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A Legal Study on Malicious Trademark Registration

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Abstract. Malicious trademark registration represents an inherent governance dilemma arising under China's trademark registration-acquisition system. In June 2026, the Standing Committee of the 14th National People's Congress of China passed the first comprehensive revision of the Trademark Law since its implementation more than forty years ago, and regulating malicious registration stood as a core theme of this legislative revision. This paper sorts out the concepts and categories of malicious trademark registration. On the basis of existing legal provisions, it addresses practical legal challenges in current social practice concerning malicious trademark registration, including ambiguous criteria for determining "malice", insufficient logical connections among legal provisions, and the mismatch between illegal costs and unlawful gains. This research analyzes the contributing factors behind malicious trademark registration. Finally, it proposes relatively sound countermeasures from legislative, judicial and administrative dimensions, so as to offer suggestions for the effective enforcement of the revised Trademark Law. This paper concludes that the root causes of malicious trademark registration lie in low illegal costs paired with high potential profits as well as limited examination resources. Centering on the requirement of bona fide intent to use, a multi-party collaborative mechanism covering legislation, judicature, administration and credit sanctions shall be established to build a system featuring pre-application interception and post-fact regulation, which guarantees the effective implementation of the trademark legal regime.

Keywords: Malicious Trademark Registration, Trademark Hoarding, Registration-Acquisition System, Legal Regulation, Revision of the Trademark Law

1. Introduction

China has maintained the world's largest number of trademark applications for consecutive years. Meanwhile, problems such as malicious trademark registration and hoarding for profit remain prominent. Trademark owners exercise trademarks to realize their core function of identifying the source of goods. Nevertheless, under the registration-acquisition legal regime for trademarks, trademark applications filed without bona fide commercial use intent readily give rise to trademark squatting and hoarding. Registered trademarks are thereby turned into tools for profit-seeking and rights abuse, which runs counter to legislative purposes.

In January 2023, the China National Intellectual Property Administration released the Draft for Comments on the Revision of the Trademark Law, which explicitly took "curbing malicious

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trademark squatting and fostering a fair-competition market environment" as a major policy orientation for this round of revision. In June 2026, the Standing Committee of the 14th National People's Congress adopted the comprehensively revised Trademark Law of the People's Republic of China. This marks the first full-scale revision since the law came into force in 1983. Oriented toward practical problems, the revised law targets prominent issues strongly reflected by the public that constrain innovation vitality, and introduces critical adjustments in strengthening trademark use administration and cracking down on malicious trademark registration. Regulation of malicious registration constitutes one of the focal points of this revision.

Against the backdrop of the comprehensive revision of China's Trademark Law in 2026, this paper analyzes the balance between "trademark acquisition by registration" and "intent to use" from a jurisprudential perspective, and explores the specific connotation of "malice" within trademark law. Following elaboration on the concepts, categories and current legal framework of malicious trademark registration, this paper identifies regulatory dilemmas in legal practice. It further interprets underlying causes from the angles of institutional roots and interest-driven incentives, and puts forward proposals for optimizing trademark registration governance from legislative, judicial and administrative perspectives. This research is intended to contain malicious trademark squatting, hoarding and occupation of public resources, safeguard legitimate interests of prior-right holders and consumers, and provide a reference framework for future research on the regulation of malicious trademark registration.

2. Current status and dilemmas of legal regulation on malicious trademark registration

2.1. Concept and categories of malicious trademark registration

Malicious trademark registration refers to trademark application acts where applicants violate the principle of good faith, lack bona fide intent for commercial use, and file trademark applications for improper gains. Such acts inherently undermine trademarks' function of identifying the source of goods.

Malicious trademark registration falls into three categories. First, malicious squatting of others' trademarks with certain influence: applicants preemptively register trademarks already used and well-known by others with prior knowledge, and then demand transfer fees to free-ride on others' business goodwill. Second, trademark hoarding, namely bulk trademark registration without intent to use. Applicants have no genuine operational need for trademarks. They file numerous trademark applications within a short period and hoard trademarks to seek profits through trademark assignment or licensing, thus occupying public trademark resources. Third, squatting of public resources and others' prior rights, including registration of celebrity names, portraits, film-television IPs and geographical indications. This type of conduct harms both specific private subjects and public interests.

2.2. Current legal regulatory framework

China's Trademark Law has formed a normative system centered on registration examination and cancellation of registered rights for regulating malicious trademark registration, which mainly includes the following dimensions.

First, Paragraph 1 of Article 4 of the Trademark Law stipulates that "Malicious trademark registration applications filed without intent to use shall be rejected". This clause was added in the fourth revision of the Trademark Law in 2019 to address rampant malicious applications for

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counterfeiting well-known marks and large-scale trademark hoarding for assignment profits in practice. Serving as the primary defensive line, this provision intercepts malicious registration at the trademark application stage [1].

Second, the Trademark Law establishes the principle of good faith, requiring trademark applicants and agents to act in good faith with genuine operational demands rather than for squatting or hoarding during trademark registration and use. Article 32 further prescribes that "An application for trademark registration shall not infringe upon others' existing prior rights, nor shall it preemptively register, by improper means, a trademark already used by another party and having a certain influence". These two rules jointly lay the normative foundation for restraining malicious trademark registration [1, 2].

Third, the Trademark Law institutes trademark opposition (applicable within the three-month public notice period after preliminary approval of a trademark application, where interested parties may file oppositions), invalidation of registered trademarks (interested parties may apply for invalidation within five years upon registration for malicious squatting, infringement of prior rights or hoarding; the five-year limit does not apply to malicious squatting of well-known trademarks), and cancellation for non-use for three consecutive years. These institutions provide post-fact remedies for interested parties. Nonetheless, they are plagued by long procedural cycles, high costs and difficult burden of proof in practice, resulting in relatively limited regulatory effects [3].

Fourth, the comprehensively revised Trademark Law of 2026 introduces multiple new institutions. Most notably, the compulsory trademark transfer system empowers victims of trademark squatting to request competent intellectual property administrative authorities to assign the maliciously registered trademark to themselves. This institution essentially combines trademark opposition/invalidation procedures with new trademark application. It protects legitimate rights of victims and cuts subsequent registration costs. Trademark rights obtained via malicious squatting constitute interest-infringing unjust enrichment, and the compulsory trademark transfer system represents the concrete application of the civil-law unjust-enrichment restitution mechanism in the trademark domain [4, 5].

2.3. Practical defects in current legal regulation

Despite abundant trademark legal institutions, many practical dilemmas persist and regulatory outcomes remain unsatisfactory.

First, ambiguous criteria for identifying "malice" in malicious trademark registration lead to inconsistent judicial adjudication. Theoretical and practical disputes exist regarding the logical relationship between "absence of intent to use" and "malice". Some scholars regard them as parallel conditions, while others treat "absence of intent to use" as a constituent or qualifying element of "malice". Such interpretive divergences directly undermine judicial consistency, and debates persist over whether factors beyond bona fide use should be weighed when determining malice [1, 6].

Second, regulatory provisions targeting malicious trademark registration are scattered across Article 4, Article 7, Article 32 and other clauses of the Trademark Law. Unclear applicability relations among fragmented provisions prevent the formation of an integrated normative system. Moreover, legal consequences for malicious registration are incompletely stipulated. Existing rules only dispose of registered trademarks, yet contain no provisions for recovering assignment fees obtained through trademark squatting. The current regime therefore lacks comprehensive regulatory instruments [1].

Third, the long-standing tendency of "emphasizing registration while downplaying use" has not been fundamentally reversed. Large quantities of registered trademarks remain idle or hoarded and

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circulate in so-called "trademark supermarkets". Detached from goods and services, trademarks are alienated into independent tradable commodities, contradicting the original purpose of the trademark system. Malicious registrants file numerous trademarks at minimal costs. Even if part of applications get rejected or invalidated, their illegal costs are far lower than potential unlawful gains [6]. By contrast, victims of trademark squatting have to go through opposition or invalidation procedures to defend their rights, confronting lengthy proceedings, heavy evidential burdens and high safeguarding costs [3, 7].

3. Improvement paths for legal regulation of malicious trademark registration

3.1. Root-cause analysis of malicious trademark registration

The prevalence of malicious trademark registration stems from institutional design itself. China adopts a trademark registration system under which trademark rights are exclusively acquired via registration [2]. The essence of malicious registration lies in pursuing profits through trademark assignment and licensing. Malicious applicants file massive trademark applications at low costs; substantial profits can be achieved as long as a small fraction get registered and assigned [6]. Meanwhile, limited administrative examination resources cannot support thorough review of bona-fide-use intent for every application amid surging trademark filings, creating opportunities for malicious conduct [1, 6].

3.2. Suggestions for legislative improvement

Legislative refinement constitutes the fundamental solution.

First, enact a general clause for invalidating maliciously registered trademarks to systematize the regulation of malice. Current prohibitive norms against malicious trademark applications lack systematic arrangement. Drawing lessons from EU legislation, a special provision against malicious trademark applications may be incorporated into the Trademark Law, explicitly listing "malice" as an independent ground for trademark invalidation [1]. This will unify criteria for malice determination, realize organic connection among relevant provisions, and elevate the systematicness of regulation.

Second, optimize the compulsory trademark transfer system to strip unlawful gains from malicious registrants. As an embodiment of unjust enrichment restitution in trademark law, this system shall clarify qualification standards for claimants and obligated parties in accordance with civil-law theories on unjust enrichment. Claimants shall be limited to subjects holding prior trademark interests, prior personal rights or intellectual property rights and possessing bona-fide use intent. Obligated parties refer to trademark registrants who commit malicious squatting. Administrative authorities shall additionally examine whether transfer would trigger consumer confusion and whether obstacles such as pledge or freeze exist. The institution enables victims to directly claim trademark assignment, exempting them from repetitive trademark application after invalidation and reducing rights-defense burdens [4, 5].

Third, further strengthen statutory obligations of trademark use. At the application stage, applications filed in large quantities within short periods or obviously exceeding the applicant's business scope without reasonable explanation may be presumed to lack use intent and rejected at source so as to curb trademark hoarding. After trademark registration, registrants may be required to submit biennial declarations concerning trademark use status, restoring use to the core position of trademark institution [7].

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3.3. Coordinated regulation by judiciary and administration

Legislative progress can only take effect through sound judicial and administrative implementation.

At the judicial level, priority shall be given to unifying judicial criteria for "malice". Objective indicators including bulk trademark applications and massive trademark transfers may trigger a presumption of malice, shifting the evidential burden onto trademark applicants or registrants, who shall prove bona-fide use intent and legitimate commercial purposes [1, 6]. Furthermore, civil compensation and punitive damages for malicious registration shall be increased. Article 83 of the Draft for Comments on the Revision of the Trademark Law first introduces civil-compensation clauses for malicious trademark squatting, which represents a praiseworthy legislative direction [3]. Differentiated compensation scales shall be formulated corresponding to different types of malicious conduct. Besides, mandatory case-retrieval mechanisms shall be applied in trademark authorization and confirmation litigation. Judgments shall refer to analytical frameworks of typical precedents to mitigate inconsistent adjudication caused by discretionary interpretation of individual judges. Distinguishing judgment standards for "hoarding-oriented malice" and "squatting-oriented malice" is necessary: the former centers on use intent and the match between application scale and business demands; for the latter, "absence of intent to use" is not a prerequisite. Malice is established even if the squatter intends to operate with the contested trademark after registration [1, 6].

At the administrative level, as emphasized in judicial regulation, examination of bona-fide-use intent shall be reinforced during registration review. Applications evidently lacking sincere use intent shall be rejected according to law. A trademark-use statement system shall be established, requiring registrants to explain actual trademark use within specified periods. Registered trademarks without valid use evidence shall be canceled. In addition, malicious trademark registration shall be incorporated into credit records via credit-sanction instruments to raise illegal costs and generate deterrence [8].

4. Conclusion

This paper explores concepts and categories of malicious trademark registration under China's registration-acquisition trademark system, analyzes its root causes, and proposes preventive countermeasures from legislative, judicial and administrative perspectives. It holds that rampant trademark squatting, hoarding and seizure of public resources are mainly attributable to low illegal costs, high unlawful gains and limited examination resources. Although current Chinese law has instituted application interception, opposition, invalidation, cancellation for three-year non-use and compulsory transfer, defects persist including indefinite criteria for malice, insufficient coordination among legal clauses, and inadequate post-hoc disposal instruments. Therefore, a collaborative mechanism featuring systematized legislation, unified judicial determination, as well as administrative review and credit sanctions shall be constructed around bona-fide trademark-use intent. This paper has limitations: it does not conduct empirical statistical analysis of massive judicial decisions, nor does it implement comparative-law research on legal regimes of the European Union and other jurisdictions. Future research may focus on typified and definite criteria for malice, applicable conditions for compulsory trademark transfer, and coordination between biennial use-declaration obligations and cancellation-for-non-use institutions.

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