

The Economic Analysis of the Reverse Confusion Debate in Trademark Infringement: Based on the Game Theory

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Abstract

Recognized as a specialized form of trademark protection, reverse confusion prevents the larger junior user from taking the smaller senior user's trademark as his own. However, it was also criticized that it protects the smaller senior user at the price of the waste of social resources because only the junior user of reverse confusion cases is capable of promoting trademark values through sheer economic strength. Hence, some scholars, from the perspective of economical efficiency, suggest that where the benefits exceed the harms, the best solution is to allow the junior user's infringement despite the harm to the senior user.

Challenging the traditional view of "the allowance of the junior user's infringement is at the expense of the senior user", this article, based on some concepts of game theory and paradigm shifts in law, tries to prove that the optimal solution for the senior user to maximize his benefit is to allow the junior user's use of the mark, and further provide some suggestions on the purpose of making this policy come true.

Keywords: reverse confusion, the economic analysis of law, boxed pigs, strategic moves, paradigm shift, damages calculation, reasonable royalty.

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