



## REVIEW

# A Cross-Border E-Commerce Intellectual Property Rights

Linjun Cai\*

Zhejiang Institute of Mechanical & Electrical Engineering, Hangzhou, Zhejiang, 310000, China

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### ABSTRACT

As an intangible property right, intellectual property is a very important economic resource, which is of great significance for merchants to enter the international market. With the development of The Times, more and more merchants begin to look globally and enter the overseas market. In order to gain a foothold and develop in the international market where intellectual property rights are more strictly protected, intellectual property rights have important significance that cannot be ignored by all businesses. **Writing significance:** Taking NetEase Koala as an example to further understand the IPR protection of cross-border e-commerce

## 1. Overview of IPR Protection for Cross-Border E-Commerce

### 1.1 Overview of Current Cross-Border E-Commerce Development

Under the open Internet network environment, e-commerce, as a new way of transaction, brings production enterprises, circulation enterprises, consumers and the government into a new world of network economy and digital survival.

E-commerce refers to the realization of electronic trade activities.

Generally speaking, compared with traditional trade, e-commerce has the following four characteristics: world wide, directness, convenience, equality and so on.

In the face of international competition, e-commerce has created new market opportunities for us on many levels.

Affected by the domestic and foreign trade environment, the development speed of China's traditional foreign trade has slowed down significantly, while cross-border e-commerce has maintained a high level of growth.

According to the 2017-2022 research report on the development prospects and development strategies of China's cross-border e-commerce industry, this can be seen from the data of the ministry of commerce: in 2011, the total transaction volume of China's cross-border e-commerce reached 1.6 trillion yuan, an increase of more than 30% compared with 2010.

In 2012, the total transaction volume increased further and reached 2 trillion yuan. Although the growth rate

\*Corresponding Author:

Linjun Cai,

Zhejiang Institute of Mechanical & Electrical Engineering, No. 528 Binwen Road, Binjiang Higher Education Park, Hangzhou, Zhejiang, 310000, China;

E-mail: 1461675136@qq.com

slowed down, it also reached 25%.

In terms of business entities, the number of foreign trade enterprises using various platforms to conduct cross-border e-commerce business in China has exceeded 200,000, and the number of e-commerce platform enterprises has exceeded 5,000.

With the growth trend in recent years, small and medium-sized enterprises and individual businesses account for most of the newly added e-commerce operators, more than 90%. Cross-border e-commerce shows its huge development potential and is expected to become the main force driving the development of China's foreign trade in the future.

The reasons are mainly analyzed in the following three aspects:

(1) the development of Internet, electronic payment, smart mobile and other technologies provide technical support for cross-border e-commerce;

(2) under the influence of international economic downturn, European and American debt crisis and diversified demand, foreign trade orders gradually show a trend of "short, small and fast". The "fragmentation of foreign trade" drives the development of many domestic small, medium and micro foreign trade enterprises, and cross-border e-commerce has become a convenient channel for them to develop overseas markets

(3) with the rapid development of domestic economy, Chinese people pay more and more attention to the quality of life. The huge middle class consumer group has a strong demand for overseas luxuries, high-quality food and agricultural products.

China's cross-border e-commerce transactions will reach 6.5 trillion yuan in 2016, with an average annual growth rate of nearly 30 percent, according to an estimate by the ministry of commerce.

In the market pattern, B2B of foreign trade plays a dominant role in China's cross-border e-commerce, and most B2B enterprises have large trade orders with surprising overall scale.

Although only part of the import and export trade of these B2B enterprises is completed online, online trading has not been completely realized, but with the continuous improvement of online trading in technology and management services, complete online trading is just around the corner.

Cross-border online retail in China has been growing rapidly in recent years. There are two major types of retail models. First, e-commerce enterprises have established independent foreign trade B2C websites to conduct sales activities, such as lanting jixu and Vipshop.

The other is that e-commerce enterprises carry out trade

through third-party platforms, such as eBay and amazon.

In terms of product composition, China's foreign trade enterprises mainly export products such as clothing, small household appliances and digital products, with a larger overall scale and faster growth rate.

The characteristics of cross-border online retail that serves individuals determine its characteristics of small amount, multiple batches and high frequency transactions.

In recent years, China's cross-border e-commerce is developing rapidly and has made remarkable achievements. However, there are still some restrictive factors in customs clearance and supervision, which have caused serious impact on the development of cross-border e-commerce.

## **2.2 At Present, the Protection of E-Commerce Intellectual Property Rights**

Current situation of legislation in the field of electronic commerce:

With the rapid development of e-commerce, in recent years, the infringement of intellectual property rights in the field of e-commerce has been increasing, and the means of infringement has become more and more diverse.

How to better strengthen the means of judicial and administrative protection of intellectual property and solve the outstanding contradiction of intellectual property protection in the field of e-commerce has become an urgent problem to be solved at present and even in the future.

Therefore, in 2012, zhejiang intellectual property office started from investigating the current situation of e-commerce intellectual property protection, and put forward countermeasures and Suggestions on further improving the laws and regulations of e-commerce intellectual property protection, strengthening supervision and rights protection, and building a disciplinary system.

The rapid development of e-commerce has led to the increasingly prominent problem of intellectual property protection.

In recent years, the state, relevant departments and enterprises have taken various measures at the legislative, judicial, administrative and operational levels to solve the problems of intellectual property rights in the development of e-commerce.

At present, the main laws in the field of e-commerce include copyright law, tort liability law (promulgated in 2009), and the decision on strengthening network information protection enacted by the National People's Congress in 2012.

In terms of administrative regulations, the interim provisions on the management of international networking of computer information networks, regulations on the protec-

tion of computer software, regulations on the protection of the right to spread information networks, etc.

The theoretical circle has different views on the nature and status of network trading platform in e-commerce. They regard platform platform as "seller or joint venture", "rough site or counter lessor", "intermediary", "network service provider" and so on.

According to the judicial interpretation of the supreme people's court in 2012, Internet trading platform providers are only Internet service providers (or independent third parties), not intermediaries.

E-commerce puts forward higher requirements for intellectual property protection:

Without a sound intellectual property protection environment, it is impossible to promote the sustainable development of e-commerce industry.

First, e-commerce has become a hotspot for intellectual property disputes. E-commerce USES knowledge, information, technology and other means to create social material wealth, inevitably involving many intellectual property disputes.

Second, e-commerce model has gradually become an object of patent protection. In 1996, the patent examination procedure manual M.P.E.P issued by the United States patent and trademark office explicitly allowed the application of patents for business methods.

Third, e-commerce challenges the traditional mode of intellectual property protection. It is mainly manifested in the conflict between the infinite space and time of e-commerce activities and the limited protection of traditional intellectual property rights (time, region and space).

Intellectual property rights in e-commerce are more hidden than traditional intellectual property rights. It is more difficult to define administrative and judicial jurisdiction difficult.

E-commerce platform operators have encountered a large number of intellectual property rights complaints disputes.

According to statistics, Alibaba handled 910,000 IPR infringement complaints in 2011 and 400,000 in the first half of 2012.

On taobao, 8.7 million IPR infringement complaints were handled in 2011 and 2.35 million in the first half of 2012.

The two e-commerce platforms have increased their investment in intellectual property protection, and the number of complaints has been decreasing

From the content of intellectual property complaints, intellectual property disputes on Alibaba's platform mainly focus on patents and trademarks;

The intellectual property disputes on taobao mainly fo-

cus on trademarks and Copyrights.

It can be seen that different e-commerce platforms face different intellectual property disputes.

### **3. Netease Koala Related Introduction**

#### **3.1 Company Development**

NetEase Koala is a comprehensive e-commerce company mainly engaged in cross-border business under netease. It was publicly tested on January 9, 2015, and its sales categories cover maternal and infant products, beauty and makeup, home life, nutrition and health care, global cuisine, clothing bags, digital appliances, etc.

NetEase Koala with 100% genuine, every day low price, 30 days worry free return, fast delivery, provide consumers with a large number of overseas commodity purchase channels, hoping to help users "with less money to live a better life", boost the consumption and life of the double upgrade.

NetEase Koala concept, main proprietary straight length in the United States, Germany, Italy, Japan, Korea, Australia, Hong Kong, Taiwan has branches or offices, in-depth product origin direct mining height are broken quality, suitable for the Chinese market of goods, from the source to eliminate fake goods, guarantee the quality of the goods at the same time save a lot of the intermediate links, directly from the country of origin arrived home, under the monitoring of the customs HeGuoJian, stored in a bonded warehouse.

In addition, NetEase Koala also jointly developed the qr code traceability system with the customs to strictly control product quality.

Hangzhou as "cross-border electricity in test area, the first batch of pilot enterprises", NetEase Koalas in the ways of business model, marketing, integrity, self-discipline, has achieved a lot, from the China quality certification center certification of "class B2C commodity e-commerce transaction service certification", certification, four star level is the first domestic to receive the certification of cross-border electricity company, also is the present domestic first for one of the highest level of certification of cross-border electronic business platform.

As a media-driven e-commerce company, NetEase Koala is a strategic product created by netease group with a large amount of high-quality resources. It has solved the current situation of information inequality between merchants and consumers, and has seven advantages, including self-operation mode, pricing advantage, global distribution, warehousing, overseas logistics, capital and num-type service.

In June 2018, netease kaola.com announced to change

its name to "netease kaola.com", announcing its entry into the comprehensive e-commerce market.

### Shopping trolley

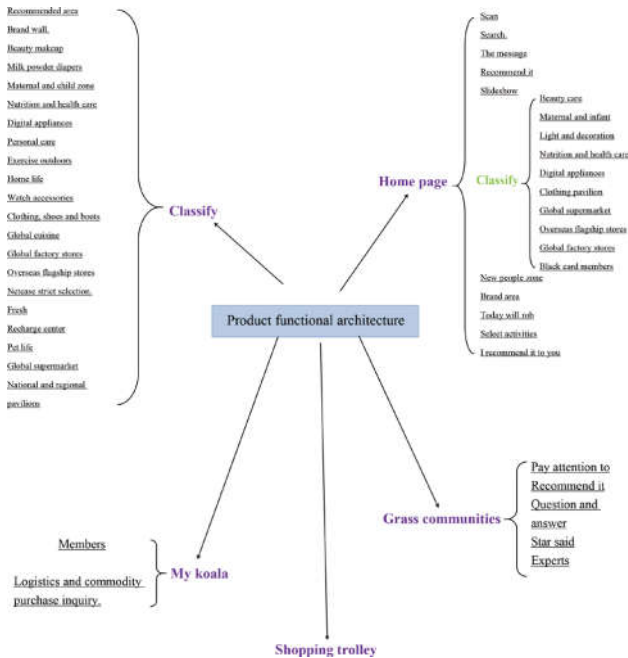


Figure 1. NetEase Koala whole process development analysis chart

Any product has its own positioning, and netease kaola has the following positioning:

Product positioning: self-run cross-border e-commerce, providing low-price and fidelity overseas purchase services for daily necessities.

User orientation: urban white-collar women, new workplace mothers.

### 3.2 Netease Koala Intellectual Property Rights Protection

In recent years, China's cross-border e-commerce industry has developed rapidly. In addition to meeting the basic needs of consumers, intellectual property rights have also become an important weight in the competition of cross-border e-commerce platforms in terms of protecting authentic products.

As the largest cross-border e-commerce platform in China, netease kaola.com actively conducts in-depth cooperation with the government to protect intellectual property rights.

On December 15, 2017, netease kaola.com signed a memorandum of cooperation on intellectual property with hangzhou customs, further promoting the protection of intellectual property rights in cross-border e-commerce.

The two sides said they will cooperate on ipr risk prevention of cross-border e-commerce enterprises, customs enforcement assistance, cross-departmental coordination and education and training.

As a leading cross-border e-commerce platform in China, NetEase Koala insists on practicing the protection of international brand intellectual property rights from the source of the supply chain to provide consumers with genuine products.

NetEase Koala's insistence on genuine products has also been widely recognized by the market.

On February 6, 2018, the world's leading new economy industry data mining and analysis iiMediaResearch authority (media) has released the latest research on cross-border electricity dealer market in 2017, according to the report, NetEase Koala sea to buy authentic trust leads to 38.8% the cross-border electric business platform, with a 25.8% market share in the first place, this is since 2016, NetEase Koala sea purchase authentic credibility first for two consecutive years, the market share first.

Hangzhou customs, as the director of the first comprehensive pilot zone of cross-border e-commerce in China, has been paying close attention to the issue of intellectual property in cross-border e-commerce. This cooperation with netease kaola overseas shopping will not only help the e-commerce platform to establish the awareness of intellectual property protection, but also make consumers more confident about product quality.

Besides signed the memorandum of cooperation, the hangzhou customs will also work with NetEase Koala sea in cooperation between research and propaganda and training, etc, the two sides will jointly form the protection of intellectual property rights research team, through the cross-border electricity or the issues of intellectual property rights research and discussion, enhance the ability to work both intellectual property protection.

As early as the beginning of 2017, NetEase Koala overseas shopping has tried to cooperate with government agencies to achieve autonomy.

On March 8, netease kaola overseas shopping and the national monitoring center of cross-border e-commerce commodity quality and safety risk signed a memorandum of cooperation on joint governance of cross-border e-commerce product quality. The two sides will conduct joint governance in information sharing, data sharing, joint governance of quality, collaborative disposal and other aspects.

The two sides will establish a regular cross-border commodity quality supervision and sampling inspection cooperation mechanism, jointly discuss the formulation of

cross-border commodity self-inspection and control plan, and implement sampling inspection, feedback and disposal according to their respective functions.

After the cooperation between the two parties, consumers can watch the whole process of direct purchase and quality inspection through the relevant pages of Netease Kaola overseas shopping, making the inspection submission visible and transparent for the first time.

The move not only strengthens consumers' confidence in strict and scientific law enforcement by the national monitoring center, but also strengthens consumers' confidence in the cross-border e-commerce industry and market.

Cooperation memorandum signed in cross-border electricity product quality work after the national monitoring center for the first time according to the purchase and sales of infant formula in NetEase Koala sea, love for ranking among his beauty, kraal, Hero, a2, beautiful, beautiful Baby son, Craig Bellamy, mead Johnson, semper nine brands such as a total of 46, conducted a random transport work.

Zhang lilong, deputy director of e-commerce department of hangzhou entry-exit inspection and quarantine bureau, announced the inspection results of dozens of products at a joint conference on the quality of cross-border commodities held in May. The data showed that all the products tested were qualified in physical, chemical and microbial indicators.

For the results of the inspection, NetEase Koala overseas shopping said no surprise.

As a cross-border e-commerce platform that insists on self-operation mode, direct purchase of genuine products and protection of brand intellectual property rights, NetEase koala has always put the quality of goods in the first place.

All inspection from 100% insist on warehousing and other industries the most strict quality standards to the well-known SGS inspection and quarantine organ, Zhejiang inspection and quarantine institute of science and technology cooperation such as sampling observation, and then to "twelve Yan Zhengpin guarantee written pledge to fulfill a military order" in the history, NetEase Koala sea for effective quality supervision of the society from all walks of life recognition, perfect quality inspection system for cross-border electricity industry has set a standard model better.

This time, NetEase koala overseas shopping and government agencies will further promote the recognition and protection of intellectual property rights in cross-border e-commerce industry.

## 4. Case Study

NetEase Koalas have been taken to court by Estée lauder's agents in China.

We learned from Chongqing no. 1 intermediate people's court that Estée lauder's trademark infringement case against NetEase Koala and NetEase has been formally filed in the court and will be held soon.

Intellectual property experts and analysts in the cross-border e-commerce industry believe that at present, the problem of trademark right and parallel import of overseas online shopping involving the secondary sales of overseas commodities is a common dilemma faced by the cross-border e-commerce industry.

"During the review of the case by the first intermediate people's court of Chongqing, the supreme people's court approved the establishment of the people's court of Chongqing Liangjiang new area and the people's court of Chongqing pilot free trade zone, and made adjustments to the jurisdiction of the basic courts under the jurisdiction of the court in respect of intellectual property cases," the civil ruling said.

This case belongs to the case with significant influence in this jurisdiction, so this case should not be continued by Chongqing Yubei District people's court.

The first intermediate people's court of Chongqing municipality shall propose the case for trial.

According to the Chongqing municipal first intermediate people's court on January 15, 2019 to make the information in the civil verdict: the plaintiff Estée lauder (Shanghai) v. NetEase Koalas and NetEase the infringement trademark rights, Estée lauder (Shanghai) the main demands of the four:

First, NetEase Koala and NetEase to immediately stop the implementation of the infringement of the plaintiff no. 834258 "m. a. C" trademark rights behavior, including but not limited to stop sales of products involved in trademark infringement, the disclosure of the infringing products or source of supply chain;

Second, NetEase Koala and NetEase immediately destroy infringing products;

Third, NetEase Koala and netease have published apology statements on People's Daily online, ifeng.com, qq.com, sina.com, caixin and other websites for 30 consecutive days, in order to eliminate the adverse effect caused to the plaintiff due to the infringement of the right to exclusive use of registered trademarks.

Fourth, NetEase Koala and netease jointly and severally indemnify the plaintiff for the economic loss of RMB 1 million caused by the infringement of the right to exclusive use of a registered trademark, as well as the reason-

able expenses incurred by the plaintiff for investigating and stopping the infringement of RMB 200,000.

Legal part: A trademark is a markshangAs a kind of identification mark in industrial activities, the role of trademark right is mainly to maintain the order in industrial activities, which is different from the role of patent right to promote the development of industry.

Trademark right has five characteristics: exclusiveness, timeliness, locality, property and category.

In this case, NetEase Koala torts Estée lauder's MAC trademark right mainly because NetEase Koala damages its exclusive trademark right. The main reason for cross-border e-commerce infringement is the relative lag in the legislation of trademark right of ziyu. In terms of the protection of cross-border e-commerce trademark right, there is a gap, which cannot catch up with the rapid

development of cross-border e-commerce.

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