

A Review of Legal Issues Concerning Parallel Imports of Trademarks on Cross-Border E-Commerce Platforms

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Abstract. With the development of economic globalization and internet technology, cross-border e-commerce now constitutes an integral component of international trade. The legal issue of parallel import of trademarks has grown increasingly salient. Currently, China lacks unified legislative provisions on parallel import of trademarks, and judicial practice lacks consistent adjudicative criteria, resulting in disparate rulings on identical factual circumstances. This paper employs literature analysis and case analysis to systematically examine the foundational doctrines, current normative application, and regulatory approaches of parallel import of trademarks on cross-border e-commerce platforms. The study reveals that scholars diverge on legality, including the exhaustion of rights principle, the principle of territoriality, and the theory of implied license. Judicial practice diverges on the identical-rightsholder requirement, material difference standard, and the liability of e-commerce platforms. This paper contends that future research should focus on the application of the principle of balance of interests, the boundary of e-commerce platform liability, and the establishment of information disclosure and product origin traceability mechanisms, in order to provide theoretical references for the improvement of the trademark parallel import system in China.

Keywords: Cross-border E-commerce, Parallel Import of Trademarks, Trademark Infringement, Exhaustion of Rights, Liability of E-commerce Platforms

1. Introduction

In recent years, cross-border e-commerce transactions have grown increasingly frequent and now constitute an important part of China's economic development. In 2023, China's cross-border e-commerce imports and exports reached 2.38 trillion yuan, up 15.6% [1]. During the same period, the General Administration of Customs seized 62,000 batches of suspected infringing goods, among which goods infringing on trademark rights ranked first in quantity, and many involved e-commerce parallel imports [1].

Parallel import of trademarks has not been uniformly addressed in international treaties. Article 6 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) leaves the matter to the discretion of each member state [2]. China's *Trademark Law*, *Anti-Unfair Competition Law* and *Regulations on the Protection of Intellectual Property by Customs* contain no explicit

provisions [1, 3]. E-commerce's virtual nature, information asymmetry, and traceability difficulties challenge traditional legal regulation [1].

This paper employs the literature analysis method and case analysis method to systematically review relevant research results, aiming to provide theoretical references for the improvement of legislation and the unification of judicial adjudication in China.

2. Research on the basic theory of parallel import of trademarks and the characteristics of cross-border e-commerce

2.1. The concept and characteristics of parallel import of trademarks

The academic community has not yet arrived at a unified definition of parallel import of trademarks. Huang Linlin summarized three definitional perspectives: focusing on "the same trademark owner", focusing on the parallel exercise of intellectual property rights, and focusing on the parallel direction of import [1]. In summary, parallel import of trademarks refers to conduct where parallel importers, without the permission of the trademark owner, import and sell trademarked goods that are already protected in the importing country [1].

This conduct is characterized by three elements: first, it is a genuine product, as distinguished from counterfeit goods; second, it is carried out without the permission or authorization of the trademark owner; third, the trademark is legally protected in the importing country [1, 4]. Hu Xueyuan pointed out that the sales conduct of parallel importers constitutes a resale after the initial market launch [4].

2.2. New characteristics of parallel imports under the cross-border e-commerce model

In the context of cross-border e-commerce, trademark parallel imports present new characteristics: Firstly, the distinctive nature of the trading platform. As an emerging medium, e-commerce platforms have endowed parallel imports with global coverage and rapid circulation;; Secondly, the virtual nature. This exacerbates the difficulty of identifying the infringer's identity; Thirdly, the special legal status of the entities. E-commerce platforms may act as network service providers or direct sellers, giving rise to different liability regimes [1].

Cao Chuhuan believes that the cross-border and borderless nature of cross-border e-commerce poses a significant challenge to traditional intellectual property theories [5]. Zhang Hui points out that consumers' right to know and their right to legal relief will face greater challenges [6].

2.3. The main legal theories involved in parallel imports

The academic community relies on different theoretical bases regarding the issue of parallel import of trademarks. The exhaustion of rights principle was articulated by German scholar Joseph Kohler in the late 19th century [7], and it can be classified into domestic exhaustion, regional exhaustion, and international exhaustion [1, 4]. Scholars who support international exhaustion assert that the trademark owner has already derived profit from the initial sale and is therefore precluded from prohibiting subsequent distribution [1, 7].

Li Fei maintains that the international exhaustion principle of trademark rights represents the optimal approach, which serves to prevent the abuse of rights and aligns with China's economic policies [7]. Hu Xueyuan adopts a reserved stance, asserting that this principle conflicts with the principle of trademark territoriality [4]. In addition, the theory of implied license and the "what is

not prohibited is permitted" doctrine have also been discussed, but they lack sufficient doctrinal support [4, 7].

3. Research on the application and practice of regulations for parallel imports in cross-border e-commerce

3.1. The relevant regulations in china regarding the use of parallel imports

The current laws in China contain no specific provisions on parallel import of trademarks. Article 56 of the Trademark Law does not enumerate the import right within the scope of exclusive rights, and Article 57 does not expressly cover parallel import [1]. Article 2 and Article 6 of the Anti-Unfair Competition Law are principle-based and their application depends on judicial discretion [1, 3]. The Regulations on the Protection of Intellectual Property Rights by Customs also do not set forth explicit provisions [1, 4].

It is worth noting that Article 75 of the Patent Law has explicitly codified the principle of international exhaustion of patent rights. Zhou Yuan et al. recommend that the Trademark Law should follow this legislative model [3]. Hu Xueyuan advocates controlling the determination of infringement from three aspects: the identity of the source of the goods, the consistency of the rights holder, and substantive differences [4].

3.2. The responsibilities and obligations of e-commerce platforms in parallel imports

E-commerce platform liability in trademark parallel import is a key academic concern. Liability differs by business model: operators bear direct infringement liability; service providers bear fault-based liability [1, 8].

Li Yueying pointed out that whether a cross-border e-commerce platform bears infringement liability depends primarily on the platform's operational model. If the platform directly participates in sales, it must bear direct infringement liability; if it only provides technical services, it can invoke the "safe harbor" principle and be exempted from liability after fulfilling the "notice-and-takedown" obligation [8]. Fan Ziyi, however, argues that the current "safe harbor principle" is overly broad, leading to insufficient regulatory motivation on the part of platforms, and it is necessary to further restrict the conditions for exemption of the platform and strengthen its review obligations [9].

Regarding the platform's duty of review, Huang Linlin pointed out that there are three main problems: there is a lack of objective standards for judging whether parallel imported goods infringe rights, it is still questionable whether the platform has the professional ability to perform such review, and the scope of the duty of review obligation is unclear [1]. Yu Zihan analyzed from the perspective of trademark infringement by clothing enterprises, and asserted that the platform deeply intervenes in transactions through algorithms and traffic allocation, but the law has not clearly defined the boundary of its active review obligation, resulting in a disconnection between technology and legal responsibility [10].

3.3. The main problems and manifestations that emerged in practice

The issue of inconsistent judicial standards is prominent in judicial practice. Huang Linlin reviewed cases from 1999 to 2024, with infringement and non-infringement cases each accounting for half [1, 7]. In the "Lishi Soap" case in 1999, infringement was found, while in the "AN'GE Clothing" case in 2000, no infringement was found due to no confusion [1, 8].

Li Fei categorized legal disputes into three levels: theoretical level, where divergence exists regarding the international exhaustion principle; legal application level, where there are varying understandings of the likelihood of confusion and the impairment of trademark functions; and micro level, where the determination of the same entity and substantive differences is unclear [7]. Consumer rights protection is also a difficulty. Zhou Yuan suggested establishing an information entry and public announcement platform to safeguard the right to know [3].

4. A review of governance paths and research findings on parallel imports in cross-border e-commerce

4.1. Research on the recognition of legality

The academic stance on trademark parallel import legality has shifted from general denial to conditional affirmation. Early scholars mostly held a negative attitude, exemplified by Wang Chuanli, who argued that parallel import should be generally prohibited on the premise of protecting trademark exclusive rights [1]. With the development of global trade, scholars' attitudes gradually changed. Long Zhaohua advocated treating parallel import with the principle of "generally affirmative with individually negative" [1]. Han Lei asserted that it should be based on China's specific circumstances, comprehensively considering the interests of the trademark rights holder, the parallel importer, and the consumers, to achieve a balanced protection [1].

In terms of the specific standards for legal determination, Li Fei identified two core elements: "identical-rightsholder" and "material differences": when the trademark rights holders at home and abroad are the same entity or there is a control or authorization relationship, parallel import is generally legal; when the parallel imported goods have material differences from domestic goods and reach the "significant" or "essential" degree, infringement should be found [7]. Hu Xueyuan proposed a similar "three-element" test, namely, the identity of the source of the goods, the consistency of the trademark rights holder, and no substantial differences [4].

The "three-element rule" of Japan provides a useful reference for our research. This rule requires: the trademark rights holder has identity, the parallel import of goods is legal, and there are no material differences between the goods [1, 3]. The U.S. Lever rule allows conditional import of materially different goods if a prominent distinguishing label is affixed [1, 7].

4.2. Research on platform management and risk control

Platform-level regulation has three aspects. First, improve the trademark protection rules of the platform. Yu Zihan suggests integrating the trademark database with the product listing process, using algorithms to compare trademark information in real time, and automatically blocking obvious infringement links [10]. Second, clarify the responsibility boundaries of the platform. Fan Ziyi advocates that e-commerce platforms should strengthen their awareness of intellectual property compliance review, strictly scrutinize the qualifications of users, and regularly verify the authorization documents and purchase channel proofs of goods [9]. Third, establish a multi-party collaboration mechanism. Zhou Yuan proposes to build a parallel import product information entry and public display platform, create a price comparison system, and provide a consultation channel for parallel importers and exclusive importers [3].

In terms of risk prevention and control, scholars emphasize the equal importance of ex ante prevention and ex post relief. Cao Chuhuan suggests that parallel importers should conduct trademark searches before implementing imports, review the ownership of trademarks both

domestically and abroad, and examine the material differences of the goods [5]. Chen Qihui proposes countermeasures from the national, industry, and enterprise levels: at the national level, legislation should be improved, specialized international treaties should be concluded, and judicial jurisdiction should be appropriately expanded; at the industry level, associations should play a guiding role, and collective actions should be organized when necessary; at the enterprise level, they should ascertain the laws of the target market in advance, enhance trademark protection awareness, and establish professional legal teams [11].

4.3. Research on information disclosure, product traceability and collaborative governance

Information disclosure and traceability are key to resolving e-commerce trademark parallel import issues. Huang Linlin suggests establishing a system for disclosing the source of parallel imported goods in the e-commerce domain, including: requiring operators to provide purchase vouchers to the platform; indicating the source, manufacturer information, and purchase channel on the product details page; and providing source information through labels, which can draw on the "label exception rule" in the United States [1].

Zhou Yuan proposed that the parallel imported goods information entry and public display platform includes three aspects: trademark information disclosure mechanism (including trademark authorization and usage information disclosure), price comparison system, and consultation channel [3]. This platform aims to address the issue at its source and promote the circulation of genuine products.

Collaborative governance requires multiple stakeholders. Chen Qihui believes that an international internet court should be actively established to overcome the spatial and temporal barriers in cross-border e-commerce litigation and reduce the cost of enterprise rights protection [11]. Yu Zihan suggests establishing a multi-party collaborative cross-border rights protection mechanism, including establishing a regional trademark infringement blacklist sharing database, having customs introduce an artificial intelligence-assisted inspection system, and forming a joint working group to regularly exchange information on infringement trends [10].

5. Conclusion

This article reviews research on legal issues of trademark parallel import in cross-border e-commerce. Existing research has produced rich results in basic theory, normative application, and governance. The theory includes exhaustion, territoriality, and implied license. Normative core elements are the same entity and substantive differences. Governance suggestions cover legislation, platform management, disclosure, and collaboration.

The existing research still has limitations: insufficient attention to novel e-commerce business models; lack of analysis on affiliative relationships between domestic and foreign trademark owners; weak empirical and quantitative economic analysis. Future research should examine AI and blockchain in infringement monitoring and evidence preservation, and the impact of international digital trade rules.

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