Journal of Innovation and Development
ISSN: 2958-4752 | Vol. 3, No. 3, 2023

Research on the Legal System of Sports Intellectual Property from an International Perspective

Lin Zhu *

School of Physical Education, Leshan Normal University, Leshan, Co 614000, China
* **Corresponding author Email:** 444289903@qq.com

Abstract: The development of digital technology has created enormous opportunities for the global promotion of sports intellectual property rights, while also bringing various risks and challenges to the global protection of sports intellectual property rights. It is extremely important to deeply explore the legal system of sports intellectual property rights from an international perspective in order to prevent the occurrence of sports intellectual property rights worldwide and promptly remedy the corresponding infringed sports intellectual property rights. On the one hand, such research contributes to the global relief and maintenance of sports intellectual property rights; On the other hand, in a deeper sense, it contributes to the steady development of the global sports industry. Research suggests that the characteristics of the legal system of sports knowledge are mainly manifested in the virtualization of international jurisdiction, the foreign-related nature of the rights subject, the differences in legal systems, and the particularity of the rights object.

Keywords: International Perspective; Sports Intellectual Property Rights; Legal System.

1. Introduction

The globalization of sports relies on sports rules, while the global development of sports intellectual property requires legal protection. In order to safeguard the global interests of sports intellectual property rights, it is crucial to strengthen global coordination of the rule of law. As is well known, the Jordan Sports Trademark case lasted for nearly eight years and ultimately ended with the victory of famous American football star Jordan, who revoked the corresponding Jordan Sports Trademark. [1] In this process, rule of law management plays a decisive role. But the fact that it has lasted for such a long time also indicates that international coordination in sports intellectual property disputes is particularly important. How to reflect the fairness and justice of the rule of law is the most crucial. In view of this, this paper will explore the relevant international legal system of sports intellectual property rights, sort out its value characteristics, and provide legal basis for the protection of international sports intellectual property rights.

2. Exploration of Relevant Legal Systems for the Protection of Sports Intellectual Property Rights from an International Perspective

The legal system of sports intellectual property rights includes both domestic laws of various countries and international intellectual property treaties created and developed by international organizations. Domestic laws such as China's sports law and intellectual property law. International intellectual property treaties are mainly organized by the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO). Among them, the international intellectual property treaties managed by WIPO include substantive and procedural treaties. Substantive treaties include the Convention of Peking on Audiovisual Performance, the Berne Convention, the Brussels Convention, the Madrid Agreement on (Origin Mark), the Marrakech Treaty on the Visually Impaired, the Nairobi Treaty, the Paris Convention, the Convention on Phonograms, the Rome Convention, the Washington Convention, the WIPO Copyright Treaty, and the World Intellectual Property Organization Convention on Performances and Phonograms. Procedural treaties include: Budapest Treaty, The Hague Agreement, Lisbon Agreement, Madrid Agreement (Trademarks), Madrid Protocol, Patent Cooperation Treaty, Patent Law Treaty, Trademark Singapore Treaty on the Law of Trademarks, Logano Agreement, Nice Agreement, Vienna Agreement, Tesla Castle Agreement and Trademark Law Treaty. The WTO is a consultation platform for resolving global trade and has concluded the TRIPS agreement.

The above intellectual property agreements are closely related to commercial trade, and intellectual property disputes in sports products can be resolved through the above organizations and relevant legal systems. But the intellectual property rights of sports appear extremely special. Its protection usually requires relevant legal agreements between sports organizations or with the state. For example, the Olympic Committee has signed an agreement with Beijing to protect the intellectual property rights of the Olympic emblem. In order to protect the intellectual property rights of the Olympic Symbols, China has introduced a series of legal systems such as the "Regulations on the Protection of Olympic Symbols" and the "Special Action Plan for the Protection of Intellectual Property Rights of the Olympic Symbols of the Beijing 2022 Winter Olympics and Paralympics". In addition, countries hosting the Olympic Games, such as the United States, the United Kingdom, and Australia, have relevant Olympic logo legislation.

3. Characteristics of Relevant Legal Systems for Sports Intellectual Property Protection from an International Perspective

3.1. The Void Nature of International Jurisdiction

Internationally, sovereign countries have equal status, mutual respect, and non-interference, and neither party has the right to dominate the other. So, there is no hierarchical jurisdiction between countries. [2] Although there is no hierarchical jurisdiction between sovereign countries, disputes over the interests of rights subjects between different countries still need to be properly resolved, and the usual approach is the relative handling of foreign-related legal relations by domestic countries, which means that one country's handling requires the cooperation and enforcement of another country. In international private law relations, the processing steps mainly include procedural content such as identification, jurisdiction, and legal application. The so-called identification refers to the qualitative and classification of objectively occurring events, disputes, disputes, etc. by a country's court; Jurisdiction means whether the courts of a country can exercise jurisdiction over events, disputes or disputes, and whether State immunity or inconvenient factors are involved; The application of law refers to what Substantive law should be applied to judge disputes. [3] In fact, the "jurisdiction" in the theory of private international law only explains the substantive significance of "jurisdiction", while "jurisdiction" does not have integrity, meaning that the jurisdiction of private international law is the jurisdiction of civil legal relations within incomplete jurisdictions. The judgments or rulings made by a court of a country on foreign-related subjects or parties can be referred to as "jurisdiction", while foreign-related subjects or parties often cannot be "controlled" by the domestic country due to being outside their jurisdiction. Obviously, if the subject matter of the award or award or the party is in a domestic country, the court of that country can exercise the corresponding jurisdiction. Once the subject matter or party is in a foreign country, or outside the jurisdiction, there is no corresponding enforcement capacity, regardless of whether the Substantive law adopted by the court is domestic law or foreign law. Therefore, there is a virtual nature of international judicial jurisdiction. The exception is that the United States is a country that actively participates in international affairs. "Long arm jurisdiction" is its regular practice. Originally, the List of courts of the United States solved the jurisdiction problems of people and enterprises outside the state, but now it has expanded to all parts of the global international community. But this has not been recognized by the international community, on the contrary, it has ushered in active confrontation from the international community. [4]

In summary, the jurisdiction of civil legal acts between countries is weak and does not have enforcement power beyond the jurisdiction. Whether it can be complied with inevitably requires the support and cooperation of relevant countries. Therefore, international jurisdiction is a virtual power. Undoubtedly, the internationalization of sports intellectual property disputes will inevitably face the same problem, and the proper handling of jurisdiction issues is the key to resolving conflicts.

3.2. Foreign Involvement of the Rights Subject

The subject of rights in private international law refers to the subject of civil legal relations, which is the bearer of rights and obligations in foreign-related civil legal relations. It mainly includes natural persons, legal persons, countries, and international organizations. The Principal type of rights stipulated in China's Civil code is similar to the content of private international law, specifically including natural persons, legal persons and unincorporated organizations, while the state exists as a special subject. It can be seen from this that the Civil code of China has added the organization of illegal persons, which enriches the content of the subject of rights in private international law. In addition, international organizations can be divided into intergovernmental organizations and non-governmental organizations. According to the above analysis, the rights holders of sports intellectual property rights in the international community can be countries, international organizations, natural persons, legal persons, or illegal organizations. Of course, natural persons, legal entities, and event organizations are the main rights holders of sports intellectual property, especially international event organizations such as FIFA, the International Olympic Committee, and the International Federations. The international nature of sports intellectual property disputes determines the foreign-related nature of the legal relationship of the rights subject, such as any natural person, legal person, or other organization of the country hosting the Olympic Games infringing on the sports logo rights of the Olympic Games, or also known as infringing on the sport’s intellectual property rights of the International Olympic Committee. Then, according to Article 61 of the Olympic Charter: "Any dispute during or in connection with the Olympic Games shall be submitted to the Sports Arbitration Court." [5] The legal place of the International Court of Sports Arbitration is located in Lausanne, Switzerland. Therefore, as the rights subject of non-governmental international event organizations, the International Olympic Committee will resolve disputes over sports intellectual property rights with infringers from the host country of the Olympic Games in the legal arbitration venue of Lausanne, Switzerland. From this, it can be seen that the main characteristics of disputes over sports intellectual property rights internationally are reflected in their foreign-related nature. Its foreign-related nature is mainly manifested in the following aspects: firstly, the parties involved in sports intellectual property disputes are located in different sovereign countries. That is, the rights subject and the infringer are not in the same country; Secondly, although the parties involved in sports intellectual property disputes belong to the same country, the subject matter of the dispute or the infringing act is not in the same country; The third is that the jurisdiction of the court and the parties or the subject matter of the dispute are not the same country.

In summary, from an international perspective, the disputes over the rights and interests of the rights holders of sports intellectual property mainly manifest as the foreign-related nature of legal relationships. That is to say, at least one of the parties, the subject matter, the infringing act, or the jurisdiction court is not in the same country. The foreign-related nature of the rights subject also determines the complexity of safeguarding rights.

3.3. Differences in Legal Systems

According to legal theory, the legal system is the entirety

of all current legal norms in a country. On the one hand, it is a reflection of national economic relations and is constrained by national economic laws; On the other hand, it is closely related to human subjectivity, ideology, and cultural traditions. In summary, the legal system has the characteristic of organic unity of objective laws and subjective attributes. [6] Specifically, the legal system exhibits characteristics such as uniqueness, contemporaneity, realism, effectiveness, and foreign involvement under specific conditions. Given the different historical and cultural traditions of each country, as well as the varying forms of economic development, the content of its legal system is bound to vary greatly. Firstly, the legal system constrains the legal system. The nature of the legal system is different, and the ways in which it solves problems will inevitably vary, which will also affect the content and form of the legal system. According to different classification standards, legal systems can exist in various forms. Among them, the legal system can be divided into civil law system and Common law according to whether there is a written code. Common law is also called case law system, common law system or British law system, and Stare decisis is the basic principle for such countries to resolve disputes; Civil law countries, on the other hand, are written law countries, and the resolution of various contradictions and issues requires the basic requirement of clear legal provisions. In criminal law, the phrase "no law is a crime unless it is explicitly stated" is a clear portrayal of the application of law by a written law country. In addition, in the Common law and the civil law system, even if the decree is very similar, its implication will be very different. For example, scholars Weijun Zhang and Zhuomin Wu believe that "Germany's' stop infringing the Cause of action 'is quite different from the' injunction 'in the common law, mainly because their legal concepts, theoretical basis and legal effects are different." [7] Secondly, even countries with the same legal system, there may also be differences in its legal system. For example, in terms of copyright theory, Japanese law adopts the equal status of Personality rights and copyright, while French law believes that Personality rights should be included in copyright. [8] Once again, the level of economic development will also have an impact on the legal system. There is a significant difference in the expectations of developed and underdeveloped countries in terms of intellectual property protection. Developing countries often tend to oppose the protection of intellectual property rights, believing that it is not conducive to the development of related industries in the country; Developed countries, on the other hand, believe that only by strengthening intellectual property protection can skills innovation and social development be beneficial. In addition, there are significant differences between developed and underdeveloped countries regarding the relevant provisions of international intellectual property law. Some scholars have pointed out that the intellectual property provisions of the World Trade Organization are formulated by developed countries, which do not meet the needs of developing countries, but excessively serve the interests of developed country companies. Moreover, developed countries emphasize that the protection of intellectual property rights is still insufficient. If there is no corresponding return from monopolies based on innovation activities, the market's supply of research, innovation, and creative achievements will be insufficient. [9] In summary, different countries and legal systems will have varying degrees of protection for sports intellectual property rights.

3.4. The Particularity of the Object of Rights

Generally speaking, intellectual property mainly includes three basic types: copyright, patent right, and trademark right, and the specific content of the object of rights also depends on the current intellectual property legal system of each country. Article 123 of the Civil code of China stipulates that the objects of rights in intellectual property mainly include: (1) works; (2) Invention, utility model, exterior design; (3) Trademark; (4) Geographical indications; (5) Trade secrets; (6) Integrated circuit layout design; (7) New plant varieties; (8) Other objects stipulated by law. In theory, sports intellectual property should also have the characteristics of general intellectual property. However, due to the technical characteristics of sports, there is still significant controversy in the academic community regarding the object content and attributes of sports intellectual property. Currently, in order to address the cognitive differences in sports intellectual property rights, some scholars have defined sports intellectual property rights in both a broad and narrow sense. This not only confirms the legal nature of sports works, but also deepens the understanding of the connotation of sports intellectual property rights in the academic community. The scholar pointed out that: In a narrow sense, sports intellectual property rights should specifically refer to the intellectual property rights of sports. From this definition, it can be seen that sports are not only the object of sports intellectual property rights, but also reflect the professional attributes of sports. According to this definition, sports intellectual property rights can also be called ontological sports intellectual property rights. In practice, sports event copyright is ontological sports intellectual property rights. In a broad sense, sports intellectual property rights are composed of sports intellectual property rights The sum of sports and various intellectual labor achievements formed around sports, including sports products, sports industry products, and sports service products [10] The broad definition of sports intellectual property rights not only includes ontological sports intellectual property rights, but also includes intellectual property rights related to sports products and services. Given the indispensability of sports products in the process of sports, they can be referred to as essential sports intellectual property rights; Other sports services have auxiliary properties, and the intellectual property rights of such sports services can be referred to as auxiliary sports intellectual property rights. From this, it can be seen that the broad and narrow definition of sports intellectual property has resolved the significant differences between sports intellectual property and sports intellectual property. So, sports intellectual property can be divided into three types based on this: ontological sports intellectual property, essential sports intellectual property, and auxiliary sports intellectual property. Its object content mainly includes sports, sports products, and sports services.

4. Conclusion

Sports intellectual property rights require the protection and protection of international legal systems. Nowadays, the international legal system for sports intellectual property rights has taken shape and continues to develop, providing a corresponding institutional platform for the resolution of international sports intellectual property disputes. However, there are also shortcomings in the legal system of sports intellectual property rights, which hinder the smooth

resolution of international sports intellectual property disputes, such as the virtualization of international jurisdiction, the foreign-related nature of rights subjects, the differences in legal systems, and the particularity of rights objects. Furthermore, sports intellectual property rights have certain particularities, especially the ontological sports intellectual property rights, which still have theoretical controversies in the academic community, adding resistance to the protection of sports intellectual property rights.

Acknowledgments

Scientific research startup fund project: The legal basis and path choice of sports intellectualproperty protection (RC201 14).

References

[1] People's Daily, The Supreme People's Court's Retrial Adjudication Revokes the "Jordan and Image" Trademark (Report style) Available: http://ip.people.com. cn/n1/ 2020/ 0410/c136655-31668680.html.

[2] Jin Shao, International Law (Book style). Beijing: Higher Education Press, 2014, pp.26-27.

[3] Yongping Xiao, Principles of Private International Law (Book style), Beijing: Law Press, 2003, pp.12-13.

[4] Yuguan Yang, The Origin, Expansion, and Response of Long Arm Jurisdiction in the United States (Periodical style), Journal of Law, no.4, 2022, pp.73-92.

[5] Olympic Charter, Available: https:// olympics.com/ ioc/ documents/ international-olympic-committee/olympic-charter.

[6] Wenxian Zhang, Jurisprudence(book style), Beijing: Higher Education Press, 2011.

[7] Weijun Zhang, Zhuomin Wu, The difference between ordering cessation of infringement and issuing a permanent injunction in intellectual property infringement disputes (periodical style), Electronic Intellectual Property, no1, 2019 , pp. 77-83.

[8] Yuqiong Liu, The nature of Personality rights of works: thoughts on history and system (periodical style), Hundred schools of thought contend, no.9, 2011, pp. 49-54.

[9] [M]Dean·Baker, Arjun·Jiayadefu, Joseph·Stiglitz, Innovation, intellectual property and development: improvement strategies for the 21st century (periodical style), Translated by Zhou Jianjun and Shi Meng. Political economy Quarterly, vol.2, no. 1, 2019, pp.1-43.

[10] Lin Zhu, The Dilemma and Outlet of Sports Intellectual Property Protection(periodical style), Hubei Sports Science and Technology, vol.41, no.2, 2022, pp. 119-124.