A Study on the Effect of Trademark Law in Curbing Malicious Squatting of Trademarks

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ABSTRACT
Malicious squatting of trademarks is a serious social phenomenon in the field of trademarks. Therefore, the Trademark Law regulates the examination of trademark registration applications, the obligations of trademark agencies, and the legal consequences of malicious squatting. In order to achieve the legislative purpose of further curbing the malicious squatting of trademarks, improving the economic benefits of the trademark legal system and maintaining a good business environment. However, in actual application, some clauses lack the basis and standard for identification, and the lack of operability of the clauses greatly reduces the effect of regulation, which needs to be further refined and improved by the legislative department. Based on this, this paper proposes that the relevant supporting laws and regulations and departmental rules should be improved; industry self-discipline should be strengthened, and trademark agencies should give full play to the guiding role of trademark application behavior; , adhere to the combination of government guidance and market supervision.

Keywords: *The trademark law, Malicious cybersquatting, Legal effect, Applicable disputes.*

1. INTRODUCTION

Malicious squatting of trademarks endangers the legitimate rights and interests of trademark owners and consumers, and impacts my country's trademark protection system, which should be regulated. In response to the repeated prohibition of malicious squatting of trademarks in recent years, the "Trademark Law of the People's Republic of China" (hereinafter referred to as the "Trademark Law") has been revised several times to explore the legal system to curb malicious squatting of trademarks, and has been adopted in the preliminary examination, announcement and legal process of trademark registration. Responsibilities and other links to make corresponding institutional arrangements. Therefore, this article will sort out the relevant provisions of the current trademark legal system to curb malicious squatting, interpret its legislative value and scope of application, and give specific suggestions on the basis of summarizing the implementation experience, so as to promote the effective solution of the problem of malicious squatting.

2. REGULATIONS OF THE TRADEMARK LAW TO CURB MALICIOUS TRADEMARK SQUATTING

In general, the regulation of trademark law on malicious squatting of trademarks can be divided into two aspects: the stage of trademark registration confirmation and the legal consequences of malicious squatting of trademarks.

2.1. The stage of registration confirmation to curb malicious squatting of trademarks

At the stage of trademark registration and confirmation, the Trademark Law begins to regulate malicious squatting, and strictly controls trademark review.

2.1.1. Emphasize the "purpose of use" of the trademark

my country implements a trademark registration acquisition system, but based on the current situation of malicious squatting and hoarding registered trademarks, applicants are required to have real intention to use when registering a trademark.[1] For malicious registration

without the purpose of use, the trademark registration authority should directly turn down. The introduction of "intent to use the trademark" as a consideration factor in the trademark acquisition system is to soften the mode of absolute registration acquisition, and aims to correct malicious trademark squatting behavior from the root. In practical application, Article 4 "A malicious trademark registration not for the purpose of use shall be rejected" can be used as a rejection of malicious squatting of trademarks. specific legal basis. It should be noted that the "purpose of use" is only a guideline for the subjective requirements of the trademark applicant, not a prerequisite for the registration of the trademark being applied for. Secondly, there are enterprises that are currently conducting defensive registrations for well-known brands to avoid dangers in the process of trademark confirmation and rights protection. It is not appropriate to reject all such applications, so the malicious" element is emphasized.

2.1.2. Protection of prior rights under "specific relationship"

Article 15 of the "Trademark Law" is aimed at the squatting of trademarks by agents, representatives and other specific related persons. Although there are many clauses in the Trademark Law to curb malicious cybersquatting, from a system perspective, this clause has its necessity to exist. Form an important part of the legal system to protect unregistered trademarks and curb malicious squatting. Therefore, this clause can be divided into two parts. The first paragraph of Article 15 is aimed at the malicious cybersquatting behavior of the increasingly violent agent or representative, and at the same time, it is to fulfill the obligations of international conventions, and it aims to protect the principal or the representative. prior legal rights. Paragraph 2 of Article 15 refers to the conduct of cybersquatting with the knowledge of others' prior trademarks who have a specific relationship in practice. The two together constitute an adjustment of the current Trademark Law to trademark squatting in the case of a specific relationship.[2]

2.1.3. Protection of "previously used and influential" trademarks

Article 32 of the "Trademark Law" protects trademarks that have been used and have certain influence based on the principle of maintaining good faith. From the legislative purpose, it is the most clear and appropriate clause that can be used to curb malicious squatting of trademarks. First of all, "prior use" is limited in time and territory. In principle, the preemptively registered trademark should have been put into use in China before the date of application for registration of the trademark.[3]Secondly, judging whether the registration act is "by improper means" needs to be comprehensively considered in combination with the actor's subjective state at the time of the application, the object of damage, and the actual consequences caused. The illegality of registration is mainly reflected in the requirement of "bad faith", that is, knowing the unregistered trademark used by others before, and intentionally registering and occupying it for the purpose of unfair competition. Third, “certain influence” can be understood as the trademark creator has carried out commercial use and publicity of the disputed trademark before it is squatted, so that the trademark has a certain reputation among the relevant public in a certain period of time, in a certain region or industry.

2.2. Regulate the legal consequences of malicious squatting of trademarks

For the legal protection of unregistered trademarks, especially in terms of legal liability, the Trademark Law stipulates that the legal rights and interests of the owners of prior use rights should be protected by applying for trademark objection and trademark invalidation. Squatting strikes.

2.2.1. Increasing Relief Paths

Article 4 of the "Trademark Law" intercepts malicious squatting of trademarks at the beginning of the examination, making trademarks "not intended for use" constitute the legal consequence of invalidation from the beginning. This advance prevention system reduces the subsequent administrative and judicial organs. burden. In addition, trademark-related rights holders can also seek legal remedies through the trademark opposition and trademark invalidation system. If the opposition or invalidation is established, the legal consequences are equivalent to "rejection". With the support of more social supervision forces, the speculation cost of malicious applicants has been increased. Articles 33 and 44 of the Trademark Law both involve trademark registration and procedures after trademark registration. Through the remedies given to the parties and the implementation of Article 4 in the procedure, the malicious squatting of trademarks will be curbed from multiple perspectives and in all directions.

2.2.2. Improve legal liability

Article 68 of the Trademark Law stipulates the legal responsibilities of trademark agencies. The Trademark Office may impose administrative penalties based on the specific circumstances of malicious applications for trademark registration. It can be said that it emphasizes the purpose of trademark use from the perspective of legal responsibility. In addition, in the field of trademarks, the phenomenon of malicious lawsuits against specific rights holders for profit by using registered trademark rights as bargaining chips not only

harms the interests of the sued enterprises, but also violates the original intention of the Trademark Law to protect the exclusive rights of trademarks. Except that the prior right holder or interested party can seek relief at the stages of application, opposition, "withdrawal", invalidation, etc., the Trademark Law stipulates that the trademark applicant's malicious application for registration and malicious filing of trademark lawsuits are relatively Strict penalties. To put it simply, for the legal liability of abnormal application behavior, abnormal agency behavior and malicious litigation, the deterrent effect of rejecting registration application is not enough. It is necessary to impose administrative penalties, increase illegal costs, and cause substantial damage to squatters. blow.[4]

3. THE EFFECT OF LEGAL REGULATION ON MALICIOUS TRADEMARK SQUATTING

3.1. The purpose of legal regulation of malicious trademark squatting

3.1.1. Further curb the phenomenon of malicious squatting of trademarks

The "Trademark Law" builds a system to standardize trademark registration application behaviors in terms of trademark authorization review, agency obligations, and administrative penalties. In the review stage, reduce the number of trademark applications, improve the quality of applications, and save administrative and judicial resources; regulate the behavior of trademark agencies, increase their statutory obligations, protect the legitimate rights and interests of trademark owners and consumers, and create a favorable environment for the development of the trademark industry; Relief ways for squatters, increase administrative penalties, and increase the speculative cost of malicious squatting. From the stages of trademark application, examination, registration and use, it will more strictly and effectively regulate malicious application for registration, and increase the crackdown in multiple dimensions to achieve the basic purpose of further curbing the phenomenon of malicious squatting trademark registration.[5]

3.1.2. Improve the economic efficiency of the trademark legal system

The first paragraph of Article 4 of the "Trademark Law" can be regarded as two parts. The former stipulates the basic principles for obtaining registration in my country's Trademark Law, and the latter reflects the emphasis on the use value of trademarks. From the perspective of system design, the characteristics of the two acquisition modes of registration and use are balanced. From the point of view of economic benefits, under the registration acquisition system, the exclusive right to a trademark must be obtained by completing the registration procedures, which provides a hotbed for malicious squatting, wastes administrative and judicial resources, or the owner of the trademark right after malicious hoarding Malicious litigation or transfer to obtain improper profits, which in turn leads to inefficiency; acquisition of trademark ownership through possession may be detrimental to the protection of trademark exclusive rights due to factors such as wasteful use, variability of goodwill, and uncertainty of trademark rights. At the same time, the rapid development of the economy has prompted the trademark law to provide legal protection for unregistered trademarks. Therefore, it has become a current international trend to combine the two modes of trademark acquisition. That is, the principle of "prior use" of trademarks is introduced under the registration acquisition system. "In principle, the form of registration is considered to maximize economic efficiency.

3.1.3. Maintain a good business environment and business ethics

From the perspective of the legitimacy of intellectual property protection, the utilitarian "incentive theory" seems to be more suitable for the current rapid development of intellectual property rights and is in the mainstream. Knowledge creation to maximize social welfare. However, unlike the copyright law and the patent law, whose original intention is to encourage creators to create more excellent works and practical skills, the trademark law does not unilaterally take the number of trademark registration applications as its pursuit. Behind the rapid increase in the number of trademark registration applications in my country, the phenomenon of malicious squatting of trademarks is rampant, and some trademark agencies, under the inducement of economic interests, still accept the entrustment of the applicant knowing that the applicant has the intention of malicious registration. Therefore, the trademark law has always been to encourage market entities to protect the goodwill value contained in the use of trademarks, to crack down on speculators' behavior of using legal loopholes to achieve their own economic interests, to effectively protect the interests of consumers, and to maintain a good transaction order and industry ethics. ultimate goal.

3.2. The dilemma of legal regulation of malicious squatting of trademarks

The prohibitive clauses for the specific circumstances of trademark squatting are based on different adjustment objects and have their own positioning and application requirements. Only by mutual cooperation can the trademark law play a role in curbing malicious trademark squatting. However, due to the uncertainty of the content

of some requirements and the complexity and variety of the case, there are disputes over the scope of application and implementation.

First, the determination of the two elements "not for the purpose of use" and "bad faith" in Article 4 of the "Trademark Law" plays a decisive role in the correct application of this article. From a legislative point of view, neither the Trademark Law nor its implementing regulations have been able to clearly explain the connotations of "not for the purpose of use" and the elements of "bad faith" and the relationship between the two, and it is even more lacking in how to identify the elements of "bad faith". Legal basis for guidance. From the perspective of actual implementation, it is not easy to use "purpose of use" and "maliciousness" as subjective elements, and different law enforcement agencies have different law enforcement attributes, so it is inevitable that there will be different understandings of laws and regulations. unity. In addition, the scope of application of this clause is also controversial. Judging from the interpretation of the "Several Provisions on Regulating the Behavior of Applying for Registration of Trademarks", it seems that this clause is only limited to restricting the phenomenon of trademark hoarding that is not for the purpose of use. However, the applicable boundary of the clause is mostly determined by its legislative purpose. If the adjustment scope of the clause only covers the malicious hoarding of trademarks, the legislative purpose of this clause to comprehensively regulate the malicious application for registration of trademarks cannot be achieved. Second, the fact that the preemptively registered unregistered trademark has been put into use is the basis for obtaining the prior rights of the trademark. Therefore, the correct identification of the "prior rights" is the first step in applying Article 32 of the Trademark Law. The boundaries of the connotation of "rights" are not clear, and the corresponding interpretation of the trademark legislation needs to be given. Third, in the protection of well-known trademarks and principals or other trademark-related rights holders who have a specific relationship, the prior use of the trademarks popularity and the specific relationship between the trademark-related rights holders need to be provided by the preemptive registrant to provide evidence. prove. The unclear determination standard not only affects the submission of evidence, but also creates difficulties for the trademark examination agency. Secondly, excessively delving into the influence and popularity of the previously used trademark will affect the regulatory effect of the key element of the squatters subjective maliciousness, which will not be effectively brought into play.

4. SUGGESTIONS ON CURBING MALICIOUS TRADEMARK SQUATTING

4.1. Improve relevant supporting laws and regulations

The State Intellectual Property Office has carried out a series of legislative researches on the problem of abnormal trademark applications due to malicious squatting of trademarks. On the one hand, through the Trademark Law, standardize all aspects of the trademark registration and acquisition system, and establish a long-term mechanism to effectively curb malicious trademark squatting. On the other hand, supporting laws and regulations are formulated to ensure the better operation of the revised content of the new Trademark Law, and provide reference and foreshadowing for the improvement of the Trademark Law in the future.

On the basis of the promulgation of the Trademark Law and its supporting Regulations, a series of guiding cases for malicious trademark applications can be published, which can correctly guide the behavior of commercial entities and give potential malicious squatters by raising the alarm, it can also unify the judicial concept and reduce the phenomenon of "different sentences for the same case". After the actual application of the new Trademark Law, the Supreme Judicial Organ issued relevant judicial interpretations to clarify the trademark violations that need legal regulation and improve the efficiency of case handling. All in all, the implementation regulations of the Trademark Law and other regulations and departmental rules should be issued as soon as possible as a supplement to the Trademark Law, which will help different departments to better apply the new Trademark Law according to their law enforcement attributes. A relatively sound modern trademark legal system.

4.2. Strengthen the norms of agency behavior and industry self-discipline

As a professional service organization, a trademark agency has certain professional advantages in curbing malicious squatting of trademarks.

First, trademark agencies should regulate and guide applicants to apply for registered trademarks, and engage in agency business in accordance with the law. In addition to the obligation of confidentiality and disclosure to the principal, the trademark agency should also exercise self-discipline, which means it is obliged to examine the client's application for trademark registration. In addition to the high standards of professional ethics, the self-restraint obligation is also more difficult to achieve technically. It requires the trademark agency to make a judgment on whether the client's application for trademark registration is malicious before accepting the entrustment. Second, the Trademark

Industry Association should strengthen and regulate the internal behavior of the industry. By formulating industry norms, we will effectively strengthen industry self-discipline, carry out legal business self-discipline initiatives, and create a good industry atmosphere. Non-member units that "do not follow the right path" should be condemned and announced to the public. Conscientiously cooperate with the government's examination work and promote the sound development of the trademark industry.

4.3. Improve the law enforcement capacity of administrative agencies

The level of enforcement of the administrative agencies will be crucial to whether the Trademark Law can play its due role. The backward enforcement capacity will not only increase the workload of the Trademark Office, but also make the legislative purpose of the provisions of the Trademark Law unable to be effectively achieved. [6]

First, trademark management departments at all levels should clarify their responsibilities, strengthen departmental collaboration, and improve the ability to flexibly apply trademark laws and regulations. Second, improve the quality and efficiency of trademark examination by administrative agencies. Faced with the huge volume of trademark applications, if the application for trademark registration is rejected until the substantive examination stage, it will greatly waste social, administrative, and judicial resources. On the basis of formulating the "Standards for Trademark Examination and Trial" to refine the examination standards for various commodities, adhere to the principle of "not breaking the standards at will", which is conducive to the examination staff to complete the examination work quickly and strictly in accordance with the unified examination standards, and facilitates trademark applications. People conduct self-examination. The Trademark Office shall comprehensively examine multiple factors such as the applicant's business category, the number of trademarks applied for, and the originality of the applied-for trademark, and analyze and judge based on the case evidence, and has the right to reject a malicious trademark application that cannot prove that it has a purpose of use.

5. CONCLUSION

The Trademark Law has limitations in regulating malicious squatting of trademarks. The criteria for determining the specific circumstances of trademark squatting are ambiguous, and the scope of application is controversial. In judicial practice, it is easy to ignore the "malicious" element, which violates the original legislative intent of the clause. Therefore, in order to exert the effect of the Trademark Law in curbing malicious squatting, various efforts are needed, including the improvement of supporting laws, the cooperation of market players, the self-discipline of the industry, the strict law enforcement by administrative units, and the extensive supervision of the society. In the new era in which intellectual property drives economic and social development, it is necessary to do a good job in trademark work, and form a trademark legal system that can effectively combat malicious trademark squatting under the existing legal framework.

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