Exploring the Reasons for Compulsory Registration of Tobacco Trademarks in China

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Abstract. In China, most of the goods circulating in the market can be sold without a registered trademark. Consumers who do not know which category of goods to choose can identify the source of the goods through the trademark and choose goods that have accumulated a certain amount of goodwill. Unregistered goods simply lack recognition and do not affect the circulation and sale of the goods themselves. But why is it compulsory in China to register trademarks for two categories of goods, namely pharmaceuticals for human use and tobacco products? This article will explore the issue of compulsory registration of tobacco products.

Keywords: Tobacco products, Compulsory registration of trademarks, Trade mark rights

1. Introduction

Since 1983, when the first Trademark Law of the People's Republic of China came into existence, the compulsory registration of trademarks contained therein has been a bone of contention. Only two categories of goods, namely pharmaceutical products for human use and tobacco products, are subject to compulsory registration in China, why should they be subject to compulsory registration and what is the significance of this? Human medicines and tobacco products have a special status in the marketplace, and it may be possible to explore the reasons for the existence of the compulsory registration system in this context, in conjunction with the nature of trademarks.

2. The Functions and Tasks of Trademarks

2.1 Functions of a Trademark

According to Article 8 of China's Trademark Law: any sign that can distinguish the goods of a natural person, legal person or other organization from those of others, including words, graphics, letters, numbers, three-dimensional signs, colors combinations and sounds, as well as combinations of the above elements, can be applied for registration as a trademark.

In daily life, trademarks have the following functions: 1. the function of identifying the source; 2. the function of quality representation; 3. the function of symbolic consumption; 4. the function of advertising; 5. the function of goodwill accumulation

2.2 The Task of a Trademark

In essence, a trademark is a mark that facilitates the identification of the source of similar goods or services. The most basic function of a trade mark is identification, i.e. to distinguish the goods or services provided by the operator from those of other operators. Other functions of a trade mark, such as advertising, are derived from this function, and other derived functions of a trade mark are only possible if the identification function of the trade mark can be properly performed[1].

The public interest collides with trade mark restrictions, and if the public interest is the benchmark, then this is an Non-objective implementation of trade mark restrictions and a disregard for the tasks inherent in trade marks. Only by finding a balance between the two can the functions and tasks undertaken by the trade mark be fully respected.

3. The Tobacco Environment in China

3.1 Current Tobacco Consumption in China

According to data from China's National Bureau of Statistics, China's cumulative cigarette production reached 2,418.24 billion sticks for the year 2021, representing a cumulative increase of 1.3%. As of May 2022 China's cigarette production stood at 188.25 billion sticks, up 10.4% year-on-year. On a cumulative basis, China's cumulative cigarette production from January to May 2022 reached 117.61 billion sticks, a cumulative increase of 5.3%. This is undoubtedly a scary figure, as the world's largest producer and consumer of tobacco, China accounts for more than a third of the world's tobacco consumption in 2020, and almost all of those who smoke are men. The Report on the Health Hazards of Smoking in China states that tobacco costs the lives of more than one million people in China each year and that if they do not quit smoking, the number is expected to rise to two million per year by 2030 and three million per year by 2050[2].

Accordingly, it can be concluded that China's tobacco consumption is characterized by a large number of people and large production. China's tobacco environment is unique, and it is this unique environment that caused the birth of China's tobacco monopoly system and provides ideas for the reasons for the compulsory registration of tobacco trademarks in China that will be analyzed below.

3.2 Chinese Tobacco Consumers' Awareness of Tobacco

A sample of 12 provinces and cities, including Yunnan, Shandong, Guangdong, Beijing and Hunan, found the following phenomena: (1) the price of cigarettes smoked by teenagers is 5-10 RMB, which is low; (2) the smoking population aged 30-40 is more concerned about the packaging of cigarettes; (3) managers and civil servants choose convenient places to buy cigarettes and are more concerned about the packaging and popular characteristics of cigarettes; (4) company employees are more concerned about the taste of cigarettes. (4) company employees are more concerned with the taste of cigarettes.

The analysis of the reasons for smokers' behaviors also led to the following conclusions: (1) Consumers' motivations for buying cigarettes are expressed in five areas: image appeal, interpersonal interaction, being different, psychological dependence and status presentation. (2) More than half of smokers believe that smoking helps to soothe their mood, and 46.2% believe that smoking on certain occasions can cover up embarrassment and nervousness[3].

From the above data, it is easy to see that Chinese tobacco consumers' awareness of tobacco products is only limited to the consumption function of tobacco, and that Chinese smokers do not have a correct and clear understanding of the health problems brought about by tobacco products, resulting in tobacco products endangering the health of the Chinese people step by step. So are these problems brought by tobacco products to the health of Chinese citizens related to the compulsory registration of tobacco products trademarks in China? This is explored in the following article.

4. Analysis of the Reasons for Compulsory Registration of Tobacco Trademarks in China

4.1 Background to the Compulsory Registration of Trademarks for Pharmaceutical Products for Human use and Tobacco

First of all, we should be clear that the tobacco trademark also belongs to a kind of trademark rights, is a kind of product trademark, the above mentioned trademark for the product or service the most basic and most important function is to identify the source, only through the identification of the source of this attribute, we can know the product or service provider is who, in order to investigate the product or service provider of the relevant situation.

The illegality of the subject to which the trademark applies is one of the main reasons why tobacco products are subject to compulsory registration. in the 1990s, the scale of production in China's

tobacco industry was already larger than that required by planned management. However, due to the high profitability of tobacco products, tobacco factories were still set up all over the country, becoming black tobacco factories that did not take the approval of the competent tobacco authorities[4]. The state has therefore enacted relevant regulations.

Only pharmaceuticals for human use and tobacco products are subject to compulsory registration in China. Trademark owners register their trademarks to prevent infringement by others, that's for sure, and the registration of medicines for human use and tobacco products must also be to prevent them from infringing. But why are these two categories of products alone subject to compulsory registration when there are so many in the market? This is the question that this article will explore.

4.2 Reasons for Compulsory Registration of Trademarks in the Light of the Right to Public Health

We can start by looking at the provisions relating to the inability to register a trademark to see the special nature of these two types of products. Article 10(8) of the Trademark Law of the People's Republic of China says: No trademark may be registered if it is harmful to socialist morals or has other undesirable effects. Tobacco would undoubtedly have a great impact on socialist moral ethics if it were to become popular among young people. If human medicines have side effects, they can have even more serious consequences for consumers in terms of their physical effects.

In today's world, the mainstream recognition, respect and protection of human rights should be the basis for the construction of public health theory, the legal system of public health policy and the public health system[5]. The right to life and health is one of the most fundamental human rights of citizens, and in China, the rule of law is again the most effective guarantee of human rights. If the registration of trademarks for medicines for human use is not made compulsory, there is a risk that poor quality medicines for human use will appear on the market, which on the one hand will undermine citizens' right to life and health, and on the other hand will lose the credibility of medicines for human use, so that citizens will no longer trust such medicines and they will lose their market, which will greatly affect the research and development and production of medicines for human use and is not conducive to technological progress. The same applies to tobacco products. If there is no compulsory registration of trademarks for tobacco products, there will certainly be many shoddy tobacco products on the market, which will undoubtedly have an extremely bad impact on the health of tobacco consumers due to the unknown source of production and unknown production materials, and will also reduce citizens' trust in tobacco products on the market, affecting the tobacco market. This is why compulsory registration of trademarks is necessary

4.3 Reasons for Compulsory Registration of Trademarks in the Context of China's Tobacco Environment

In China, the importance of tobacco products is undeniable, and recently, it was also made public by the media that the total amount of tax paid by tobacco in China in 2021 is 1.3581 trillion yuan, nearly 1.36 trillion yuan, which is really a shock to everyone, and what does such a huge figure represent? China's military expenditure in 2021 will be less than 1.3 trillion yuan, and the total amount of taxes paid on tobacco in China will even meet the military's needs[6]. It is clear that the taxes collected on tobacco products in China can be used in many ways that are beneficial to nation building and that the tax is indispensable. I believe that a large part of the reason why China has made trademark registration of tobacco products compulsory is because of the tax. If trademark registration of tobacco products is not required, there may be all kinds of black market tobacco products in circulation, and there is no way for the manufacturers of such products to find out where they are, so how can taxes be levied? If this is the case, it will have a strong impact on the taxation of tobacco products in China, and therefore on the national economy, so China should make the registration of tobacco trademarks compulsory.

5. Conclusions

The reasons for the compulsory registration of trademarks for human drugs and tobacco products are complex and have to be analyzed in the context of the Chinese market, which can only be explored if the Chinese market and national conditions are fully analyzed. There are not many explanations for the compulsory registration of trademarks in China, and there is still a long way to go before the rationality of compulsory trademark registration can be fully explored.

References

[1] Yumin Zhang On the Role of Use in the Construction of the Trademark System--On the Occasion of the Third Amendment to the Trademark Law

[2] Report on the Health Consequences of Smoking in China 2020. Summary of the China Report on the Health Consequences of Smoking 2020. Chinese Journal of Circulation

[3] https://www.cnxiangyan.com/article/705.html

[4] Ping Xie Problems, Causes and Countermeasures in the Use of Compulsorily Registered Trade Marks

[5] Dun li Public Health and Human Rights

[6] https://baijiahao.baidu.com/s?id=1727374847946795173&wfr=spider&for=pc