

從語言學觀察商標淡化 ——論產地證明標章之立法妥適性

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摘 要

任何能夠傳遞資訊的載體皆可視為符號，文字、語言、標章皆屬之。本文以「產地證明標章」為中心，分析我國自 2011 年商標法修法後，於條文設計上多「依其性質準用」一般商標的規定。基於產地證明標章在各方面皆異於一般商標，因此，在商標侵權態樣之一——淡化（dilution）之規定上，產生準用之困難。本文從產地證明標章之意義、功能為起點，透過 Saussure 符號學分析傳統混淆誤認規範與商標淡化間所侵害之法益有何不同，並提出構成「商標淡化」之要件為何。惟我國實務對於構成商標淡化之要件看法分歧，原因在於對商標淡化保護之法益模糊不清。本文透過語言學上轉喻（metonymy）分析淡化所保護之法益，提出產地證明標章應無一般商標淡化規定之適用，並在最後以經濟學上外部性（externality）之角度，在商標法架構下提出修法建議。

關鍵詞：產地證明標章、商標淡化、轉喻、顯著性、搭便車、外部性

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A Linguistic Approach to Analyze Trademark Dilution —The Applicability to Geographical Certification Marks Under Trademark Law

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Abstract

Any kinds of vehicles that can convey information could be considered symbols, including words, languages and marks. This article applies semiology and linguistics to analyze the issue in new trademark law that passed in 2011, focusing on “geographical certification mark” which only roughly stipulates as that “trademarks shall apply *mutatis mutandis* to certification marks.” However, due to various differences between geographical certification marks and trademarks, difficulties have arisen when applying dilution articles to geographical certification marks. This article begins by examining the meaning and function of geographical certification marks, and then applies Saussure’s semiology to identify the legal interest that “likelihood of confusion” and trademark dilution aim to protect. Moreover, this article proposes a rationale to determine whether the trademark dilution occurs, and

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highlights several split opinions among courts which resulting from having an unclear perception of the legal interests that the dilution articles seek to protect. This article also addresses the issue by analyzing the “metonymy” from a linguistic approach and proposes the conclusion that the dilution is not applicable to geographical certification marks. Furthermore, this article suggests other mechanisms based on “externality” in economic’s concept to protect geographical certification marks under trademark law.

Keywords: Geographical Certification Marks, Trademark Dilution, Metonymy, Salience, Free-riding, Externality