

Empirical Research on Judicial Protection of Trademarks of Traditional Chinese Medicine

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Abstract

This study retrieves 90 relevant cases of TCM trademarks in the past five years and systematically and comprehensively analyzes the specific situation of current judicial practice in protecting TCM trademarks from seven aspects: time, case categories, dispute type, regional distribution, court level, litigation subject, and case result. We find that the key issues include: time-honored TCM brands and well-known trademarks being heavily affected by infringement, weak trademark awareness of TCM enterprises, uncertain compensation standards, and low compensation amounts. It proposes measures such as strengthening special protection, enhancing legal popularization to encourage operators to take the initiative to learn the law, and strengthening judicial application to increase punitive damages. In conclusion, strengthening the legal protection of TCM is an inevitable requirement in today's society ruled by law. In particular, strengthening the protection of trademarks of well-known TCM brands plays a key role in protecting traditional medicine.

Keywords

Traditional Chinese Medicine, Trademark, Judicial Protection, Empirical Research

1. Introduction

Traditional Chinese Medicine (TCM) is a treasure of the Chinese nation, containing thousands of years of health preservation concepts and practical experience, with unique cultural and medical value. As global attention to natural therapies and alternative medicine increases, the status of TCM in domestic and international markets has become increasingly important. However, in the development process of TCM, intellectual property protection has become an issue that cannot

be ignored, among which the protection of TCM trademarks is a key issue.

With economic globalization, the risk of loss of intellectual property rights of Chinese TCM has become prominent, especially in the field of trademark protection. As early as 2012, the trademark of Tongrentang, a Chinese brand carrying the essence of traditional Chinese medical culture, was rejected in its registration application in Japan on the grounds that the three characters “Tongrentang” had been registered in advance by a Japanese company. In recent years, Tongrentang has faced the risk of trademark infringement and squatting both at home and abroad. With the gradual expansion of Tongrentang’s market share in Japan, trademark squatting has seriously infringed on Chinese TCM brands. Tongrentang actively communicated with the Japan Patent Office, conducted in-depth research on Japanese trademark law, and strived to prove its prior right to use the trademark. Fortunately, after a tortuous process, the Japanese company that squatted the trademark lost the lawsuit, and Tongrentang’s trademark was successfully registered in Japan. This example shows that trademarks need protection to safeguard the rights and interests of enterprise brands and enable Chinese enterprises to gain due respect and rights in the international arena.

Although China has established a series of laws and regulations on the protection of intellectual property rights related to TCM, there are still many problems in practical judicial protection. For example, TCM enterprises have weak trademark awareness and a small number of trademark registrations; the quality of trademark design is low, lacking competitiveness; trademark designs are prone to confusion, leading to disputes; and the protection of authentic medicinal materials is insufficient.

We search on CNKI (China National Knowledge Infrastructure) with the keyword “TCM intellectual property” yielding 588 papers and periodicals, spanning from 1994 to 2024. A further search with the keyword “TCM trademark” finds 30 related papers and periodicals, from 2003 to 2021. From the content of these papers and periodicals, most scholars tend to discuss the protection of TCM trademarks, copyrights, and patents together when studying the protection of TCM intellectual property, while there are relatively few studies focusing solely on TCM trademark protection. Therefore, it can be inferred that academic research on TCM trademark protection in China is relatively scarce.

Zhou Jia from the Jiangsu Center of Patent Examination Cooperation, Patent Office, National Intellectual Property Administration, took the current status of intellectual property protection of Yiling Pharmaceutical’s Lianhua Qingwen prescription as the research object (Zhou et al., 2024). In terms of trademark protection, it was proposed that design patents and trademark protection should advance in parallel. That is, in the process of establishing the intellectual property protection system for the Lianhua Qingwen prescription, a synergistic approach of the patent system and administrative protection system should be adopted, supplemented by the comprehensive protection of trademarks and design patents. This case has certain reference significance for the trademark protection of Chi-

nese TCM enterprises. We sorted out the collected cases and found that many TCM enterprises' trademarks have been infringed, and their product appearance designs have been adjusted and modified, with infringers attempting to use this as an excuse to evade legal liability. Taking Yiling Pharmaceutical's Lianhua Qingwen Capsules, which became well-known to the public during the epidemic, as an example, the case (2022) E 0982 Minchu No. 2686 shows: "The words 'Lianhua Qingwen Tea' on the infringing product are arranged in two horizontal lines in black Song typeface in the middle of the packaging box. Among them, 'Lianhua' is in a larger font and prominently displayed in a separate line, and about 1/4 of the left side of the front of the packaging box is blue with patterns inside." The defendant Hubei Yaxiu Hall Trading Co., Ltd. obviously infringed Yiling Pharmaceutical's trademark right and appearance design patent right of Lianhua Qingwen, and the suggestion of "advancing appearance design and trademark protection hand in hand" put forward by the Patent Examination Cooperation Jiangsu Center of the Patent Office, State Intellectual Property Office, comes into play. Wang Zhao from Zhengzhou University, in *Trademark Protection of Traditional Chinese Medicine in China*, also pointed out the necessity, existing problems, and reference countermeasures for TCM trademark protection (Wang, 2016). The article points out that trademarks are a symbol of goodwill and a guarantee of quality. However, problems such as weak brand awareness of TCM enterprises, low quality of trademark design, weak protection of authentic medicinal materials, and confusion between drug names and trademark names are prominent. In the face of these problems, we suggest improvements in the quality of trademark design of TCM products, establishing international well-known trademark¹ brands of TCM, and providing geographical indication protection for authentic medicinal materials also have certain reference value. Xie Sheng from Hefei University of Technology, in the journal *Science and Technology Management Research*, published *Limitations and Solutions of the Current Intellectual Property System in Protecting TCM Knowledge*, which mentions the limitations of trademark protection (Xie, 2023). The protection of exclusive trademark rights alone can only protect the external form of a certain commodity, and mainly serves as a symbol to distinguish it from other commodities. Such symbols are often just characters, graphics, letters, numbers, three-dimensional symbols, colors, sounds, or combinations of the above. Trademarks require enterprise operation and careful management, and the scope of trademark protection will truly expand to the protection of enterprise reputation and honor only with the improvement of commodity quality.

In summary, research on TCM trademark protection is particularly necessary in the context of the internationalization, popularization, and branding of TCM. Experts and scholars are also putting forward problems and countermeasures for

¹Well-Known trademark refers to a type of trademark officially recognized by the Trademark Office of the State Administration for Industry and Commerce of China upon the application of an enterprise, which is widely known to the public and enjoys a high reputation in China (Wang, 2025).

TCM trademark protection according to the changes of the times. Abroad, due to the strong regional and historical attributes of TCM, coupled with the need to understand China's intellectual property legal system, it is slightly more difficult for foreign experts and scholars to conduct in-depth research.

2. Analysis of TCM Trademark Protection Cases

2.1. Time Trend

We set the search period from January 1, 2020 to December 25, 2024, and used “traditional Chinese medicine” and “trademark” as search keywords to retrieve 133 cases on China Judgments Online. After removing 43 cases related to non-traditional Chinese medicine trademark causes of action based on the causes of action identified by the court, 90 valid cases were obtained.

We analyzed the 90 selected cases and found that the number of traditional Chinese medicine trademark infringement protection cases displayed on China Judgments Online and actually collected decreased from 133 to 10 and from 54 to 10 respectively between 2020 and 2024 (Figure 1). This may be attributed to the fourth amendment to the *Trademark Law of the People's Republic of China* made at the 10th session of the Standing Committee of the 13th National People's Congress on April 23, 2019, which strengthened trademark administration, introduced a punitive compensation mechanism, and better protected exclusive trademark rights. In addition, the continuous popularization of the Trademark Law in recent years has enhanced people's awareness of the rule of law, leading to a consequent reduction in infringement and illegal incidents.

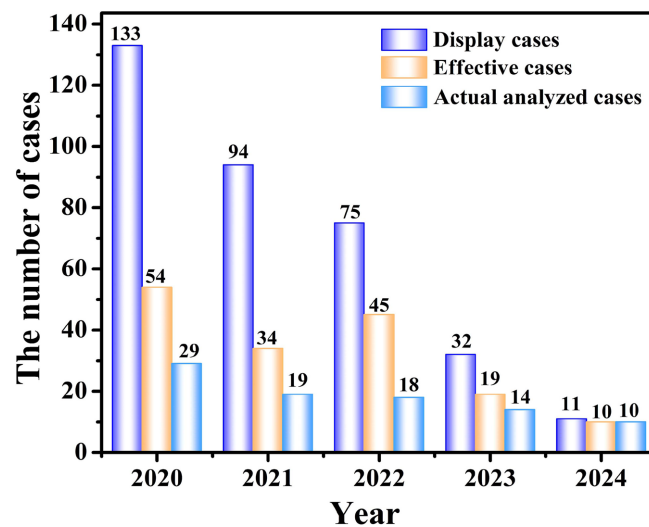


Figure 1. Trend in the number of trademark infringement protection cases of traditional Chinese medicine in the past five years.

However, there are still some enterprises and individuals who lack knowledge about what trademark infringement is, or whether they have infringed others' rights or been infringed themselves. Due to such ignorance, they fail to take ap-

appropriate measures, which may result in penalties and compensation or lead them to overlook the losses they have suffered.

2.2. Proportion of Case Types

Among the 90 sample cases, there are 75 civil cases, accounting for 83.33%; 2 criminal cases, accounting for 2.22%; and 13 administrative cases, accounting for 14.44% (Figure 2). From the data, civil cases of TCM trademark infringement protection are in the majority, followed by administrative cases, and criminal cases are the fewest. Trademark infringement mainly occurs between TCM enterprises or between enterprises and individuals, involving administrative subjects in a minority of cases. Those who violate the criminal law by using trademarks are even fewer. The two cases are (2023) Chuan 0303 Xingchu No. 164, where the defendant was convicted of false advertising, and (2023) Yu 08 Xingzhong No. 103, where the defendant was convicted of fraud, both involving multiple people committing the crimes together.

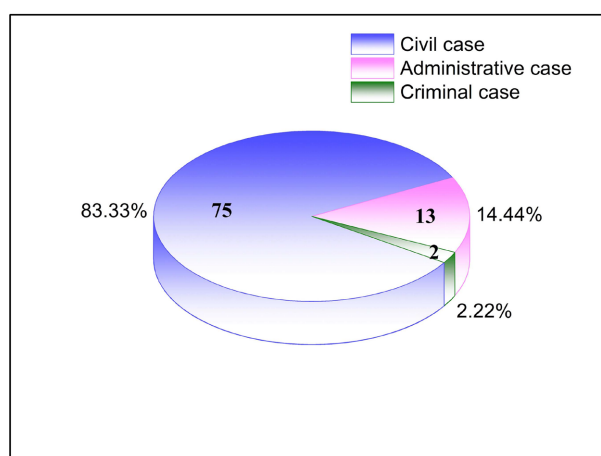


Figure 2. Proportion of case types.

Therefore, the author will focus on civil cases to study and analyze the status of TCM trademark protection, supplemented by administrative and criminal cases to explain the management of trademarks by administrative subjects.

2.3. Dispute Types

The types of disputes in civil cases mainly include trademark infringement disputes, unfair competition disputes, trademark ownership disputes, and trademark licensing contract disputes. Among them, trademark infringement disputes are the most common, with 58 cases, which is 4 to 58 times that of other types of disputes (Figure 3).

Administrative cases basically involve trademark administrative management. For example, the case (2021) Jing Xingzhong No. 1480 revolves around the revocation review of the disputed trademark “Tongtai Traditional Chinese Medicine”, and finally decides to revoke the decision and make a new decision on the revo-

cation of the trademark. Most cases are similar to this, where administrative subjects examine and manage a company's disputed trademark and make decisions such as revocation, review, and rejection.

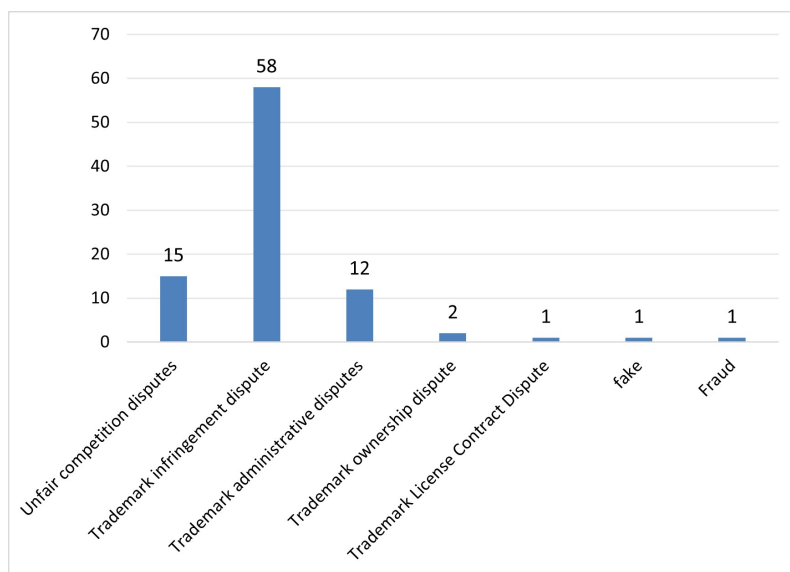


Figure 3. Specific types of disputes.

Criminal cases are relatively few. The two collected cases emerged in the past two years, from basic courts and intermediate courts respectively, convicting of false propaganda and fraud, both involving multiple offenders. It is indeed difficult for multiple people to commit crimes, and it is even more difficult to commit crimes using trademarks, which rely on influence and credibility, so there are few such cases.

2.4. Region

Analyzing from the regions where trademark infringement disputes of traditional Chinese medicine occur, Beijing, Guangdong, Shandong, and Yunnan are the four provinces with the largest number of cases (Figure 4). We speculate that this is because Beijing and Guangdong are located in relatively developed areas in China, as first-tier cities with more developed economies and more thorough intellectual property protection, thus seeing more disputes. In addition, Beijing and Guangzhou have special intellectual property courts with prominent advantages in professional talents, and their judgment standards in terms of trademark infringement are relatively higher. Shandong ranks second in the number of cases. From the perspective of dispute subjects, most of the trademark infringements involve time-honored brands² such as “Tongrentang”, “Derentang”, “Hongjitang”, or

²Time-Honored brands refer to a brand with a long history, which possesses products, techniques or services passed down from generation to generation, has a distinct traditional Chinese cultural background and profound cultural deposits, gains extensive social recognition and has formed a good reputation (Yu et al., 2025).

well-known trademarks like “Jiangzhong” and “Dong’e Ejiao”. Due to the principle of “the plaintiff follows the defendant”, the cases are ultimately tried in Shandong, resulting in a large number of cases there. The relatively large number of cases in Yunnan may be attributed to the fact that Yunnan Baiyao Group is based in Yunnan. Among the 7 collected cases in Yunnan Province, 6 are cases where Yunnan Baiyao Group accused the defendants of infringing on the exclusive right to use its No. 3635192 “Yunnan Baiyao” trademark. This, on the one hand, reflects that Yunnan Baiyao Group has a strong awareness of safeguarding its trademark rights; on the other hand, it also shows that many illegal enterprises attempt to ride on the coattails of the well-known trademark “Yunnan Baiyao” to obtain improper benefits.

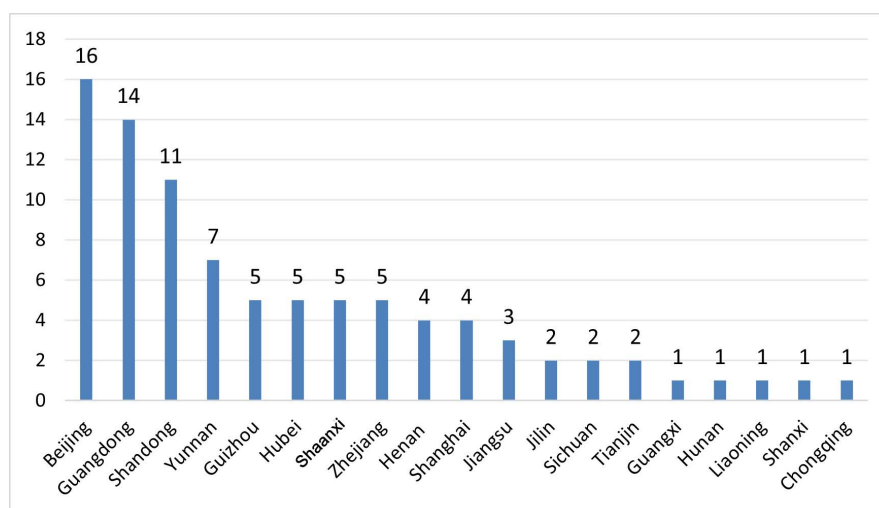


Figure 4. Statistical chart of regional distribution of cases.

2.5. Court Level

Analyzing 130 valid cases, there are 18 valid cases in higher courts, accounting for 20%; 42 valid cases in intermediate courts, accounting for 46.67%; and 30 valid cases in grassroots courts, accounting for 33.33% (Figure 5). Thus, the number of cases in grassroots courts is the largest, as cases are handled according to the court level, with first-instance cases basically in grassroots courts. Intermediate courts have fewer cases than basic courts but more than higher courts, indicating that many cases are not properly resolved in grassroots courts, and the first-instance judgment leads to at least one party being dissatisfied, and the case is resolved in the second instance by the intermediate court. Among the 18 cases collected from higher courts, 14 cases resulted in “appeal rejected, original judgment maintained”, indicating that most of the grassroots courts’ case judgments are relatively accurate in fact-finding and legal basis.

2.6. Litigation Subjects

From the perspective of litigation subjects, there are 57 litigation disputes between

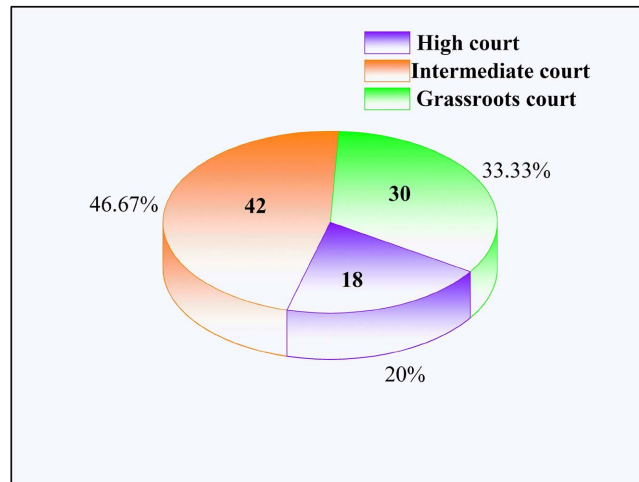


Figure 5. Chart of court levels for case trials.

companies in the sample cases, and 26 cases occur between more than two subjects, indicating that trademark infringement disputes involve a wide range of subjects, and there are often multiple infringing subjects for one trademark (**Figure 6**).

There are 10 litigation disputes between companies, natural persons and administrative subjects, where the administrative subjects specifically refer to the State Intellectual Property Office, mostly involving disputes over trademark management such as the revocation of disputed trademarks. However, in fact, there are relatively few successful cases in disputes between civil subjects and administrative subjects. Among the 10 cases collected by the author, 7 litigation claims were rejected.

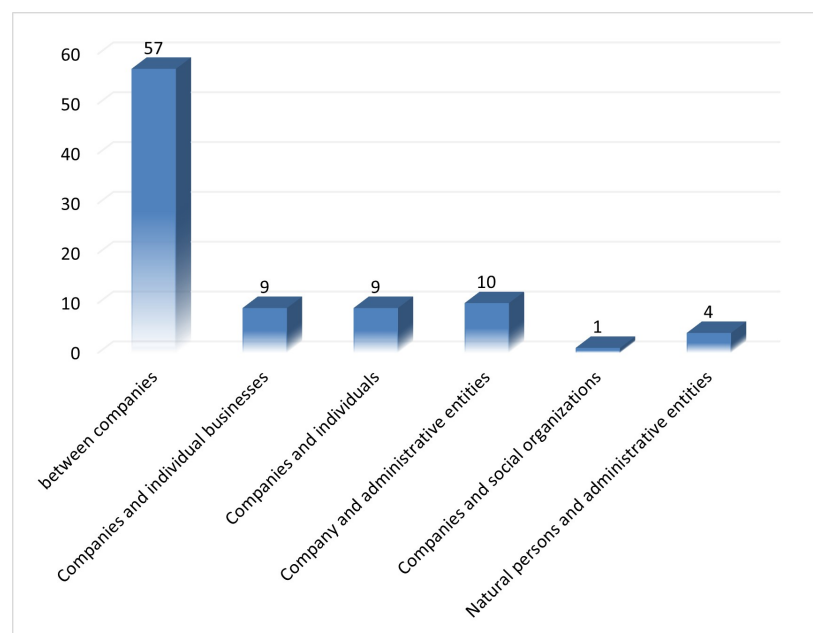


Figure 6. Distribution chart of litigation subjects.

Disputes between companies and individual businesses or natural persons are still the most common. The natural persons here are generally individual business owners or legal representatives of companies. Taking the case (2024) Yun 2302 Minchu No. 93 as an example, this is a trademark infringement dispute between Yunnan Baiyao Group Co., Ltd. and a tobacco boutique store, which actually resulted from the store selling non-genuine Yunnan Baiyao toothpaste. Most individual businesses operate in the form of stores with low registered capital. In order to reduce costs and increase profits, their purchase channels may be irregular. In addition, most operators have no awareness of trademark infringement and cannot distinguish whether goods are genuine, thus leading to “unexpected lawsuits”. As seen in the cases, many operators are unaware of infringement and do not pay attention to it, and simply handle it by not responding to the lawsuit or appearing in court.

2.7. Case Results

Among the 90 selected cases, the rulings for 75 civil cases mainly included: immediately ceasing acts of infringing on exclusive trademark rights; immediately stopping the production, promotion, and sale of goods that infringe on exclusive trademark rights; changing the enterprise name within a time limit, with the revised name prohibited from containing the infringing trademark; compensating for rights protection costs, reasonable expenses, and economic losses caused by the infringement; publishing a public apology to the plaintiff in a prominent position in relevant newspapers to eliminate the impact of the infringement; and dismissing other claims. In the 13 administrative cases collected, 9 resulted in “appeal dismissed, original judgment upheld,” while only 2 cases led to “revocation of the original administrative judgment, with the China National Intellectual Property Administration ordered to reissue a review decision.” There were only 2 criminal cases, both involving trademark-related fraud and false advertising. The rulings found the defendants guilty of fraud or false advertising, with illegal gains confiscated. Civil cases involving compensation amounts allow us to analyze the court’s level of support for trademark infringement cases.

According to the author’s collection, 65 cases clearly stated the claimant’s demands and the court’s actual compensation rulings. Analysis shows that the highest claimed compensation by right holders reached 5 million yuan, a critical threshold because Article 63 of China’s Trademark Law stipulates: “Where the actual losses suffered by the right holder due to the infringement, the benefits obtained by the infringer from the infringement, or the licensed use fee of the registered trademark are difficult to determine, the people’s court shall, based on the circumstances of the infringement, award compensation of not more than 5 million yuan.” In judicial practice, as described in the law, calculating actual losses and infringer benefits is often challenging. Thus, for both parties and judges, applying statutory compensation is the most efficient way to reduce litigation burdens and improve efficiency. As shown in **Figure 7**, there is a significant gap be-

tween claimed and actual compensation, with actual amounts generally lower than claimed. Among all sampled cases, only Case (2020) Yue 0111 Min Chu No. 10274 fully supported the claimant's compensation demand.

The highest compensation award appeared in Case (2023) Jing 73 Min Zhong No. 3190, a civil second-instance case concluded by the Beijing Intellectual Property Court in 2024. A company infringed the “Tongrentang” trademark, and the court upheld the first-instance judgment awarding 1.1 million yuan in economic losses and 10,000 yuan in reasonable expenses, totaling 1.11 million yuan—the highest in the sample. Conversely, Case (2024) Ji 0802 Min Chu No. 1605 awarded the lowest compensation at only 4000 yuan, showing a substantial disparity. Statistics indicate that among the 65 cases with compensation rulings, the average claimed amount was 523,400 yuan, while the average court-awarded amount was 90,600 yuan, accounting for only 17.3% of the claimed amount. From the perspective of compensation levels, statutory compensation tends to result in relatively low awards.

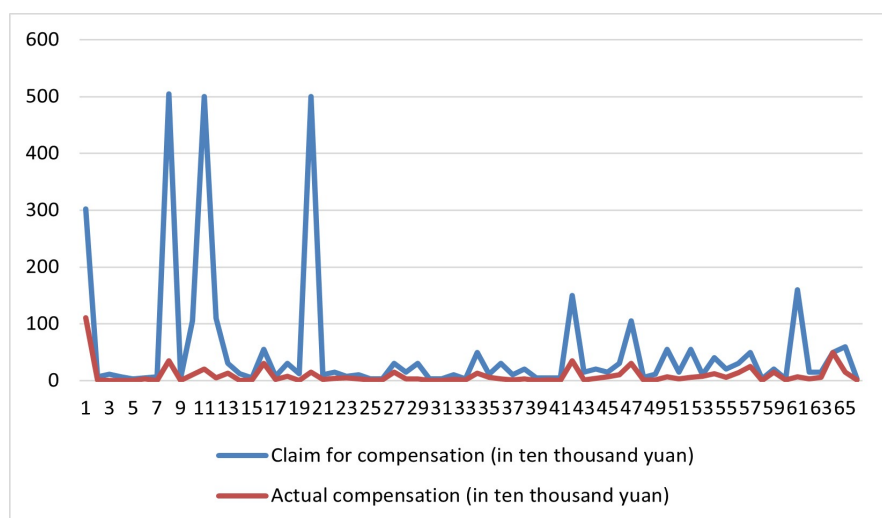


Figure 7. Comparison between claimed compensation and actual compensation.

Compensation standards typically depend on factors such as the reputation of the trademark involved, the infringer's subjective fault and attitude toward rectification, the business status of the parties, sales volume and price of infringing products, the consequences of the infringement, and reasonable expenses incurred by the right holder to stop the infringement. As observed, these standards are highly subjective, granting judges significant discretionary power.

3. Problems in Judicial Protection of Traditional Chinese Medicine (TCM) Trademarks

3.1. Time-Honored TCM Brands and Well-Known Trademarks as Primary Targets of Infringement

Among the 90 cases, repeated trademark infringements (occurring twice or more)

primarily targeted time-honored TCM brands and well-known trademarks. For example, “Yunnan Baiyao” appeared in 18 cases (Figure 8). Many TCM enterprises, struggling to establish market footholds due to late development and low brand recognition, attempt to include elements of well-known trademarks or time-honored brands in their enterprise names or trademarks to “ride on the fame” of others. Unscrupulous enterprises exploit the influence of infringed trademarks to attract consumers and boost sales. However, frequent “borrowing” of trademarks damages the credibility and brand influence of time-honored and well-known brands, hindering their sustainable development.

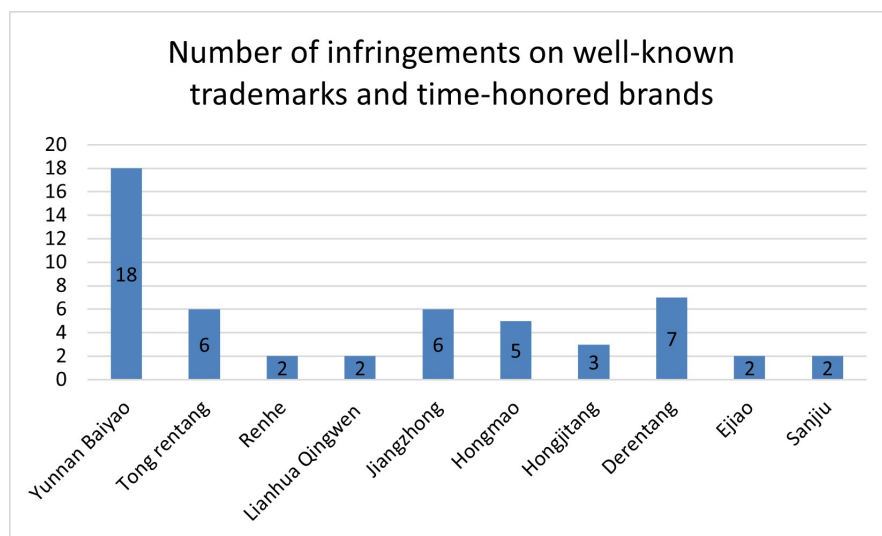


Figure 8. Statistics on infringement cases involving well-known trademarks and time-honored brands.

“The TCM industry heavily relies on brand value,” notes Song Xinyang, associate researcher at the Research Center for International Development of TCM, Shanghai University of Traditional Chinese Medicine. Well-known trademarks and time-honored brands possess unique brand value, especially time-honored TCM brands, which, after decades or centuries of development, have formed distinct business philosophies and carry unique commercial and cultural value. Among the public, these trademarks and time-honored brands have become synonymous with high quality.

3.2. Weak Awareness of Exclusive Trademark Rights among TCM Enterprises

Case analysis reveals that parties involved in trademark disputes include not only companies but also many individual business owners and natural persons operating small pharmacies, clinics, and food wholesale stores. Due to their weak legal awareness, these operators do not understand what exclusive trademark rights are, nor do they know whether their commodities are infringing. Faced with sudden lawsuits, they may choose not to appear in court, not cross-examine evidence, or

ignore the case entirely. As sellers, they are indifferent to trademark infringement issues, and legal popularization efforts rarely reach them. Beyond infringers with weak awareness, some right holders also lack awareness of their trademark rights. They may remain unaware of infringements, tolerate them, or struggle with high rights protection costs, disrupting the normal order of the TCM market.

3.3. Over-Reliance on Statutory Compensation, Low Payouts, and Unclear Standards

According to the author's statistics, courts primarily applied statutory compensation in almost all trademark infringement cases (except those with dismissed claims), rendering Article 63(1) of the Trademark Law ineffective: "Compensation for trademark infringement shall be based on the actual losses suffered by the right holder; where losses are difficult to determine, compensation may be based on the infringer's gains; where neither is determinable, reference may be made to a reasonable multiple of the trademark licensing fee." While calculating actual losses and gains is indeed challenging in practice, statutory compensation avoids the difficulties of evidence collection for right holders and complex calculations, saving time for both parties and judges. However, this has led to the marginalization of the legal provision.

In sampled cases, courts applying statutory compensation typically considered factors such as the trademark's reputation, the infringer's scale, location, infringement circumstances, local economic development, the nature and subjective fault of the infringement, the quantity and price of infringing products, and the plaintiff's reasonable expenses for stopping the infringement. These standards are highly subjective, relying heavily on judicial discretion, resulting in excessive judicial latitude. Case analysis also shows a significant gap between claimed and awarded compensation, with most actual payouts being low.

4. Paths for Judicial Protection of TCM Trademarks

4.1. Implementing Special Protection and Increasing Infringement Costs

To address the frequent infringement of time-honored TCM brands and well-known trademarks, the author proposes granting them special protection. Time-honored TCM brands carry profound Chinese historical culture and are "golden signs" of integrity. Having built public trust over decades or centuries, they are invaluable. Well-known trademarks, through enterprises' efforts in promotion, operation, and management, have gained market share and widespread recognition. Liu Ying, professor at the Civil, Commercial, and Economic Law School of China University of Political Science and Law, argues that managing and protecting time-honored enterprises is a critical niche in intellectual property. The calculation method of taking statutory compensation as the base for calculating compensation should be added. Clarifying the weight of factors such as subjective fault considered in multiples is conducive to the realization of the punitive compensa-

tion function (Xu & Ma, 2022). The author believes stricter protection for these trademarks, such as higher punitive damages is necessary.

4.2. Strengthening Legal Popularization and Encouraging Proactive Learning

To tackle weak awareness of trademark rights, legal popularization of the Trademark Law should be enhanced to guide operators and the public to proactively learn and abide by the law. In reality, many enterprise legal representatives and small operators, lacking a sense of responsibility as market participants, view law as irrelevant and neglect learning, leaving them helpless when disputes arise. Intellectual property authorities should fulfill their popularization duties, while legal professionals should conduct outreach activities. This ensures effective rights protection when interests are infringed.

4.3. Resolving “Compensation Determination Difficulties” and Addressing “Low Payouts”

Excessive reliance on statutory compensation, coupled with inconsistent standards, leads to generally low awards. In order to give full play to the institutional effectiveness of trademark punitive damages, it is necessary to clarify the institutional functions of statutory damages and punitive damages, and take statutory damages as one of the bases for punitive damages (Du, 2023). The author suggests adjusting judicial calculation methods for damages and optimizing the application of statutory compensation. Proposals include establishing specialized compensation assessment departments and a tiered determination mechanism, which would reference factors such as infringing product sales, trademark market value, and licensing fees without violating the intent of statutory compensation. A tiered mechanism would objectify standards, enhance targeting, and increase punitive damages to address low payouts. Ensuring that right holders receive reasonable compensation after arduous rights protection efforts will motivate continued vigilance, reduce infringements, and promote healthy development of TCM enterprises.

5. Conclusion

This paper conducts an empirical analysis of 90 judicial cases involving trademark infringement disputes in China’s traditional Chinese medicine (TCM) field over the past five years. It finds that well-known trademarks and time-honored brands in the TCM sector have become the main targets of infringement. TCM enterprises generally have weak awareness and capabilities in safeguarding their trademark rights. In judicial practice, the application of statutory compensation is quite common, and the amount of compensation awarded is relatively low. Therefore, it is suggested that a special protection mechanism be established for the distinctive TCM field, the infringement costs for infringers be increased, enterprises’ awareness and capabilities in rights protection be strengthened, the application of

statutory compensation be optimized, and the intensity of punitive damages be enhanced, so as to provide legal guarantees for the healthy development of TCM enterprises and the TCM sector.

Limitations

This study only selected 90 cases did not cover all cases from the judicial precedents of traditional Chinese medicine trademarks in the past five years as samples. In addition, there are relatively few cases published on China Judgments Online in the past three years. Therefore, there may be incompleteness in the selection of samples, so it cannot represent the latest national judicial trends and can only provide certain references.

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Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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