

A Study on the Forms of Trademark Infringement and Prevention in China's Cross-border E-commerce Industry

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Abstract. This study investigates the prevalent issue of trademark infringement within China's burgeoning cross-border e-commerce sector, examining its forms, underlying causes, and proposing targeted prevention strategies. Amidst the sector's rapid expansion and its critical role in global market integration, trademark infringement emerges as a significant challenge, jeopardizing business integrity and economic growth. Through comparative analysis of international and domestic legal frameworks, alongside a review of infringement cases, this research delineates the primary infringement modalities—trademark squatting and counterfeiting. It emphasizes the need for a multi-faceted approach involving legal reforms, enhanced judicial protection, and proactive risk prevention measures. The findings underscore the critical importance of adapting China's intellectual property laws to the dynamic global e-commerce landscape and fostering a robust trademark protection ecosystem to safeguard and stimulate the country's economic globalization ambitions.

Keywords: Cross-border e-commerce, trademark infringement, intellectual property law, legal framework comparison.

1. Introduction

In the context of rapid economic globalization and trade liberalization, cross-border e-commerce plays a vital role in the economic development of various countries. Judging from the annual turnover and transaction volume announced by various domestic e-commerce platforms, e-commerce has a strong economic driving force. According to data released by the General Administration of Customs of the People's Republic of China, in the first half of 2023, the scale of China's cross-border e-commerce import and export was approximately 1.1 trillion yuan, a 16.6% increase from the same period last year, with a growth rate accelerating by 13.7 percentage points. It accounted for 5.5% of the total value of China's goods trade import and export during the same period, an increase of 0.7 percentage points in proportion. This is enough to illustrate that cross-border e-commerce has become an important driving force in China's economic globalization process.

Furthermore, the incorporation of e-commerce into the Regional Comprehensive Economic Partnership (RCEP) underscores its global importance, with specific articles aimed at fostering a secure and reliable environment for its utilization. This international endorsement emphasizes the role of cross-border e-commerce in empowering small and medium-sized enterprises (SMEs) to explore overseas markets, thereby bolstering the global economy. However, the industry's expansion has been accompanied by escalating concerns over intellectual property rights infringements, particularly trademark infringement. Instances such as the seizure of 11,715 infringing trademarks by Manzhouli Customs in 2021, the most prevalent form of intellectual property violation in cross-border e-commerce, underscore the urgency of addressing these challenges.

The study of trademark infringement within the context of cross-border e-commerce is pivotal for several reasons. Primarily, it offers an opportunity to enhance China's intellectual property protection framework. Established in the wake of economic reforms and the opening-up policy, China's intellectual property legal system, despite its progress, still grapples with gaps between legislation and the realities of infringement. Analyzing instances of trademark infringement can thus contribute to refining the legal system, ensuring more effective resolution of such cases. Furthermore, tackling the issue of trademark infringement holds the potential to rejuvenate China's cross-border economic and trade sectors. With Chinese e-commerce platforms experiencing complaint rates significantly

higher than the global average, addressing these legal challenges could lower the barriers faced by Chinese companies in international markets, thereby fostering a more vibrant cross-border e-commerce ecosystem.

The structure of this paper is as follows: Initially, it provides a comprehensive understanding of the current situation of trademark infringement within China's cross-border e-commerce industry. This includes an analysis of practical cases to identify the basic forms and manifestations of trademark infringement, a summary of the behaviors and causes of infringement, and the proposal of feasible suggestions for addressing these issues by infringers and enterprises. Subsequently, this paper compares foreign laws and regulations, studies international treaties, and examines the experiences of trademark protection in cross-border e-commerce in the European Union and the United States. Through this comparison, it aims to highlight the deficiencies in China's trademark law and offer new ideas for the protection of trademarks in China's cross-border e-commerce sector. Lastly, this paper emphasizes the importance of joint efforts by the state, enterprises, and industry associations to explore and implement methods for preventing trademark infringement, thereby safeguarding the interests of all stakeholders involved in cross-border e-commerce [1].

2. The Current Situation of Trademark Infringement in China's Cross-Border E-Commerce Industry

2.1. Typical Case: Jordan Trademark Case

In 2017, China's Qiaodan Sports Company sued Century Excellence Company because the latter used the word "Qiaodan" on the Chinese website of Amazon. Century Excellence Company was selling a certain Nike series of sports shoes and used the word "Qiaodan" on the website, which was identical to Qiaodan Sports Company's trademark. Furthermore, they prominently displayed "Qiaodan" as the link entry for the sports shoe purchase page. Qiaodan Sports Company believed that Century Excellence Company's actions seriously infringed their trademark rights. They also argued that Amazon China Excellence Limited, as a cross-border e-commerce platform operator, should bear joint liability. Whether Century Excellence Company has infringed upon the trademark rights of Jordan Sports Company has become the focus of contention in this case.

In this case, the main considerations for whether trademark infringement has occurred include: "whether the use of words constitutes legal trademark use", "whether it is easy to confuse similar products for consumers", "whether the trademark use is authorized by the trademark registrant", "determining identical goods or services", and "assessing similar goods or services". These five aspects are the main criteria used in practice to determine whether trademark infringement has taken place [2].

2.2. Main Forms of Infringement

According to the "2022 International Trademark Monitoring and Early Warning Report" published by the China Trademark Association, as of the application date in 2022, trademark international monitoring and early warning were conducted for 313 member companies of the China Trademark Association in 196 countries/regions worldwide, finding that trademarks of 22 well-known companies had records of being registered by others, with an annual registration rate of 7%. Among the 22 companies, 12 had records of trademark squatting in "Belt and Road" countries, accounting for 55% [3]. It can be seen that in cross-border e-commerce economic activities, trademark squatting occurs from time to time. In addition to trademark squatting, trademark counterfeiting is also a major form of trademark infringement in cross-border e-commerce.

Trademark squatting, characterized by the bad-faith registration of trademarks by individuals aware of existing rights, poses a significant challenge in the e-commerce landscape. Such actions often target brands with substantial economic value, with squatters aiming to leverage these trademarks for profit, thereby undermining the rights of the original holders. This form of

infringement is compounded by a lack of awareness and timely action from Chinese enterprises regarding trademark registration and protection.

Furthermore, counterfeit trademarks represent a critical infringement form, involving the unauthorized use of similar trademarks to mislead consumers and capitalize on the reputation of established brands. This includes manufacturing or selling goods under a counterfeit trademark or distributing goods bearing such trademarks without permission from the rightful owners. These practices not only violate trademark laws but also threaten consumer trust and the integrity of the global e-commerce marketplace [4].

2.3. Reasons for the Serious Infringement Phenomenon

2.3.1. The territorial limitation of trademark rights

According to the relevant provisions in the general principles of the Trademark Law of China, trademark rights have a strong territorial nature. If a trademark is not registered and trademark rights are obtained in a country, then the trademark cannot receive any intellectual property protection. For example, the recognition of well-known trademarks in the Trademark Law refers to "a trademark that is well known to the relevant public within China". China strictly limits the recognition of well-known trademarks under the territorial restriction of "within China." Therefore, the territorial nature of trademarks requires multinational e-commerce companies to pay attention to the registration of trademark rights in their economic activities to prevent other infringers from maliciously registering trademark rights in advance, thereby affecting overall economic activities.

2.3.2. The boundlessness of the internet

With the rapid development of the Internet era and the impact of the global pandemic, many consumers have started to choose cross-border trading models. According to statistics, the scale of China's cross-border e-commerce transactions reached 15.7 trillion yuan in 2022, a 10.56% increase over the end of 2021. Despite the high pressure of the international economic downturn, the overall market for cross-border e-commerce continues to grow rapidly, demonstrating significant development potential and vitality. Cross-border e-commerce has the characteristics of virtuality, boundlessness, and globality, breaking through the original geographical restrictions. However, once entering the scope of trademark law adjustments in other countries, it is easy to overlook the issue of trademark protection.

2.3.3. Lack of legal knowledge of infringers

Usually, infringers, if knowing that their infringing actions will lead to consequences, will abandon the behavior because the legal risks brought about by committing infringement are unbearable for them, which goes against the original intention of commercial activities. However, in reality, infringers are not clear about the legality and consequences of their actions, which greatly enhances their sense of luck in committing infringement. In addition, the cost of infringement in the field of trademarks is very low, with low intensity in tracking. To prove the existence of trademark infringement, solid evidence is needed, which is often difficult to achieve in reality. At the same time, the profit margin of trademark infringement is significant, and under the temptation of high profits, infringers are highly likely to engage in infringement [5].

2.3.4. Insufficient awareness of enterprise risk prevention

From the perspective of corporate development layout, many companies' core goals are market expansion and profitability. There is often negligence in trademark design, registration, and risk prevention. Many companies believe that only registering trademarks domestically can prevent all risks, ignoring the territorial restrictions of intellectual property laws. The key issue lies in the low level of attention paid to trademarks, believing that there is no need to invest too much energy and capital in trademark registration, and instead focusing on how to earn more profits. In actual practice, many companies only gradually start to address infringement issues after the infringement has occurred. Compared to resolving disputes afterwards, it is better to focus on risk prevention

beforehand. Once trademark infringement occurs, companies not only face huge profit losses, but also have to bear massive costs for cross-border rights protection activities and legal liabilities, which is highly unfavorable for business operations [6].

3. The Legal System of Trademark Infringement in Cross-border E-commerce and Implications

3.1. Recognition of Trademark Infringement in International Treaties

The intellectual property protection treaties that are currently in effect worldwide are the "Paris Convention for the Protection of Industrial Property" and the "TRIPS Agreement". The core of their determination of trademark infringement lies in whether "confusion, misunderstanding" are considered as independent criteria for judgment. The Paris Convention for the Protection of Industrial Property, although it does not specifically define the standards for infringement judgment, it can be seen from its main provisions that preventing confusion and misunderstanding among the relevant public is the main goal of the Convention. For example, Article 6 of the TRIPS Agreement contains provisions for the protection of famous trademarks, and it is easy to confuse this with trademark registration being prohibited. The TRIPS Agreement is a fundamental legal document of the WTO, and it is the most widely recognized and highest standard international convention for intellectual property protection worldwide. The TRIPS Agreement also applies the likelihood of confusion to determine trademark infringement, as stated in Article 16.1, which specifies that a company should avoid using another company's trademark to label its own goods or services without permission [7].

3.2. Recognition of Trademark Infringement in EU Laws

In the international protection of regional trademarks, the laws related to trademark protection include the "EU Trademark Directive" and the "Regulation on the Community Trademark" in Europe. Because the trademark laws of various EU member states are different, in order to promote trade among member states and facilitate the flow of goods and capital between countries, trademark protection laws and regulations have been established within the EU. The "EU Trademark Directive" and the "Regulation on the Community Trademark" also use the likelihood of confusion standard to determine trademark infringement. For example, Article 2 of the EU Trademark Directive states that a trademark application must possess distinctiveness and not cause confusion with already registered trademarks. Article 8 of the Community Trademark Regulation lists reasons for rejecting registration that align with the provisions of the EU Trademark Directive, specifying that identical trademarks and services cannot be registered. The likelihood of confusion, previously a non-mandatory condition, has now become a mandatory one, illustrating that EU trademark laws consider trademark confusion as a key criterion for trademark infringement.

3.3. The Recognition of Trademark Infringement in U.S. Relevant Laws

In 1946, the United States Congress passed the Lanham Act, which led to the establishment of the United States Patent and Trademark Office. Implemented to this day, the US Congress explicitly states that the legislative purpose of the Lanham Act is to prevent confusion among the public regarding trademarks, and confusion is determined as the standard for trademark infringement. Under the Lanham Act, to establish a case of trademark infringement, three critical elements must be demonstrated. Firstly, there must be unauthorized use of a trademark that is identical or substantially similar to the registered trademark owned by the plaintiff. This use must occur in commerce and be connected to the sale, distribution, or advertising of goods or services, thereby creating a likelihood of confusion or deception among consumers. Secondly, the infringed trademark must be valid and legally protectable, meaning it is registered or qualifies for protection under common law due to its distinctive nature or acquired secondary meaning. This ensures that only trademarks with legal recognition and public recognition are protected against infringement. Lastly, the essence of

trademark infringement under the Lanham Act hinges on the likelihood of confusion standard. This standard evaluates whether the defendant's use of the mark creates a probable confusion or misunderstanding among consumers about the source, sponsorship, affiliation, or endorsement of goods or services. Factors considered in this assessment include the similarity of the marks, the similarity of the products or services, the strength of the plaintiff's mark, the potential for overlap in the marketing channels and target consumers, and actual instances of confusion.

4. Countermeasures for Trademark Infringement in Chinese Cross-border E-commerce

4.1. Improve Trademark Protection Laws and Regulations

With the meteoric rise of China's cross-border e-commerce, the existing trademark protection framework has struggled to keep pace, revealing significant deficiencies that demand urgent legislative and procedural enhancements. Key to strengthening the trademark protection regime is the overhaul of existing laws to better accommodate the nuances of digital commerce and international trade. This entails updating the legal definitions of trademarks and infringement to encompass the online environment's unique characteristics, ensuring that digital trademarks receive the same level of protection as their physical counterparts. Additionally, there's a need for clearer guidelines on cross-jurisdictional enforcement, recognizing the global nature of e-commerce and the necessity for international cooperation in combating infringement.

A crucial step towards mitigating trademark infringement lies in refining the trademark examination process. By simplifying procedures and concentrating on the substantive review of applications, the system can more effectively identify and reject potentially infringing trademarks before they enter the market. This proactive approach not only prevents infringement at its source but also speeds up the registration process for legitimate trademarks, enhancing market entry and competition.

Incorporating trademark registrants more actively in the examination phase represents an innovative strategy for distributing the responsibility for trademark protection. Mandating that applicants provide concrete evidence demonstrating their trademark's uniqueness and non-infringement potential shifts part of the burden of proof from the trademark office to the registrants themselves. Such a requirement not only alleviates the administrative load on the trademark office but also encourages registrants to engage more deeply with the protection of their intellectual property, fostering a more responsible and informed applicant base [8].

4.2. Strengthen the Judicial Protection of Trademark Right

Improving the judicial protection of trademark rights is crucial in effectively tackling the complexities of cross-border trademark infringement within China's burgeoning e-commerce landscape. A pivotal aspect of strengthening judicial protection involves diversifying and expanding the mechanisms available for resolving trademark disputes. This includes not only traditional court proceedings but also the integration of alternative dispute resolution methods, such as mediation and arbitration. The establishment of specialized arbitration institutions dedicated to addressing cross-border trademark disputes offers a streamlined, efficient avenue for parties to resolve conflicts without resorting to lengthy and costly litigation. Such institutions can provide expertise in international trademark law, ensuring decisions are informed by a deep understanding of the complexities involved in cross-border infringement cases [9].

The global nature of e-commerce necessitates an international approach to trademark protection. Strengthening the exchange of information and sharing best practices between China's domestic enforcement agencies and their international counterparts can lead to more cohesive and effective strategies against trademark infringement. By fostering bilateral and multilateral agreements, China can enhance its legal arsenal to combat infringement, ensuring that Chinese trademarks receive

adequate protection abroad and foreign trademarks are respected within China. This cooperative stance facilitates the pursuit of infringers across borders, leveraging international legal frameworks and agreements to uphold trademark rights globally.

To effectively deter trademark infringement, it is imperative to broaden the scope of legal prosecution, ensuring that all forms of infringement are adequately covered and penalized. This includes not only direct infringement but also contributory and vicarious liabilities, where third parties may facilitate or benefit from the infringement activities. Establishing clear standards and principles for elevating severe cases of cross-border trademark infringement to criminal proceedings can amplify the deterrent effect of the law, signaling a strong commitment to protecting intellectual property rights [10].

4.3. Emphasize the Prevention of Intellectual Property Risks

Emphasizing the prevention of intellectual property risks within the sphere of cross-border e-commerce transcends mere legal compliance, representing a strategic imperative to safeguard business interests and foster sustainable growth. Successful risk management involves a holistic integration of legal foresight with business strategies, requiring enterprises to be adept not only in understanding the trademark laws of countries with which they engage but also in appreciating the subtleties of local cultures, customs, and consumer behaviors. As such, the capacity to preemptively identify and address legal risks becomes a competitive advantage, enabling businesses to navigate the complexities of international e-commerce with confidence.

In the age of digital commerce, leveraging cutting-edge technologies and tools for risk assessment and management is indispensable. Advanced analytics, artificial intelligence, and blockchain technology can offer unprecedented insights into market trends, consumer behavior, and potential legal vulnerabilities. By harnessing these technologies, businesses can conduct thorough legal risk assessments, pinpointing areas of concern well before they escalate into disputes. This proactive stance not only minimizes the likelihood of legal entanglements but also optimizes resource allocation, directing efforts towards innovation and market expansion rather than litigation.

Building and maintaining robust relationships with local partners, industry peers, and regulatory bodies is essential in preempting and addressing intellectual property risks. Active engagement and information sharing within these networks can provide early warnings of emerging legal issues, insights into best practices, and avenues for collaborative problem-solving. Furthermore, participation in industry associations and adherence to international best practices can elevate a company's reputation, positioning it as a responsible and trustworthy player in the global market [11].

5. Conclusion

Trademark infringement remains a prevalent challenge within the realm of cross-border e-commerce, significantly impacting the growth and integrity of online trade. The unique challenges posed by the territorial nature of trademark rights, coupled with the boundless reach of the internet, create a complex landscape for protecting intellectual property rights globally. The prevalence of such infringements is further compounded by a general lack of legal understanding among potential infringers and a notable deficiency in risk prevention measures within the business community. China, as a major player in the global e-commerce market, finds itself at a critical juncture, with substantial opportunities to enhance its approach to intellectual property protection, risk management, and dispute resolution. The existing gaps in the country's intellectual property framework underscore the need for a more robust and proactive legal system, one that not only aligns with international standards but also fosters a culture of respect and awareness for trademark rights [12].

The path to mitigating trademark infringement in cross-border e-commerce is multifaceted, necessitating a collaborative effort that spans national borders and industry sectors. By drawing insights from international legal practices and integrating them into domestic reforms, China can fortify its legal infrastructure to better address and prevent trademark disputes. This endeavor requires

a concerted effort from governments, the private sector, and civil society to elevate the importance of intellectual property rights, refine legal mechanisms for dispute resolution, and streamline processes for trademark registration and enforcement. As these measures are implemented and mature, a transformative shift in the landscape of cross-border e-commerce trademark protection is anticipated. By establishing a more secure and transparent environment for online trade, stakeholders can look forward to a future where innovation flourishes, consumer trust is upheld, and the full potential of digital commerce can be realized without the overshadowing threat of trademark infringement.

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