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Study on the Recognition Criteria of Deceptive Trademarks and Their Applicable Rules

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Abstract. Deceptive trademarks are widespread, and by misleadingly describing the characteristics and origin of the goods, they essentially convey false information to consumers and exacerbate the asymmetry of information, which is consistent with the logic of the "lemon model" revealed by the economics of information. China's current deceptive trademark determination of the existence of inconsistent standards, the application of differences and other issues, while the U. S. law on this issue has formed a more mature rules can be drawn on. In this regard, from the logic of information transmission and credibility mechanism, we should refine the trademark examination system, promote the "three elements" determination standard, clarify the subject of judgment, put the prominence review in the priority position, publish typical cases to unify the judgment scale, enhance the professionalism of the examiners, and improve the aftermath of the processing mechanism. In order to effectively regulate deceptive trademarks, balance the interests of all parties and maintain market order.

Keywords: deceptive trademark, mistake, adverse effect, materiality test

1. Introduction

The basic function of trademark is to indicate and distinguish the origin of goods, and it can also effectively reduce the search cost of consumers and establish a reputation mechanism to motivate enterprises to improve the quality of goods [1]. Recently, deceptive trademarks have become a hot topic, such as the "For the stomach" plant beverage, which is likely to mislead the public into believing that the product has health care effects, and the "thin salt" oyster sauce, which is likely to mislead consumers into believing that the product is made of the wrong ingredients. Deceptive trademarks provide misleading descriptions of the characteristics or source of the goods, which are easy to be misidentified by the public, to a certain extent violating the basic function of trademarks and exacerbating information asymmetry. Some enterprises take advantage of this information gap to seek undue benefits, destroying the market competition order based on real information.

In practice, there are often differences in the application of deceptive trademark identification standards and conflicting views, and the academic research on deceptive trademarks is also difficult to fully respond to the urgent needs of practice. In this paper, we try to introduce the perspective of information economics to analyze the logic of deceptive trademarks, market impact and regulatory

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path, to provide theoretical support for the construction of scientific identification standards, to improve the trademark legal system, and to maintain the market order.

2. Connotation of deceptive trademark

2.1. Connotation of "deceptive" in the scope of trademark law

According to Article 10(1)(g) of the Trademark Law, signs that are deceptive and likely to mislead the public as to the quality or origin of the goods shall not be used as trademarks. According to the deceptive provisions of the current Trademark Law and the relevant guidelines for trademark administrative adjudication, "deceptive" in the context of the Trademark Law refers to the trademark's false representation of the quality, use, raw materials and other characteristics of the goods designated for use or the source of the origin of the goods which is more than the inherent degree of the trademark itself and does not correspond to the actual situation, thus causing the relevant public to have a wrong understanding of the goods. Misunderstanding. The deceptive nature of the trademark to consumers to convey false information, cover up the real situation of the goods and induce consumers to fall into the cognitive barrier, can be said to be a game of incomplete information, the enterprise is extremely covertly increase the cost of consumer information search.

Deceptive connotation can be divided into three levels of understanding. First, a trademark should be descriptive, directly describing and indicating the quality, use, raw materials and other characteristics of the goods or the source of origin [2]. As a signal conveying information about the goods, a descriptive mark does not have inherent distinctiveness, but only directly conveys information about the characteristics or origin of the goods, so the information carried by the signal has both true and false possibilities. Secondly, the description contained in the trademark should be an objective and misleading description, which is based on the fact that consumers use the trademark as the primary means of obtaining information about the goods. Information economics categorizes goods as "search goods" and "experience goods". The quality of search goods can be known through testing before purchase, while the quality of experience goods needs to be verified through use. Consumers have difficulty in verifying false descriptions of empirical products before purchasing them, and have to pay much higher than normal information costs to recognize the truth [3]. This is the key to the deceptive nature of trademarks. Finally, the misleading description should not be materially different from the actual situation.

With respect to information about goods, merchants have an advantage over consumers, especially in the case of empirical goods, where consumers need to use the goods before they can verify their quality, and where the asymmetry of information is even more pronounced. The core function of trademark is to indicate the source of goods, consumers are willing to believe that the goods indicated by the same trademark have the same quality standard and a certain level of quality , so as to reduce the cost of searching for information, and lay the foundation for long-term repeated transactions. However, deceptive trademarks artificially construct false perceptions of goods by conveying misleading information that is inconsistent with the actual situation, in the context of strong information concealment. The American economist Akerlof's "lemon model" shows that when the seller has more information about the goods, the buyer is worried about the possible loss due to the information disadvantage, and tends to bid at a low price, which ultimately triggers the adverse selection of high-quality goods out of the market, and even leads to the shrinkage of the whole market [4]. Accordingly, the core element of deception is satisfied when the misleading description in the trademark is materially different from the actual situation, and such difference is

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sufficient to cause consumers to generate misperception, believe that the description is true and influence their purchasing decisions.

2.2. Clarification of the relationship between deceitfulness and misrecognition

The definition of the logical relationship between "deception" and "misrecognition" in Article 10 of the Trademark Law is crucial to the determination of the elements of use of this provision. Combining the institutional logic of trademark law and the perspective of information economics, there is a progressive/causal relationship between "deception" and "misidentification", i. e. , "deception" alone is not sufficient for the application of the provision. Such "deception" should also lead to "misidentification" in order for the provision to apply [5].

"Deceitfulness" is reflected in the inconsistency between the information conveyed by the trademark and the actual state of the goods, which in itself may constitute interference with the transmission of information, but this alone is not enough to fall within the scope of regulation. Such as No. 25789474 "millet" trademark designated goods for the 32nd class "water (beverage); mineral water ingredients; beer with snake hemp seed juice". The designated goods do not contain the ingredient. However, based on common sense, the public will not mistake the above goods such as "water (beverage)" as containing "millet" because the trademark contains the word "millet", therefore, the Beijing Higher People's Court found that the trademark is not applicable. Therefore, the High Court held that Article 10(1)(g) was not applicable to the disputed trademark.

Thus, "misidentification" is the core of this provision. It should not be directly presumed that the public will misidentify the trademark based on the objective inconsistency between the name and the reality of the trademark, but should follow the judgment standard of the proposed "rational person" (a person with general knowledge, experience and ability) [6]. The law should only intervene when the relevant public is likely to have a misperception due to misinformation and affect their consumption decisions. In 2019, the Beijing Higher People's Court issued the "Guidelines for the Trial of Trademark Authorization and Confirmation of Administrative Cases of the Beijing Higher People's Court" , which also stipulates that: "If the public, based on their daily life experience, etc. , will not have a misperception of the characteristics of the quality or origin of the goods or services designated by the trademark at issue, it will not have a misperception of the quality of the goods or services. If the public, based on their daily life experience, will not misrecognize the quality and other characteristics of the goods or services designated for use in the dispute or the place of origin, it does not fall into the circumstances stipulated in Article 10(1)(g) of the Trademark Law. " It should be noted that the actual occurrence of deception is not required here, as long as the registered mark itself has the possibility of misleading the public. If "misrecognition" is regarded as a further explanation of "deception", and the two are essentially synonymous, i. e. , deception and misrecognition do not need to exist at the same time, then it may unduly restrict the trademark owner's right space, which is not conducive to balancing the interests between the consumers and the trademark owner. It is not conducive to balancing the interests of consumers and trademark holders.

3. Judicial application of Article 10(7) of the trademark law on deceptive trademarks

From the perspective of information economics, the regulatory objectives of Article 10(1)(g) of the Trademark Law can be categorized into three levels: firstly, to prevent the transmission of false information. The first is to prevent the transfer of false information, and to prevent enterprises from attracting consumers through false descriptions. After all, with a distinctive and distinctive

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trademark is more likely to impress consumers; Second, to reduce the information cost of consumers. Information economics research shows that information costs are shared by both parties to the transaction. When the information cost borne by consumers is too high, the market demand will contract, which ultimately leads to the decline of enterprise selling price and market scale shrinkage [7]; Third, it is to maintain the repeated game mechanism based on reputation. Deceptive trademarks through false information to destroy consumer trust in trademarks, so that the repeated game between enterprises and consumers can not be sustained, the prohibition of the provisions of the article, it is through the legal force to protect the credibility of the operation of the mechanism of the basis.

However, because of the generality of this provision, with a high degree of abstraction and ambiguity, the reviewer's discretion is also greater, the application of chaos. The main problems are as follows:

3.1. Confusion between the deceptive clause and the "adverse effect" clause

3.1.1. Confusion of provisions

There is confusion between the "adverse effect" clause (Article 10(1)(h) of the Trademark Law) and the deceptive clause (Article 10(1)(g)) in practice, and there is no lack of practice of recognizing the adverse effect of a trademark on the ground that the trademark misleads the consumers. For example, in the case of "Wu Weijun, Trademark Administration of the State Intellectual Property Office Trademark Registration Dispute", the courts of the three levels all held that, as Wu Weijun had no connection with Zhang Bishi and Zhang Yu Company, but he used Zhang Bishi's portrait as well as the year in which Zhang Yu Company started to prepare for the establishment of the company as trademarks, and registered the trademarks in the "Wine (Beverage)" category. "wine (beverage)" and other goods, it is easy for the public to mistakenly believe that the source and quality characteristics of the goods are related to Zhang Bishi or Zhang Yu Company, and thus create a misidentification. Based on this, the court found that the trademark under suit may have a negative impact on the public interest and public order of our society, and should be recognized as having an "adverse impact". In another trademark case related to Zhang Bishi and Zhang Yu Company, the Trademark Office initially found that the opposed trademark was likely to mislead the relevant consumers by making them associate the quality characteristics of the goods with the original opposer, and thus found it to have an adverse effect. However, during the review process, the TRAB clearly pointed out that the opposed trademark itself did not have any negative impact on the public interest and public order in China, and did not belong to the situation stipulated in the "adverse impact" clause, and should constitute the situation stipulated in Article 10(1)(g) of the Trademark Law. In addition, in the case of Laizhou Jinyuan Seed Co. , Ltd. and the Trademark Review and Adjudication Board of the State Administration for Industry and Commerce (TRAB), the TRAB similarly held that a trademark that causes confusion or misrecognition by consumers is in violation of the "adverse effect" clause. However, the court held that the deceptive clause should be regulated and modified the basis of application accordingly. This shows that the judiciary's decision scale is not uniform, so that in practice there is a contradiction in different cases.

3.1.2. The reasons for the confusion of the provisions

First, the historical reasons. Trademark Law (2001) Article 10, paragraph 1, subparagraph 7 of the provisions of the "exaggerated publicity and deceptive", the application of the provisions of the

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means to meet the "exaggerated publicity" and "deceptive" elements. The application of this provision requires the fulfillment of the means element of "exaggerated propaganda" and the result element of "deceptive". Trademarks that are deceptive but do not use exaggerated publicity are not within the scope of this provision, in order to solve this problem, the practice is based on the "adverse effect" clause to reject the application for registration of such trademarks. According to the successive amendments of the Trademark Law to the "deceptive" provisions, although it can be seen that the distinctive legislative intent to distinguish the scope of adjustment of the "deceptive" provisions and the "adverse effect" provisions However, the provisions are still generalized. The "adverse effect" clause requires that "may have a negative or adverse impact on the public interests and public order of our society", while it is still debatable whether the interests of consumers belong to the public interests. The deceptive provisions are designed to avoid making unspecified consumers bear undue information costs and excessive information search requirements; while the "adverse effect" provisions regulate the trademark itself or the trademark and the combination of the information conveyed by the combination of goods on the public interests of society to have a negative impact on the political life, excellent traditional culture, morality, etc. , and attach more importance to the spiritual dimension. Emphasis on the spiritual level. Therefore, the two should not be mixed up because of the different regulation objects and influence levels.

Secondly, the reasoning of the adjudication documents is insufficient. In all the cases with "adverse effect", a considerable part of the cases in the reasoning process used "the trademark in dispute is easy to let the relevant public mistakenly believe that ... and ... there is a connection" or expressions with similar meanings. This method of argumentation is likely to cause confusion between the "adverse effect" clause and the deceptive clause [8].

3.2. Generalization of deceptive trademark determination

3.2.1. The scope of deceptive trademarks is not clear

Some scholars believe that the "public" in the article should be defined as the "relevant public", and the cognitive ability and level of the relevant public should be used as the standard of judgment. However, there are also views that, for the purpose of protecting the legitimate rights and interests of unspecified consumers, the general public should be the subject of judgment. According to the supreme people's court on the trial of trademark civil dispute cases on the application of law of the interpretation of article 8, the trademark law refers to the relevant public, refers to the trademark of a certain type of goods or services related to the consumers and other operators with close relationship with the marketing of the aforementioned goods or services. Generally speaking, the relevant public, as consumers of specific types of goods or other operators with close relations, the cognitive ability and understanding of the goods themselves is higher than the general public, and the likelihood of their misrecognition of the trademark is lower. Therefore, judging the scope of interpretation of the subject is crucial to the application of the provisions. The Supreme People's Court has interpreted "public" as "relevant public" and "general public" in different cases, which is contradictory. In the 2019 "Future Science Prize" trademark application refusal review case, the Supreme People's Court interpreted the "public" in the deceptive clause as the relevant public, and held that the relevant public in the field is prone to misunderstand the trademark; while the Supreme People's Court interpreted the "public" in the deceptive clause as the relevant public. In the case of 2020, the Supreme Court interpreted the "public" in the deceptive clause as the general public, pointing out that the general public would easily misunderstand the trademark because of the words "All Natural". The Supreme Court interpreted "the public" as the general public, pointing out that the

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general public would easily misunderstand the raw materials of the goods due to the words "All Natural".

Defining the scope of subjects for judging deceptive trademarks is essentially defining the scope of inherent information cost and search cost that the subjects corresponding to the goods in this category should have. It is important to note that the scope of costs varies from one product area to another, and may change with market awareness, education, and regulatory requirements. For example, for subjects corresponding to alcohol commodities, understanding their basic raw materials and main effects belongs to the scope of information costs that the market should expect and that are reasonable for that group. Therefore, whether "general public" or "relevant public" is used as the standard, it has the uncertainty based on the majority, and its scope and specific references are abstract and ambiguous, and it is impossible to define different information costs according to different commodities. Scope.

3.2.2. Subjective intent of the trademark holder lack of attention

As to whether the subjective intention of the trademark holder should be taken into consideration, some scholars advocate that the determination of deception should be examined strictly from the objective facts contained in the trademark itself, and the subjective intention of the trademark holder should not be considered. There are also views that it is necessary to include it in the examination. The intention of deception is to cover up the truth with false words and deeds, that is, deception needs "intentional" existence. In principle, then, the holder of a deceptive trademark should have the subjective intent to influence the truth of the information conveyed. In the case of "Chegao Prince", the company of Xinjiang Chegao heir Adili Maimeti Tujie applied to register the name "Chegao Prince" as a trademark in 2014 for bread and sugar, and the Trademark Office and the TRAB cited the similarity of the trademarks and the fact that "Chegao" is easy to be used as a trademark in the market. The Trademark Office and the TRAB rejected the application on the grounds that the trademarks were similar and that "Chegao" could easily mislead consumers into believing that the goods were not "Chegao". However, the court's review found that the trademark originated from the public's nickname for Adili, and that there was no subjective intent to mislead consumers, so it concluded that it was not deceptive and reversed the TRAB decision. This case fully illustrates that the inclusion of the subjective intent of the trademark holder in the examination prompts the adjudicator to take into account the actual circumstances of the case and makes the trademark determination more objective and fair. However, it should be noted that the subjective intention of the trademark holder is difficult to identify and should be examined carefully.

3.2.3. The phenomenon of different judgments in the same case for deceptive trademarks is common

For example, a German chemical company applied for registration of a series of trademarks of "AB Enzyme" and "AB ENZYMES and Picture" in Class 1 for a variety of industrial enzyme-related commodities, and the State Intellectual Property Office considered that although the applicant claimed that the designated commodities of the trademark applied for were related to "enzyme", the applicant had not applied for registration of "AB Enzyme", but had applied for registration of "AB Enzyme". The State Intellectual Property Office held that although the applicant claimed that the goods designated by the trademark were all related to "enzyme", the ordinary trademark use management system did not have the ability to certify the description of the characteristics of the raw materials and quality of the goods, and could not restrict the subject of the actual use of the

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goods, whereas the trademarks were displayed on the relevant goods, which could easily lead consumers to mistakenly believe that the trademarks were a true description of the characteristics of the goods or even a determination of the characteristics of the goods, and thus misled them in their consumption behavior. The applicant appealed to the Beijing Intellectual Property Court. The Court of First Instance supported the applicant's claim, holding that the provisions of the Trademark Law on deception are measured by the relationship between the mark itself and the goods designated for use, and that when there is a consistency between the content indicated by the trademark mark itself and the goods designated for use, it cannot be concluded that the trademark mark is deceptive on the basis of the inability to limit the actual subject of use of the trademark by the trademark use management system [9]. For example, the trademark No. 25153872 "Qinzhou Huang", the designated goods for the 33rd class "fruit wine (including alcohol); white wine; rice wine", etc. , the State Intellectual Property Office rejected the re-examination of the "Qinzhou Huang" as the name of a variety of millet, and found that "Qinzhou Huang" was the name of a variety of millet. The State Intellectual Property Office rejected the review and found that "Qinzhou Huang" is the name of a variety of millet, and its use as a trademark on the designated goods would easily mislead consumers about the characteristics of the raw material ingredients of the goods, and therefore the trademark was rejected. However, the Beijing Intellectual Property Court held that consumers who buy or drink "liquor" have a high level of cognitive ability with respect to the raw materials of liquor products, and generally will not mistakenly believe that liquor and other goods contain "millet" or "qinzhouhuang". "or "Qinzhou yellow millet" in liquor and other commodities, so the decision to reject the review was reversed. However, after the case was appealed to the Court of Second Instance, the Beijing Higher Court pointed out that millet can also be used as a raw material for brewing wine, and that the designation of "QINZHOU HUANG" for "fruit wine (containing alcohol); liquor; rice wine" and other commodities could easily mislead the public into believing that the commodities are raw materials and ingredients, and thus revoked the judgment of first instance. The first instance judgment was revoked [10].

4. Local improvement path of deceptive trademark recognition and application

4.1. Refinement of the trademark examination system

4.1.1. Prioritizing the examination of distinctiveness over the examination of legality

Prominence is the most important constituent element of a trademark [11] , and taking the judgment of prominence as a prior step in the determination of deception is both logical and efficient. The fact that a mark is distinctive means that it can indicate and distinguish the origin of the goods, which in turn reduces the cost of information transmission and searching and incentivizes enterprises to ensure the quality of the goods. Prioritizing the examination of distinctiveness can greatly narrow the scope of subsequent examination and reduce the cost of information screening. The United States for the deceptive situation to the legality of the review as a priority, the prominence of the review for the first focus on the issue of prominence, in line with the trademark of the most fundamental role of distinction and identification as the primary issue of logic; our country to the legality of the review of as a priority, the review of the prominence of the review as a priority, pay more attention to "mislead the public" of this issue. This has led to a one-size-fits-all situation in China's practice. On the other hand, distinctiveness examination can help to classify different situations, protect existing interests, and give the applicant opportunities and incentives to build up goodwill. China's prior review of the legality of deceptive trademarks will result in all "seemingly"

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misleading signs being prohibited from registration and use in violation of legal prohibitions, even if the trademark has been in use for many years, and the cost to consumers of searching for trademarks is much lower than the cost of searching for goods.

4.1.2. Promotion of the "three elements" recognition

As mentioned above, the essence of the legislative purpose of the deceptive provisions is to prevent the adverse consequences of false information on consumers and to maintain the credibility of the mechanism through the law. The U. S. Court of Appeals for the Federal Circuit, in a series of decisions, has gradually clarified the three-step test for whether a trademark contains deceptive content: (1) Do the words used provide a misleading description of the characteristics, quality, function, composition or use of the goods? (2) If so, is a potential purchaser likely to believe that the misleading description is a true description of the goods? (3) If so, is the misleading description likely to influence the purchase decision? [12] The third step of the inquiry is whether the misleading description "motivates" the consumer to purchase the goods, i. e. , whether the qualities or characteristics described in the sign make the goods more appealing or desirable to potential purchasers. The materiality test focuses on whether consumers care that the goods contain misinformation, and if they do not, it can be concluded that there is no material increase in the cost of information, and the mark should not be deceptively rejected despite the first two steps. The prevailing standard of judgment in our practice is the "two-step process", which is similar to the first two steps in the United States, and there is a sufficient basis for attempting the third step. In the "AB Enzyme" series of cases mentioned above, the Beijing Intellectual Property Court has already put forward the three elements for the "determination of deceptive marks": first, the mark contains content describing the quality, main raw materials, function, use, weight, quantity and other characteristics of the goods or services; second, the mark contains content describing the quality, main raw materials, function, use, weight, quantity and other characteristics of the goods or services; and second, the mark is not deceptive. First, the sign contains content describing the quality, main raw material, function, use, weight, quantity and other characteristics of the goods or services; second, the relevant public is likely to associate the aforementioned description of the characteristics of the goods or services with the attributes of the goods or services designated for use in the sign, and the description is misleading; and third, the aforementioned misleading description is sufficient to influence the purchasing decision of the relevant public. The "three elements" are similar to the U. S. "three steps" and have led to reasonable decisions. The promotion of the "three elements" is conducive to the reduction of subjective factors in the examination, and the reduction of different judgments in the same case.

In terms of balance of interests, trademark law not only protects the interests of consumers, but also takes into account the interests of trademark holders. The U. S. divides deceptive marks into two categories, including deceptive misdescription marks and deceptive trademarks. A deceptive misdescription dismissal applies when the mark contains a false description of the characteristics of the goods or services and consumers are likely to believe the description to be true, i. e. , the first two elements of the three-step test are met, but not the third element. Such marks may be allowed to be registered if they acquire a "secondary meaning" through use over time, i. e. , a reputation is built up and consumers can use the mark to reduce the cost of obtaining information. Such marks are not substantially more attractive or agreeable to potential purchasers, do not in fact increase the cost of information to consumers, and rejection as deceptive would disproportionately deprive the holder of its rights and undermine the reputation mechanism. The promotion of the "three elements" of the determination can be more detailed to distinguish between trademarks, and is conducive to

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safeguarding the interests of consumers, while giving trademark holders the opportunity to build up their reputation and incentives.

4.1.3. Clarifying the scope of deceptive trademarks

In China's judicial practice, as mentioned above, there is a dispute between the "general public" and the "relevant public" regarding the scope of the subject of deceptive trademark judgment. The U. S. Supreme Court in the McLean v. Fleming case in 1878 defined a reasonably prudent purchaser as "the average consumer exercising ordinary care", and held that it is necessary to measure whether a mark used by another person is liable to cause "the average consumer exercising ordinary care and caution". ordinary consumers exercising ordinary care and caution". Therefore, the average consumer with ordinary care needs to have reasonable ability to recognize the product, reasonable intelligence and ability to recognize the product, reasonable degree of care, and no carelessness or slowness. Korea uses the term "consumer" directly in the corresponding part of its Trademark Law, and Japan also uses the term "consumer" directly in its Trademark Law [13]. The terms "general public, " "relevant public, " and "consumer" have different scopes and meanings. Although "general public" and "relevant public" include "consumers", they are far beyond the scope of "consumers". The scope of "consumer" is much broader than that of "consumer". The "consumer" is an organic part of the "public" and the "relevant public", but is relatively independent. Therefore, the scope of the subject should be defined as "general consumers", because in everyday language, "relevant public" and "general public" are abstract words far away from people's lives, which are easily diversified and simplified. Diversification and simplification of treatment; and "consumer" has a clear scope of coverage, pointing to a very clear [14]. While it is conducive to reducing different judgments in the same case and refining the standard, the definition is more in line with the inherent market attributes of trademarks.

The attention of the average consumer is generalized in the complex environment of the market, which is fundamentally different from the adjudicator who focuses on a single trademark. The hidden nature of some marks increases the cost of searching for consumer information, and much of the information cannot be verified through experience in use, while it is difficult for the adjudicator to truly substitute the consumer's perspective, which can easily lead to the omission of judgment on deceptive behavior. For example, the court in the Yu Xiang hand-rolled noodles case presupposed that consumers "should know that the noodles in question are industrially produced", which in fact exceeded their inherent information costs. The same problem exists in special areas such as arms and waste disposal, where the adjudicator unreasonably overstates the consumer's inherent knowledge. Therefore, it is necessary to introduce the jury system in relevant cases, so that consumers can actually participate in the adjudication, avoiding the adjudicator from unrealizing the real information cost of consumers, and safeguarding the justice of individual cases. This will also help to examine the subjective intent of the trademark holder under a reasonable information environment, to prudently presume whether it is deceptive, and to analyze whether the information bias belongs to the category of normal market risk.

4.2. Releasing typical cases to unify the judgment scale

In order to further clarify the standard of trademark examination and judicial adjudication, and reduce the confusion of legal application caused by the deviation in the understanding of legal provisions, typical cases can be released regularly. On the one hand, guiding cases can be issued to distinguish between "deceptive provisions" and "adverse effect" provisions. These cases will explain

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in detail how to accurately determine whether a trademark is not registrable or cannot be used because it conveys false information to mislead consumers, or because it violates public order and morals and harms the public interest, and clarify the boundaries of the application of each provision, so as to provide clear guidelines for trademark examiners, judges and market participants, and effectively reduce the uncertainty caused by confusion of the provisions. On the other hand, we have sorted out and published trademark cases with different judgments in the same case. The phenomenon of different judgments in the same case occurs from time to time in the trademark field, which affects the credibility of the judiciary. When releasing such cases, the relevant departments should analyze the specific reasons for the different judgments, such as differences in the understanding of legal provisions, differences in the scope of investigation, differences in the determination of steps, etc. , and give targeted guiding suggestions. When determining whether a trademark is deceptive or has adverse effects, the meaning of the trademark mark itself, the actual situation of the goods or services, the general level of consumer awareness, and the subjective intention of the trademark holder should be taken into account, so as to guide the trademark examination and judicial decision toward uniformity and standardization.

4.3. Constructing a cooperative governance system for deceptive trademarks

In view of the complexity of social governance and the need to balance governance efficiency, it is difficult for legislators or judicial officers to rule out all problems in advance, and it is extremely unlikely that misleading trademarks can be completely eliminated at the source, and overly complicated review procedures will inhibit brand business vitality and damage the business environment, so it is crucial to improve the post-transaction mechanism.

Specifically, we can start from the multi-party collaborative management: market supervision and management departments and the Trademark Office to jointly manage the registration of misleading trademarks, to safeguard the market order and consumer rights and interests. For example, the two sides should establish a regularized joint enforcement mechanism to investigate and deal with cases of trademark infringement and misleading trademarks through coordinated research and evaluation of clues, formulation of action plans, and on-site inspections. Industry associations should promote the establishment of business ethics conventions, and incorporate "not using trademarks to create cognitive bias" into corporate self-regulatory guidelines. At the same time, it is necessary to strengthen the credit constraint mechanism. A credit commitment system for trademark registration should be established, requiring applicants to be responsible for the authenticity of their trademarks; trademark registration obtained by deceptive means should be declared invalid according to the law and classified as a subject of breach of trust; and information on trademark violations should be pooled through the National Credit Information Sharing Platform and the Enterprise Credit Information Disclosure System, so as to realize inter-departmental credit joint discipline and raise the cost of violations.

5. Conclusion

By sorting out the current situation of the application of the relevant provisions of China's Trademark Law, and combining the theory of information economics with the comparative reference to the U. S. law, this paper puts forward the improvement paths such as refining the examination system, releasing typical cases, enhancing the professionalism of the examiners, and perfecting the mechanism for handling the aftermath of the incident, with the aim of realizing a balance between

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the protection of consumers' interests and the protection of the rights and interests of the trademark holders and safeguarding the mechanism of the market reputation based on the real information.

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