The Theoretical Logic of the Construction of Sports Intellectual Property System

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Abstract. Aiming to break through the narrow, broad and general understanding of sports intellectual property rights, this paper adopts interdisciplinary methodology to analyze and summarize the concept, attributes and categories of sports intellectual property rights, and explore the theoretical logic of the construction of sports intellectual property rights system. In terms of concept definition, it deeply analyzes the right attributes of sports intellectual property rights, and forms three types of rights: ontological sports intellectual property rights, necessary sports intellectual property rights and related sports intellectual property rights; in the formation mechanism, it puts forward that the construction of right system of sports intellectual property should follow the basic principles of comprehensiveness, systematization and openness; In terms of right relationship, it points out that the ontological sports intellectual property rights comes from sports itself, and the object of rights is irreplaceable. The necessity of sports intellectual property rights and sports is a direct relationship, and the object of rights is indispensable. Related sports intellectual property rights and sports are indirect relations, the object of rights has a supporting role, and the subjects of rights have mutual benefits.

Keywords: Sports; Intellectual property; Principle; System.

1. Introduction

Sports intellectual property is an intangible property right with the nature of private rights. The formation of this concept not only confirms that sports have a unique market position and extraordinary commercial value, but also shows that sports intellectual labor achievements bear an important role in rights and huge social functions. As a result of intellectual labor, sports intellectual property rights should be closely protected by law. However, its protection effect is not ideal. It can be seen from the relevant theories in the academic circle that the concept of sports intellectual property has not reached a deep consensus so far, and even conflicts with each other in ideas, which is not conducive to the legal protection of sports intellectual property. Therefore, in order to comprehensively and deeply protect the sports intellectual property rights, earnestly and prudently safeguard the legitimate interests of the right subjects, and actively and effectively promote the harmonious, stable and healthy development of the sports market, it is very necessary to reshape the concept of sports intellectual property rights and build a scientific, comprehensive and systematic right pedigree of sports intellectual property rights. This paper reexamines the connotation of sports intellectual property rights with the combination of sports theory in methodology, and deeply interprets sports intellectual property rights with philosophical logic analysis methods such as aesthetics, so as to clarify the logical mechanism of the construction of sports intellectual property rights system.

2. Definition of Sports Intellectual Property

The scientific definition of the concept of sports intellectual property rights is the premise and basis for safeguarding the right. In order to define the concept of sports intellectual property rights, Chinese scholars have made unremitting efforts, mainly using the methods of enumeration, definition, or both. Among them, in terms of definition, some scholars believe that "sports intellectual property rights refer to the general term of the exclusive rights enjoyed by natural persons, legal persons, unincorporated social organizations or the state in accordance with the provisions of law for their
creative intellectual achievements and business marks in competitive sports, sports culture, sports industry management and other fields”. Some scholars believe that "sports intellectual property rights refer to the spiritual wealth created by intellectual activities in the field of sports. They are exclusive rights enjoyed in a certain region and a certain period of time, consisting of sports copyright and sports property rights". In addition, in terms of enumeration, some scholars pointed out that the specific types of sports intellectual property rights should include: "(1) sports logo rights; (2) copyright and copyright adjacency of various types of sports works; (3) sports patent rights; (4) sports competition performance intellectual property rights". There is no doubt that this kind of definition has played a positive role in the protection of sports intellectual property rights. It not only provides a corresponding theoretical basis for the confirmation of intellectual achievements in sports, but also provides a certain direction for the protection of sports intellectual property rights in the future. However, neither the definition nor the enumeration of rights has further explored the essence of "sports" in intellectual property, nor has it pointed out the deep relationship between "sports" and intellectual property. For this reason, this paper will put forward a limited view for the academic evaluation.

As an intangible property right, sports intellectual property has its own particularity. In the concept of sports intellectual property, the word "sports" is the key element of the right, because it is the foundation of the right, or the difference of the right. Therefore, to clarify the connotation of sports intellectual property rights, reshape the concept of sports intellectual property rights, and build the right pedigree of sports intellectual property rights, it is necessary to analyze the essential characteristics of the word "sports". Otherwise, it is impossible to highlight the main points, that is, to identify the rank among various sports intellectual property rights. First of all, enumeration is a specific expression of sports intellectual property rights. It is not necessary to make a detailed analysis of the essence of the word "sports". Naturally, there is no distinction between high and low levels of various sports intellectual property rights, just list the names of various rights. Such as "sports logo right", "sports broadcasting right", etc. The definition is an abstract expression of the concept of sports intellectual property, which should reflect the universal content of sports intellectual property or the essential right component of "sports", that is, the main value component of sports intellectual property. However, this trait is not true. As mentioned earlier, this definition mainly covers the subject and object of sports intellectual property, as well as the abstract correspondence between subject and object. It does not touch the essential value cognition of "sports", nor distinguish the category relationship of sports intellectual property rights. In view of this, the definition of the concept of sports intellectual property rights still needs further consideration. It should not only clarify the subject and object of sports intellectual property rights and their interrelationships, but also highlight the essential connotation of "sports" in sports intellectual property rights, and at the same time recognize the primary and secondary nature of sports intellectual property rights, so as to build a multi-dimensional, deep and systematic pedigree of sports intellectual property rights.

First, what is the essence of sports? According to the definition of the online Chinese dictionary, "essence" is the inherent property of things and determines the nature, appearance and development of things. Then, the essence of sports refers to the inherent attributes of sports itself, which determines the nature, appearance and development of sports. Some scholars pointed out that "the essence of sports is to take physical exercise as the basic means to promote people's physical and mental health development and improve people's quality of life and quality of life." It can be seen from this that the noumenon of sports is sports, mainly referring to various sports forms of human limbs, and its purpose is to promote the development of physical and mental health and improve the quality of life and quality of life. In this way, the primary object of sports intellectual property should be sports itself, not other object forms. In the definition of sports intellectual property rights, the intellectual achievements and business marks in the fields of competitive sports, sports culture and sports industry are collectively referred to as the intellectual property rights of the right subject. Here, the sports industry obviously cannot reflect the essence of sports, and it can only represent the auxiliary industry of sports or the intellectual property rights of various sports industries related to sports; Sports culture
is a macro concept, which is a multi-dimensional summary with the spirit, system, material and behavior of sports as its content, and can not concentrate on the essential characteristics of sports; Competitive sports can best reflect the special nature of sports, but it is not comprehensive. Because other sports can also have the attribute of sports intellectual property. In summary, it is very important to define the concept of sports intellectual property rights and clarify the essence of sports, which is an important condition for distinguishing the categories of sports intellectual property rights and their interrelationships.

Secondly, the relationship between sports and intellectual property. Sports intellectual property can be divided into two forms: narrow sense and broad sense. The narrow sense of sports intellectual property refers to the sports intellectual property directly related to sports, such as sports or competitive events at all levels. Here, it is particularly manifested as the copyright of major sports events, although such rights are still controversial in the copyright law. However, the author believes that sports event programs meet the requirements of copyright law works. They are works led by sports event organizers, implemented by sports participants according to regulations or agreements, and created jointly with the assistance of other sports participants. In addition, other general sports or competitive events also have the attribute of sports intellectual property, but the value shown is not as obvious as that of major sports events. However, as the research focus is not here, it will not be discussed. The broad sense of sports intellectual property refers to various sports intellectual property rights that are directly and indirectly related to sports. First, directly related sports intellectual property rights. There are two forms of directly related sports intellectual property rights: one is the narrow sense of sports intellectual property rights, whose object is sports itself; Second, it refers to the necessity of sports intellectual property rights. Its object is sports equipment and other items related to sports, which are an integral part of sports. Secondly, indirectly related sports intellectual property rights. The indirectly related sports intellectual property rights are not directly related to sports, but they play an indirect auxiliary role in sports, or a mutually beneficial role. According to this analysis, the broad sense of sports intellectual property rights is manifested in three forms of association: first, essential association. It refers to the direct relationship between sports and intellectual property. As the noumenon of sports is also the object of intellectual property, which is irreplaceable, this kind of intellectual property can be called noumenon sports intellectual property, which is the core right of sports intellectual property. According to the definition of the essence of sports, the object that can represent the essence of sports can only be sports (that is, body sports). Therefore, the intellectual property of sports should be the essential sports intellectual property, or the ontological sports intellectual property (hereinafter collectively referred to as the ontological sports intellectual property); Second, necessity correlation. Sports are not entirely the activities of sports participants. Sometimes, sports can only complete related activities with the help of certain venues, equipment and apparatus. Therefore, the intellectual property rights of these indispensable venues, equipment, equipment and apparatus have become an indispensable object of sports intellectual property rights. Such as martial arts, gymnastics related equipment, appliances and other items. Then, the intellectual property rights of such objects can be called necessary sports intellectual property rights; Third, auxiliary association. Auxiliary association means that it has no direct relationship with sports, but it can become a part of sports and play a certain auxiliary role in sports, such as training auxiliary equipment and other service contents. Of course, they will also obtain the corresponding market value or reputation through sports. Therefore, such intellectual property rights can be called relevant sports intellectual property rights.

To sum up, Sports intellectual property rights can be defined as: "Sports intellectual property rights are the sum of all kinds of sports intellectual labor achievements formed by sports and around sports. In addition, according to the close relationship between sports intellectual labor achievements and sports, they can be divided into three types: ontological sports intellectual property rights, necessary sports intellectual property rights and relevant sports intellectual property rights. Among them, ontological sports intellectual property rights are core rights, and necessary sports intellectual property rights The right and relevant sports intellectual property rights are successively followed. "
3. Construction principles of sports intellectual property rights system

3.1 Comprehensiveness

Sports intellectual property rights are the fundamental guarantee for the development of sports undertakings, and the healthy development of sports undertakings urgently requires the comprehensive protection of sports intellectual property rights. Sports undertakings are carried out by government agencies or social organizations, mainly including sports, sports industry and sports service industry. The development of sports is conducive to ensuring people's health and well-being, improving people's quality of life, and realizing the dream of a sports power in China. Tracing back to the source, it is the development and expansion of sports that gave birth to various sports industries and related services. On the contrary, the sports industry and sports service industry and other organizations also support and ensure the smooth development and orderly operation of sports. In the process of sports development, sports intellectual property rights came into being and appeared in the right sequence. The formation and appearance of it also shows that the protection and relief of sports intellectual labor achievements need to be strengthened from another angle, that is, it is imperative and urgent to comprehensively strengthen the relief and protection of sports intellectual property rights. For example, the copyright issues of competitive events are widespread around the world, and disputes about the reputation and name rights of well-known athletes in commercial rights are emerging. At the same time, only the comprehensive protection of sports intellectual property can ensure the orderly operation of sports and the harmony and stability of sports social relations. In view of this, at the level of sports intellectual property protection, on the one hand, it is necessary to protect the intellectual property rights of sports, on the other hand, it is necessary to protect the intellectual property rights of sports industry and sports service industry. As mentioned above, sports intellectual property rights mainly include three types: ontological sports intellectual property rights, necessary sports intellectual property rights and relevant sports intellectual property rights. Therefore, the protection of sports intellectual property rights should be systematically maintained from these three dimensions. First of all, the intellectual property right formed by sports itself is the primary sports intellectual property right. Without sports, other sports intellectual property rights will no longer exist. Secondly, the intellectual property rights of the sports industry also occupy a pivotal position. The development of sports industry is conducive to the smooth development of sports. In sports, national fitness needs corresponding sports products, such as fitness clubs and community activity centers need corresponding fitness equipment. Large sports events are inseparable from the support of the sports industry. Such as clothes worn by athletes, equipment and apparatus for training. It can be said that the development of sports industry is an important guarantee for the higher level operation of sports. Finally, the service industry of sports also needs to be strengthened. Sports service industry also has its own value on sports. By improving their service quality, it can ensure the safety, environmental protection, health, orderly and harmonious development of sports at all levels. In a word, only through the comprehensive protection of sports intellectual property rights, the development of sports can flourish.

3.2 Systematic principle

The systematic principle refers to the unity of opposites between the whole and the part in a system. Among them, there are qualitative and quantitative differences between the whole and the part and between the part and the part, which is called opposition. But at the same time, the whole and the part, as well as the part and the part, interact and are related to each other, so they are unified. Then, in the construction of sports intellectual property rights system, following the systematic principle is to regard the components of sports intellectual property rights as an organic whole, and at the same time distinguish the individual differences between them. In the mutual relationship, we should not only distinguish the primary and secondary contradictions between them, but also see the close relationship between them. Specifically, the requirements of the systematic principle are as follows: (1) Integrity. Integrity refers to bringing all the current and relevant sports intellectual property rights into the
system, and treating them as an organic unity, rather than dividing them into different parts; (2) Primary and secondary. The primary and secondary characteristics reflect the position and difference of various sports intellectual property rights in the whole system, that is, the closeness and distance between sports intellectual property rights and sports. As sports intellectual property rights, their development and formation were not achieved overnight, and there must be major and secondary contradictions. The main contradiction refers to the ontological sports intellectual property, while the secondary contradiction refers to the nonontological sports intellectual property, which includes the necessary intellectual property and the relevant sports intellectual property. Therefore, clarifying the primary and secondary contradictions of sports intellectual property rights is also an important part of the systematic principle; (3) Relevance. The relevance of sports intellectual property covers a wide range, including sports and sports related objects, property attributes, right subjects, etc. Understanding and mastering them will help to safeguard the rights and interests of the parties. First of all, sports intellectual property is closely related to sports. Without sports, there will be no corresponding birth of sports intellectual property. Therefore, the study of ontological sports intellectual property is the core content in the field of sports, which is also an important part of sports intellectual property. In addition, other nonontological sports intellectual property rights should also be based on the good protection of ontological sports intellectual property rights. Otherwise, there will be no hair on the skin. Just imagine that if the ontological sports intellectual property rights are not protected as they should be, the consequences will not only be that other sports intellectual property rights will be adversely affected, but even worse, it will affect the good development vision of the entire sports cause. Secondly, the property attribute of sports intellectual property. Sports intellectual property is a kind of intangible property rights. To protect intangible property rights, we must be familiar with their types. As we all know, in the intellectual property system, the types of intangible property rights mainly include copyright, patent right, trademark right and so on. Therefore, the protection of sports intellectual property rights must be closely connected with this type of rights, and the close connection between the types of intangible property rights and the relevant content of sports intellectual property rights requires the theoretical creation and active exploration of sports law scholars. Only when the protection of sports intellectual property rights can there be laws to follow, can the protection of the rights and interests of the parties be truly realized, thereby promoting the development of sports undertakings. For example, some scholars believe that "the legal nature of sports events should be recordings rather than works". Therefore, the legal characterization of the sports event program provides the corresponding legal protection basis for the object. Thirdly, the subject of sports intellectual property rights. According to the above classification of sports intellectual property rights, the subject of sports intellectual property rights mainly has three categories. The first is the subject of ontological sports intellectual property rights, the second is the subject of necessary sports intellectual property rights, and the third is the subject of relevant sports intellectual property rights. These three kinds of subjects have created the intellectual labor achievements of sports in a broad sense. Then, in law, only by safeguarding the interests of the subject of sports intellectual property rights, can sports cause develop better. (4) Equality. The primary and secondary division of sports intellectual property rights only reflects the distance between them and sports, but does not mean that there are differences in the protection of rights. All kinds of sports intellectual property rights should be protected equally, but the forms of the protected sports intellectual property rights are quite different.

3.3 Principle of openness

The construction of the pedigree of sports intellectual property rights must also adhere to the principle of openness. Adhering to the principle of openness requires the relevant legal institutions to respond quickly to the emerging sports intellectual labor achievements in the future through the corresponding mechanisms, and incorporate them into the sports intellectual property system in a timely manner, so as to minimize the scope of damage to the interests of the subject of rights. With the development of society and the progress of science and technology, the content of sports intellectual property will inevitably show new fruits. As Tieguang Liu, a scholar, believes: "With the
development of media technology, copyright legislation controls and protects the use and communication of works that affect the interests of obligee, thus making today's copyright a huge bundle of rights. Each right in the bundle controls the use and communication of a work.” There is no doubt that in such a rapid era of technological innovation, the number of sports intellectual property rights will also grow rapidly, and the definition, expansion and dispute of copyright in sports intellectual property rights are particularly significant. The main content of the dispute is the copyright of sports events. At the same time, the formulation and promulgation of relevant laws and regulations is also an important proof of the increasing content or quantity of sports intellectual property rights. For example, Article 2 of the Regulations on the Protection of the Right of Information Network Communication (revised in 2013) issued by the State Council stipulates: "The right of information network communication enjoyed by the obligee shall be protected by the Copyright Law and these Regulations. Unless otherwise provided by laws and administrative regulations, any organization or individual that provides works, performances, audio and video products of others to the public through information networks shall obtain permission from the obligee and pay remuneration." It can be seen from this article that the right of network information dissemination has officially become the protection content of the copyright law, so it can be imagined that the network dissemination of sports events should be protected by this copyright law and this regulation. Because the audio and video products of sports events can be protected by the Copyright Law and the Regulations, according to the interpretation of course, sports events should be protected by the Copyright Law and the Regulations. At the same time, it also shows that the protection of sports intellectual property is facing the necessity and urgency of the times. Therefore, the current sports intellectual property system should be built with a comprehensive, systematic and open attitude, and timely inject new sports intellectual property achievements, so as to comprehensively and effectively protect the sports intellectual property interests of the relevant right subjects.

4. Relationship between sports intellectual property rights

In the pedigree of sports intellectual property rights, all kinds of rights are constantly generated and expanded due to the development of sports, but their existing relationships are obviously different. The ontological sports intellectual property reflects the right attribute of sports itself. Its value and level determine the level of sports skills and the size of the influence threshold range; Necessity sports intellectual property is not the intellectual property of sports itself, but the relevant intellectual property owned by enterprises and businesses for sports products provided by sports. Such sports products are an indispensable part of sports; Relevant sports intellectual property is neither the intellectual property right of sports itself, nor the intellectual property right of sports products that are necessary for sports. The exception is that such enterprises provide sports products that are necessary for sports. In any case, the contribution of such enterprises is conducive to the development of sports. Therefore, the ontological sports intellectual property shows the rights of sports themselves, the necessity of sports intellectual property shows that it is directly related to sports, and the relevance of sports intellectual property shows that it is indirectly related to sports. Of course, although there is a certain gap in the content and form of the relationship between the three types of sports intellectual property rights and sports, and they belong to different types of right subjects, the protection of sports intellectual property rights should still be treated equally to ensure the smooth development of sports and the orderly operation of the sports industry market.

Acknowledgement

Scientific research startup fund project: The legal basis and path choice of sports intellectual property protection (RC20114).
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