

## Path Choice of Sports Intellectual Property Protection

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**Keywords:** sports; intellectual property right; dilemma

**Abstract:** From the perspective of jurisprudence, this paper deeply analyzes the difficulties faced by sports intellectual property protection, and then carefully creates the corresponding path of sports intellectual property protection. The research shows that the dilemma of sports intellectual property protection lies in the cognitive dislocation of the relationship between sports and sports intellectual property, the application value of "sports law" is declining day by day, and the application degree of "intellectual property law" is relatively insufficient; In terms of path selection, it is required to build a solid legal basis for sports intellectual property protection, construct a comprehensive management system for sports intellectual property protection, and improve the rights protection ability of the right subject.

### 1. Dilemma of sports intellectual property protection

#### 1.1. Cognitive dislocation of the relationship between sports and sports intellectual property

To clarify the relationship between sports and sports intellectual property rights, we must scientifically interpret the connotation of sports intellectual property, which is an important prerequisite for the effective protection of sports intellectual property. To master the connotation of sports intellectual property, we should first clarify the semantics of the concept. In the concept of sports intellectual property, intellectual property is the attribute of the word, and sports is its kind difference, that is, the type of sports intellectual property is determined by the word "sports". Therefore, understanding the meaning of the word "sports" will clarify the basic connotation of sports intellectual property. According to the theory of physical education, sports is a cultural activity that promotes physical and mental development by means of physical movement.<sup>[1]</sup> Then, the basic connotation of sports intellectual property refers to the intellectual property of physical exercise, namely, sports intellectual property rights in the narrow sense, or ontology sports intellectual property.

In practice, sports intellectual property mostly adopts the broad concept, which is another realistic factor causing the cognitive dislocation of the relationship between sports and sports intellectual property. The reason is that as a broad concept, the object of sports intellectual property includes sports and sports products and service products related to sports. For example, in terms of enumeration, some scholars pointed out that the types of sports intellectual property rights mainly include: "(1) sports logo right; (2) copyright and adjacent right of various types of sports works; (3) sports patent right; (4) intellectual property of sports competition performance".<sup>[2]</sup> In this definition, it involves both the intellectual property of sports and the intellectual property of sports related products. However, sports only involve the intellectual property rights of sports competition and performance, and not all competitive sports have intellectual property rights, let alone other sports. In terms of definition, some scholars believe that "sports intellectual property rights refer to the generic terms of the exclusive rights enjoyed by natural persons, legal persons, unincorporated social organizations or the state for their creative intellectual achievements and operational symbols in the fields of competitive sports, sports culture and sports industry management in accordance with the provisions of the law".<sup>[3]</sup> In this definition, the object of sports intellectual property also includes sports and sports products and service products related to sports. However, in sports, it only emphasizes the intellectual property attribute of competitive sports, and other sports still have not been paid attention to. Some scholars believe that "sports intellectual property rights refer to the spiritual wealth created by engaging in intellectual activities in the field of sports undertakings. They

are the exclusive rights enjoyed in a certain region and a certain time, and are composed of sports copyright and sports property rights."<sup>[4]</sup> It can be seen that the definition involves sports copyright and sports property rights in terms of rights attributes, but it is still unclear whether sports should enjoy intellectual property rights.

To sum up, in order to effectively distinguish sports intellectual property and avoid cognitive errors of rights, it can be defined as two forms: narrow sense and broad sense. Among them, sports intellectual property in a narrow sense refers to the fruits of intellectual labor formed by sports. The object of rights is sports; In a broad sense, sports intellectual property refers to the fruits of intellectual labor formed by sports and around sports. The object of rights is sports, sports products and service products. In this way, the types and objects of sports intellectual property rights in both narrow and broad sense can be corresponding one by one.

### **1.2. Decline of applicable value of "Sports Law"**

As a product of the times, "sports law" undoubtedly has positive significance to the development of sports undertakings. However, with the continuous development of society, its disadvantages are becoming more and more obvious. As some scholars pointed out: "the main reasons for the failure of the "sports law" to play a role are poor implementation of the law, limited content orientation and backward legislative technology."<sup>[5]</sup> And some scholars believe that "the current 'sports law' has the shortcomings of failure of fully demonstrating rights, weak enforcement, and failure of adapting to demands of the time with the rapid development of sports and the integrated development of various sports."<sup>[6]</sup> Thus, the value role of the "sports law" in the development of sports has declined. First of all, the general provisions of the "sports law" fail to highlight the importance of sports intellectual property rights. Of the nine general provisions of the "sports law", only the third relates to economic construction. The article stipulates: "sports shall be incorporated into the national economic and social development plan."<sup>[7]</sup> It can be seen that sports only serve economic construction and has not risen to an important part of the national economic and social development plan. Secondly, the content of specific provisions of the "sports law" is very limited and does not involve sports intellectual property rights.

### **1.3. Insufficient application of "intellectual property law"**

Theoretically, sports intellectual property should be fully protected by the "intellectual property law". According to the normative content of the "intellectual property law", intellectual property rights include copyright, patent right, trademark right and other intellectual property rights, which can protect all relevant intellectual products, including sports. However, this is not the case. The "intellectual property law" stipulates: "the objects of intellectual property protection are the intellectual products created by people in the fields of science, technology, culture and other forms of knowledge."<sup>[8]</sup> However, this kind of knowledge products does not cover all knowledge products of sports. First of all, the works content of the "copyright law" does not include sports. Secondly, the "patent law" and the "trademark law" are not directly related to sports. The objects protected by the "patent law" are mainly inventions, utility models and designs of scientific products, while the "trademark law" protects the marks of goods or services for the purpose of distinguishing them from other goods and marks. That is, the "patent law" and the "trademark law" can not directly protect the ontological sports products - sports, but can protect the necessary and service sports products related to sports.

As an ontological sports product, sports is the creative root of other sports products and service products, and should be protected first. However, the "intellectual property law" does not pay due attention, which is not conducive to the development of sports, nor to the prosperity of other sports industries. One of the reason is that the academic community has not reached a consensus on whether sports are works, and the other is that the intellectual property law has not been confirmed.

### **3. Path choice of sports intellectual property protection**

#### **3.1. Build a solid legal foundation for sports intellectual property protection**

The protection of sports intellectual property rights should improve the "sports law" and "intellectual property law" to make them play a basic role.

First of all, the "outline of building a strong country in sports" emphasizes the protection of sports intellectual property rights and requires corresponding amendments to the "sports law" to meet the needs of sports intellectual property protection. Firstly, the general provisions of the "sports law" should reflect the value and function of sports intellectual property in the development of sports industry. Article 3 of the general provisions of the "sports law" relates to economic construction, which can be amended as "the state insists that sports serve economic construction, national defense construction and social development, and sports undertakings should be incorporated into the national economic and social development plan, and sports industry is an important part of national economic and social development. The state promotes the reform of sports management system. The state encourages enterprises, institutions and social organizations to establish and support sports undertakings, develop sports industry and protect sports intellectual property rights." Secondly, the "sports law" can list the "sports industry" in a separate chapter, listing the product types of the sports industry and the corresponding forms of intellectual property rights, and protect sports products through sports intellectual property rights, so as to effectively promote the steady development of the sports industry.

Secondly, improve the "intellectual property law" and strengthen the comprehensive protection of sports intellectual property. Sports intellectual property mainly includes three types of rights: ontology, necessity and relevance. Among them, the object of necessary and relevant sports intellectual property mainly involves sports products and sports services, so its intellectual property content mainly includes patent right, trademark right, logo right, trade name right and other forms, which can be protected by the legal provisions in the "intellectual property law". The ontological sports intellectual property rights mainly include three forms: theoretical copyright, practical copyright and sports logo right. Among them, the theoretical copyright can be given due protection through the "copyright law", and the sports logo right can be managed in accordance with the administrative regulations "conservation regulations on the Olympic symbols"<sup>[9]</sup>. On the contrary, there is no reliable legal guarantee for the practical copyright of sports. The reason is that the copyright attribute of sports has not been recognized by the academic circles, and there is no specific legal provisions. As a kind of body culture, sports takes the improvement and consolidation of technology as the main line and the display and competition of skills as the form. Therefore, sports should identify works from the perspective of "sports art", and give different levels of copyright protection according to their "technology" level and social value function. If sports cannot be protected by copyright, it will not be conducive to the development of sports undertakings, hinder the prosperity of sports industry, and ultimately run counter to the dream of becoming a sports power. Therefore, it is extremely important to strengthen the comprehensive protection of sports intellectual property rights. The author believes that a separate chapter can be listed in the intellectual property law to construct the sports intellectual property system. Its characteristics are as follows: first, establish the core position of ontological sports intellectual property rights; Second, emphasize the key role of the necessary sports intellectual property rights; Third, give play to the auxiliary role of relevant sports intellectual property rights.

#### **3.2. Build a comprehensive management system for sports intellectual property protection**

Sports intellectual property protection is a systematic project, which requires strict requirements from the source of sports governance, scientific control in the process of power operation, and justice and fairness in the procedure of judicial relief.

The first is sports management organization governance. At present, China's Sports Bureau is the main promoter of sports undertakings, which can contribute to the development of sports industry and plays a guiding role in the protection of sports intellectual property rights. This can be inspired by the main responsibilities of the State General Administration of sports. For example, article 3 of the main responsibilities of the State Administration of sports stipulates: "make an overall plan for

the development of mass sports, be responsible for implementing the national fitness plan, supervise the implementation of the national physical exercise standards, and supervise and manage public sports facilities."<sup>[10]</sup> According to this article, the State General Administration of Sports is the planning director of national fitness, as well as the supervisor and manager of national fitness. In the process of management and supervision, the State Administration of Sports can make scientific and reasonable requirements and instructions on the form of sports, the quality of sports products and the specifications and standards of sports services, which is actually the indirect protection of the intellectual property rights of sports, sports products and sports services.

The second is administrative governance. Administrative governance focuses on process governance, which plays a fundamental role in the protection of sports intellectual property rights. The administrative organization mainly refers to the Intellectual Property Office, which is directly responsible for the supervision and protection of sports intellectual property, and is responsible for the condition identification, registration, registration and relevant dispute adjudication of intellectual property. For example, the fourth article in the institutional function of the State Intellectual Property Office stipulates: "responsible for the examination, registration, registration and administrative adjudication of intellectual property rights. Implement trademark registration, patent examination and integrated circuit layout design registration. Be responsible for administrative rulings such as review and invalidation of trademark, patent, integrated circuit layout design review and invalidity. To formulate a unified identification system for geographical indications of origin and organize its implementation."<sup>[11]</sup> The strict examination of the trademark right, patent right and other rights of sports products by the State Intellectual Property Office will help to improve the quality of sports intellectual property. The supervision and governance of the intellectual property office should give play to its own initiative, actively enter the field of sports market, actively verify various sports intellectual property rights, and timely protect the legitimate rights and interests of the parties.

The third is judicial governance. Judicial governance focuses on right relief, requiring the termination of illegal acts and the restoration of damaged rights and interests. At present, the intellectual property court is the jurisdiction court of intellectual property disputes, so the sports intellectual property disputes are also its jurisdiction cases not to decline. As mentioned above, the content of sports intellectual property is very special and closely related to sports. so the intellectual property court must consider its sports attribute. Therefore, the establishment of special sports intellectual property court should be the best choice. This can not only effectively improve the efficiency of dispute resolution, but also ensure judicial justice to a greater extent.

### **3.3. Improve the rights protection ability of the right subject**

The ultimate purpose of sports intellectual property protection is to protect the legitimate rights and interests of the right subject, and whether the legitimate rights and interests of the right subject can be guaranteed is closely related to its ability to protect rights. Therefore, it is particularly important to protect sports intellectual property rights, safeguard the interests of the rights subject and enhance the rights safeguarding ability of the rights subject. The ability of safeguarding rights is mainly reflected in three aspects: the first is the awareness of rights. Rights consciousness refers to the full cognition of the rights subject on whether their sports intellectual property rights have been infringed; The second is the decision to safeguard rights. It refers to the determination of the will of the right subject after measuring the damage degree of sports intellectual property rights, and it is also the prelude to decide the action of safeguarding rights; The third is action to protect rights. It refers to the activity that the rights subject can actively take measures to safeguard their own rights on the basis of objective facts and on the platform of governance institutions.

## **4. Conclusion**

The legal basis of sports intellectual property protection is the foundation, and the "Sports Law" and "Intellectual Property Law" should be improved and strengthened. The comprehensive governance system of sports intellectual property protection is the core. To construct the comprehensive governance system, we should emphasize the trinity governance mode of sports

organization, administrative institutions and judicial institutions. In addition, the protection of sports intellectual property should emphasize the subject's ability of safeguarding rights, which is the key to safeguarding rights.

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