

*The Nature of the Sale:  
Behavior in Trademark Infringement under Chinese Trademark Law*

**Dong Zhu**

Ph.D. Candidate, Peking University Law School  
Beijing, China

In China, the "use of trademark" is limited to production field by the trademark law since 1988, so the Chinese Trademark Law treats the behavior of the sale of goods as a single kind of infringement. The main reason for this is the behavior happens in the field of circulation. However, there are different opinions on the nature of this behavior among scholars; one of their focuses is on whether it belongs to the direct infringement or indirect infringement. The standard in distinguishing the indirect and indirect infringement should be whether a behavior inappropriately gets in to the scope of the exclusive rights of a trademark. To determine the scope of the trademark exclusive rights, we should choose the concept of the "use of trademarks" rather than the likelihood of confusion. The behavior of the sale of goods should belong to the indirect infringement. Although theoretically, the behavior of sale of goods should belong to the act of use of trademark; the spatiality of Chinese Trademark Law leads to some disorders in trademark infringement and trademark rights. There may be some issues caused by this mode. Such as there may be some violation of the rule of Identity when we are trying to understand the meaning of trademark use in the specific articles in the Law; there tends to splitting the connection between sale of goods and confusion, especially in the OEM cases; thus, it is very difficult to explain the exhaustion of trademark right under this mode. Therefore, it is better for Chinese Trademark Law to reconstitute the nature of the behavior sale of goods to the use of trademark.

**Email:** zhudong0107@aliyun.com

Zhu