

Research on the Regulation of Anti-Unfair Competition Law on the Abuse of Trademark Rights after Malicious Registration

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Abstract. The Anti-Unfair Competition Law is a necessary and acceptable measure to control the abuse of trademark rights following malicious registration. Notwithstanding the Trademark Law's limitations on malicious registration, it is challenging to adequately handle trademark rights misuse following malicious registration due to its lax registration review process and insufficient remedies. Such activity is greatly regulated by the Anti-Unfair Competition Law, which has a wider range of applications and more varied regulatory actions. The coherence and efficacy of legal application are hampered by issues in contemporary judicial practice, such as the inconsistent application of the Trademark Law and the Anti-Unfair Competition Law, the underutilization of ambiguous provisions, and the ambiguous scale of general provisions. The institutional advantages of the Anti-Unfair Competition Law can be fully utilized to effectively regulate the abuse of trademark rights following malicious registration by elucidating the essential elements of the general provisions of the law, expanding the protection scope of Article 6 of the law, and clarifying the scope of application of both the Trademark Law and the Anti-Unfair Competition Law.

Keywords: malicious registration, Trademark rights, Abuse of right, Anti-Unfair Competition Law

1. Introduction

With the development of the modern market economy, trademarks have growing goodwill value and competitive advantages as important indicators to identify the source of goods or services. Simultaneously, under the background of China's trademark registration and acquisition system, malicious registration phenomena such as trademark squatting have emerged. Malicious trademark registration is a long-standing and iconic problem within the field of trademarks in China [1]. With the constant improvement of laws and regulations in China, malicious behaviors such as registration and hoarding during the application stage of trademark registration have been effectively regulated. According to statistics, in 2021, the China National Intellectual Property Administration will crack down on 482000 malicious registered trademarks [2].

However, as a carrier of goodwill for commercial entities, trademarks, due to their low cost of registration but relatively lucrative benefits, have led to a large number of malicious registrants

abusing their trademark rights to disrupt market competition order in practice - that is, obtaining trademarks through improper means such as registering trademarks previously used by others or hoarding trademarks, and then abusing the exclusive rights of registered trademarks by obstructing the reasonable use of trademarks by others, causing consumer confusion through the use of trademark logos, and abusing litigation rights, resulting in the disruption of market competition order. Such behavior not only undermines the original intention of protecting innovation in the trademark system but also infringes on the fair competition rights of others. In judicial practice, numerous cases involving the malicious registration and subsequent abuse of trademark rights have been observed. In the case of Bayer Consumer Care Holdings Co., Ltd., Bayer Consumer Care Co., Ltd. v. Li Qing [3]. (dispute over commercial bribery and unfair competition), Li maliciously registered the trademark of Bayer's trademark with prior copyright, and threatened to "withdraw the lawsuit for payment" and "transfer the trademark", resulting in the forced delisting of Bayer's products; In the case of BRITAGMBH Co., Ltd., BRITAGMBH Water Purification System (Shanghai) Co., Ltd. v. Shanghai Kangdian Industrial Co., Ltd. (dispute over trademark infringement) [4], Kangdian Company not only registered many trademarks similar to "BRITA" , but also abused administrative procedures such as trademark opposition to obstruct the registration of the Birande trademark; In the case of Suiyong Wang. v. Shenzhen Ellassay Clothing Co., Ltd. (dispute over application for trademark violation and unfair business practices) [5], Wang Suiyong claimed 6 million yuan through litigation after registering the trademark "ellassay" previously used by ellassay Company. The existence of malicious registration and hoarding of trademarks, as well as the abuse of trademark rights, not only directly constitutes an infringement upon the original owners' lawful rights, turning trademark rights into a "tool for accumulating wealth" to seek illegitimate benefits, but also undermines the good competitive environment of the market-based economy and disrupts the normal competitive order of the marketplace.

In the current legal system of our country, although the Trademark Law has imposed certain restrictions on the above-mentioned behaviors through clauses such as prohibiting malicious registration and restricting the exercise of trademark rights, there are limitations, such as a limited protection scope and unclear compensation for infringement. The Anti-Unfair Competition Law can effectively crack down on the abuse of trademark rights after malicious registration by regulating market competition behavior. Therefore, examining the regulatory approach of the Anti-Unfair Competition Law regarding the abuse of trademark rights following malicious registration is of significant importance. Accordingly, this article will focus on the specific characteristics of such post-malicious-registration trademark right abuses., starting from the necessity of regulating it with Anti-Unfair Competition Laws, and conducting research on its difficulties in regulation and legal improvement paths, providing useful references for the protection and purification of the market economy environment and the reasonable adjustment of the relevant legal system.

2. The necessity of regulating the abuse of trademark rights after malicious registration

Manuscript Preparation

2.1. Limitations of the "Registration Regime " in the Trademark Law

The acquisition of trademark rights in China adopts the "registration acquisition regime", which means that the ownership of trademark rights is based on registration as the core basis, rather than actual use as a necessary prerequisite. Although this system has assumed a critical function in encouraging market entities to actively protect their rights and maintain transaction security, in

practice, its inherent structural defects provide opportunities for malicious registration and subsequent abuse of trademark rights.

2.1.1. Weak review of "malicious" and "intent to use" in the registration process

The core of the current trademark registration examination is to determine whether the applied trademark has distinctiveness, whether it violates the prohibition and annotation clauses, and whether it conflicts with the trademark previously registered or applied for by others. Although Article 4 of the Trademark Law clearly stipulates that " trademark registration applications submitted maliciously without actual intention of use should be rejected. ", in practical operation, the examination and determination of the applicant's "subjective malice" and "intention to use" by administrative organs are relatively weak and difficult, which leads to the problem of abuse of trademark rights by the perpetrator after malicious registration.

On the one hand, the examination process for trademark registration is difficult to detect the applicant's subjective malice. Trademark examination relies on written materials provided by the applicant, and the examiner conducts formal examination and limited substantive examination within a limited examination time. This substantive examination is generally limited to the examination of whether the trademark itself meets legal requirements, and does not involve the examination of the applicant's subjective psychology. The applicant packages malicious applications in the application materials by forging evidence of use, cutting off related relationships, etc., such as knowingly registering and hoarding trademarks in large quantities, which are usually difficult to detect and prove directly during the application stage. On the other hand, the current Trademark Law's requirement for the applicant's "intention to use" is virtually non-existent. Article 4 of the Trademark Law clearly stipulates that " Trademark registration applications submitted maliciously without actual intention of use should be rejected." Although this article specifies the requirement for true intention of use in trademark registration, it only prevents the possibility of trademark hoarding from the reverse side and does not require applicants to submit evidence of use at the time of application or within a specific time after registration to maintain registration [6]. Article 49 of the Trademark Law only stipulates the revocation system for three consecutive years without justifiable reasons, which allows applicants to easily register a large number of trademarks without actually using them, purely for "enclosure" or for sale at a price.

This examination mechanism that emphasizes registration form over substantive intention has given rise to a large number of malicious trademark applicants. They view trademarks as tradable goods or "litigation weapons" rather than commercial marks used to distinguish the origin of their own goods or services. At the same time, it also provides institutional soil for those who disregard the value of trademark use and purely intend to obtain "right appearance" through administrative authorization to abuse trademark rights. Once a malicious registrant obtains registration, they put on the cloak of "legitimate rights" and provide cover for their subsequent abusive behavior.

2.1.2. Lack of relief for the abuse of trademark rights after malicious registration

Even if the abuse of trademark rights after malicious registration is identified, the existing relief procedures in the Trademark Law are challenging to effectively regulate. This is primarily manifested in two key areas: firstly, the punishment is insufficient, making it difficult to form effective deterrence. The main remedy for malicious registration behavior under the Trademark Law is to declare the trademark invalid, but this procedure needs to be initiated by the prior rights holder or interested party. However, the reality is that many small and medium-sized operators are forced to

abandon their rights protection due to a lack of awareness and difficulty in bearing the cost of rights enforcement. Furthermore, the review period of the invalidation procedure is as long as 1-2 years, during which malicious registrants can continue to abuse their trademark rights to obtain illegal benefits. The continued occurrence of such abuse will continue to expand the damage to the lawful entitlements of the prior rights holder and the normal competition order. At the same time, the existing Trademark Law does not provide for compensation liability for malicious applicants. Although the fifth amendment draft of the Trademark Law proposes that malicious applications for trademark registration that cause losses to others should bear civil compensation liability, the main rule of civil compensation is based on the principle of filling in, which not only lacks punitive damages, but also does not define the scope of losses, and it is still unknown whether this clause can be implemented. Secondly, "similar protection" limits the bounds of regulation. The protection of the Trademark Law is based on the boundary of "identical or similar goods or services", which means that only the use of identical or similar trademarks on similar goods may constitute infringement. However, malicious registrants often register logos that are identical or similar to well-known trademarks on non-similar goods or services through cross-class registration. For example, in the case of Beijing Gubei Water Town Tourism Co., Ltd. v. Beijing Xiaohao Technology Co., Ltd. (dispute over unfair competition) [7], although China Youth Travel Service registered trademarks in core categories such as Class 39 (tourism services) and Class 43 (catering and accommodation), other market entities still registered the "Gubei Water Town" trademark on non-similar goods such as Class 25 (clothing) and Class 35 (advertising sales), and successively sent infringement warning letters to the plaintiff Gubei Water Town company, while initiating trademark infringement industrial and commercial complaints, demanding that the plaintiff stop using the "Gubei Water Town" trademark on the packaging of alcoholic products. This reflects the lack of protection of the principle of "same class protection" in dealing with cross-class registration.

2.2. The institutional advantages of the Anti-Unfair Competition Law in regulating the abuse of trademark rights after malicious registration

2.2.1. The Anti-Unfair Competition Law has a wider scope of application

The Anti-Unfair Competition Law regulates the abuse of trademark rights after malicious registration, breaking through the traditional trademark law's rights protection logic centered on "registration" and instead using "legitimacy of behavior" as the core judgment standard, thus forming a more inclusive scope of application that can cover various hidden and complex malicious behaviors.

2.2.1.1. The Anti-Unfair Competition Law is based on the premise of protecting the order of competition

The Anti-Unfair Competition Law takes the protection of the order of competition in the marketplace as its core legal interest, focusing on business ethics and fair competition principles. This feature enables it to directly penetrate the "legal coat" of malicious registration and directly point to the essence of the unfairness of the behavior, giving it a significant advantage in combating the abuse of trademark rights after malicious registration. For example, in 1996, the World Intellectual Property Organization explicitly stipulated in Article 2 of the Model Law against Unfair Competition (hereinafter referred to as the "Model Law") that "any act or behavior that causes or may cause confusion with other enterprises or their activities, especially the products or services

provided by the company, in industrial and commercial activities, shall constitute unfair competition [8]. As a member state of the World Intellectual Property Organization, China's legislative concept of Anti-Unfair Competition Law is in line with international rules, and its Article 6 clearly prohibits all types of confusing behavior that may mislead people, which is highly consistent with the provisions of the Model Law, with the core of preventing market confusion and strengthening the regulation of behaviors that violate business ethics. This indicates that even if malicious registrants obtain trademark rights through formal and legal procedures, their subsequent abuse of this right can be included in the scope of Anti-Unfair Competition Law as long as it violates business ethics. This protection mode can directly curb malicious registrants from disrupting market order through the abuse of trademark rights.

2.2.1.2. The scope of adjustment of Anti-Unfair Competition Law is not limited by the registration category and actual use of the trademark

The abuse of trademark rights after malicious registration often has characteristics such as cross category and non-actual use. Therefore, the scope of adjustment of Anti-Unfair Competition Law is not limited by the trademark registration category or whether it is actually used, and can comprehensively cover such malicious behavior. The second article of China's Anti-Unfair Competition Law, as a principal clause, clearly defines the behavior of "disrupting the order of market competition and infringing upon the lawful rights and interests of other market participants or consumers." as unfair competition. This provision does not impose any restrictions on the trademark registration category or usage status involved in the behavior, providing a basic basis for regulating the abuse of trademarks after malicious registration. Article 6 further provides specific provisions for market confusion behavior, and its judgment criteria are not limited to the specific category of trademark registration, but rather whether it causes confusion among consumers. Even if a malicious registrant registers and uses someone else's well-known trademark across categories, as long as their behavior is sufficient to cause market confusion, they may fall within the scope of regulation under Article 6. From a comparative law perspective, many countries' legislation also reflects a similar regulatory approach: Section 7 (e) of the Canadian Federal Trademark Act includes "commercial conduct that violates Canadian business integrity practices" within the scope of unfair competition regulation, without limiting the registration category or usage status of trademarks. This provision avoids regulatory gaps caused by different trademark registration categories and ensures effective constraints on malicious registration behavior across domains. Article 2 of the Hungarian Competition Law further clarifies that it is prohibited to engage in commercial activities that infringe upon or harm the legitimate rights and benefits of competitors, business partners, or consumers, or that violate business ethics requirements. This means that even if a maliciously registered trademark is not actually put into use, as long as its registration and abuse harm the rights of others or violate business ethics, it can be considered unfair competition.

2.2.2. The Anti-Unfair Competition Law has more effective regulatory measures

The Anti-Unfair Competition Law integrates multiple means, including civil remedies, administrative supervision, and punitive damages to form a more efficient and deterrent regulatory system.

The Anti-Unfair Competition Law provides victims with a dual path of civil remedies and administrative protection: on the one hand, individuals whose private rights have been damaged can claim cessation of infringement and compensation for losses through civil litigation; On the other

hand, administrative agencies can actively intervene and investigate malicious behavior that disrupts market order, forming a synergistic effect of private remedies and public supervision. For instance, Article 18 of China's Anti-Unfair Competition Law requires that if an operator breaches the clauses of Anti-Unfair Competition Law by engaging in confusing behavior, the supervisory and inspection authority shall order the cessation of the unlawful activities and confiscate the illegal goods. In cases of severe violations, the business license shall be revoked. This administrative measure is more efficient than civil litigation, especially for large-scale and systematic malicious registration activities.

In addition, the Anti-Unfair Competition Law can also apply punitive damages, increasing the punishment for abusive behavior after malicious registration. The subjective malice of abusing trademark rights after malicious registration is strong, and simple compensatory compensation is difficult to curb their impulse to repeat the offense. Although the Anti-Unfair Competition Law only sets punitive damages clauses for trade secret infringement, in judicial practice, courts combine the Anti-Unfair Competition Law with the Trademark Law to apply punitive damages for malicious registration and abuse, forming a stronger deterrent effect. For example, in the case of Guangdong Hotata Technology Group Co., Ltd. v. Jiangsu Haotaitai IoT Technology Co., Ltd. (dispute over trademark infringement and unfair competition) [9], Jiangsu Hotata Home Furnishing Company and its affiliated companies knew that the "Hotata" trademark of Guangdong Hotata Technology Group Co., Ltd. enjoyed high popularity in the market, but still used the same or similar logo in products and business activities such as smart locks, and applied for registration of a large number of related similar trademarks. Their subjective malice was obvious. Based on this, the second instance court ruled that punitive damages should be applied to this case and fully supported Guangdong Hotata Company's compensation request of 10 million yuan. From this, it can be seen that the court can use the punitive damages clause stipulated in Article 63 of the Trademark Law, and take the "confusion behavior" identified in Article 6 of Anti-Unfair Competition Law as the objective element of "serious circumstances", thereby breaking through the limitations of Anti-Unfair Competition Law itself on punitive damages.

3. The Anti-Unfair Competition Law regulates the abuse of trademark rights after malicious registration

3.1. The issue of mixed application of Anti-Unfair Competition Law and the Trademark Law in judicial practice

The Anti-Unfair Competition Law and the Trademark Law are complementary. The Trademark Law provides exclusive protection for registered trademarks through a rights protection model, while the Anti-Unfair Competition Law provides anti-confusion legal shield for unregistered trademarks through a behavior regulation model [10]. In regulating the abuse of trademark rights after malicious registration, the relationship between the two should be even more so: the Trademark Law focuses on the establishment, protection, and limitation of trademark rights, and combats the source of malicious registration through systems such as invalidity and revocation; The Anti-Unfair Competition Law concentrates on maintaining competition order, regulating the consequences of unfair competition such as market confusion and breach of integrity caused by abuse of right, and filling the gaps in trademark law regulation. However, in judicial practice, the application boundaries of the two laws are often blurred, leading to the problem of mixed application, which reduces the predictability of judicial judgments and affects the stability and authority of legal application. Specifically reflected in the following two aspects: firstly, infringement behaviors that

have been clearly regulated by the Trademark Law are still recognized as unfair competition. The current Article 57 of the Trademark Law has set up special provisions for behaviors such as "forging or unauthorized manufacturing of registered trademark logos of others". If such behaviors can be fully remedied through the Trademark Law, the Anti-Unfair Competition Law should no longer intervene repeatedly. However, in practice, some cases have identified violations of trademark and fair competition rules for a certain behavior, resulting in lengthy legal evaluations. For example, in the case of HOMEINNS Hotel Management (Shanghai) Co., Ltd. v. Ruihe Rujia Express Hotel. (dispute over violations of trademark and fair competition rules) [11], the defendant "Ruihe Rujia Hotel" prominently used the "Home Inn" logo in the company name and business activities, which is identical to the plaintiff's registered trademark "Home Inn". The court determined that the defendant constituted trademark infringement and also found that the defendant's conduct amounted to unfair competition. Although this adjudication method strengthens the protection of rights holders in individual cases, it further highlights the issue of standard ambiguity in the application of the two laws. Objectively, it provides space for malicious registrants to choose litigation claims that are favorable to them, and encourages their tendency to engage in market speculation or extortion by obtaining rights and taking the opportunity to file lawsuits. Secondly, the mixed application of the Anti-Unfair Competition Law and the Trademark Law leads to inconsistent standards of court judgments. Due to the lack of clear legal guidance, there are significant differences in the judgment standards of different courts for similar cases. Some courts tend to strictly distinguish the application of trademark law and the Anti-Unfair Competition Law, while others tend to apply them interchangeably, resulting in the phenomenon of "different judgments for the same case". For example, in both the case of New Balance Trading (China) Co., Ltd. v. Lelun Zhou et al. (dispute over appeal case of trademark infringement) [12] and the case of the appellant Xin Mouheng Sports Co., Ltd., Xin Moulun Trading (China) Co., Ltd. v. the appellant Jiangxi Xin Moulun Leading Sports Goods Co., Ltd. [13], Guangzhou Xin Moulun Leading Footwear Co., Ltd., the first instance defendant Zeng Mouhong. (dispute over trademark infringement and unfair competition), there was a dispute between sports shoe brands over the Chinese translation of "New Balance". In the case of New Balance Trading (China) Co., Ltd. v. Lelun Zhou et al. (dispute over appeal case of trademark infringement), the Guangdong High Court mainly relied on Article 6 of Anti-Unfair Competition Law to determine that the defendant's use of "New Balance" constituted market confusion; In the case of the appellant Xin Mouheng Sports Co., Ltd., Xin Moulun Trading (China) Co., Ltd. v. the appellant Jiangxi Xin Moulun Leading Sports Goods Co., Ltd., Guangzhou Xin Moulun Leading Footwear Co., Ltd., the first instance defendant Zeng Mouhong. (dispute over violations of trademark and fair competition rules), the Beijing High Court placed more emphasis on trademark law, using trademark similarity as the main criterion for judgment. The similarity of the two cases but the different paths of judgment highlights the problem of mixed application of the Trademark Law and the Unfair Competition Law in legal practice. This further leads to malicious registrants taking advantage of the judgment tendencies of different courts to engage in selective litigation, selecting courts that are more likely to recognize their rights or have a higher tolerance for their abusive behavior to file lawsuits for high compensation, thereby turning the judicial process into a tool for extortion.

3.2. The lack of regulation on the abuse of trademark rights after malicious registration in the Anti-Unfair Competition Law

The regulation of the abuse of trademark rights after malicious registration in the Anti-Unfair Competition Law mainly relies on the confusion clause in Article 6 and the general provision in

Article 2. However, in practice, these two types of clauses have obvious limitations in application and are difficult to fully cover the complex situations of abuse of trademark rights after malicious registration.

3.2.1. The application limitations of confusing clauses to regulate the abuse of trademark rights after malicious registration

The confusing behavior stipulated in Article 6 of Anti-Unfair Competition Law refers to the act of an operator using someone else's influential logo or other means without authorization, which leads people to mistakenly believe that the goods they produce or operate are someone else's goods or have a specific connection with someone else. Its constituent elements include: the subject of the behavior is the operator, that is, natural persons, legal persons, and unincorporated organizations engaged in commodity production, operation, or service provision; The object is a kind of logo with certain influence, including commodity logo, subject logo and special logo in the Internet field; The method is unauthorized use; The result was a misleading effect. Although the abuse of trademark rights after malicious registration conforms to the above framework - malicious registrants act as operators and put registered trademarks that are similar to others' well-known logos into use, causing confusion among consumers, there are certain problems in practical application, specifically manifested in the following two aspects: One limitation is the narrow interpretation of competitive relationships among "business". According to Article 2, Paragraph 3 of Anti-Unfair Competition Law, For the purposes of this Law, an enterprise refers to a natural person, a legal person, or an unincorporated organization that produces or operates goods or provides services. Narrowly defined competitive relationships generally refer to intra-industry competitive relationships, that is, the relationship of mutual competition for market trading opportunities between operators who provide substitute goods or services, that is, direct competitive relationships [14]. Whether a specific competitive relationship exists between the parties is also a prerequisite for the other party to claim damages based on the Anti-Unfair Competition Law. The confusion clause provides a narrow interpretation of the competitive relationship, but the perpetrator of malicious registration and abuse of trademark rights may not be the traditional "business" or "competitor". Some individuals profit from trademark registration through litigation threats, high price transfers, and other means, without any real business intention; Or its business scope is far different from that of the infringed party, and it only abuses its rights through cross-class registration. For example, in the case of Bayer Consumer Care Holdings Co., Ltd., Bayer Consumer Care Co., Ltd. v. Li Qing. (dispute over commercial bribery and unfair competition), Li illegally registered the trademark of Bayer with prior copyright, but did not actually operate the related products. Instead, he threatened Bayer with "paid withdrawal of the lawsuit" and "trademark transfer", and his behavior was essentially using the trademark rights to claim unfair benefits, rather than participating in market competition. If the competition relationship is strictly limited to intra-industry competition, the abusive behavior of such non-commercial malicious registrants will be difficult to effectively regulate. Secondly, the limitations of protecting object types. Article 6 of Anti-Unfair Competition Law adopts a listing model, limiting the listed commercial signs to specific types such as "name, packaging or decoration", "the name of a company, the name of a social organization, or an individual name", " a domain name, a website name, or a webpage ", etc., with the intention of clarifying the protection boundary through typological listing. However, with the increasingly diverse forms of commercial logos in practice and the rampant abuse of trademark rights after malicious registration, this clause is difficult to cover all the scope of commercial logos that need to be protected. For example, in the case of Suiyong Wang. v. Shenzhen Ellassay Clothing Co., Ltd. (dispute over application for trademark

infringement and unfair competition), ellassay company claimed that its "ellassay clothing" constituted a " distinctive designation of a renowned product ". However, the court held that "clothing", as a general upper level concept, cannot refer to specific "women's clothing" products, and consumers find it difficult to establish a unique association between "ellassay clothing" and ellassay's women's clothing products. Therefore, it was not recognized as a " distinctive designation of a renowned product " protected by Article 5 (corresponding to the current Article 6) of the 1993 Anti-Unfair Competition Law, and instead cited the principle clause of Article 2 of the 1993 Anti-Unfair Competition Law. This ruling reflects that the confusion clause's classification of commercial logos is too closed, making it difficult to cope with the complexity of logo use in practice, resulting in some malicious registration and abuse behaviors escaping regulation due to object mismatch.

3.2.2. The scope of applying principle based general provisions to regulate the abuse of trademark rights after malicious registration is unclear

The catch-all provision of Anti-Unfair Competition Law are relative to specific provisions, referring to the general norms established in the Anti-Unfair Competition Law that include the constituent elements of unfair competition behavior. Unlike specific rules, general clauses are not fixed responses to predetermined events, and their application should be supplemented by judges in a evaluative manner based on specific scenarios [15]. Article 2 of Anti-Unfair Competition Law, as a general provision, stipulates that " In their production and business operations, enterprises shall adhere to the principles of voluntariness, equality, fairness, and good faith, and comply with laws and business ethics ", providing flexible space for regulating unfair competition behaviors that are not explicitly listed in the law. However, due to its high abstraction and lack of specific applicable standards, this clause is prone to inconsistent judgment standards when regulating the abuse of trademark rights after malicious registration, and may even excessively interfere with market competition freedom. In practice, different courts may make opposite determinations based on general terms for the same type of malicious registration behavior. in the case of MGM Film Co., Ltd. v. Shenzhen MGM Film Co., Ltd. (dispute over unfair competition) [16], the defendant registered numerous trademarks that were similar to the plaintiff's well-known trademark, but did not actually use them. Instead, they interfered with the plaintiff's business through procedures such as trademark opposition and invalidation. The court held that whether the defendant's trademark registration behavior was malicious should be judged based on the Trademark Law, and the general provisions of Anti-Unfair Competition Law should not intervene in the trademark registration process, so it was not determined that it constituted unfair competition. In the case of EmersonElectricCo. v. Xiamen Hemeiquan Drinking Water Equipment Co., Ltd., Xiamen Haina Baichuan Network Technology Co., Ltd., Wang Yiping, Xiamen Xingjun Intellectual Property Affairs Co., Ltd. (dispute over unfair competition) [17], the defendant illegally registered the plaintiff's trademark and abused their rights in a similar manner. The court, based on Article 2 of Anti-Unfair Competition Law, determined that their behavior violated the principle of good faith and amounted to unfair competition. The facts of the two cases are similar, but the verdicts are vastly different, reflecting the lack of unified standards in the application of general provisions, and differences in the understanding of the principles of good faith and business ethics due to different case contexts and judges' perceptions, resulting in uncertainty in the legal evaluation of malicious registration and abuse behavior.

4. Optimization suggestions for regulating the abuse of trademark rights after malicious registration under the Anti-Unfair Competition Law

4.1. Clarify the scope of application of the Trademark Law and the Anti-Unfair Competition Law

As mentioned earlier, in regulating the abuse of trademark rights after malicious registration, the relationship between the Trademark Law and the Anti-Unfair Competition Law should be as follows: the Trademark Law concentrates on the establishment, protection, and restriction of trademark rights, and combats the source of malicious registration through systems such as invalidity and revocation; The Anti-Unfair Competition Law concentrates on maintaining competition order, regulating the consequences of unfair competition such as market confusion and breach of integrity caused by abuse of right, and filling the gaps in trademark law regulation. Based on this, for behaviors that can be fully evaluated and provided with complete remedies under the Trademark Law, such as Article 57 of the Trademark Law, which explicitly states that "using a trademark identical or similar to a registered trademark on the same type of goods without the permission of the trademark registrant is likely to cause confusion," the principle does not apply to the repeated regulation of the Anti Unfair Competition. For example, in the case of BRITAGMBH Co., Ltd., BRITAGMBH Water Purification System (Shanghai) Co., Ltd. v. Shanghai Kangdian Industrial Co., Ltd. (dispute over trademark infringement), Kangdian Company used a similar registered trademark to "BRITA" on similar goods, which meets the infringement requirements of Article 57 of the Trademark Law and does not need to apply Article 6 of Anti-Unfair Competition Law. Furthermore, regulating the abuse of trademark rights after malicious registration should limit the intervention boundary of Anti-Unfair Competition Law. From the legal positioning of Anti-Unfair Competition Law, it belongs to supplementary statutory provisions. Therefore, the Anti-Unfair Competition Law should not become an "accessory" of the Trademark Law. Its value lies in filling the gap of specialized intellectual property laws, rather than duplicating the regulation of behaviors already covered by specialized laws. Therefore, the intervention focus of Anti-Unfair Competition Law should be concentrated on areas that cannot be covered by the Trademark Law, such as cross-class protection of unregistered trademarks, non-commercial activities aimed at litigation or high price transfer after malicious registration, and market confusion caused by cross-class abuse of trademark rights, in order to fill the gap in the rights protection model.

4.2. Improving the application of confusion clauses in regulating the abuse of trademark rights after malicious registration

4.2.1. General criteria for identifying competitive relationships among business

In current judicial practice, some courts limit competition to the operation of similar or identical goods or services, making it difficult to regulate the abusive behavior of non operating trademark malicious registrants. Therefore, it should be clarified in legal or judicial interpretations that the competition relationship in the sense of Anti-Unfair Competition Law is not limited to intra-industry competition, but should be understood as a broad competition relationship that exists for the purpose of competing for trading opportunities, damaging others' competitive advantages, or disrupting market order. For example, in the case of Beijing Gubei Water Town Tourism Co., Ltd. v. Beijing Xiaohao Technology Co., Ltd. (dispute over unfair competition), the appellate court provided a detailed explanation of the generalized competition relationship. The second instance court pointed

out that in the development process of Anti Unfair competition, its legislative goals have continuously expanded from protecting the interests of competitors to protecting consumer rights and public interests, and from simply protecting private rights to achieving market regulation goals. This expands the definition of unfair competition behavior beyond competition between competitors in the same industry, to include competition damage caused by non competitors in the same industry. Because in the context of relatively scarce market resources, competitive behavior not only directly harms competitors in the same industry, but also harms other operators participating in market competition. If the competition relationship is limited to the relationship between competitors in the same industry, it may not protect the lawful benefits of other market participants whose rights have been infringed upon, thereby violating the legislative objectives of Anti-Unfair Competition Law. Furthermore, for those who maliciously register for the purpose of litigation or high price transfer without actual business intention, their behavior itself should be deemed to constitute damage to the market competitive advantage of the rights holder, thus meeting the requirements of the competitive relationship. For instance, in the case of Uniqlo Trading Co., Ltd., Fast Retailing (China) Trading Co., Ltd. v. Guangzhou Compass Exhibition Service Co., Ltd., and Guangzhou Zhongwei Enterprise Management Consulting Service Co., Ltd. (dispute over malicious intellectual property lawsuit and liability) [18], the defendant knowingly registered a similar trademark without actually using it, despite knowing the popularity of others' trademarks. The purpose of their actions was not to carry out legitimate business, but to seek illegal benefits by initiating large-scale lawsuits and demanding high compensation from Uniqlo and its distributors. The court ultimately determined that although the behavior occurred between different entities and did not have a traditional industry competition relationship on the surface, its abuse of litigation rights essentially caused serious interference to Uniqlo's normal operation, damaged its market competitive advantage, and constituted unfair competition.

4.2.2. Expand the protection scope of Article 6 of Anti-Unfair Competition Law

The "influential signs" listed in Article 6 of the current Anti-Unfair Competition Law are limited to specific types such as the name of products, product Containers, and designs, and are difficult to cover commercial signs abused by malicious registrants in practice. Therefore, it can be clearly stipulated through Article 6 of Anti-Unfair Competition Law that for malicious registrants who abuse the trademark rights obtained through registration, if genuine use of the registered trademark obtained through registration by malicious registrants in market competition creates the possibility of market confusion, achieves the illegal purpose of the perpetrator's attachment to the goodwill of other operators, causes losses to the legitimate benefits of the other party, and reduces the competitive benefits of the other party, the party whose interests are damaged can directly obtain corresponding rights and remedies through Article 6 of Anti-Unfair Competition Law, without being restricted by the types of commercial signs listed in the existing Anti-Unfair Competition Law. The application path of this law conforms to the statutory purpose of Anti-Unfair Competition Law to maintain fair competition and prevent confusing behavior, as well as the internationally recognized concept of protecting commercial logos, which is not limited by specific types and focuses on preventing confusing behavior. Article 4 of the German Anti-Unfair Competition Law also considers "imitating others' commercial logos to cause confusion" as an unfair competition behavior, which is not subject to specific types of restrictions. Article 1 of the Japanese Anti-Unfair Competition Law is similar in structure to German law. According to Article 1, Paragraph 1, Items (1) and (2) of the Japanese Anti-Unfair Competition Law, Japan prohibits the confusing use of commercial logos [19], and the Yamaha case indicates that using someone else's commercial logo as a business name for

confusing purposes. The holder of the commercial logo is entitled to request the defendant to prevent using it based on Article 1, Paragraph 1, Item (1), unless the defendant can prove that they are using their name legitimately. Section 43 of the Lanham Act in the United States also provides anti-confusion protection for unregistered trademarks, product appearances, etc., and restricts the exercise of the right to maliciously register trademarks; Therefore, with the intention of effectively responding to malicious registration and abuse of trademark rights, it is necessary to strengthen the flexible interpretation of Article 6 of the Anti-Unfair Competition Law, in an effort to further improve the legal protection system for commercial logos and maintain a fair and honest market competition environment.

4.3. Clarify the essential application of general terms to the abuse of trademark rights after malicious registration

In terms of Anti-Unfair Competition Law, general provisions are the fundamental induction of the constituent elements of the regulated unfair competition behaviors. They not only highly abstract the common characteristics of all typified unfair competition behaviors, but also serve as a principle legal guide for distinguishing non typified unfair competition behaviors [20]. Although Article 2 of the current Anti-Unfair Competition Law provides flexible space for regulating the abuse of trademark rights after malicious registration, it is highly abstract and can easily lead to problems such as "unclear judicial judgment standards" and "different judgments in the same case". Therefore, in judicial practice, when deciding whether to apply general provisions in individual cases, the court should always maintain a cautious attitude and try to refer to the constituent elements of the limited list of unfair competition behaviors as much as possible, and make element based treatment for the unfair competition behaviors recognized by the application of principle based general provisions. In the case *Shandong Food Import and Export Company. v. Qingdao Saint Kedacheng Trading Co., Ltd.* (dispute over applied for retrial of the unfair business practices) [21], the Supreme People's Court has developed three core elements for applying Article 2 to identify novel types of unfair competitive practices: first, the action is against commercial ethics and good faith standards; second, it upsets the market competition order; and third, it damages the legitimate rights and interests of other operators or customers. For the trial of cases involving trademark rights misuse following malicious registration, this requirement scheme is crucial because it requires the court to look at each case individually from three perspectives: subjective, objective, and damage results. Specifically, in terms of subjective requirements, the perpetrator needs to have malicious intent that violates the principles of good faith and commercial ethics, such as "knowingly registering others' prior use" and "solely for profit"; In terms of objective elements, the abuse of trademark rights by the perpetrator disrupts a fair and orderly competitive environment; In terms of the elements of the damage result, the act infringes on the legitimate benefits of the operator or rights holder, or the rights and benefits of consumers. This requirement based trial mode can avoid excessive discretion of judges in practice, transform abstract principles into concrete factual judgment standards, and effectively regulate the abuse of trademark rights after malicious registration.

5. Conclusion

Legal viability and institutional necessity support the use of Anti-Unfair Competition Law to control trademark rights abuse following malicious registration; however, this must be predicated on elucidating the relationship between the Trademark Law and the Anti-Unfair Competition Law and enhancing the latter in a reasonable manner. It is challenging to independently handle the issue of

abuse of rights following malicious registration since the Trademark Law is constrained by the "registration system" and has flaws in the inspection procedure, the efficacy of relief, and cross-class protection. Besides, the Anti-Unfair Competition Law, with its behavior regulation orientation, broad scope of application, and diverse liability mechanism, demonstrates stronger adaptability and regulatory potential. In the long term, Labor allocation between the two laws should be further clarified to avoid duplicate evaluations; Expand the criteria for identifying "competitive relationships" and "commercial logos" in confusing clauses; And promote the essential application of general provisions in identifying unfair competition behavior, effectively regulating the abuse of trademark rights after malicious registration, maintaining a fair competition market order and a social trend of honesty and trustworthiness, and promoting the coordination and improvement of relevant legal systems.

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