

Analysis on Anti-dilution Protection of Well-known Trademark

Zhi-sheng Xue^{1,a} and Fang Liu^{2,b}

¹School of Law of Tiangong University, 399, Binshuixidao Xiqing District Tianjin, P.R.C

²School of Law of Tiangong University, 399, Binshuixidao Xiqing District Tianjin, P.R.C

^axzs678@126.com, ^blf13280277587@163.com

Keywords: well-known trademark, anti-dilution, protection

Abstract. A well-known trademark is one that is familiar to the public and has a higher reputation in the market, but dilution refers to the phenomenon that the trademark is weakened or even damaged. In addition, well-known trademark and the Socialist market economy are inseparable, so the authors think It is necessary to explore the related system of well-known trademark and protest it. Through explaining the concept of well-known trademark and dilution, combining with the existing problems of well-known trademark, the paper shows that It is important to pay attention to the well-known trademark and protest the legitimate rights and interests of the well-known trademark. Through the above, some suggestions are put forward in order to solve the problem of dilution of well-known trademark.

1 Introduction

The anti-dilution protection of well-known trademark is an important system of protecting well-known trademark, it is of great significance for protesting the trademark owner and maintaining the stability of the trademark environment. But in the actual life, our country is not perfect about the protest of anti-dilution in well-known trademark. For example, in the provisions of the *Trademark Law of People's Republic of China*, the registered well-known trademarks are protested across categories, while the unregistered well-known trademarks are prohibited from protection of across categories. Different from this is the foreign provisions on well-known trademark. The well-known trademark whether it is or not registered, they give comprehensive protection. Therefore, according to the defects of well-known trademark to improve the protection of well-known trademark anti-dilution.

2 The Concept Definition of Well-known Trademark and Dilution

2.1 The Concept of Well-known Trademark

The words of “well-known trademark” were record in the *Paris Convention for the Protection of Industrial Property* in 1884, this marks the birth of well-known trademark. In accordance with *the Provisions for Identification and Protection of Well-known Trademark* in China. The “well-known trademark” refers to a trademark widely known by the relevant public and highly reputation in China. Among them, “having a high reputation” means that in the public mind, a commodity trademark is recognized by them and has a good quality. The “relevant public” includes consumers, other business operators and sellers and related personnel involved in the distribution channels.

2.2 The Theoretical Analysis of Dilution

From the theory, dilution refers to the meaning of weakening by the addition of water or a thinner, as in fruit juice with water, the concentration will be diluted. Similarly, for trademark dilution, its recognition and distinctiveness are like original fruit juice, but will be diluted by the addition of infringement. An early law protecting against trademark dilution was *the Black's Law Dictionary* which gives a brief introduction to the confusion of trademark.

2.3 The Legal Analysis of Dilution

Legally speaking, in the United States, *the Federal Trademark Dilution Act* of 1995 clarified the term “dilution”, it provides that whether there is competition between the trademark owner and the unauthorized user, or whether there is misunderstanding and confusion between the trademark and the relevant public, these circumstances cannot determine the degree of discrimination and recognition of the well-known trademark decline or weaken. In addition, *The Trademark Dilution Revision Act of 2006* to “dilution” also made an explanation, it says that the latter user uses the well-known trademark or similar trademark of the former user without authorization in the act of trading. If such behavior results in the dilution or significant reduction of the well-known trademark, judicial relief can be taken.

2.4 Necessary to Study the Dilution of Well-known Trademark

The dilution of well-known trademark means that the significance of trademark is decrease and the influence is weakened. Its essence is an illegal and unfair competition. Its dilution means mainly refers to a kind of goods is not registered, but the relevant public thinks that this kind of goods and registered trademark of the original goods is the same as one, and then purchase is based on this connection. If a variety of goods use the trademark that associated with the registered trademark of the goods, the relevant public will buy the unregistered trademark goods. This situation leads to the weakening of the original trademark, leading to the dilution of well-known trademark. To sum up, we discuss the dilution of well-known trademark for the purpose of curbing its confusion and increasing the discriminability, finally accelerating economic growth and stabilizing social order.

3 Related Issue on Dilution of Well-known Trademark

3.1 The Law Protecting Dilution of Well-known trademark is Flawed

The trademark law, the judicial interpretation of the supreme people's court and the administrative regulations of the state administrative regulations of the state administration for industry and commerce have many shortcomings in the demarcation of the dilution of well-known trademark. For example: article No.13 of *Trademark Law of the People's Republic of China* regulates that rules on protection of well-known trademarks that have been registered. It means that the above two cases are in accordance with the well-known trademark registration to give different provisions. It provides for cross-class protection of registered well-known trademarks and homogeneous protection of unregistered well-known trademarks. It is because of the reason, many unregistered well-known trademarks in China are damaged, and the value of the trademarks is reduced, so they cannot be fully protected. Therefore, in the authors' opinion, the anti-dilution protection of well-known trademarks in *the Trademark Law of the People's Republic of China* is not clear.

3.2 The Current Legislative System is not Perfect

Make Confusion the Premise of Dilution. The traditional confusion theory is to distinguish the trademark and prevent others from using their own trademark to confuse with the prior trademark, which may lead to misidentification by the relevant public. Dilution is to prevent others from infringing on the intangible value contained in the well-known trademark, such as protecting the trademark's value. If taking confusion as the premise of dilution believe that only when consumers' understanding of trademark is confused can it constitute a special infringement. This will lead to the ambiguous definition of trademark dilution, and no independent space for anti-dilution protection, which prejudice the development of dilution theory.

An Unregistered Well-known Trademark cannot Obtain Cross-class Protection. In our country, the system of cross-class protection is prohibited for the unregistered well-known trademark. Cross-class protection means that the registered well-known trademark is also allowed to give legal protection in different and dissimilar fields, and no one is allowed to use the well-known trademark or its similar trademark on any goods. For example, a century-old brand in some parts of our country, its trademark that has market power is familiar and recognized by most people in this area, so it is recognized as a well-known trademark. Because its trademark is not registered, although it can get legal protection, the scope of protection has been limited. It is not authorized to obtain full protection in the field of different or dissimilar goods or services. In conclusion, our country of protection of well-known trademark is flawed, it is favorable for the infringer to damage the rights and interests of the trademark owner.

The Anti-dilution Regulation of Well-known Trademark is not Clear. The *Trademark Law of the People's Republic of China* provides for the administration of trademark. But the protection of anti-dilution made a brief provision, and there is no definite rule to specify the content of dilution. Although there are other laws that provide this situation of trademark, it is not systematic enough. In our opinion, it is because of too many laws and regulations that well-known trademark tends to cause confusion and the regulations on well-known trademark in our country do not form a complete and clear system. In addition to this, it mainly prescribes the behavior of confusion, and does not provide a clear definition of dilution. Hence, the concept of dilution in China and dilution will appear what adverse consequences and the acceptance of responsibility and other questions have no specific provisions.

4 Suggestions on the improvement of anti-dilution protection of well-known trademark

4.1 Establish a legal system centered on *Trademark Law of the People's Republic of China*.

Our country carries on the protection method to the trademark is that the center is the *Trademark Law of the People's Republic of China*, supplemented by other laws and regulations related to trademark. *Trademark Law of the People's Republic of China* is the basic norm for the right holder and the state organ in safeguarding the legality of the trademark, This means that any laws and regulations related to trademark should be consistent with the legislative thought and purpose of *Trademark Law of the People's Republic of China*. Furthermore, laws and regulations concerning trademark protection include anti-dilution protection of well-known trademark. Therefore, it is crucial for the anti-dilution protection of well-known trademark should also take the *Trademark Law of the People's Republic of China* as the core to protect.

4.2 Give a clear definition of dilution of well-known trademark

In our country about laws and regulations that anti-dilution protection of the well-known trademark, the national legislature did not give an accurate concept of dilution, nor did it have a clear identification standard. In addition, due to the lack of this definition, there are many enterprises for the recognition of well-known trademark to sue rather than trademark dilution. Without the consent of the right holder, the use of the same or similar trademark on other things will reduce the recognition of the well-known trademark and the reputation of the right holder will be destroyed. This is a description of dilution on baidu encyclopedia, which is not absorbed by the *Trademark Law of the People's Republic of China*. The authors think this description can be used for reference by lawmakers. Therefore, it is vital to clearly define the definition of well-known trademark dilution in China.

4.3 Cross-class Protection shall be Applied to the Unregistered Well-known Trademark

Because there is no cross-class protection for unregistered well-known trademarks in China, the infringer is likely to damage the rights of the trademark holder, who uses the trademark and registers the trademark first. In this way, It is virtually supported that the infringer can obtain the trademark right to exclude by registering the trademark of others. This situation is undoubtedly a violation of the principle of justice required by the law. In conclusion, the authors think once a trademark is recognized as a well-known trademark, it shall be protected by law whether it has been registered or not. This is conducive to upholding the legislative purposes of trademark, protecting the smooth operation of the trademark system and safeguarding the rights and interests of trademark owner.

4.4 Perfect Relief Mode

Stop the infringement, eliminate the influence and compensation for the loss and other relief methods are now the anti-dilution protection of the well-known trademark of the practice. However, the above methods are obviously not applicable to the protection measures for anti-dilution protection of the trademark. It is a traditional remedy for civil tort and is not enacted for well-known trademark. After the well-known trademark dilution and injury consequence occurs, traditional remedies do not play a significant role in trademark damage. Based on the above, the establishment of injunctive relief is particularly important at this point. Because injunctive relief not only can remedy the harmful result occurs but also the foreseeable or probable damages. Therefore, injunctive relief can prevent the infringement of well-known trademark from the root.

5 Conclusion

The value of the well-known is extremely important to the current market, we should take various measures to strengthen the protection of the well-known trademark, prevent the dilution of the well-known trademark, only in this way, can protect the interests of the trademark owner and promote the stable and healthy development of the market economy.

Acknowledgement

This research was sponsored by the National Natural Science Foundation of China Project “Intellectual Property Protection, Investment Opportunity and Innovation Investment of High-tech Enterprise—Based on the Differential Executive Characteristics Perspective” (Project No. 71672087).

References

- [1] Xiao Qianli, Ding Lei. On Legal Regulation of Dilution of Well-known Trademark [J]. Journal of Yanbian University (Social Science Edition), 2013, 46(04):133-139.
- [2] Zhang Dongmei, Sun Yingwei. Reflections on Anti-dilution of Well-known Trademark [J]. Guizhou Social Sciences, 2013(05):89-92.
- [3] Wu Handong. Intellectual Property Law [M]. Peking University Press, 2002.
- [4] Wang Na. On Anti-dilution Protection of Well-known Trademark [N]. Journal of Chongqing University of Science and Technology (Social Science Edition), No. 6, 2011.
- [5] Ren Yan. On Anti-dilution and Dilution Measures of Well-known Trademark—On the protection of China's well-known trademark [J]. Hebei Law, 2011, 29(11):51-57.