

Intellectual Property Protection in E-commerce

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Abstract

China is a big e-commerce country, and the popularity of the Internet has rapidly driven the development of e-commerce. However, with the rise of e-commerce industry, a large number of adverse phenomena of infringement of intellectual property rights have also emerged, which is not only related to the incompleteness of the system, but also related to the specific implementation of the system. In order to strengthen the protection of intellectual property rights in e-commerce, based on the legal analysis of China's Electronic Commerce Law and in combination with the current protection dilemma, we further put forward four suggestions, namely, raising the threshold of complaints, establishing a joint review mechanism for professional judgment, strengthening the supervision and guidance of private rights, and making differentiated protection of trademarks and patents, with a view to continuously strengthening the protection of intellectual property rights in e-commerce.

Keywords

E-commerce Platform; Intellectual Property Protection; Legal Principles; Difficulties; Suggestions for Improvement.

1. Introduction

In recent years, the popularity of the Internet has greatly promoted the vigorous development of China's e-commerce industry. People can buy their favorite products without leaving their homes through Internet information to trade goods or services, which greatly facilitates people's life. However, with the rapid development of e-commerce, there is a serious problem of infringement of intellectual property rights. From the current e-commerce market, counterfeiting, piracy and patent infringement are particularly prominent, causing serious damage to the copyright, trademark and patent rights of the oblige. According to the random sampling survey conducted by the former State Administration for Industry and Commerce in 2014, nearly half of the products sold by e-commerce platforms are fakes, with alarming results. The infringement of intellectual property rights by e-commerce platforms cannot be underestimated. It is related to the implementation of the national innovation driven development strategy, the healthy development of China's future e-commerce environment, and the enthusiasm of citizens to participate in innovation. As the main front of current trading activities, e-commerce is in urgent need of strengthening the protection of intellectual property rights[1].

2. Legal Analysis

The first formal Electronic Commerce Law of China was officially implemented on January 1, 2019, providing legal guidance for the standardized development of China's e-commerce industry and legal protection for strengthening the protection of e-commerce intellectual property rights.

(1) Principal provisions

Article 5 of the E-Commerce Law has specific provisions on the protection of intellectual property rights in the field of e-commerce, emphasizing that e-commerce operators should actively perform their obligations to protect intellectual property rights, accept supervision and do a good job in protecting intellectual property rights. In China's e-commerce law, e-commerce operators are divided into e-commerce platform operators, platform operators and other e-commerce operators who sell goods and provide services. As an e-commerce operator, e-commerce platforms should, of course, actively abide by this principle, consciously improve the awareness of intellectual property protection, and do a good job in protecting the intellectual property rights of e-commerce platforms[2].

(2) Specific provisions

Articles 41 to 45 of the Electronic Commerce Law further stipulate the specific obligations of e-commerce platforms in e-commerce business activities. First of all, article 41 emphasizes that e-commerce platforms not only have the obligation to establish intellectual property protection rules, but also strengthen cooperation with obliges to jointly protect China's intellectual property rights. This rule has a very important guiding significance for e-commerce platforms, aiming to emphasize the role of "platform autonomy". Secondly, Articles 42 and 43 of the Electronic Commerce Law refer to the "notification deletion" rule derived from the United States Millennium Digital Copyright Act. According to the rule, when the obligee believes that his rights have been violated, he can send a notice of infringement to the e-commerce platform and provide preliminary evidence of the infringement of his rights. The e-commerce platform should take necessary measures such as disconnecting links and deleting in a timely manner, prevent further expansion of losses; Correspondingly, operators in the platform can exercise the right to counter notification. In this process of "notification - taking necessary measures - anti notification", the e-commerce platform has the obligation to transmit the notification, take measures and publicize the results. It is the information circulation link between the obligee and the business, and acts as the "judge" of infringement judgment. In addition, in order to urge e-commerce platforms to actively perform their regulatory obligations, under the "safe harbor principle", the E-Commerce Law also specifically stipulates the "red flag principle" as an exception. According to the provisions of Article 45, the e-commerce platform shall know or should know about the infringement of merchants, and shall take necessary measures; Otherwise, it is necessary to jointly bear relevant joint and several liabilities with the infringer[3].

From the above jurisprudential analysis of China's Electronic Commerce Law, both principled provisions and specific provisions on the principle of safe harbor and the principle of red flag play an autonomous role in emphasizing specific infringement disputes of e-commerce platforms. It is undeniable that e-commerce platform autonomy is more targeted and feasible. It can not only solve problems in a timely and targeted manner, but also better understand the actual internal situation of e-commerce industry. When formulating rules, we can take into account the differentiated needs of specific platforms, so as to formulate practical rules and achieve the desired governance effect. However, while actively playing the role of platform autonomy, in the actual governance, it cannot effectively curb the infringement of intellectual property rights in the field of e-commerce, and sometimes it catalyzes other undesirable phenomena[4].

3. Analysis of Realistic Difficulties and Causes

(1) Realistic predicament

Since the implementation of the intellectual property protection rules of the Electronic Commerce Law, it has made great contributions to safeguarding the interests of the obligee, and severely cracked down on illegal acts such as selling counterfeit goods. However, while safeguarding the interests of obligees, the provisions on the protection of intellectual property also cause great problems to e-commerce platforms, making the protection of intellectual property face the following problems.

Malicious complaints increase the burden of e-commerce platform review and supervision. Malicious complaints mainly refer to malicious complaints to relevant authorities in the name of intellectual property rights protection in order to obtain illegal interests. With the vigorous development of e-

commerce, the e-commerce platform has added an online complaint mechanism, which can achieve the purpose of protecting rights by providing preliminary evidence of infringement, and greatly facilitates the parties' rights protection. But while it is convenient and the threshold for complaint is low, it has led to a large number of malicious complaints, especially for trademark rights. Many malicious complainants apply for some common words or hot words of the industry as registered trademarks, and then complain to the platform in the name of rights protection to seek illegal benefits. Low cost causes malicious complaints to be rampant, which seriously interferes with the normal operation of the platform and increases the platform review obligation.

The review capability of e-commerce platform does not match the practice. According to the provisions of China's Electronic Commerce Law, after receiving the notice of infringement, the e-commerce platform should be subject to special review, and then make the necessary measures accordingly. If the platform is not handled properly, it may also need to bear legal responsibility. Generally speaking, it is easier to determine the infringement of copyright and trademark rights. Most of them are infringement links of movies, books, and counterfeit goods. The e-commerce platform can have a good protection effect if it is deleted in time after being notified. However, the determination of patent rights is more complex. Because patent rights are more technical than copyright and trademark rights, and infringement is hidden, it is not only difficult to find, but also requires highly professional people to determine after discovery. However, most of the current platform audit teams do not have this ability, which is one of the reasons why patent protection in China's e-commerce industry is difficult to achieve results.

As a private power subject, e-commerce platform lacks necessary supervision. According to the provisions of the Electronic Commerce Law, e-commerce platforms have at least three powers: the power to formulate rules for the protection of intellectual property rights, the power to review the preliminary evidence of infringement after receiving the notice of infringement, and the power to take necessary measures according to the specific circumstances of the complaint. Of course, some scholars believe that these three points belong to the obligations of e-commerce platform, which is a refinement of the obligations of intellectual property protection of e-commerce platform. However, whether it is power or obligation, the first three acts of e-commerce platform will have a certain degree of impact on the other party. As a private power subject, e-commerce platform undertakes the "third party obligation" of e-commerce governance. While it has great independent rights, it is still a commercial subject, and pursuing profits is its ultimate pursuit. If there is no necessary supervision, it will inevitably lead to the expansion of private power. For example, the "one out of two" behavior in e-commerce obviously belongs to the abuse of power. E-commerce platforms require businesses to sign exclusive cooperation agreements with the platform by formulating rules. Such monopolistic behavior will seriously damage the interests of businesses and consumers, and damage fair competition in the market. In addition, due to the lack of necessary supervision over the platform, many e-commerce platforms have been constantly squeezing and suppressing competitors in the same industry by formulating rules conducive to their own development, which has formed a super strong monopoly situation and seriously interfered with the normal operation of the market economy.

The "notification deletion" rule is difficult to apply to trademark and patent protection. The "notification deletion" rule was originally formulated based on the protection of copyright, and later it was gradually extended to apply to trademark and patent protection after achieving good protection effects. However, trademarks and patents are different from copyrights after all. The infringement of copyrights in the field of e-commerce is mostly in the form of piracy, copycat, infringing links, etc. It is easy to make a judgment of infringement, but trademarks and patents are more technical. It is difficult for e-commerce platforms to make a judgment of infringement through formal examination, which is also the reason why the protection of trademarks and patents in the field of e-commerce is difficult to achieve results.

(2) Cause analysis

From the above points of view, the current unsatisfactory effect of intellectual property protection in the field of e-commerce in China is caused by many factors, both in legislation and law enforcement. From the legislative point of view, the threshold for obliges to lodge complaints is too low. According to the provisions of the Electronic Commerce Law, the oblige generally only needs to meet two conditions to protect his rights: one is that the oblige thinks his rights have been violated, and the other is to provide preliminary evidence of infringement. From these two points of view, in fact, it only needs the oblige to provide preliminary evidence of infringement, and does not need to provide any "margin" to achieve the effect of safeguarding rights. This is extremely beneficial to strengthening the protection of intellectual property rights and suppressing illegal acts. However, the threshold for complaints is too low, and everyone can complain. The number of complaints is too large, which will inevitably lead to poor results in rights protection, and also give those who have ulterior motives and make profits by taking advantage of legal loopholes an opportunity. At the same time, the legislation did not further detail the "effective notice" and "effective measures" of trademark and patent infringement, which not only increased the platform review burden, but also resulted in poor trademark and patent protection.

In terms of law enforcement, the administrative organ transfers part of its power to the e-commerce platform. The e-commerce platform formulates rules for the protection of intellectual property rights, judges the notice of infringement complaints, supervises the operators on the platform, and hopes to protect intellectual property rights in the way of platform autonomy. This is originally a good mechanism for the protection of intellectual property rights. However, in the process of specific implementation, while making the e-commerce platform bear too many obligations, the lack of necessary professional assistance from administrative organs also affected the enthusiasm of the platform to safeguard its rights. On the other hand, e-commerce platform is essentially a commercial subject, pursuing profits is its ultimate goal, fairness and justice is not the value orientation of the platform, and it is easy to abuse private rights in the process of exercising power.

4. Suggestions

(1) Increase the threshold of complaints, so as to correct and abuse complaints

The "notification deletion" rule of China's Electronic Commerce Law is similar to the idea of pre litigation injunction, that is, the oblige meets the following four conditions without the court's infringement judgment: first, there is a real possibility of infringement; Second, it is urgent to take measures, and failure to take relevant measures in time is likely to cause irreparable losses; 3 not to damage public interests; 4. In order to require the applicant to provide a guarantee at the same time of application, the applicant may request to stop the infringement by providing preliminary evidence of infringement. This can not only remedy the loss caused by the wrong injunction, but also avoid the indiscriminate litigation caused by the low threshold. Compared with the "notification deletion" rule in China's Electronic Commerce Law, although this idea has been used for reference, it does not have all the elements for the establishment of the pre litigation injunction. It is the lack of elements that makes the problems in the implementation of the "notification deletion" rule prominent, and instead encourages the unhealthy wind of false rights protection. Therefore, it is necessary to use the method of pre litigation injunction for reference, introduce guarantee, appropriately raise the threshold of complaint, reduce the review burden of e-commerce platform with the wind of legitimate and indiscriminate litigation, focus on legitimate rights protection, and give play to the effect of intellectual property rights protection in e-commerce field.

(2) Establish a joint review mechanism with intellectual property professional institutions to make professional judgments on infringement

The e-commerce industry in China is developing rapidly, covering all aspects of the current economic life, with a huge scale. It is difficult for any single platform service organization to accurately review and judge tens of thousands of goods and services. On the one hand, the huge audit and supervision burden will bring great pressure to the e-commerce platform, which easily leads to the fact that most

of the infringement judgments can only be subject to formal review, which is not conducive to the protection of intellectual property rights; On the other hand, intellectual property is the result of intellectual activities, and infringement judgment has a high technical threshold, especially for patent issues. Not every e-commerce platform can guarantee the accuracy of judgment. Therefore, it is necessary to establish a joint review mechanism with professional intellectual property institutions to jointly review the judgment of intellectual property infringement. If necessary, a hierarchical review mechanism can be established. The e-commerce platform will conduct a preliminary review of the notice of infringement, and the professional intellectual property service agency will conduct further identification and judgment on difficult intellectual property issues with strong expertise, so as to increase the accuracy of infringement judgment.

(3) Strengthen the guidance and supervision of the exercise of private rights

The exercise of power must be supervised, which is the most concentrated embodiment of modern democratic spirit. In China's E-Commerce Law, compared with the provisions on the power of e-commerce platforms, there are not too many rights and obligations for the operators on the platform, which means that disputes can only be resolved through the relevant standard clauses formulated by e-commerce platforms, and the operators on the platform are obviously in a weak position in e-commerce activities. Therefore, we must strengthen the restriction and supervision of e-commerce platforms, establish offline and online power supervision mechanisms, and prevent excessive expansion of power from harming the interests of others.

(4) Make differentiated provisions on trademark and patent protection

The "notification deletion" rule is not the general rule of intellectual property protection. Although it can have an immediate effect on copyright protection, it may not have the same effect on the protection of highly technical trademarks and patents. Therefore, based on the "notification deletion" rule, we can further refine and formulate the provisions on the protection of differences. Specifically, we can define the rules of trademark and patent protection in legislation, and make more specific and differentiated provisions on a series of issues such as what is "effective notice", what is "infringement", and what is "taking necessary measures". This can not only improve the accuracy of infringement judgment, but also unify platform standards, avoid abuse of private power, and ensure that the exercise of power is fairer and just.

5. Conclusion

The "Fourteenth Five Year Plan" continued to emphasize the strengthening of intellectual property protection and the protection of national innovation initiative. The protection of intellectual property has never been given as much attention as it is today. The booming e-commerce has gradually become the main position to promote economic development, which means that the protection of intellectual property rights in the e-commerce field must be strengthened to stimulate the source of innovation and inject fresh blood into economic development. It is believed that through the continuous improvement of the legal system and the effective play of the autonomous role of the e-commerce platform, the protection of intellectual property rights in the field of e-commerce will be strengthened, adding vitality to economic development.

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