

Intellectual Property Protection of Sports Industry in China

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ABSTRACT. Sports industry is the sunrise industry. There are many demands for intellectual property protection in the development of sports industry, which almost cover all the IP types. IPR protection of sports industry is of great importance. At present, there are many problems in IP protection of sports industry in China, which hinder the development of the industry. This paper mainly analyses three aspects of IP in sports industry and the problems of IPR protection so as to give suggestions on the construction and improvement of IP protection of sports industry in China.

KEYWORDS: Sports industry, Intellectual property protection, Problems, Construction and improvement

1. Introduction

As a sunrise industry, the sports industry plays a more and more important role in economy. There are many demands for intellectual property protection in the development of sports industry. However, the problems in IP protection still exist, which further hinder the development of the industry. Therefore, it is necessary to strengthen the analysis of the problems.

2. The Overview of Sports Industry

2.1 The Definition of Sports Industry

When it comes to the development of China's sports, it is obvious to win the recognition of the world, which not only cultivates a group of excellent athletes in the world, but also makes great progress in the promotion of national sports. With the rapid development of sports in an all-round way, ordinary financial support has been unable to meet the growing needs of people's life for the diversification of sports activities. What's more, the nature of sports services that was once considered as public goods have also changed considerably, since some parts of traditional sports have no longer the nature of public products, which gradually have the nature of quasi public or private products. Through these changes, it makes the traditional sports have the characteristics of production and operation, as well as the characteristics of industry, which thus forms sports industry [1].

2.2 Sports Industry is the Sunrise Industry

What sports industry mainly focuses on is economic benefits, in which its essence is profit-making. Thus, it can be seen that sports industry is a real sunrise industry. The most developed country of sports industry in the world is the United States, in which the total output value of sports industry in the United States accounted for about 1% of its GDP in the 1980s, ranking 22nd in the total output value of major industries. In the mid-1990s, the total output value of sports industry in the United States had exceeded 300 billion dollars. Besides, the annual output value of sports industry has entered the top ten pillar industries in North America, Western Europe and Japan where sports industry is developed. As early as 2000, the total output value of the global sports industry was as high as 400 billion dollars, which has an average annual growth rate of 20%. More importantly, the total output value of sports industry in developed countries such as Australia, Canada, Japan, Britain, Germany, France and Italy accounts for 1% TO 1.5% of GDP [2].

3. The Intellectual Property in Sports Industry

According to intellectual property, it refers to "the exclusive right of the oblige to the intellectual labor achievements created by him or her", that is, all kinds of intellectual creations, such as inventions, literary and artistic works, as well

as signs, names, images and designs used in commerce, which can be regarded as intellectual property owned by a certain person or an organization. As for traditional intellectual property right, it includes copyright, trademark right and patent right (covering invention, appearance design and utility model) [3]. Moreover, there are also some special “similar intellectual property rights” in the sports industry, such as the most important and universal intellectual achievements, which includes sports professional technology, intangible cultural heritage of national traditional sports, the right to use the names of famous athletes and sports signs, etc. However, there is no unified opinion on the protection of the above-mentioned “similar intellectual property” due to the definition of concept, classification and other reasons at present, which also raises many special problems for the protection of intellectual property rights in sports industry.

In The Outline on the Development of China's Sports Industry, it clearly points out that China's sports industry mainly includes three categories at present, in which the first is the main industry of sports, which refers to the sports business activities that give full play to the economic function and value of sports itself, such as sports competition performance, training, fitness and other aspects of business, the second is related industries that provide services for sports activities, such as the production and operation of sports equipment and sports goods, the third is other kinds of industrial activities carried out by sports departments to subsidize the development of sports undertakings. Meanwhile, there are many demands for intellectual property protection in the development of sports industry, which almost cover all the above types [4].

3.1 The Aspect of Patent Right

As for the rapid improvement of sports level, it is due to the rapid improvement of science and technology to the largest extent. The greatest embodiment of the improvement of science and technology level is high-tech sports products, such as the Nike air cushioned sneakers that people are familiar with and the famous “shark skin” swimming suit appearing in the Sydney Olympic Games in 2000.

All these high-tech products have applied for patent protection. Based on the patent system, it reflects the innovation ability of the industry and enterprises, which also further promotes the continuous innovation of sports industry technology.

Over the years, there are many lawsuits involving patent infringement, such as Nike's suing of Fujian Bestwinn Company as a Chinese footwear manufacturer for patent infringement.

3.2 The Aspect of Trademark Rights

For trademark protection, it is often related to the brand building of sports enterprises. Once sports enterprises and products have trademark rights, they have “labels” that are convenient for consumers to identify and select on the one hand, which can also restrict competition on the other hand.

The use of the same name or mark are embodied in Adidas, YONEX and so on we are familiar with. At the same time, the trademark right also has the property right attribute, which can help to obtain profits by means of transfer and licensing.

In addition, there are many trademark infringement disputes, such as UNDER ARMOUR vs. UNCLE MARTIAN, Adidas vs. Adivon, New balance vs. New barlun.

3.3 The Aspect of Copyright

In line with the article 2 of the regulations for the implementation of the copyright law, it stipulates that works as mentioned in the copyright law refer to intellectual achievements that are original in the fields of literature, art and science and can be reproduced in a tangible form. As for the copyright part, it is the most controversial part in the theory and judicial practice of intellectual property rights in sports industry, especially on the copyright disputes of sports events. Meanwhile, the disputes mainly focus on whether the sports events and sports programs are the objects of copyright protection, whether the broadcasting right of sports events belongs to copyright, and how to determine the nature of the broadcasting right of sports events in the network environment. There are two typical cases in Beijing Intellectual Property Court, such as CCTV vs. BaoFeng Player (2015) No. 1055, Sina vs. Fenghuang (2015) No. 1818. The judgment gist of the intellectual property court on whether the continuous picture of sports event constitutes work is: 1. Fixity; 2. Originality.

4. The Significance of Protecting the Intellectual Property of Sports Industry

First of all, it can promote the rapid improvement of competitive sports performance in our country. Secondly, it can enhance the international competitiveness of China's sports industry development. Thirdly, it is the important property resources of China's sports industry development. Fourthly, it is conducive to the inheritance and development of the intangible cultural heritage of national traditional sports. Thus, it can be seen the great significance.

Moreover, countries around the world are also strongly aware of the importance of intellectual property rights and other related rights to sports and its economic role while recognizing the economic value of sports. As for the effective implementation of the strategy of sports intellectual property and the strengthening of the protection of sports intellectual property in an increasingly globalized field, it is becoming the economic value of sports around the world. At the same time, the importance and significance of intellectual property and other related rights to sports and its economic role are increasingly recognized. Besides, the effective implementation of the sports intellectual property strategy and strengthening the protection of sports intellectual property rights have also become an important connotation of the healthy development of sports economy around the world, which certainly includes China.

5. The Protection of Intellectual Property Rights of Sports Industry in China

The sports industry has developed rapidly though it started in China late. Meanwhile, its industry field has been extended and its scale has been expanded. In 2014, the State Council issued Several Opinions on Accelerating the Development of Sports Industry and Promoting Sports Consumption, which made sports industry become a new choice for many entrepreneurs and investors. In the face of the good policy and the popularity of social investment, China's sports industry should pay more attention to the protection of intellectual property rights, so as to promote the healthy development of the industry.

5.1 Problems in Intellectual Property Protection of Sports Industry

When it is compared with the overall emphasis on intellectual property, it is found that the development of intellectual property in sports industry is relatively slow, which also exists problems in the protection of intellectual property in sports industry.

First of all, the existing legal system in China is inadequate in protecting the intellectual property rights of sports industry.

Firstly, there is no special laws and regulations to protect the intellectual property rights of sports industry, which increases the difficulty of interpretation when dealing with specific problems. Secondly, the general rules and regulations on intellectual property rights are restricted by some characteristics of intellectual property rights in sports industry and cannot be applied smoothly. Thirdly, there is no clear basis for local governments to formulate relevant legal documents due to the lack of high-level legal documents. Fourthly, it is the influence on the process of legislation of the whole sports industry in our country, which is not conducive to the matching and perfection of the sports law.

Furthermore, the definition of intellectual property rights in sports industry cannot keep up with the development of sports industry. For sports event broadcasting rights, sports event logo rights, special technology of sports, sports technology innovation actions, training management methods and so on that receive high attention, some of them have been protected by intellectual property rights. While in actual operation and management, it is relatively arbitrary, which are not really protected by law. Even some have not been defined by property rights, instead of enjoying full protection.

Then, it is about the common problem of intellectual property protection in China, such as the lack of intellectual property protection of the national traditional sports cultural right subject, low degree of independence of sports enterprises intellectual property rights, weak ability of technological innovation, low conversion rate of intellectual property rights, the existence of disputes of intellectual property rights at home and abroad, serious infringement phenomenon, weak criminal punishment for infringement, relatively less independent intellectual property rights and well-known brands of sports, low value of patent technology and brand value, as well as low internationalization level of patents and trademarks[5].

5.2 The Construction and Improvement of Sports Industry Intellectual Property Protection in China

5.2.1 Construct a Perfect Legal System of Intellectual Property

As an important technical asset at the national level, the intellectual property right of sports industry is also the property right at the individual level. No matter it is from the perspective of the government or the interests of enterprises and individuals, it is necessary to attach importance to the protection of the intellectual property right of

sports industry.

Firstly, what the state should do is to strengthen the legislation of intellectual property rights in sports industry, clarify the scope of infringement, standardize the filing and hearing of cases, and create a good atmosphere of law enforcement. Secondly, it is necessary to improve the protection of sports intellectual property in our criminal law, adjust the penalty allocation of intellectual property crimes in criminal law, and distribute them reasonably by centralized and decentralized legislation. Thirdly, it should modify and perfect the existing intellectual property system and sports legal system in China, as well as join the relevant protection object of sports industry intellectual property in a timely manner. In this way, it can strengthen the legal protection of sports intellectual property and build a perfect legal system of intellectual property.

5.2.2 Implement a Strong Enforcement System for Intellectual Property Rights in the Sports Industry

With the advantages of high efficiency and rapidity for the remedy of sports intellectual property rights infringement, administrative regulation can deal with infringers in a short time and safeguard the interests of sports intellectual property rights holders. In view of the infringement of intellectual property rights, the punishment for them should also be carried out differently due to the different degree of harm and the nature of infringement. If necessary, administrative punishment should be increased to make the administrative regulation play its due role. In addition, it should carefully carry out the system construction and procedure management of intellectual property protection in sports industry, so as to block the loopholes of intellectual property loss.

5.2.3 Strengthen the Autonomous Management of Intellectual Property within the Industry

In the aspect of the protection of intellectual property rights in sports industry, it not only needs the supervision and control of external conditions, but also needs to strengthen the self-management of property rights within the industry. As for the normal operation of sports organizations and enterprises, it urgently needs the support of strong internal self-management organizations. To establish the self-government mechanism under the condition of market economy, it should start from giving full play to the economic and social benefits of the intellectual property rights of sports industry, and fully tap the application value of the intellectual property rights of sports industry. Based on the market-oriented operation means, operation rules and transaction procedures, it is necessary to promote the scientific utilization of intellectual property rights and give full play to its market value. At the same time, it should strengthen the awareness of rights protection of the organizations with sports intellectual property rights, actively declare the achievements of sports innovation in accordance with the procedures of laws and regulations, and timely obtain the legal status of their own intellectual property rights. Besides, it should also take measures at the system level and technical aspects to strengthen the protection of sports intellectual property rights, especially to strengthen the management of sports knowledge original talent, so as to prevent the loss of rights and interests of intellectual property due to the flow of talents.

5.2.4 Establish a Diversified Dispute Resolution Mechanism

Firstly, it should establish more specialized arbitration institutions in view of the characteristics of sports industry and the emerging characteristics of intellectual property disputes in sports industry. Secondly, it is necessary to set up a legal system to restrict the flow of sports talents, which should also set up a special organization to bring the trade of sports talents into the orbit of law. Thirdly, it should actively solve the disputes of intellectual property rights in sports industry through consultation, mediation, civil litigation, administrative litigation, criminal litigation and other legal means, so as to promote the formation of the dispute resolution mechanism of sports intellectual property rights in our country [6].

6. Conclusion

On by treating the disputes of intellectual property rights in sports industry correctly as well as dealing with them scientifically and rationally can achieve the best protection to intellectual property rights in sports industry. However, the protection and research on intellectual property rights in sports industry of China at this stage has not been paid enough attention. In view of it, China should strengthen the construction standard of sports industry intellectual property rights, clarify the management responsibilities and scope, promote the legislative process, so as to make the sports intellectual property rights in our country have laws to follow. For the universality characteristics of intellectual property rights in sports industry, specific analysis should be carried out on the specific problems involved in it, so as to better promote the development and progress of sports in China.

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