

Ceramic Intellectual Property Protection

-- Jingdezhen as an Entry Point

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Abstract

The long history of porcelain making, skillful porcelain making techniques and unique ceramic appearance make Jingdezhen ceramics famous in China and abroad. However, in today's knowledge economy, Jingdezhen ceramics are repeatedly faced with various infringements, and the reasons behind them can be attributed to the lack of intellectual property protection measures for ceramics. Based on the current situation of intellectual property protection of Jingdezhen ceramics, this paper analyzes the specific reasons for the infringement and proposes effective protection strategies to improve the intellectual property protection system of Jingdezhen ceramics.

Keywords

Ceramics; Intellectual Property Rights; Jingdezhen.

1. Introduction

As one of the birthplaces of Chinese ceramics, Jingdezhen has a thousand-year history of porcelain making and is known as the "world's ceramic mecca", and its exquisite ceramics are famous for their style of "white as jade, bright as a mirror, thin as paper and sound like a rock". To this day, Jingdezhen ceramics are still unanimously sought after at home and abroad, with a strong market demand and broad development prospects. However, in the face of the development of contemporary science and technology and the popularity of network e-commerce, Jingdezhen's art porcelain works have been copied and counterfeited, the lack of copyright agencies, trademarks have been used without authorization and other problems are increasingly prominent. The traditional way of protecting ceramic works has been unable to adapt to the development needs of the new era and its needs, so the author from the professional knowledge of intellectual property rights, ceramic protection to put forward new insights and suggestions.

The first part of this paper briefly introduces the basic history of Jingdezhen ceramics and the basic situation of Jingdezhen Ceramic intellectual property protection; The second part will analyze the problems existing in the intellectual property protection of Jingdezhen ceramics from the perspective of copyright, patent and trademark, such as the lack of copyright agency and the lack of registration and protection of rights; The third part discusses the Countermeasures of Jingdezhen ceramic protection according to the above intellectual property problems; The fourth part is a brief summary of this paper.

2. The Historical Development of Ceramics in Jingdezhen

Jingdezhen's ceramic development can be traced back to the earliest Neolithic era, when ceramics to "seal pattern hard pottery" as a feature. And in the Eastern Han Dynasty, Jingdezhen has formed a certain scale of kiln factory. According to "South kiln notes": "Xinping of Jingdezhen, in the south of the Changjiang River, its smelting pottery began in Jihan." Jihan is the so-called Eastern Han Dynasty.

Jingdezhen ceramics flourished in the Sui and Tang dynasties, in that period, Jingdezhen to "fake jade ware" and famous. According to the "Euphemia", "Tang Wu De in, the town people Tao Yu, carrying porcelain into the Guanzhong, called fake jade ware. And tribute to the dynasty, so the town of Changnan porcelain famous world". In addition, Jingdezhen at the end of the Tang Dynasty was the first region in the south to fire white porcelain, and because of its white porcelain production techniques and exquisite works, Jingdezhen became the beginning of the development of artistic porcelain.

After the fall of the Tang dynasty, China experienced a long period of turmoil in the Five Dynasties and Ten Kingdoms, and finally in the Song dynasty ended the chaotic situation of vassalage, China ushered in another period of prosperity. Jingdezhen's ceramics industry has been further developed with this opportunity, and its blue and white porcelain system and listed in the Song dynasty, the first of the six major kiln systems. In the Yuan Dynasty, Jingdezhen was ordered by the court to build the Fuliang Porcelain Bureau, to fire official porcelain, court ceremonial ware and official trade porcelain. The establishment of the Fuliang porcelain bureau, effectively promoted the rapid development of Jingdezhen porcelain industry, thus allowing the concentration of the best craftsmen in the country's kilns, from the government to obtain other kilns rare raw materials, from the General House to get new product shapes and decorative patterns, to blue and white porcelain, glaze red and egg white glaze pivot porcelain known throughout the world. [1]

The development of ceramics in Jingdezhen tended to stagnate and show a state of decline after the Ming Jiaqing period. The development of Jingdezhen ceramics during the Qing dynasty needs to be explored in two stages. In the early Qing dynasty, driven by the partial relaxation of the policy of emphasizing agriculture and suppressing commerce and the abolition of the "craftsmen's registry", the development of Jingdezhen ceramics ushered in another peak period, in which, in terms of artistic expression, the varieties were more diverse and the colors were richer. Underglaze, overglaze, doucai and color glaze were all improved or innovated to varying degrees. [2] In the Jiaqing period, due to the implementation of the "closed-door" policy, the Qing Dynasty's national power was declining, followed by the war invasion of the Western powers and the impact of commodity dumping, Jingdezhen ceramic industry tended to stagnate and gradually decline. This state lasted until the Republic of China period, the Republic of China government promulgated a series of policies and measures to promote the development of the ceramic industry during this period, but could not save Jingdezhen ceramics declining trend in. After the founding of the People's Republic, thanks to the Party's policy and the people's struggle, Jingdezhen ceramics production gradually recovered, the sales market gradually opened up, and the production techniques of ceramics also made great innovations, showing a thriving posture in general. Especially since the reform and opening up, the sales volume of Jingdezhen ceramics at home and abroad has been increasing, and there have been frequent cultural exchanges with foreign countries, and many world exhibitions have been held to introduce Chinese ceramics culture to the people of the world, promoting Jingdezhen ceramics gradually to the international arena.

3. Status of Intellectual Property Protection for Jingdezhen Ceramics

Jingdezhen, as one of the main production sites of ceramics in China since ancient times, is experienced in ceramic production and skilled in ceramics, but precisely due to the influence of traditional concepts, there are many problems in the protection of intellectual property rights of Jingdezhen ceramics, and both the national and local governments attach great importance to this situation. When General Secretary Xi Jinping visited Jiangxi in May 2019, he gave the important instruction of "building a national pilot zone for ceramic culture inheritance and innovation in Jingdezhen", and in the same year, Jingdezhen also became the 13th central city

in the country to create a national copyright demonstration city. The local government of Jingdezhen has also introduced many protection regulations and measures based on the need to protect ceramic works, such as the "Measures for the Protection of Intellectual Property Rights of Jingdezhen Ceramics" and the "Announcement on the Protection of Products from the Original Porcelain Region of Jingdezhen". In addition, in April 2021, Jingdezhen was approved by the Supreme People's Court and the Office of the Jiangxi Provincial Establishment Committee to establish an intellectual property court, and on the 25th of the same month, the Jingdezhen Ceramic Intellectual Property Alliance was officially inaugurated.

Based on the above, it can be concluded that Jingdezhen has made great efforts in ceramic protection and improved the intellectual property protection environment of ceramics to a certain extent, but there are still many problems of ceramic intellectual property protection in concrete practice. In February 2021, the Jingdezhen Municipal Administration of Market Supervision issued a report titled "Digging Deeper, Investigating More and More, Clearing the Root of the Problem - Jingdezhen Municipal Administration of Market Supervision Reinforces IPR Enforcement to "Right the Name" of "Jingdezhen" Ceramics ", Jingdezhen still has cases of counterfeiting of other people's goods with fines as high as 200,000 yuan for its own sales, which reflects the problem that there are still loopholes in the specific practice of intellectual property protection in Jingdezhen. This is also confirmed by the numerous cases of intellectual property disputes in Jingdezhen, such as the cost of copyright infringement, the problem of copyright registration, theft of patented designs, and misuse of geographical indications. intellectual property rights of ceramic creators.

4. Problems of Intellectual Property Protection in Jingdezhen Ceramics

4.1. Lack of Copyright Agents and No Way to Register and Defend Rights

As the "porcelain capital" of China, the ceramic industry is an important part of Jingdezhen's economic development, and with the continuous improvement of Jingdezhen's ceramic development environment, the willingness of a large number of ceramic enterprises to locate in Jingdezhen has become stronger and stronger. Although Jingdezhen has built the first ceramic copyright trading platform in the country in 2014, the number of its copyright agencies is relatively small. Among them, the copyright agency refers to the National Copyright Administration of the People's Republic of China approved by the audit, can accept the entrustment of the principal, and in the entrustment of the scope of authority to handle copyright applications or other copyright matters in the name of the principal service agencies. For example, in the Taoxichuan Cultural and Creative Neighborhood of Jingdezhen, the total number of registered works in Taoxichuan reached 5,200 in 2020, exceeding 50% of the total registered works in Jingdezhen, which is also in the top position in Jiangxi Province, but there is no copyright agency in the Taoxichuan Cultural and Creative Neighborhood, which is an important part of the development of ceramics in Jingdezhen. This phenomenon is a microcosm of the development of ceramics in Jingdezhen, which This phenomenon is a microcosm of Jingdezhen's ceramic development and reflects the lack of copyright agencies in Jingdezhen ceramics. And the lack of copyright agencies, may lead to some ceramic creators to maintain the rights of the difficulties, because the registration of copyright and infringement litigation need to go through the statutory procedures and steps, but many entrepreneurs on this aspect of understanding only floating on the surface, so the specific operation but no way to start.

4.2. Low Compensation for Copyright Infringement and a Long Judicial Cycle to Defend Rights

Copyright refers to the author's exclusive rights to the literary, artistic, scientific and technological works that he or she has created, and the specific performance on ceramic works

refers to the exclusive rights that the ceramic creator enjoys for his or her ceramic works, with exclusivity. Jingdezhen ceramic creators in the face of their works were copied, counterfeit problems, most will choose to take the path of litigation to protect their legitimate rights and interests. In China, the litigation process requires a series of tedious processes such as prosecution, filing, investigation, trial, judgment, appeal and enforcement, which takes too long for the creators to defend their rights, and the final amount of compensation is often less than the amount of the infringed work itself, which to a certain extent also discourages the ceramic creators to defend their rights. For example, in the 2016 "Jiangxi Beijing Zhongyi Shouzou Culture Co., Ltd. and Hu Liquan and three others infringed copyright," the infringers' sales of counterfeit products during the infringement period were as high as 820,000 yuan, but the court's trial resulted in a fine of 420,000 yuan, far less than the infringers' profits, in addition to sentencing the main participants to a term of imprisonment. The amount.

At the same time, ceramic creators often need to invest a lot of time and energy in the litigation process, regarding the "Jiangxi Beijing Zhongyi Shouzou Culture Co., Ltd. and Hu Liquan and other three people infringing copyright case", the Public Security Bureau of Jingdezhen City, Jiangxi Province, opened a case for investigation after receiving a report on August 11, 2017, and then took the three defendants bail pending trial, arrest and other compulsory measures. However, it was only on August 22, 2018 that the prosecutor's office in Zhushan District, Jingdezhen City, filed an indictment against the defendants for alleged copyright infringement, and on December 28 of the same year, the Zhushan District Court finally made a verdict. It took more than a year for the ceramic creators to get their rights remedied. In the process of defending their rights, the creators had to spend a lot of time and energy in searching for evidence and other related materials, which greatly reduced their own creative efficiency and caused them to suffer from the loss of being unable to create new works in addition to the loss caused by counterfeit products.

4.3. Frequent Patent Infringement, Which Disrupts the Market Order

A design patent refers to a new design of a product that is aesthetically pleasing and suitable for industrial application in terms of shape, design or combination thereof, as well as the combination of color and shape or design, and in accordance with Article 2(3) of the Implementing Rules of the Patent Law, a design includes a shape design, a design of a pattern, a design of a combination of shape and figure, a design of a combination of shape and color, a design of a combination of figure and color, and a design of a combination of shape and figure and color. For Jingdezhen ceramics, the design patent mainly refers to the color, pattern, shape and other elements of ceramics, and Jingdezhen ceramics is famous for its unique design, but Jingdezhen ceramics is now also facing the phenomenon of design infringement, and this kind of infringement in the Jingdezhen ceramics market is not an exception. In Jingdezhen, more than 80% of the patent infringement cases are for infringement of patented designs.

"Ltd. and Beijing Guoxin Zhengyuan Mingye Trading Co. (for short, the plaintiff) manufactured, sold and promised to sell their own products with porcelain highly similar to the plaintiff's. After the court surveyed and compared the allegedly infringing products with the appearance of the patent in question, it was concluded that the porcelain produced by the two defendants was highly similar to the design owned by the plaintiff and constituted an infringement of the plaintiff's design. To a certain extent, the infringement of the appearance of the design is easy to make consumers produce the wrong perception of the main body of production, thus giving rise to consumer behavior that does not meet the true wishes of consumers, to a certain extent, disrupt the ceramic market order, is not conducive to the development of the scale of Jingdezhen ceramic industry.

4.4. Unauthorized Use of Ceramic Geographical Indications, Pulling Down the Image of Ceramic Brands

According to Article 16 of the Trademark Law of the People's Republic of China, a geographical indication is an indication that indicates the place of origin of the source of a certain commodity, or indicates the specific quality, reputation or other characteristics of the commodity, which is mainly determined by the natural or human factors of the area. Among them, the economic significance of geographical indications lies in the fact that they point to certain products, that is, the geographical indication coalesces the specific quality, reputation or other characteristics of a certain commodity, and if this geographical indication is used on a certain type of product, it may bring great economic benefits [3]. This feature of geographical indications promotes the development of Jingdezhen ceramics and brings considerable economic benefits, but at the same time also brings certain challenges for the protection of intellectual property rights of Jingdezhen ceramics.

On April 15, 2005, the former AQSIQ approved the implementation of the protection of "Jingdezhen porcelain" as a product of origin, and Jingdezhen adopted a series of standards for the production of porcelain, such as "Geographical Indication Product Blue and White Porcelain", "Geographical Indication Product Linglong Porcelain", "Geographical Indication Product Pastel Porcelain" and "Geographical Indication Product Color Glaze Porcelain" in 2013. and a series of porcelain production standards. Based on this, Jingdezhen ceramics production innovation, inspection, packaging, transportation, protection, etc. are more and more standardized, most consumers give Jingdezhen geographical indication products more trust. However, this also provides opportunities for unscrupulous elements to make profits by using Jingdezhen ceramic GI on porcelain whose quality does not meet Jingdezhen ceramic GI standards without the approval of the relevant authorities, thus allowing consumers to purchase inferior products marked with Jingdezhen ceramic GI and lowering the brand image of Jingdezhen ceramics. From January 2021 to June 2021, there were 82 cases of unauthorized use of GI for Jingdezhen ceramics. In "Jingdezhen ceramic association and chengdu lian and tea co., LTD., trademark disputes" as an example, chengdu lian and tea industry co., LTD. without the permission of the Jingdezhen Ceramic Association in its own products displaying the "Jingdezhen" logo, leading to confusion and misunderstanding of the source of the goods to ordinary consumers or that its source and the plaintiff's registered trademark has a specific connection, clearly constitutes an infringement, the amount of compensation to 60,000 yuan.

The unauthorized use of the Geographical Indication of Jingdezhen ceramics by others makes products that do not meet the production standards of Jingdezhen with the "Jingdezhen" logo into the market, causing damage to the image of Jingdezhen ceramics, while also easily causing confusion in the ceramics market, which is not conducive to the long-term development of Jingdezhen ceramics.

5. Intellectual Property Protection Measures for Jingdezhen Ceramics

5.1. Develop a Development Strategy to Effectively Safeguard Rights and Interests

The local government of Jingdezhen can formulate a strategy to promote the development of the porcelain capital and protect intellectual property rights according to the requirements and targets of intellectual property rights in the 14th Five-Year Plan formulated by the state and taking into account the current situation of intellectual property rights of Jingdezhen ceramics, and put forward the key areas and development path of intellectual property rights. In addition, the intellectual property rights strategy should include innovation strategy, protection strategy, management strategy, etc. [4] In dealing with the lack of copyright agencies, the Jingdezhen government as well as relevant departments should effectively formulate innovation strategies

and protection strategies. Among them, the innovation strategy refers to the innovation of ceramic intellectual property development path, and this strategy can start from the registration of ceramic intellectual property rights, because only after the creators go through the legal procedures to carry out the corresponding registration, their relevant rights and interests can be effectively protected, and provide protection for the successive series of development. As for the above-mentioned copyright agencies, the Jingdezhen government can also formulate policies and measures to encourage copyright agencies to settle in Jingdezhen and incorporate them into the planning of the development of ceramic intellectual property innovation in Jingdezhen, so as to make up for the shortage of existing copyright agencies. The protection strategy mainly refers to the formation of a more comprehensive intellectual property protection system, and this system needs to take the judicial organs and administrative departments as the backbone, and the concrete implementation of the dual-track model with the judiciary as the benchmark and the administration as the helper. In addition, it should also make good use of social power, announce various reporting methods to the society, and once confirmed, give corresponding moral or material encouragement, and effectively mobilize all forces of the society to improve the protection of intellectual property rights. [5] To develop a development strategy as the base, from many aspects of Jingdezhen ceramic intellectual property protection and development, and encourage the intellectual property agency into Jingdezhen ceramic industry circle, improve the ceramic copyright registration environment, and thus improve the level of protection of Jingdezhen ceramic intellectual property.

5.2. Increasing Penalties for Violations and Improving the Quality of Judicial Personnel

Jingdezhen Ceramics after copyright infringement is not as compensated as the amount of the subject matter, and during this period also spent a lot of time and energy. This situation directly affects the creators' enthusiasm to create and defend their rights, which in turn affects the entire intellectual property protection environment of Jingdezhen ceramics, and therefore, measures should be taken to overcome this problem.

First of all, in the face of infringement damages, the judiciary should increase the penalty to a certain extent during the trial. It is because the amount of profit is much higher than the cost of the crime that causes the rampant infringement of ceramic copyright, if the cost of the crime is increased, or even higher than the profit space, then such infringement will be restrained or even disappear, and the copyright of ceramic creators in Jingdezhen will be more securely protected. Secondly, as intellectual property rights are very extensive and highly professional, the capacity and capability of law enforcement officers must be improved if intellectual property protection is to be further strengthened. [6] If we want to improve the level of intellectual property protection in Jingdezhen, the cultivation of intellectual property expertise of the corresponding judicial staff is an important step. The training [7] to improve the IPR legal literacy of the staff of the local judiciary in Jingdezhen in a coordinated and orderly manner.

5.3. Multi-party Network Platform to Curb Design Infringement

In Jingdezhen ceramic patents, the highest frequency of infringement is the appearance design patent of ceramics, which has a certain relevance to Jingdezhen's production of art ceramics, ornamental ceramics. But compared to other intellectual property infringement cases, design patents have a certain complexity, this complexity is mainly reflected in the infringement of design patents across industries, such as cosmetics industry, wine enterprises use infringing ceramics as product containers to increase sales highlights, so, to effectively curb the occurrence of design infringement in Jingdezhen ceramics, it is necessary to build multiple Design data platform, to have registered ceramic design patent data registration, and with the

network of similar product design similarity comparison, in order to achieve timely detection of infringement.

In order to make the data of the design data platform complete and can be updated in a timely manner, then need to Jingdezhen multi-body cooperation to build. In addition, according to "jingdezhen ceramic intellectual property protection management regulations" article 15: the city science and technology bureau (city intellectual property office) is responsible for ceramic patent administrative law enforcement, mediation of patent disputes, investigation and punishment of counterfeit patent behavior, so, in building this platform to play the leading role of the city science and technology bureau, and jingdezhen ceramic chamber of commerce should also play a role in which, play their own in ceramic enterprises, ceramic art celebrities, etc. The social body between the call, and actively promote the online platform and the existing design information for effective connection. This online platform should be built to gradually form the relevant government departments as the leading, to other social bodies as the auxiliary work mechanism, so as to effectively curb the ceramic industry internal and external design infringement, and effectively guarantee the legitimate rights and interests of ceramic creators.

5.4. Strengthen the Management of Geographical Indications and Form Distinctive Industry Brands

The development of Jingdezhen ceramic industry depends to a certain extent on the "Jingdezhen" signboard, and in general, the application for the use of Jingdezhen ceramic geographical indications must be located in the local quality and technical supervision bureau of Jingdezhen porcelain products of origin to declare the application, after passing the preliminary examination, approved by the State General Administration of Quality Supervision, Inspection and Quarantine announcement. And then, the company may use Jingdezhen porcelain "special signs of origin products". However, in reality, Jingdezhen ceramic geographical indications are abused frequently, constantly pulling down its ceramic brand image, based on this situation, the management of Jingdezhen ceramic geographical indications of the relevant departments need to make corresponding measures to improve the current situation, in order to promote Jingdezhen ceramic geographical indications become a major characteristic of the industry brand.

First, according to the "Jingdezhen ceramic intellectual property protection management regulations" Article 16 provides that: the Municipal Quality Supervision Bureau is responsible for Jingdezhen porcelain geographical indication products, Jiangxi famous brand of intellectual property protection; organization of the city's ceramic enterprises and institutions to participate in the Jiangxi famous brand products identified by the recommendation and management; develop and organize the implementation of ceramic independent intellectual property rights of famous brand products support and protection measures, according to the law to investigate and deal with ceramic counterfeit and shoddy Product behavior. Therefore, the Municipal Quality Supervision Bureau to strictly control the application for the use of Jingdezhen ceramic geographical indications of private enterprises or individuals, the application information submitted by them for the dual verification of legality and authenticity, and the production of ceramic products to verify whether they meet the porcelain production standards, making the producers through the application fully meet the normative standards. Second, Jingdezhen Ceramic Association, as the holder of the "Jingdezhen" geographical certification mark, should also play a role in solving this problem. For example, Jingdezhen Ceramic Association should strictly control the entrance of "Jingdezhen" certification mark, Jingdezhen porcelain origin product mark and well-known trademark, develop and improve the industry standard of ceramics, [8] and establish a mechanism of elimination of the fittest, the Jingdezhen area production and distribution of substandard ceramics enterprises excluded from the "Jingdezhen The "Jingdezhen" certification mark and origin protection [9], thus to a

certain extent to prevent and eliminate the occurrence of infringement, so as to maintain the standard of the entire ceramic industry in Jingdezhen.

6. Conclusion

As an important cultural symbol of China, Jingdezhen ceramics is one of the mediums to introduce the charm of Chinese culture to the world. However, the series of intellectual property infringement problems it faces is a major obstacle to its promotion to the world. Based on this situation, on the premise of being familiar with the historical background and the real situation of Jingdezhen ceramics, a specific analysis has been made to conclude that Jingdezhen ceramics has the problems of lack of agents and less compensation for infringement in terms of copyright; in terms of patent, there is the phenomenon of design being stolen; in terms of trademark, there is the misuse of geographical indications. There are loopholes. In addition, a series of IPR protection paths that meet the realistic needs of developing strategies, improving judicial literacy, building a network platform and strengthening trademark management are explored with a problem-oriented approach, so as to form a perfect ceramic IPR protection system, and then to promote Jingdezhen ceramics to the international market and let the world experience the unique beauty of Chinese ceramic culture.

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