

The Analysis of Intellectual Property Risk in Cross-border E-commerce

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Abstract

In recent years, cross-border e-commerce has been booming, and has become an indispensable part of international trade in terms of turnover and market share. However, with the rapid development of cross-border e-commerce, the intellectual property infringement is also increasing, making it one of the main threats faced by cross-border e-commerce enterprises. Therefore, how to effectively reduce the intellectual property infringement, and improve the operation efficiency has become a hot topic in recent years.

Keywords

Cross-border e-commerce, intellectual property, prevention measures.

1. Introduction

With the rapid development of e-commerce, international trade is more and more presented in the form of cross-border e-commerce. According to the data from the National Bureau of statistics, since 2008, the scale of cross-border e-commerce turnover has increased year by year, from 0.8 trillion (CNY) in 2008 to 9.1 trillion (CNY) in 2018, with an average growth of more than 25%, and is expected to reach 12 trillion (CNY) by 2020. However, with the rapid development of cross-border e-commerce, the phenomenon of intellectual property infringement of cross-border e-commerce also becomes serious. Intellectual property infringement events such as "fingertip gyro" and "mobile phone bracket" had a huge impact on cross-border enterprises and brought them huge losses. At present, intellectual property infringement has become the main threats faced by cross-border enterprises. If want to get further development, the cross-border enterprises must pay attention to the issue of intellectual property infringement. Therefore, this paper will analyze the causes and risks of intellectual property infringement of cross-border e-commerce, propose measures to prevent intellectual property infringement in operation, and promote the sustainable development of cross-border e-commerce enterprises.

2. Reasons of Intellectual Property Infringement

2.1. Benefit Temptation

In the operation of cross-border e-commerce, many cross-border e-commerce enterprises do not hesitate to exploit legal loopholes to obtain the maximum benefits at the lowest cost. Due to the independent development and design of new products, and the registration of product trademarks or patents require large financial and time costs, cross-border enterprises often directly steal pictures, information and videos of other shops on domestic e-commerce websites, and then to sell directly in the cross-border platforms. In this way, cross-border e-commerce enterprises can save the time and cost of choosing products, taking pictures and making product information, especially the cost of developing and designing. However, this practice is often decided by cross-border enterprises themselves, without communication with the original manufacturers, which is usually easy to bring infringement.

2.2. Weak Awareness

Cross-border companies lack awareness of the importance of intellectual property and do not understand the seriousness of infringement. At the same time, cross-border enterprises do not have the awareness of safeguarding their rights and are unable to deal with malicious intellectual property litigation. At one time, more than 3000 independent cross-border e-commerce stations for wedding dresses in China were sued by a company in United States. As a result, most sellers' account server permissions were directly transferred to GoDaddy without prior notice, even if cross-border enterprises wanted to provide evidence to prove that they were not infringing. Moreover, some of them ranked within 10000 in the world, and the economic losses caused by suing could not be recovered. It can be seen that because of the weak awareness of intellectual property of cross-border e-commerce enterprises, the frequency of intellectual property infringement events in the operation of cross-border enterprises is increasing, which has a lot of adverse effects on cross-border enterprises.

2.3. Limited Penalties

Cross border e-commerce is a new form of market operation developed in recent years, so there are inappropriate management, imperfect system and other problems. The laws and regulations on intellectual property infringement are uncertain, and the penalty cost of the third-party platform is limited. At present, due to the low penalty cost of intellectual property infringement, many sellers will choose to make profits through intellectual property infringement. For example, on the AliExpress platform, if sellers cause intellectual property infringement, most of the penalties are for the removal of goods and points deduction of the store, and the most serious thing is to close the store. In addition, in the customs inspection, there is no strict control, and most of the penalties are seizure of goods or monetary penalties. Due to the impact of the penalties are limited, they cannot deter or suppress such activities.

3. Risks of Intellectual Property Infringement

3.1. Operational Complexity

Cross-border e-commerce takes network as medium, and foreign buyers can receive goods from another country as long as they place an order through the cross-border platform. However, in the process of transaction, the protection of intellectual property in cross-border e-commerce is prone to regional conflicts. Because the cross-border transactions are different from domestic transactions, the goods need to be transported abroad through customs and cross-border logistics, so the laws of two different countries are involved. Therefore, the intellectual property of goods need to be protected in their own countries, as well as overseas. The protection of trademark rights is regional, but cross-border enterprises often think that trademark rights only need to register in China, and do not realize the need to register in the arriving country. For example, Chinese "ballet" pearl cream, whose brand is registered firstly in Indonesia and Singapore by local business, can't be sold in Indonesia and Singapore despite its good reputation. Therefore, it conflicts with the regional law, which also makes cross-border enterprises consider more factors and operate more complex when they sell their goods.

3.2. Fierce Competition

Enterprises in the same industry will imitate their competitive goods in order to more benefit. Some enterprises will even rush to register trademarks of their competitive enterprises. Most countries in the world adhere to the principle of first registration. The business of priority registration can enjoy the exclusive right to use the trademark regardless of whether the trademark is the original of the applicant. The Chinese "hero" brand pen was once very popular in the Japanese market, but its trademark was first registered by Japanese businesses.

If Chinese enterprises want to sell the "hero" brand pen in Japan, they need to pay 5% commission to Japanese businesses, which leads to the Chinese agent of "hero" brand pen give up the Japanese market. Such a bad means of competition has a great impact on cross-border enterprises to open up new markets. At present, some enterprises lack social responsibility and infringe other enterprises' intellectual property for their own interests.

3.3. Increasing Risk of Infringement

In 2016, after Oppo and Vivo companies entered the Indian market, they were sued by Dolby for infringement. This is a huge disaster for Oppo and Vivo companies, which forced them to stop all marketing activities and caused huge losses to them. In the end, they can only withdraw from the Indian market. It can be seen that if the cross-border products sold by an enterprise are complained of infringement, the enterprise will bear the risk of product off the shelf or link being deleted, which will cause the enterprise to withdraw from the foreign market temporarily, even to compensate for the infringement losses. Then taking the network information dissemination behavior as an example, the dissemination and forwarding of many pictures, videos, documents and other materials can only be used with the consent of the intellectual property owner if they are used for commercial purposes. Visual China, for example, has been convicted of infringement for using photos without permission. In the minds of consumers, the infringement will greatly reduce the original enterprise image.

4. Solution and Prevention Measures

4.1. Innovation

The most effective way to solve intellectual property infringement for cross-border enterprises is to create their own patents. On the one hand, they should improve the awareness of intellectual property, pay more attention to technological innovation, strengthen the development, design and research of new products, and timely apply for corresponding patents in domestic and foreign markets to obtain legal protection; on the other hand, enterprises should strengthen the management of intellectual property, and try to find ways to update the technology of products suspected of infringement, so as to eliminate the problem.

4.2. Establishing Corresponding Laws

There are cultural differences in intellectual property in the bilateral countries of cross-border trade, so it is easy to make intellectual property ignored or complicated in the process of cross-border e-commerce transactions. Now, the management of intellectual property in cross-border e-commerce needs to be solved urgently. We need to formulate and improve laws related to intellectual property to solve and prevent intellectual property problems in the operation of cross-border e-commerce enterprises. Only when the State formulates the corresponding laws according to the actual situation can it meet the requirements of e-commerce development of enterprises. China's cross-border e-commerce comprehensive pilot zone established in Hangzhou has achieved successful experience in intellectual property protection, and has issued the measures for the protection of cross-border e-commerce intellectual property in combination with the actual situation, which provides strong support for the country to further develop and improve the laws on enterprise intellectual property.

4.3. Construction of Credit Platform

Most cross-border enterprises rely on the third-party cross-border platforms for transactions, and the intellectual property review of each platform is different, so the repetitive work will bring a lot of troubles to the operation of cross-border enterprises. If stores of the same company are opened on multiple platforms, the review of intellectual property are repetitive,

and the management of cross-border platforms will be more complex. In order to effectively supervise the intellectual property in the field of cross-border e-commerce, on the basis of complying with national laws, the author suggests that we can build an audit platform for the intellectual property of cross-border e-commerce, which gathers a number of cross-border e-commerce platforms, obtains their authorization, and is mainly responsible for auditing the intellectual property. Only through the qualification review of this platform, can enterprises directly conduct market transactions on the settled cross-border platform without repeated submission for review.

5. Conclusion

To sum up, the rapid development of cross-border e-commerce in recent years has brought new impetus to Chinese economic growth and is an important part of Chinese international trade. From the perspective of cross-border intellectual property, it is necessary to strengthen the research on intellectual property management of cross-border enterprise. In view of a series of risks and problems, research specific solutions, and constantly improve the audit and management methods through the platform system, so that cross-border enterprises can improve their awareness of intellectual property, strengthen technological innovation, and master relevant response methods and preventive measures in intellectual property management, so as to avoid potential intellectual property risks and reap greater benefits.

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