

The Legal Analysis on the Unique Packaging and Decoration of Famous Products

Jinchuan Wang

School of Hubei Polytechnic University, Huangshi 435000, China.

Abstract

The decoration and trademark of well-known goods are independent of each other. The former cannot be generalized. The former is the legal protection protected by the Anti-Unfair Competition Law, and the latter is the exclusive right protected by the Trademark Law. Enterprises cannot attribute the legal benefits of others' economic value to their names because they have trademark rights. Therefore, in view of the actual situation in China, the principle of prior use and the principle of fairness can be proposed as the legal principle for the identification of the unique packaging and decoration of well-known commodities in China.

Keywords

Well-known commodities; Unique packaging and decoration of well-known commodities; Prior use principles; Fairness principle.

1. The Legal Basis for The Unique Packaging and Decoration of Well-Known Commodities

According to the provisions of Article 2, paragraph 1, of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Cases of Unfair Competition: "The name, packaging and decoration of goods with distinctive characteristics that distinguish the source of goods shall be deemed to be negative. The "Special Name, Packaging, Decoration, as stipulated in Article 5 Item (II) of the Competition Law." An administrative regulation issued by the State Administration for Industry and Commerce on July 6, 1995, on the prohibition of counterfeiting Article 3 of the "Several Provisions on the Unfair Competition Behavior of Names, Packaging and Decorations Unique to Famous Products" states: "The term "special" as used in these Regulations means that the name, packaging and decoration of the goods are not common to the relevant goods and have significant differences. Sexual characteristics. The unique name of a well-known commodity referred to in these Provisions refers to the name of a commodity that is unique to a well-known commodity and has a significant difference from the common name. However, the name has been registered as a trademark. The term "package" as used in this regulation refers to identification. Commodities and auxiliary materials and containers that are convenient to carry, store and transport, and are used for the purpose of identification and beautification. The words, patterns, colors and their permutations combined with the goods or their packaging." From this we can conclude that although the name, packaging and decoration of the goods need to have distinctive features, there is no violation of the Supreme People's Court. The interpretation of certain issues in the application of law in civil cases of competition, but in fact they are used by consumers, and consumers repeatedly recognize the role of the source of goods. Even if the name, packaging, and decoration characteristics of the product are very significant, it is difficult to produce a difference in the source of the goods on the first day of use. It should be emphasized here that the name, packaging and decoration of the goods do not depend on the trademarks attached to them to distinguish the source of the goods, otherwise they cannot exist as independent legal objects. The name, packaging and decoration of goods can be the legal

benefits of anti-unfair competition law. It is precisely because they are different legal objects from trademarks. Otherwise, the single trademark "trademark law" can name, package, decorate and label goods. All inclusive, so that they are jointly adjusted and protected by the Trademark Law.

2. Defining the Controversy Over the Unique Packaging and Decoration of Well-Known Commodities

In 2012, The JDB and GPLH interrogated the other party's unauthorized use of well-known products in the packaging and decoration case. Yuegao said: "Packaging and decoration is made up of elements such as words, patterns, colors and their arrangement. The trademark can be used as a component of the packaging decoration, or the trademark can be excluded from the components of the packaging decoration. If the trademark identification is an integral part of the packaging decoration, that is, the trademark and the packaging decoration have been integrated, at this time, The trademark and the other components of the packaging and decoration should be separated, and the packaging and decoration including the trademark should be protected as a whole by the law." I cannot agree with this, the decoration of the product should be separated from the trademark. It refers to words, patterns, colors and their arrangement in addition to trademarks attached to goods or their packaging for the purpose of identifying and beautifying goods. The judgment mentioned that "packaging and decoration including trademark identification as a whole is protected by law", the author can't help but ask whether this law is anti-unfair competition law or trademark law or any other law. Nothing is known from the judgment.

The Guangdong High Law made this recognition of the packaging and decoration of the goods and the trademark, but in fact it was not clarified because of its relationship with the anti-unfair competition law and the trademark law. "From the perspective of historical origins and its content, the Anti-Unfair Competition Law is a direct normative purpose to curb unfair competition, to protect victims in a way that curbs behavior, and victims are thus The legal benefits of the victims, which enjoy the act of stopping unfair competition, are different from the exclusive rights of trademarks. The trademark right is a kind of civil right, which refers to the right of the trademark authority to legally grant the trademark owner to control its registered trademark and prohibit others from infringing. Different from the trademark right by positively granting the right to protect the subject, the Anti-Unfair Competition Law protects the subject by regulating the wrongdoing from the opposite side. It means that the rights have both positive and negative prohibitions, and the legal benefits are only passive. The anti-unfair competition law protection is not based on the grant of rights, but on the violation of honest business practices should be prohibited. The author believes that the decoration and trademark of well-known goods are independent of each other. The former cannot be generalized. The former is the legal benefit protected by the Anti-Unfair Competition Law, and the latter is the exclusive right protected by the Trademark Law.

3. The Attribution of Unique Packaging and Decoration of Well-Known Commodities

The focus of the most central, most important and most difficult dispute in this case lies in the unique packaging and decoration of well-known commodities. Because our laws and related judicial interpretations do not clearly stipulate the unique packaging and decoration of well-known commodities, only in 1995. Article 4, paragraph 2, of an administrative regulation promulgating No. 33 of the State Administration for Industry and Commerce on July 6th, "Several Provisions on Prohibiting Counterfeiting of Names, Packaging, and Decorations Unique to Counterfeit Goods": "The unique product name, packaging and decoration shall be

recognized in accordance with the principle of prior use." This is the only legal basis for China's identification of the unique packaging and decoration of well-known commodities. The unique packaging and decoration of well-known products in this case is produced in the process of trademark licensing. It is very difficult to apply this article. Therefore, this case has aroused widespread concern and debate in the theoretical and academic circles.

The well-known goods are uniquely packaged and decorated. It is not a kind of civil right stipulated by Chinese law, but it is a kind of civil interest similar to the ownership of the unique packaging and decoration of famous products. However, the legal benefits of protection should be given. Trademarks are indeed one of the carriers of goodwill, but they are by no means the only carriers. The goodwill of a company is jointly created by the quality and quality of goods, the packaging and decoration of goods, patents, copyrights, trademarks, advertising investment, integrity and effective management, and they all carry the goodwill of the enterprise. Enterprises cannot attribute the legal benefits of others' economic value to their names because they have trademark rights.

Therefore, the author then absorbs the theoretical viewpoints of the peers and draws on the foreign legal and judicial practice, and proposes two legal principles that are most suitable for the identification of the unique packaging and decoration of well-known commodities in China.

3.1. Prior Use Principle

According to the principle of prior use, before the operator uses the packaging and decoration for the goods produced by himself, there is no other manufacturer in the market to use the same or similar packaging decoration on the same or similar goods, then the packaging decoration belongs to The operator.

According to the facts of the case, we can know that the packaging and decoration of the red can is designed by The JDB and obtained the design patent in 1997. This proves that the red can packaging decoration is the first design by The JDB rather than the medicine. The group was first designed. Moreover, at that time, no one in the mainland herbal tea market used red as the packaging and decoration of herbal tea. Because red can give consumers a "get angry" association, and the cost of canning is high, so The JDB is the first to launch in the mainland market. Red can packaging and decorating companies.

In the judgment, Guangdong Supreme Court stated: "Even if the packaging and decoration involved in this case is entrusted by Hong tao group to design and obtain the design patent right, the design itself cannot produce the unique packaging and decoration rights of well-known products, which can only be subject to the patent law. Protection, and the unique packaging and decoration rights of well-known goods are formed through the use of the anti-unfair competition law." I can not agree with this. First of all, this design patent is widely used in actual production and sales as the packaging and decoration of herbal tea. This is an objective fact. Secondly, design patents can produce unique packaging and decoration of well-known commodities, and there are precedents in judicial practice in China.

3.2. The Principle of Fairness

The principle of fairness is the basic principle of our civil law. Article 4 of the General Principles of the Civil Law of China stipulates that civil activities should follow the principle of fairness. The principle of fairness means that "civil subjects should implement civil acts in accordance with the concept of fairness and justice. Judicial organs should handle civil disputes according to the concept of fairness. Civil legislation should also fully reflect the concept of fairness." This case is the design of red cans of The JDB Company. Packing and decorating, used for herbal tea products with the trademark "Wang Lao Ji", and the formula of this product is used by descendant license The JDB. The marketing of the product is also created by The JDB. Because the GP Group owns the "Wang Lao Ji" trademark, which makes the red can packaging and

decoration completely belong to the GP Group, it does violate the fairness principle of the civil law.

The judgment order of Japan in the judicial practice dealing with unfair competition behaviors involving the unique packaging and decoration of goods is different from the judicial practice in China. China first recognizes the well-known goods, and then determines who owns the goods, and then determines that the packaging and decoration belongs to it. Japan first recognizes that packaging and decoration are well-known, and then weighs who has contributed and contributed to the process of packaging and decoration becoming a well-known logo. No contribution or contribution to packaging and decoration is definitely not owned by it, so packaging and decoration contributes a lot. By. Therefore, Japan's judicial practice directly omits the identification of goods and the attribution of goods, which just solves the big problem in this case, that is, who owns the well-known goods, it is worth learning. It is also worth mentioning that in Japan's judicial practice, it is never considered that the unique packaging and decoration of well-known commodities belongs to only one subject. If there are multiple legal subjects with large contributions, the packaging and decoration can be attributed to them. If the case is in accordance with this standard of identification, the red can packaging decoration will not be owned by the GP Group. At the very least, it will be shared by GPHL and The JDB. The two parties will add other marks to distinguish the source of the goods when they are used. Yes, this is more in line with fairness and justice. According to Locke's point of view, "people impose labor on what they have in common, and that labor produces property rights." the law should at least not punish active labor. Therefore, the author believes that China's judicial practice should absorb the practical experience of Japan to solve the problem of the ownership of well-known commodity packaging and decoration, which is in line with the fair principle of our national law and the legislative purpose of China's anti-unfair competition law.

4. Conclusion

Business competition should not pursue the effect of your life, even if you eliminate all competitors, it does not mean that you can develop very well. I can't help but imagine that if GPHL does not have the strong competitor of The JDB, the sales volume will be able to make rapid progress. Does it have more herbal tea market share than today's The JDB? I am not sure. Enterprises should not narrowly understand market competition. They should think more about how to make cakes bigger together with other companies, so that each company has more cakes than before, instead of grabbing a piece of cake and vicious competition, so it is a win-win situation. It is a real win.

The reason why the anti-unfair competition law has strong flexible applicability and vitality is undoubtedly closely related to the creative and innovative application of the judiciary. The unique packaging and decoration of well-known products in this case reflects the endless efforts of the operators. Therefore, the Supreme People's Court should keep pace with the times, develop and innovate, bridge the gap between the law and the changing reality of life, and handle the case fairly and reasonably.

References

- [1] Cao Xinming. Analysis of the Ownership of the Unique Packaging and Decoration Rights of Well-known Commodities Law Science (Journal of Northwest University of Political Science and Law), Vol. 6 (2018) No. 36, p.164-169.
- [2] Zhang Guangliang, Zhang Jiyu. On the Reconstruction of the Legal Protection Elements of Commercial Appearance--A Jurisprudential Analysis Based on the Case of "Red Pot Wang Laoji Herbal Tea Case" Legal System and Social Development, Vol. 3 (2018) No. 24, p.212-224.

- [3] Kong Xiangjun. On the Attributes and Ownership of the Legalization of the Commodity Name Packaging and Decorating--Comment on the Special Packaging and Decoration Case of "Red Pot Herbal Tea" Intellectual Property, Vol. 12 (2017) p.3-29.
- [4] Huang Jun. Infringement of the problems and improvements of the unique packaging and decoration behavior of well-known commodities Intellectual Property, Vol. 10 (2017) p.35-45.
- [5] Zhang Weijun. On the revision and improvement of the clauses of "Special Name Packaging and Decoration of Famous Products" Intellectual Property, Vol. 6 (2017) p. 22-32.
- [6] Yao Hehui. Dialectical and Perfection of Anti-unfair Competition Protection System with Unique Names of Famous Commodities--Comment on "Anti-Unfair Competition Law (Revised Draft for Review)" Law Science (Journal of Northwest University of Political Science and Law), Vol. 3 (2016) No. 34, p.126-134.