

# The Concept and Dimensions of Trademark Quality

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## Abstract

Improving the quality of intellectual property rights has become a consensus in China, but the concept of trademark quality has not been clearly defined and the extension of trademark quality is relatively vague. By combing through the existing literature, this paper defines the concept of trademark quality in terms of jurisprudence, the market and trademark marks, specifically including the quality of trademark rights, the quality of trademark license and the quality of trademark marks. At the same time, the dimensions of trademark quality are summarised.

## Keywords

Trademark Quality; Dimension; Trademark Symbol.

## 1. Introduction

The Outline for Building a Strong Intellectual Property Country (2021-2035)[1]proposes that building a strong IP country must be led by quality, and it has become the consensus of the academic community to improve the quality of IP. Trademarks are the most widely used form of intellectual property, and by the end of 2021, the number of valid trademark registrations in China had reached 37.24 million; however, according to the Global Brand Value List (2021) released by Interbrand, the world's largest comprehensive brand consulting agency, only one Chinese company, Huawei, was listed. Undoubtedly, China is a big trademark country, but it cannot be called a strong trademark country yet. At the same time, some trademark applicants in the field of trademark law have registered a large number of trademarks not for the purpose of use, and the phenomenon of trademark malicious snatching and trademark hoarding frequently occurs, which only brings about a meaningless increase in the number of trademarks and cannot play a role in production life, and even the snatched trademarks will also cause obstacles to the actual users of trademarks. Therefore, it is not enough to focus on the quantity of trademarks, the quality of the trade mark must be taken into account.

## 2. Meaning of Trademark Quality

Previous research on trademark quality has been conducted from three main perspectives: jurisprudential, market and technical.

### 2.1. Jurisprudential Perspective: Quality of Trademark Rights

The jurisprudential perspective on the quality of trademarks revolves around the quality of trademark rights. The quality of a trademark refers to the exclusive right of the trademark owner to own the trademark. The quality of a trademark is mainly expressed by whether the trademark right has a high legal stability and is not easily confused and diluted. (Xie, 2019)[2]explores the meaning of trademark quality in terms of the trademark right examination process. Trademark rights need to be acquired after administrative examination, and the quality of the trademark examination process affects the stability and exclusivity of the legal aspects of the trademark; in other words, the stable results of the trademark examination can ensure that the trademark is not easily rejected by opposition, and the trademark can better function and value.

The quality of trademark examination is the cornerstone of the long-term development of the Trademark Examination Collaborative Centre of the State Administration for Industry and Commerce. According to the Trademark Examination Guidelines of the State Intellectual Property Office, the quality of trademark examination means that the results of trademark examination have the consistency of execution and the correctness of examination conclusions. A very important aspect of trademark examination is to determine the distinctiveness of a trademark, and in order to clarify the criteria for trademark examination, trademark quality is also considered to be the degree of merit of the goods or services to which the trademark is attached. The quality of trademark examination refers to the improvement of the efficiency of trademark examination under the premise of strict enforcement of trademark examination standards, including the shortening of the trademark examination cycle and the increase of the number of trademark examinations (Wang, 2019) [3]. (Xie, 2019) [2] starts from the stability of the law and the exclusivity of power, and proposes that trademark quality refers to the high stability and a large scope of exclusivity of a trademark after it has been authorized by the law. Integrating the existing jurisprudential perspectives on trademark quality, this article proposes that trademark quality refers to the strength of trademark rights, including legal stability and exclusivity of power, where legal stability means that a trademark is not easily rejected by opposition after acquiring trademark rights, and exclusivity of power means that a trademark is not easily confused or diluted, and can distinguish goods or services in a larger scope.

## 2.2. Market Perspective - Quality of Trademark Licensing

With the widespread and increasing use of trademarks worldwide, scholars have focused on the economic relevance of the large number of trademark transactions to the trademark market (Castaldi, 2020) [4] (Ferrucci, 2019) [5], where trademarks are no longer just an indication of the origin of goods/services (World Intellectual Property Report 2013, n.d.) or a symbol of legal rights (Carter, 1990) [5] (Katz, 2016) [7], but rather as an exchangeable asset circulating between markets (Ansar et al., 2015) [8]. According to the Global Licensing Industry Survey (2018), the total value of trade mark licensing transactions was US\$14.5 billion. Trade in trademarks is fast becoming a viable means for companies to acquire third-party trademarks. The trademark market includes the temporary transfer of the right to use trademarks (trademark licensing and franchising) and the sale and transfer of ownership of trademarks (trademark acquisition) (Ferrucci, 2019) [5] (Ansar et al., 2015) [8]. As trademark market data is currently focused on trademark licensing (WIPO 2013) [9], current scholarly research on the trademark market also focuses on the trademark licensing market, and the discussion of trademark quality is mainly conducted from the perspective of trademark licensing; based on this, trademark quality under the perspective of the trademark market in this paper refers to In this paper, trademark quality from the perspective of the trademark market refers to the quality of trademark licensing.

The theoretical basis of trade mark licensing is the theory of consumer information, which ultimately means that a trade mark is a tool to help consumers reduce the cost of searching and experimenting, and therefore both the assignee and the licensee should ensure that the quality of the product or service at the time of use of the trade mark is of the level claimed (Garvin, 1984) [10]. The quality of a trade mark licence means that the licensee of a trade mark shall ensure that the goods supplied are consistent and stable, in line with the perceived experience and expectations of consumers (Garvin, 1984) [10]. Article 43 of China's Trademark Law also has a corresponding provision: "The licensor shall supervise the quality of the goods for which the licensee uses its registered trademark".

Taking into account previous studies, this paper argues that trademark quality from a market perspective means that a trademark licensee should provide consumers with products or

services that are consistent with the level of the trademark, where the level of the trademark refers to the level that the trademark should reach in consumers' cognitive experience.

### 2.3. Technical Perspective: Trademark Symbol Quality

Trademarks usually protect the goodwill carried by the mark or the source identification function of the sign, and the quality of the trademark mark can have an impact on the overall quality of the mark (Xie, 2019)[2]. The appearance of a trademark helps shape the consumer's first impression of the goods (Griffiths, n.d.)[11]. Although consumers' judgement of the appearance of a trademark is more subjective, in practice differences in trademark marks can influence consumers' judgement of goods, thus we argue that trademark design is also part of trademark quality, (Xie, 2019)[2] suggesting that trademark marks are an important component of trademark quality. And the importance of the distinctiveness of a trademark's design is increasing as consumers' pursuit of distinctiveness increases. (Wheatley & Chiu, 1977)[12] suggest that differences in trademark appearance can appeal to consumers on a psychological or emotional level; it has also been argued that the appearance of a product affects consumers' judgments of quality (Jacoby et al., 1971) [13]. In this paper, we consider trademark quality to be the ability of a trademark logo design to distinguish goods and services significantly and to leave an impression on consumers.

In summary, the concept of trademark quality can be developed from three perspectives:

From a jurisprudential perspective: trademark quality means that it refers to the strength of trademark rights, including the stability of the law and the exclusivity of the power, where the stability of the law means that the trademark is not easily rejected by opposition after acquiring trademark rights, and the exclusivity of the power means that the trademark is not easily confused or diluted and can distinguish goods or services to a larger extent.

From a market perspective: trademark quality means that the trademark licensee should provide consumers with products or services that are consistent with the level of the trademark, where the level of the trademark is the level that the trademark should achieve in the consumer's cognitive experience.

From a technical point of view: trademark quality means that the trademark mark is designed to distinguish goods and services significantly and to make an impression on consumers.

## 3. Dimensions of Trademark Quality

As the study of trademarks has become more advanced, scholars have realised the limitations of the number of trademarks and that a simple count of trademarks does not truly reflect the characteristics of trademarks and have begun to use trademark data other than the number of trademark registrations as a measure. (Flikkema et al., 2019) [14], in discussing the relevance of trademarks to products or services to innovation, suggest the inaccuracy of using only the number of trademarks as trademark data, and to better describe the relationship between trademarks and innovation, use the number of NICE classifications and international trademarks as a measure of trademark data.

(Thoma, 2019)[15] points out that factors such as the breadth of trademark protection, the procedures for filing trademark applications, and the procedures for examining trademarks all have an impact on trademarks, so he suggests that trademarks can be measured in these three ways: (1) the breadth of trademarks includes the number of NICE classes a product or service spans, the number of times a trademark has been searched for, and the number of direct or indirect registered trademarks; (2) the breadth of trademark protection includes the number of international trademark applications and the number of years a trademark has been registered; and (3) the procedures for filing and examining trademarks include the duration of

the first use of a trademark, the number of additional registrations of a trademark, and the number of times a trademark has been opposed by competitors.

(Sandner & Block, 2011)[16] suggest four factors that influence a trademark from a market value perspective: (1) the number of NICE classes the trademark spans: the breadth of goods or services covered; (2) consumer familiarity with the trademark: the potential awareness of consumer familiarity and dissemination of the product or service resulting from the trademark; (3) the number of times the trademark has been opposed by competitors. Competitors perceive the mark to be a threat to themselves and oppose it; (4) The importance that firms themselves attach to responding to trademark oppositions: the means that firms use to protect their trademarks.

(Castaldi, 2020)[4] The size of the company of the applicant for the proposed trademark, the number of years the trademark has been registered, the extent to which the trademark is licensed, and the maturity of the company all have an impact on the trademark.

A summary of the previous literature reveals that previous references to the measurement of trade mark indicators have focused on the breadth and depth of trade marks: where breadth refers to the industry and geographical scope covered by the trade mark, including the number of NICE classes the trade mark spans and the number of international trade marks; and depth refers to the extent to which the trade mark is valued and used, including the number of times the trade mark has been challenged by competitors and whether the trade mark whether the mark has been renewed. Taking into account the factors influencing trademark quality and the availability and operability of data this paper proposes that trademark quality includes the following indicators.

(1) The number of international trademarks. Trade mark protection is territorially limited and its validity is restricted by national boundaries; if you want your trade mark to be recognised in another country, you must apply for a trade mark in that country. Under the Madrid Agreement, a trademark applicant can apply for a trademark now in its home country and then apply for a trademark in the country of the Madrid Agreement. A Community trade mark enables a company to apply for a trade mark once and then obtain protection from each member state of the European Union. However, accordingly, the cost of filing a trademark application is proportional to the territory covered, whether through the Madrid Agreement or by applying for a Community trademark. Moreover, the cost of filing an international trademark is higher than that of a domestic trademark. Therefore, we can argue that companies do not apply for international trademarks for all the trademarks they own, and that they will only apply for foreign trademarks if they consider it valuable to do so, (Flikkema et al., 2019) [14] measuring the breadth of a trademark by the number of international trademarks, and thus we believe that the number of international trademarks can be used as one of the indicators of the value of a trademark.

(2) The number of NICE classifications spanned by the trademark. According to Article 35 of the Trademark Law, the classification for applying for trademark registration follows the Nice Classification, which divides products and services into 34 product classes and 11 service classes, a total of 45 classifications, and a trademark applicant can apply for 10 categories when registering, and the application fee increases by RMB 100 for each additional category beyond that, which means that the more Nice categories a trademark covers, the higher the cost. In addition, according to the Trademark Law, the same trade mark can only be protected in the class for which the trade mark is applied for, and the more classes covered by the application, the wider the scope of protection. The more classes a company covers when applying for a trademark, the wider the protection coverage of that trademark. (Flikkema et al., 2019)[14] propose the concept of trademark breadth, i.e. the number of Nice Classes a trademark spans, representing the range of industries a trademark spans. (Thoma, 2019) [15] (Block, n.d.)[17] use the Nice classification as one of the indicators to evaluate the value of a trademark. This

paper refers to their approach and uses the number of Nice classifications spanned by a trademark as one of the indicators of the quality of a trademark.

(3) Whether the trademark is renewed. A trademark applicant obtains trademark rights for a period of ten years, and if it wants to renew, it needs to apply within 12 months before the expiry date, and each renewal of registration is valid for ten years, and renewal of the trademark requires payment of certain fees as stipulated. For businesses, there is a cost associated with renewing a trade mark, and the trade marks that need to be renewed are often those that are useful and of quality to the business. (Thoma, 2019) [15] then uses the duration of trademark renewal and continued registration as an indicator of the value of a trademark. Therefore, this paper uses trademark renewals as an indicator of trademark quality.

(4) The number of times a trademark has been opposed by a competitor. The registration of a trademark is a legal procedure in which an application is made by the applicant for the trademark, the Trademark Office examines the application and issues a notice of first instance, and if no opposition is filed or if the opposition is ruled not to be established, the trademark is registered successfully and is protected by law and the trademark registrant enjoys exclusive rights to the trademark. A trademark opposition is a dissenting opinion raised by the public on a trademark during the three-month notice period issued by the Trademark Office when applying for a registered trademark. According to Article 35 of the Trademark Law, the defence of a trademark opposition is voluntary and no fees are charged by the Trademark Office, but the dissenting enterprise often needs to engage a professional to draft and defend relevant aspects of the trademark evaluation matter. For businesses, there is a cost to opposing. For brands nowadays, trademark registration is essential for protection. Trademark oppositions from competitors indicate that the mark is not only valued by the firm itself, but competitors also believe that it needs to be invalidated to prevent future market risks, using the number of trademark oppositions as an indicator of trademark quality, and others use the number of trademark oppositions to measure the relationship between trademark value and firm performance. Therefore, this paper uses the number of competitor oppositions as a measure of trademark quality.

## 4. Conclusion

By summarising the existing literature on trademark quality, this paper argues that trademark quality is a cross-disciplinary, broad-disciplinary concept that should be defined in terms of jurisprudence, the market and the trademark mark itself. By combing through the literature and combining the definitions of trade marks, the dimensions of assessing trade mark quality are summarised. There are no authoritative findings on the quantification of trademark quality in existing trademark research, and it is hoped that this paper will shed some light on the study of trademark quality.

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