Proceedings of ICGPSH 2026 Symposium: EdTech & AI in Learning: Large Language Models in Business, Politics, and Humanities
DOI: 10.54254/2753-7048/2026.LD33269

Reconstruction of Jurisprudential Foundations and Logical Justification for Trademark Infringement Determination

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Abstract. In the era of the digital economy, trademark infringement forms are becoming increasingly complex, plunging traditional determination paradigms into a dual dilemma of subjectivity and lack of standardization. The root cause lies in the long-standing misalignment of the jurisprudential relationship between "trademark similarity" and "likelihood of confusion." Grounded in the Trademark Law and relevant judicial interpretations, this article employs doctrinal legal analysis and examination of judicial practice to reveal the logical paradoxes in the traditional approach of "inferring similarity from confusion." It then constructs a binary separation framework of "identifier similarity—likelihood of confusion," establishing a progressive determination logic of "factual precedence followed by value assessment." On this basis, it refines similarity judgment standards for different trademark types, such as textual, graphic, and combined trademarks, and clarifies the quantitative evaluation dimensions for likelihood of confusion. Ultimately, it shapes a trademark infringement determination system that balances jurisprudential legitimacy with operational feasibility in adjudication, aiming to resolve the chronic judicial issue of "inconsistent judgments in similar cases" and fortify the theoretical foundation for judicial credibility in trademark matters.

Keywords: Trademark Infringement, Similarity Judgment, Likelihood of Confusion, Adjudication Standardization

1. Introduction

The comprehensive penetration of the digital economy into social life has propelled trademark usage scenarios from physical domains to virtualized, cross-modal, and cross-regional spaces. Statistics indicate that in 2024, the number of trademark infringement cases in China reached 4.781 million, with novel infringement forms such as graphic trademarks, cross-linguistic trademarks, and combined trademarks occurring frequently, continually challenging the cognitive frameworks and adjudicative logic of traditional trademark infringement determinations [1]. In judicial practice, due

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to the inherent abstraction of standards like "general attention of the relevant public" and "overall visual impression," coupled with divergences in adjudicators' understanding of the relationship between "trademark similarity" and "likelihood of confusion," outcomes in similar cases often vary significantly, severely undermining the uniformity and predictability of legal application [2].

Existing research predominantly focuses on doctrinal analyses of concepts such as trademark similarity and likelihood of confusion, or on instrumental arguments for technology-assisted determinations, without thoroughly examining the underlying jurisprudential conflicts in the determination logic from a foundational perspective [3]. The longstanding judicial practice of "inferring similarity from confusion" essentially conflates the boundaries between factual judgment and value judgment. In view of this, this article seeks to return to the legal normative system and the context of judicial practice, taking jurisprudential reconstruction as the main thread to systematically optimize the logical framework and applicable rules for trademark infringement determinations, promoting a shift in adjudicative thinking from "experience-dependent" to "norm-guided," and providing judicial practice with a hierarchical, clear, and logically coherent theoretical paradigm [4].

2. Normative system and element analysis for trademark infringement determination

2.1. Hierarchical structure of the legal normative system and its internal tensions

China's normative system for trademark infringement determinations features a three-tier architecture led by the Trademark Law, refined by judicial interpretations, and supplemented by departmental regulations. Article 57 of the Trademark Law enumerates seven categories of infringing acts, with "double identical" scenarios (identical trademarks used on identical goods) applying direct infringement rules without a confusion requirement, while "double similar" scenarios construct a tripartite element system of "trademark similarity + similarity of goods + likelihood of confusion," serving as the key mechanism for delineating the scope of trademark protection [5].

At the level of judicial interpretations, Articles 9 and 10 of the Supreme People's Court's Interpretation on Several Issues Concerning the Application of Law in the Trial of Civil Trademark Dispute Cases further establish the three-dimensional comparison dimensions of "shape, sound, and meaning" for trademark similarity, as well as operational principles of "overall comparison, key part comparison, and isolated comparison," providing initial guidance for judicial adjudication [6]. Departmental regulations, such as the Trademark Examination and Adjudication Guidelines, offer more concrete rules for similarity judgments across different trademark types, serving as important references for administrative examination and judicial trials [4].

However, the normative system is not seamlessly integrated. The Trademark Law positions trademark similarity and likelihood of confusion as independent elements, yet judicial interpretations embed confusion elements like "likely to cause misrecognition by the relevant public" into the definition of trademark similarity, leading to a prevalent judicial practice of "inferring similarity from confusion" in a logical loop. This implicit conflict at the normative level constitutes a structural barrier to achieving standardization in trademark infringement determinations [7].

2.2. Jurisprudential attributes and functional differentiation of core elements

The essence of trademark infringement determination lies in accurately grasping the legal nature and interrelationship of the two elements: "trademark similarity" and "likelihood of confusion" [3].

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Trademark similarity is inherently a factual judgment, tasked with objectively comparing the form, pronunciation, and meaning of the trademark identifiers themselves, possessing relatively stable and externally verifiable characteristics, and functioning to define the inherent scope of trademark protection. Likelihood of confusion, in contrast, is a value judgment, focusing on the disruptive effects of trademarks on the relevant public's cognition in usage contexts, influenced by multiple variables such as trademark distinctiveness, degree of goods association, and industry characteristics, aimed at balancing the tensions between trademark protection and free market competition [8].

In the specific determination of trademark similarity, a typological approach should be followed: textual trademarks emphasize comprehensive comparisons of character shapes, pronunciations, and meanings; graphic trademarks center on overall visual impressions, incorporating similarities in color, composition, and salient parts; combined trademarks adopt a "dominant element priority" rule. Additionally, the degree of trademark distinctiveness directly affects the tolerance threshold for similarity.

The judgment of likelihood of confusion should adhere to the principle of comprehensive balancing. Pursuant to Articles 20 and 21 of the Standards for Trademark Infringement Judgment, multiple factors must be considered holistically, including the degree of trademark similarity, similarity of goods, trademark distinctiveness, level of attention of the relevant public, and distinctions between direct confusion (misrecognition of goods origin) and indirect confusion (misrecognition of business affiliation) [9]. Adjudicators must base their assessments on the "general attention of the relevant public," reconstructing authentic cognitive scenarios in market transactions and avoiding subjective conjectures detached from commercial practice.

3. Jurisprudential deviations in traditional determination logic and judicial dilemmas

3.1. Structural misalignments at the logical level

Judicial practice in China has long adhered to the adjudicative approach of "inferring similarity from confusion," forming a conviction on likelihood of confusion first and then retroactively establishing trademark similarity accordingly [2]. This logic appears to stem from a literal interpretation of Article 57(2) of the Trademark Law but in reality distorts the proper progressive relationship between trademark similarity and likelihood of confusion. From a jurisprudential perspective, trademark similarity is a prerequisite factual element for infringement establishment, while likelihood of confusion is the legal consequence; the two should follow a judgment sequence of "facts first, values second." Reverse reasoning not only violates basic legal methodology but also leads to circular arguments in adjudication logic.

This logic also induces systemic fragmentation in normative application: in trademark authorization and confirmation procedures, similarity judgments are limited to objective symbol comparisons; in infringement litigation, however, confusion elements are incorporated into similarity determinations.

3.2. Multifaceted constraints in practical dimensions

The issue of adjudicative subjectivity stems from the lack of operational objective scales for standards like "general attention of the relevant public". Adjudicators with varying regional, experiential, and cognitive backgrounds often render divergent judgments on the same trademark identifier. The lack of standardization further exacerbates "inconsistent judgments in similar cases".

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Moreover, traditional methods exhibit evident inadequacies in adapting to novel trademarks. Confronted with graphic, dynamic, cross-linguistic trademarks, and other new forms, manual comparisons struggle to comprehensively capture symbolic features and similarity dimensions [9]. For example, the visual association degree of the "N" letter design in "New Balance" versus "New Barlun," or semantic correspondences in cross-border trademarks across multiple languages, cannot be accurately quantified through sensory experience [5]. Simultaneously, manual examination efficiency lags, failing to cope with the explosive growth in case volumes.

4. Toward jurisprudential reconstruction: binary separation framework and progressive determination logic

4.1. Doctrinal foundations of the binary separation framework

To thoroughly overcome the drawbacks of traditional logic, a binary separation framework of "identifier similarity—likelihood of confusion" should be constructed. Its core proposition is to treat identifier similarity as a preliminary objective element in infringement determination, focusing solely on the morphological similarity of trademark identifiers themselves, excluding all market factor interferences; and to position likelihood of confusion as a subsequent value evaluation element, comprehensively incorporating market contextual variables on the basis of identifier similarity [8]. The two form a progressive relationship of "factual screening → value balancing," collectively constituting a complete, hierarchically clear infringement recognition system.

This framework is deeply rooted in the dual value orientations of trademark law: the objective judgment of identifier similarity aims to safeguard the certainty and predictability of trademark protection scopes, providing clear behavioral boundaries for market entities; the contextual judgment of likelihood of confusion is dedicated to achieving a dynamic balance between trademark protection and competitive freedom, preventing undue encroachment of trademark rights into the public domain. This framework aligns with the "facts—values" dichotomy in legal epistemology and helps eliminate the standard fragmentation in similarity judgments between trademark authorization procedures and infringement procedures, promoting internal coherence in the trademark legal system.

4.2. Specific unfolding of progressive determination logic

The first stage should focus on objective screening of identifier similarity, achieving preliminary quantification and standardization through "typological thresholds". Thresholds can be set such that textual trademarks require high levels of character shape similarity or pronunciation similarity; graphic trademarks' overall visual effect similarity; combined trademarks based on textual element similarity. Preliminary screening via thresholds can swiftly exclude clearly dissimilar cases, enhancing judicial efficiency.

The second stage proceeds to comprehensive assessment of likelihood of confusion, preferably employing a multi-factor weighted quantification method. Indicators such as trademark distinctiveness, degree of goods similarity, level of relevant public attention, trademark usage methods, and identifier similarity reinforcement coefficients can be set, with total scores exceeding predefined thresholds establishing likelihood of confusion [9]. Simultaneously, dynamic adjustment mechanisms should be established; for instance, confusion thresholds can be moderately lowered for well-known trademarks, while weights for public attention are increased for luxury goods and

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similar items, ensuring adjudicative outcomes align with commercial realities and judicial consensus.

4.3. Adaptive judgment paths for typological trademarks

For textual trademarks, rules for three-dimensional comparisons of shape, sound, and meaning should be systematically refined: shape comparisons must consider stroke structures and writing styles; pronunciation comparisons should encompass standard Mandarin, major dialects, and foreign language pronunciations; meaning comparisons focus on core semantics.

For graphic trademarks, the principle of "overall visual priority, supplemented by salient parts" should be established, conducting comparisons through quantifiable dimensions such as composition proportions, color systems, and element layouts to maximally suppress adjudicative subjectivity [1]; for combined trademarks, clarify a "text-dominant, graphic-supplementary" comparison sequence; for cross-linguistic trademarks, construct a dual analysis mechanism of "semantic correspondence + phoneme similarity," leveraging multilingual semantic alignment technology and phoneme similarity algorithms to overcome judgment blind spots caused by language barriers [9]; for non-traditional trademarks like sound or three-dimensional trademarks, adhere to the principle of "perceptual similarity + functional differentiation".

5. Practical significance and institutional support of jurisprudential reconstruction

5.1. Dual enhancement of adjudicative consistency and efficiency

The binary separation framework and progressive logic can significantly constrain adjudicators' subjective discretion, leveraging objective thresholds and quantitative models to implement "same judgments in similar cases," bolstering judicial credibility [6]. Simultaneously, the preliminary identifier similarity screening mechanism can compress traditional months-long initial similarity evaluations to mere days, substantially conserving judicial resources and addressing the real pressures of surging case volumes. Confronted with emerging novel trademark forms in the digital economy, typological adaptive paths provide systematic adjudicative guidance, enhancing judicial comprehensiveness and foresight.

This framework also lays a jurisprudential foundation for artificial intelligence-assisted adjudication. The objective quantification of identifier similarity can be achieved through computer vision and natural language processing technologies for automated recognition; the structured evaluation dimensions of likelihood of confusion provide clear training labels for machine learning models, propelling trademark infringement determinations toward a new smart judicial model of "technology empowerment, norm guidance," aligning with the goal of "strengthening intelligent construction of intellectual property judicial protection" outlined in the Outline for Building a Strong Intellectual Property Country (2021–2035) [10].

5.2. Deep challenges in institutional complementarity and normative integration

The construction of the jurisprudential framework is merely a starting point; its vitality depends on organic integration with existing institutional systems. Currently, China's trademark law implementation features a dual-track pattern of administrative confirmation and judicial protection. The advancement of the binary separation framework must confront the dilemma under the civil law tradition: how to maintain legal stability while preserving flexibility.

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First, at the level of normative synergy, the binary framework requires re-harmonization of "similarity" recognition logic in trademark authorization and confirmation procedures versus infringement litigation procedures. Authorization and confirmation procedures emphasize clear delineation of rights boundaries; infringement determinations focus on social evaluation of infringing acts, necessitating comprehensive consideration of market realities and competitive ecosystems [9].

Second, at the level of judicial discretion allocation, the introduction of quantitative tools and objective models aims to regulate discretionary arbitrariness but may itself provoke new controversies. A more fundamental challenge arises when quantitative analysis results diverge from judges' inner convictions.

Finally, in the context of modernizing governance systems, the systematic enhancement of trademark protection efficacy relies on synergistic co-governance among administrative supervision, industry self-regulation, market adjustment, and judicial remedies. The ultimate significance of jurisprudential reconstruction in trademark infringement determination lies in promoting a transparent, fair, and predictable trademark rule-of-law ecosystem [10].

Thus, the essence of institutional complementarity and normative integration is an open process of continuous dialogue and dynamic adjustment across jurisprudential, technical, and policy dimensions.

6. Conclusion

The jurisprudential reconstruction of trademark infringement determination is an inevitable choice for addressing digital economy challenges and resolving judicial practice dilemmas. The "identifier similarity—likelihood of confusion" binary separation framework advocated in this article aims to correct the longstanding logical misconception of "inferring similarity from confusion," rebuilding a progressive determination paradigm of "factual precedence followed by value assessment," and propelling trademark infringement recognition toward objectivity, standardization, and systematization through methods such as thresholding, typification, and quantitative evaluation.

The profound significance of jurisprudential reconstruction lies in achieving an organic unity of certainty and flexibility in trademark protection. Looking ahead, relevant institutional complementarities should be continuously refined, transforming the aforementioned theoretical framework into practically applicable adjudication rules, and actively embracing technological means such as artificial intelligence to construct a trademark infringement judicial determination system of "norms as foundation, technology as supplement, practice as essence," providing solid doctrinal support and institutional safeguards for the modernization of China's intellectual property governance.

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