Trademark Infringement and Confusion: A Perspective Based on Consumer Cognition

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Abstract: In trademark infringement adjudication, similarity is assessed through two lenses: physical re-semblance and cognitive confusion, with legal validity hinging on consumer misidentification. Trademarks with inherent distinctiveness receive robust protection against parasitic imitation, while descriptive marks face stricter confusion thresholds. Industry-specific factors dynamically shape infringement risks: rapid purchasing decisions in FMCG sectors reduce scrutiny, whereas brand reliant industries amplify vulnerability to subtle similarities. Judicial practice balances trademark protection with market freedom, safeguarding consumers' cognitive stability against source misattribution while avoiding overprotection that stifles competition. This study proposes a dual framework integrating physical feature analysis and cognitive impact evaluation, reconciling consumer rights with market vitality. It advances a globally adaptable paradigm that harmonizes legal precision with economic pragmatism, ensuring trademark law evolves alongside commercial dynamics.

1 INTRODUCTION

In the framework of a market economy, trademarks function as core identifiers for en-terprises, distinguishing the sources of goods/services and embodying critical roles such as brand goodwill. Trademark law seeks to protect exclusive trademark rights when consumer confusion is likely, with its essence lying in preventing misperceptions about product/service origins. Article 57 of China's Trademark Law explicitly establishes "likeli-hood of confusion" as a pivotal criterion for adjudicating similarity-based infringement, thereby safeguarding market order (Manning et al, 2021). However, judicial determinations of "confusion likelihood" face multifaceted complexities. Heterogeneity in consumer cognition significantly impacts these assess-ments: studies demonstrate that consumer at-tention levels directly influence confusion judgments—higher attention reduces confu-sion susceptibility, whereas lower attention amplifies difficulties in distinguishing similar marks (Yang, 2020). Factors such as physical attributes (e.g., design, color), distinctiveness, fame, and industry-specific characteristics further shape consumers' cognitive acuity and discernment. For instance, in fast-moving consumer goods (FMCG) or catering

sectors, rapid purchasing decisions driven by personal preferences or pricing dilute trademark sali-ence, minimizing confusion risks. Converse-ly, in industries reliant on brand reputation (e.g., premium manufacturing), consumers are more vulnerable to contextual influences, often associating similar marks with estab-lished brands, leading to source misattribu-tion.

Cases A and B epitomize how these varia-bles drive divergent judicial outcomes. In Case A, the plaintiff, a leading catering brand, had entrenched its identity in consum-er perception. Despite the defendant's mark bearing high physical similarity, the court ruled against confusion, emphasizing service differentiation (Sichuan hotpot vs. Hunan riv-er cuisine) and consumers' ability to discern sources amid hurried dining decisions. In contrast, Case B centered on the liquor indus-try, where the plaintiff's "郎" (Lang) trade-mark, fortified by decades of fame, trans-cended its literal meaning. Although the de-fendant's mark "夜郎古酒" (Yelang Gujiu) only shared the core "郎" character, the court deemed this sufficient to trigger confusion, citing brand loyalty, historical legacy, and in-dustry-specific consumer habits that amplify sensitivity to subtle similarities. These cases, spanning distinct industries with unique deci-sion-making paradigms, offer archetypal in-

sights into how contextual cognitive dynam-ics shape judicial reasoning.

Against this backdrop, this study adopts a consumer-centric lens, conducting a compara-tive analysis of Cases A and B to systemati-cally unravel the mechanisms through which consumer cognition influences confusion de-terminations. By bridging theoretical frame-works with judicial practice, the research aims to fortify the precision of "confusion likelihood" assessments in trademark in-fringement cases, advancing the scientific ri-gor and fairness of adjudication in China's legal landscape.

2 LITERATURE REVIEW

In the realm of trademark infringement adjudication, the determination of "likelihood of confu-sion" holds pivotal significance, with jurisdictional approaches exhibiting broad convergence in practice despite nuanced divergences. The United States and the United Kingdom, as the ori-gins of confusion theory, have historically shaped foundational doctrines. The European Union (EU) and Japan, meanwhile, adopt distinct standards: the EU integrates similarity and confu-sion likelihood as dual criteria, while Japan employs hybrid standards blending similarity thresholds with confusion assessments. China, adhering to an eclectic approach, has developed a nuanced adjudication framework tailored to its judicial practice, balancing global principles with local market realities (Yang, 2024).

Notably, theoretical advancements and empirical refinements have driven a global shift to-ward the U.S.-styled multi-factor test methodology. This approach synthesizes variables such as trade-mark distinctiveness, consumer attention levels, defendant intent, and industry-specific practices, offering a dynamic and context-sensitive tool for evaluating confusion risks. Such convergence reflects a broader trend toward harmonizing legal standards in an increasingly in-terconnected commercial ecosystem, while preserving jurisdictional flexibility to address local-ized market dynamics. For instance, Chinese restaurants across the United States adopt names such as Jinlong (Golden Dragon) or Hunan Garden not to distinguish their services or inten-tionally mislead consumers about the origin of goods, but to signal that their offerings align with American diners' familiarity with specific regional cuisines (Hemel and Ouellette, 2021). By integrating these considerations, the methodology enables a more comprehensive and flexi-ble assessment of the likelihood of confusion, thereby ensuring that trademark infringement de-terminations adhere to scientific rigor and judicial fairness. This nuanced analysis prevents overreach in trademark protection while preserving market diversity and consumer autonomy.

Drawing from the cognitive element deconstruction paradigm, Yao Hehui distinguishes be-tween physical similarity and cognitive confusion, proposing a "precondition-outcome" separa-tion of legal elements. He systematically analyzes the relationship between the likelihood of confusion, trade-mark similarity, and product/service relatedness, arguing that these should be treated as independent criteria: similarity serves as a precondition for confusion, while confu-sion itself constitutes the ultimate basis for establishing infringement (Yao, 2015). This per-spective challenges the traditional "confusing similarity" standard, which retroactively inter-prets similarity through the lens of confusion, thereby falling into circular reasoning. Yao's framework provides theoretical grounds for rejecting the presumption of confusion based solely on similarity. However, his work fails to systematically construct the logical pathway linking consumer cognitive biases to the legal requirements for confusion, leaving a theoretical gap for this study to address.

From the normative teleology perspective, Yin Shaoping employs a systematic interpretation method to argue that the core function of the confusion doctrine lies in preserving trademark distinctiveness rather than merely preventing actual consumer confusion. His research breaks from the traditional "consumer contact" requirement, demonstrating the independence of trademark use in foreign original equipment manufacturing (OEM) cases. Yin asserts that the scope of trademark exclusion rights should hinge on the degree of symbolic similarity itself (Yin, 2024). While this shifts the confusion analysis from outcome-based judgments to behav-ior-centric regulation, it inadequately explains the mediating role of consumer cognition in real-izing trademark functions, thereby limiting its explanatory power.

Under the systematic thinking framework, Wei Jialin and Zhu Dong construct a "presump-tion-rebuttal" dual structure, advocating for a rebuttable presumption of confusion in "dual-sameness" infringement cases while broadening the definition of confusion (Wei and Zhu, 2020). However, their study primarily focuses on using consumer cognition as a final standard to overturn infringment claims, neglecting an in-depth exploration of how consumer cognitive factors (e.g., attention levels, decision-making contexts) actively shape confusion determina-tions. This oversight leaves unresolved

questions about the interplay between cognitive dynam-ics and judicial reasoning in trademark disputes.

3 CASE COMPARISON: DIVERGENT LOGICS IN TRADEMARK SIMILARITY ASSESSMENTS

3.1 Separation and Integration of Physical Similarity and Cognitive Confusion

In Case A, the court focused on the physical attributes of the trademarks (e.g., glyph structure, pronunciation, composition, and color), acknowledging that while "河底捞" (Hedi Lao) and "海底捞" (Haidilao) share the characters "底捞" (Di Lao), the glyphs of "河" (He, river) and "海" (Hai, sea) differ markedly. For instance, the "河" character incorporates a three-dot water rad-ical stylized as flowing waves, whereas "海" employs a bold, square calligraphic font. The pronunciations also diverge across dialects and Mandarin. Furthermore, the parties operated in distinct market segments (Sichuan hotpot vs. Hunan river cuisine), leading the court to con-clude that physical similarity alone was insufficient to trigger consumer confusion (China Judgments Online, 2019). This ruling underscores the separation between physical similarity and cognitive confusion, positing that physical resemblance serves merely as a precondition for assessing confusion likelihood, while infringement determinations ultimately require a holistic evaluation of consumer cognition.

In contrast, Case B similarly examined physical attributes (e.g., the shared "郎" character in "夜郎古酒" (Yelang Gujiu) and the plaintiff's "郎" (Lang) trademark). However, the court pri-oritized cognitive confusion's erosion of trademark functionality. The plaintiff's "郎" mark, through decades of use, had acquired exceptional fame, with its distinctiveness transcending the generic meaning of the character. Although the defendant argued that "夜郎" referenced a historical region, the court emphasized that in the liquor industry, consumers exhibit strong brand cognitive inertia and adhere to industry-specific conventions. These factors predisposed consumers to associate "郎" with the plaintiff's iconic brand, conflating "夜郎古酒" (ancient liquor

from Yelang) with "郎酒" (Langjiu), thereby blurring source identification (IPHouse, 2024). This decision transcends a narrow focus on physical similarity, instead integrating trademark distinctiveness, industry practices, and consumer cognitive habits to assess confu-sion risks. The court concluded that the defendant's mark, by leveraging the plaintiff's fame and exploiting cognitive associations, lost its normative ability to distinguish sources, constitut-ing parasitic exploitation of a highly renowned trademark.

This juxtaposition illustrates how judicial reasoning evolves from isolated physical compari-sons (Case A) to multidimensional cognitive analyses (Case B), reflecting trademark law's adaptive response to market realities and consumer psychology.

3.2 Variable Weight of Distinctiveness and Fame

Both cases involved evaluations of trademark distinctiveness and fame, yet assigned differen-tial weights to these factors. In the Hedi Lao case, while "海底捞" (Haidilao) was recognized as a well-known brand, the court emphasized that the defendant's mark "河底捞" (Hedi Lao) employed differentiated design elements (e.g., stylized fonts and a Hunan cuisine positioning) to diminish its association with the plaintiff's trademark. Consumers were deemed capable of distinguishing the sources based on the overall commercial impression, thereby negating con-fusion risks (China Judgments Online, 2019). Conversely, in the Yelang Gujiu case, the plain-tiff's "郎" (Lang) trademark had achieved such exceptional renown that its distinctiveness transcended the character's literal meaning. Despite the defendant's addition of "夜" (Ye) and "古" (Gu, old), the court ruled that the "郎" character remained the core identifying element, in-ducing consumer cognitive bias through its entrenched association with the plaintiff's brand (IPHouse, 2024).

In summary, when a trademark exhibits heightened distinctiveness, courts are inclined to presume a likelihood of confusion unless the defendant demonstrates that consumers have es-tablished clear distinctions in perception. This judicial tendency underscores the interplay be-tween trademark strength and evidentiary burdens in infringement disputes, reflecting a doctri-nal prioritization of protecting iconic marks from parasitic exploitation.

4 CASE COMPARISON: JUDICIAL STANDARDS FOR CONSUMER COGNITIVE BIAS

4.1 Context-Dependent Industry Influences

The courts in both cases adopted divergent presumptions regarding consumer attention. In Case A, the catering industry's mass-market nature—where consumers prioritize non-trademark fac-tors like taste and price—led the court to conclude that the general public could avoid confu-sion through product distinctions (e.g., Sichuan hotpot vs. Hunan river cuisine). This reflects an assumption of low trademark sensitivity in industries with rapid, low-involvement purchas-ing decisions. By contrast, Case B involved the liquor sector, characterized by high brand de-pendency and prolonged consumer decision-making cycles. Here, consumers exhibit height-ened sensitivity to trademarks, particularly for iconic brands like "郎酒" (Langjiu). Even minor similarities (e.g., the "郎" character in "夜郎古酒") were deemed sufficient to trigger source misidentification, given the industry's reliance on brand loyalty and historical associations.

This context-dependent nature of consumer cognition underscores how industry-specific at-tributes—such as purchasing behavior, product homogeneity, and brand centrality—profoundly shape confusion likelihood. Consequently, judicial assessments of confusion must integrate product-specific characteristics and consumption habits to align legal standards with market re-alities. The rulings thus highlight trademark law's adaptive capacity to calibrate protection lev-els based on the interplay between cognitive dynamics and industry ecosystems.

4.2 Judicial Adoption of Actual Confusion Evidence

In Case B, the court explicitly cited "existing instances of confusion among media and the pub-lic" as a basis for its ruling, underscoring the critical role of actual confusion evidence in rein-forcing the presumption of a "likelihood of confusion" (IPHouse, 2024). Conversely, Case A relied predominantly on logical inferences (e.g., differences in font and color) without referenc-ing concrete instances of confusion. This reveals judicial flexibility in applying actual confu-sion evidence: when a trademark possesses exceptional distinctiveness, courts may infer con-fusion risks through industry expertise and cognitive principles, even absent direct evidence; conversely,

defendants may rebut such presumptions by demonstrating actual market differen-tiation.

Collectively, the divergent rulings reflect trademark law's dynamic recalibration of protec-tion priorities. In the catering industry (Case A), characterized by low entry barriers, diverse business models, and fragmented market competition, the malleability of confusion likelihood renders it a versatile doctrinal tool. Trademark owners may invoke it broadly, prompting courts to prioritize market competition freedom over expansive trademark rights (Trademark Injury in Law and Fact: A Standing Defense to Modern Infringement, 2021). Judicial restraint here em-phasizes that "consumer cognition must be assessed within the holistic commercial context", preventing overprotection from stifling innovation among small and medium-sized enterprises (SMEs) and distorting market dynamics (China Judgments Online, 2019).

In contrast, the liquor industry (Case B) demands prolonged brand-building cycles, with consumer loyalty and brand goodwill serving as core corporate assets. The plaintiff's "郎" (Lang) trademark, cultivated over decades, had achieved unparalleled recognition. The court prioritized safeguarding established reputational order, preventing parasitic exploitation of highly distinctive marks. Given the sector's product homogeneity and consumer reliance on brand identity, even minor reputational harm to iconic trademarks risks misleading consumers and destabilizing market order.

This dichotomy illustrates the interplay between trademark functionality and consumer cog-nition. Trademark law does not prohibit all similar uses but targets behaviors that disrupt the stable link-age between a mark and its source in consumers' minds. The legal framework thus seeks to externally differentiate trademarks without inducing internal cognitive biases, balanc-ing protection against market vitality. By tailoring standards to industry-specific realities—whether fostering competition in fragmented markets or preserving reputational integrity in brand-centric sectors—courts ensure that trademark law adapts to evolving commercial land-scapes while upholding its core mission of consumer protection and fair competition.

5 CONCLUSION

This study employs a comparative analysis of Case A (catering industry) and Case B (liquor industry) to elucidate the dynamic and context-dependent nature of consumer cognition in trademark infringement adjudication. The findings reveal that the divergence in rulings funda-mentally stems from structural

differences in industry ecosystems shaping the root causes of consumer confusion. In the catering sector—marked by decentralized competition—judicial emphasis shifts toward safeguarding market innovation (e.g., Case A's reliance on "holistic commercial environment assessment" to curb trademark overreach). Conversely, the liquor industry's brand concentration and reputational dependency compel stronger protection of trade-mark distinctiveness (e.g., Case B's incorporation of "historical brand goodwill" and "consum-er cognitive inertia").

The research constructs a three-dimensional analytical framework—"physical similarity, industry attributes, consumer cognition"—confirming consumer cognition as the pivotal variable linking trademark functionality (distinctiveness, goodwill) to market dynamics (innovation freedom, order maintenance). In low-barrier, hyper-competitive industries, consumer cognition exhibits "high-frequency, low-involvement" traits, necessitating trademark protection thresh-olds calibrated to "competition tolerance." In contrast, high-reputation-dependent sectors mani-fest "low-frequency, high-reliance" cognitive patterns, demanding "goodwill gradient scrutiny" mechanisms. This discovery challenges the static homogeneity assumptions of traditional con-fusion theory, providing a theoretical foundation for differentiated trademark law application.

However, the study acknowledges two key limitations. First, its case samples are confined to catering and liquor industries, omitting technology-intensive and cultural-creative sectors, thereby limiting cross-industry generalizability. Second, the analysis of consumer cognition re-lies on judicial text interpretation, lacking empirical cognitive science data. Future research should focus on: Systematically developing dynamic adjudication standards that refine con-sumer cognition evaluation metrics (e.g., attention levels, decision-making contexts, brand dependency); Quantifying trademark perception pathways across industries through empirical studies; Establishing a national "Trademark Confusion Case Database" integrating industry da-ta, consumer surveys, and judicial precedents; Designing AI-driven adjudication assistance systems to enhance consistency and efficiency.

These advancements will propel the refinement of trademark law, balancing intellectual property protection with market vitality, while offering a "Chinese paradigm" for the global transformation of trademark legal systems toward context-aware adaptability.

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