

On the Regulation of Bad Faith Trademark Registration

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Abstract: With the continuous development of market economy, the intangible value attached to the trademark is more and more large, large-scale malicious trademark registration has destroyed the order of trademark registration, we must take effective measures to curb the malicious trademark registration. For the cognizance of malicious registration of trademarks, currently only in national trademarks promulgated by the administrative organs of the trademark review and hearing standard to judge the malicious registration of trademarks in the specific reference, for the standard of "malicious" did not make clear a regulation, at the same time, there is trademark registration system focusing too much on the use of the trademark application time and ignoring the trademark; Too long objection period is not conducive to the rights protection of interested parties; The illegal cost borne by malicious registrants is too small. Through the comparative analysis of foreign provisions on malicious trademark registration, the differences between malicious and related concepts are analyzed, and the following suggestions are put forward: clarifying the identification standard of "malicious" and strengthening the intention of trademark applicants to use trademarks; In order to curb the phenomenon of malicious trademark registration, we should adopt the mode of absolute reason examination and the objection to the front mode, and appropriately increase the legal liability of malicious applicant.

Keywords: Trademark registration, Trademark examination, True intention of use.

1. Current Situation of Trademark Malicious Registration Regulation

At present, China's Trademark Law has been amended four times to continuously improve the trademark system in order to achieve the purpose of effectively controlling the malicious registration of trademarks, saving judicial and administrative resources and rebuilding the order of trademark registration. Article 4 of the Trademark Law stipulates that applications for registration of trademarks in bad faith that are not for the purpose of use shall be rejected. This article provides for the principle of bad faith trademark registration and clearly prohibits the act of bad faith trademark registration, but does not specify the specific recognition criteria and the meaning of "bad faith". In Article 45 of the Trademark Law, it is stipulated that the registration of a trademark that infringes on the prior rights and interests of others is stipulated as bad faith registration, and a 5-year opposition period is set for the right holder to protect the interests of prior rights holders, further clarifying and expanding the scope of bad faith trademark registration. Article 32 of the Trademark Law stipulates that an application for trademark registration shall not damage the existing prior rights of others, nor shall it pre-register a trademark that has been used by others and has certain influence by unfair means. The scope of trademark registration protection is expanded to include trademarks with existing prior rights of others and trademarks that have been used by others and have a certain influence.

For the determination of malicious registration of trademarks, the ' Trademark Review and Trial Standards ' formulated by the national trademark administrative authority stipulates specific reference situations for judging malicious registration of trademarks, including seven types, respectively, from different situations. Whether the applicant knows or should know, the specific relationship between the parties, and the originality of the objective logo are specifically stipulated in various aspects, and a unified and universal identification standard has not been formed. Therefore, the

multiple revisions of the trademark law have not substantially solved the problem of the lack of universal standards for identifying malicious registration of trademarks in judicial and administrative practice. Therefore, it is necessary to clarify the criteria for malicious identification. Accurately identify whether the perpetrator of malicious trademark registration is subjectively malicious, reduce malicious trademark registration, to achieve the purpose of trademark to distinguish the source of goods, and promote the healthy development of the trademark market. As far as the current trademark system in China is concerned, it has greatly promoted the development of China's economic market and made the trademark market more prosperous. Similarly, there are corresponding problems, which make malicious applicants have an opportunity to take advantage. The specific defects are analyzed as follows.

2. Existing Problems of Trademark Malicious Registration Regulation

As far as the current trademark system in China is concerned, it has greatly promoted the development of China's economic market and made the trademark market more prosperous. Similarly, there are corresponding problems, which make malicious applicants have an opportunity to take advantage. The specific defects are analyzed as follows.

2.1. Lack of uniform provisions on ' malicious ' determination

In China, the concept of ' malice ' is seldom used in legal terms. Most laws stipulate the relevant system of ' good faith ', and the trademark law does not stipulate ' malice '. Only in the specific provisions governing trademark registration, some specific situations of malicious trademark registration are stipulated. The trademark law lacks a unified and universal abstract provision on malice, and there is no unified standard for malicious identification, which not only causes difficulties in specific identification and cannot adapt to the changing economic market situation, but also causes different

judgments in the same case, that is, the same situation produces different judgments in different courts. At present, most of the trademark malicious registration cases in China can not be solved, and the number of trademark malicious registration is rising. The lack of unified identification of trademark malicious registration is a fundamental reason.

2.2. Ignoring trademark use

Our country adopts a single ' trademark registration acquisition ' model, and the restrictions stipulated in the law are less, resulting in a low threshold phenomenon of trademark registration, so it will cause people to ignore the intention of trademark use. Just as the U.S. trademark law uses use as a requirement for obtaining trademarks, trademark exclusive rights are rights that cannot be automatically generated and acquired, and need to be valued through market use. Without emphasizing the legal provisions on the use of trademarks, the principle of priority on the date of application has been excessively misinterpreted, resulting in vicious market orientation and misunderstanding. Operators rush to register others ' trademarks or other marks and hoard trademarks, disrupting the normal order of trademark market competition. In this vicious competition cycle, it will not only destroy the legitimate rights and interests of stakeholders, but also shake the integrity foundation of China 's existing trademark system, and lose the function of trademark establishment to distinguish commodity sources and promote market development. Use is the purpose of the operator 's registered trademark. Applying for a registered trademark to obtain a trademark exclusive right should serve the production and operation activities. In order to inject vitality into the trademark, make the trademark play the basic function of distinguishing the source of goods, and protect the rationality of the exclusive right of the trademark, it should be to inject value into the trademark through use, not through malicious registration.

2.3. Imperfect trademark registration system

With the continuous development of the market economy, in order to meet the increasingly high requirements of market efficiency, the state has continuously lowered trademark registration fees and simplified trademark registration procedures to reduce the operating costs of operators and improve operational efficiency, but there are corresponding side effects. On the one hand, the trademark law has revised the trademark registration procedure many times, shortening the period of trademark registration, so that the trademark registrant can obtain the exclusive right of registered trademark more quickly. If there is malicious registration, malicious applicants will be more convenient to obtain trademarks, making the rights of interested parties more vulnerable. On the other hand, if a trademark is maliciously registered, the interested party wants to revoke the disputed trademark that has been registered through the objection procedure, and file a trademark objection application. The waiting time is long or short according to the influence of the disputed trademark, the use time and other factors, usually longer than the application for a registered trademark. Especially in most cases, the evidence of both parties is not sufficient, and the waiting time may be longer. Therefore, the current trademark registration encounters two situations, one is the trademark opposition procedure time is too long, and the second is a large number of trademark resources are registered first, the trademark registrant always pay attention

to the trademark transfer situation, ' horse enclosure ' exacerbated the trademark registration chaos.

3. Suggestions for the Improvement of Trademark Malicious Registration Regulation

3.1. Unified ' malicious ' standard

Establishing a unified and universal ' malicious ' identification standard is the fundamental solution to the problem of malicious trademark registration, which can fundamentally solve many trademark registration problems. In the practice of administrative management, whether the trademark registration applicant is subjectively malicious should be strictly examined. Whether the trademark applicant knows or should know the fact that the trademark has prior rights, mainly examines whether the applicant has malicious hoarding intention, whether it has real use intention and other factors. For the existence of the trademark registration applicant 's ' knowing or should know ' prior rights, knowing and should know are malicious but should know but should not know should be treated differently in different cases. If the applicant has no reason not to know the existence of prior rights, such as the trademark or prior rights are widely known in their life, even if they do not know, they should be identified as ' slight negligence ' ; if the trademark registration applicant can prove that he does not know, he cannot be identified as having a ' malicious ' subjective state. In addition, the time of knowing or should know is also an important factor in determining whether the trademark applicant is malicious. If the applicant for trademark registration becomes aware of the prior rights involved in the application for registration of the trademark after the application date, it shall not be deemed to have subjective malice because it has no intention of infringing the prior rights of others at the time of application for registration ; in contrast, it is natural to know that others have prior rights in the trademark applied for registration, but still register the mark, it can be presumed that the applicant is malicious, and no longer explore whether it has the intention of infringing on the prior rights of others. The degree of influence on prior rights. By identifying the popularity of prior rights, it is determined whether the applicant knows the prior rights before the application date, so as to determine its subjective mental state. In China 's administrative organs to determine the size of the influence of the trademark, mainly through the identification of well-known trademarks to confirm the well-known degree of the trademark, and this does not mean that the disputed trademark needs to achieve the influence of the well-known trademark, as long as it has a certain influence in its industry or region, that is, the consumers in the region have a related imagination of their trademarks and commodities, the greater the influence of the disputed trademark, the greater the possibility that the parties know or should know, the parties are more likely to be identified as ' malicious '.

3.2. Strengthen the investigation of the applicant 's use or use intention

Submit evidence of intent to use when applying for a registered trademark and evidence of long-term use of the trademark after applying for registration. Whether the administrative organ has the intention to use the parties, first of all, it examines whether it is really engaged in the sale of

goods or the provision of services, or whether it makes the necessary preparations for the use of trademarks, such as recruiters and purchase equipment, which can reflect the applicant's intention to use. Secondly, whether the trademark applied for registration by the applicant is obviously beyond its use ability or scope of application, and whether the applicant's subjective is to apply for a trademark that conforms to the business prospect planning or to apply for a trademark to seize the market and exclude others from entering the market. Trademark registration applications that significantly exceed the size of the industry should focus on examination. Through the investigation of the intention of trademark use and the ability to use the trademark, it is ensured to the greatest extent that the applicant applies for a registered trademark for the purpose of use. In order to strengthen the use of trademarks, we should not only examine whether there is a real intention of trademark use when applying for trademark registration, but also implement that after obtaining the exclusive right to use a registered trademark, the trademark registrant can be required to submit evidence of its use of a registered trademark every year. If the evidence of trademark use cannot be submitted, it can be reminded. If the evidence cannot be submitted within a reasonable period of time, the trademark can be revoked. If there are legitimate reasons, the situation needs to be explained. This provision is conducive to the trademark registrant to realize the true role of the trademark, avoid the limitation and waste of trademark resources, and play the due role of the trademark. In judicial practice, the objective behavior that is easy to judge, such as whether the trademark is actually used and whether the necessary preparation for use is made, is used as a factor to measure whether the applicant is subjectively malicious.

3.3. Adopt the trademark examination mode of relative reason examination and preposition of objection

In terms of review content, relative reason review is adopted. According to the " Trademark Law, " the trademark administrative authority examines the reasons for absolute refusal to register, without examining the prior rights and interests involved in the application for a registered trademark. First of all, it can improve the efficiency of trademark registration, reduce the time cost of the review stage, and leave the review of the corresponding related rights to the next stage. During the actual examination of registered trademarks, the examiner cannot fully discover all the interests involved in the application for a registered trademark and deal with it. Therefore, a comprehensive review consumes a lot of manpower and material resources, resulting in greater administrative pressure, but the results may not be satisfactory. The trademark law is constantly strengthening the crackdown on the malicious registration of trademarks. It adopts the relative reason review rather than the comprehensive review, which reduces the review items and shortens the review time. Of course, it will reduce the difficulty of trademark registration. Therefore, there will be a

large number of malicious trademark registrations, and the interests of the original rights holders will be damaged, but this does not mean that there is no corresponding system to supplement it. Therefore, the trademark opposition procedure should be set up in the trademark opposition procedure to protect the rights of trademark stakeholders. Therefore, the principle of trademark registration review should be clarified and matched with the trademark opposition pre-procedure.

In the review process, a pre-objection procedure is used. For the interests involved in the trademark, the trademark management authority can only examine a limited part. Instead of continuously increasing the review responsibilities of administrative personnel, it is better to hand over the rights of trademark review to all market participants. Before obtaining the exclusive right to use the trademark, the interests involved in the trademark should be clearly examined, so the trademark objection procedure should be prepositioned. The preposition of objection increases the difficulty of trademark examination, which to some extent raises the threshold of trademark application. The trademark malicious competition at the present stage is due to the imperfection of the trademark system itself and the malice of the applicant. After the objection is proposed, the malicious applicant is likely to encounter the objection application, and there is a risk of trademark application. The trademark application may not be passed, which can reduce the number of trademark malicious registration. Therefore, this paper holds that the preposition of objection is more conducive to the stability of trademark exclusive rights than the postposition of objection, and the removal of potential trademark disputes in advance is more conducive to standardizing the order of trademark registration and reducing the waste of procedural resources.

Based on the above, China can adopt the model of ' relative reason review + objection preposition'. On the other hand, in addition to improving the trademark examination system, optimizing the trademark identification process, from the administrative level to reduce malicious trademark registration, but also from the trademark registration, by increasing the registration cost of the applicant and the illegal cost, from the subjective intention of the applicant malicious trademark registration intent to kill in the cradle.

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