

The protection and research of university logo under the view of multiple legal rule

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Abstract: With the continuous development and improvement of the social system and structure, the scope of functions of colleges and universities, as market subjects, in participating in market activities continues to expand, and the logos of colleges and universities, as intangible assets of colleges and universities, can be transformed into tangible assets in market activities, and the economic value generated by them has brought considerable benefits to many speculators. The ensuing intellectual property rights dispute about the college logo is becoming more and more fierce. The Outline for Building a strong Intellectual Property Country (2021-2035) clearly proposes to strengthen the construction of an intellectual property protection system, which also provides a reference direction and expected construction for intellectual property protection in universities. This paper will make a simple analysis of the infringement of college logos through case analysis and literature review, and put forward corresponding objective and feasible solutions.

1 The status quo and case analysis of college logo protection

1.1 The status quo of college logo protection

In recent years, the infringement of college logos has emerged in an endless stream, and the corresponding protection of college logos has attracted wide attention from the society^[1]. However, from the current protection status of college logos, the situation is not optimistic. From the perspective of schools, only a small number of famous colleges and universities are strengthening their awareness of the right protection of logos, while most of the ordinary colleges and universities are still unaware of the seriousness of the infringement of logos, and often take passive measures to protect their rights when the infringement of logos seriously affects the interests of the schools. In addition, for colleges and universities with unregistered types of relevant intellectual property rights, their rights protection methods are relatively simple, and civil litigation is generally carried out through name right infringement, and the validity of rights protection is small. From the perspective of the state, there is no complete and unified protection process for the protection of college logos, and its protection is scattered. The protection of college logos is characterized by complexity and long-term nature. However, at present, the state has not issued laws and regulations on the protection of college logos, but only promulgated rules and regulations on the protection of college logos, such as the Measures for the Management of College Name and Class Logos and the Regulations on the Protection and Management of Intellectual Property Rights of Colleges and Universities,

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which have little protection for college logos. Even when the university logo is violated and appeals for rights protection, the court will not use the above two rules and regulations as the basis for trial. For universities that protect their rights, the situation is very unfavorable. **In terms of rights protection methods,** most colleges and universities only seek a litigation dispute resolution mechanism to protect their rights through judicial procedures when facing the problem of infringement of college logos. Although judicial procedures can protect their rights quickly, the result of rights protection is implemented, but the litigation cost is also immeasurable. The cost of litigation is not only the cost of litigation, but also the sum of the necessary expenses such as the cost of appraisal, the cost of lawyers, the cost of time, and the cost of other effects caused by the breakdown of the relationship. The necessary litigation costs are a guard line to maintain judicial activities and restrain indiscriminate litigation. For ordinary colleges and universities, the annual financial allocation can only maintain the normal operation of colleges and universities, and the economic cost of investment in rights protection is difficult to solve, which is also a major difficulty for colleges and universities to seek prosecution when their logos are infringed^[2].

1.2 Case study

As the country in recent years for the protection of intellectual property rights has become increasingly perfect, triggered by the intellectual property rights disputes also increased, one of the most significant is caused due to the registered trademark disputes. On March 31, 2021, according to a report in Yangtze River

Daily, any entity or individual can apply to the Trademark Office to revoke the registered trademark if a merchant uses laws and regulations related to intellectual property rights to become the generic name of its approved goods or does not use it for three consecutive years without valid reasons. Because Huazhong University of Science and Technology in order to protect the intellectual property rights of colleges and universities to prevent the malicious registration of businesses, and adopt a defensive nature of the registration of "Huazhong University of Science and Technology" trademark, was caught by a business loophole, on the grounds that Huazhong University of Science and Technology does not use the three-year registration, proposed to cancel and re-apply for registration of "Huazhong University of Science and Technology" trademark. For the purpose of registering "Huazhong University of Science and Technology" for personal gain by borrowing the social influence of Huazhong University of Science and Technology, as one of the top 985 universities in China, the significance of its registered trademark and the general acceptance of the society, the relevant institutions rejected the request of the business. Although Huazhong University of Science and Technology can retain the trademark "Huazhong University of Science and Technology", it also reflects that universities should have the corresponding awareness of intellectual property rights to prevent malicious use, and also indicates that universities can use registered trademarks to protect their rights^[3].

2 Defensive protection strategy of university logo

The problem of infringement of logos in colleges and universities is endless, the essence of which is that colleges and universities themselves do not prevent the infringement of logos from the source, unconsciously protect the intellectual property rights and interests of colleges and universities and take targeted legal countermeasures. This chapter will make corresponding reasonable and objective suggestions from the source of college logo protection^[4].

2.1 The identification and prevention strategy of university logo

At present, most colleges and universities do not make their logos clear. With the introduction of the Management Measures for the Name and Label of Colleges and Universities, colleges and universities need to clarify the specific content of college and university logos and issue corresponding management measures for college and university logos, so as to provide theoretical basis for dealing with the infringement of college and university logos in the future. At the same time, the school needs to set up corresponding legal affairs and rationally integrate and utilize the faculty of the school's law school, and always pay attention to whether the school logo is maliciously registered and its operation.

2.2 University logo can be registered trademark strategy

Article 8 of the Trademark Law stipulates that "any sign capable of distinguishing the goods of a natural person, legal person or other organization from the goods of another person, including words, graphics, letters, numbers, three-dimensional logos, color combinations and sounds, as well as combinations of the above elements, may be registered as a trademark application." As the specific culture and symbol of colleges and universities, the logo of colleges and universities is an important basis to distinguish from other colleges and universities, and has significance, so the logo of colleges and universities can be trademarked. The registered trademark of the university can deal with the problem of infringement of the logo of the university, the registered trademark of the university has the right to prohibit other organizations to maliciously register the same or similar trademark with this trademark, and the trademark has the exclusive right, which also prevents the malicious registration of other organizations^[5].

Through the investigation and research, it is found that at present, there are few colleges and universities in China that register trademarks, and they are mainly concentrated in colleges and universities directly under the Ministry of Education and well-known universities, However, local universities and non-well-known universities have hardly registered trademarks related to the logo. This is also related to the popularity of colleges and universities. The logos of colleges and universities with high visibility are more likely to be infringed, so the registered trademarks of colleges and universities are differentiated. For universities directly under the Ministry of Education and well-known universities, it is completely necessary to carry out a full range of placeholder registration in all categories of goods or services. For local colleges and non-well-known colleges and universities, Class 41 service items should be registered: schools (education), correspondence courses physical education, education training, teaching lectures, education information, education assessment, nursing schools, kindergartens, practical training, technical schools, religious education registered education service trademarks. At the same time, the nature of colleges and universities is no longer only social attributes and public welfare attributes. With the industrialization of education, socialization and cross-category development of disciplines, colleges and universities can also use registered trademarks to set up corresponding school-run enterprises. It can not only avoid the risk of cancellation if the registered trademark is not used for three years, but also provide corresponding support for the research and development products of colleges and universities to enter the market and make up for the lack of education funds in colleges and universities.

2.3 Intellectual property rights protection strategy of university logo

The intellectual property protection issues related to college identification are mainly divided into two dimensions: **real intellectual property** and **network**

intellectual property. The real intellectual property rights mainly include patent right, trademark right, well-known trademark right, copyright can be protected by patent law, trademark law and well-known trademark law respectively. The principle of patent application is implemented, and the design logos of colleges and universities can be protected by patent law in the form of patent application. The patent law protection time of design is ten years, which is long and strong, which is conducive to the rights protection of colleges and universities. Copyright protection implements the principle of automatic protection. Once the work is created, the right holder can automatically obtain the copyright without performing legal procedures. What the right holder needs to do is to pay attention to keeping the proof of the completion time of his creation in order to deal with future infringements. At the same time, the principle of liability for copyright infringement adopts the principle of no-fault liability. As long as the infringer uses the logo work of the university without the permission of the university, it will constitute the problem of infringement. In addition to the cases of fair use and legal permission, it also needs to bear civil liability for compensation. University logo registration as a trademark can adopt the relevant legal provisions of the trademark law to protect the rights (mentioned in the above part). For universities with relevant well-known trademark registration conditions, you can apply for the registration of well-known trademarks, the scope of protection of well-known trademarks is larger than the scope of protection of general trademarks, general trademarks can only be protected in the same kind of goods or services, and registered well-known trademarks can not only obtain the same kind of protection, but also obtain cross-class protection. The registration of well-known trademarks is beneficial to the all-round protection of university logos. University identification network intellectual property rights are mainly domain name rights. The right to a domain name is exclusive and exclusive. Once a trademark of a domain name is registered, it is not allowed to re-register the relevant domain name or register a trademark that is similar enough to cause confusion. For universities, it is necessary to pay attention not only to the protection of real intellectual property but also to the protection of network intellectual property^[6].

3 The protection shackles of college identification and the perfection of its laws

The protection of university logos is a complicated protection process. The current trademark law mainly targets producers and operators. Whether the trademark issue of university logos is absolutely applicable to the current trademark law and whether too many registered trademarks are against the social attributes of universities and colleges as a public welfare institution is still worth studying. This section mainly from the university logo protection blank and its legal problems to make objective and reasonable suggestions.

3.1 Promulgation of legal provisions on the protection of logos of public institutions

At present, the Trademark Law used in China mainly provides academic and legal provisions for profit-making market entities, while the protection of trademarks infringed by public institutions such as universities and governments is limited and one-sided. Moreover, the issue of university logos is extremely complicated and confusing, and the use of legal provisions targeting market economic entities is obviously biased. At present, there are 1.26 million public institutions in China, which have a wide range of subjects, and both objective conditions and actual conditions need to formulate a targeted legal provisions to carry out targeted rights protection. And in this law, it is necessary to clarify the scope of registered trademarks of public institutions to avoid the accumulation of useless resources.

3.2 Introduce defensive marks into the Trademark Act currently in use

The foreign university registration trademark mainly adopts the form of defense trademark, which can be used as reference for Chinese law. Defensive trademark refers to the registered trademark is used to prevent other organizations from malicious registration of the right holder's unregistered trademark or easily confused similar trademark, currently China's trademark Law has clearly stipulated that the trademark is not used for three years, will be cancelled. However, the original intention of registered trademarks in Chinese universities is to protect rights, not to enter the market and become business entities. As mentioned above, trademarks can be used through the establishment of school-run enterprises, but this is only for a small number of famous universities, most of which do not have the corresponding economic and environmental basis for the establishment of school-run enterprises. So the introduction of defensive trademarks is a good idea^[7].

3.3 The establishment of identifiable regional trademarks to solve the conflict of rights caused by university abbreviation or abbreviation

For different colleges and universities, their abbreviations and abbreviations may converge, which leads to the infringement of college logos. Whether it is the convergence of the short name or abbreviation of well-known universities and well-known universities or the conflict of the short name or abbreviation of well-known universities and non-well-known universities is in a dynamic balance circle. Each university can add a distinctive and exclusive logo or a regional representative logo before the abbreviation to deal with the right conflict of the abbreviation or abbreviation of the university. For the possible or already occurred school name abbreviation and abbreviation disputes, colleges and universities should take the initiative to carry out consultations with the relevant units, in order to reach an agreement and avoid disputes. For newly established colleges and

universities or universities to be renamed, it is necessary to fully and reasonably identify the abbreviation or abbreviation, and the effective use of the abbreviation or abbreviation of the original name, so as to avoid unnecessary loss of intangible assets.

3.4 Adapt the trademark preemption principle

Trademark is a first-come-first-served principle. At present, most colleges and universities in China have not registered relevant marks, but infringement has occurred from time to time. This means that once the first-come-first-served principle of trademark is applied, it is difficult for the logo belonging to the university itself to return to the university. In order to solve this problem, we can adopt the principle of flexible trademark preemption, and determine that the registered trademark is the trademark of the university according to the clear method of the school logo, and then recover it. This requires the university to introduce the corresponding clear method of the university logo, so as to provide a theoretical basis for the recovery of the logo^[8].

4 The operation of non-litigation dispute resolution mechanism in college identity protection

The previous article mainly discussed the use of litigation dispute resolution mechanism to deal with the problem of safeguarding the rights of college logos, but with the progress of national judicial reform, non-litigation dispute resolution mechanism and diversified dispute resolution mechanism have increasingly become the main means of dispute resolution. For the infringement of college logos, if only litigation means to solve the problem will consume huge litigation costs, especially the time cost and money cost, for ordinary colleges and universities, the money cost of litigation is difficult to support, and the adoption of litigation procedures to solve the infringement problem has become a kind of empty rhetoric and the satisfaction of litigation results is also difficult to control. If the non-litigation dispute resolution mechanism is adopted in the infringement problem of the university logo, the solution procedure is convenient and rapid, and the two parties can have direct dialogue, there is a more intuitive problem solving channel, and it is easier to achieve the result of maximizing the interests through non-litigation. What kind of dispute resolution mechanism colleges and universities adopt depends on the situation. Generally speaking, the infringing party is mainly the enterprise. If the university logo registered by the infringing party has not affected the reputation of colleges and universities, colleges and universities can adopt non-litigation dispute resolution mechanism to seek the maximization of their own interests^[9]. Through the social influence of colleges and universities, enterprises occupy the active position in the market and obtain the corresponding economic benefits. Colleges and universities can also cooperate with them and become a community of interests with enterprises. However, becoming a community of interests does not mean that colleges and universities have become

the main body of market management or the social attributes of colleges and universities have weakened, but that the market adaptability of colleges and universities has been enhanced day by day^[10].

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