

On the Function of Trademark Law in China

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Abstract: Since the establishment and implementation of the trademark law, some problems such as malicious registration, counterfeiting and unfair judgments have been repeatedly prohibited, which has triggered many scholars' discussions on the functions of the trademark law. Based on the analysis of the causes of several major problems in the implementation of the trademark law, this paper further discusses the functions and correct positioning of the trademark law.

1. Introduction

In the process of implementing the trademark law, some problems such as malicious registration, counterfeiting and unfair judgment are common. Some scholars believe that this is due to the problems in the function orientation of the trademark law in China, so there was a heated debate on the revision of the trademark law in 2001. Now, the new law has been published and implemented for a long time, and these problems have not been fundamentally solved. Therefore, this paper discusses the problems and causes in the implementation of the trademark law, the reflection on the functions of the trademark law caused by the problems, and the correct positioning of the functions of the trademark law. On the basis of the new law, we will talk about the function of trademark law and analyze its internal value orientation in order to better play its due role.

2. Problems and Reasons in the Implementation of Trademark Law

In our country, only after the strict examination procedure, the registered trademark can be recognized by the law, thus the trademark right can be produced and protected by the law. However, in all stages of registration, there are inevitably loopholes in the law. Therefore, some schemers will take advantage of these loopholes, which will have a bad impact on the trademark owners and may even damage the legitimate rights and interests of operators and consumers. The reason for this problem lies in that China does not determine a specific and feasible implementation standard in the management process of distinguishing and confusing trademarks, but simply relies on a distinction table with no legal effect, which makes the working mode solidified and rigid without flexibility and pertinence. At the same time, the principle of "registration first" makes the goodwill of trademark not be well protected.

China's trademark law has strict restrictions on the modification of trademarks. Even if it is only a slight change, it is necessary to cancel or re register a new trademark. However, trademark

registration is not achieved overnight. Therefore, it will undoubtedly increase the cost of time, energy, money and other costs for trademark owners. At the same time, it will also face the risk of malicious rush to register in the process of trademark registration, which is not conducive to the protection of their rights. This is fundamentally because the relevant legal norms still have a bias on the protection of trademark symbols and do not establish the theory of the possibility of confusion.

3. Reflection on the Function of Trademark Law Caused by Problems

A trademark is simply a mark of goods or services. With the development of commodity production and exchange, the function of trademark is more and more extensive, which needs to be regulated by law. Trademark law is also the general term for adjusting the legal norms of various social relations arising from trademark registration, use, management and protection of trademark exclusive rights. In jurisprudence, the function of law refers to the internal function and efficiency of law, which should be realized and reflect the legislative purpose and the good wishes of legislators.

It is not difficult to see that the functions of the trademark law in China generally include the following three aspects. First, strengthen the management of trademarks; second, protect the exclusive rights of trademark owners; third, protect the rights and interests of consumers and promote fair competition.

4. Conclusion

It is not difficult to see that there are some problems in the balance of the interest subjects, which leads to the defects of the functions of the trademark law. It presents the characteristics of the public law which is inconsistent with the nature of the private law, and is greatly influenced by the “dilution theory”. So that all kinds of illegal acts can not be cured. Therefore, we should have a correct position on the function of trademark law, protect private rights, highlight the nature of private rights, face up to its function, in order to better play its role and realize its purpose. At the same time, it should be connected and cooperated with other laws. To provide better protection for trademark owners and create a good market environment for operators and consumers.

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