

Original Paper

Research on the Application of Civil Punitive Damages for Trademark Infringement in China

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Abstract

Civil punitive damages is a new system introduced into China's trademark legislation, aiming to increase the cost of infringement and illegal acts and exert the deterrent effect of judicial punishment. However, the current system faces problems such as ambiguous application requirements and inconsistent calculation standards in judicial practice, leading to frequent occurrences of "different judgments for the same case". This study, through theoretical analysis and judicial practice investigation, systematically reviews the application status and difficulties of civil punitive damages for trademark infringement, and innovatively introduces the "dynamic system theory" as a reference method for determining the amount of compensation. The research finds that clarifying the standards for determining "malice" and "serious circumstances" and standardizing the calculation method of the compensation base are the keys to activating this system. This paper provides theoretical support and practical paths for improving the judicial application of civil punitive damages for trademark infringement in China.

Keywords

Trademark Infringement, Civil Punitive Damages, Judicial Application, Dynamic System Theory

1. Introduction

With the in-depth implementation of the intellectual property strategy, China's Trademark Law introduced the civil punitive damages system in 2013, and further raised the upper limit of compensation in the 2019 revision (Wang, L. F., 2022, p. 12). The establishment of this system marks the transformation of China's intellectual property protection from purely compensatory damages to punitive damages, reflecting the legislative attitude of zero tolerance towards serious trademark infringement. However, in the ten years since its introduction, the application rate of civil punitive damages in judicial practice has not been ideal. Judges face multiple difficulties in applying the system,

such as ambiguous application requirements, difficulty in determining the compensation base, and unclear boundaries with statutory damages (Du, J., 2023, pp. 69-76). These problems not only affect the expected effect of the system but also make it difficult for rights holders to obtain adequate relief in the process of rights protection.

This study aims to explore feasible paths to improve the application of the civil punitive damages system for trademark infringement through a systematic analysis of its theoretical basis, current status, and judicial practice issues. The research hypothesis holds that by clarifying the standards for determining “malice” and “serious circumstances”, standardizing the calculation method of the compensation base, and innovatively introducing the “dynamic system theory” to comprehensively consider multiple factors, the current difficulties in judicial application can be effectively solved, and the intended function of the punitive damages system can be activated. This study not only has theoretical value in enriching the theory of intellectual property infringement compensation but also has important practical significance in guiding judicial practice and unifying judgment standards.

2. Theory of Punitive Damages for Trademark Infringement in Civil Law

2.1 Overview of Punitive Damages in Civil Law

Punitive damages in civil law refer to a system where, for serious infringements of intellectual property rights, the law stipulates the awarding of compensation far exceeding actual losses to achieve the purposes of punishment and deterrence (Ni, L. Y., & Dong, J., 2022, pp. 462-470). Essentially, it is a special form of damages, distinct from traditional compensatory damages. The Civil Code of China stipulates that punitive damages in civil law mainly cover three areas: infringement of intellectual property rights, product liability, and environmental infringement. Punitive damages for trademark infringement fall under the category of intellectual property rights infringement. The concept of punitive damages originated in Europe during the 16th to 18th centuries, first appearing in France. The United States established the system of punitive damages for trademark infringement through the Trademark Act of 1903. Japan began to introduce relevant content in the 1930s. Based on foreign experience and in line with its own reality, China has gradually established a civil punitive damages system with Chinese characteristics (Cheng, X., 2021, p. 66).

In China’s legal system, the application of punitive damages in civil law mainly covers three areas: the field of intellectual property rights infringement, applicable to cases where the infringement is intentional and the circumstances are serious; the field of product liability, applicable to cases where the producer or seller knowingly produces or sells defective products, causing death or serious injury to others; and the field of environmental pollution, applicable to cases where the infringement is intentional, environmental pollution or ecological damage is caused, and serious consequences occur.

2.2 Overview of Punitive Damages for Trademark Infringement in Civil Law

Punitive damages for trademark infringement in civil law refer to the situation where, after a trademark right is infringed upon, the infringer is ordered to pay the right holder an amount of money far

exceeding the actual losses based on the degree of the infringer's fault (Wu, H. D., 2023, p. 89). Its core feature lies in the compensation amount exceeding the actual losses, reflecting the punitive nature of malicious infringement.

Regarding the nature of punitive damages for trademark infringement in civil law, there are three main viewpoints in the academic circle (Yang, S. Q., 2021). The quasi-criminal liability theory holds that punitive damages have a public law character, and the multiple punitive fines are similar to fines, thus having the attribute of quasi-criminal liability. The civil liability theory argues that trademark infringement punitive damages address property relations between equal subjects, and since the Civil Code includes it in the tort liability section, it should be classified as civil liability. The economic law liability theory contends that this system has both public and private law characteristics, aiming to maintain social economic order, and should be regarded as economic law liability. Currently, the mainstream view leans towards the civil liability theory, considering that positioning it as civil liability is more in line with the logical structure of China's legal system. Punitive damages for trademark infringement in civil law have multiple functions. The punitive function is the core value of this system, as it imposes high compensation on malicious infringers, making them pay a heavy price and thereby curbing infringement. The preventive function is reflected in two aspects: preventing the infringer from repeating the infringement and warning potential infringers. The compensatory function aims to make up for the shortcomings of traditional statutory damages and cover intangible losses such as damage to business reputation. The incentive function encourages right holders to actively protect their rights by increasing the benefits of doing so, thereby purifying the market environment.

3. The Current Situation of Civil Punitive Damages for Trademark Infringement

3.1 The Current Legal Basis for Civil Punitive Damages for Trademark Infringement

Article 63 of the Trademark Law of the People's Republic of China is the core legal basis for civil punitive damages. It stipulates that for malicious infringement of trademark exclusive rights and serious circumstances, the compensation amount can be one to five times the amount determined based on the actual losses of the right holder, the profits of the infringer, or the multiple of the trademark licensing fee. It also stipulates that when the above calculation basis is difficult to determine, the people's court may, based on the circumstances of the infringement, award statutory damages of up to 5 million yuan.

The relevant judicial interpretations of the Supreme People's Court further refine the application rules. The interpretation provides that when determining the compensation base, the actual losses of the plaintiff, the illegal income or the illegal gains of the defendant should be taken as the basis, excluding the reasonable expenses incurred by the plaintiff to stop the infringement (Liu, C. W., & Liang, Z. Q., 2021, pp. 29-37, p. 53). When the actual losses, illegal income, and illegal gains are difficult to calculate, the base can be determined based on the trademark licensing fee. When determining the amount of punitive damages, the people's court shall comprehensively consider factors such as the

degree of the defendant's subjective fault and the severity of the damage caused to the right holder.

3.2 The Current Judicial Application of Civil Punitive Damages for Trademark Infringement

From the perspective of judicial practice, the application rate of civil punitive damages for trademark infringement is generally low. Taking the Beijing Intellectual Property Court as an example, among the nearly 2,000 trademark infringement cases it heard from 2015 to 2017, more than one-fifth of the cases ultimately did not receive compensation, and the number of cases applying punitive damages was extremely limited.

The case of Xinhua Dictionary is a typical example of the application of punitive damages. The Commercial Press has continuously published Xinhua Dictionary since 1957, with a global circulation of over 567 million copies by 2016 and has received multiple honors. The court determined that Xinhua Dictionary constitutes an unregistered well-known trademark, and the act of the Chinese Language Publishing House in publishing a dictionary with the same name constitutes malicious infringement. When calculating the compensation amount, the court referred to factors such as the number of printed copies of the infringing dictionary and the average net asset return rate of publishing enterprises, and calculated the compensation amount at 1.5 times, ultimately fully supporting the Commercial Press's compensation claim of 3 million yuan (Tian, F., 2018).

Through the analysis of typical cases, it can be found that the key to applying civil punitive damages lies in determining whether the infringer has malicious intent subjectively. This malicious intent includes both direct intent and gross negligence. However, there is a lack of a unified standard for determining knowledge or gross negligence in practice, resulting in excessive discretion for judges and affecting the uniformity and predictability of the application of the system.

4. Problems in the Judicial Application of Punitive Damages for Trademark Infringement in China

4.1 Issues in the Recognition and Application of Punitive Damages for Trademark Infringement

The primary issue currently faced is the ambiguity of the conditions for applying punitive damages. The Trademark Law stipulates that the application of punitive damages requires both malice and serious circumstances, but it does not clearly define their specific meanings. The relationship between malice and intent, how to define malice, and what constitutes serious circumstances are all lacking in clear explanations. Especially in trademark infringement cases, intangible losses such as damage to business reputation and loss of customers are difficult to quantify. Relying solely on accounting losses to determine whether the circumstances are serious is unfair to the rights holder.

The unclear standards for recognizing prior use is also a prominent problem. When the prior user is not clear, how does the court determine whether prior use exists; when the prior user is clear, how to determine whether their use is in good faith; when the prior user is unaware of the other party's registered trademark, how to determine their subjective state. These issues all require further clarification through legislation or judicial interpretation.

4.2 Issues in Determining the Amount of Punitive Damages for Trademark Infringement

The difficulty in determining the base for punitive damages is a significant factor restricting the application of the system (Jiang, H. S., 2021, pp. 146-170). The three calculation bases stipulated in the Trademark Law - actual losses, profits of the infringer, and trademark licensing fees - are often difficult to accurately calculate in judicial practice. The rights holder faces difficulties in providing evidence, and the infringer often conceals accounts, making it difficult for the court to determine a reliable calculation basis, and ultimately leading to the application of statutory damages.

The confusion between punitive damages and statutory damages is also a very prominent issue. In some cases, judges use statutory damages as the base for calculating punitive damages, confusing the two different types of compensation. Statutory damages are an alternative compensation when actual losses cannot be determined, while punitive damages are a doubling of the base amount. The two have different natures, and their application conditions and calculation methods should also be distinct. This confusion leads to the failure of the parties' intention to compensate for losses through punitive damages.

5. Suggestions for Improving the Judicial Application of Civil Punitive Damages for Trademark Infringement in China

5.1 Clarifying the Conditions for the Application of Civil Punitive Damages

Establishing a standard for defining malice is the foundation for improving the application conditions. Malice should not be equated with general intent but should be understood as a deeper level of intent, encompassing both subjective malignancy and objective blameworthiness. It is suggested that in judicial practice, malice be understood as knowing that one's actions infringe upon another's trademark rights and still proceeding, or having a clear intention to evade legal responsibility and harm others' rights and interests. At the same time, it should be made clear that gross negligence can also be recognized as malice in specific circumstances, such as when the infringer, as a competitor in the same industry, should have known about the existence of a well-known trademark but failed to fulfill reasonable due diligence obligations.

Improving the criteria for determining serious circumstances requires a comprehensive consideration of multiple factors. It is suggested that the determination be made based on the duration of the infringement, the popularity of the trademark, the scale of the infringement, and the consequences of the infringement. This includes: long-term and wide-ranging infringement; high popularity of the infringed trademark; significant economic losses or adverse social impacts caused by the infringement; multiple infringement records of the infringer; and malicious infringement methods, such as counterfeiting or imitating well-known trademarks; and the infringer's resistance to law enforcement and destruction of evidence. At the same time, judges should be given the discretion to make decisions based on the specific circumstances of each case, but they must provide sufficient reasoning in the judgment documents.

5.2 Standardizing the Calculation Method of Civil Punitive Damages

Improving the definition of the actual losses of the right holder should start from the perspective of the reduction of expected benefits. In the case of exclusive licensing, the decline in market share and profit reduction of the licensee due to the infringement should be included in the actual losses. The court can estimate the actual losses based on the expected benefit losses suffered by the right holder due to the infringement. For cases where the infringement has been stopped, the right holder must provide evidence of the actual use of the registered trademark in the previous three years. The actual losses should also include reasonable expenses incurred to stop the infringement.

Improving the definition of the infringer's gains from the infringement requires clarifying the scope of the gains. The infringer's gains from the infringement should include all benefits obtained from the infringement, not only direct profits but also indirect benefits such as market advantages and business opportunities gained by the infringer. For cases where it is difficult to calculate accurately, the average profit margin in the same industry and the sales volume of the infringing products can be used as reference factors to determine the gains comprehensively. The court can determine the compensation amount based on the actual losses suffered by the infringed party or the illegal gains of the infringer.

Standardizing the calculation formula for the multiple of the trademark licensing fee should consider the overall interest balance. When calculating the licensing fee, the benefits obtained by the defendant due to the infringement should be deducted after the licensing fee. The multiple calculation formula should be limited to the benefits obtained by the defendant from the trademark infringement. For benefits obtained based on commercial reputation through licensing, factors such as the social impact caused by the infringement should be considered. Specifically, the average profit of the previous three years can be used as a reference for calculation, while also considering factors such as the industry, business model, and scale.

Considering other factors to determine the compensation amount based on the dynamic system theory is an innovative suggestion in this article (Wang, T. P., 2020, p. 85). The dynamic system theory emphasizes that when determining the compensation amount, multiple factors should be comprehensively considered, and the compensation amount should be dynamically determined based on the weight and interaction of each factor. Specific applications include: judging the substitutability and popularity of the accused infringing product or service based on its quality, price, and innovation level, and then assessing the degree of the infringer's subjective malice; considering the market demand for the accused infringing product or service, and not granting excessive punitive damages if the market demand is small or the popularity is low; The punitive damages shall be determined by analyzing the infringer's profits and the rights holder's losses, with due consideration given to the reasonable expenses incurred by the rights holder in preventing the infringement. The compensation amount may be adjusted appropriately based on the market recognition of the alleged infringing goods or services and the infringer's degree of subjective malice. The application of dynamic systems theory helps overcome the rigidity of traditional calculation methods, thereby achieving substantive justice in

individual cases.

6. Conclusion

This study, through theoretical analysis and examination of judicial practice, systematically explored the application of civil punitive damages for trademark infringement in China. At the theoretical value level, this research deepened the understanding of the nature, function, and application conditions of civil punitive damages, clarified the distinction criteria between malice and intent, and enriched the theoretical discussion on the factors for determining serious circumstances. Particularly, it innovatively introduced the dynamic system theory as a reference method for determining compensation amounts, providing a new theoretical perspective for the determination of punitive damages.

At the practical value level, this study addressed the prominent issues in judicial application and proposed specific suggestions for clarifying application conditions and standardizing calculation methods. Setting standards for defining malice and improving the criteria for determining serious circumstances can help unify the judicial standards and reduce the phenomenon of inconsistent judgments in similar cases (Xu, J., & Ma, Q., 2022, pp. 1-10). Standardizing the calculation method of the compensation base and clarifying the determination methods of actual losses, profits from infringement, and licensing fees can enhance the operability of punitive damages. Referring to the dynamic system theory to comprehensively consider multiple factors can help achieve the scientific determination of compensation amounts and the fairness of individual cases.

Compared with existing research results, the advantages of this study lie in: first, it systematically integrates theoretical exploration and practical analysis, avoiding the limitations of pure theoretical deduction or simple case accumulation; second, it innovatively introduces the dynamic system theory, providing a more inclusive and flexible method for determining compensation amounts; third, it pays attention to the operability of the suggestions for system improvement, and the proposed standards and methods are convenient for direct application in judicial practice. However, this study also has certain shortcomings, such as the need for further refinement of the specific application rules of the dynamic system theory and the need for more empirical research to support the weight distribution of various factors.

The unresolved issues of this study include: the connection between the dynamic system theory and the existing statutory compensation system, how to prevent the abuse of the dynamic system theory, and how to ensure the uniformity of judgment results while safeguarding the discretion of judges. Future research can build on this foundation, through broader empirical analysis, to further clarify the specific weights of various factors and explore the quantitative application methods of the dynamic system theory (Zheng, Y., 2021). At the same time, it is suggested that the legislative body issue judicial interpretations in a timely manner to make more explicit provisions on the standards for defining malice, serious circumstances, and the calculation methods of the compensation base, providing clearer guidance for judicial practice.

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