



授权确权环节 驰名商标认定标准

Recognition of well-known marks in the trademark licensing and confirmation process

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法律依据 Legal Basis

商标法第十三条 Trademark Law, Article 13

驰名商标的含义; Definition of well-known marks;

驰名商标认定保护前提; Premise for protecting well-known marks;

驰名商标的保护范围。 Scope of protection.



法律依据 Legal Basis

商标法第十四条 Trademark Law, Article 14

驰名商标认定原则和应当考虑的因素；

Principles of and considerations in recognition of well-known marks;

驰名商标认定主体和程序； Governing body and procedure;

禁止“驰名商标”字样用于广告宣传。 Ban on using “well-known marks” in advertising;

商标法第四十五条第一款 Trademark Law, Article 45.1

商标法实施条例第三条 Implementation Regulations of Trademark Law, Article 3



认定原则 Recognition Principles

个案认定原则 Case by case

被动保护原则 Passive protection

按需认定原则 As needed

诚实信用原则 Good faith



判定标准 Decision Criteria

复制、摹仿或者翻译他人驰名商标的判定

On reproduction, imitation, or translation of another's well-known mark

复制：系争商标与他人驰名商标相同。

Reproduction: the disputed mark is identical to the well-known mark

摹仿：系争商标沿袭他人驰名商标的显著部分或者显著特征。

Imitation: the disputed mark is a derivative of the distinctive parts / features of the well-known mark

翻译：系争商标将他人驰名商标以不同的语言文字予以表达。

Translation: the disputed mark is a transformation to a different language of the well-known mark



判定标准 Decision Criteria

混淆、误导可能性的判定 Likelihood of confusion and misleading

- 1.混淆、误导的主要情形 Main circumstances
- 2.混淆、误导的判定要件：不以实际发生混淆、误导为要件，只需判定有无混淆、误导的可能性即可。 Criteria: not actual confusion and misleading, but the likelihood thereof
- 3.混淆、误导可能性判定的考虑因素 Considerations in the decision



判定标准： Decision Criteria 恶意注册的判定 bad-faith registration

复制、摹仿或者翻译他人驰名商标申请注册的，自该商标注册之日起五年内，驰名商标所有人或者利害关系人可请求宣告该系争商标无效，但对属于恶意注册的，驰名商标所有人请求宣告系争商标无效不受五年的时间限制

Where a trademark is a reproduction, imitation, or translation of a well-known mark, the prior right owner or interested party may, within five years upon the registration date of such trademark, petition for its invalidation. In the event of bad-faith registration, the prior right owner may exempt from the five-year duration.

典型案例 Case Studies

“SKECHERS” 商标异议案：复制他人驰名商标，易误导公众 Opposition to
“SKECHERS”：misleading reproduction of a well-known mark



SKECHERS

被异议商标

指定使用商品：剃须刀、剪刀等

Disputed mark

Designated goods: shavers, scissors.



SKECHERS

引证商标

指定使用商品：男人、女人和小孩的鞋；
男人、女人和小孩的衣服等

Reference mark

Designated goods: shoes & apparel for men,
women & kids

典型案例 Case Studies

“酷狗 KU GOU”商标无效宣告案：复制、摹仿或者翻译他人未注册驰名商标 Invalidation of “酷狗 KU GOU”: reproduction, imitation, or translation of an unregistered well-known mark



争议商标

指定服务项目：提供卡拉OK服务等

Disputed mark

Designated services: karaoke



申请人未注册商标

指定使用服务：提供在线音乐（非下载）

Unregistered mark

Designated services: music streaming

典型案例 Case Studies

“施華洛及图”商标无效宣告案：争议商标注册满五年 Invalidation of “施華洛” (Chinese transliteration of “Swarov”) & its logo: registration date > 5 years



争议商标
指定使用服务：婚纱摄影等
Disputed mark (“Swarov”)
Designated services: wedding photography

施华洛世奇

引证商标
指定使用商品：宝石等
Reference mark (“Swarovski”)
Designated goods: gems



感谢!

Thank you!