

The Discussion about the Legal Effect of Trademark Coexistence Agreement

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Abstract: As commercial practices develop, the trademark coexistence agreement has gained popularity among market entities. However, there is no official provision for the coexistence agreement in legislation, which has led to varying standards in the examination process of administrative and judicial authorities about the legal effect of trademark coexistence agreement. This article concentrates on the legal effect of the coexistence agreement, discussing the reasons for the formation of the coexistence agreement, judicial practice and academic recognition of the legal effect of the coexistence agreement, and the author's thoughts and auxiliary improvement measures on the legal effect of the coexistence agreement. It is proposed that the legal effect of the coexistence agreement should be recognized in principle, with exceptions only considered in cases when it endangers social public interests and market competition order. Hopefully, some ideas can be provided for solving the problem of recognizing the legal effect of trademark coexistence agreements in current practice.

Keywords: Trademark Coexistence Agreement; Legal Effect; Trademark Law; Anti Unfair Competition Law; Anti Monopoly Law

1. Introduction

With the great improvement of productivity and rapid advancement of technology, the market has broken through geographical restrictions, and products and services have shown a trend of diversification, sufficient supply and diversification of providers, allowing consumers to have a wide range of choices. In order to achieve competitiveness, operators began to add brand names, or trademarks, to products. Gerald Ruston believes that early trademarks served as both a

mark of ownership and an identification of the origin of goods.[1] During the great development of trade in the Middle Ages, trademarks gained the function of quality assurance.[2] The convenience of logistics after the steam revolution has made remote transactions the norm in the market, and trademarks themselves have attracted increasing attention as an important medium for product advertising. Trademarks have gradually shifted from tools to property in the concepts of market entities, and merchants' demand for trademark protection has also increased sharply, from advocating free use by individuals to seeking national registration. However, in a modern society where the commodity economy is more developed, the economic benefits behind well-known trademarks have shown a blowout trend, and market entities have paid more and more attention to the occupation and utilization of trademark resources, which has triggered a series of commercial chaos. Due to the alienation of the Trademark Registering system, malicious registration is caused, examiners are inevitably subjective, the bias of trademark infringement determination, there are countless cases of abuse of registered trademark rights. It is not objective to judge trademark disputes entirely based on whether they were registered first, but the legal coexistence of certain identical or similar trademarks should be allowed.

Based on the basis of legitimacy, trademark coexistence is divided into two categories: legal coexistence and agreement coexistence. In my country, although there is no direct legal provision for the legal coexistence of trademarks, its identification can be based on the provisions of Article 59 of the Trademark Law on trademark pre-use rights. Legislation in the field of coexistence of trademark agreements is completely blank. There are neither relevant legal provisions nor relevant standards issued by the Supreme People's

Court or the State Intellectual Property Office. They are only slightly mentioned in local judicial documents. However, because trademark coexistence agreements play an important role in reflecting the private nature of trademark rights, increasing the probability of trademark authorization, and stimulating market vitality, they still attract much attention in the practice of trademark authorization. In 2014, my country's State Administration for Industry and Commerce (now the State Intellectual Property Office) promulgated the "Trademark Review and Adjudication Rules", Article 8 of which states that the parties to a trademark dispute are allowed to resolve disputes through mediation or self-settlement. Although this provision does not clearly specify that trademark coexistence agreements are the form of handling trademark disputes, it is not difficult to find that the government respects the free will of the parties to reach a trademark coexistence agreement.

In Chinese country's practice, trademark coexistence agreements are mainly used in two stages: one is the trademark application objection stage, and the other is the trademark infringement litigation stage. This reflects that trademark coexistence agreements between unregistered trademarks and registered trademarks, and between registered trademarks are more common. Trademark Registering application must first be reviewed by the Trademark Office. If there are circumstances that are the same as or similar to the trademark previously used or registered and are applicable to the same or similar goods or services, the Trademark Office will reject the application. In order to gain an advantage in trademark review or subsequent administrative litigation initiated by the Trademark Office for refusing to accept the notice of non-registration, trademark applicants often use trademark coexistence agreements to prove that they have reached a consensus on the coexistence of the disputed trademark and the cited trademark with the prior rights holder. As of the end of 2023, the Trademark Review

and Adjudication Board has concluded a total of 15956 cases involving "coexistence agreements" in rejected review cases. According to the statistics from the Table 1, 2018, 2019, and 2020 are the years when coexistence agreements have begun to be widely used in practice. At the same time, the State Intellectual Property Office has a relatively relaxed attitude towards the adoption of coexistence agreements; After 2021, although the enthusiasm for the use of coexistence agreements has not waned in practice, the official recognition attitude has become stricter, and the proportion of acceptance has been greatly reduced. In trademark infringement litigation, coexistence agreements are widely used as an important sign that the original defendant has reached a settlement consensus and that the defendant does not constitute trademark infringement. Using "trademark coexistence agreement" as the key word, a case search was conducted on the China Judgment Document Network, and a total of 832 documents were searched. Excluding cases in which the trademark coexistence agreement was not actually submitted and duplicate cases, 401 documents were screened. As shown in Table 2, The adjudication year started from 2013 to the end of 2024. Analysis of 12 years of data shows that in the initial judicial practice of my country, cases that denied the validity of trademark coexistence agreements accounted for a relatively large proportion. The judicial authorities are very cautious about trademark coexistence agreements. After 2016, the adjudication of the validity of trademark coexistence agreements has gradually relaxed. In the past three years, the collection of data may have been significantly reduced due to reasons such as the epidemic and delays in accessing the Internet for documents, but the overall situation is still visible. It can be seen that the judicial authorities have a more conservative attitude towards the determination of the validity of trademark coexistence agreements.

Table 1. Statistics on Coexistence Agreements in Cases Rejected by the CRIC for Review

	2017	2018	2019	2020	2021	2022	2023	2024
Recognized	92	762	911	805	512	131	40	16
Not recognized	276	1560	1935	1708	2580	2797	1169	826
Total	368	2322	2846	2513	3092	2928	1209	842
Proportion	25%	32.8%	32%	32%	16.6%	4.5%	3.3%	1.9%

Table 2. Statistics on Trademark Coexistence Agreements in Trademark Infringement Cases Ruled by Courts

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Recognized	1	3	6	23	25	28	77	78	7	1	2	1
Not recognized	1	1	7	3	16	18	40	29	3	2	8	21
Total	2	4	13	26	41	46	117	107	10	3	10	22
Proportion	50%	75%	46.2%	88.5%	61%	60.9%	65.8%	72.9%	70%	33.4%	20%	4.55%

In real commercial practice, trademark coexistence agreements are widely favored by market entities, but there is no clear judgment standard in terms of their normative legislation. Therefore, judicial practice and academic circles have different attitudes on the validity of trademark coexistence agreements. In order to respect the free exercise of rights by trademark owners, maximize trademark interests to achieve win-win results, and maintain social public interests and market competition order, it is of great significance to standardize the validity recognition and application procedures of trademark coexistence agreements.

2. Judicial Practice of Determining the Effectiveness of Trademark Coexistence Agreements in China

The substantive requirements for the validity of civil legal acts include three points: the subject's civil capacity matches the behavior it engages in, the expression of will conforms to the principle of voluntariness, and the content conforms to the principle of legality. Generally speaking, in addition to special civil legal acts that require formal requirements such as approval and registration, other civil legal acts can take effect as long as they meet the above three substantive requirements. However, as a trademark coexistence agreement regulated by special civil laws, its validity determination must not only consider the general provisions of civil legal acts, but also give priority to the special provisions of the trademark law. In our country's judicial practice, regarding the validity of trademark coexistence agreements, we temporarily ignore the valid requirements of civil legal acts and give priority to the relevant provisions and principles of the Trademark Law. The following three views have emerged: First, unconditionally recognize the validity of trademark coexistence agreements; First, absolutely deny the validity of trademark coexistence agreements; First, determine the validity of trademark

coexistence agreements based on the possibility of confusion, and at the same time, use the trademark coexistence agreement itself as a reference factor to determine the possibility of confusion.

2.1 Effectiveness Theory: Break Through the Possibility of Confusion and Emphasize the Private Nature of Trademark Rights

The validity theory is similar to the absolute validity model adopted by the UK for trademark coexistence agreements, that is, when a trademark conflicts with a prior trademark, as long as the owner of the prior trademark is willing to provide written consent, the registration of the subsequent trademark is not restricted.

The Supreme People's Court issued a document in 2014 recognizing the validity of the trademark coexistence agreement and allowing the parties to reach a consent for Trademark Registering. Although this clause was eventually deleted from the officially promulgated version, it also reflected that my country's officials had noticed the important position of trademark coexistence agreements in commercial practice and had discussed their legal validity, showing a tendency to recognize to a certain extent.

When the Liangzi trademark case was retried, the Supreme People's Court held that the trademark system was based on the protection of trademark rights. In view of the private nature of trademark rights, it fundamentally emphasized the protection of trademark owners, with the ancillary consideration of consumer interests as reflective interests; trademark owners' judgment on whether there may be confusion between the disputed trademark and their own trademark is often more accurate and reasonable than third parties such as administrative or judicial agencies; Since the parties believe that their trademark interests have not been infringed and there will be no confusion between the disputed trademark and their own trademark, the

trademark coexistence agreement can be used as evidence to deny the possibility of confusion between the disputed trademarks, that is, the court fully recognizes the trademark coexistence agreement. The validity of the agreement eliminates the need to separately review whether the coexistence between the two trademarks in dispute will lead to confusion. What's more, courts have taken the initiative to mediate and facilitate the two parties to reach a trademark coexistence agreement, such as *Hengsheng v. Hang Seng Trademark Infringement Case*.

Scholars who agree with such views in the academic community believe that the trademark coexistence system can help promote rapid economic development and healthy market competition.[3] As one of the manifestations of trademark coexistence, trademark agreement coexistence should also be treated with tolerance with the concept of "inclusive growth".[4] It strongly proves that there is no possibility of confusion between the two trademarks, and the review authority should respect the intentions of the parties. There is no need to review whether there is a possibility of confusion between the two trademarks involved in the coexistence agreement and whether the trademark coexistence agreement has sufficiently arranged measures to avoid confusion.[5]

2.2 Invalidity theory: Adhere to the Possibility of Confusion and Deny the Validity of the Trademark Coexistence Agreement

The theory of invalidity is similar to the negative effect model adopted by Mexico for trademark coexistence agreements, that is, the trademark law not only protects the interests of the trademark owner but also protects the interests of the consumer public. As a trademark coexistence agreement that only communicates with the parties, it is not allowed to rely on its approval. Trademark Registering that may cause confusion among consumers.

In the first instance of the Liangzi trademark case, the court held that the agreement between the parties on trademark coexistence could not oppose the possibility of confusion as the scope of legal review. For another example, in the CLOT Trademark Case and the Alier Trademark Case, the court only

recognized that a trademark coexistence agreement could bind the parties, because when the two trademarks are highly similar, the trademark loses its basic function of identifying and distinguishing the source, and the trademark coexistence agreement does not avoid confusion among consumers.

Some scholars in the academic community also support this view, believing that a trademark coexistence agreement between private entities cannot be the basis and basis for establishing trademark rights.[6]

2.3 Compromise theory: Use the Trademark Coexistence Agreement as an Important Reference for Determining the Possibility of Confusion

The compromise theory is similar to the relative effectiveness model adopted by the United States for trademark coexistence agreements. That is, although the trademark coexistence agreement cannot absolutely enable the subsequent similar trademarks to be registered, it strongly proves that there is no possibility of confusion. If it is not related to major public interests, it generally recognizes its effectiveness.

The 24th Trademark Review and Adjudication Board in 2007 proposed the need to reasonably consider the application of trademark coexistence agreements. It should not only respect the autonomous will of the parties under the private nature of trademark rights and the subjective goodwill of not intending to "free ride", but also consider the purpose of trademark legislation. To protect consumers' legitimate interests from confusion, comprehensive consideration should be given to the similarity of the trademarks of both parties when determining the validity of the trademark coexistence agreement. Factors such as the similarity in the scope of application of the trademarks of both parties and the popularity of the brands of both parties do not absolutely affirm or deny the validity of the trademark coexistence agreement.

In judicial practice, although the parties have reached a trademark coexistence agreement, after judicial judgment, the court still believes that the two trademarks are highly similar and there is no significant difference. The categories of goods or services applicable to the disputed trademark and the cited trademark are almost the same in terms of use, audience,

etc., which will still confuse consumers and cannot distinguish them, and ultimately the validity of the trademark coexistence agreement will not be determined. For example, the CATTIER trademark case, the HYDROROCK trademark case, the Rubber and Plastic Factory trademark case, Snow Beauty trademark case, ECLIPSE trademark case.

Of course, there are also situations in judicial practice where various factors are combined to finally determine that the trademark coexistence agreement is valid. For example, in the nexus trademark case, the Supreme Court held that it cannot be directly concluded that consumers will be confused just because the two trademarks involved have exactly the same letters to form "nexus". First, from the perspective of visual effects, the two have their own designs in terms of letter case and color; second, from the perspective of the categories of goods to which the trademarks apply, although both are generally related to computers, the functions, uses, and sales channels of their respective products are different. Google is registered in the category of "handheld computers", while Shimano Co., Ltd. is registered in the category of "bicycle computers"; Third, from the perspective of product audiences, both serve cyclists or cycling enthusiasts with certain professional knowledge. Due to the high precision required by such products, consumers will pay more attention to the trademarks of products when purchasing, and their ability to distinguish similar logos is higher than that of ordinary people. To sum up, the court judged that consumers would not be confused about the trademark involved in the case, recognized the trademark coexistence consent signed between the parties, and finally approved the registration application of Shimano Co., Ltd. For example, in the Crocodile Trademark Case, the validity of the trademark coexistence agreement between French Crocodile Company and Singapore Crocodile Company was recognized by the Supreme Court. The court emphasized that factors such as the subjective good and evil intentions of the parties, the historical origin of the trademarks of both parties, etc. should be based on factors such as the subjective good and evil intentions of the parties. Otherwise, although the logos of the two trademarks are similar to a certain

extent, it will not cause confusion among consumers.[7] It also does not recognize it as infringement and opposes coexistence. What's more, the court held that if there is no significant evidence to prove whether the disputed trademarks will cause confusion, the trademark coexistence agreement or consent issued by the prior trademark owner who is well versed in market rules and is directly related to the interests should be directly accepted as strong evidence to rule out the possibility of confusion, such as the STELUX trademark case.

Scholars who hold a compromise theory in the academic community believe that the existence of a trademark coexistence agreement is reasonable, but also emphasize that the premise of recognizing a trademark coexistence agreement is to eliminate the possibility of confusion between the two trademarks, and its effectiveness can only be affirmed if there is no possibility of confusion among consumers.

3. Thoughts on the Determination of the Validity of Trademark Coexistence Agreements

The first article of the Trademark Law clearly states the legislative purpose, which is not only to protect the exclusive right to use trademarks, but also to protect the interests of the public. A trademark coexistence agreement, that is, an agreement by which the parties agree on the coexistence between two identical or similar trademarks applicable to the same or similar goods or services without trademark infringement, is a product of the full exercise of the autonomous will of the trademark exclusive rights holder, and in principle It should be respected; however, if its existence affects social interests and violates the legislative purpose of the Trademark Law, it should be deemed invalid.

3.1 In Principle, the Trademark Coexistence Agreement between the Parties Is Recognized

In the preamble, the TRIPS Agreement emphasizes that the nature of intellectual property lies in the attribute of private rights. It is not denied that the nature of private rights is because the object of intellectual property is immaterial or intellectual property is closely related to the intervention of public power.

This is because property such as intellectual achievements and property in the traditional sense essentially form a "personal-property" correspondence. Trademark rights, as part of intellectual property rights, are undoubtedly also private rights. Due to the private law nature of the trademark law, protecting trademark owners is the direct purpose of the formulation of the trademark law. First of all, the legitimate rights and interests of the trademark owners must be put first, and secondly, the protection of consumer interests needs to be considered. According to the principle of private autonomy, as long as the mandatory provisions and basic principles of laws and regulations are not violated, rights holders have the right to freely limit their trademark rights, tolerate the narrowing of the boundaries of their trademark prohibition rights and reduce the significance of their own trademark prohibition rights, or give up the possibility of infringing trademarks. Therefore, the trademark owner has the right to freely choose whether to reach a coexistence agreement with the competing trademark owner, expressly or implicitly agreeing to the registration or use of the other party's trademark. During the review process of trademark disputes, administrative and judicial authorities should relax existing restrictions on the determination of the validity of trademark coexistence agreements, based on the principle of determining that the trademark coexistence agreement legally agreed by both parties is valid. Such regulations can not only give parties greater freedom to further enhance market vitality, but also increase the probability of trademark authorization, overcome the rigid market competition model, use the appeal of goods and services themselves as competition, and make corporate profits and industries expand while creating more positive economic conditions for the entire market.

3.2 Exceptional Considerations Affect Public Interests and Market Competition order

As a supplement to the principle of recognizing the validity of trademark coexistence agreements, the legislative design should include balancing and protecting public interests and market economic order into the scope of balance. In the case where the

existence of a trademark coexistence agreement violates the public interest or affects the order of market competition, the validity of a trademark coexistence agreement should not be affirmed.

(1) The benefits protected by the agreement are less than the harm caused by consumer confusion

American jurist Posner believes that reducing consumers' search costs and improving the quality of producers' products are the economic foundations that should be followed for legal protection of trademarks. Although the trademark law focuses primarily on the interests of trademark owners, it still must take into account the interests of consumers. The Trademark Law only protects trademarks that meet the salience requirement, that is, trademarks that enable consumers to identify the source of goods or services. Therefore, the act of signing a trademark coexistence agreement, which is regarded as the trademark owner's autonomous restriction of his own rights, does not only depend on the will of the trademark owner, but also needs to be judged whether it violates the public interest of consumers.

There are different opinions in the academic community on what constitutes public interest, and there have been many discussions on how to define "public interest". For example, in the WeChat trademark case, the Trademark Review and Adjudication Board and the court of first instance believed that if the plaintiff's trademark registration was agreed, the consumer group had already had a stable perception. The court of second instance believed that online APP software had the advantage of notifying users in a timely manner, and the definition of awareness of its audience should be higher than that of the general offline situation. Therefore, it was concluded that the plaintiff's trademark would never lead to misidentification by consumers or endanger the public interest. The academic community also discussed the views of these two schools. Although a consensus could not be reached in the end to define the concept of public interest, the public interest is open., hierarchical, shareable, reducibility and other characteristics have been generally agreed by the academic community.[8] The author believes that the definition of public interests that will affect the effectiveness of trademark

coexistence agreements can be started from two perspectives: breadth and depth: on the one hand, "public" emphasizes the breadth of the scope of the subject. Compared with private interests involving only specific parties, the subject of public interests is an unspecified majority; on the other hand, "interests" emphasize the fundamentals of nature and degree. Compared with the variety of forms of private interests, public interests correspond to more basic needs of mankind.

In addition to common illegal acts, in the perspective of the trademark coexistence agreement, the main harm caused by consumer confusion is higher than the interests that can be protected by the trademark coexistence agreement. At this time, the trademark coexistence agreement should be deemed invalid. For example, in the Aigford trademark case, since the scope of use of the two trademarks involved in the case is pesticide goods closely related to crop planting, pest control, and ecological and environmental pollution, the court held that the similarity of the two trademarks could easily cause misunderstanding by consumers, and the consequences of confusion would be greater harm to the public interest, so the validity of the trademark coexistence agreement submitted by Jinan Aigford Company was not recognized. However, in some special fields, such as medical devices, drugs, etc., because they do not allow any possibility of confusion, otherwise it may cause irreversible harm to the lives and health of the public, and the distinction requires high professional ability, the law must not demand consumers to achieve this level of sophistication, so there is no need to spend energy weighing the benefits of public interest damage and trademark coexistence. Instead, any coexistence that may cause consumers to purchase mistakenly, such as the ALLEGRA trademark case, The incomparable paste trademark case, etc.

On the contrary, it can be inferred that there are two main types of situations that will not invalidate the trademark coexistence agreement. First, the coexistence between trademarks will not cause confusion among consumers. For example, in the APPLE Trademark case, the court held that the trademark coexistence agreement previously signed by the two parties had already delineated the scope of their respective

trademarks. In response to Apple Computer's launch of the iTunes Music Store, the act of providing music download services (retailers) will not confuse consumers about the fact that the exclusive use of music (record companies) belongs to Apple Corp., so it was determined that Apple Computer did not constitute infringement. Nor does the trademark coexistence agreement be deemed invalid. Second, the harm caused by consumer confusion is relatively low and is less than the benefits protected by the trademark coexistence agreement. For example, some bona fide trademarks coexist due to historical reasons. There is indeed a certain degree of confusion between trademarks. However, given the accumulated goodwill of various trademarks over the years and the already entrenched market order,[9] the court believes that the harm caused by possible confusion among consumers has not reached the level of harming social public interests, so there is no need to deny the validity of the trademark coexistence agreement. For example, in the UGG trademark case and the Crocodile trademark case, the court did not excessively demand that there be no possibility of confusion at all, but believed that a low possibility of confusion could be tolerated and did not require that no one would cause misidentification under any circumstances.

To sum up, the prerequisite for determining whether the public interest under the scope of trademark law is to clarify the possibility of confusion. It originated from the identification of infringing trademarks in the Trademark Law. Based on the protection of trademark identification functions, it explores whether suspected infringing trademarks will cause the public to misunderstand the source and connection of goods or services and the extent of the misunderstanding. It is an officially recognized criterion in various countries and even internationally. The judicial interpretation further defines what constitutes confusion, that is, the relevant public mistakenly recognizes that the source of a certain good or service is the plaintiff's registered trademark or has a specific connection. Multi-factor testing is generally used when judging the possibility of confusion, emphasizing that multiple related factors that may exist in practice should be comprehensively considered, such as the

similarity of trademarks, the similarity of applicable goods or services, the subjective viciousness of the defendant, and the trademark.[10] The degree of well-known, the evidence of actual confusion, the degree of attention of consumers, etc. The "Regulations on Authorization and Confirmation" promulgated by the Supreme People's Court of my country assigns "necessary" reference weights to the first four factors in Article 12, while the latter two factors are considered to be in the category of "auxiliary" reference. As for the trademark coexistence agreement itself, there are also views that it should be included in the consideration of the possibility of confusion. For example, in the Coca-Cola Trademark Case, the trademark coexistence agreement reached by the parties not only included Coca-Cola Company's consent to the Snow Crest Beverages Trademark Registering application, but also specially designed provisions to eliminate confusion, including the division of the scope of use of the respective trademarks and the appropriate addition of distinguishing marks. In general, since certain factors may appear in real practice that are particularly prominent or not involved, administrative or judicial agencies should appropriately use quantitative methods in management science to analyze the results after preliminary screening of the facts involved, such as hierarchical analysis method, comprehensive evaluation method, etc., rather than discussing that there is no possibility of confusion between the two trademarks, like the courts in the Inouchi Trademark Case and the Hangzhou World Trade Trademark Case, In the judgment, it only briefly mentioned that "there are certain differences between the disputed trademark and the cited trademark".

It is particularly noteworthy that in the context of online trademark coexistence, since trademarks on the internet are presented in a two-dimensional format with relatively small patterns and font sizes, consumers applying the same general level of attention as they would offline may find it difficult to distinguish between them. Therefore, a more stringent standard of judgment should be adopted. Parties involved should also employ more rigorous methods in their trademark coexistence agreements to delineate markets and minimize consumer confusion as much as possible. This could include declaring the

absence of a cooperative relationship between the two companies, and even differentiating their trademarks by adding links to each other's websites, highlighting the differences between their trademarks, or incorporating additional commercial identifiers.

(2) Utilizing Agreements to Segment the Market and Exclude Legitimate Competition Constitutes Monopoly

Article 6 of the Anti-Unfair Competition Law stipulates the "confusing acts that business operators are prohibited from implementing." The first item therein aligns with the infringement criteria set forth in Article 57 of the Trademark Law. Specifically, if a trademark coexistence agreement is established to enable one party to free-ride on the goodwill and market advantages accumulated by the other party, thereby promoting their own products and misleading consumers into purchasing the wrong products, such conduct not only harms public interests but also unjustly damages the legitimate interests of the other party and undermines the healthy competitive dynamics of the market. Consequently, when confronted with trademark coexistence agreements that seek to exploit the reputation of a prior trademark for unfair gains—commonly referred to as "free-riding"—administrative and judicial authorities should take into account the subjective bad faith of the trademark applicant. Applications for trademark registration that disrupt market order and contravene public social interests should be denied, as exemplified by the OPTIBENT trademark case.

Article 13 and Article 14 of the Anti-Monopoly Law prohibit the formation of horizontal monopoly agreements and vertical monopoly agreements, respectively. Since vertical monopolies occur between business operators and their trading counterparts, they generally cannot manifest as trademark coexistence agreements signed between two business operators. If the parties involved achieve a dominant position in the market through the execution of a trademark coexistence agreement, such an agreement may be regarded as a form of horizontal monopoly agreement. This is because trademark coexistence agreements typically involve stipulations and restrictions on the categories of goods for which the trademark is

used, the scope of sales, pricing, quality, and other related aspects. Consequently, these agreements can create fertile ground for monopolistic practices, such as unlawfully or unreasonably manipulating transactions, entering into exclusive sales or agency agreements, artificially interfering with the natural adjustment of market prices by setting uniform price levels, or engaging in tying or bundling unrelated products. Trademark rights inherently grant the trademark holder a monopoly over the use of the mark within a specific domain. Further restrictions imposed through trademark coexistence agreements exacerbate market distortions and facilitate the emergence of monopolies. Therefore, if a trademark coexistence agreement prevents other enterprises from entering the market with their goods or services, the agreement should be deemed invalid for violating the Anti-Monopoly Law. However, in judicial practice, cases where trademark coexistence agreements result in substantive monopolies are exceedingly rare. As demonstrated in the PINE-SOL trademark case, courts have held that the Anti-Monopoly Law is not designed to protect individual competitors from market barriers but rather to safeguard the overall competitive order of the market. The distinguishing restrictions in trademark coexistence agreements are merely the product of the parties' efforts to maximize their respective interests and do not significantly harm the market as a whole.[11]

4. Enhancing Supporting Measures for the Application of Trademark Coexistence Agreements

To better align with the aforementioned institutional design that generally recognizes the validity of trademark coexistence agreements, the author proposes the following four supporting measures to address pressing practical issues: insufficient negotiation time for parties, lack of public oversight mechanisms, "free-riding" behaviors between coexisting trademarks, and arbitrary or nonstandard content in trademark coexistence agreements.

4.1 Establishing a Review Period for Trademark Coexistence Agreements to Ensure Adequate Negotiation Time

Under the Trademark Law, the statutory

deadlines for submitting reconsideration applications and initiating litigation against rejected trademark registration applications are notably brief—only 15 days and 30 days, respectively. During this period, trademark applicants are required to promptly submit evidence, including trademark coexistence agreements. However, the process of negotiating and finalizing a trademark coexistence agreement itself is inherently time-consuming, as it involves multiple stages: mutual understanding between the parties, communication and strategic bargaining over whether and how to coexist, and ultimately reaching consensus. In commercial practice, administrative and judicial authorities do not suspend proceedings or grant additional time to parties beyond legally mandated procedures. Consequently, the likelihood of concluding a trademark coexistence agreement depends not only on the parties' ability to reach consensus but also on external factors. A lack of procedural safeguards often results in failed negotiations or agreements with defects.

For example, in the Chen Mahua trademark case, Chen Shoulin and Chongqing Yueran Company signed a trademark transfer agreement for the registered trademark "Chen Mahua." Subsequently, Chongqing Chen Mahua Food Company applied to register the "Chen Mahua" trademark for identical or similar goods but was rejected. The company challenged the decision in court and submitted a trademark coexistence agreement with Chongqing Yueran Company during the second-instance proceedings. However, due to insufficient time for completing the prior trademark transfer procedures, the legal owner of the trademark remained Chen Shoulin rather than Chongqing Yueran Company. As a result, the parties to the agreement were not legally qualified, and the court ultimately invalidated the agreement's validity.

In conclusion, to better support the principle of recognizing the validity of trademark coexistence agreements, procedural obstacles should be minimized during the implementation of the system. A dedicated review period should be established to afford parties sufficient time for thorough negotiation and agreement finalization.

4.2 Establishing a Public Filing and Disclosure System for Trademark

Coexistence Agreements to Enable Third-Party Oversight

Trademarks inherently serve the broader public, and the effects of trademark coexistence extend beyond the parties directly involved in the agreement. Even while respecting the principle of autonomy of will in recognizing the validity of trademark coexistence agreements, it is imperative to guard against potential adverse impacts on public interests. To this end, the Trademark Office of the China National Intellectual Property Administration (CNIPA) should establish a comprehensive public filing and disclosure system for trademark coexistence agreements.

First, the filing system would facilitate the review of the content of trademark coexistence agreements, enabling timely identification of contracts that violate laws, regulations, or contain loopholes. Second, the disclosure mechanism would safeguard the legitimate rights and interests of the public by granting third parties the right to monitor, raise objections, and receive feedback. Should a valid objection be raised, the Trademark Office must promptly revoke its recognition of the agreement's validity.

4.3 Introducing an Exit and Renegotiation Mechanism to Prevent Future “Free-Riding”

After a trademark coexistence agreement is validated and the trademarks successfully coexist, a scenario may arise where one party's trademark gains significant influence through its own efforts. To prevent the other party from exploiting the prior agreement to “free-ride” on this enhanced reputation, an exit clause should be incorporated at the outset of the agreement. This clause would specify predefined thresholds (e.g., a substantial disparity in brand influence) that trigger mandatory renegotiation.

The determination of such thresholds could adopt the legal drafting technique of “specific enumerated criteria supplemented by a catch-all provision.” For instance, if both trademarks are initially ordinary marks, the designation of one as a “well-known trademark” by administrative or judicial authorities could signal a significant disparity in brand influence, necessitating renegotiation to prevent undue reliance. Similarly, sustained

and widespread public recognition of one party's trademark due to innovative design or substantial advertising investments could also serve as a triggering event for renegotiation.

4.4 Providing a Standardized Template for Trademark Coexistence Agreements to Streamline Review and Dispute Resolution

Nonstandard trademark coexistence agreements often create inefficiencies for administrative and judicial bodies, requiring examiners and judges to painstakingly parse ambiguous or fragmented provisions. This not only delays proceedings but also wastes public resources. To address this, relevant authorities should issue an official standardized template for trademark coexistence agreements, incorporating pre-approved, reusable clauses to guide market participants.

The template should include, at minimum: (1) detailed descriptions of the coexisting trademarks; (2) measures to prevent consumer confusion; (3) mutual commitments to refrain from filing oppositions or cancellation actions against each other's trademarks; (4) exit clauses triggered by significant disparities in trademark influence; and (5) dispute resolution mechanisms. Additionally, the template should retain flexibility for parties to supplement terms based on their specific circumstances, while ensuring compliance with legal standards.

By implementing these measures, the legal framework for trademark coexistence agreements will achieve greater clarity, fairness, and operational efficiency, balancing private autonomy with public interest safeguards.

5. Conclusion

The evolution of trademark coexistence agreements has surged forward with remarkable momentum, garnering increasing favor among market participants in China's commercial landscape. However, the absence of a unified standard for determining the validity of such agreements in both legislative and judicial frameworks has led to inconsistencies in administrative and judicial practices. To ensure the rational and effective utilization of trademark coexistence agreements, it is imperative to establish a feasible regulatory framework that balances protection with oversight.

This paper first identifies the validity of trademark coexistence agreements as its central research focus. Through an analysis of statutory provisions and empirical data, it synthesizes the current level of official recognition accorded to such agreements in China. Subsequently, the paper explores the underlying rationale for the formation of trademark coexistence agreements, delving into their objective necessity and inherent advantages, thereby reinforcing the significance of this inquiry.

The study further examines prevailing judicial and academic perspectives on trademark coexistence agreements, dissecting the theoretical foundations of three dominant viewpoints: the validity theory, invalidity theory, and compromise theory. Building on this analysis, the paper proposes an institutional framework for adjudicating the validity of trademark coexistence agreements. This framework adopts a presumption of validity as a guiding principle but mandates the invalidation of agreements that threaten public interests or disrupt market competition order.

To operationalize this framework, the paper concludes with four targeted measures aimed at addressing procedural and substantive barriers. These measures are designed to enhance clarity, fairness, and enforceability in the application of trademark coexistence agreements.

In summary, against the backdrop of a growing disconnect between the commercial demand for trademark coexistence agreements and the current legislative-judicial landscape, this paper advances novel insights and pragmatic reforms to refine the adjudication of their validity. It is hoped that these contributions will inform both scholarly discourse and practical implementation, fostering a more coherent and equitable regime for trademark coexistence agreements.

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