

Study on the Protection of Sports Star's Name Right from the Perspective of Trademark Law –Taking “Qiaodan Trademark” as an Example



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ABSTRACT

The case related to the trademark “Qiaodan” heard by the Supreme People’s Court has attracted the world-wide attention. The fast development of sports business has made the sports stars’ name of vital importance with great commercial value. The name right is an important personality right, the trademark holder owns an exclusive property right. The behaviour of squatting the sports stars’ names as trademarks is an infringement to the name right of sports stars, meanwhile this trademark squatting constitutes an unfair competition, which damages the lawful rights of the sports stars and the consumers, as well as the sports development of China. The Chinese trademark law has no regulation on the issue that the sports stars’ names can be squatted as trademark, however the regulation “an application for maliciously registering a trademark without the purpose of actual use or intent-to-use should be rejected” in the latest revision of trademark law will lower the possibility of squatting the sports stars’ names as trademarks.

Introduction

Before the enforcement of Chinese *Civil Code*, the name right of a natural person is usually protected by *General Principles of Civil Law* in China, however it is challenged that how the name identification related to the net name or nickname, as well as the Chinese name of a foreigner should be protected within the current legal framework. In the judicial practice, the unique correspondence or stable connection is adopted to justify the association between the name identification and specific person. If the name of a notable person, for example, a famous sports man, is squatted to be registered as a trademark by an enterprise, his name right protection will be in the plight. It is known that a trademark reflects the great value of an enterprise and its brand as an intangible asset. Due to the fast development of market economy, trademark squatting has inevitably come out and become more and more

serious negative phenomenon. The behavior of trademark squatting, which is regarded as an infringement, has not only seriously damaged the prior rights of the business signs owned by the right holders, but also spoiled the right order of market competition, disrupted the order of trademark registration and management of administrative organs and harmed the consumers’ interests without any benefits. The trademark squatting and its commercial use of the sports man’s name as trademark constitute a name infringement to the sports man’s lawful rights.

Main Objectives

1. Present the dispute related to Qiaodan trademark
2. Demonstrate the adverse effects of sports stars’ names being registered as trademarks
3. The negative effects include encroaching the name rights of sports stars, causing the confusion of consumers, causing damages to the prior users of the business logo, and Harming the right order of market competition
4. Analyze the reasons for causing sports stars’ name being registered as trademark
5. Put forward four approaches to protecting sports stars’ name right from perspective of trademark law

Materials and Methods

The research is based on the series of cases about the Qiaodan trademark between Michael Jeffrey Jordan and Qiaodan Sportswear Co. Ltd. The rulings made by the SPC provide rich materials and theoretical guidance for the research of trademark infringement. Some other scholars doing research on the trademark protection offer helpful materials for the research.

Case analysis is mainly adopted in this paper.

Conclusion

The judgments of series cases related to “Qiaodan” trademark have attracted people’s attention to examine the conflict between the prior name right and the trademark right. The judgments have clarified that a natural person owns name right when he claims his name right protection for a specific name as long as the person’s name establishes a stable correspondence relationship with the natural person. In determining whether an application for registration of a trademark impairs another person’s name right, the ruling of the SPC clearly clarifies the misunderstandings on how the CTL safeguards prior rights, as well as clarifies the conditions under which a natural person claim his name rights protection and the vicious intention that should be taken into consideration in deciding whether an application for registration of a trademark infringes upon the name right of prior right holders. Why sports stars’ names are squatted to be registered as trademarks lies in the commercial value contained sports stars’ names. It can be estimated that more and more sports stars’ names will be registered as trademarks with the spread of celebrity effect. It is of importance and urgency to make specified provisions in the CTL to regulate the issue that the celebrity’s names are squatted to be registered as trademarks. Combating the behaviour of registering sports stars’ names as trademarks cannot only safeguard the sports stars’ prior name rights, but also defend the consumers’ lawful rights, maintain market competition order, as well as promote the vigorous and healthy development of China’s intellectual property rights.

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