

Exploring the System of Punitive Damages for Trademark Malicious Prosecution

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Abstract. The phenomenon of trademark malicious prosecution is common, endangering individual private rights and public interests, and the existing legal system is difficult to effectively regulate and remedy the rights of the defendant. In response to this dilemma, it is necessary to establish a punitive damages system to regulate the nature of trademark malicious prosecution based on the "abuse of rights". It is necessary to clarify the criteria of "malicious prosecution" and "seriousness of the circumstances", as well as to formulate the scope of compensation in line with the "optimal deterrence" and balance of interests, to protect the interests of the relevant rights holders, maintain market order and judicial authority.

Keywords: Trademark Malicious Prosecution; Abuse of Power; Punitive Compensation Mechanism; Legal Regulation.

1. Introduction

Recently, the Tongguan Ruojiameo Snack Association of Shaanxi Province filed a prosecution against hundreds of "Tongguan Ruojiameo" snack stores across the country for infringement of trademark rights, requiring the merchants to withdraw the words "Tongguan Ruojiameo" from their signboards and compensate for infringement costs. If they want to continue to use the "Tongguan Ruojiameo" trademark, it is supposed to pay the corresponding franchise fee. In addition, a series of trademark malicious prosecution such as "Kulle Fragrant Pear", "Xiaoyao Town Spicy Soup" and "Honeysuckle" have emerged, causing great adverse social impact. "Why is trademark malicious prosecution so rampant?" "How to regulate the trademark malicious prosecution?" has become an urgent question to be answered and resolved. This paper will analyze the rationality of establishing a punitive damages system for trademark malicious prosecution in China on the basis of clarifying the nature of trademark malicious prosecution and the existing legal regulation dilemma, and put forward thoughts and suggestions on its application in conjunction with relevant systems in foreign countries.

2. Trademark Malicious Prosecution and its Legal Regulation Dilemma

2.1 The Essence of Trademark Malicious Prosecution: Abuse of Rights

Malicious prosecution refers to the dishonest prosecution initiated based on a certain form of right, without factual basis, legal basis or justifiable reasons, with the purpose of gaining improper interests of oneself or causing the defendant to suffer losses in the prosecution, which is implemented by taking advantage of judicial procedures, and reaches the effect of damaging the legitimate interests of others or public interests. Trademark malicious prosecution is a malicious prosecution based on trademark rights.

In exploring the nature of trademark malicious prosecution, the academic view can be mainly attributed to the "infringement theory", which holds that trademark malicious prosecution damages the existing rights or expected rights of users in good faith, so the "Four Elements" of general civil tort shall be adopted to determine the application of law. However, this paper believes that the trademark malicious prosecution is not only the infringement in legitimate interests, the but also the public interests including market order, administrative resources and judicial resources, and thus has the characteristics of "dual structure", which cannot be equated with simple infringement. In addition, it is biased to consider the nature of trademark malicious prosecution as an act of unfair competition,

as not all trademark malicious prosecution can be classified as unfair competition. For example, in the case of Tongguan Ruojiame, Tongguan Ruojiame Association claimed the right with its registered collective trademark, which does not constitute a competitive relationship with the merchants using the trademark. The purpose of the prosecution is to collect franchise fees rather than to exclude or restrict competition. Therefore, the trademark malicious prosecution is essentially a double abuse of the entity's trademark rights and the right to sue, while it exerts a double infringement on the private rights and public interests as a kind of abuse of rights. Such a recognition is a positive response to its "dual structure" and can explain the complexity of the case at the same time.

2.2 The Dilemma of Legal Regulation of Trademark Malicious Prosecution

China has not yet established an express system of punitive damages in the field of trademark malicious prosecution and the existing legal system for the regulation of trademark malicious prosecution has the following dilemma:

Trademark malicious prosecution is not regulated by substantive regulations and the costs for violations are low. Article 68 of *Trademark Law* is the first to put forward the penalty right of the people's court on trademark malicious prosecution, providing a legal basis for the regulation of it. However, this article has not yet specified the basis of punishment and the amount of punishment for trademark malicious prosecution, and it is still controversial whether the punished person is limited to the trademark agency, resulting in little application in judicial practice. In addition, there are some principle provisions for trademark malicious prosecution, such as principles of good faith and prohibition of abuse of rights, but such principles are mostly used as guiding spirit, lacking practical operability. Therefore, in the current legal system, there is a lack of substantive regulation of trademark malicious prosecution, resulting in most of the trademark malicious prosecutions are only withdrawn. For example, in the case of "Honeysuckle", hundreds of toilet water enterprises were sued for infringement by the owner of the "Honeysuckle" trademark, but only after these enterprises responded to the prosecution did they discover that the "Honeysuckle" trademark held by the defendant had been cancelled due to improper registration in 1995. In the end, this case only ended with the defendant withdrawing the prosecution and returning the mediation payment. Because of the low cost of violation, the trademark malicious litigants are emboldened.

In addition, there is a lack of remedies for trademark malicious litigants, and it is difficult to protect their legitimate rights and interests. In 2021, the Supreme People's Court issued the "Official Reply to Issues Concerning the Reasonable Expenses Claimed by the Defendant against the Defendant's Abuse of Rights in Intellectual Property Infringement Prosecution", stating that in the trademark malicious prosecution, the defendant may request the litigant to compensate for its expenses in responding to the prosecution such as attorney's fees, transportation fees and accommodation fees paid as a result of the prosecution in accordance with the law, so as to provide a way for the relief of the rights and interests of the defendant. However, in trademark malicious prosecution, the defendant suffers not only the property loss of responding to the prosecution, but also the damage to goodwill, preservation and operation, which cannot be calculated directly in money and cannot be remedied. Under the existing system, the relief for the defendant in trademark malicious prosecution does not even meet the requirements of the principle of filling.

Therefore, it is difficult for the existing legal system to effectively regulate the trademark malicious prosecution and reach the relief for the defendant, and this paper proposes to introduce a punitive damages system to cope with such dilemma in the following.

3. Theoretical Basis of the Punitive Damages System for Trademark Malicious Prosecution

3.1 Theoretical Basis of Punitive Damages

2.1.1 Deterrence Theory

The modern sense of deterrence is "optimal deterrence". The aim of legal sanction is to maintain the deterrence effect at the marginal benefit of the society equal to the additional marginal cost. The basis of punitive damages for trademark malicious prosecution under deterrence theory lies in the duality of value protection of intellectual property law. First, determining the duty of care. Where the defendant in trademark malicious prosecution voluntarily makes a claim for punitive damages, it shall use the punitive damages system to safeguard its own legitimate rights and interests. The second is to restore the marginal cost of loss by upgrading ordinary compensation to punitive damages, so as to maintain the marginal benefit of society and the dynamic balance of marginal benefits and marginal costs. That is, in addition to compensating the actual loss of the defendant, the malicious litigant should also compensate for the loss of the huge social marginal cost caused by the lower prosecution cost, so as to maintain the marketability of the trademark involved in the case. Under the perspective of deterrence theory, the existence of the trademark malicious prosecution punitive damages system is based on the double damage caused by malicious prosecution of private and public interests, moreover, the severity of control through the enumeration to improve the certainty of liability, so that the right holders are permitted to greatly promote social innovation within the scope of their rights.

2.1.2 Balance of Interest Theory

The benefit balancing mechanism of intellectual property rights is based on the dual attributes of intellectual property objects, namely, the private benefit and public benefit of intellectual achievements. Therefore, IPRs aim to balance the private interests of IP subjects with the public interests of society. In the dynamic adjustment of the balance of interests, it is also based on a series of principles that both enable the public to obtain benefits and the intellectual property owner to obtain benefits within the scope permitted by law, i.e. the appropriateness and reasonableness of the two-way setting of rights and obligations. Under the perspective of interest balance theory, the basis of the existence of the punitive damages system for trademark malicious prosecution lies in balancing the interests of the malicious litigant, the defendant and the public again, and redeploying the pursued interests to achieve consistency and homogeneity. Therefore, the goal of the balance of interests of the trademark malicious prosecution punitive damages system is to make the pre-prosecution injunction or other procedural measures taken by the trademark through punitive damages back into circulation, to fill the damage based on the redeployment of the market elements between the two, to achieve mutual balance of interest mechanism "reverse reaction", in order to move it toward a new balance.

3.2 Domestic Punitive Damages System and its Essence

Although China has not yet established a punitive damages system in the area of trademark malicious prosecution, punitive damages systems have been established in the areas of product liability, environmental pollution liability, intellectual property infringement liability and food safety liability.

Article 55 of *Consumer Protection Law* provides that consumers have the right to claim punitive damages in accordance with the law when there is fraud in the provision of goods or services by the provider of the product or when the product is defective leading to serious consequences. Here, it is necessary to clarify the legal interests infringed by the tort and the nature of punitive damages. First, it is the multiplicity of legal interests infringed by the tort, such as the right to information, the right to safety and security in the private sector, and the market order in the public sector. Second, consumers can obtain additional compensation on top of the compensatory damages, which in essence

is the exercise of public power on behalf of consumers, beyond the traditional private law remedy principle of filling in the gap.

Thus, punitive damages realize the subrogation of public law power by private law rights, which is essentially a special punishment system under the dichotomy of public law and private law, with the deterrent and punitive functions carried out by public law. Its application is based on the concept of private law damages and public law punishment system, aiming at punishing the infringers and motivating the infringers to actively defend their rights, so as to effectively regulate the improper behaviors that both violate the rights of private subjects and the public interests of the state.

3.3 The rationality of Establishing a Punitive Damages System in the Field of Trademark Malicious Prosecution

In summary, it should be seen that the application of punitive damages in the field of trademark malicious prosecution has quite sufficient reasons. First, to meet the "dual structure" of trademark malicious prosecution relief needs. The "dual structure" of trademark malicious prosecution is reflected in the dual abuse of substantive rights and the right to sue, is also a double infringement of individual private rights and public interests, then the set of deterrence, compensation, punishment function in one of the punitive damages can improve the cost of malicious litigants abuse of power, to compensate the defendant for the loss in excess of any amount, but also embody the nature of public law with the attribute of punishment. Second, it has strong theoretical support. Under the deterrence theory and interest balance theory, based on the nature of trademark malicious prosecution abuse and double infringement, the punitive damages system of trademark malicious prosecution should be the "optimal deterrence" for trademark malicious litigants, and also make the dynamic balance between private rights themselves, private rights and public interests. Third, it meets the requirements of the national intellectual property strategy. Compared with other malicious prosecution in the field of traditional intellectual property, trademark malicious prosecution is unique due to the non-intellectual nature of trademarks. In the context of the national intellectual property strategy, it is necessary to encourage creators to innovate and defend their rights, and therefore the regulation of trademark malicious prosecution of creative intellectual property needs to be more cautious, while the application of punitive damages for trademark malicious prosecution is not limited to this. Thus, it is reasonable to establish a punitive damages system in the regulation of trademark malicious prosecution, which is in line with the legislative requirements for the unification of political, social and legal effects in the construction of comprehensively governing the country according to law.

4. Punitive Damages System of Foreign Trademark Malicious Prosecution and Its Reference

4.1 The United States

Although there is no express provision on the punitive damages system for trademark malicious prosecution in the United States, it is clear from the provisions of *Federal Rules of Civil Procedure* and *Lanham Act* that the United States judicially recognizes trademark malicious prosecution as a kind of trademark malicious infringement. It can be seen from this, trademark malicious prosecution refers to the trademark prosecution filed in violation of the relevant provisions of Article 11 of *Federal Rules of Civil Procedure*, that is, the prosecution filed is defective in the submission of documents, evidence and reasonable certainty, which is the formal element to determine the "maliciousness" in the "malicious prosecution". Secondly, the degree of "maliciousness" is determined as the amount of compensation, and the trademark malicious prosecution should comply with the relevant provisions of the trademark malicious infringement, that is, the relevant provisions of Article 35 (a) and (b) in *Lanham Act*, that is, the trademark right of the defendant in malicious prosecution has been damaged by such prosecution, or the defendant in malicious prosecution has

been aware that the trademark is counterfeited at the time of filing the prosecution but still has used, sold, offered to sell or provided assistance to others in malicious prosecution. The concept of "knowing" counterfeit trademarks is provided for in Article 43 (d), which is the substantial element for determining "maliciousness" in malicious prosecution. This is the substantive element of "maliciousness" in a "malicious prosecution". Finally, on the one hand, if a trademark malicious prosecution does not harm the public interest, i.e., hinder other competitors in the market or unduly affect competition among operators, but only harms the interests of the defendant in the trademark malicious prosecution, the court may directly rule against the defendant at the original prosecution stage based on the defendant's defense and apply punitive damages. On the other hand, if the trademark malicious prosecution damages or is likely to damage the public interest, the defendant may also file a counterclaim under *Sherman Act*.

4.2 The United Kingdom

The English substantive law does not yet expressly provide for a system of "punitive liability" for IP malicious actions, but is only vaguely reflected in part of the jurisprudence. In its application, the purpose is to punish and deter malicious litigants and to provide relief to the defendant. The rational calculation of the difference between the compensatory damages and the benefit of the act of the malicious litigant before the prosecution will be included in the consideration of "subjective intent" and "maliciousness". In addition, under Article 34 of *U.K. Code of Civil Procedure*, the court may dismiss a case in the event of malicious prosecution, and may order the malicious litigant to pay reasonable expenses such as travel, attorney's fees, and court costs. Article 97 of *UK Copyright, Designs and Patents Act in 1988* provides for a punitive additional damages system, which has significance for the establishment of a punitive damages system for trademark malicious prosecution in China.

4.3 Germany

Article 226 and 242 of *German Civil Code (BGB)* and Article 138 of *German Code of Civil Procedure (ZPO)*, which deal with malicious prosecution to the show that Germany places malicious prosecution first in substantive law and then in procedural law, so that the abuse of rights is no longer confined to the principle provisions of substantive law. Secondly, the German legislation distinguishes malicious actions in the commercial field and the civil field, and the general view is that malicious actions in the commercial field are more egregious, and the choice of damages is special compared to ordinary civil disputes, and punitive damages may be applied. Therefore, Germany recognizes malicious prosecution as an abuse of rights and considers malicious litigants to have a duty of good faith in substantive and procedural law, but still regulates the violation of their obligations by tort liability. German intellectual property law does not provide for a system of punitive damages, and a jurisprudence similar to punitive damages has emerged only in the case of the German Federal Supreme Court against a collective management organization for infringement of music copyright.

4.4 Summary of Extraterritorial System Reference

Countries have two attitudes towards trademark malicious prosecution. One believes that trademark malicious prosecution is a violation of the duty of good faith in substantive law, and the other believes that trademark malicious prosecution is a violation of the duty of truth in procedural law. Germany has provided for malicious prosecution in both substantive law and procedural law to regulate malicious prosecution. The provisions of each country have the following remedies for trademark malicious prosecution respectively: Firstly, before hearing of the trademark prosecution, a court shall review whether the prosecution filed by the defendant is based on proper and legal interests and may dismiss the prosecution if the prosecution is not based on proper and legal interests. Second, when the court hears the trademark malicious prosecution, some courts find that the trademark malicious prosecution is an abuse of the right to sue, so they will adopt the request to dismiss the

prosecution and take the way of fine to punish the trademark malicious litigant, such as France. Some courts identify the trademark malicious prosecution as the infringement of the defendant's trademark right and rule against the defendant and order the defendant to lose the prosecution and be liable for damages, such as in Germany and Japan. Some courts will be based on the consideration of "maliciousness" and "circumstances" in the trademark malicious prosecution, and the punitive liability system is established on the basis of the theory of imputation of tort liability, such as the United States, the United Kingdom and Taiwan, China.

This paper believes that, because of the particularity of intellectual property law program to prosecution relief, to balance the defendant, the society for trademark malicious prosecution in loss of personal interests and public interest, the punitive damages system of trademark malicious prosecution in China when taking rights abuse view should be on the basis of trademark malicious prosecution defendant requests for punitive damages.

5. Thoughts and Suggestions on Establishing a Punitive Damages System for Trademark Malicious Prosecution

5.1 Improve the Right Basis for Punitive Damages for Trademark Malicious Prosecution

Based on the nature of malicious prosecution "abuse of rights", the bona fide user of the trademark should have the right to defend against the malicious prosecution request. This defense will have a permanent blocking effect on the malicious litigant's right to claim the trademark, but will not extinguish its right to claim, which is regarded as the malicious prosecution defendant's "shield". Meanwhile, the defendant in the trademark malicious prosecution shall also enjoy the civil rights based on the determination of the trademark malicious prosecution and negative evaluation of the defendant by the judicial authorities, where the party involved in trademark malicious prosecution shall be entitled to the civil rights of claiming a certain amount of rights protection expenses and losses of the malicious prosecution against the party involved in the prosecution in an independent prosecution other than the malicious prosecution, which is the malicious prosecution of the defendant's "spear". As the warrior on the battlefield needs spear and shield, the defendant also needs both trademark malicious prosecution defense and the right to claim punitive damages before it can become a complete market competition subject, with the ability to resist malicious prosecution.

5.2 Clarify the Conditions for the Application of the Punitive System of Trademark Malicious Prosecution

In China's prosecution damage compensation mechanism, punitive damages play a supporting role, and the application of the punitive damages system in trademark malicious prosecution shall also be subject to extra caution. This paper believes that it is necessary to achieve the three elements of "constitution of trademark malicious prosecution", "trademark malicious prosecution circumstances are serious", "the existence of malicious prosecution or malicious litigants claim not to establish the effective judgment". They are applicable only when they are met.

4.2.1 Whether it Constitutes the Determination of Trademark Malicious Prosecution

The current laws in China do not have a clear concept of malicious prosecution, but malicious prosecution by nature is an abuse of rights. The paper is of the opinion that the following elements shall be deemed as identification standards in determining trademark malicious prosecution:

(1) The Perpetrator Has the Legal Form Elements of Trademark Rights

An actor files a malicious prosecution with a nominal right basis, but this kind of civil right is often "legal" in form but flawed in essence and is usually obtained by improper means such as rush registration or hoarding registration. Trademark malicious prosecution without any defect in right basis also exists. However, the determination of trademark malicious prosecution under any circumstance shall be subject to the legal form elements of the trademark right of the agent.

(2) The Perpetrator Filed a Trademark Right Prosecution without Factual or Legal Basis

In general, only the trademark right holder or its authorized defender is entitled to file a trademark prosecution. If the trademark litigant is not the valid right holder of the trademark in question, or only enjoys the formal "legality" of the trademark right without legitimacy, or sues the bona fide user to bear the "trademark infringement liability" and other circumstances, the prosecution is "filed without factual or legal basis".

(3) The Perpetrator Has Harmed Private Rights or Public Interests as a Result of the Prosecution

The damage to private rights is mainly reflected in the expenses incurred by the defendant to passively enter the prosecution process and the damage to goodwill and business loss. The damage to the public interest is mainly reflected in the destruction of the fair competition of the market economic order and the waste of judicial and administrative resources.

(4) The Perpetrator Has Subjective "Maliciousness"

The concept of "maliciousness" does not exist in China's Civil Code system, but the "Interpretation on the Application of Punitive Damages in the Trial of Intellectual Property Civil Cases", which came into effect on March 3rd, 2021, clarifies the consistency between "intentional" and "malicious intent". Consideration of IPR malicious prosecution is made under the concept of intent, which is divided into direct and indirect intent. According to Prof. Zhang Xinbao, maliciousness is the most harmful intention and must be direct intention, which is clearly aimed at pursuing the damage of others rather than exercising one's own legitimate rights when carrying out certain acts. Combined with the lack of legitimate reasons and the initiative of filing a trademark malicious prosecution, the "malicious" form of fault of the malicious prosecution is direct intent, which is manifested as that a party filing a trademark prosecution improperly exercises his prosecution rights for the purpose of obtaining benefits, even knowing that his claim is unjustified, so as to cause damage to the property or goodwill of the defendant.

In addition, in the trademark malicious prosecution, it is supposed to pay attention to the fact that the defendant himself should not exist infringement of trademark rights, that is, it has legitimate rights and interests. That is, if the opponent of the prosecution itself does not exist legitimate rights and interests, there is no "infringement through malicious prosecution" of the right to be infringed, and there is no right to fight the so-called trademark malicious prosecution.

4.2.2 The Determination of the Seriousness of the Trademark Malicious Prosecution

Punitive damages mechanism is not arbitrarily applied. In order to prevent the generalization and excess of the punitive damages system, in the judicial practice of punitive damages for trademark malicious prosecution, various factors should also be considered, and only those who reach the seriousness of malicious prosecution can be applied. The factors to be considered include, but are not limited to, the consequences of damage, the degree of subjective malice, the market influence of the trademark in question, the evaluation of criminal law and so on.

4.2.3 There is no Effective Judgment that Supports the Claim of Trademark Malicious Prosecution

Based on the res judicata of the people's court's effective judgment, the defendant is required to either file a counterclaim in the original malicious prosecution or separately sue for punitive damages against the malicious litigant before there is no effective judgment of the trial court to support the claim of trademark malicious prosecution. The reason is to avoid the possibility of conflict between the original judgment and the later judgment, to maintain judicial credibility and has formed a stable social relationship. Secondly, repeated examination and determination shall be avoided, the efficiency of judicial adjudication shall be improved and the rigor of original adjudication is supposed to be urged.

5.3 Determination of the Amount of Compensation for Punitive Damages for Trademark Malicious Prosecution

The amount of punitive damages for trademark malicious prosecution is the sum of compensatory damages and punitive damages. The author will explore China's trademark malicious prosecution punitive damages system under the perspective of comparative law, starting from the legislative examples of extraterritorial intellectual property rights punitive damages system.

4.3.1 Legislative Choice of Punitive Damages for Intellectual Property Rights in Foreign Countries

The basis of punitive damages for trademark malicious prosecution lies in the filling of damage, and the essence lies in punishment. It Not only fills the actual loss of malicious prosecution defendants, but also fills the social damage, and be based on the "deterrence theory" to make the trademark malicious prosecution punitive damages system in the "optimal deterrence" state. In the choice of legislative examples, the relevant legislation of various countries is divided into three categories. The first one is the non-deterministic amount of damages stipulated in *Copyright Act* of Canada and *Patent Act* of Australia, which is dominated by the discretion of judges, but there are limitations in determining the punitive damages in a fair and reasonable manner, and it is difficult to reflect the punitive nature and strict application. The second is the legislative example of replacing the amount of punitive damages with statutory damages in *Copyright Law* of the United States and *Copyright Law* of Taiwan, China, which is manifested in the provisions of *Patent Law* and *Copyright Law* in force in China as the application of the compensation amount of statutory damages when it is impossible to determine the damages suffered by the right holder due to the infringement and the illegal benefits obtained by the infringer due to the infringement. However, it should be distinguished from trademark malicious infringement because the essence of trademark malicious prosecution is the abuse of rights. The third is the legislative example of determining the proportional relationship between compensatory damages and punitive damages for trademark malicious prosecution adopted in *Patent Law* and *Lanham Act* of the United States and *Patent Law* of Taiwan, China. The determination of punitive damages is not only closely related to the malicious degree of malicious litigants, but also has a clear correspondence with the amount of compensatory damages, so China's trademark malicious prosecution punitive damage is more suitable for the third legislative example.

4.3.2 The Base Point and Base Range of Punitive Damages for Trademark Malicious Prosecution

The base point of punitive damages for trademark malicious prosecution is generally determined in one of the following ways. First, the actual loss suffered by the trademark malicious prosecution defendant due to malicious prosecution; Second, the illegal benefit obtained by the trademark malicious prosecution; Third, a reasonable multiple of the trademark license fee. In the selection of application, since the subject of the request for punitive damages is the malicious prosecution defendant, and the right basis of the claim arises from the malicious prosecution act, the actual loss of the trademark malicious prosecution defendant as the base point of compensation is more in line with the requirement of balance of interests, including the direct loss and indirect loss arising from the malicious prosecution. The former includes, but is not limited to, the weakening, dilution or tarnishing of the trademark due to the abuse of the right of malicious prosecution, as well as the reasonable expenses incurred by the malicious prosecution defendant for responding to the prosecution and defending the right. The latter includes, but is not limited to, the loss suffered by the malicious prosecution defendant due to the reduction of trademark use caused by the malicious prosecution, the loss such as damage to goodwill caused by the malicious prosecution defendant, and the illegal benefit obtained by the trademark malicious litigant due to the malicious prosecution. In addition, when the actual loss cannot be determined or is too low, it is also necessary to confirm the amount of touted compensation through legislation to respond to the social harm of malicious prosecution.

4.3.3 Determination of the Proportional Relationship between Compensatory Damages and Punitive Damages for Trademark Malicious Prosecution

In the foregoing extraterritorial trademark malicious prosecution punitive damages system, although the United States has no explicit provisions of such system, according to the linkage between its laws and regulations, trademark malicious prosecution violates Article 11 of *Federal Rules of Civil Procedure*. Based on Article 35 of *Lanham Act*. The amount of trademark malicious prosecution damages is three times the compensatory damages, that is, the punitive damages are two times the compensatory damages. Punitive damages in China's domestic legislation are only found in *The Law on the Protection of Consumer Rights and Interests*, *The Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Disputes on Contracts for the Sale of Commodities* and the newly revised *Trademark Law*. Among them, the current *Trademark Law* stipulates that the punitive damages for malicious infringement of trademark rights shall not exceed four times of the compensatory damages.

Based on the new stage of China's development, in order to make the punitive damages system in the field of trademark malicious prosecution play the optimal deterrent and interest balance, this paper suggests that the ratio of punitive damages to compensation for malicious prosecution in China be determined as two times, that is, the court can increase the amount of compensation for trademark malicious prosecution up to three times the actual loss of the victim. In the interface with the existing system, as the provisions of Article 68 of *Trademark Law* is limited to "court fines" and there is a debate on whether the subject of malicious prosecution regulated by this provision is limited to trademark agencies, this paper believes that a separate article should be added specifying the punitive damages liability and the court's penalty power against all parties involved in malicious prosecution and stipulating that the two may be applied concurrently, so as to exclude unnecessary disputes in theory and judicial practice and effectively regulate such abuse of substantive and procedural rights.

6. Conclusion

Citizens' rights cannot be violated, the market order cannot be disturbed, and judicial authority cannot be trampled. The establishment of punitive damages in the field of trademark malicious prosecution is conducive to directly regulating the current abuse of trademark rights, indirectly curbing the phenomenon of trademark malicious registration and hoarding of registered trademarks, and protecting the rights of multiple interests. This paper puts forward the punitive damages for trademark malicious prosecution, and hopes that it can be of reference value for the regulation of trademark malicious prosecution and other malicious prosecutions.

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