

The Legal Dilemma of Intellectual Property Protection in Emei Martial Arts and its Mitigation Strategies

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Abstract

From a legal perspective, analyze the connotation and logical relationship of intellectual property rights in Emei martial arts, point out the Legal dilemma in protecting Emei martial arts intellectual property rights, and then propose solutions to the problems. The study believes that the intellectual property rights of Emei martial arts refer to the intellectual property rights based on the intellectual achievements and commercial logos of Emei martial arts. The legal dilemma in the protection of intellectual property rights in Emei martial arts mainly manifests as follows: the identity of the rights subject of intellectual property rights in Emei martial arts and the intangible cultural heritage of Emei martial arts is the root cause of the conflict between public and private interests; to some extent, the sports nature of the intellectual property rights of Emei martial arts has influenced the legal recognition of this part of Emei martial arts intellectual property rights in the academic community; the inadequacy of the legal system is the fundamental reason why the intellectual property rights of Emei martial arts are difficult to obtain comprehensive protection. Based on this, the study proposes that technological innovation is a logical prerequisite for the protection of intellectual property rights in Emei martial arts. It can be achieved by extracting the classic techniques of Emei martial arts, constructing representative martial arts routines, and creating Emei martial arts competition projects; The improvement of the legal system is the legal foundation for the protection of intellectual property rights in Emei martial arts. In this process, it is necessary to particularly strengthen the important position and role of the Sports Law in the protection of intellectual property rights in Emei martial arts, and improve the basic position and auxiliary function of relevant intellectual property laws in the protection of intellectual property rights in Emei martial arts; The enrichment of theory is a powerful argument for the protection of intellectual property rights in Emei martial arts. Strengthening theory must be combined with the characteristics of sports, in order to build a solid legal foundation for the protection of the object of rights. In addition, the protection of intellectual property rights in Emei martial arts should focus on benefits, which requires balancing public and private interests and promoting the realization of public welfare through private rights protection

Keywords

1. Introduction

As a martial arts culture rooted in the regional environment, Emei martial arts reflect the humanistic spirit of the times, with offensive and defensive techniques being its essential embodiment. Nowadays, with the development of society, the function of Emei martial arts is no longer limited to offensive and defensive techniques, but combines multiple sports functions such as fitness, competition, education, economy, and politics. As a traditional martial arts culture, Emei martial arts have endowed contemporary sports culture with fundamental characteristics. Moreover, with the help of modern science and technology, especially the popularization and application of Internet technology, the name card of Emei Wushu has gone global. In the process of spreading in the Emei martial arts world, its commercial value has also been demonstrated to a certain extent. Undoubtedly, as a sports culture business card, its commercialization not only contributes to the rapid growth of the local economy, but also contributes to the innovation and development of Emei martial arts. However, in its commercialization process, the industry brand is likely to face various malicious commercial uses from the outside world, and may even be subjected to illegal acts of intellectual property infringement. As is well known, the more well-known the sports industry brand, the greater the possibility of commercial confusion, value utilization, and intellectual property infringement. The trademark registration of Shaolin martial arts brand is a vivid example. So, how to scientifically develop Emei martial arts, how to protect intellectual property rights, and how to commercially utilize them naturally become a major issue before us. Firstly, the “outline for Building a Sports Strong Country” clearly proposes to increase innovation in the sports industry, form products with high technological content and independent intellectual property rights, and create well-known enterprises and influential brands with international influence. Obviously, this outline points out the direction for the innovative development of Emei martial arts. Secondly, the 14th Five Year Plan points out that “China is in a critical period of realizing the great rejuvenation of the Chinese nation, and the economy has shifted from a high-speed growth stage to a high-quality development stage. The strategy of innovation driven development is deeply implemented, the construction of modern industrial system is accelerated, and high-level opening-up is continuously deepened.” This indicates that the innovative development of Emei martial arts must inevitably follow the high-quality development requirements of the industrial economy, and cannot be separated from the innovation of Emei martial arts intellectual property rights and the protection of legal systems. Therefore, this study will deeply analyze the legal connotation of intellectual property rights in Emei martial arts, comprehensively explain the value logic of Emei martial arts intellectual property protection, objec-

tively analyze the legal dilemma of Emei martial arts intellectual property protection, and propose countermeasures for Emei martial arts intellectual property protection.

2. Interpretation of the connotation of intellectual property rights in Emei martial arts

As a form of combat sports culture, Emei martial arts contain rich combat wisdom, which is the fundamental prerequisite for the existence and development of Emei martial arts. Similarly, the innovation, development, and protection of Emei martial arts knowledge products will inevitably revolve around the essential feature of combat skills in Emei martial arts. Moreover, in the era of commercialization and marketization, building the Emei martial arts brand, promoting Emei martial arts culture, and realizing its commercial value have become a consensus in today's academic, business, and political circles. Currently, according to literature review, since 2007, Emeishan City has not only hosted six sessions of the "China Sichuan International Emei Martial Arts Culture Festival", but also held multiple "World Traditional Martial Arts Championships". It can be said that with the joint efforts of all sectors of society, the reputation of Emei martial arts brand has been established. Along with it, various related knowledge products of Emei martial arts, such as Emei martial arts trademarks and Emei martial arts equipment patents, have begun to emerge. In this context, it is necessary to carefully build the Emei martial arts industry brand, fully tap into the potential value and functions of Emei martial arts, and deeply explore the essential connotation of Emei martial arts intellectual property rights, in order to lay a solid foundation of rights for the development of Emei martial arts. Moreover, only by understanding the essence of Emei martial arts and the relationship between Emei martial arts and intellectual property can we better protect and develop Emei martial arts.

Firstly, the interpretation of the connotation of Emei martial arts. Emei martial arts is a school of traditional Chinese martial arts, which can be regarded as the main representative of regional traditional martial arts, and is on par with traditional martial arts schools such as Shaolin and Wudang. However, what is Emei martial arts? Are all the martial arts performances at the Emei Martial Arts Culture Festival Emei martial arts? What is the relationship between the World Traditional Martial Arts Championships and Emei martial arts? There are still some differences among the public and even the martial arts community regarding the above issues. To clarify the essence and connotation of Emei martial arts, it is necessary to thoroughly analyze them one by one. Firstly, according to the definition of "Emei martial arts", "Emei martial arts are a general term for martial arts that originated in the Emei Mountain area of Sichuan and have been widely spread throughout Sichuan and even the southwestern region." From this definition, it can be inferred that the birthplace of Emei martial arts can only be Mount Emei in Sichuan. From the per-

spective of dissemination, Emei martial arts are mainly spread throughout the entire Sichuan region and have radiated to various parts of southwestern China. However, since ancient times, communication within and outside martial arts has been a common occurrence. So, what is the relationship between Emei martial arts and foreign martial arts? Does the development of Emei martial arts exclude foreign martial arts, and are foreign martial arts the same as Emei martial arts? Obviously, the Emei Mountain area in Sichuan does not reject the intervention of foreign martial arts, and it has great openness and inclusiveness towards foreign martial arts. This can be seen from the emergence and significant development of various foreign martial arts such as Tai Chi, Wing Chun, and Nan Quan. So, is this type of martial arts considered Emei martial arts? According to the definition of Emei martial arts, this type of martial arts does not belong to the branch or series of Emei martial arts because its origin is not in the Emei Mountain area. But once the content elements of this type of martial arts are absorbed by Emei martial arts, they can become an integral part of Emei martial arts. Therefore, Emei martial arts are not all martial arts in the Emei region. But Emei martial arts can integrate other martial arts elements to develop itself. Because, fundamentally speaking, various martial arts have similarities, with offensive and defensive techniques as the core elements of martial arts, and highly similar forms of movement, such as routines, techniques, combat, and ideological concepts. Therefore, Emei martial arts can be considered as a traditional martial arts that originated in the Emei Mountain area of Sichuan Province, with the development of martial arts content from other regions as auxiliary elements, and has gradually developed, formed, and improved through frequent communication or dissemination to the outside world. Furthermore, based on its project analysis, the martial arts exhibition at the Emei Martial Arts Culture Festival includes traditional martial arts from various regions of China, and is similar in content to the World Traditional Martial Arts Championships. Therefore, the Emei Martial Arts Culture Festival and the World Traditional Martial Arts Championships are both platforms for showcasing traditional martial arts. It promotes innovation and development of traditional martial arts through platforms, and Emei martial arts is just one of its contents.

Secondly, the definition of the intellectual property content of Emei martial arts. In theory, intellectual property refers to the exclusive rights enjoyed by civil subjects over specific intellectual achievements and commercial marks, also known as intangible property rights or intellectual property rights.[1] Therefore, in terms of attributes, the intellectual property of Emei martial arts is a type of intellectual property right or intangible property right, which includes intellectual achievements and commercial logos; Literally speaking, the classification of intellectual property rights in Emei martial arts is Emei martial arts, and it has distinct sports attributes. So, the intellectual property rights of Emei martial arts refer to the intellectual property rights based on the intellectual achievements and commercial logos of Emei martial

arts. Considering the sports attributes of Emei martial arts, the intellectual property rights of Emei martial arts can also be referred to as sports intellectual property rights. The content of Emei martial arts intellectual property is relatively rich. In addition to traditional intellectual property such as copyright, patent rights, and trademark rights, Emei martial arts intellectual property should also include sports logos, sports mottos, sports symbols, registration websites, martial arts names, and other content. In addition, the intellectual property of Emei martial arts is closely related to intangible cultural heritage. That is to say, the intellectual property of Emei martial arts is innovatively developed on the basis of Emei martial arts culture, but Emei martial arts culture, as an intangible cultural heritage, does not have intellectual property attributes. As an intangible cultural heritage, Emei martial arts demonstrate the attributes of public culture and have a wide range of obligated protection subjects. As scholars have pointed out, the subject of intangible cultural heritage and the subject of intangible cultural heritage protection are different.[2] Of course, some scholars believe that the main body of protecting intangible cultural heritage is administrative agencies, although the effect is not very ideal.[3] In summary, the intellectual property rights of Emei martial arts and the intangible cultural heritage of Emei martial arts have different attributes and subject rights. Obviously, Emei martial arts intellectual property rights have a private nature and are an innovation and development of Emei martial arts knowledge products. However, the intellectual property of Emei martial arts cannot be separated from Emei martial arts as an intangible cultural heritage.

3. The Value Logic of Intellectual Property Protection in Emei Martial Arts

Emei martial arts have a long history. Combat skills are unique and diverse. However, with the changes in society and people's lifestyles, the connotation, value, and function of Emei martial arts are also gradually evolving. In reality, sportsmanship is a historical inevitability of its development, while commercialization is the market manifestation of its knowledge products. Generally speaking, as an excellent traditional martial arts culture, it should be accepted, inherited, and promoted by contemporary people, thus demonstrating its vitality and humanistic value. But now, in order to prevent the gradual decline of Emei martial arts culture, it needs to be included in the national intangible cultural heritage list for protection. Obviously, the protection of this intangible cultural heritage list is not a one-time solution. It is just a preservation or recording of excellent historical culture. It still requires people to constantly explore, refine, innovate, promote and protect it, so that it can continue to give back to society and serve the people. Firstly, according to Article 3 of the Intangible Cultural Heritage Law of the People's Republic of China (hereinafter referred to as the "Intangible Cultural Heritage Law"), "the state shall take measures such as recognition, recording, and archiving to preserve intangible cultural heritage,

and shall take measures such as inheritance and dissemination to protect intangible cultural heritage that embodies the excellent traditional culture of the Chinese nation and has historical, literary, artistic, and scientific value.” This indicates that the main ways in which the state protects intangible cultural heritage are: first, adopting appropriate methods for archiving and preservation; The second is to inherit and spread it. Obviously, this protection method is not aimed at promoting innovation and development of Emei martial arts, nor is it related to how to solve various infringement behaviors in Emei martial arts. Secondly, Article 30 of the Intangible Cultural Heritage Law stipulates that “the cultural authorities of the people’s governments at or above the county level shall, as needed, take the following measures to support representative inheritors of intangible cultural heritage projects in carrying out inheritance and dissemination activities: (1) provide necessary inheritance venues; (2) provide necessary funding to support their activities such as apprenticeship, art transmission, and exchange; (3) support their participation in social welfare activities; (4) support other measures for their inheritance and dissemination activities.” However, there is no further explanation on how to ensure and support this. This means that the current methods of protecting intangible cultural heritage are difficult to solve the fundamental problems of innovation, development, and protection of Emei martial arts. As pointed out by Wenzhang Wang, the president of the China Academy of Art, “In some places, the awareness of intangible cultural heritage protection is weak, and the phenomenon of emphasizing application and development over protection and management is quite common.....”[4]

Based on the above analysis, it can be concluded that the protection method of the Emei Martial Arts Cultural Heritage List reflects the national will, which is the national protection or national memory of local intangible cultural heritage. In terms of decision-making execution, it is usually led by the decisions of the national administrative organs; In terms of measures and actions, it is generally implemented by mobilizing various organizations and institutions of the people, as well as inheriting the power of individuals and groups; In terms of management system, it usually implements a collaborative mechanism among the national government, scientific research institutions, and civil organizations to achieve the protection of intangible cultural heritage. Obviously, this operating mode can attract the attention and importance of various sectors of society to a certain extent, and the designation or determination of protection units has also laid the corresponding institutional foundation for the development of Emei martial arts. However, the public welfare nature of Emei martial arts cultural heritage and the non personal nature of Emei martial arts rights holders are not conducive to the innovation and development of Emei martial arts. As is well known, the development of society is continuous and eternal, and people’s needs are also ever-changing. The development of Emei martial arts must also keep pace with the times to meet the needs of society and individuals. Without a doubt, development means innovation, and it is not simply a matter of archival

memory. The innovation of culture requires individuals to exert their initiative. In this situation, clear rights holders and clear division of responsibilities are necessary to fully mobilize the initiative of innovators. In view of this, the protection of intellectual property rights is an important path for the innovative development of Emei martial arts. Generally speaking, intellectual property focuses on the protection of private rights, granting corresponding monopoly rights to the rights holders, which is conducive to stimulating individual creativity. Moreover, in today's increasingly fierce high-tech competition in the international community, intellectual property protection has become an important strategy for national security and social development. Scholars have pointed out that "the Chinese government's emphasis on the knowledge economy and the rapid promotion of intellectual property strategies have gradually made intellectual property an important tool for enterprises to exert their core competitiveness and a new engine for social and economic growth." [5] Therefore, the development of the Emei martial arts industry must also attach importance to the innovation and protection of knowledge products and skills in order to conform to the trend of the times, meet people's needs, and inject new elements into social development. On the one hand, the generation and ownership of knowledge products related to Emei martial arts are the legal prerequisites for Emei martial arts to receive intellectual property protection. Through the intellectual property protection of Emei martial arts, not only can the intellectual achievements of Emei martial arts innovators be protected, but more importantly, it promotes the innovative development of Emei martial arts and activates the commodity market of Emei martial arts industry. In short, the protection of intellectual property rights in Emei martial arts is one of the key aspects of its development.

4. Analysis of the Legal Dilemma of Intellectual Property Protection in Emei Martial Arts

4.1. The dilemma of rights holders in the protection of intellectual property rights for Emei martial arts

The rights holders of Emei martial arts intellectual property are closely related to the rights holders of Emei martial arts intangible cultural heritage, but there are some differences. At the same time, due to the fundamental nature of intangible cultural heritage and intellectual property, there are also some unfavorable situations in the protection of Emei martial arts intellectual property.

Firstly, the rights holders of intangible cultural heritage of Emei martial arts are closely related to the rights holders of Emei martial arts intellectual property. As a national intangible cultural heritage, the rights holders of Emei martial arts are diverse and have different responsibilities. Firstly, the organizer and manager of Emei martial arts. According to the list of representative national intangible cultural heritage protection units, the protection unit of Emei martial arts intangible cultural heritage is the Emeishan Sports Federation. According to Article 8 of the "Interim

Measures for the Protection and Management of National Intangible Cultural Heritage" (hereinafter referred to as the "Measures"), national intangible cultural heritage project protection units shall fulfill the following responsibilities: firstly, comprehensively collect the physical objects and materials of the project, and register, organize, and file them; The second is to provide necessary conditions for the inheritance and related activities of the project; Thirdly, effectively protect the cultural venues related to the project; Fourthly, actively carry out exhibition activities for the project; The fifth is to report the implementation of project protection to the local cultural administrative department responsible for the specific protection work of the project, and accept supervision. From this, it can be seen that as a social organization for the protection of intangible cultural heritage of Emei martial arts, it is both a right subject and an obligation subject. This institution has the right to collect, organize, archive, protect, disseminate, and develop Emei martial arts. Its source of power is entrusted by the national administrative agency. But if the commissioning unit cannot meet the requirements of the Measures, there is a possibility of being banned. Secondly, the inheritor of Emei martial arts. There are numerous martial arts schools in Emei, known as the "Five Flowers and Eight Leaves" school. The "Five Flowers" refer to the schools of Huangling, Dianyi, Qingcheng, Tiefo, Qingniu, and other popular regions; The "Eight Leaves" refer to the eight different martial arts sects of Monk, Yue, Zhao, Du, Hong, Zi, Hua, Hui, etc. With numerous sects, there are also many inheritors. The inheritors of Emei martial arts are not only outstanding spokespersons of Emei martial arts, but also direct guardians and disseminators of Emei martial arts. Thirdly, the practitioners of Emei martial arts. The inheritance of Emei martial arts cannot be separated from the practitioners of Emei martial arts. With Emei martial arts practitioners, the role of Emei martial arts inheritors can be reflected, the cultural value of Emei martial arts can be highlighted, and the responsibilities of Emei martial arts intangible cultural heritage protection units can be truly fulfilled. The intellectual property rights of martial arts are partly derived from the rights holders of intangible cultural heritage of Emei martial arts, which is mainly reflected in the development of skills. In terms of skills, the formation of intellectual property rights for Emei martial arts mainly comes from three aspects: firstly, the Emei Mountain Sports Federation promotes the exploration and innovation of Emei martial arts skills through its own rights; Secondly, the dedicated research of the inheritors of Emei martial arts has contributed to the development of their skills; The third is the learner's own learning and exploration. In summary, it is the rightful owners of the intangible cultural heritage of Emei martial arts who undertake the important task of innovating and developing Emei martial arts techniques.

Secondly, the rights holders of Emei martial arts intellectual property and Emei martial arts intangible cultural heritage do not completely overlap, and their pursuit goals are also not completely consistent. In terms of value goals, the intangible cul-

tural heritage of Emei martial arts aims to benefit society and serve the people. The main objective of the “Opinions on Further Strengthening the Protection of Intangible Cultural Heritage” emphasizes that by 2025, representative projects of intangible cultural heritage will be effectively protected, the work system will be scientifically standardized and effectively operated, and the people’s sense of participation, acquisition, and identification with intangible cultural heritage will be significantly enhanced. The role of intangible cultural heritage in serving the contemporary and benefiting the people will be further played. Strengthen the integration and sharing of national intangible cultural heritage resources, further promote the lawful opening of intangible cultural heritage data to the society, and further enhance the social utilization of archives and recorded achievements. It is obvious that the protection of intangible cultural heritage is based on the value goal of public welfare. The value goals of intellectual property protection for Emei martial arts are quite different. The purpose of protecting the intellectual property rights of Emei martial arts is to encourage innovation and development of Emei martial arts skills, which is the protection of private rights and demonstrates the monopolistic characteristics of private rights. Only in specific circumstances such as violating social public interests, overall national security, or legal limitations, can private rights potentially yield benefits to some extent. In terms of rights holders, the main rights holders of the intangible cultural heritage of Emei martial arts are the corresponding social organizations, inheritors, and their practice groups. In addition to the aforementioned group organizations and individuals, the rights holders of Emei martial arts intellectual property can also include enterprises, institutions, and other relevant individuals. Because the intellectual property of Emei martial arts not only includes the combat techniques of Emei martial arts, but also various application products of Emei martial arts, as well as knowledge products such as the name, logo, and website of Emei martial arts. Finally, in terms of implementation form, the intangible cultural heritage of Emei martial arts is also different from the intellectual property of Emei martial arts. The intangible cultural heritage of Emei martial arts is preserved through collection, organization, and archiving, and promoted through inheritance and dissemination, ultimately achieving the goal of serving people’s lives and promoting social happiness. The forms of realizing the intellectual property rights of Emei martial arts include: firstly, the innovation of Emei martial arts knowledge products. It includes technical products and material products; The second is the realization of the commercial value of Emei martial arts knowledge products. It includes various commercial forms such as license, transfer, sale, and use of Emei martial arts intellectual property rights; The third is the protection of intellectual property rights in Emei martial arts. The protection of intellectual property rights in Emei martial arts can be achieved through judicial, administrative, or negotiation means.

The dilemma of the intellectual property rights holders of Emei martial arts mainly

manifests in two aspects: first, the rights holders of the Emei martial arts industry itself. The ontology industry refers to the industry formed by the skills of Emei martial arts itself, such as Emei martial arts performance industry, Emei martial arts training industry and other corporate institutions. This type of company focuses on the development and dissemination of Emei martial arts skills, and their rights holders overlap with the rights holders of Emei martial arts intangible cultural heritage. The owner of the intangible cultural heritage of Emei martial arts is also the owner of the intellectual property rights of Emei martial arts. In this case, the subject of rights is both a representative of the public interest group and a representative of individual private interests. When public and private interests are represented equally, the maintenance of public interests will be questioned to some extent. The second is the rights holder of Emei martial arts related industries. This type of industry is not the main industry of Emei martial arts, but they can provide services for the development of Emei martial arts, such as Emei martial arts advertising and promotion industry, Emei martial arts product manufacturing industry and other corporate institutions. Although the Emei martial arts related industries can assist in the innovative development of Emei martial arts, they may not fully understand the nature and characteristics of Emei martial arts, or to some extent affect the inheritance and innovation of Emei martial arts for their own interests. Excessive development or extreme mythology of Emei martial arts functions by enterprises can have a negative impact on the development of Emei martial arts. Only by being familiar with the attributes and characteristics of Emei martial arts, understanding the fundamental needs of society for it, and not harming the rights and interests of Emei martial arts for its own development, can the related industries of Emei martial arts better promote the healthy development of Emei martial arts.

4.2. The dilemma of the object of intellectual property protection in Emei martial arts

According to Article 123 of the Civil Code of the People's Republic of China (hereinafter referred to as the "Civil Code"), civil subjects enjoy intellectual property rights in accordance with the law, and its objects include: works; Invention, utility model, appearance design; Trademark; Geographical indication; trade secret; Integrated circuit layout design; New plant varieties; Other objects specified by law. According to Article 3.1 of the "Guidelines for Intellectual Property Management of Industrial Enterprises" (hereinafter referred to as the "Guidelines"), intellectual property refers to the exclusive rights enjoyed by inventors, creators, and others in the fields of science and technology, literature and art to their creative labor results in accordance with the law, including patents, trademarks, copyrights and related rights, integrated circuit layout designs, geographical indications, new plant varieties, trade secrets, traditional knowledge, genetic resources, and folk literature and art.[6] So, based on the content of intellectual property objects in the Civil Code and Guidelines,

the object of intellectual property rights for Emei martial arts should include: works; Invention, utility model, and design; Sports trademark; Sports logo; Technical secrets; Traditional knowledge and other related content. From this content, it can be seen that the intellectual property object of Emei martial arts reflects both the ontology or sportsmanship of Emei martial arts, as well as the relevance or enterprise of Emei martial arts, but their commonality is commercialization. The main manifestation of its object dilemma is as follows:

Firstly, an analysis of the difficulties in protecting the intellectual property rights of Emei martial arts works. According to Article 3 of the Copyright Law of the People's Republic of China (hereinafter referred to as the "Copyright Law"), works refer to intellectual achievements in the fields of literature, art, and science that are original and can be expressed in a certain form. Its content includes: written works; Oral works; Music, drama, folk art, dance, and acrobatic works of art; Artworks and architectural works; Photographic works; Audiovisual works; Engineering design drawings, product design drawings, maps, schematic diagrams and other graphic works and model works; Computer software; Other intellectual achievements that meet the characteristics of the work. From this, it can be seen that the intellectual achievements of textual works such as research-oriented papers and academic reports on Emei martial arts are naturally protected by the Copyright Law. However, considering the movements and techniques of Emei martial arts as works of art poses certain difficulties. Firstly, this article limits the scope of the work to the fields of literature, art, and science. So, is Emei martial arts a work of art? This has also been a controversial issue for a long time, as scholars believe that "although there are many performances of martial arts in modern times, their main purpose is not to express emotions and mobilize consciousness, but to attack others based on this foundation." [7] This means that the scholar believes that martial arts performances do not have artistic value. Secondly, Emei martial arts works have attachment. That is to say, Emei martial arts need to rely on certain carriers to form works. In practice, Emei martial arts are presented to the world in the form of martial arts combat movements, with the formlessness of objects, and can only be reproduced in some form of carriers to form works. For example, there are various types of media such as cassette tapes, CDs, and digital media used for performances in Emei martial arts competitions. At the same time, the works also require that the technical forms of Emei martial arts have originality. Otherwise, the work will not be protected by the Copyright Law. In addition, most scholars believe that martial arts routines have creative, artistic, and aesthetic elements in their choreography, similar to dance works, and can enjoy the protection of works under the Copyright Law. Finally, the Copyright Law only protects the carrier form of Emei martial arts works, and does not protect the specific content of Emei martial arts works. Therefore, even if the content of the work includes audiovisual works, the artistic and original requirements of Emei martial arts are still its pain points.

Secondly, an analysis of the patent protection dilemma of Emei martial arts intellectual property. According to Article 2 of the Patent Law of the People's Republic of China (hereinafter referred to as the "Patent Law"), inventions and creations refer to inventions, utility models, and designs. Among them, invention refers to a new technical solution proposed for a product, method, or its improvement; Utility model refers to a new technical solution proposed for the shape, structure, or combination of a product that is suitable for practical use; And appearance design refers to a new design that is aesthetically pleasing and suitable for industrial applications, which combines the overall or partial shape, pattern or their combination, as well as the combination of color and shape, pattern of a product. From this, it can be seen that inventions in the Patent Law include product inventions, technological inventions, and improvement inventions. Utility model invention refers to the utility model technical solution of a product, but does not include technical methods. Similarly, appearance design also refers to the invention of industrial products, and is not related to technical methods. In general, the inventions protected by the Patent Law are mainly inventions and creations of industrial products. This type of enterprise product can be an indispensable tool for the development of Emei martial arts, such as Emei thorns. Moreover, as long as such products meet the patent requirements of the Patent Law for products or methods and obtain patent rights, they can be protected by China's Patent Law. But can the techniques and methods of Emei martial arts be protected by the Patent Law? Some scholars have pointed out that "patents in the field of sports are not uncommon, and they are usually provided for tangible inventions. However, the Patent Law has also provided methods for human movement. For example, 'golf putting rod and putting rod method' is a patented work registered with the Patent and Trademark Office (PTO). "[8]The Emei martial arts technique can be granted patent rights to some extent. However, the current academic community generally does not support obtaining patents for sports methods. Martial arts movie star Jet Li once applied for a martial arts action patent in the United States, but the registration application was not recognized by the US Patent and Trademark Office. [9]The reason for this is that patents need to be attached to specific products, and even method patents are closely related to the manufactured products. And martial arts movements are the technical methods or means of martial arts operation, which have nothing to do with industrial products. If they are called products, they are only martial arts movements themselves. In addition, if martial arts movements can form a method patent, then the dissemination and promotion of martial arts will be significantly hindered. At the same time, the requirement for martial arts action patents also goes against the way martial arts competition is conducted, which further disrupts the general fairness of martial arts competitions.

Thirdly, an analysis of the difficulties in protecting the intellectual property rights of Emei martial arts. In the intellectual property of Emei martial arts, the identification

symbols of Emei martial arts mainly include two types: sports trademarks and sports logos. The reason why it is called a “sports trademark” and “sports logo” is due to the sportsmanship of Emei martial arts. The Emei martial arts trademark mainly reflects the symbol of Emei martial arts products, however, the trademark of Emei martial arts products has shown a phenomenon of dilution. On the enterprise service platform “Aiqicha”, a trademark search using the keyword “Emei Martial Arts” reveals 12 trademarks with the same name, 11 similar trademarks, and up to 15 trademark categories. Among them, the international categories of the trademark with the same name as “Emei Martial Arts” involve education and entertainment, transportation and storage, convenience food, medicine, handmade equipment, social services, website services, advertising sales, financial property management, and other content. From this, it can be seen that Emei martial arts, as a form of sports culture, is not closely related to sports in terms of its knowledge products. Even beer and alcohol have appeared in the trademark category, which has now been shown to be invalid. The widespread emergence of trademarks for other products that are detached from the sports attributes of Emei martial arts is a serious dilution of the Emei martial arts product trademark brand, which is not conducive to the healthy development of the real Emei martial arts industry, nor does it contribute to the prosperity and progress of Emei martial arts culture. At the same time, the emergence of similar trademarks has exacerbated the negative effect of this dilution. Sports logo is a specific identification or symbol used by sports organizations, events, sports brands, or other sports related entities, which can represent sports entities, convey sports images, and showcase sports values. Therefore, sports logos have a guiding and explanatory role for sports activities or sports products. More importantly, sports logos also play a significant role in promoting the marketization and commercialization of sports. For example, the “Regulations on the Protection of Olympic Symbols” promulgated by our country are aimed at protecting the commercial value of Olympic symbols. The main legal system for the protection of sports symbols is the “Regulations on the Management of Special Symbols”. Article 2 of the Regulation stipulates that special symbols refer to names and abbreviations, emblems, mascots, and other symbols composed of text and graphics used in national and international cultural, sports, scientific research, and other social welfare activities approved by the State Council. From this article, it can be seen that sports logos are one of its protected contents. Meanwhile, Article 3 of the Regulations on the Administration of Special Signs stipulates that special signs approved and registered by the State Administration for Industry and Commerce are protected by this Regulation. Therefore, whether the Emei martial arts sports logo can be protected by law depends on whether it has been approved and registered by the State Administration for Industry and Commerce.

4.3. The legal system dilemma of intellectual property protection in Emei martial arts

The intellectual property objects of Emei martial arts include two types: non-material martial arts techniques, marks, symbols, domain names, and material martial arts products. As material knowledge products, they can be protected by legal systems such as patent law, trademark law, and anti unfair competition law. However, non-material intellectual property objects are difficult to obtain comprehensive protection under intellectual property law. Firstly, in terms of copyright, whether the skills of Emei martial arts possess artistic qualities is the key to their protection under the Copyright Law. Undoubtedly, Emei martial arts have sports attributes, but the Copyright Law does not make corresponding provisions on the artistic nature of sports, which means that Emei martial arts are difficult to be protected by the Copyright Law; Secondly, in terms of patent rights, the techniques and methods of Emei martial arts cannot be patented, so they do not need to be protected by the Patent Law. Again, although Article 871 of the Civil Code stipulates the confidentiality obligations of the transferee of a technology transfer contract and the licensee of a technology license contract, this confidentiality obligation also applies to commercial technology contracts. Therefore, the techniques and methods of Emei martial arts cannot be protected by the commercial secrets regulations in the Civil Code. Furthermore, the sports logo of Emei Martial Arts does not meet the requirements stipulated in the “Regulations on the Management of Special Symbols”. Finally, the content on the protection of sports intellectual property rights in the Sports Law of the People’s Republic of China (hereinafter referred to as the “Sports Law”) is also very limited and lacks operability. As stipulated in Article 52 of the Sports Law, the names, emblems, flags, mascots and other symbols of sports events held within the territory of China shall be protected in accordance with relevant national regulations. Without the permission of the organizers and other relevant rights holders of sports events, it is not allowed to collect or disseminate on-site pictures, audio and video information of sports events for profit. From this, it can be seen that in the field of sports intellectual property, the content protected by the Sports Law mainly includes sports symbols such as names and emblems in sports events, as well as related content information of competition activities. However, the relevant national regulations mainly include two legal systems: the “Regulations on the Protection of Olympic Symbols” and the “Regulations on the Protection of Special Symbols”. Among them, the Regulations on the Protection of Olympic Symbols aim to protect Olympic sports symbols, while the symbols protected by the Regulations on the Protection of Special Symbols must be special symbols approved and registered by the State Administration for Industry and Commerce. It can be seen that the legal system for protecting the intellectual property rights of Emei martial arts is not comprehensive.

5. Relief strategies for intellectual property protection of Emei martial arts

The protection of intellectual property rights in Emei martial arts can promote the innovation and development of Emei martial arts knowledge products. The innovation of Emei martial arts knowledge products is first and foremost the innovation of technical products. Without the innovative development of Emei martial arts technology products, what is the significance of the innovative development of other related Emei martial arts products? As the saying goes, without the skin, where can the hair be attached. This means that only with the development of Emei martial arts can the related industries of Emei martial arts have a solid foundation, and the political, economic, educational, fitness, entertainment and other functions of Emei martial arts can be better realized. Among them, technological innovation is the logical premise for the protection of intellectual property rights in Emei martial arts; The improvement of the legal system is the legal foundation for the protection of intellectual property rights in Emei martial arts; Theoretical enrichment is the legal guarantee for the protection of intellectual property rights in Emei martial arts; Focusing on efficiency and balancing public and private interests is an effective path for the development of Emei martial arts.

5.1. Technological innovation: the logical premise of intellectual property protection for Emei martial arts

The development of Emei martial arts requires continuous innovation and careful care. Innovation is the inexhaustible source of Emei martial arts development, while protection becomes the foundation of Emei martial arts development. Nowadays, the establishment of the national intangible cultural heritage of Emei martial arts has laid the foundation for the innovative development of Emei martial arts. On this basis, the traditional skills of Emei martial arts have been inherited and promoted to a certain extent. The successive publication of books such as “Emei Martial Arts Exercises”[10], “Twelve Methods for Relaxing Muscles and Softening Ridges”[11], “Emei Martial Arts Tutorial”[12], etc. is a clear proof. Among them, “Emei Martial Arts Exercises” mainly reflects the physical fitness function of Emei martial arts, “Twelve Methods of Relaxing Muscle and Softening Spine” focuses on providing methods and philosophy for Emei martial arts health preservation, and “Emei Martial Arts Tutorial” partially showcases the techniques of Emei martial arts combat. Of course, the innovative development of Emei martial arts goes far beyond that. It can also continue to explore and innovate in the following aspects: first, extract representative techniques of Emei martial arts. There are numerous martial arts schools and techniques in Emei. In order to quickly promote Emei martial arts skills and build the Emei martial arts brand, representative techniques from different sects can be selected for promotion and popularization, which can achieve immediate promotion effects. Just as the “Ri” character boxing technique of Wing Chun and the “six in one” technique of Xingyi Quan are well-known in the martial arts world. Secondly, the construction of representative routines for Emei martial arts. The con-

struction of Emei martial arts routines: firstly, it is necessary to combine the needs of sports and fitness, and carry out different planning and design for participants with different levels of exercise; Secondly, it is necessary to carefully screen and highlight the technical essence of Emei martial arts by combining the extensive content of Emei martial arts; The third is to form a hierarchy between different routines, promoting practitioners to gradually improve their martial arts skills. Thirdly, establish characteristic competition events for Emei martial arts. The Emei martial arts competition, especially the operation of combat skills, must demonstrate the sportsmanship of Emei martial arts. Sportiness is the primary characteristic of Emei martial arts, and in combat competitions, it is necessary to control the use of dangerous techniques in Emei martial arts. In competitive matches, athletes can ensure their physical and mental health through the use of protective gear, or they can abandon some of their more harmful hitting skills. At the same time, it is also possible to explore the integration of the martial arts techniques of Emei and the combat techniques of the world. In summary, the innovation of Emei martial arts technology is the fundamental prerequisite for the protection of Emei martial arts intellectual property rights. Conversely, the protection of intellectual property rights in Emei martial arts will better promote the further development of Emei martial arts.

5.2. Improving the legal system: the legal foundation for the protection of intellectual property rights in Emei martial arts

The protection of intellectual property rights in Emei martial arts requires continuous improvement of the legal system. Firstly, the Sports Law should play an important role in protecting sports intellectual property rights. However, in reality, the protection of sports intellectual property rights in the Sports Law is clearly insufficient. In terms of content, the Sports Law consists of 12 chapters and 122 articles, among which only Article 52 of Chapter 4 regulates the names, logos, emblems, and other symbols of sports events. Obviously, the protection of sports intellectual property rights in the Sports Law must be systematic in order to effectively prevent the infringement of various sports intellectual property rights, including Emei martial arts, by relevant enterprises, organizations, groups and individuals. In other words, the sports intellectual property rights in the Sports Law should cover the copyright, patent rights, technical secrets, trademark rights, logo rights of sports, as well as various emerging sports intellectual property rights in the context of the Internet. Even if the Sports Law cannot provide detailed provisions for various sports intellectual property rights, corresponding citation regulations should still be provided. Such as citing China's Intellectual Property Law, Civil Code, Criminal Law, or international intellectual property treaties that China has participated in. Secondly, establish the fundamental position and role of relevant intellectual property laws. Firstly, enrich the theory of works in the Copyright Law. In terms of technology, the attributes of Emei martial arts works should be based on the artistic standards of

sports, rather than simply adopting the ideological aspects of literature and art. Otherwise, the protection of Emei martial arts copyright will be difficult to achieve, which is also inconsistent with the practical activities of the international community regarding sports works. For example, China's Tiktok platform purchases the copyright of the World Cup, which is a clear example. Recognizing the nature of football matches, the copyright of the football World Cup naturally has rationality. Secondly, establish a system for protecting sports technology secrets. Since patent protection of sports technology is not conducive to the promotion, exchange, learning, and development of sports technology, corresponding protection of combat secrets should be a feasible path. On the one hand, technical confidentiality can enhance the value of technology in competitions; On the other hand, if secrets are leaked, corresponding compensation and appropriate non compete agreements should be made. Of course, the technical confidentiality of Emei martial arts cannot simply rely on the protection of commercial technology secrets. At the same time, technical confidentiality cannot follow the ancient practice of "keeping one hand" and cause the loss of Emei martial arts skills. Thirdly, improve the legal system for the protection of sports symbols. In the protection of sports symbols, excessive emphasis should not be placed on their national or international nature, but rather on their creativity and commercial value, in order to protect the intellectual achievements and commercial value of innovators. Otherwise, the sports logo of Emei martial arts brand will be stolen arbitrarily.

In short, the protection of intellectual property rights in Emei martial arts requires not only the protection of intellectual property rights in the sports industry related to Emei martial arts, but also the strengthening of the protection of intellectual property rights in the essence of Emei martial arts. This requires the improvement of relevant sports laws and regulations.

5.3. Strengthening Theory: Consolidating the Legal Basis for Protecting the Object of Rights

In the process of intellectual property protection of Emei martial arts, the difficulty of object protection mainly lies in the technical aspects of Emei martial arts, that is, there is theoretical controversy over the definition of technical works of Emei martial arts, the technical patents of Emei martial arts are not recognized by the academic community, and the sports symbols of Emei martial arts are insufficiently protected in the legal system. Therefore, in order to stimulate innovation and promote the healthy development of Emei martial arts, the author believes that the rationality of intellectual property protection for Emei martial arts should be demonstrated in combination with the characteristics of sports in legal terms, as follows:

Firstly, adhere to the artistic characteristics of sports works. Regarding artistry, some scholars have pointed out that both "art" and "craftsmanship" are things that do not exist in nature, they are "humanized nature" and belong to the category of

“culture”. However, human cultural behavior is not limited to “art” and “craftsmanship”, but at least includes other different contents such as “sports” and “science”. And the scholar also emphasized that “art” is a cultural form that lies between sensibility and rationality. Sports is just an extreme of the emotional aspect of ‘art’. In ancient China, the “Six Arts” and “Wandering in the Arts” also contained content related to “sports”. [13] From this, it can be seen that “sports” have artistic characteristics and can become an essential element of a work. Obviously, the artistic quality of each work will give people different artistic feelings, such as literature, oral, music, art, photography, and other works of art. However, the artistic quality of any other work cannot reflect the sports characteristics of Emei martial arts. Therefore, the artistic quality of other works cannot replace the artistic quality of sports works. Only by adhering to the sportsmanship of Emei martial arts works can Emei martial arts have its true artistic value. Therefore, the artistic quality of Emei martial arts should be the artistic quality of sports. Currently, the broadcasting or sale of copyrights for various important international sports events is a tangible proof of the work. In addition, only by adhering to the artistic nature of sports works can the copyright protection of Emei martial arts works be convincing.

Secondly, uphold the confidentiality of sports technology. The confidentiality of sports technology is an important weapon for winning sports competitions. Unscrupulous disclosure of technical or training methods may lead to defeat in competitions, and subsequently result in the loss of expected benefits in competition, performance, or training work. However, regarding confidentiality regulations, the relevant systems in China mainly exist in the Civil Code. For example, Article 1039 of the Civil Code stipulates the confidentiality obligation of state organs and their staff towards personal information. In addition, Articles 861, 868, and 869 of the Civil Code respectively stipulate the ownership and distribution of technical secrets, the obligations of the transferor and licensor of technical secrets, and the obligations of the transferee and licensee of technical secrets. Therefore, the confidentiality protection in the Civil Code mainly refers to the confidentiality protection of personal information and the confidentiality protection of production technology in technology contracts. This type of secret protection is not directly related to the technical secrets in Emei martial arts. The technical secrets of Emei martial arts mainly refer to sports techniques, training methods or means. Moreover, the technical products of Emei martial arts are nothing but their own skills. The direct function of technology is to perform, win, or improve technical skills, while the indirect function is to obtain honors, economic benefits, and other content. Given that the technical patent protection of Emei martial arts is not feasible. So, the protection of technical secrets in Emei martial arts has become an important protection path, which should be achieved by: (1) dividing the level of secrets based on the importance of Emei martial arts' sports techniques in competitions or training, and setting the strength of technical secret protection accordingly; Secondly, draft a contract for the protection

of Emei martial arts technical secrets, and use the confidentiality requirements of the sports contract as the basis for law enforcement; The third is to clarify the punishment standards for leaking secrets, which can refer to the social and commercial value of the sports techniques of Emei martial arts. By scientifically and reasonably protecting the technical secrets of Emei martial arts, promote the fair and orderly development of Emei martial arts.

Thirdly, we must firmly uphold the originality and commercialization of sports logos. As mentioned earlier, sports logos include sports trademarks and sports logos. Sports trademarks attached to sports products can distinguish the source of sports products and can be protected under China's Trademark Law. The protection of sports symbols refers to the names and abbreviations, emblems, mascots, and other symbols composed of text and graphics used in national and international sports activities approved by the State Council. Moreover, special signs that have been approved and registered by the State Administration for Industry and Commerce can only be protected by the Regulations on the Administration of Special Signs. Therefore, the sports symbols related to Emei martial arts will be difficult to be protected by this regulation. In order to comprehensively and effectively protect the intellectual property rights of Emei martial arts and promote the sustained, healthy, and coordinated development of Emei martial arts, the sports symbols of Emei martial arts should be protected by corresponding laws. The theoretical basis it follows should include: (1) the originality of sports symbols. It refers to the fact that sports logos should be independently conceived and completed without plagiarism, copying, or tampering with the works of others. That is to say, sports symbols are the manifestation of the intellectual achievements of the rights holder. In other words, the independent conception and completion of the Emei martial arts sports logo is an inevitable prerequisite for its legal protection. (2) The commercialization of sports logos. The establishment of sports logos generally has functions such as indication, labeling, and promotion. More importantly, the use of sports logos generates commercial value. Specifically, once sports logos have commercial attributes, especially well-known sports logos, it is difficult to avoid sports infringement. For example, in recent years, the case of "masks with exclusive rights to the Olympic logo" and the case of T-shirts with the pattern of "Bing Dwen Dwen" occurred in China. Therefore, the commercial nature of sports logos also determines the fundamental reason for their need for protection. Nowadays, with the continuous development of the Emei martial arts brand, the use of the Emei martial arts sports logo will inevitably bring corresponding commercial benefits to the rights holders, and there are appropriate reasons to protect it based on the originality and commercialization of the Emei martial arts sports logo.

5.4. Emphasize efficiency: balance public and private interests, prioritize private rights to promote the realization of public welfare

As mentioned earlier, the subject of intellectual property rights in Emei martial arts overlaps with the subject of intangible cultural heritage rights in Emei martial arts. In this situation, prioritizing the public welfare realization of the intangible cultural heritage of Emei martial arts will partially harm the private rights and interests of the creators of Emei martial arts knowledge products. This will to some extent undermine the creative enthusiasm of the relevant Emei martial arts intellectual property rights holders. On the contrary, solely considering the private property of Emei martial arts intellectual property will hinder the public welfare realization of Emei martial arts intangible cultural heritage. Therefore, in order to improve the social benefits of Emei martial arts, the author believes that the development of Emei martial arts should take into account the dual interests of Emei martial arts intellectual property and Emei martial arts intangible cultural heritage. Moreover, priority should be given to the private protection of intellectual property rights in Emei martial arts, and on this basis, the public welfare development of intangible cultural heritage in Emei martial arts should be rapidly promoted.

Firstly, the protection of intellectual property rights in Emei martial arts is beneficial for the innovation and development of Emei martial arts. The protection of intellectual property rights in Emei martial arts is a recognition of innovation and an incentive for innovators. In reality, the awareness of sports intellectual property protection in China's sports field is not strong, for the following reasons: firstly, the value of knowledge products in the sports field is not high; Secondly, athletes have the traditional idea of "valuing patents over competition and achievements"; The third is the prevalence and influence of the "social person hypothesis" theory. [14] This theory holds that individual interests should be subordinate to social interests. Fourthly, there is a lack of specialized enforcement agencies for sports intellectual property rights. Therefore, the protection of intellectual property rights in Emei martial arts requires not only the establishment of a comprehensive legal system and a fair, just, and strict law enforcement governance institution, but also the enhancement of the protection awareness of the rights holders of Emei martial arts intellectual property rights. Once the intellectual property rights holder of Emei martial arts does not attach importance to the protection of their own rights and interests, their motivation for innovation will not be strong, their persistence in innovation will be difficult to sustain, and the quality of knowledge product innovation will be difficult to improve. In this way, it is difficult for such knowledge products to provide high-quality services to society. In addition, the infringement of intellectual property rights in Emei martial arts still exists. As mentioned earlier, the confusion of Emei martial arts knowledge products hinders the high-quality development of Emei martial arts knowledge products. Therefore, strengthening the protection of intellectual property rights in Emei martial arts should achieve the following: first, to enhance the awareness of rights holders to protect their rights; second, to improve the enforcement system of sports intellectual property rights; The third is to

severely crack down on infringement in the market.

Secondly, to enhance the social services of Emei martial arts knowledge products and assist in the public welfare realization of Emei martial arts intangible cultural heritage. This type of social service can take various forms, as follows: firstly, strengthen online publicity efforts to promote Emei martial arts knowledge products. Through Internet publicity and promotion, the society can learn more about Emei martial arts and its products, so as to purchase related services. Secondly, local governments should appropriately purchase Emei martial arts knowledge products for some communities. By purchasing services for the community, on the one hand, it can alleviate the economic burden on society to enjoy Emei martial arts knowledge products, and on the other hand, it also encourages society to inherit and develop Emei martial arts. Thirdly, the introduction of Emei martial arts into schools is also an important way for the social development of Emei martial arts. Nowadays, the physical education departments of Neijiang Normal University, Leshan Normal University, and even public sports have offered Emei martial arts courses. This greatly promoted the development of Emei martial arts. In short, the protection of intellectual property rights in Emei martial arts has provided impetus for the development of Emei martial arts. The social service of Emei martial arts has once again promoted the development of Emei martial arts.

6. Conclusion

The protection of intellectual property rights in Emei martial arts can promote the innovative development of Emei martial arts, ensure high-quality social services for Emei martial arts, and meet the needs of national economic development strategies. In the dilemma of intellectual property protection in Emei martial arts, this article only proposes some methods and strategies to resolve the crisis in terms of the subject, object, and legal system of rights. However, Emei martial arts intellectual property protection involves a lot of content, such as specialized judicial institutions, administrative law enforcement management, and social governance, which have not yet been addressed. In the future, the author will further explore the protection of intellectual property rights in Emei martial arts and promote the innovative development of Emei martial arts.

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