
Analysis of the practicability of intellectual property law on the protection of intangible cultural heritage in Inner Mongolia

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Abstract

There are various kinds of intangible cultural heritage in Inner Mongolia, but the importance of intangible cultural heritage needs to be improved. Through the analysis of the intangible cultural heritage in Inner Mongolia, it is found that many of them are not inherited, and some of them are misappropriated and distorted by the outside world. The author hopes to protect the intangible intellectual achievements of Inner Mongolia region through intellectual property law. Through trademark right protection, copyright protection and anti-inappropriate competition law, more effective inheritance and protection of intangible heritage are carried out.

Keywords

Intangible cultural heritage, intellectual property law, anti-inappropriate competition law.

1. Introduction

At present, there are mainly two ways to protect intangible heritage. One is the "top-down" way of administrative protection, which is mainly led by the government, propagandize the core value of the intangible cultural heritage, and give the economic benefit of the inheritor. With "blood transfusion" as the main, it is difficult to play a long-term protection; the other is a "bottom-up" private law protection method, by mobilizing the enthusiasm of the inheritor, to explore the potential commercial value of the intangible cultural heritage. With "hematopoiesis" as the main factor, we should enhance the re understanding of intangible cultural heritage in ethnic areas and protect them from the source.

The present situation of intangible cultural heritage in Inner Mongolia

The tragedy and embarrassment of Ethnology lies in making all the preparations for the study, only to find that "the material it is going to study has irrevocably dissipated rapidly. When the scientific methods and objectives of the field of ethnology have begun to take shape, when the trained people embark on the journey to study the inhabitants of the uncivilized area, they gradually disappear in front of our eyes. [1] has become an imminent task for the protection of intangible cultural heritage. In my opinion, the intangible cultural heritage is also divided into "strong culture" and "weak culture". The so-called "strong culture" still has a very high practical value in today, and can bring stable economic benefits for the inheritor. And through the sustainable development, the "strong culture" still has the potential influence to be excavated. For example, the Mongolian medicine, in 2008, was selected as the second batch of national level list. Traditional Mongolian medicine therapy is the product of the labor and wisdom of the vast number of working people in the Mongolian region. The Mongolian people live in the cold northern plateau for a long time. With hunting and nomads as the main production methods, the traditional therapies such as hot compress, moxibustion, sand burying therapy (short for short, sand therapy) and sheep shit hot compress are very early in the Mongolian nationality. [2] in the author's data collection, I found that Mongolian medicine in Inner Mongolia, many of the intangible cultural heritage, more well-known, more practical, more people.

The so-called "disadvantaged culture" is that when the degree of industrialization is relatively low, it can bring convenience to the local residents and has higher practical value. However, with the

progress of science and technology, some intangible cultural heritage, obviously replaced by other more advanced technology, is gradually eliminated. Such as Le Le car, in 2006, "Mongolian Le Le production techniques" was included in the first batch of national intangible cultural heritage list.

Its origin can be traced back to the "Yuan Fu" recorded in Han Shu. This has always been the main means of transportation and transportation in pastoral areas, known as the "steppe boat" reputation, reflects the wisdom of the Mongolian herdsmen. However, with the advance of industrialization, Leller cars have been hard to see in pastoral areas, replaced by motorcycles and trucks.

2. The present situation of the non material heritage in Inner Mongolia

The heritage of intangible cultural heritage in Inner Mongolia has the following aspects: folklore, traditional medicine, folk dance, acrobatics and athletics, folk music, traditional drama, and musical art. At present, the protection of the African Heritage Site in Inner Mongolia is mainly led by the government in administrative protection. A small number of heirs with awakened awareness of power apply for trademarks or run schools on their own initiative. In Inner Mongolia, there are mainly training schools, but the number of personnel is 20 or less. The famous training course in Hohhot was founded by Su Rong, a variety of teaching methods, which is widely recognized by the masses. In addition, there are also the inheritance of Mongolian medicine. There are many famous Mongolian doctors in Hohhot's hospitals. Doctors in hospitals are also more aware of the protection of Mongolian medicine, such as Inner Mongolia Medical University on a special application for Mongolian medicine related patents. as follows

Multi-media human body acupoint model of Mongolian Medicine

The utility model has the right to have the right

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However, there are many inheritors and inheritors of the culture of "weak culture", because the cultural heritage can not bring economic benefits, but also lack of inheritors, has been in a precarious place.

3. The dilemma faced by the intangible cultural heritage

3.1 Misleading propaganda

Some time ago, "hot search" broke out a "miracle doctor" named Liu Hongbin. Doctors in different fields sell "magic medicine", and have successfully transferred to satellite TV. Finally, through the identification of netizens, the medical practitioners of the big satellite TV are the same person. From the Tibet television station to the Jilin television station, the "God doctor" sold his "God medicine" in five TV columns, the identity of the Miao doctor, the inheritor of the Mongolian medicine and the professor of Peking University. In recent years, with the improvement of living standards, health care has attracted more and more attention, especially for the elderly. However, the sources of health knowledge for the elderly are limited, and most of the elderly are mainly through television programs. Many older people believe in the authority of television, lack of identification of false propaganda, is likely to be misled by television programs, the purchase of magical "products". But the key is that these drugs will not only help consumers, but may also aggravate consumers' condition. "God doctor" is mostly under the cover of the secret recipe of the ancestral secret, claiming that he is all kinds of diseases. Generally speaking, Miao medicine and Mongolian medicine have been in China for thousands of years, just like Chinese medicine. Some ancient prescriptions have magical curative effects, and some consumers may buy so-called "products" because of the misleading of television. This kind of medicine will not only affect the condition of the consumer, but also destroy the reputation of the intangible cultural heritage, and make the immaterial intangible cultural heritage "worse".

3.2 The disappearance of "disadvantaged culture"

Bai Yinchagan is a non-hereditary inheritance representative of the autonomous region and the state. Influenced by his family at an early age, he began to learn the repair and production technology of Le Le Car from an early age. In his oral introduction, when he was sixteen years old and grazed with the production team, he began to make Leller cars, and the herdsmen repaired the broken-down Leller cars. When he was in trouble, he would seek help from his predecessors, such as sang cloth and Ma, and after years of experience, he made the Lele, which has been used as a famous handicraftsman with short time and high specifications. The day of Chagan makes a brand new Le Le, the shortest warrior is only three days. At the same time, he is also developing new type of Le Le car, trying to introduce Le Le technology to handicrafts. However, there are still many problems in finding a successor. Since the introduction of the Inner Mongolia region's prohibition policy, the use of the lels is getting smaller and smaller, and the herdsmen have no hope for the future of the lels, and the use of the lels is negligible compared to the modern means of transportation. The majority of young people are reluctant to learn this skill, such as the "Le Le Le Car" such as how to inherit the "disadvantaged culture" has become a thorny problem.

In the exchange of children in the pastoral areas of our college, they told the writer, "the lels are rarely used as a means of transportation, and most of the herdsmen have bought the lorries, because the traditional lels are too shabby relative to modern transportation. When it comes to Le Le, it basically belongs to lorry. "

3.3 A false mess of fake goods

In recent years, the tourism industry in Inner Mongolia has developed rapidly, and at the same time, it has promoted the development of handicrafts. After the tour, tourists will buy exquisite craft ornaments as souvenir and send them to relatives and friends. Such as: Mongolian clothing, knives, horse head Qin, Alashan carpet and so on, more representative non heritage products. Initially, the objects purchased by tourists were purchased from the hands of the inheritors. Tourists can discover their exquisite craftsmanship and Mongolian culture through the purchases. However, with the increase of tourists, the demand is increasing. In the past, the goods in the hands of the inheritors could no longer supply the demand of the market. "The market is relatively chaotic, and driven by interests, the quality of artware is becoming increasingly coarse. Although there are many varieties of handicrafts in Inner Mongolia, they lack brand names. The brand of the product is single and the style design is backward. Products from enterprises outside the Inner Mongolia Autonomous Region are all pipelined and low in price. Because the technology products are easily imitated, it is easy to cause "free riding". [3] illegal businesses benefit, but the real successors do not get any financial compensation.

3.4 The plight of the work of right cognizance

So far, the legacy of Inner Mongolia is still under development. This requires us to do a good job of right identification. According to the provisions of the non material cultural heritage law and the provisional measures for the identification and management of the national intangible cultural heritage project, the inheritors must meet the following three conditions: first, the proficiency in the mastery of the nonlegacy culture; and the second is the local influence. Finally, we should actively promote the work of inheritance. Hohhot is the capital of Inner Mongolia. It is a facade. Besides assessing the above three rigid requirements, the inheritor has strong ability to communicate and communicate with others, good temperament and good image. However, in some counties in Inner Mongolia, some inheritors can only communicate with the Mongolian language, the Chinese communication is not convenient, and more people can not let more people know the intangible cultural heritage that he inherited. In addition, Inner Mongolia is sparsely populated, there are many intangible cultural heritage inheritors living a traditional nomadic life, inconvenient to inherit culture. According to Article 4 of the Interim Measures, eligible citizens apply for or are recommended as representative successors of state-level intangible cultural heritage projects on their own. In addition,

the fifth article stipulates that the national non material cultural heritage project protection unit can recommend the representative inheritor to the cultural administrative department at or above the county level, but should obtain the consent of the recommended person. In addition, China's non-genetic heritage protection work has only been carried out for more than ten years, the protection mechanism is not perfect, and there is no incentive policy to stimulate the enthusiasm of non-genetic inheritors.

4. Necessity of intellectual property protection law intervening in intangible cultural heritage protection

4.1 The internal relationship between intellectual property law and intangible cultural heritage

In the process of exploitation and utilization of intangible cultural heritage, intellectual property protection is the most powerful and most suitable means, because intellectual property right exists as a kind of private right, and its specificity can give limited knowledge resources to master and use this right with the unique economic value 'owner'. [4] Because intellectual property rights protect private rights, it can maximize the economic benefits of the obligee and give incentives to non-hereditary heirs. This can fundamentally solve some problems of inheriting people's indifference and achieve the goal of "hematopoiesis". The characteristics of intangible heritage are that there is no definite carrier or specific form of expression, and the way of passing word by mouth is easily inherited. The main features of the intellectual property law are: the novelty of the object of protection (the Patent Law); (the requirement of the copyright) to protect the originality of the object; the exclusive rights holders mainly enjoy the right of issuing and copying in the copyright law, but they do not have the extensive rights of the copyright subject. Although there is a certain contradiction between the time limit of intellectual property law and the long nature of the intangible cultural heritage, the non material cultural heritage is a group nature and the intellectual property rights cause certain contradictions. However, from the essence of intellectual achievements (intangible), the agreement between intellectual property law and intangible cultural heritage is particularly high, and the protection of intangible cultural heritage should be based on intellectual property law.

4.2 Anti unfair competition law helps to distort the intangible cultural heritage

False advertisements appearing on TV are easy to cause misunderstandings of the audience. It should be considered that TV advertisements belong to authoritative columns and mislead audiences to buy so-called products. If the product does not achieve the desired purpose or cause certain physical harm to consumers, it is easy to distort the concept of intangible cultural heritage in the minds of the people. The World Intellectual Property Organization (WIPO) has pointed out that "misleading, especially misleading advertising, may be the most popular unfair competition in various countries," Fourth "anti misconduct competition model clause". In general, misguidance can be defined as a market choice for consumers to create a false impression on the product, service or activity of the enterprise, causing it to make harmful own rights and interests. " The infringement caused by Liu Hongbin includes misleading advertising and misleading publicity. This article only talks about misleading propaganda. The misleading propaganda mentioned earlier by Liu Hongbin has made the audience false impressions of products or services, making the audience making wrong decisions and in fact violating the legitimate rights and interests of other people, such as property and person. It requires the social public to develop it on the premise of "not distorting and non commercial", and similar distortions need to maintain the reputation and the interests of the inheritor with the weapon of law.

4.3 The inheritance of the patent right to the "weak culture"

Inner Mongolia news network August 26, 2009 reported that Wu Runda, the representative inheritor of the intangible cultural heritage of huhhhun, demonstrated the whole process of the production of Mongolian leather boots for the audience in the "prairie atmosphere" exhibition hall of the Inner Mongolia Museum. [5] this is to let more people understand and pay attention to Inner Mongolia's

intangible heritage, and understand the culture and connotation of "leather boots". However, all technologies (including core technologies) are released to the public, resulting in resource sharing, novelty leakage and no patents. This also reflects another question, why is it possible to expose the core of the boot art, or to show it to the public? After many of my understanding, the inheritance cycle of the non heritage inheritors is generally longer, and the learning ability of the apprentice should be integrated. Generally speaking, it takes three to four years to start a school, such as learning to make Alxa carpets, Daur hunting knives, Mongolian string instruments, and Mongolian leather boots. Inheritors do not control the number of apprentices. Basically, as long as someone is willing to learn, inheritors will accept it. There are a lot of non - material heritage and apprentice to the apprentice. For some students who have a little family difficulty, they can also afford their own apprentice. If the inheritance of some "weak cultures" can be assisted by patent applications, some of the intangible cultural heritage will be transformed into commercialization mode. Video and text can be used to sort out the legacy that has been handed down to form books and video tutorials. It can not only enhance the vitality and popularity of the intangible heritage, but also increase the income of the inheritors.

4.4 The necessity of establishing a collective trademark

Under the provisions of the African Legacy Law, the inheritors of Inner Mongolia will receive a subsidy of 5,000 yuan after 2016. This will, to some extent, inspire the inheritors and revitalize the heritage culture, but the effect is far from enough.

If only the unilateral "blood transfusion" of the government can not save the fate of the disappearance of the intangible cultural heritage, the introduction of the "hematopoiesis" mechanism is very important. The sixteenth article of the trademark law and the sixth article of the regulations on the implementation of the trademark law can be protected by the way of applying the collective trademark, proving the trademark and the geographical indication. In this way, we can prevent the false goods from the above appearance, avoid the imitation of the people from the region, and take the car, and further create the the Inner Mongolia Autonomous Region self. The brand of oneself can realize the economic development and drive the inheritance of culture. In addition, we can see the traditional medicine of the Hui nationality - the case of the eight diagnosis of the soup bottle, and the Dongying Tian Ze company did not take the first trial, and appealed the case to the high people's Court of Shandong province. In March 2, 2012, the Shandong high academy made (2011) Lu Min's three final word 198th judgment, and thought: "the eight diagnosis treatment of Hui nationality soup bottle" has been included in the national intangible cultural heritage project, belonging to the general name; and the registered trademark with general name, the exclusive right holder has no right to prohibit his proper use. ① In the end, the original judgment was maintained. After that, Yang Huaxiang went on again. The final judgment is that Yang Huaxiang's trademark is not significant. However, there is no specific standard in the trademark law and the judiciary for the specific standards of saliency. However, if Yang Lao applies for Yang's "soup bottle eight diagnosis", will it have different results? Therefore, as stipulated in Article 44 of the Law of the People's Republic of China on Intangible Cultural Heritage, there is a long way to go in legislation and judicature. To sum up, for the current market chaos, the task of establishing collective trademarks and certification marks is imminent.

4.5 Improvement of the work of right cognizance

The recognition of the inheritors of intangible cultural heritage is not comprehensive in China's laws. I think the following points need to be improved. First of all, I think the government is lack of funds and the talents of Mongolian and Han. The investment of Inner Mongolia local finance on intangible cultural heritage protection projects is insufficient, and the national and autonomous regional intangible cultural heritage in the autonomous region is huge. The protection funds for intangible cultural heritage are mainly borne by local governments and lack of private capital injection. Second, the inheritors are indifferent to the right to identify the rights, and many non material heritage inheritors themselves are not highly educated. He can not realize the importance of his own culture. We can refer to the South African Cactus case, which was stolen by Phutopharm because of its failure to protect traditional knowledge. Therefore, it is imperative to enhance the vigilance of inheritors.

Finally, the law should specify how to assist the representative inheritors, the specific amount of funds, how to apply for the heritage sites and the specific process of approval. Because of the shortcomings of policies, government actions will be carried out passively, and inheritors can not better advocate their rights.

5. Conclusion

Taylor believes that the different societies of the same age can be in different stages of evolution, the diversity of cultural forms, the formal identity of the culture of the times, and the culture of each stage, which is not only the product of the past, but also a certain role in the formation of the future stage. [6] I agree with Taylor that culture is progressing. As Darwin's "theory of heaven performance" says, "natural selection is the survival of the fittest". If the non material culture wants to pass on, it will not be crushed by the wheel of history, so as to make the non material culture evolve through the joint efforts of the whole nation, so as to adapt to the present situation of the society. As students of ethnology, we should use our knowledge to help the inheritors of ethnic areas to realize the importance of their own culture. As a great cultural country, our country should pay more attention to the protection of culture. However, from the present situation, it is far from enough for both administrative help and inheritor's own protection. Although there are many ways to protect, I think legal protection is the most effective. In the future, I still go to the non industrial area to carry out a field survey to understand more of the plight of the heritage of intangible cultural heritage, and better use the knowledge of intellectual property to help inheritors to inherit the traditional culture they have mastered.

Note: ① the court is based on the forty-ninth article of the regulations on the implementation of the People's Republic of China trademark law, which stipulates that "the general name, figure, model of the commodity contained in the registered trademark, or the quality of the commodity, the main raw material, function, use, weight, quantity and other characteristics of the commodity, or the place containing the land." The right to exclusive use of a registered trademark has no right to prohibit others from using it properly.

References

- [1] [British] marinsky. Navigation in the Western Pacific [M]. Liang Yongjia, Li Shaoming. Translation. Beijing: Hua Xia publishing house, 2002:1
- [2] Overview of traditional therapy of Mongolian medicine, [J]., Chinese Journal of nationalities medicine, 2007-2
- [3] Ge Yonghong, Zhang Jianxiang. Marketing strategies of Mongolian handicrafts, [J]. shopping malls modernization, 2008, (2):30.
- [4] Luo Zongkui, Wang Fang. Application of Intellectual Property Law in the Exploitation of African Heritage Resources in Inner Mongolia [J].Journal of Radio and TV University, 2011 (1)
- [5] Cao Jing. The fifth generation of people in the field demonstrated the handicraft of Mongolian leather boots [EB/OL].Http: //culture. nmgnews. com. CN / system /2009 /08 /27 /010273696.shtml, 2010 - 08 - 23
- [6] Song Shuhua, Bai Zhen Sheng. Theories and methods of Ethnology [M]. Minzu University of China press, 1988: 15-16