

Research on the Limitations and Protection Mechanisms of Name Rights in Trademark Registration

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Abstract: In the era of increasingly prominent knowledge economy and brand effects, trademark registration is not only an important way for enterprises to obtain market recognition, but also a legal guarantee for maintaining brand image and commercial reputation. As a core element of natural person identity recognition and personality expression, the protection of name rights not only concerns individual dignity and freedom, but also profoundly affects social public order and business ethics. This article will deeply analyze the restrictive conditions and protective measures of name rights in trademark registration, and provide strong support for constructing a scientific and reasonable name rights protection mechanism by introducing classic cases and cutting-edge theories.

In the vast field of intellectual property, the right to name, as a core element of individual identity recognition and self-expression, and its application and protection mechanism in trademark registration constitute an indispensable legal cornerstone of modern commercial society. With the vigorous development of the market economy, trademarks, as prominent identifiers of goods and services, are being registered and used increasingly frequently. As one of the trademark elements, the uniqueness and recognizability of a name make it a focal point for businesses to compete for. Therefore, how to balance the protection and restriction of name rights in the process of trademark registration, prevent abuse and confusion, has become an urgent research topic.

1. Overview of Name Rights

Since ancient times, names have been used as symbols to distinguish individuals, and their extension has far exceeded the narrow legal registration of names, covering diverse titles such as pen names, online names, and even ancient literati's characters and names. These broad names are not only artistic expressions of personal emotions and personalities, but also invisibly construct the unique charm of personal brands, especially in literary creation and public domains. For example, Lu Xun's pen name has become a cultural symbol beyond his real name Zhou Shuren, deeply influencing people's cognition and memory. With the vigorous development of the market economy, the legal attributes of name rights have quietly transformed, and their property rights characteristics are becoming increasingly prominent. Enterprises are competing to register the names of well-known individuals as trademarks, precisely because they value the broad social recognition and potential economic benefits behind them. This phenomenon reflects the widespread application of names in the business field and further reveals the inevitability of the trend towards the property

rights of names. In this process, the right to a name has expanded from a single category of personality rights to a complex system of rights that includes both personal and property interests. This transformation requires legal theory and practice to keep pace with the times and construct a more comprehensive and refined protection framework^[1].

2. Name Rights Restrictions in Trademark Registration

(1) The principle of trademark registration and prior rights

As a key element in the field of intellectual property, trademark registration relies on granting exclusive use rights to trademarks through legal procedures, thereby protecting their distinctiveness and commercial value. Article 32 of the Trademark Law explicitly prohibits any trademark registration that may harm the prior rights of others, providing solid legal protection for prior rights. This regulation requires that when reviewing trademark registration applications, attention should not only be paid to formal compliance, but also to in-depth exploration of whether their substantive content infringes on the prior name rights of others. This includes but is not limited to directly using someone else's name as a trademark, using logos that are highly similar or capable of causing public misidentification to someone else's name, and using the popularity of someone else's name for unfair competition^[2]. When determining whether there is infringement, it is necessary to comprehensively consider factors such as the popularity of the name, the association between the trademark and the name, and the possibility of confusion in consumer perception to ensure the fairness and reasonableness of legal rulings.

The "Britney" case is a typical case of trademark and name rights conflict that has attracted widespread attention in China. In this case, a certain company registered the transliteration of the name "Britney Spears" as a trademark and used it for commercial activities without the permission of American pop singer Britney Spears. After discovering it, Britney Spears immediately filed a lawsuit with the Beijing First Intermediate People's Court, requesting the revocation of the trademark registration. After trial, the Beijing First Intermediate People's Court held that the plaintiff Britney Spears, as an internationally renowned pop singer, her name "Britney Spears" and its transliteration "Britney" have a high level of popularity and influence in China, and belong to the category of "prior rights" stipulated in the Trademark Law. The defendant registered and used the plaintiff's name as a trademark without permission, clearly infringing on the plaintiff's right to name. Based on this, the court ruled to revoke the trademark registration. Subsequently, the defendant appealed to the Beijing High People's Court against the first instance judgment. But the second instance court upheld the original judgment and further confirmed the protective status of the right to name as a prior right in trademark law^[3]. This case not only provides strong judicial support for the protection of name rights in the field of trademarks, but also sets an example for the subsequent trial of similar cases.

(2) Restrictions on "adverse effects" in trademark registration

If the names of well-known historical, cultural, or political figures are applied for trademark registration, the registration and use of such trademarks will have adverse social effects and constitute a trademark that violates the provisions of Article 10 (1) (8) of the Trademark Law regarding "or other signs with adverse effects". It shall not be registered as a trademark, nor shall it be used as a trademark. Due to the absolute clauses that harm public interests and public order, the trademark registration management department will proactively review and reject them during the registration application stage. Any person may, in accordance with the law, raise objections or declare invalidity against such trademarks that have been preliminarily announced or approved for registration. Taking the case of "Confucius Family" (2024) Jing Xing Zhong No. 573 as an example, the applicant attempted to register a trademark by combining the name of the historical figure

"Confucius" with the word "Family". The trademark registration management department believes during the examination process that the trademark is prone to causing the public to associate goods or services with Confucius and his cultural image, thereby generating misleading associations and affecting consumers' normal judgments. At the same time, the use of this trademark may potentially devalue or negatively evaluate the image of Confucius as a cultural giant, violating the prohibitive provisions of the Trademark Law regarding "symbols harmful to socialist moral standards or having other adverse effects". Based on this, the trademark registration management department actively rejected the registration application of the trademark during the registration application stage. Even if the trademark passes the initial review and is announced, any individual or organization who believes it has adverse effects has the right to file an objection or request invalidation in accordance with the law. In the "Confucius Family" case, the final judgment was made by the Beijing High People's Court, which upheld the rejection decision of the trademark registration management department, demonstrating the serious attitude of the law towards the protection of historical figures' names^[4].

3. Name protection mechanism in trademark registration

(1) Clarify the existing clause specifications and judgment criteria

The "prior rights" clause and the "adverse effects" clause are commonly used legal basis for handling trademark and name rights disputes in China. Currently, although these two provisions each perform their respective duties within the theoretical framework, safeguarding individual rights and social order respectively, in practical operation, there may be ambiguity or confusion in the application of legal provisions. Therefore, clarifying and refining the application conditions and scope of these provisions is not only the key to resolving conflicts between trademark rights and name rights, but also an inevitable requirement for enhancing the certainty and fairness of legal application. Firstly, in terms of the "prior rights" clause, its core is to protect the legitimate rights and interests of living natural or legal persons over their distinctive elements such as names and portraits, and to prevent others from registering these elements as trademarks without authorization to seek improper benefits. The application of this provision should strictly follow the principle of prior rights, that is, when the content of a trademark application for registration conflicts with a pre-existing legal right, the interests of the prior rights holder should be protected first. However, it is worth noting that "prior rights" are not a universal key and cannot cover all situations that may hinder trademark registration, especially when conflicts do not directly involve private rights but are more related to public interest or public order and good customs. In contrast, the "adverse effects" clause plays a more macro role, aiming to maintain social public order and good customs, and prevent trademark registration from causing negative impacts on society^[5]. However, the application of this clause must be highly cautious and avoid becoming a 'panacea', otherwise it will improperly restrict the exercise of individual rights. Specifically, the determination of "adverse effects" should be strictly limited to those behaviors that truly threaten national interests, social public interests, or violate social ethics. In cases involving the registration of name trademarks, unless the behavior has caused widespread negative social evaluation, such as seriously damaging the reputation of historical celebrities, distorting public perception, or stimulating negative social emotions, the "adverse effects" clause should not be easily used for regulation. In order to more accurately grasp the scope of application of these two clauses, it is necessary to introduce more refined judgment criteria and procedures^[6].

(2) Strengthen the examination system for name and trademark registration

When exploring the protection mechanism of name rights in the field of trademark registration, a core and urgent need to be strengthened is the reform and refinement of the trademark registration

examination system. The introduction of the "Trademark Intent Statement" rule is an important supplement to the existing examination framework, and also reflects a profound understanding of the essence and social function of trademark rights. This rule requires applicants to provide a detailed explanation of their true intention and intended use of the applied trademark, and to clearly demonstrate the specific application scenarios and strategic plans of the trademark in future business activities through written materials. This pre explanatory obligation is a test of the applicant's integrity principle and a preliminary validation of their business plan and brand vision. On this basis, the examiner can conduct a more comprehensive and in-depth evaluation of the applicant's application purpose based on these materials, combined with industry background, market conditions, and past cases. More importantly, this rule is not a one-time formal review, but a dynamic evaluation mechanism that runs through the entire review process. If the examiner has doubts about the applicant's intention during the preliminary examination stage, they may request the applicant to provide further detailed future commercial plans, including but not limited to market positioning, marketing strategies, product and service scope, and other specific information. This progressive review mode greatly enhances the pertinence and effectiveness of the review, making it impossible for those who attempt to obtain improper benefits through opportunistic and malicious registration methods to escape^[7]. If someone else's name is applied for trademark registration, it is necessary to actively explain the intention and reason for applying for trademark registration of that name at the time of application. I believe this will greatly reduce the occurrence of applying for trademark registration of someone else's name. In addition, the "Trademark Intent Statement" rule also emphasizes tracking and feedback on the actual use of the trademark. Once the trademark is approved for registration and put into commercial use, the applicant must continue to demonstrate that it has been used in accordance with the previously stated intentions and plans. This 'post verification' mechanism ensures the effective exercise of trademark rights and fair competition, and also provides important reference for resolving potential disputes in the future.

(3) Improve the punishment system for illegal registration behavior

Faced with the frequent occurrence of trademark registration fraud, deepening the punishment system for such behavior and building a more efficient and comprehensive protection framework have become important issues that urgently need to be addressed. Relevant departments need to start with program optimization, promote institutional reform in response to the current situation of cumbersome trademark opposition procedures and low examination efficiency, simplify the opposition process, and shorten the examination cycle. Specifically, the introduction of an intelligent examination system utilizes big data and artificial intelligence technology to conduct preliminary screening of trademark applications, quickly identify and eliminate suspicion of malicious registration, and improve examination efficiency. At the same time, relevant departments need to establish a rapid response mechanism and open up a green channel for trademark applications that clearly infringe on name rights, ensuring that rights holders can obtain timely relief. Secondly, in terms of responsibility allocation, the burden of proof between the name owner and the trademark applicant should be clearly defined to ensure fairness and reasonableness in the attribution of responsibility. For the holder of the right to a name, sufficient evidence should be provided to prove the popularity of their name in a specific field and its association with specific goods or services, in order to demonstrate the reasonableness of the infringement of their right to a name. The trademark applicant is responsible for proving that their application was not made in bad faith and did not cause actual harm to the rightful owner of the name. By reasonably allocating the burden of proof, it can effectively curb malicious registration behavior and protect the legitimate rights and interests of legitimate applicants. In the construction of the responsibility system, a multi-level and three-dimensional responsibility structure should be established, including civil tort liability, administrative illegal liability, and criminal liability. For minor cases of unauthorized

registration, civil liability for infringement shall be pursued in accordance with the law, and compensation for losses, elimination of impacts, and other means shall be used to compensate for the damages suffered by the rights holder. For those who repeatedly engage in illegal registration and have obvious malicious behavior, administrative penalties will be increased, the amount of fines will be raised, and they will be included in the credit punishment system to restrict their subsequent commercial activities^[8].

(4) Establish rules for the protection of non celebrity name rights

Although the naming rights of celebrities enjoy a certain degree of priority due to their widespread social recognition, this does not mean that the naming rights of non celebrities should be marginalized or deprived. On the contrary, building a parallel system that respects the naming rights of celebrities and protects the legitimate rights and interests of non celebrities is an inevitable requirement for maintaining market order and fairness and justice. Normally, non celebrity names can be registered as trademarks and protected as long as they do not violate relevant provisions of the Trademark Law and do not conflict with prior trademarks or other rights of others. But when the names of non celebrities and celebrities are the same, non celebrities can achieve this goal by incorporating distinctive graphic elements or unique textual descriptions into their name trademarks. The selection of graphic elements should avoid legal invalidity as much as possible, that is, they should be able to be independent of the name itself and add unique visual recognition to the trademark. For example, combining the silhouette of a personal avatar with their name can visually display the identity characteristics of the trademark holder, effectively reducing the risk of confusion with celebrity names. In addition, adding distinguishing text is also an effective strategy. These texts do not need to be fixed, and the key is that they can clearly sever the connection between the trademark and any potential well-known individuals, allowing consumers to clearly distinguish between different trademark subjects^[9]. However, even if non celebrities have taken the above measures, they may still face the risk of confusion due to differences in public perception. In this situation, we cannot simply prohibit non celebrities from exercising their name rights on the grounds of "possible confusion". On the contrary, a more in-depth examination should be conducted on the necessity of using the name by non celebrities and the legitimate rights and interests behind it. If a non celebrity does have a reasonable need to use the name and has fulfilled a reasonable obligation to avoid confusion, then their right to the name should be fully respected and protected.

4. Conclusion

In summary, the limitation and protection mechanism of name rights in trademark registration is a complex and delicate legal issue that involves multiple levels such as individual rights, market competition, and consumer protection. Through in-depth research on this mechanism, it is not difficult to find that its core lies in seeking a balance point, which not only needs to protect the legitimate rights and interests of name holders, avoid their names from being improperly used or confused, but also maintain market order and promote fair competition. Based on the review of relevant legal systems and judicial practices, this article puts forward several suggestions and reflections in order to contribute to the construction of a more comprehensive system for protecting the right to name.

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