International Journal of Education and Humanities
ISSN: 2770-6702 | Vol. 3, No. 3, 2022

Comparison of Famous Trademark Laws in China and Japan in International Economic Law

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Abstract: This article begins with the growth of Chinese and Japanese brands and introduces an overview of the legal systems of famous trademarks in the two countries. On this basis, a comparative study was made on the contents of the famous trademark systems of the two countries, such as the recognition system of famous trademarks, the individual legal protection of famous trademarks, and the defense of trademark systems. At the end of the article, which talked about the views on how to improve the legal protection of famous trademarks in China in the future.

Keywords: Trademark legal system, Recognition system, Legal protection system.

1. Introduction

As an economic and brand power, Japan has a lot of excellent experience in building a well-known trademark legal system in China.While, China has a short history of protecting famous trademarks, but has formulated a legal system for famous trademarks with world standards. With the acceleration of China's marketization process and the implementation of the national brand strategy, the protection of well-known trademarks is of great significance to the country, the market and enterprises. Japan is already a world brand power, and famous brands such as Sony and Panasonic have great social and economic influence in the international market. The growth of Japanese brands in the market is inseparable from the long-term improvement of the legal system for the protection of famous trademarks. Therefore, a comparative study of the growth level of famous trademarks in China and Japan and the legal protection system of famous trademarks is not only beneficial to China, but also conducive to promoting the improvement of China's famous trademark system.

2. The Differences Between China and Japan In the Protection of Famous Trademarks

2.1. Differences in The Scope of Protection of Well-Known Trademarks Between China and Japan

First of all, the differences between China and Japan in the protection of famous trademarks are embodied in the scope of protection of famous trademarks. China adopts cross-class protection for the protection of famous trademarks, but only if the trademark is registered in China. However, in Japan, cross-class protection is used regardless of whether a well-known trademark is registered or not.

2.2. Japan's Legal Provisions on Famous Trademarks

Japan's legal provisions on famous trademarks.Japan's current Trademark Law was enacted in 1959 and has been amended several times since then. Notably, the 2004 amendment gave the court the power to revoke trademarks that had been preemptively registered by third parties on the basis of facts. This strengthens the protection of well-known trademarks. The provisions of the current Japanese Trademark Law on famous trademarks are mainly embodied in Article 4. 10, 11, 15 and 19, Article 32(1), 33(1), and Article 64(1). In addition, in 1999, the Japan Patent Office promulgated the revised "Examination Standards for the Protection of Well-known Trademarks and Famous Trademarks", which stipulates the scope of protection, infringement standards, and damages for famous trademarks to adapt to the implementation of the Trademark Law.

It is worth mentioning that Japan's Anti-Unfair Competition Law plays an important role in protecting well-known trademarks. The Law regulates issues such as the protection of unregistered well-known trademarks and the cross-class protection of well-known trademarks. The combination of the Trademark Law and the Anti-Unfair Competition Law has played a broad defensive role in infringement, and its detailed provisions have good operability at the implementation stage.

2.3. The Dilution Theory of Well-Known Trademarks

The theoretical basis for cross-class protection of well-known trademarks is the dilution theory. Famous trademarks not only have the function of distinguishing goods and services, but also have the quality characteristics and commercial reputation of goods, so the use of the same trademark of a famous trademark for non-similar goods or services is still a well-known trademark, although it is different from confusion. It will not only dilute the characteristics and reputation of the goods and services they mark, but even tarnish and detract from the characteristics and reputation of famous trademarks, so it is necessary to protect famous trademarks across classes to prevent the loss of their intangible wealth. This is the basic meaning of the famous trademark dilution theory.

Admittedly, the traditional theory of confusion is clearly insufficient in the protection of famous trademarks, while the TRIPS Agreement formally establishes the protection of famous trademarks based on dilution theory, so it is accepted and recognized by many countries. China and Japan stipulate

the relevant contents of the famous trademark protection law.

However, the protection of China's famous trademarks based on the dilution theory is mainly based on the provisions of article 13, paragraph 2 of the Trademark Law, "if a trademark applied for on a non-identical or similar goods is copied, imitated, translated or misunderstood by the public on a well-known trademark registered by a third party in China, and damages the interests of the registrant of a well-known trademark, registration is not allowed and its use is prohibited." "Reflected in. It can be seen that when the dilution theory is used in China, it must be a well-known trademark registered in China.

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3. Famous Trademark Recognition Agency

3.1. Differences in The Powers of The Courts and Administrative Bodies of China and Japan

As we all know, in the legal systems of China and Japan, the courts and trademark administrative organs are both organs with the power to protect famous trademarks, and there is a division of labor between the two. Both China and Japan belong to civil law countries and are trademark prioritists, so their roles in the protection of famous trademarks are similar. The trademark administration is mainly responsible for the examination of applications and the handling of opposition and invalidation requests, and the courts are responsible for the trial and protection of well-known trademark infringement cases.

However, due to differences in legal provisions and differences in the competence of the courts and administrative organs, there are differences between China and Japan.

The Trademark Office of China, the Trademark Evaluation and Examination Board, and the Patent Office of Japan have basically the same powers and functions, and in accordance with the specific provisions of their respective trademark laws, administrative decisions such as not to register, invalidity, cancellation, and prohibition of the use of registered trademarks are made. A decision may be made or the infringement of an infringing trademark of a well-known trademark may be stopped. In addition, the relevant administrative regulations are an important basis for the trademark administrative organs of the two countries to exercise their functions and powers. For example, Japan's "Examination Standards for the Protection of Well-known Trademarks and Famous Trademarks" and China's "Provisions on the Recognition and Protection of Famous (Well-known) Trademarks".

In terms of judicial protection by the courts, the difference between China and Japan is mainly in whether the court can directly determine that the registered trademark is invalid. Both China and Japan regard registration as the basis for obtaining trademark rights, and are friendly to trademarks that are approved for registration, and courts usually do not accept claims for invalid trademark rights. However, after 2004, Japan amended the Trademark Law, and Article 39 stipulates that in a lawsuit for infringement of trademark rights, the owner of the registered trademark may apply for his own trademark from the defendant if the plaintiff's registered trademark right "shall be declared invalid in the invalidation proceedings". It is stipulated that powers may not be exercised. That is to say, the court may determine the invalidity of the trademark right according to the facts and evidence during the trial of the case. Obviously, the validity of an improperly registered trademark is directly denied by the court handling the dispute, rather than waiting for the decision of the trademark administrative organ, simplifying the procedure, saving the time and cost of the parties, avoiding the prolongation of the procedure and causing further damages that can be avoided, and effectively protecting the unregistered famous trademark. Japan's reforms are worth learning from China.

3.2. Protective Marks

Protective marks, which is also known as satellite marks, refer to the act of a well-known trademark owner registering the same trademark on other goods in order to prevent the use of the same trademark by a third party other than the goods approved for use by the famous trademark or similar goods. Protective signs are based on "extended protectionism", a system established for well-known trademarks, the purpose of which is to prevent third parties from registering or using trademarks identical or similar to famous trademarks on non-similar goods or services in order to dilute their distinctiveness. It's about prevention. The protective sign system is a kind of prior protection measure spontaneously taken by the owner of a well-known trademark.

4. China and Japan Famous Trademark Recognition Institutions

4.1. Japan's Famous Trademark Recognition Agency

Japanese law does not clearly stipulate the recognition of famous trademarks. At the practical stage, both the Patent

Office and the court, which act as the trademark administration authority, can recognize well-known and well-known trademarks. Article 39 of Japan's Trademark Law, as amended in 2004, provides that in an infringement lawsuit concerning trademark rights, when the plaintiff's registered trademark is "declared invalid in the invalidation proceedings", the owner of the registered trademark shall allow the defendant to exercise his trademark right. Provisions shall not be confrontational. This effectively gives the court the power to invalidate trademark rights, and further enhances the authority of the court in determining well-known trademarks.

4.2. China's Famous Trademark Recognition Agency

Prior to the promulgation of the relevant judicial interpretations, Article 3 of China's existing Interim Provisions on the Recognition and Administration of Famous Trademarks stipulates: "The Trademark Office of the State Administration for Industry and Commerce is responsible for the recognition and management of famous trademarks. No other organization or individual may recognize a well-known trademark or identify an identical trademark. According to the provisions of this article, the State Administration for Industry and Commerce is the only institution in China that recognizes famous trademarks. This means that the court does not have the right to determine whether the disputed trademark is famous on the basis of facts when hearing a well-known trademark dispute case. The court rejected all the court's claims for the recognition of a well-known trademark, and informed the state organs with the right to do so that they could sue after applying to the Trademark Office of the State Administration for Industry and Commerce for recognition of a well-known trademark.

There are obvious drawbacks to the single determination mechanism of administrative organs. First, it is almost impossible for the State Administration for Industry and Commerce to recognize a large number of foreign enterprises as well-known Chinese trademarks. Second, even if it is recognized by the Office as a well-known trademark, it is difficult to estimate the plaintiff's losses in the famous trademark dispute case because the time required is not known.

In order to change the situation of a single determination by administrative organs, in July 2001, the Supreme People's Court issued the Interpretation on Several Issues Concerning the Application of Law in the Trial of Civil Dispute Cases Involving Computer Network Domain Names, article 6 of which stipulates that the "People's Law" court hearing domain name dispute cases may determine whether the registered trademark in question is a well-known trademark in accordance with the law at the request of the parties and the specific circumstances of the case. ". Article 6 of the Interpretation on Several Issues Concerning the Application of Law in the Trial of Civil Dispute Cases, which came into effect in October 2002, stipulates: "In a well-known trademark dispute case, the people's court shall determine whether the registered trademark involved may be determined to be a well-known trademark in accordance with law on the basis of the request of the parties and the specific circumstances of the case." Provisions. As a result, a trial mechanism for the court to carry out judicial protection for well-known trademarks was preliminarily stipulated, and since then, the people's courts have also determined many well-known trademarks accordingly. The Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Dispute Cases Involving the Protection of Well-known Trademarks, issued in April 2009, further improves the judicial recognition mechanism for well-known trademarks in China.

This marks the adoption of a dual system of recognition of famous trademarks in China, which establishes the principle of recognition. This is in line with the international situation in which the protection of property rights and the protection of well-known trademarks are constantly strengthening, and also meets the requirements of the development of China's market economy. This enables the judicial review of specific administrative acts of the Office by the courts to be dealt with in accordance with the law.

5. Conclusion

Articles of the Trademark Law stipulate in detail the conditions for the registration of protective marks, application procedures, infringement and other issues. In general, Japanese protective label trademarks have two characteristics. (1) Dependent attributes. The basis of the right to register a protective mark or a subordinate basic registered trademark, and the protective seal is transferred or terminated with the transfer or termination of the right to the basic trademark. (2) Protective. The purpose of Japan's protective seal system is to protect and protect, not to log in. Of course, protective seals do not have the obligation to use after registration.

Japan's protective label system has a long history, and famous trademarks are in a dominant position to be protected. First of all, in Japan, protective labels can pre-delineate the scope of exclusivity of well-known and famous trademarks to achieve the purpose of expanding protection. Second, you can save money. Registration with a protective seal can set up several types of goods or services, and only the basic registration fee is required. Moreover, even if the protective seal is not used after successful registration, there is no possibility of being cancelled.

At present, China has not yet established a protective sign system, but in the implementation stage, many enterprises have protected well-known trademarks by registering protective signs and achieved positive results. In the future, China should consider adopting legislation to establish a protective sign system.Through comparison, we can see that Japan's legal provisions on the protection of well-known trademarks and related theories and practices have many things worth learning from China. Some of these provisions and practices are not only of theoretically enlightening significance, but also help China to solve some of the problems that have arisen in the protection of well-known trademarks.

Acknowledgment

I would like to extend personal heartfelt gratitude to the many people who helped me in the process of writing the article, and thank you for their selfless guidance.When I studied Japanese at university, I used to audit law school courses because of my interest, and my internship in a law firm during college and my work experience in a law firm after graduation exposed me to many practical activities and further understanding the joy of law.

Now I am turning to the work of corporate legal counsel, and under the careful guidance of my predecessors, I have

given me the courage and confidence to continue on this road. In the future, I have the opportunity to further engage in foreign-related legal work, but the basis for engaging in foreign-related legal affairs is still language, legal language is the carrier of the rule of law, and there are many places to learn. In the process of learning law, I also understand that although life needs planning and order, but the world is unpredictable, not everything can be achieved, just like the law also has an insurmountable lag, what we can do is to constantly update ourselves, so that efforts can replace regrets.

Life is also like law and case analysis, different people have different ways of thinking and behaving and characteristics, and there is never any standard answer. The only thing that matters is the process of doing everything possible to make people look like themselves, so that you will feel that you have no regrets in the future when you look back on the past.

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