

Analysis of Jordan Trademark Dispute Case

Weibo Fang^{1,a,*}

¹*Grit Academy, Shenzhen, 518000, China
a. 13650571333@163.com*

**corresponding author*

Abstract: The dispute over the trademark "Qiaodan" is mainly constituted by the trademark infringement case of Nike International Co., Ltd. (from now on referred to as "Nike") against Qiaodan Sports Co., Ltd. (from now on referred to as "China Qiaodan"), and the civil lawsuit against Qiaodan Sports Co., Ltd. by the American NBA basketball star Michael Jordan for infringing his right of name and trademark. The study proposes the following questions: we propose the following questions: How to define the exercise subject of a natural person's "name right", how to judge the corresponding relationship between a trademark mark and a natural person's "name", whether "popularity" should be the judgment factor of damaging a natural person's "name right". The paper suggests that the exercise subject of a natural person's "name right" should be himself and there is a "broad" correspondence between the trademark and the "name" of a natural person. Besides, "popularity" should be a judgment factor in such cases.

Keywords: Qiaodan, Nike, trademark right, Michael Jordan

1. Introduction

From 2002 to 2007, Nike filed an objection to the Trademark Review and Adjudication Board of the State Administration for Industry and Commerce for the eight trademarks applied by China Qiaodan, requesting the cancellation of the relevant trademarks involved in the infringement of China Qiaodan. Subsequently, Nike did not file an administrative lawsuit with the court. In February 2012, Michael Jordan complained against China Qiaodan Sports for infringing his right to name and trademark because China Qiaodan violated Article 31 of the Trademark Law of the People's Republic of China, which stipulates that "the application for trademarks shall not infringe upon the existing prior rights of others." Finally, the Trademark Review and Adjudication Board did not support his request to cancel the relevant trademarks of China Qiaodan because the name "Qiaodan" does not specifically refer to Michael Jordan. Subsequently, Michael Jordan appealed to the First Intermediate People's Court of Beijing. However, it failed, and the court still supported the resolution of the Trademark Review and Adjudication Board. Michael Jordan continued to appeal to the Beijing High People's Court, which was also rejected. In the previous appeals, Michael Jordan lost the lawsuit. In 2015, Michael Jordan appealed to the Supreme People's Court again. In December of the same year, the Supreme People's Court intellectual property tribunal ruled to review 10 cases according to the Administrative Procedure Law of the People's Republic of China. On December 8, 2016, the Supreme People's Court made the final judgment, ruling that the registration of "Qiaodan" infringed the athlete Michael Jordan's right to the prior name, and China Qiaodan should be revoked. At the same time,

about the involvement of the pinyin "QIAODAN" a and the related graphics combination trademark of 3 cases, Michael Jordan does not enjoy the right to name; the disputed trademark does not violate the trademark law. The trademark dispute case of "Qiaodan" ended with the withdrawal of Nike, the victory of Michael Jordan, and the revocation of part of the trademark of China Qiaodan. The final judgment in this case maximized the protection of the legitimate rights and interests of all parties. Michael Jordan protected his right to name, and China Qiaodan did not suffer fundamental losses of interest as a result of this event. But when we analyze this event, we can find that the biggest controversy lies in the different spellings of "Jordan" and "qiaodan" in the two different language systems of English and Chinese. Therefore, we believe that the applicability of trademark law in the international environment needs to be continuously promoted.

Given the above situation, the paper proposes the following questions: How to define the exercise subject of a natural person's "name right"? How to judge the corresponding relationship between a trademark mark and a natural person's "name". Whether "popularity" should be the judgment factor for damaging a natural person's "name right".

2. The exercise subject of a natural person's "name right"

A natural person's "name right" belongs to the category of personality rights. "Personality right is the right to maintain and realize personality equality, personality dignity, and personal freedom to take the inherent personality interests of civil subjects as the object" [1]. There is an inseparable nature between personality rights and civil subjects. With the continuous development of the economy and the continuous enrichment of advertising and marketing nowadays, "Stars" are constantly emerging through advertising endorsements and other ways to obtain commercial remuneration for their names or portraits. The situation of natural person endorsement advertising in Article 2 Clause 5 of China's Advertising Law has been stipulated. Whether it is the actual market situation or the specific provisions of the law, natural persons are endowed with the business model of obtaining economic benefits from their personality rights objects through licensing, authorization, and other means. To sum up, when a natural person's "name" is registered as a trademark by others, if only the natural person himself claims damage, it obviously does not cover the commercial subjects who obtain the natural person's name, portrait, and other personality rights by paying consideration, nor does it effectively protect its legitimate commercial interests, nor can it actively curb the unjustified seizure of trademark registration. Therefore, the subject of exercising the natural person's "name right" should be limited to himself or his interested person. However, even if the natural person transfers the complete right to use the "name" for commercial purposes to other subjects if the natural person finds that others have implemented the behavior of damaging his "name right" in the process of trademark registration, he still has the subject qualification to claim relevant rights. Because the personality right attribute of "name right" determines that it cannot be separated from the natural person, In the above "Jordan" trademark dispute case, the retrial judged that "the right to name is personal. Although the right to name can contain economic interests, such as the right holder's ability to license his name to others for commercial use, the right to name itself can neither be completely separated from the right holder's person nor be completely transferred. Therefore, even if the retrial applicant exclusively licenses his name to Nike for commercial use, he still enjoys the right of name and has the right to separately apply for cancellation of the disputed trademark." [2].

3. The "broad" correspondence between the trademark and the "name" of a natural person

As for whether the disputed trademark logo uses the "name" of a natural person and whether there is correspondence between them, there are two levels of problems. The first level needs to be solved is

that because the "name" of a natural person is a symbol that can refer to a specific natural person through external forms of expression, whether the "symbol" should be limited to the appellation shown on the household registration book or ID card of Chinese residents, or the appellation shown on the passport of natural persons in overseas regions and countries of China, that is, only one "symbol" is allowed to refer to a natural person; or whether it should include the pen name, stage name, translated name, shop name, and other "symbols" included in the natural person's actual life, business activities, work, and creation, that is, the "name" of natural person should not be limited to a specific symbol in legal form, and how to limit the extension of the "name". The second level that needs to be solved is how to determine the correspondence between the trademark logo and the "name" of the natural person. In the above case, Qiaodan Company in the trademark review stage defense put forward that the trademark in dispute, "Qiaodan," and the case of revocation application subject, Qiaodan, do not have a "unique" corresponding relationship because there are natural persons in addition to legal documents to use other symbols refer to their phenomenon, so when referring to other symbols, whether the symbol should be limited to the natural person has a "unique" corresponding relationship. Another view is that this kind of corresponding relationship should not be limited to the "unique," as long as the specific symbol for the trademark designated by the relevant public can be recognized as referring to the natural person. It should not be too "demanding," otherwise it is not in line with the development of modern commercial society and also cannot meet the objective of effective protection of the natural person's "name" and curbing the spread of improper trademark acts. In the above "Qiaodan" trademark dispute case, the retrial proves that "Qiaodan" has a high degree of popularity. The Chinese public usually refers to the retrial applicant as "Qiaodan." It has formed a stable corresponding relationship between the retrial applicant and Qiaodan, so the retrial applicant "Qiaodan" enjoys the right to name [3].

4. The significance of "popularity" for the judgment

"Visibility" should be used as damage to the natural person's "right to name" factors. Trademarks and names both refer to different things through specific symbols. The difference between the two is that a trademark refers to the symbol of the source of relevant goods or services. Through this specific symbol, consumers can judge the quality, function, and other information of goods or services in a short time, reducing the cost of information screening for thousands of goods and improving the efficiency of selection and purchase. The name refers to the symbol of a specific natural person. "Through the name, a natural person can maintain his personality in the relationship with the people around him and distinguish himself from others in social interaction. Based on the differences between the functions of trademark and name, in terms of simple trademark registration behavior, even if the symbol is the same as the "name" of a natural person, it does not mean that it directly leads to the destruction of the human dignity of the natural person but rather reflects the improper use or acquisition of the commercial value contained in the "name," which is different from the identification of the "name right" in general civil tort disputes. Therefore, if the relevant public who uses the goods or services designated by the trademark does not associate the unique symbol in the trademark with a specific natural person, it cannot be directly recognized as damage to the "name right" of the natural person. Therefore, "popularity" should be used as the judgment factor for the damage to the "name right" of the natural person in the administrative case of trademark authorization and confirmation. Based on the above analysis, in the administrative case of trademark authorization and confirmation, the analysis of whether the damage is caused mainly from the perspective of the economic interests of personality rather than from the perspective of the spiritual interests of personality in the traditional civil law theory. Therefore, the different judgment value base points determine the differences in the judgment ideas and judgment factors. The "celebrity" effect makes it easy to obtain the favor of the relevant public for purchase because of its "popularity," which has a certain advertising effect. The

basis of this economic value cannot be separated from the "popularity" of the natural person and recognized separately. It is based on trademark authorization and right cases; the protection of the natural person's "name right" is analyzed with the natural person's "economic value" as the original intention, not from the personality and spiritual interests of the judgment, and the judgment of the individual "economic value" obviously cannot be identified with the so-called "equal treatment" view; the difference in the influence of individuals in the consumer group is objective. At the same time, "popularity" as the judgment factor of the protection of the natural person's "name right" under the trademark law can also effectively solve the problem of how to choose in the "double name" phenomenon; otherwise, it will not be possible to change the name of the natural person with the right to change their name, and there may be the behavior of improper registration and "free riding." Changing the name of the "popularity," which is excluded from the judgment factor, may make the planning of the aforementioned behavior "outside the law". Based on the above analysis, in administrative cases of trademark authorization and right confirmation, if the natural person does not have "popularity," it is difficult to demonstrate that the "relevant public" is likely to think that the disputed trademark refers to the natural person, so "popularity" should be the judgment factor in such cases [4–5].

5. Conclusion

Name is the basic right of a person. There is no clear provision in Chinese law on the standards for the protection of the prior right of name in administrative disputes over trademark authorization and confirmation, and there have been controversies in judicial practice. With the development of China's economy, the deep adjustment of its economic structure, and the replacement of old driving forces with new ones, China has reached a new stage where only innovation can drive sustainable development. The judgments of a series of cases play an important role in guiding market entities to operate with integrity, respect others' legal prior rights, and actively cultivate independent brands. The study is of great significance for China to create a market order of fair competition, improve the trademark registration system, and implement brand strategy[6].

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