



## 2019 Study Question

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**Consumer survey evidence**

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### I. Current law and practice

***Please answer the below questions with regard to your Group's current law and practice.***

**1.a** Is consumer survey evidence in principle admissible in trademark proceedings? Please answer YES or NO.

Yes

Please Explain

**1.b** Are there specific statutory provisions in your law governing consumer survey evidence?

**If YES, what do they state and do they specifically concern trademark matters or do they have a more general nature?**

Yes

Please Explain

The details are as follows:

1. In Article 5 of?Interpretation of the Supreme People's Court on the Application of Law in the Trial of Civil Disputes Involving the Protection of Well-known Trademarks?, the people's court shall combine evidences such as market research reports\market value assessment reports with other evidences of well-known trademarks, reviewing objectively and comprehensively.
2. The Higher People's Courts in Beijing and Henan have issued guiding regulations which determined that in the trial of the case, the consumer survey report can be used as reference evidence. However, other provinces'courts have not issued relevant regulations, and it is uncertain whether they will adopt the regulations of Beijing and Henan.

***If you have answered NO to Q1)a), please skip Q2)-Q5) and proceed to Q6); If you have answered YES to Q1)a), please proceed to Q2).***

**2.a** Is consumer survey evidence admitted in all types of trademark proceedings (see also para. 13 in the full text of the Study Guidelines which can be found at the top of this webpage)?

No

Please Explain

**2.b** If consumer survey evidence is not admitted in all types of trademark proceedings, in which types is it admitted and in which types is it not (e.g. opposition proceedings, revocation, proceedings, infringement proceedings)?

The consumer survey evidences should be admitted in types of opposition proceedings, invalidation declaration proceedings, infringement proceedings, and not be admitted in types of registration proceedings, revocation proceedings, and revocation review proceedings.

**3.a** What can consumer survey evidence prove or help prove (e.g. confusion, acquired distinctiveness; see also para. 14 in the full text of the Study Guidelines which can be found at the top of this webpage)?

Whether the actual use of the trademark identification belongs to the using trademark action in the sense of trademark law, whether the different trademarks will cause confusion, whether the trademark is significant, whether the trademark is well-known, and whether the trademark has become a general identification, etc.

**3.b** What is consumer survey evidence most used for in practice to prove or help prove (e.g. confusion, acquired distinctiveness; see also para. 14 in the full text of the Study Guidelines which can be found at the top of this webpage)?

Please see above.

**4.a** Are there specific requirements for surveys, e.g. as to the way of conducting the survey (e.g. internet or email survey, telephone survey, shopping mall interrupt surveys), the number and selection of respondents, the appropriate form and order of survey questions and the use or nature of controls? If so, which?

Yes

Please Explain

The survey itself should be objectivity and neutrality. The method should be selected according to the respondents, survey content, survey time and other factors. According to the survey content, respondents must meet the requirements of age, education, gender, etc. The form and order shall be formulated in advance and the use of control measures be determined according to the actual situation.

**4.b** If your answer to Q4a) is NO, what characteristics do surveys generally have, e.g. as to the way of conducting the survey, the number and selection of respondents, the appropriate form and order of survey questions and the use or nature of controls?

**5.a** Are specific percentages of respondents answering certain questions required or sufficient to prove certain items? If so, which?

Yes

Please Explain

A certain percentage of respondents are required to be conditioned, such as certain academic qualifications, specific ages, etc.

**5.b** What percentages of respondents answering certain questions are typically deemed insufficient?

In the specific survey content, if the number of respondents and the proportion of qualified respondents do not meet the minimum requirements, it is considered as typically deemed insufficient.

**6** Is the court or IP office involved in the set-up of the survey, or can it be, and, if so, to what extent?

No

Please Explain

**7** What weight or value is generally given by the court or IP office to consumer survey evidence, if such is admitted, and which factors are relevant in considering the extent of such weight or value?

The court or IP office considers it as a reference evidence rather than a key qualitative evidence. They will be more concerned about the objectivity and neutrality of the evidence.

## II. Policy considerations and proposals for improvements of your Group's current law

**8** Could any of the following aspects of your Group's current law or practice relating to consumer survey evidence be improved? If YES, please explain.

**8.a** Types of trademark proceedings in which survey evidence is admissible;

No

Please Explain

It is recommended that the consumer survey evidence be adopted in the refusal review process.

**8.b** What survey evidence can prove or help prove;

No

Please Explain

No need to improve.

**8.c Requirements of surveys;**

Yes

Please Explain

Effective criteria of consumer survey evidence should be specified in laws and regulations, such as objectivity, neutrality, conditions of eligible respondents, etc.

**8.d The application, or lack thereof, of bench-mark percentages;**

Yes

Please Explain

Once the evaluation from effective respondents being specified in laws and regulations, the corresponding conclusions could be recognized.

**8.e The weight or value given to consumer survey evidence.**

No

Please Explain

Not responded.

**9 Are there any other policy considerations and/or proposals for improvement to your Group's current law falling within the scope of this Study Question?**

Yes

Please Explain

It is recommended that the definition of valid consumer survey evidence should be clearly stated in laws and regulations.

**III. Proposals for harmonisation**

***Please consult with relevant in-house / industry members of your Group in responding to Part III.***

**10 Do you believe that there should be harmonisation in relation to consumer survey evidence?**

Yes

Please Explain

***If YES, please respond to the following questions without regard to your Group's current law or practice.  
Even if NO, please address the following questions to the extent your Group considers your Group's***

***current law or practice could be improved.***

**11** Should consumer survey evidence in principle be admissible in trademark proceedings? Please answer YES or NO.

Yes

Please Explain

**2.a** Should consumer survey evidence be admitted in all types of trademark proceedings (see also para. 13 in the full text of the Study Guidelines which can be found at the top of this webpage)?

No

Please Explain

**2.b** If consumer survey evidence should not be admitted in all types of trademark proceedings, in which types should it be admitted and in which types should it not be admitted (e.g. opposition proceedings, revocation, proceedings, infringement proceedings)?

The consumer survey evidences should be admitted in types of opposition proceedings, invalidation declaration proceedings, infringement proceedings, and not be admitted in types of registration proceedings, revocation proceedings, and revocation review proceedings.

**13** What should consumer survey evidence be allowed to prove or help prove (e.g. confusion, acquired distinctiveness; see also para. 14 in the full text of the Study Guidelines which can be found at the top of this webpage)?

Whether the actual use of the trademark identification belongs to the using trademark action in the sense of trademark law, whether the different trademarks will cause confusion, whether the trademark is significant, whether the trademark is well-known, and whether the trademark has become a general identification, etc.

**14** Should there be specific requirements for surveys, e.g. as to the way of conducting the survey (e.g. internet or email survey, telephone survey, shopping mall interrupt surveys), the number and selection of respondents, the appropriate form and order of survey questions and the use or nature of controls? If so, which?

Yes

Please Explain

The survey itself should be objectivity and neutrality. The method should be selected according to the respondents, survey content, survey time and other factors. According to the survey content, respondents must meet the requirements of age, education, gender, etc. The form and order shall be formulated in advance and the use of control measures be determined according to the actual situation.

**5.a** Should specific percentages of respondents answering certain questions be required or deemed sufficient to prove certain items? If so, which?

Yes

Please Explain

A certain percentage of respondents are required to be conditioned, such as certain academic qualifications, specific ages, etc.

**5.t What percentages of respondents answering certain questions should be deemed insufficient?**

In the specific survey content, if the number of respondents and the proportion of respondents who meet the survey conditions does not meet the minimum requirements, it is considered as typically deemed insufficient.

**16 Should the court or IP office be involved in the set-up of the survey and, if so, to what extent?**

Yes

Please Explain

If the court or other factual judge consider it necessary to conduct investigation and all the parties in case agree, the court or other factual judge should designate a neutral survey agency to conduct the investigation.

**17 What weight or value should be given by the court or IP office to consumer survey evidence, if such is admitted, and which factors should be relevant in considering the extent of such weight or value?**

Depending on the actual circumstances of the case, the court or other factual judges will determine the weight of the consumer survey evidence by paying attention to objectivity and neutrality of the evidence.

**18 Please comment on any additional issues concerning any aspect of consumer survey evidence you consider relevant to this Study Question.**

The court or other factual judge could initiate consumer survey by designating a neutral investigative body to conduct the investigation, which is more objective.

**19 Please indicate which industry sector views provided by in-house counsel are included in your Group's answers to Part III.**

Before judge or other factual officers decide to accept the consumer survey results, the following main aspects must be considered:

1. Qualified respondent
2. Appropriate survey method
3. Proportion of confusion possibilities
4. Neutrality and impartiality of the survey
5. Accurate scope of the survey