

On the Regulation of the Likelihood of Confusion Surrounding Well-known Trademarks: The Interface between the Fair Trade Act and Trademark Act

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Abstract

The Trademark Act and the Fair Trade Act are the most important regulations for protecting well-known trademarks in Taiwan. However, the related provisions regarding the likelihood of confusion in the Trademark Act are expected to give rise to more legal certainty. Moreover, the amendment to the Fair Trade Act in 2015, which resulted in a reduction in the protection of well-known trademarks because the scope of Article 22 is limited to narrow confusion, has been criticized. Therefore, in view of the global trends in legal protection for well-known trademarks against confusion, this article suggests that Article 25 may play an important role in dealing with the general confusion surrounding well-known unregistered trademarks since the Supreme Court did not exclude such a situation. Nevertheless, whether Article 25 of the Fair Trade Act can provide suggestions or not should be reviewed carefully because of its supplementary nature.

From a comparative law viewpoint, this article has found that the Japanese Trademark Act sets out individual provisions, with different legal requirements, for the narrow confusion surrounding unregistered well-known trademarks and registered trademarks, and for the general confusion surrounding well-known trademarks in order to protect them, thereby facilitating the choice when applying. Moreover, this article also finds that the separation of the Trademark Act and Fair Trade Act in Japan provides an incentive to apply for trademark registration by reducing the cost of trademark-related lawsuits in order to maintain a balance between the two regulations.

Keywords: Well-known Trademark, Likelihood of Confusion, the Fair Trade Act, the Japan Trademark Law, the Japan Unfair Competition Prevention Act.

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