

Legal Positioning and Optimization of Trademark Coexistence Agreements in China

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Abstract. Amidst the flourishing development of Chinese market economy, trademark coexistence agreements have emerged as a potentially valuable means for market entities to resolve trademark registration conflicts and prevent infringement. However, these agreements struggle to gain stable and effective recognition within Chinese trademark law environment. Notably, they face two major issues: first, courts sometimes exhibit logical deficiencies when adjudicating related cases; second, the agreements themselves are often too simplistic in content to serve their intended purpose of mitigating confusion. Nevertheless, based on the legislative purpose of the Trademark Law, there is sufficient ground to recognize coexistence agreements on the premise of trademark coexistence. Based on the key points in Chinese judicial decisions concerning such cases, as well as legislative and judicial practices related to trademark coexistence agreements in other jurisdictions, Chinese courts should adopt a consumer-oriented perspective and thoroughly assess potential scenarios in which conflicting trademarks may cause confusion. Furthermore, it is necessary to refine the criteria and considerations used in reviewing coexistence agreements. Besides, when drafting these agreements, parties should proactively address applicable review factors by stipulating specific and reasonable preventive measures while clearly restricting how both parties may use their respective trademarks, thereby reducing the likelihood of confusion between conflicting trademarks.

Keywords: Coexistence Agreement; Trademark Coexistence; Likelihood of Confusion.

1. Introduction

Trademark coexistence refers to the situation where two or more conflicting trademarks, owned by different entities, legally coexist within the same jurisdiction for certain reasons [1]. While trademark coexistence takes various forms, achieving coexistence through mutual agreement represents a significant category. Coinciding with the rapid increase in trademark applications in China, the number of rejected applications has also grown. Consequently, an increasing number of applicants, after receiving rejection notices, choose to submit a "Trademark Coexistence Consent Letter" or a "Trademark Coexistence Agreement" in the reexamination and court proceedings. In practice, this terminology often broadly encompasses not only bilateral agreements, but also unilateral consent letters or declarations issued by the owner of the cited trademark.

Since China lacks a formal trademark coexistence agreement filing system, these documents are generally not accessible to the public, although their existence and nature can sometimes be inferred from civil judgments. Available evidence suggests that the content of these agreements is often rudimentary, merely stating that the cited trademark owner does not object to or consents to the disputed trademark application. Critically, they rarely provide detailed reasoning as to why there is no likelihood of confusion or specify concrete measures undertaken to avoid public confusion [2]. As a result, such simple coexistence agreements primarily function as a limitation or disposition of the cited trademark owner's rights, reflecting private autonomy, but they offer little substantial support for the disputed trademark to gain registration approval. This results in a disconnect: When a rejected applicant (owner of the disputed trademark) sought to sign an agreement with the owner of the cited trademark, intending to achieve legal trademark coexistence. However, the vague legal positioning

of the agreement and the limited practical effect differ significantly from the outcome the parties usually intend.

In contrast to trademark coexistence, trademarks are generally allowed to be freely transferred in China. To be more specific, once a trademark transfer contract is validly executed and effective, and is not attributed to the restrictions stipulated in the Trademark Law, it can achieve the intended legal effects. However, regarding trademark coexistence, relevant authorities adhere to a principle of limited recognition, ultimately applying the "likelihood of confusion" standard derived from Article 30 of the Trademark Law as the decisive criterion. Coexistence agreements are merely considered as contributory factors and does not have a decisive effect [3]. Consequently, different trademark examination authorities often reach inconsistent conclusions regarding trademark coexistence, and even the same authority may reach different conclusions in similar cases. Given that the assessment of Likelihood of Confusion is complex and multi-faceted, lacking explicit legal provisions and standards, whether a coexistence agreement can be accepted remains highly uncertain. Furthermore, past agreements have not been disclosed for public review, leaving the owner of disputed trademark and cited trademark with limited guidance. As a result, these agreements rarely include appropriate provisions to reduce confusion, which are not convincing.

In summary, the uncertain standards of admissibility of trademark coexistence agreements hinder the parties from making predictable business arrangements related to brand strategy and market competition. Therefore, there is a compelling need to design a standardized and replicable template for them to refer. This template should establish clear requirements for the parties involved, aiming to forge a stable path towards "achieving legal trademark coexistence". Developing such a framework also provide inspiration for examination authorities to further clarify and refine the standards in the future.

2. Current Status and Issues of Trademark Coexistence Agreements in China

Trademark coexistence agreements often arise in the context of trademark examination and authorization cases. Depending on the procedural stage, they are generally categorized into the administrative review phase (usually trademark reconsideration) and the judicial review by the courts. In the administrative review phase, the Trademark Office of CNIPA tends to prioritize effective trademark administration and the protection of consumer rights, while maintaining a relatively conservative or even denial stance toward coexistence agreements that reflect private autonomy. However, in the judicial review, the submission of trademark coexistence agreements most commonly occurs in trademark review cases following rejection. In contrast, opposition and invalidation proceedings are initiated by the owner of the cited trademark or interested parties. At that stage, if the applicant of the disputed trademark attempts to seek coexistence, it often runs counter to the original intent of the owner of the cited trademark, and such scenarios are relatively rare in practice. Although Chinese courts have developed a relatively mature judicial approach in handling these cases, the current framework still exhibits notable shortcomings, which will be looked at in the next sections.

2.1. Current Status of Trademark Coexistence Agreements in China

An analysis of recent judicial practice over coexistence agreements reported a stark trend. For example, the review of cases of 2023 and 2024 netted 45 decisions on coexistence agreements applications, strikingly without any supporting the registration of the disputed trademark on the premise that the submitted coexistence agreement removes likelihood of confusion. As for 2022, out of 217 relevant retrieved cases, only 41 judgments (approximately 18.9%) supported coexistence agreements by which to allow the registration of disputed trademarks. Data of 2021 provided 73 such instances out of 279 total cases, which forms a slightly higher percentage of the acceptance. Based on the above data, it can be observed that since 2021, the number of cases involving trademark coexistence agreements has been decreasing year by year, with a more pronounced decline in the number of cases where such agreements were upheld. Since 2023, there have been no instances in

which the courts have permitted the registration of a disputed trademark on the basis of a supported coexistence agreement. These trends are shown in Figure 1.

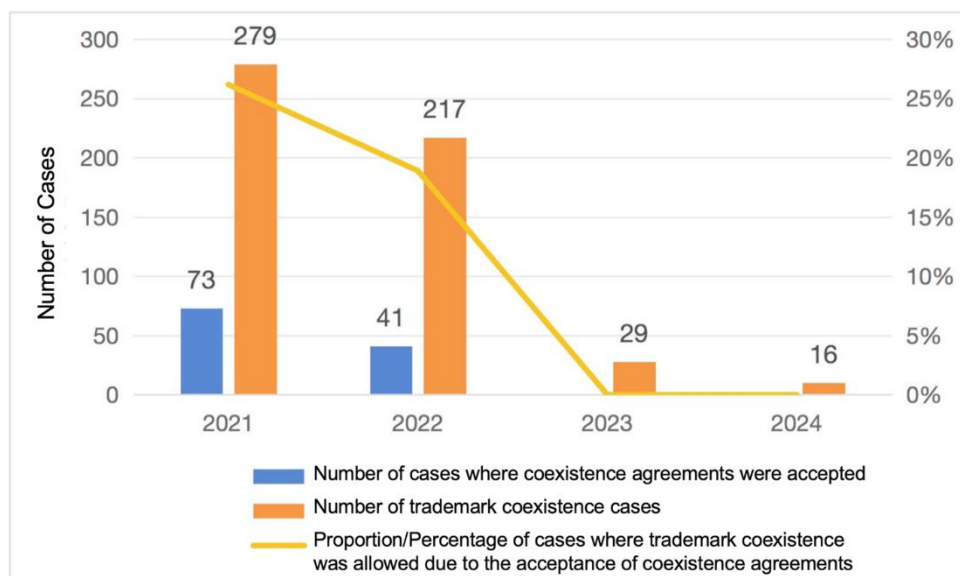


Figure 1. Number of trademark coexistence agreement cases and cases where agreements were supported (2021-2024).

From the analysis of the reasoning used in those adjudications, several points of judicial consensus regarding the treatment of coexistence agreements can be identified:

First, courts consistently hold that a coexistence agreement does not automatically negate a finding of likelihood of confusion. Such agreements should be considered fundamentally premised on ensuring that coexistence will not harm the interests of the relevant public [5].

Secondly, generally, if the disputed trademark is identical or very high in degree of similarity with the cited trademark, especially when used on identical or like goods or services, the coexistence agreement is usually considered not capable of removing the likelihood of confusion.

Third, if on the contrary, the disputed trademark is just similar to the cited trademark and the degree of their similarity is not deemed very high, courts may consider the coexistence agreement as potentially strong evidence against the likelihood of confusion. But, In the past two years, the examination of trademark coexistence has become increasingly stringent. In the appellate review of the case between the China National Intellectual Property Administration and Suning.com, the court held that certain cited trademarks and the disputed trademark were essentially identical, and consequently overturned the first-instance court’s acceptance of the "Letter of Consent" [6].

2.2. Issues with Trademark Coexistence Agreements in China

Significant issues hinder the practical application of coexistence agreements in China, stemming primarily from two interconnected problems. First, a majority of coexistence agreements submitted to authorities are not accepted as sufficient grounds to permit the registration or continued use of the disputed trademarks. Second, the agreement, although admissible, did not play a substantive role in securing coexistence for the parties.

A significant part of the problem appears rooted in certain inadequacies within the courts' prevailing adjudication approach. The court stated that a coexistence agreement can only be taken into consideration if there is no evidence showing that trademark coexistence would harm the public interest. In such cases, the agreement may serve to eliminate the likelihood of confusion. However, it remains unclear to what extent coexistence must be shown not to harm the public interest, and how such “evidence” can be obtained when the disputed trademark has not yet been put into actual use.

The main legal base for courts' refusal lies in Article 30 of the Trademark Law, which prohibits marks' registration if they are identical or similar to marks for the same or similar goods [7]. Judicial interpretations at times express some degree of flexibility, from which it may be concluded that the relatively low degree of similarity between the disputed mark and the cited mark, and the limited likelihood that their coexistence on identical or similar services would cause public confusion. Taken together, these considerations reflect the court's application of the "likelihood of confusion" standard. Notably, the court engaged in a form of circular reasoning in its assessment of the marks, both prior to and after evaluating the coexistence agreement. That is, the threshold for determining whether confusion existed remained unchanged regardless of the presence of the agreement. Consequently, the coexistence agreement was deemed to have made no substantive contribution to eliminating the likelihood of confusion.

Under the current judicial approach, the coexistence agreements that are permitted remain extremely limited. The courts hold that such agreements may only be admitted when there are sufficient objective differences to allow the relevant public to distinguish them independent of any agreement, thereby eliminating the likelihood of confusion based on the marks' inherent characteristics alone. Yet, this fundamentally contradicts the typical impetus for seeking such agreements. Parties usually resort to coexistence agreements precisely because the relevant trademark authority has already identified a potential confusing similarity sufficient to warrant rejection. If there were truly no likelihood of confusion between the marks in the first place, they could legally coexist without any formal agreement being necessary. Therefore, the situations most urgently requiring effective coexistence mechanisms involve genuinely similar trademarks used by different entities on related goods/services. Correspondingly, the agreements most needed are those specifically designed to mitigate the risks associated with this similarity and counteract the negative impact of potential "confusion" on registration or use.

Currently, however, the judicial focus in coexistence cases often remains centered on the threshold analysis of mark and good similarity, frequently sidelining or minimizing the significance of the coexistence agreement furnished by the parties. Meanwhile, the superficial content of the agreements themselves limits their persuasive force. As the U.S. Court of Customs and Patent Appeals famously noted in the DuPont case, a "naked consent", which is devoid of specific undertakings to avoid confusion, is often meaningless, potentially stemming from ignorance or misunderstanding of the law and failing to adequately protect the public interest [8]. Echoing this sentiment, this article agrees that an agreement that merely identifies the trademarks and records mutual consent is insufficient on its own either to reduce potential harm to public interests or to genuinely eliminate the likelihood of confusion [9].

3. The legal positioning and requirements for trademark coexistence agreements in China

The overall orientation of a nation's trademark law's legislative purpose largely determines the legal treatment of trademark coexistence. Different legislative priorities not only affect the fundamental attitude of trademark law towards coexistence but also shape the specific design of any related regulatory system [1]. Consequently, whether coexistence agreements submitted by parties can be admitted hinges significantly on how the legislative purpose of the Chinese Trademark Law is interpreted and applied.

Broadly, the value objectives of the Trademark Law can be seen in two major aspects: protecting consumer interests and protecting the interests of the trademark owners. These objectives appear compatible in the fight against counterfeiting and imitation. However, a conflict emerges in other areas. Consumers and businesses belong to different market constituencies and, at times, their interests may conflict, especially on issues to do with similar trademarks [10]. This conflict forms the basis of the legal approach towards coexistence agreements.

- A value model focusing on private rights would support the independent disposition and self-control of the rights of the owners in trademark, thereby leading to a greater tendency to accept coexistence agreements as workable solutions.
- On the contrary, a consumer interest-based model requires that the probability of confusion be brought down at any cost, which results in a very stringent standard under which very few coexistence agreements may be allowed.
- In addition, there is also an approach that seeks to balance two competing values and achieve mutual benefit, which requires the owners of trademark to exercise limited disposition of their lawful rights while striving to safeguard consumer interests to the greatest extent possible.

3.1. Legal Positioning of Trademark Coexistence Agreements in China

Trademark coexistence often emerges organically as a product of economic development. Driven by operational needs and self-interest, many manufacturers may consent to another entity registering a trademark similar to their own. However, the fundamental function of a trademark is to serve as a unique identifier distinguishing a single source of goods or services. Unlike certain property rights, trademark rights are generally exclusive and cannot easily be shared without risking dilution or confusion. Under coexistence, due to variations in quality of products or services between the parties, potential for free-riding by one party on the other's reputation may occur. Consequently, allowing conflicting trademarks to legally coexist can impose burdens on consumers by increasing search costs and the risk of misidentification.

This paper maintains that, though with challenges, Trademark Law shall adjust to the forces of the market, recognize the objective fact of trademark coexistence, and set a framework for its approval under proper conditions. It has to be understood that in a market environment, it becomes impracticable to eliminate all forms of trademark coexistence. Besides, the relevant public has built a capacity to differentiate between the same kind of trademarks following repeated use over some time. Inevitable oversights in the trademark examination process often allow conflicting trademarks to slip through and coexist in practice [1]. Hence, it can be said that trademark coexistence is not only common, but also unavoidable.

3.1.1. Recognition of Trademark Coexistence Agreements.

Given the inevitability of coexistence, it follows that agreements facilitating such arrangements warrant legal recognition, provided certain conditions are met. To adapt to the needs of the market economy, particularly within the context of Chinese economic transformation, the administration of Trademark Law should reduce its purely administrative oversight role and enhance its function as a service to market participants. Adjudicators and examiners should strive to assess potential confusion from the perspective of a reasonably prudent consumer, rather than depending on their own judgment entirely [11]. Simultaneously, the Trademark Law shall continue to ensure interests of relevant public, primarily those of consumers and competitors. Therefore, it shall aim to coordinate the relationship between the private interests of trademark owners and broader public interests, allowing both to be appropriately addressed [12].

When considering the balance of interests, the potential harm to the owner's interests of cited trademark resulting from the registration and use of the disputed trademark is more direct and certain than the potential (and often speculative) harm to consumer interests. Therefore, it is arguably inappropriate to categorically deny the right of cited trademark owners to dispose of or limit their own legitimate rights simply by invoking generalized concerns about potential "harm to consumer interests" [13]. Notably, the Beijing Intellectual Property Court observed in the "The Voice" case that if the owner of the cited trademark agrees to coexist with the disputed trademark, it generally implies a waiver of the legal protection otherwise afforded to their market interests and reputation, or a tolerance of the bad faith conduct of the disputed trademark applicant. Therefore, the Court suggested such private arrangements are generally admissible [4].

Therefore, even though trademark coexistence inherently implies a likelihood of confusion (and that the agreement itself can be seen as evidence of this potential) the Court still has sufficient grounds to recognize the validity of a coexistence agreement under conditions that permit trademark coexistence. This does not conflict with the legislative purpose of the Trademark Law. On the contrary, affirming the legal status of coexistence agreements aligns with the principles of a market-oriented economy and helps reduce uncertainty for trademark owners when exercising their rights. Potential disadvantages to consumers can still be mitigated through careful scrutiny and reasonable regulation of the content of coexistence agreements, as discussed later.

3.1.2. Mitigating Confusion Through Coexistence Agreements.

Effective coexistence agreements should be designed to proactively minimize the problems potentially caused by coexistence. As discussed previously, a potential flaw in the current judicial approach lies in potentially internalizing the likelihood of confusion assessment entirely within the similarity analysis. Strictly applying such a standard leaves little room for genuinely similar but potentially distinguishable trademarks to coexist, regardless of private agreements. To move beyond this potential circular reasoning dilemma, the two-step infringement analysis framework—assessing similarity first, then separately assessing the actual likelihood of confusion in the marketplace—offers a valuable analogy. Applying this logic to coexistence:

- Acknowledge the similarity between the trademarks and/or goods/services.
- Then, evaluate whether, despite the similarity, the actual likelihood of confusion can be sufficiently minimized through specific arrangements documented in the coexistence agreement.

Crucially, trademark law can, and arguably should, require parties seeking coexistence for similar trademarks to implement and commit to concrete measures that actively reduce the likelihood of confusion. This is viable because actual trademark use profoundly impacts consumer perception over time. Even trademarks that might initially present a likelihood of confusion can, through distinct usage patterns and targeted measures, gradually become distinguishable in the minds of consumers. Although the objective similarity may persist, consumer perception is malleable. While a basic coexistence agreement might not alter the conflict at the moment of signing, a well-crafted, substantive agreement containing specific commitments, when performed over time, can—in conjunction with other market factors—effectively prevent consumer confusion and achieve genuine source differentiation. Thus, potential harm to consumer interests can be managed and controlled through robust agreement design and execution.

3.2. Basic Requirements for Effective Trademark Coexistence Agreements

Fundamentally, a trademark coexistence agreement is a contract, representing the parties' mutual intent regarding their respective rights and obligations concerning potentially conflicting trademarks. Trademark rights, as a form of civil property right, can generally be disposed of by the owner's will. The coexistence agreement embodies a transaction where the cited trademark owner agrees to "tolerate" (often in exchange for consideration) the applicant's registration or use of an identical or similar trademark on related goods or services. Therefore, such agreements are inherently subject to contract law principles.

Therefore, a coexistence agreement naturally subjects to the Contract Law, and the Court should examine whether it meets the general requirements for the formation and validity of a contract. These usually include:

- Capacity: The people must be individuals, groups, or other bodies with full civil capacity.
- True Intent: The deal must be based on the real, not forced expression of intent of both parties.
- Legality and Public Order: No content should contravene imperative rules of law or administration, or be against the general principles of public order and good morals.

- **Absence of Malice:** There should be no subjective mala fides in the parties' agreement, such as a vicious collusive intent (e.g., to defraud third parties or injure competitors by other means than fair competition).

In the context of trademark coexistence, the notion of “public order and good morals” may be understood as encompassing market economic order and the public interest. It requires that trademark coexistence must not disrupt the established market order, nor result in unfair competition or malicious monopolization [14].

Beyond basic contract validity, the second key aspect concerns the agreement's role and weight in administrative and judicial proceedings. Due to the Privity of Contract, the legal effects of the agreement primarily bind only the contracting parties. In the broader administrative or judicial legal relationship concerning the registrability or permissible use of the disputed trademark, a coexistence agreement functions primarily as a piece of evidence. Its purpose as evidence is to help determine the relevant disputed issue, “whether there is likely to be confusion between the conflicting trademarks in the marketplace”. Crucially, this determination often involves predicting future market realities, not just assessing the established facts. Therefore, both the parties submitting the agreement and the adjudicator reviewing it need strong evidentiary support or a solid analytical basis to enhance the credibility of their respective claims about the likelihood (or unlikelihood) of future confusion [15].

As aforementioned, the mere existence of a coexistence agreement can itself be viewed as evidence that a potential for confusion exists (otherwise, no agreement would be needed). However, the content of a robust, well-drafted agreement can serve as compelling evidence that this potential for confusion is likely to decrease or be effectively managed over time through the agreed-upon measures. Thus, the courts should not limit their focus to the conflicting trademarks in isolation. Instead, they need to carefully evaluate the specific arrangements detailed within the agreement, assessing the adequacy and likely efficacy of the preventive measures undertaken by the parties to mitigate possible confusion. This assessment informs the judgment on the ultimate probability of consumer confusion occurring in practice.

When reviewing the content of agreements, the analysis should be specific and factor-based, rather than relying on general impressions. Although trademark cases are often highly fact-specific, adjudication shall follow consistent analytical methods and processes to maintain the stability and predictability of legal outcomes, thereby safeguarding the prestige of the examination authorities and protecting public interests. Drawing inspiration from approaches like the multi-factor likelihood of confusion test used in the United States, this article suggests that the examination authorities should consider comprehensively those factors that are relevant to assessing consumer misidentification in the specific context of the case. The relative importance or weight of each factor will naturally vary depending on the particular circumstances.

Core factors to consider:

Analysis of Similarity: The degree of similarity between the trademarks (in terms of visual appearance, pronunciation, meaning, and overall impression [16]) and the relatedness of the goods or services remains the main consideration. The greater the similarity between the trademarks, the lower the degree of similarity required between the goods or services to establish a likelihood of confusion, and vice versa.

Goods/Services Relatedness: Practical classification is a good beginning. An in-depth analysis is required because related services are related in purpose, clientele, method, or content. Related goods share connection in function, use, manufacture, trade channels, or market segment. These are the real-world market factors that would determine whether the goods or services associated with conflicting trademarks are considered similar, and thus affect the likelihood of confusion. For example, even if the goods or services of the applicant and the registrant are not deemed similar under the classification schedule, a likelihood of confusion may still be found if an association between them can be established through other means. For instance, the case "SHAPES" (beauty salons) vs. "SHAPE"

(magazine featuring salons), was found likely to cause confusion, as such magazine frequently features content related to beauty salons and spa services [17].

This shows that the assessment of likelihood of confusion is highly flexible. When reviewing a trademark coexistence agreement, courts should not only analyze the basic information of the trademarks and the goods or services involved, but also take into account a broader range of factors. These factors often reflect the intentions and arrangements of the parties, including—but not limited to—the trade channels already established or likely to be established, marketing strategies, and the types of consumers targeted.

4. Suggestions for the Optimization of Trademark Coexistence Agreements in China

Building upon the preceding analysis of the deficiencies within the current system and judicial practice, and informed by both the basic legal requirements for contracts and relevant domestic and international experience, this section proposes concrete recommendations for designing more effective coexistence agreements that are more likely to satisfy current legal requirements and possess sufficient substance to warrant admissibility by examination authorities. Structuring the content of an agreement according to the following principles and including specific, actionable clauses related to each aspect can materially reduce the likelihood of consumer confusion arising in the marketplace.

4.1. Enhance the Distinctiveness of Product Appearance

Apart from the trademarks, the way the products look is a major factor in aiding the consumers to distinguish between possible sources of conflict. The environment and the way it is visually presented, which is essentially the dress of the product, creates the all-important first impression for the consumer.

1. Commitment to Unique Packaging and Decoration: The agreement should make the owners of the disputed trademarks responsible for designing distinct packaging and decoration for its products. This requires a commitment to choosing demonstrably different packaging materials, shapes, colors, graphics, and other design elements compared to those used for the cited trademark owner's products. The well-known market distinction attained through the contrasting red can and green box versions of "Wong Lo Kat" herbal tea serves as a practical example of the effectiveness of this principle.

2. Agreement on Adding Appropriate Distinguishing Identifiers: In addition to the above or in the alternative, the parties shall agree that the owners of the disputed trademarks will incorporate additional marks or information as distinguishing onto the product or packaging of the product. This is to be done in accordance with the relevant administrative principles of interest-balancing acts. For instance, explicit requirements set by the China National Intellectual Property Administration (CNIPA) [18] permit, under the said conflicts with prior users in Art. 59(3), to balance the interests between the trademark registrant and the prior user, if the registrant requests that the prior user add distinguishing elements to prevent confusion among relevant consumers, the prior user shall comply. Such distinguishing elements may include trade names, geographical indications, special symbols, or exclusive product names. In order to reasonably protect the existing commercial interests of the party using the disputed trademark, the degree of differentiation should be appropriate—sufficient to ensure that, when viewed as a whole, the mark conveys a commercial impression that is not confusingly similar to the cited trademark. In this way, it should reasonably protect the existing commercial interests of both parties.

4.2. Define the Scope of Use for Coexisting Trademarks

An important strategy for reducing the likelihood of confusion is to define the scopes of use of the coexisting trademarks by contract such that they are distinctly defined. This is supported by judicial precedent. For example, the Supreme People's Court had, in its judgment, guided Crocodile Company to use certain marks in such a manner that the use shall be "completely different usage environments and conditions" than those of Lacoste Company's trademarks [19]. The underlying rationale of this

principle is that the interest protected by the Trademark Law is primarily vested and established goodwill (earned through effort) and not some prospective or notional interest. Therefore, the business scope and operational scale of the owner of the disputed trademark should therefore be restricted from extending into the distinct business domain of the cited trademark owner.

Such contractual divisions—whether by geography, product line, trade channel, or target consumer group—serve to separate the parties' market presence. Consequently, consumers interacting primarily within one distinct market segment are more likely to develop clear recognition for the trademark prevalent within that sphere, thereby reducing the overall likelihood of confusion with the mark used in a different segment. Operationally, the parties can privately negotiate terms, potentially including financial considerations or other forms of compensation, for the party whose commercial opportunities are more significantly constrained by these limitations.

At an advanced stage, ideally, in time, clearly marked divisions of use, particularly geographical ones, should prove highly effective. The long-standing coexistence of various entities that have used the trademark "Daoxiangcun" offers a compelling example. These are Suzhou Daoxiangcun, Baoding Daoxiangcun, and Beijing Daoxiangcun, which have each largely operated within unique regions. Over prolonged years of use, they have all cultivated significant local market reputations and have, in turn, established relevant consumer bases. In such like situations where if the market itself shows that the relevant public can and does objectively make distinguishing between the different commercial signs despite the similar name, then that market reality should be accorded significant weight. It then comes to respect these established distinctions and maintain the stability of the existing market order.

4.3. Restrict Implied Associations and Prohibit Unfair Connections between Coexisting Trademarks

It should be clearly stipulated that the owner of the disputed trademark shall not use trade dress—such as packaging, labeling, or marketing materials—that is similar to that used by the proprietor of the cited trademark in the course of selling or promoting the cited mark [20]. Moreover, neither party shall attempt to establish an association with the other party or trade on the goodwill of the other. Although a coexistence agreement is based on the mutual intent of both parties, there remains the possibility that one party may engage in bad-faith conduct, such as free-riding, that violates the principle of good faith. Therefore, the agreement should include clear provisions on the consequences of any breach, in order to ensure mutual accountability and compliance.

4.4. Deliberately Differentiate Target Consumer Groups or Usage Contexts

Differences in sales conditions and the substantive nature of goods or services can give rise to distinct consumer groups with varying preferences, thereby reducing the likelihood of confusion between coexisting trademarks. Although the Classification Table of Similar Goods and Services may presume that similar goods or services target similar consumer groups, in practice, substantial differences in the characteristics of the goods or services can significantly influence consumers' ability to distinguish between them and the level of attention they exercise. Parties to a coexistence agreement should provide a detailed explanation of how such differences (if any) can mitigate the risk of confusion.

Consider these examples:

- **High-Involvement Purchases:** When both trademarks for costly goods or services, as in the case of automobiles, the consumers tend to adopt a higher degree of care and scrutiny used making it less probable that there will be confusion between trademarks that look or sound similar. The successful market coexistence of car brands like "Honda" and "Hyundai," despite phonetic and extrinsic similarities, underscores this point.
- **Different Service Environments/Offerings:** Suppose a trademark shows a fun seaside resort, and another similar one shows a plain business hotel in a city. Though both give places to stay, customers

are not likely to be tricked because of the very different service settings, aimed people, and total value offered. As the Court said in *in re Four Seasons Hotels Ltd.*, customers can easily tell between such offers, ruling out big risk of confusion [21].

5. Conclusion

Trademark rights are essentially private but operate within the public domain since they are inherently intertwined with public interests. Their exercise hence legitimately remains subject to restrictions by public power and policy considerations as reflected in the legislative purpose of the Trademark Law. In the context of trademark coexistence, the judiciary's indirect or cautious recognition of coexistence agreements in practice has created uncertainty for trademark owners in their commercial arrangements. Furthermore, due to the often insufficient or incomplete content of such agreements, the number of applications for trademark coexistence has shown a declining trend in recent years.

This article has tried to help by offering a plan for a standardized, copyable, and substantively strong content template that can be used as a guide for both buyers and examination authorities. Effective coexistence agreements, as suggested here, should clearly list the specific steps the parties agree to take. Main suggestions include: enhancing the distinctiveness of packaging and trade dress, and adding distinguishing elements to differentiate the overall commercial impression of conflicting trademarks, the parties can intentionally delineate the scope of trademark use, marketing channels, and target consumer groups, thereby fostering the relevant public's ability to distinguish between the marks. It is suggested that through the steady application of such well-outlined measures over time, the main aim of effectively controlling and reducing the risk of confusion can be realistically attained, even with similar trademarks.

Looking forward, international developments may offer valuable insights. The recent introduction (June 2023) of Japan's formalized trademark coexistence consent letter system provides a contemporary example of legislative efforts to create clearer pathways for trademark owners to overcome prior rights conflicts and potentially secure registration through mutual agreement. The analysis and suggestions presented in this paper are offered in the hope of providing constructive inspiration for the potential future development and formalization of a more predictable, effective, and legally grounded trademark coexistence system within China.

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