exchange Act and harmed the interests of U.S. investors. In May 2020, Luckin Coffee was forcibly delisted from U.S. stock exchanges. By September 2021, Luckin reached a $187.5 million settlement agreement with U.S. investors to resolve the litigation.

Although Luckin Coffee was listed in the U.S., its primary operations remained in China, and its fraudulent activities harmed the interests of Chinese investors and consumers. This case fell under the jurisdiction of China's Securities Law and the Supreme People's Court's Judicial Interpretation on Several Issues Concerning the Application of the Anti-Unfair Competition Law of the People's Republic of China. Consequently, China's State Administration for Market Regulation (SAMR) imposed a fine of 2 million RMB on Luckin for false advertising (SAMR Penalty [2020] No. 19).

The case also prompted the enactment of the U.S. Holding Foreign Companies Account-able Act (HFCAA) in May 2020. This law requires foreign companies listed in the U.S. to comply with additional disclosure requirements. If a company fails to provide the required audit or organizational information, its shares will be placed on a delisting list and barred from trading on U.S. exchanges (Chen, 2023).

However, these audit oversight requirements directly conflict with China's Data Security Law. After multiple rounds of negotiations, China and the U.S. reached an Audit Over-sight Cooperation Agreement in August 2022. For the first time, China permitted the Public Company Accounting Oversight Board (PCAOB) to inspect and investigate the audit firms of Chinese companies listed in the U.S. In December 2022, the PCAOB announced the completion of its first round of inspections, revoking its prior designation of non-inspection for relevant firms and temporarily averting the delisting crisis for Chinese stocks (Cowan,1996).

This case highlights the overlapping jurisdictions and regulatory conflicts in international anti-unfair competition enforcement, as well as the challenges posed by unilateral measures, which exacerbate jurisdictional disputes.

3.2 Jurisdictional Issues in International Anti-Unfair Competition Law

3.2.1 Overlapping Jurisdiction in Cross-Border Anti-Unfair Competition Laws

When drafting legislation, the extraterritorial jurisdiction of anti-unfair competition laws may overlap across different countries due to different theoretical foundations. Key juris-dictional principles, such as the territorial principle and the effects doctrine, often create conflicts in enforcement.

The effects doctrine allows a country to regulate extraterritorial unfair competitions as long as it has a substantial impact within its borders. This principle has been widely adopt-ed in U.S. antitrust law, as seen in landmark cases like United States v. Aluminum Co. of America (Sami, 1982). In contrast, the territorial principle asserts absolute jurisdiction over conduct occurring in a nation's territory, which limits regulatory reach to domestic activities.

Additionally, conflicts arise between the nationality principle and the conduct-based principle. In practice, corporations may strategically structure their operations across jurisdictions to further complicate their enforcement. For instance, a company might split its business processes, such as decision-making and manufacturing, across countries, making it difficult to determine the primary locus of liability.

These overlapping and sometimes conflicting jurisdictional standards create legal uncertainty, raising challenges for international cooperation in combating unfair competition.

3.2.2 Jurisdictional Expansion by Major Powers in Foreign Trade

In international trade, major economies, particularly the United States, have increasingly extended their jurisdictional reach, which often leads to legal conflicts and diplomatic tensions. The U.S. doctrine of long-arm jurisdiction, traditionally requiring a defendant to have Minimum Contacts with the forum state and the Fundamental Fairness and Substantive Justice, as established in International Shoe Co. v. Washington.

However, in recent decades, this principle has been expanded. The Sherman Act allows the U.S.

government to regulate foreign conduct that has a Substantial and Foreseeable Effect on American commerce. The Foreign Corrupt Practices Act (FCPA) is used to prose-cute foreign companies for bribery outside the U.S., often under the justification that corrupt payments passed through U.S. financial systems. In addition, the U.S. extends its jurisdiction by restricting foreign companies from using American technology or financial systems, even for transactions outside U.S. territory. For example, in 2020, the U.S. im-posed a semiconductor ban on Huawei, barring global chipmakers using U.S. equipment from supplying the Chinese technology company.

The extraterritorial expansion of jurisdiction has triggered international pushbacks. EU's Blocking Statute invalidates the effect of U.S. sanctions on EU companies. Similarly, China's Anti-Foreign Sanctions Law (2021) authorizes countermeasures against foreign entities enforcing discriminatory restrictions on Chinese firms.

3.3 Comparative Study on the Cross-Border Effect of International Anti-Unfair Competition Laws

3.3.1 The Extraterritorial Jurisdiction Effect of Anti-Unfair Competition Laws in the EU

The EU's anti-unfair competition law is not fully harmonized. There are still differences in the legislation of member states, but with a unified legislative basis. The legislative basis, for example, the Treaty on the Functioning of the European Union stipulates the prohibition of commercial bribery and the restriction of competition (Senftleben, 2024). The Unfair Business Practices Directive sets out the types of Unfair Business Practices in more detail. The Brussels Regulations rule that, in general, the jurisdiction should be the domicile of the defendant, the place where the tort caused by the anti-unfair act occurs or the place where the damage occurs. Among these, the jurisdiction of the consumer's domicile applies to business-to-consumer (B2C) cases, and the rules of contract or tort jurisdiction apply to business-to-business (B2B) disputes.

3.3.2 The Extraterritorial Jurisdiction Effect of Anti-Unfair Competition Laws in the U.S.

In Foreign Sovereign Immunities Act (FSIA), foreign sovereigns are presumed to enjoy sovereign immunity. However, the law also has nine exceptions to it, including commercial activities conducted by foreign states in the U.S. or outside the U.S. that cause a direct effect on the U.S. commerce. The Lanham Act in America defines the term Person as including any state, state authorities and officers. Lt means that any anti-unfair competition acts happen in the U.S. or have an actual effect on the American commerce, can be ruled by the Lanham Act.

3.3.3 The Extraterritorial Jurisdiction Effect of Anti-Unfair Competition Laws in Asia and Africa

In Competition Act (CA) in South Africa, the conduct outside South Africa that has a substantial, direct, and Foreseeable Effect on domestic markets (Sec. 3(2)), aligning with international effects doctrine principles can be governed. The Anti-Unfair Competition Law of the People's Republic of China (2019 Amendment) governs jurisdictional authority over unfair competition acts through a territoriality-based framework, which is applied to all business operators engaging in unfair competition with-in China, regardless of nationality.

4 APPROACHES TO ESTABLISHING JURISDICTION IN EXTRATERRITORIAL ANTI-UNFAIR COMPETITION LAW

4.1 Regional Regulatory Alignment

To address jurisdictional conflicts, countries should enhance legal harmonization through regional cooperations. This includes aligning legal standards and procedural rules. Regional blocs can adopt model guidelines or mutual recognition agreements to reduce compliance burdens for businesses operating across borders. Additionally, soft-law instruments, such as OECD or UNCTAD guidelines, can facilitate gradual convergence toward globally accepted norms. Combining regional coordination with flexible international norms, this method can reduce legal conflicts in solving cross-border unfair competition problems (Kondo& Kochiyama, 2017).

4.2 Institutional Innovation and Technology Empowerment

A global competition enforcement network could integrate real-time data-sharing platforms, AI-driven market monitoring, and joint investigation protocols to combat cross-border violations (Li et.al., 2024). Blockchain-based authentication and digital reporting systems may enhance transparency. Furthermore, establishing rapid-response task forces within existing bodies would strengthen collective action against emerging threats like economic coercion or predatory pricing in digital markets (FIERBINȚEANU & NEMEȘ, 2022).

4.3 Capacity Building and Differentiated Rule Design

Capacity-building initiatives funded by international organizations (e.g., WIPO, World Bank) should prioritize the following fields. Firstly, it is crucial to take technical training. Workshops on digital forensics, antitrust economics, and litigation strategies for local agencies can help lay a solid foundation for the practical use of rules. Secondly, tailored rules are necessary. Because of the late development of competition laws in Asia and Africa, many of the jurisdictions adopted the principles of the rules from the developed countries (Ravago et.al., 2024). The principles may not fit the local characteristic of commerce and customary law. The countries may find their own characteristics in international commerce and amend their laws to fit the current situation. Last but not least, sectoral protection is necessary to provide temporary safeguards for vulnerable industries (e.g., agriculture, cultural heritage) in low-income nations (Yoon, 2024). This framework balances uniformity with flexibility, ensuring equitable participation in the international competition governance system.

5 CONCLUSION

This study examines jurisdictional issues in extraterritorial anti-unfair competition laws across nations and international organizations in the context of economic globalization, employing comparative legal research and case analysis. It proposes that the determination of jurisdiction in cross-border anti-unfair competition cases should be based on the specific circumstances of each unfair competition act, while promoting deeper international co-operation and establishing applicable legal standards through multilateral agreements.

This research provides an analytical framework for addressing extraterritorial jurisdiction issues, offering theoretical support for establishing a fair, harmonious, and ordered inter-national trade competition system. It also furnishes legal justification for enhancing inter-national cooperation and multilateral agreements in anti-unfair competition enforcement, contributing to a more equitable and well-regulated global competitive environment.

Finally, the study is limited to jurisdictional effectiveness concerning anti-unfair competition acts and does not address more complex areas such as data-related disputes. Future research could explore the jurisdictional implications of competition law in international data governance, thereby strengthening the connection between anti-unfair competition law and emerging digital domains.

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