

Cite as: 12 TECH. L. REV., Dec. 2015, at 165.

The Preliminary Showing on the Factors of Preliminary Injunction in Trademark Infringement Cases—Focusing on American Law after the eBay Case and Taiwan Court Decisions

Jr-Da Fan *

Abstract

In *eBay v. MercExchange* (2006), the U.S. Supreme Court held that courts must apply the traditional four-factor test for injunctive relief in every case. These “principles of equity” required courts to employ the traditional four-factor test under which the plaintiff must demonstrate (1) a likelihood of success of the merits; (2) the existence of irreparable harm; (3) that the balance of hardships tilts in favor of injunctive relief; and (4) that granting an injunction would not harm the public interest. But when assessing whether a particular instance of trademark infringement resulted in “irreparable harm” U.S. federal courts almost uniformly presumed such irreparable harm upon a finding of likelihood of confusion. In fact, the eBay

* Judge of Intellectual Property Court; Doctoral Student, National Chiao Tung University School of Law.

rules should not be used to eviscerate the normal presumption of irreparable harm that attaches upon a showing of liability in trademark cases. In our country when granting or denying preliminary injunction of trademark infringement cases, the plaintiff often provides a preliminary showing with regard to the existence of legal relation and trademark infringement documentary evidence, not actively providing the existence of irreparable harm, that the balance of hardships tilts in favor of injunctive relief and that an injunction is in the public interest. The court reviewing an application for preliminary injunction deliberates on the likelihood of success on the merits as the most important consideration. Compared with patent and copyright cases of the discretion of the preliminary injunction, the court mainly deliberates on the likelihood of success and the existence of irreparable harm as the most important factor. It is clear intellectual property cases, especially trademark cases on the set of preliminary injunction claim, do not require the plaintiff to take the burden of all factors of trial discretion in Taiwan. Because these harms to producers and consumers stemming from a likelihood of consumer confusion are not merely monetary in nature, they are reputational and difficult to quantify. The plaintiff does not need to spend additional resources to prove that other factors other than “a likelihood of success on the merits”.

Keywords: Injunction, Trademark, Infringement, Irreparable Harm, Goodwill