

Research on the History of Trademark Law Change and Trademark Attachment

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Abstract: Trademarks encapsulate a company's reputation as well as the quality of its products or services, serving as significant intangible assets. The practice of "trademark climbing" not only severely harms the legitimate rights and interests of brand - owning companies and consumers but also disrupts the order of the market economy and undermines the market environment of equitable competition. By referring to historical documents and typical cases, this article explores the significance and necessity of legal protection for trademarks. It is believed that the governments of various countries should expedite the improvement of the pertinent trademark laws to more effectively combat infringements, such as trademark ascending, and to foster the healthy development of the market economy following their research. Meanwhile, consumers, producers, and operators should increase their awareness of intellectual property rights and employ legal methods to protect their legitimate rights and interests in consumption, production, and operation activities.

Keywords: Trademark Law, Trademark Attachment, Trademark Protection, Intellectual Property.

1. Introduction

Trademarks, as the core element of brand identity and a key factor in market competition, not only symbolize corporate goodwill and product quality but also serve as an indispensable reference for consumers during their purchase decisions. In the context of the burgeoning commercial activities, the legal safeguarding of trademarks has become an absolute necessity. Trademark law, being a vital legal framework for upholding market order and fostering innovation, has been in a continuous process of improvement to keep pace with the ever - changing market environments and business practices. During the evolution of trademark law, the infringement pattern of trademark attachment has gradually emerged. Trademark attachment refers to the behavior of using the popularity and reputation of others' trademarks without the permission of the trademark owner to misidentify the source of goods or services by imitation, approximation, or other confusing means so as to obtain improper benefits. This behavior damages trademark owners' legitimate rights and interests, disrupts the regular market order, and misleads consumers. With the unceasing enhancement of trademark law, the definition, manifestations, and legal consequences of trademark attachment are gradually clarified and refined. From the initial simple imitation to the later complicated means of confusion, trademark attachment behavior constantly evolves and upgrades. To cope with this challenge, the Trademark Law has gradually raised the standards and penalties for trademark attachment in the

revision process to more effectively protect the legitimate rights and interests of trademark owners and maintain market order. From a historical perspective, this paper this paper conducts an in - depth exploration of the intrinsic relationship between the evolution of trademark law and trademark attachment. By combining the development process of trademark law and dissecting the evolution trend of trademark attachment behavior, this research enables better understand the importance and necessity of trademark legal protection. Simultaneously, it also assists us in contemplating how to further optimize the trademark legal system to combat trademark attachment infringement more effectively and promote the healthy development of the market economy..

2. The Historical Evolution of Trademark Law

The historical evolution of trademark law is closely intertwined with development of the commodity economy. From the late 19th century to the early 20th century, with the advancement of the Industrial Revolution and the robust growth of the commodity economy, trademarks as a crucial tool for brand identification and market competition, gradually attracted extensive attention from various countries regarding their legal protection. Subsequently, different countries promulgated corresponding trademark laws and regulations to regulate trademark registration, usage, and security. At the international level, the signing of the Paris Convention established preliminary international norms for trademark protection, signifying that trademark law had entered a new stage of development.. The Paris Convention promotes cooperation between countries in trademark protection and lays the foundation for the subsequent development of trademark law.

Subsequently, the WTO TRIPS Agreement further propelled the international unification and coordination of trademark law. The TRIPS Agreement, also known as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), is an essential agreement under the WTO framework. This agreement aims to reduce intellectual property barriers in international trade and promote adequate and effective protection of intellectual property rights worldwide. It encompasses various intellectual property rights, including copyrights, trademarks, and patents, and formulates international unified protection standards. Unlike prior international conventions, the TRIPS Agreement elaborately stipulates the implementation procedures of intellectual property rights [1]. It precisely defines the availability, scope, and exercise standards of intellectual property rights, implementation, acquisition, and maintenance procedures, as well as dispute prevention and resolution [2]. It provides detailed procedures for enforcing intellectual property laws, which is a notable feature in comparison with previous international conventions because national Law primarily defined the enforcement procedures in the past [3]. Concerning intellectual property disputes, the Agreement provides for applying WTO dispute settlement mechanisms and procedures [4]. Different transitional periods are set for different types of countries so countries can have sufficient time to adapt their domestic laws to the protection standards and implementation measures set out in the Agreement. Additionally, the Agreement provides a dispute settlement mechanism to ensure the appropriate resolution of intellectual property disputes. The signing of the TRIPS Agreement has played a vital role in establishing and improving the global intellectual property protection system and provided a strong guarantee for technological innovation and cultural exchanges in international trade.

In the 21st century, in the face of the challenges posed by digitalization and networking, trademark law is constantly adjusted to adapt to the new environment. The demand for trademark protection in the network environment has prompted the corresponding revision of trademark law to deal with new problems such as cybersquatting and Internet infringement. These changes are intended to ensure that trademark rights remain effectively protected in the digital age.

3. The Concept and Application of Trademark Attachment

Trademark attachment is a fundamental concept in trademark law and intellectual property. It refers to taking advantage of the trademark popularity and reputation established by others without the authorization of the trademark owner to misidentify or confuse consumers about the origin of goods or services through imitation, approximation, or other means. This kind of behavior damages the interests of the trademark owner and disturbs the market order, so it is generally regarded as a kind of trademark infringement [5]. Firstly, let's conduct an in - depth exploration of the concept of trademark attachment. The core of trademark attachment lies in the word “attachment” infringers try to enhance their market position and product sales by relying on the popularity and reputation of others' trademarks. This behavior typically manifests in the imitation or similar use of well - known trademarks, such as the utilization of similar patterns, colors, fonts, or combinations. As a result, when consumers encounter the infringing trademark, they will instinctively associate it with the original trademark, leading to misidentification or confusion.. The legal nature of trademark attachment is precise, it constitutes a type of trademark infringement. This is because the trademark right is exclusive, and the trademark owner has the right to prohibit others from using the trademark without authorization. Trademark attachment violates this exclusive right, misleading consumers and obtaining improper commercial benefits through imitation or similar use of other's trademarks. On the international stage, trademark attachment has drawn widespread attention and is subject to regulation. Several international conventions and agreements, including the Paris Convention for the Protection of Industrial Property and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), have protected trademark rights and prohibited various infringements, including trademark attachment. These international legal norms provide powerful legal weapons and unified action criteria for countries to combat trademark attachment. In practical applications, cases of trademark attachment emerge endlessly. Some enterprises or individuals recklessly adopt improper means, such as trademark attachment, to obtain market share and profits. For instance, in certain industries, it can observe the emergence of some trademarks that bear a striking resemblance to well - known brands. They attempt to baffle consumers by imitating elements such as the trademark design and color scheme of famous brands, thereby misleading consumers into purchasing their products or services. This kind of behavior severely damages the interests of the original trademark owner and undermines the fair - competition environment of the market.

4. Case Study of Trademark Attachment

Fujian ERKE Sporting Goods Co., Ltd. (hereinafter referred to as ERKE Company) was established on June 8, 2000. It is a significant apparel manufacturer enterprise engaged in the production, wholesale, and retail of standard sports shoes and sportswear [6]. The registered "ERKE" trademarks of the company enjoy a very high reputation and have been widely used and promoted over an extended period.

During a browsing session on an online shopping website on December 14, 2020, the agent of ERKE Company discovered that an online store named "ERRKE" was selling products of the "ERKE" series. Upon investigation, it was revealed that the "ERRKE" online store had made extensive use of trademarks such as "ERRKE" and "ERKE" in product titles, product display images, and product details pages. On April 4, 2022, while browsing the products of the "ERRKE" online store on the online shopping website, the agent of ERKE Company discovered a pair of "ERKE" sports shoes priced at 328 yuan, with 95 pairs already sold at that time. ERKE Company (the plaintiff) believed that the infringing goods sold by the "ERRKE" online store (the defendant) highly overlapped with the "ERKE" brand products it operated and for which it had the exclusive right to use the trademark in terms of functions, uses, sales channels, and consumer groups. Thus, they

constituted the same type of goods as those it handled. This led to confusion among relevant consumers regarding the source of the goods, thereby infringing on its exclusive right to use the trademark according to the law. The "ERRKE" online store engaged in a subjective and intentional act of trademark attachment by extensive use of the "ERKE" logo to promote and sell infringing goods. Consequently, it initiated litigation against the People's Court of Baqiao District, Xi'an City, accusing it of infringing upon the exclusive right to use the trademark [7]. The defendant was obligated to cease the infringement, publish a statement to mitigate the impact, compensate for economic losses of 50,000 yuan, and cover the litigation expenses. After accepting the case, the People's Court of Baqiao District, Xi'an City (China) confirmed the trademark rights. The court determined that civil entities are entitled to trademark rights under the law, and trademarks approved for registration by the Trademark Office are registered trademarks, including product trademarks, service trademarks, collective trademarks, and certification trademarks. Trademark registrants possess exclusive rights to trademarks and are protected by the law. The plaintiff, as the trademark registrant of "ERKE", is entitled to trademark rights as stipulated by Law. The defendant's use of the plaintiff's registered trademark "ERKE" on the identical product without the plaintiff's consent resulted in a misrepresentation of consumers and a violation of the plaintiff's exclusive right to use the trademark. The court determined that the defendant was required to compensate the plaintiff for economic losses (including reasonable expenses) of 20,000 yuan after considering the popularity of the trademark in question, the defendant's infringement, subjective fault, the defendant's sales volume, and the reasonable expenses incurred by the plaintiff to prevent the infringement. The plaintiff's other claims were rejected. Neither party filed an appeal after the judgment's issuance. When the aforementioned cases are combined, the subjective intentional behavior of trademark attachment is evident in the use of registered trademarks that already have corresponding market popularity and reputation in the company name, and the business scope also belongs to the same industry or directly related industries. The "ERRKE" online store's conduct not only severely undermines the legitimate rights and interests of brand companies and consumers but also disrupts the market economic order and destroys the market environment of equitable competition.

Most market operators must operate lawfully, be honest and trustworthy, and increase their awareness of intellectual property rights to address infringements such as trademark attachment. Operators or producers should register their trademarks. As product vendors or service franchisees, they should exercise due diligence, select formal cooperation channels, and engage in legitimate competition. At the same time, consumers are advised to choose merchants authorized by the brand when purchasing products. Secondly, the enforcement of actions against trademark infringement should be strengthened, and governments and relevant agencies should accelerate the development of trademark laws and regulations. Additionally, enhancing international cooperation is one of the crucial strategies for curbing trademark - related infringements. Through international cooperation, countries can jointly combat cross - border trademark infringement and maintain a fair competition environment in the global market.

5. The Relationship Between Changes in Trademark Law and Trademark Attachment

There exists a profound and intricate relationship between the evolution of trademark law and trademark attachment. During the historical development process of trademark law, remarkable changes have taken place in the definition, form, identification standard, and punishment measures regarding trademark attachment. These changes not only demonstrate the law's adaptability and flexibility to the development of the market economy but also disclose how trademark attachment has spurred the improvement and development of trademark law [8]

5.1. The Interplay of Trademark Law Developments and Trademark Attachment Infringement

First, the development of trademark law is closely intertwined with the definition of trademark attachment. In the early nascent of trademark law, the scope of trademark protection was relatively limited, concentrating on trademark registration and essential protection principles [9]. However, with the dynamic expansion of the market economy, the significance of trademarks in commercial competition has become increasingly prominent, and the infringement of trademark attachment has gradually surfaced. In response to this challenge, trademark law has undergone revisions and enhancements, leading to a more precise and detailed definition of trademark attachment. Trademark attachment is now defined as using the popularity and reputation of another's trademark without the trademark owner's authorization through imitation, approximation, or other means to cause consumers to misrecognize or confuse the source of goods or services. The clarity of this definition furnishes a solid legal foundation for combating trademark - attachment activities. Secondly, the evolving forms of trademark attachment have driven the adaptation and adjustment of trademark law. As the market economy continuously evolves and commercial competition intensifies, the forms of trademark attachment are in a perpetual state of change and escalation. From straightforward trademark imitation to complex element mixing and color attachment, these new trademark attachment behaviors bring new challenges to trademark law. To cope with these changes, the trademark Law has made more detailed provisions on trademark attachment through continuous revision and improvement. For instance, in the case of new infringements like color - related attachments, the trademark law has specified the corresponding identification criteria and punishment measures, thereby adapting to market fluctuations and safeguarding the legitimate rights and interests of trademark owners..

5.2. Tougher standards and stronger penalties for trademark attachment under changes in trademark law

Furthermore, as trademark law evolves, the standards for trademark attachment have become more stringent [10]. Initially, the original trademark law might have only centered on the graphical and textual elements of a trademark, and the criteria for identifying trademark attachment were relatively lax. However, with the development of the market economy and the improvement of consumers' brand cognition, trademark attachment has an increasingly significant influence on market competition and consumers' rights and interests. Therefore, during the amendment process, the trademark law has gradually raised the recognition standard of trademark attachment. Besides considering the graphic and textual parts of the trademark, it also considers the overall visual effect of the trademark, the actual degree of confusion of consumers, and the subjective malicious intent of the infringer. This change makes the identification of trademark attachments more accurate and fair, helps maintain market order, and protects the rights and interests of consumers. At the same time, with the change in trademark law, the punishment measures for trademark attachment have been gradually strengthened. In the early days, the trademark law might have had relatively light punishments for trademark attachment, mainly civil compensation. However, with the increasingly rampant behavior of trademark attachment and the severe damage to the market competition order, the trademark law has increased the punishment for trademark attachment during the revision process. Modern trademark law not only provides for high fines and civil liability but also may impose criminal penalties on infringers. These severe punishment measures effectively curb the occurrence of trademark attachment and protect the legitimate rights and interests of trademark owners and the stability of market order [11].

6. Conclusion

Since its inception, trademark law has undergone continuous process of evolution and improvement to keep pace with the development of the commodity economy and changes in business practices.. The transformation of this legal system not only embodies the protection of the legitimate rights and interests of trademark owners but also reflects the determination to maintain market order and the rights and interests of consumers. Trademark attachment, as a typical form of trademark infringement, has evolved in tandem with changes in the market environment. Its behavior has changed from simple imitation to complicated means of confusion, bringing severe challenges to trademark owners and market order. However, the ongoing revisions and strengthening of the trademark law, along with the elevation of identification standards and toughening of penalties for trademark attachment, have effectively curbed the occurrence of such infringements. This has safeguarded the interests of trademark owners, maintained fair competition in the market, and protected consumers' rights and interests.. The improvement and development of trademark law is a response to the needs of the market economy and the challenge of trademark infringement. In the future, with the progress of science and technology and the innovation of business models, trademark law will face more challenges and opportunities. Therefore, we need to continue to pay attention to the latest development trend of trademark law to more effectively combat the infringement of trademark attachment and promote the healthy development of the market economy.

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