

Comparative Study on The Trademark Renewal System Between China and Anglo-countries

Chang Liu^{1, a}

¹Murdoch university, Australia
^a34549088@murdoch.edu.au

Abstract: With the development of economy, all countries began to pay attention to the role of trademarks in economic development. Since the introduction of China's Trademark Law in 1982, the application rate of trademark registration in China has been increasing yearly, which is inseparable from the continuous improvement of China's trademark system and the continuous improvement of the awareness of trademark right holders. However, on the other hand, the renewal rate of trademark registration in China has always been low. This paper aims to compare and analyze the trademark renewal system of China and the European Union, the United Kingdom, the United States and Canada from the perspective of renewal procedure through comparative research methods, so as to put forward valuable and targeted suggestions on improving the Chinese trademark renewal system.

Keywords: Trademark renewal, Chinese trademark law, European and American trademark law, Trademark registration.

1. Introduction

China trademark law was born in China's planned economy period, because of the provisions of China's planned economy, institutional constraints, makes the trademark law full of disadvantages, with the process of reform and opening up in 1978, the disadvantages of trademark law also gradually highlighted, and seriously affect the rapid development of economy. For example, the trademark law in the United States and Canada is generally divided into two categories, one is the ordinary trademark law, the other is the federal trademark law, which makes detailed interpretation and research on trademark definition, trademark registration, trademark use, trademark infringement and other contents. Compared with trademark law of China, it is strict, rigorous and scientific. A trademark is a kind of identification for the producers and operators of commodities or services to distinguish the commodities or services provided by itself from the commodities or services provided by other producers or operators. It contains the intellectual achievements of the creators, and thus is protected by intellectual property rights. According to Article 3 of the Trademark Law of the People's Republic of China (hereinafter referred to as the China Trademark Law) of 2019, the trademark approved by the competent trademark authority of China as a registered trademark is a registered trademark, and the trademark registrant enjoys the right to exclusive use of the trademark, which shall be protected by law. However, like other intellectual property rights, the protection of trademarks also has a protection period, and the general trademark protection period is ten years. Because trademarks have a lot of room for appreciation, with the expansion of the brand influence and the increasing popularity, the value of the trademark is also higher and higher. After the 10-year protection period, the exclusive right to use the trademark will not immediately expire, the law allows the trademark owner to renew it, and there is no limit on the number of renewal. In theory, as long as the trademark owner timely maintains the trademark and timely it within the effective period, the period of trademark protection can be permanent. However, in practice, the

renewal rate of trademarks is low. Some enterprises may often lack the understanding of trademark renewal and miss the opportunity of trademark protection, or even be registered by others, which thus brings irreparable losses to the industry.

2. The Current Status and Defects of China's Trademark Renewal System

Since the trademark right is different from other rights such as copyright or patent right, it does not prevent the same goods or services from entering the market and will not cause market monopoly ". Therefore, the trademark right is endowed with a unique system to provide continuous protection for the registered trademark, that is, trademark renewal. As long as the trademark right holder submits the application for renewal in time within the renewal period or extension period, the validity period of the renewal after approval shall be calculated from the next day after the expiration of the previous validity term of the trademark, and the exclusive right of the trademark will be continuously protected. China's provisions on trademark renewal are mainly reflected in Article 39 of the China Trademark Law: "The term of validity of a registered trademark is ten years, calculated from the date of approval and registration." Article 40: "Upon the expiration of the registered trademark, the trademark registrant needs to renew the extension within twelve months before the expiration, and if the trademark fails to continue the use, it may grant a six-month extension. The period of validity of each renewal registration is 10 years, counting from the day after the expiration of the validity period of the last term. If the renewal has not been renewed at the expiration of the period, the registered trademark shall be cancelled." < Article 33 of the Regulations on the Implementation of the Trademark Law of the People's Republic of China > (hereinafter referred to as the Regulations for the Implementation of the Chinese Trademark Law) specifies the starting date of the validity period of the renewal of the trademark, the renewal period of the registered trademark. From the perspective of the term, the relevant provisions in China are in line with the development trend of

the international regulations on trademark renewal, which are also appropriate to the actual situation in China. Although the Chinese trademark renewal system has been relatively complete, but there are still some shortcomings. First, China's trademark renewal rate is not high. In the nearly 40 years since the introduction of China's trademark law, although the number of enterprises applying for renewal has been increasing, the renewal rate of trademarks in China is not high. According to preliminary statistics, less than 50% of the trademarks have been renewed in the first half of 2023.

The reasons are as follows: first, in the case of no transfer and inheritance of the trademark right, the company goes bankrupt or the owners' pass-away of the trademark right, so that the trademark right also dies out. 2. Second, because of the lack of renewal awareness, that the renewal cost is high, and choose to re-register after the expiration of the trademark. In addition, a considerable part of the case is that the trademark right holder due to the forgetting of the expiration of the validity period.

3. Investigation of the Anglo National Trademark Renewal System

Study of the trademark renewal system of the European Union, the United Kingdom, the United States and Canada.

3.1. It stipulates the reminder system before the expiration of the validity period of the trademark

The trademark authorities of some countries and regions will notify the owner of the registered trademark of the expiration of the trademark. For example, both the EU Trademark Law and the UK Trademark Law stipulate that six months before the expiration of the trademark registration, the EU Intellectual Property Office and the UK Intellectual Property Office will notify the trademark owner and his agent or any other registered right holder that the expiration of the trademark registration should be renewed. At the same time, Article 53 of the EU Trademark Regulations stipulates that if the notice has not been delivered successfully, it will not affect the expiration of the validity period of the registered trademark, and the Intellectual Property Office will not be liable for it.

3.2. The recovery period system of expired trademarks is stipulated

Usually, for an expired trademark, if the renewal application is not filed within the extension period, the trademark will be canceled. For example, the European Union, the United States, and Canada. But British trademark law stipulates six months after the extension. British "trademark law rules" article 37, during the exhibition period if failed to submit renewal application or application failure, the trademark will be canceled, but in the six months after the renewal period, considering the details of the renewal, if the British intellectual property office think not renewal is unintentional, so the trademark may still be restored and renewed.

3.3. A system of declaration of trademark use or excusable non-use for trademark renewal is provided

In terms of the trademark renewal review procedure,

because only the formal review, the materials to be prepared for the trademark renewal are relatively simple. Under normal circumstances, the materials to be submitted generally include the trademark renewal application, the applicant's subject qualification certificate, the need to submit the power of attorney, the registration certificate and payment certificate, etc. The specific requirements are slightly different according to the different provisions of different countries. For example, the European Union and the United Kingdom have roughly the same materials to submit for renewal. However, the United States Trademark law provides that the use certificate of the trademark should be submitted when applying for the trademark renewal. The Lanham Act requires that the trademark renewal application form also requires an excusable declaration of the use of the trademark.

4. Specific Suggestions on Improving the Trademark Renewal System of China

Based on the comparative study of the current situation of the Chinese trademark renewal system and the foreign renewal system, combined with the reality of China, this paper puts forward the following specific suggestions on improving the legal system of the Chinese trademark renewal.

4.1. Establish a reminder system before the expiration of the trademark validity period

The trademark renewal is held only once every ten years, and the trademark is often canceled because of the trademark right holder forgetting the validity period. In view of this situation, both the EU Intellectual Property Office and the UK Intellectual Property Office have set up a notification system during the renewal period, that is, to notify the right owner of the expiration of the trademark within six months before the expiration of the trademark. On the one hand, setting up the reminder system can effectively remind the trademark owners to timely renew, and on the other hand, it is also beneficial to reduce the infringement disputes during the exhibition period. Therefore, it is necessary for China to establish a reminder mechanism. At present, the reminder system in the world is mainly divided into two kinds, registration namely reminder system and selective reminder system. The author prefers the latter, because in practice, some trademarks have become "ownerless trademarks", in the case of the trademark Office does not know the true state of the trademark implementation notice reminder, on the one hand, there is no practical need, on the other hand, it will increase the implementation cost of relevant departments. The application by the trademark owner or agent can allocate resources more effectively. At the same time in view of the trademark is, after all, a private right, the right holder should pay more attention, so this notice can only be an auxiliary reminder, the relevant departments to notice success should not bear any responsibility, the right holder can not successfully received the notice and failed to renew within the legal period. Therefore, for the establishment of the reminder mechanism, the following provisions can be added after Article 33 of Chapter IV of the Implementation Regulations of China's Trademark Law.

"From the date of the approval of the State Intellectual Property Office to the expiration of the trademark, the trademark owner or trademark agent may submit an application to the Intellectual Property Office for a reminder

of the trademark. For the submitted application, the Intellectual Property Office shall notify the trademark owner, its agent or any other registration holder in writing six months before the expiration of the trademark registration. The registration shall be renewed upon the expiration of the application.”

4.2. Increase the review of trademark use

In order to urge the trademark right owner to use the trademark actively and truly more effectively, the author thinks that the trademark right holder should also submit the evidence of the trademark use when submitting the application for trademark renewal. Although the us trademark registration principle is different from China, is the principle of "prior use", but even in the United States based on "domestic registration" for the application of registered trademark, in the fifth year to the sixth year must be submitted to prove, otherwise will bear the adverse consequences of trademark cancellation, very pay attention to the actual use of trademark. Trademarks that need to be renewed are no exception, and certificates of use are also need to be submitted when submitting the application for renewal. This system effectively urges trademark owners to actively and truly use trademarks. Therefore, from the perspective of renewal, the author believes that the trademark right holder should also submit the use evidence of the trademark when submitting the application for trademark renewal. For the trademark owner, when a trademark that has been registered for nearly ten years needs to be renewed, the trademark must have been used in the market for a long time, has the identification function of distinguishing the product source, and even has a certain popularity, so it is not difficult to submit the use certificate of the trademark. Increasing the active examination of trademark use, on the one hand, will help the examination institution to make a more comprehensive and objective judgment of the true intention of the right holder to renew.

The following provisions may be added to the review of improved trademark renewal.

(1) "For a registered trademark that needs to be renewed, the trademark owner or his agent shall submit the commercial use evidence of the registered trademark for the past three years along with the application for renewal.

(2) Where the trademark owner fails to submit the evidence of use within the extension period or although he submits the evidence of use, it is not determined to constitute an effective commercial use after examination, the State Intellectual Property Office shall make a decision not to renew the trademark.”

4.3. Establish the recovery period system

From the perspective of strengthening the protection of registered trademarks, the author believes that the recovery period system should be stipulated after the extension period. The obligee, who has good reasons and has no intention to renew, may apply for resumption within six months after the end of the extension. The trademark owner or his agent shall submit to the Intellectual Property Office the reasons for failure to timely renew the trademark and pay considerable recovery fees during the recovery period. If the Intellectual Property Office considers the reasons sufficient and valid, the trademark right may be restored. Similarly, after the restoration of the trademark right, its validity period can be calculated from the next day after the expiration of the validity period of the previous trademark, and the exclusive

right of the trademark can still be continuously protected. However, the effectiveness of the restored trademark right should be limited to a certain extent. From China issued in 2002, the Supreme People's Court on trial, standard civil dispute case interpretation of some issues of applicable law, article 5 and 1999 issued the opinions on some issues in the trademark administrative law enforcement in article 12, article 1, on the extension of the rights of the trademark protection issues, after the expiration of the renewal application for approval before this period of time infringement problem did not make sufficient and clear provisions. According to the existing theoretical research, if the trademark holder makes an application for renewal, the application shall be continuously protected at any time thereafter, and the extension shall constitute infringement. Meanwhile, if the extension of the trademark, whether the holder makes the extension or during the expiration of the extension, the extension shall be invalid and the use of others shall not constitute infringement. Finally, for the application for renewal within the extension period, even if the renewal application is finally approved, the validity of the trademark exclusive right should be limited to a certain extent, for the business

During the period from the expiration of the validity period of the bid to the application for renewal, the bona fide use of the trademark by others shall not constitute infringement, although the trademark right has been continuously protected. This is because, due to the consideration that the continuous use of the trademark may continuously enhance its value, the broad extension itself provides a relief and protection for the registered trademark. In terms of the nature of the lenient extension, the protection should be the extension of the trademark owner for renewal, rather than the protection of the right of trademark exclusive right. Therefore, in order to urge the trademark owner to exercise this right as soon as possible and clarify the right status of his registered trademark, it is very reasonable and important to limit the validity of the trademark right in the application for renewal within the extension period. And recovery system as the trademark owner of a higher level of protection, is more need to limit the effectiveness of the recovery trademark, namely although the trademark is restored can require infringement trademark to stop using, however, in the case of the goodwill use the new trademark, new trademark owners from the date until the date of its recovery, shall not bear tort liability. On the one hand, the recovery period system of trademarks is consistent with the development trend of paying more attention to the protection of registered trademarks; on the other hand, it can also provide a more complete and feasible solution to the problem of right protection of Chinese trademarks in the renewal period.

5. Conclusion

Through the above comparative analysis of the continuation of trademark law between China and Anglo - countries, it can be seen that there is a certain gap between trademark law of China and Anglo countries in many places. The Author also realize that in order to make China's rapid economic development, China needs to constantly learn from the successful experience of other developed countries. Although there are differences in the specific provisions of the trademark system, the protection mode of trademarks is similar. The law gives the trademark owner the right to renew indefinitely, which is not possessed in other forms of

intellectual property. China's current trademark renewal system has made important contributions to the development of China's trademark industry and economic and social development, but there are also some defects and deficiencies. To this, can draw lessons from the successful experience of trademark renewal system at home and abroad, especially before the registered trademark renewal reminder system, trademark renewal submit trademark use evidence system and the registered trademark after the expiration of the grace period system, further improve the system of Chinese trademark law so as to further accelerate the construction of intellectual property of china.

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