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Standardized Construction of Judicial Determination Rules for Trademark Rights Abuse

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Abstract. In the judicial practice of China, determining whether an act constitutes an abuse of trademark rights typically hinges on assessing whether the acquisition and exercise of such rights violate the principle of good faith or exceed legitimate limits as the fundamental criteria. However, this standard is highly abstract, making it susceptible to misuse during application, which in turn can lead to significant uncertainty in judicial outcomes. Moreover, in judicial rulings, it is typically impossible to directly apply the principle of prohibiting trademark rights abuse to determine specific legal consequences based on the facts of a case. Based on this, this paper aims to begin with the fundamental definition of abuse of rights, examine the manifestations of abuse of rights in the field of trademark law and the application of the principle of prohibiting abuse of rights in trademark law, introduce the method of dynamic system theory, identify the factors and weights that need to be considered in determining whether an exercise of rights constitutes abuse of rights, and draw on the Alexy principle theory to attempt to standardize the judicial determination rules of trademark rights abuse. It outlines and demonstrates a specific analysis framework and examination path that can be applied to individual cases, with the aim of providing useful reference for applying the principle of prohibiting abuse of rights to effectively regulate improper exercise of trademark rights.

Keywords. Abuse of Trademark Rights; Judicial Determination and Rule Construction; Alexy Principle Theory

1. Introduction

The prohibition of trademark rights abuse stems from the prohibition of abuse of rights. The concept of abuse of rights is closely related to the legal shift from an "individual centered" to a "social centered" approach, which originated from principles in Roman law such as "to live honestly, not to harm others, and to give each their due". The codification of the law began with the German Civil Code, and it was first explicitly enacted in legislation in the 1907 Swiss Civil Code. Prohibiting the abuse of rights essentially represents the law's regulation of the exercise of private rights. This restriction reflects the legal system's pursuit of both "corrective justice" and "distributive justice", which requires that the exercise of all civil rights shall not exceed the legitimate limits, otherwise it constitutes an abuse of rights and shall incur liability for infringement.^[1] This principle is commonly referred to as a general clause with mandatory

^[1] Ma Yuan, *A Course on Chinese Civil Law*, China University of Political Science and Law Press, 1998, p. 35.

effect, which has the following functions: Firstly, it acts as a "specificization function", filling in gaps within statutory provisions to ensure that the law aligns more closely with the spirit and intent of the legislation; Secondly, it serves as a "justice-balancing mechanism", providing an ethical foundation beyond the statute itself, ensuring that the exercise of rights conforms to substantive function of fairness and balance; Thirdly, it fulfills a "law-amendment function," adapting enacted laws to the evolving needs of society and the times by making necessary revisions; Finally, it performs a "law-creation function," introducing legal norms that may even contradict existing statutes—thus distinguishing it from the role of amending existing laws to keep them aligned with contemporary developments.[2]

2. Basic Definition of Abuse of Rights

A concept is a form of thought that reflects the unique attributes of a thing, while the qualities and relationships of a thing are collectively referred to as its attributes. Currently, due to the widespread absence of a clear legal framework on the concept of abuse of rights in civil law countries, the academic community holds differing views on the nature of such abuse. Broadly speaking, the following mainstream theories prevail. The "Subjective Malice Theory" defines abuse of rights as the intentional, malicious exercise of one's legal entitlements with the deliberate aim of harming others—essentially, any exercise of a right that serves no legitimate purpose but instead seeks to damage another party constitutes an abuse of the right.^[3] The "objective harm theory" holds that exercising a right constitutes an abuse of rights if it results in established harm to the interests of others or to the public good.^[4] According to this view, if the rights holders, in exercising their rights, objectively harm national interests, public welfare, or the legitimate rights and interests of others, even if the rights holders' own rights are entirely lawful and justified, the act of exercising those rights would still be prohibited by law. The "Theory of Exceeding the Purpose or Limits of Rights" holds that the abuse of rights refers to the exercise of rights beyond the limits of social, economic, or socially unacceptable purposes.^[5] In other words, the exercise of rights should take into account the social and public nature of the rights, and should not violate the purpose of the rights granted by the law or exceed the legitimate limits.

China's legal norms regulating the abuse of rights can be traced back to the 1987 Civil Law General Principles, in which Article 4 explicitly states the principle of good faith. Subsequently, the 2017 Civil Code General Provisions further reinforced this principle in Article 7, emphasizing both the integrity principle and the prohibition against abusing one's rights. In 2021, China's Civil Code retained the above principles, with Article 132 clearly stating that "Civil subjects shall not abuse their civil rights to harm national interests, public interests, or the legitimate rights and interests of others". This provision serves as a restrictive guideline for the exercise of all civil rights, providing a solid legal basis for regulating how rights are properly exercised. When determining whether an act constitutes an abuse of rights, the Supreme People's Court's Interpretation on Several Issues Concerning the Application of the General Provisions of the Civil Code of the People's Republic of China (commonly referred to

[2] Lin Chenger, Study on the Theory and Problems of Civil Law, China University of Political Science and Law Press, 2000, p. 8.

[3] Wang Zegian, General Principles of Civil Law, Peking University Press, 2009, p. 565.

[4] Wu Changhai, On the Principle of Prohibition of Abuse of Rights in Civil Law, Political Science and Law Forum, No. 6, 2009.

[5] Zhu Qingyu, General Theory of Civil Law, Peking University Press, 2016, p. 714.

as the "General Provisions Interpretation"), specifically Article 3, requires courts to assess factors such as "the object, purpose, timing, method of exercising the right, and the extent to which the action has disrupted the balance of interests between the parties involved." If one party exercises the civil rights primarily with the intent of harming national interests, public interests, or the legitimate rights and interests of others, such conducts shall be recognized as constituting an abuse of rights .

According to the legal norms outlined above, determining whether an act constitutes an abuse of rights typically requires considering the following factors: First, whether the actor enjoys and exercises a certain right as a prerequisite; Second, whether the exercise of rights is detrimental to national interests, public welfare, or the lawful rights and interests of others; Third, whether there is a malicious intent, meaning whether the act of exercising the right is intended to be detrimental to the interests of others.^[6] However, due to the fact that the main function of the principle of prohibition of abuse of rights is to delimit the scope of the right holder and the relative or public interest, and to prevent the exercise of rights from generating conflicts of interests, the delimitation of this boundary often varies with specific circumstances. Therefore, in China's judicial practice, the determination of whether a right has been abused does not always hinge solely on a rigid set of predefined criteria. Instead, it frequently involves a proportionate balancing of competing interests, often complemented by the "dynamic systems approach." This approach entails assessing the various factors influencing the determination of abusive behavior within the particular legal context, as well as evaluating the relative strength of each factor, allowing for flexible adjustments based on their interplay. Moreover, if a certain element exhibits special strength, it is sufficient to establish responsibility on its own .^[7]

In addition, since the principle of prohibiting the abuse of rights is a general rule applicable to all civil rights, and each type of rights serves its own specific purpose, this principle typically needs to be applied in conjunction with particular rules governing the exercise of those specific rights. The concept of intellectual property abuse originated in Anglo-American jurisdictions. It refers to unlawful acts where intellectual property right holders, in violation of the principle of good faith, the objectives and purposes of the intellectual property system, as well as public policies underpinning intellectual property protection, exercise their rights improperly, thereby harming the lawful rights and interests of others or the public interest.^[8] In the field of trademark law, Article 7 of China's Trademark Law stipulates that "the application for registration and use of trademarks shall be based on the principle of good faith" . This is the specific manifestation of the principle of good faith from civil law within trademark law, providing a fundamental guideline for regulating the abuse of trademark rights. The prohibition of trademark abuse generally means that the acquisition and exercise of trademark rights must comply with the principle of good faith and shall not exceed legitimate limits. These "legitimate limits" are reflected in the requirement that the exercise of trademark rights must align with the purpose for which trademark rights were established under the trademark law.^[9] The purpose of the trademark law legislation is complete throughout the trademark law

^[6] Wang Liming, On the Prohibition of Abuse of Rights—with Comments on Article 3 of the Judicial Interpretation of the General Provisions, *China Law Review*, No. 3, 2022.

^[7] Helmut Koziol, Reconstruction of the Law of Damages: European Experience and Trends, *Jurist*, No. 3, 2009.

^[8] Feng Xiaoqing, Justification Considerations for the Exercise of Intellectual Property Rights: A Study on the Abuse of Intellectual Property Rights and its Regulation, *Intellectual Property*, No. 10, 2022.

^[9] Li Yang, *Fundamental Principles of Trademark Law*, Law Press, 2018, p. 200.

provisions of the system, reflecting the system value of the state to establish and protect the exclusive right to register trademarks. On one hand, it emphasizes that the acquisition of trademark rights should be based on the intent to use, encouraging trademark holders to enhance the quality of goods and services, strengthen brand reputation, and maintain a fair competitive market order. On the other hand, it underscores the protection of consumer interests, reduces the cost of consumers' market identification, and maintains the balance between the interests of trademark right holders and the public.^[10] In recent years, the abuse of rights in the trademark field has become increasingly frequent. This trend not only violates the principle of good faith, but also deviates from the original intent and objectives of the trademark legal system, thereby inflicting harm on the public interest. To address the issue of regulating malicious trademark registration, China's Trademark Law now includes "malice" as a key criterion in as many as seven provisions, providing an important legal basis for curbing such practices. However, the boundaries of trademark rights inherently possess a degree of flexibility, leading to significant uncertainty in how they are interpreted and applied on a case-by-case basis. While granting adjudicators the flexibility to adapt to evolving circumstances and mitigating the conflicts between legal stability and societal development, this approach can easily lead to arbitrary discretion due to the intervention of empirical rules. It also inevitably deviates from the stability goal of the rule of law, thereby reducing the predictability of private rights protection.^[11]

3. Manifestations of Rights Abuse in the Field of Chinese Trademark Law

In China's civil judicial practice, acts involving the improper registration and exercise of trademark rights aimed at seizing others' market reputation, infringing upon prior civil rights or interests, or encroaching upon public resources are typically regulated on the grounds of "abuse of trademark rights". This paper is based on the sample analysis method of big data, using "intellectual property and competition disputes" as the cause of action and "trademark" and "abuse" as keywords, a total of 1284 judgment documents from the past decade were retrieved on the China Judgments Online database. The final 86 civil judgment documents^[12] identified were used as samples to analyze the manifestations of rights abuse in the field of trademark law in the past decade.

A. Remedies: Defensive Pleas predominate

From the perspective of the types of causes of action, the abuse of trademark rights involved in the sample cases can be primarily divided into two categories: using it as a defensive plea against infringement and filing lawsuits based on trademark abuse as an act of infringement or unfair competition for proactive rights enforcement. The number of cases in the former category constitutes an overwhelming majority. The specific annual figures are detailed in Figure 1.

^[10] Song Jian, *Judicial Regulation of Trademark Abuse*, Intellectual Property, No. 10, 2018.

^[11] Lei Lei, *Legal System, Legal Methods and the Rule of Law*, China University of Political Science and Law Press, 2016, p. 213.

^[12] The above civil judgments were compiled by eliminating invalid judgments due to entry errors, duplicate uploads, etc., judgments unrelated to trademark abuse disputes, and duplicate judgments of the first and second instance.

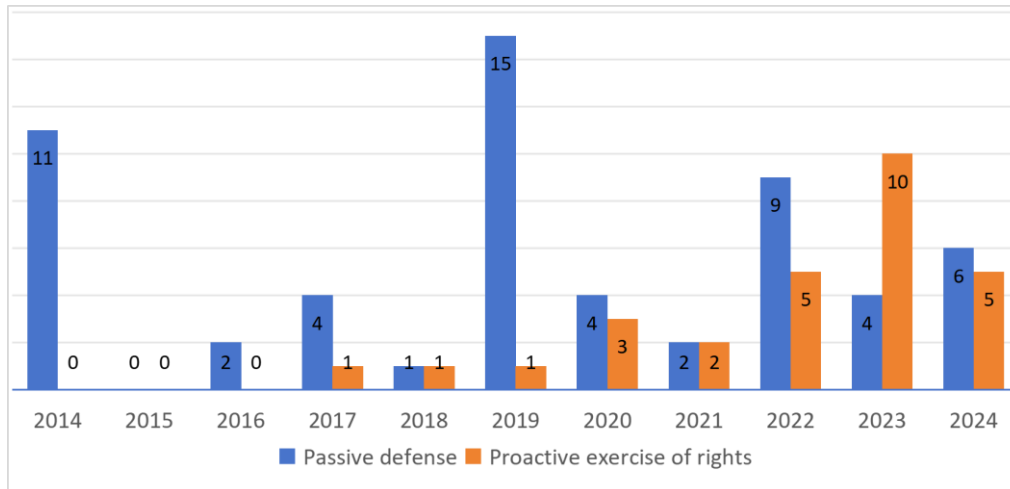


Figure 1: Types of Causes of Action and Number of Cases Involving Trademark Rights Abuse(cases)

From the perspective of case distribution, cases involving passive defenses are relatively uniform, primarily revolving around trademark infringement disputes. For instance, in the case of *Wang v. Shenzhen X Clothing Co., Ltd.*, regarding trademark infringement, the court innovatively conducted a direct review—within a civil case—of the defendant's claim that the plaintiff had engaged in trademark squatting. The court clarified that if a party violates the principle of good faith and undermines the lawful rights and interests of others, disrupting fair market competition, and maliciously obtains or exercises trademark rights while simultaneously alleging that others have infringed upon them, the People's Court should reject the defendant's claims on the grounds of abuse of rights.^[13] The main types of cases involving proactive rights protection are lawsuits seeking confirmation of non-infringement and unfair competition claims. Moreover, following the revision of the "Provisions on Causes of Action in Civil Cases" by China's Supreme People's Court in 2011 and the issuance of the "Reply on the Issue of Defendants Requesting Compensation for Reasonable Expenses on the Grounds of the Plaintiff's Abuse of Rights in Intellectual Property Infringement Lawsuits" by China's Supreme People's Court in 2021, an increasing number of civil parties whose rights and interests have been infringed are inclined to seek compensation for infringement damages against those who abuse trademark rights by initiating lawsuits under the cause of action of "Dispute over Liability for Damages Arising from Malicious Institution of Intellectual Property Litigation." The specific distribution of causes of action is detailed in Figure 2.

^[13] See The Supreme People's Court of the People's Republic of China (2014) Civil Tizi No. 24 Civil Judgment.

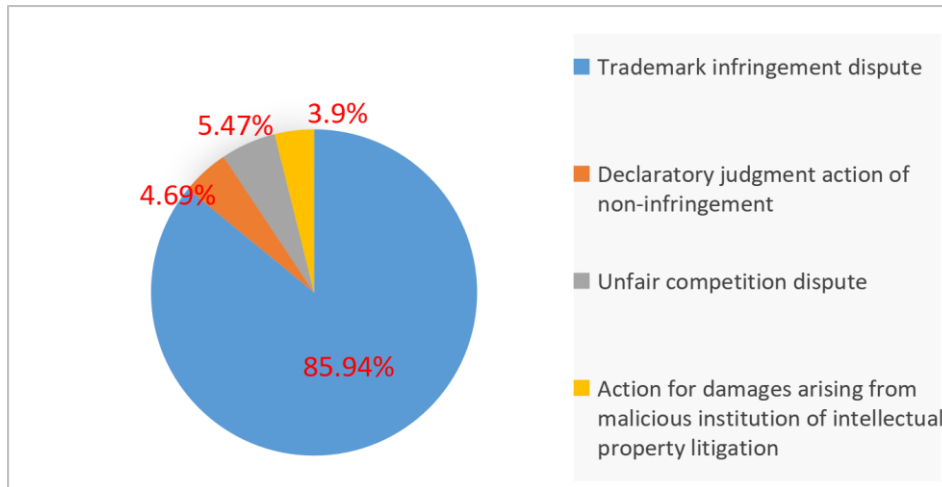


Figure 2: Distribution of Case Types Involving Trademark Rights Abuse (by Proportion)

B. Type Analysis: Predominantly Malicious Registration and Improper Exercise of Rights

The trademark rights abuse disputes involved in the sample cases primarily pertain to the following types (See Figure 3 for details).

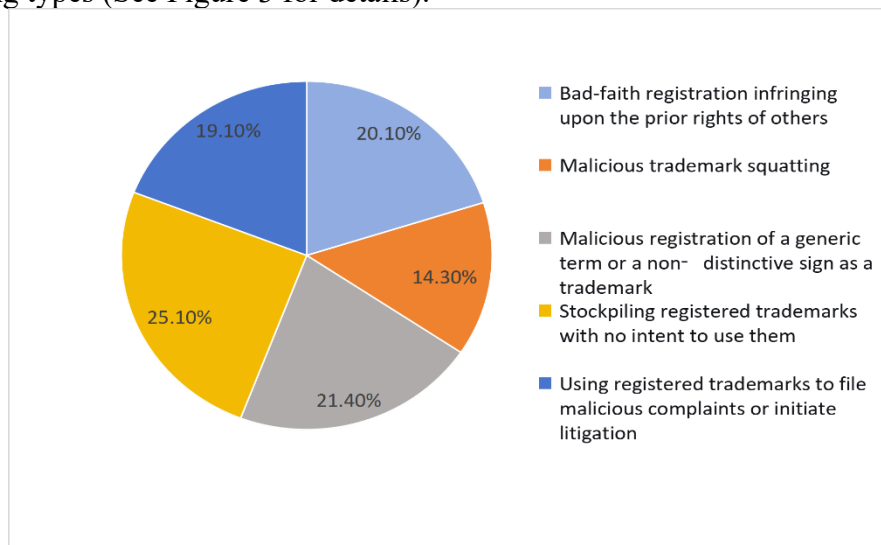


Figure 3: Proportion of Trademark Rights Abuse Types Claimed by the Parties

First, in 20.1% of the sample cases, it was argued that the trademark holders' conducts constituted abuse of rights on the grounds that they had maliciously registered trademarks in violation of the first part of Article 32 of the Chinese Trademark Law, thereby infringing upon the prior rights of others. Among these cases, some involved claims of infringement on the prior rights of the parties directly involved, while others targeted third-party rights held by individuals or entities unrelated to the dispute. The prior rights claimed to be infringed upon include civil rights such as copyrights, patents, names, and other rights and interests such as trade names, domain names, movie names, and packaging and decorations. For instance, in the case of unfair competition dispute involving X Consumer Care Co., Ltd. v. Zhejiang X Internet Co., Ltd. and Li, the consumer care company alleged that Li was fully aware that it held prior copyrights to

the "Sun, Rainbow, and Waves Design" and the "Surfing Boy Design," which had been used earlier on the products in question. Exploiting the consumer care company's failure to register the trademarks in a timely manner, Li applied to register the key distinctive elements of these designs as trademarks. Subsequently, using these maliciously registered trademarks, Li filed a complaint against the products involved with the maliciously registered trademark to seek benefits and attempted to obtain huge profits by directly selling the trademarks. Such conducts violated the principle of good faith and constituted unfair competition.^[14]

Second, in 14.3% of the sample cases, it was argued that the trademark holders' conducts constituted abuse of rights on the grounds that they had maliciously registered trademarks, well-known marks, or other signs that had been used previously and had gained a certain level of recognition by others, in violation of Article 13 and the second half of Article 32 of the Chinese Trademark Law. For instance, in the trademark infringement dispute case of Gao v. Ningxia X New Energy Company, the company argued that its "Hanas" and "MBI" marks had already been in use and enjoyed a certain level of recognition prior to the application dates of the three registered trademarks at issue—"Hanas" "MBI" and "MBI Hanas". Additionally, the company claimed that the "Hanas" mark also served as its trade name. Based on these arguments, the company contended that Gao's claims of trademark infringement should be rejected.^[15]

Third, In 25.1% of the sample cases, it was asserted that the trademark holders constituted abuse of rights on the grounds of stockpiling a large number of registered trademarks without any intent to use them and seeking improper gains. For instance, in the trademark infringement dispute case of Guangzhou X Trading Co., Ltd. v. Yiwu X Trading Co., Ltd., the Yiwu company argued that the Guangzhou company had the subjective intent to free-ride on the reputation of the Assassin's Creed game developed by a third party to attract players to purchase related products. As a result, the Guangzhou company had successively registered and stockpiled nearly 160 trademarks related to the Assassin's Creed game across multiple categories of goods or services and had initiated large-scale infringement lawsuits against numerous sellers of game-related products. Such conducts violated the principle of good faith and constituted an abuse of rights.^[16]

Fourth, In 21.4% of the sample cases, it was argued that the trademark holders constituted abuse of rights on the grounds that they had registered a generic term or a mark lacking distinctiveness as a trademark despite being fully aware of this fact. For instance, in the case of Xinchang X Building Materials Co., Ltd. v. Shaoxing X Building Materials Co., Ltd. regarding liability for damages arising from malicious institution of intellectual property litigation, the Shaoxing company argued that the Xinchang company, as a specialized manufacturer of waterproof membranes, was fully aware that "CPU" was the generic name for "cast polyurethane", but still applied for registration of the name as a trademark and pursued its rights protection in a manner likely to cause significant harm to others, ultimately resulting in financial losses for the Shaoxing company. Therefore, the Xinchang company should be held liable for infringement.^[17]

^[14] See Civil Judgment No. (2017)18627 of the Primary People's Court of Yuhang District of Hangzhou.

^[15] See The Supreme People's Court of the People's Republic of China (2012) Civil Review No. 1475 Civil Judgment.

^[16] See Civil Judgment No. (2019)2958 of Jinhua Intermediate People's Court of Zhejiang Province.

^[17] See Civil Judgment No. (2018)37 of the High People's Court of Zhejiang Province.

Fifth, in 19.1% of the sample cases, it was argued that the trademark holders constituted abuse of rights on the grounds that, while there was no bad faith at the time of applying for trademark registration, their subsequent exercise of rights involved malicious complaints or litigation. For instance, in the case of Shanghai X Building Materials Co., Ltd. v. Shanghai X Rock Wool Co., Ltd. concerning trademark ownership dispute, the counterclaim plaintiff (the rock wool company) argued that the counterclaim defendant (the building materials company), despite knowing that the alleged infringement in this case had been determined by an administrative penalty decision as the lawful use of its own registered trademark by the rock wool company, and despite not applying for administrative reconsideration or initiating administrative litigation against that decision, proceeded to file this civil lawsuit. This litigation was not a legitimate exercise of rights protection but rather a means of disrupting competitors in the market by initiating legal proceedings, thereby violating the principle of good faith and commercial ethics and constituting an abuse of rights. ^[18]

C. Judgment Result: Paradox Between Theory and Practice

Since the determination of trademark rights abuse is not strictly confined to a closed set of legal criteria, judicial practice has, to some extent, encountered practical challenges such as inconsistent standards for identifying such conducts and conflicting outcomes in case rulings.

In the case of Rizhao X Electronic Technology Co., Ltd. v. Shandong X Intelligent Technology Co., Ltd. concerning liability for damages arising from malicious institution of intellectual property litigation, the court ruled that whether the Rizhao company should be held liable for compensation should not hinge on analyzing the trademark registrant's subjective state at the time of registering the disputed trademark—specifically, whether their behaviors were deemed malicious. Although the Shandong company's trademark had been invalidated due to preemptive registration by improper means of a mark that had been used by others and had gained a certain level of recognition, given that the Shandong company's trademark right was still valid at the time it filed the infringement lawsuit against the Rizhao company or applied to the administrative authorities for seizure measures, the existing evidence was insufficient to prove that the Shandong company acted with bad faith when initiating the trademark infringement lawsuit against the Rizhao company. Therefore, the Shandong company's conducts did not constitute malicious institution of intellectual property litigation. ^[19] In the two separate cases involving Shandong X Intelligent Technology Co., Ltd. v. Jiangsu X Digital Electronics Co., Ltd. and v. Beijing X Technology Co., Ltd. concerning liability for damages arising from malicious institution of intellectual property litigation, the courts both held that prior to the Shandong company's application to register the trademark in question, the TELEMATRIX trademark used on telephones had already gained significant recognition. The Shandong company was fully aware that the trademark it applied to register was a preemptive registration of a mark that had been used by others and had acquired a certain level of recognition, and knew that it lacked a legitimate basis for its claims. Nevertheless, with the intent to harm the lawful rights and interests of its competitors and obtain illegal gains, the Shandong company blatantly filed lawsuits against the Jiangsu company and the Beijing company. Such conducts were clearly malicious and constituted malicious litigation. However, there's a key distinction between the two cases: In the case involving the Beijing company, the court summarized the considerations into two aspects: the basis of rights and the subjective

^[18] See Civil Judgment No. (2021)23804 of the Primary People's Court of Putuo District of Shanghai.

^[19] See Civil Judgment No. (2016)2271 of the High People's Court of Shandong Province.

purpose.^[20] In the case involving the Jiangsu company, the court added the element of consequences of damage as a supplementary factor.^[21]

4. Application of the Principle Prohibiting Abuse of Rights in Trademark Law

Based on the analysis of the aforementioned principle prohibiting the abuse of rights, in the field of trademark law, the following elements are usually required to be considered in China's judicial practice to determine whether an act constitutes the abuse of trademark rights: First, whether the trademark registrant holds a valid exclusive right to use the trademark; second, whether the trademark registrant improperly asserts the right, with the subjective malice of harming the national interests, social public interests or the lawful rights and interests of other people; and third, whether the exercise of trademark right is in conformity with the legislative purpose of trademark law, whether it will cause damage to the rights and interests of others or public interests, and whether there is a causal relationship between the damage and the behavior.^[22]

A. Consideration of the basis of rights

Abuse of rights "must outwardly appear as the exercise of a right."^[23] Generally speaking, the right in question must be a legally recognized interest—that is, "those seeking legal protection must have clean hands". Abuse occurs when the exercise of a right exceeds legal boundaries, and thereby harms the interests of others and the public interest.^[24] Trademark rights, as an intangible property right, are protected by law precisely because the goodwill associated with the trademark holder deserves legal protection. China adopts a trademark registration-based system, where trademark registration is merely a means of publicizing the acquisition of rights. However, this does not imply that the validity of the exclusive right to a registered trademark is immune to challenge, as "presumptive rights can be overturned". If the trademark registrant has contributed nothing to the generation or accumulation of the goodwill associated with the mark, but has instead obtained the appearance of rights by expropriating the intellectual achievements and accumulated goodwill of others, then the "rights" veil can be pierced, so that the "rights" that are legal in form but illegal in substance cannot be claimed against others.^[25] However, if it is believed that trademark rights obtained through malicious registration are neither legitimate nor proper, and therefore the principle of prohibiting the abuse of rights cannot be applied, this would result in legitimate right holders being able to seek relief only after such formally registered "trademark rights" are declared invalid. Such an approach would undermine both fairness and efficiency. Therefore, under the current trademark registration-based system, allowing even merely formalistic registered trademark rights to serve as a premise of the abuse of trademark rights is conducive to enabling the judiciary to play a

^[20] See Civil Judgment No. (2017)2052 of the Beijing Intellectual Property Court.

^[21] See Civil Judgment No. (2017)1874 of the High People's Court of Jiangsu Province.

^[22] Song Jian, *Judicial Regulation of Trademark Abuse*, Intellectual Property, No. 10, 2018.

^[23] Peng Chengxin, *On the Legal Application of the Principle of Prohibiting the Abuse of Rights*, China Legal Science, No. 3, 2018.

^[24] Mao Shaowei, *Commentary on Article 132 (Prohibition of Abuse of Rights) of the Civil Code*, Chinese Journal of Applied Jurisprudence, No. 1, 2023.

^[25] Kong Xiangjun, *The Applicable Relationship between the Civil Code and Intellectual Property Law*, Intellectual Property, No. 1, 2021.

leading role in intellectual property protection and ensuring timely relief for legitimate right holders.^[26]

In this sense, the act of maliciously registering a trademark and subsequently abusing trademark rights represents a special case of trademark abuse. It primarily pertains to situations where the trademark registrant's acquisition of the registered trademark rights is fundamentally flawed by significant defects in the rights basis, and where, after obtaining the registration, they exercise such rights with the primary purpose of harming national interests, public social interests, or the lawful rights and interests of others. Generally speaking, determining whether a trademark registration was conducted improperly often requires a comprehensive assessment of factors such as the degree of similarity between the registered trademark and previously used marks by others, the popularity and usage of the prior-used marks or prior rights, whether the prior user had valid reasons for using the mark, and whether the trademark applicant acted in bad faith when filing the registration. In judicial practice, if it is determined that the trademark registrant's acquisition of the trademark in question was illegitimate—such as when the right holder's trademark right infringes upon the prior rights of others, involves preemptive registration of a trademark that had been used by others and had gained a certain level of recognition, or constitutes registration of a trademark belonging to an agent or representative without authorization—it may be concluded that the trademark right being asserted suffers from significant defects.^[27]

B. Consideration of the purpose and manner of the conduct

“The exercise of rights must comply with the objective purpose and underlying mission of the law. If it contravenes the fundamental intent for which the right was granted, it constitutes an abuse of rights.”^[28]In the field of trademark law, the exercise of rights, when not aimed at obtaining legitimate benefits but instead intended to gain improper advantages or outright harm others, clearly exceeds the purpose for which trademark rights were established under the trademark law and loses its inherent fairness, thereby warranting rejection.

Generally speaking, the subjective and objective elements of a rights abuser are not strictly distinct. Moreover, whether there is an intent to cause harm often needs to be inferred from objective conduct. Therefore, the legitimacy of the purpose and manner in which rights are exercised can be assessed by examining factors such as the nature of the conduct and the target of the harm. In judicial practice, the abuse of trademark rights is generally manifested in the claim based on the trademark rights, such as sending warning letters of infringement, complaining about infringement to a third party or administrative authorities in bad faith, filing infringement lawsuits or applying for litigation preservation in bad faith, or filing objections and invalidation applications against the trademarks registered by the true rights holders.^[29] Although the exercise of rights will inevitably have an impact on others, the law requires right holders only to ensure that they do not violate the law or improperly exercise their rights.

According to the "dynamic systems theory" perspective, which posits that "if a particular element demonstrates significant strength, it may itself suffice to establish liability,"

^[26] Zhong Ming, *The Application of the Principle of Prohibition of Abuse of Rights in Cases of Improper Exercise of Trademark Rights*, Intellectual Property, No. 5, 2023.

^[27] Liu Yijun, *Judicial Regulations on the Abuse of Trademark Rights after Malicious Registration*, Electronic Intellectual Property, No. 7, 2022.

^[28] Lin Cheng, *Study on the Theory and Problems of Civil Law*, China University of Political Science and Law Press, 2000, p. 35.

^[29] See Civil Judgment No. (2017) 26614 of the Primary People's Court of Minhang District of Shanghai.

in cases involving bad-faith registration and subsequent exercise of trademark rights, the malicious intent behind the trademark registration can often directly support a presumption that the primary purpose of exercising the trademark right is to harm others. Generally, the accused infringer is not required to provide further evidence to substantiate this presumption.

For example, in cases of trademark hoarding, when a rights holder registers a large number of trademarks which are beyond the needs of production and business operation, it is usually done with the intent to resell for profit or prevent others from using those marks to obtain improper benefits.^[30] Regarding trademark squatting, the purpose of rights holders registering a trademark is to appropriate others' business reputation.^[31] Although the subjective state of the trademark registrant may change when initiating infringement lawsuits or filing complaints, the malicious intent present during the acquisition of the right establishes fault in the subsequent stages, leading courts to tend to favor protecting the legitimate rights and interests of non-faulty accused infringers.^[32] In the case of trademark registration without obvious malice, it is necessary to adopt "dynamic system theory approach" to make a specific judgment by comprehensively considering various factors and their respective weightings. For instance, in the case of Liu v. Wuhan X Economic Development Co., Ltd. concerning unfair competition, the trademark registrant was aware after the first complaint that the online store operated by Liu was not selling counterfeit goods. Despite this, the registrant continued to file multiple complaints in a short period without changing the grounds, leading to the removal of the store's products, blocking of links, downgrading of the store, and even its temporary suspension. Moreover, during communications with Liu, the registrant's representative explicitly stated the intent to leverage Taobao's "three-strikes" rule to achieve goals of price maintenance and channel control.^[33] Therefore, when comprehensively considered from aspects such as the object, purpose, timing, and method of the exercise of rights, as well as the extent of the resulting imbalance of interests between the parties, the conduct of the trademark registrant can hardly be deemed as being in good faith.

C. Consideration of consequences of the conduct

Generally speaking, the abuse of rights requires only the possibility of infringement of rights and interests to be established, and does not necessitate that actual damage must have occurred. In other words, the adverse legal consequences caused by the abuse of rights not only include damages with certainty and reality, but also include adverse consequences that pose a real threat. Only when such adverse consequences are the result that the rights holders intend to pursue through the exercise of their rights, should their exercise of rights be recognized as an abuse of rights. In China's judicial practice, courts typically assess such cases by considering factors such as whether the rights holder's conduct has actually harmed the lawful rights and interests of others, whether there is a possibility of harm occurring, and whether there is a balance between the right holder's gains and the losses suffered by the affected party. When a trademark is not registered in malice, the improper exercise of trademark rights often aims to strike and exclude competitors, thereby enabling the rights holder to gain a competitive advantage. For instance, in the case of Shantou X Handbag Craft Factory v. Swiss X

^[30] See The Supreme People's Court of the People's Republic of China (2018) Civil Zaizi No. 396 Civil Judgment.

^[31] See Civil Ruling (2021) Civil Review No.4890 of the High People's Court of Zhejiang Province.

^[32] Jin Yan, Practical Dilemmas and Rule Construction of Curbing Abuse of Trademark Rights, *Journal of Law Application*, No. 2, 2024.

^[33] See Civil Judgment No. (2021)1083 of the High People's Court of Chongqing Municipality.

International Co., Ltd. concerning trademark infringement, the Shantou factory did not extensively use its "MK" trademark to strengthen its exclusive reach. Instead, after the Swiss company's products entered the Chinese market, the Shantou factory began to make improper use of its trademark, deliberately approximated and imitated the allegedly infringing mark, capitalized on the goodwill associated with that trademark, and actively sought to create market confusion. Moreover, It then filed a lawsuit against the Swiss company, claiming reverse confusion and demanding high damages.^[34]

Moreover, in cases involving malicious trademark registration and subsequent exercise of those rights, the malicious registrants often pressure others into engaging in unfair transactions, demands that they integrate into the genuine rights holder's marketing system, or resort to large-scale infringement lawsuits or complaints, which will also have a significant impact on the normal operation of others.

Moreover, in most cases, malicious registrants often hoard large numbers of trademarks, continuously testing the limits of different parties and the trademark protection system. Beyond harming the lawful rights and interests of the alleged infringer, such "rights-defense" activities inevitably lead to a significant waste of administrative and judicial resources, as these efforts are devoted to safeguarding improperly acquired "rights." As a result, the order of trademark registration and management will be undermined, thereby jeopardizing national interests and the public interest. In such cases, the benefits obtained by right holders from exercising their rights are severely disproportionate to the potential harm inflicted on others or the severe disruption caused to normal business operations, and thus the exercise of such rights should be restricted.

5. Standardizing the Judicial Determination of Rules Against Abusive Trademark Rights

Although the prohibition of abuse of rights serves as a fundamental principle in civil law, providing normative guidance for ultimate discretionary adjudication, it does not constitute a definitive command prohibiting a specific behavior. Instead, it merely requires that rights not be abused and should be realized " to the greatest extent possible within the bounds of factual and legal feasibility."^[35]Judicial rulings often fail to directly apply the principle of prohibiting abuse of rights to determine the legal consequences of individual cases. In other words, the general principle cannot be resolved once and for all through a simple and absolute interpretation. Instead, it requires a case-by-case approach, gradually accumulating and refining more specific, highly predictable balancing rules that eventually give rise to a coherent system of rules.^[36]

In recent years, China's judicial authorities have gradually developed an adjudicative approach that comprehensively considers factors such as the basis of rights, the purpose and method of conduct, and the consequences of actions to regulate trademark abuse. This approach has already set a demonstrative example for subsequent cases. However, as previously noted, differences in how judges weigh these factors, along with variations in their analytical

^[34] See The Supreme People's Court of the People's Republic of China (2019) Civil Review No. 6283 Civil Judgment.

^[35] Robert Alexy, *The Formula of Gravity, Law as the Institutionalization of Reason*, China Legal Publishing House, 2012, p. 149.

^[36] Su Yongqin, *Using Public Law Norms to Control Private Contracts: A Comparison of Cross-Strait Referral Clauses and Operational Recommendations*, *Renmin University Law Review*, No. 1, 2010.

processes, have led to some inconsistency in enforcement standards and conflicting rulings. Meanwhile, the overwhelming complexity of external information further increases the cognitive cost in judicial decision-making. To counter this challenge, the essence of adopting a standardized and typified framework lies in building a robust cognitive model: by forming a "database" that links decisions with their outcomes, it helps to solidify how specific types of decisions draw upon relevant contextual information. This, in turn, provides decision-makers with a clear "mind map", significantly reducing both the cost and complexity of decision-making while enhancing its efficiency and stability.^[37] Therefore, this part proposes to standardize the judicial rules for identifying and applying the principle of prohibiting trademark abuse, based on the aforementioned general considerations typically applied in cases of rights abuse. It also designs and demonstrates an analytical framework and review process tailored to individual cases, aiming to further clarify the boundaries governing the regulation of trademark abuse.

According to the Alexy principle theory (also known as the balancing test), to determine which of the conflicting principles should take precedence, only by weighing the options can we ascertain which principle holds greater significance.^[38] The result of balancing the principles is, first, identifying the conditions under which one principle takes precedence over another, and second, ensuring that these priority conditions effectively constitute a rule—specifically, a rule that endows the prioritized principle with concrete legal effects.^[39] The technical formulation of the principle of competition is as follows: If principle P1 takes precedence over principle P2 based on condition C—denoted as (P1 P P2) C—and if P1, under condition C, gives rise to legal consequence R, then the rule encompassing both the factual behavior C and the legal consequence R is deemed valid, expressed as $C \rightarrow R$. Here, C—acting as the "priority condition"—possesses a dual role within the law of competition: in (P1 P P2) C, C serves as the "condition that determines the priority relationship" between the two principles, effectively establishing which principle prevails; whereas in " $C \rightarrow R$," C functions as the "normative constituent element", directly leading to the creation of the applicable rule.^[40]

The core issue in applying the principle prohibiting the abuse of trademark rights is establishing priority condition C—specifically, determining when this principle takes precedence over other legal principles in a given case—and using this priority condition as the normative requirement for the regularization of the principle of prohibition of trademark abuse. Meanwhile, the various factors considered in assessing trademark abuse provide a solid foundation for identifying the priority condition in individual cases: For instance, examining the purpose of the conduct helps to establish the subjective fault underlying the trademark holders' exercise of their rights, while analyzing the manner of the conduct reveals whether the exercise has objectively caused harm. Finally, evaluating the consequences of the behavior reflects the broader imbalance of interests that characterizes trademark abuse.

Here, taking the case of unfair competition dispute between X Tourism Company Ltd. and X Technology Company Ltd. as an example,^[41] and combining the various considerations

^[37] Jiang Ge, Rethinking and Interpreting the Internet Provisions of the Anti-Unfair Competition Law: Centered on Typology Theory, *Peking University Law Journal*, No. 1, 2019.

^[38] Ronald Dworkin, *Taking Rights Seriously*, Shanghai Joint Publishing Press, 2008, p. 47.

^[39] Robert Alexy, *The Formula of Gravity, Law as the Institutionalization of Reason*, China Legal Publishing House, 2012, p. 135.

^[40] Mao Shaowei, *Commentary on Article 132 (Prohibition of Abuse of Rights) of the Civil Code*, *Chinese Journal of Applied Jurisprudence*, No. 1, 2023.

^[41] See Civil Judgment No. (2021)4553 of the Beijing Intellectual Property Court.

of trademark right abuse while drawing on Alexy principles theory, an attempt is made to demonstrate the specific analytical framework and review pathway for applying the principle of prohibiting trademark abuse to individual cases.

A. The first step

Identify the competing principles in the individual case. In this case, the technology company has successfully registered the "Gubei Water Town" trademark and is using its exclusive right under this registration to send infringement warning letters and file an administrative complaint against the tourism company, which have already caused harm to the latter. This situation thus creates a conflict between two fundamental principles: (P1) the principle that the trademark registrant is entitled to exercise its trademark right, which the technology company relies on, and (P2) the principle asserting that the tourism company, having suffered damage to its interests, argues the technology company's exercise of these rights violates the prohibition against trademark abuse.

B. The second step

Establish a general priority relationship based on general priority conditions. China adopts a registration-based trademark acquisition system, whereby trademark holders have the right to exercise the exclusive rights to registered trademarks and to protect their rights against infringement. Consequently, the protection of the exclusive rights to registered trademarks inherently enjoys priority. The trademark holders, as the registrants, have the right to exercise their rights without needing to provide justification—whereas anyone seeking to invoke the principle against the abusive use of trademark rights bears the burden of justifying why such restrictions should apply. Since the trademark registrants are entitled to enforce their trademark rights under Principle P1, this grants them a general priority, expressed as (P1 P P2) → C1. However, this priority relationship is only preliminary and can be overridden by specific exceptions.

C. The third step

Establish a conditional priority relationship based on specific priority conditions, with the core focus on identifying the specific priority condition C2. The specific considerations for determining trademark abuse serve as important references for establishing these specific priority conditions:

(a) The technology company exercised its trademark rights with subjective malice

A trademark serves as a symbol identifying the source of goods and acts as a link between consumers and products. The "form" of a trademark lies in its sign, while its "essence" resides in the business reputation hidden behind that sign.^[42] As a local competitor in the same region, the technology company should have been aware of the tourism company's prior trade name and the reputation of the trademark used on alcoholic beverages. However, within just half a month after its own establishment, it already applied to register the trademark in question, which was identical to the aforementioned "Gubei Water Town" trade name and trademark. It subsequently sent multiple infringement warning letters to the tourism company and filed complaints with the relevant administrative authorities, despite never actually using the trademark in question. It is evident that the technology company's motivation for undertaking the aforementioned actions was not to engage in normal business operations using the trademark in question or to protect its own intellectual property rights, but rather to seize the "Gubei Water Town" trademark resources and prevent others from using this commercial mark. The technology company obtained registration of the trademark in question while aware that its

^[42] Li Chen, Trademark Rights Remedies and Sign Squatting, Henan Social Science, No. 1, 2006.

application for registration was improper. Moreover, when exercising its trademark rights, it was fully aware that it lacked a legitimate basis for asserting such rights. Therefore, it clearly acted with the malice of appropriating improper commercial benefits and competitive advantages;(F1)

(b) The technology company's exercise of trademark rights is an abuse of rights

The exercise of trademark rights should not only appear legitimate but also remain within the scope explicitly protected by the trademark itself. Although the technology company has formally obtained exclusive rights to the "Gubei Water Town" trademark, it has neither actually used the mark nor contributed to the creation or accumulation of the goodwill associated with it. As a result, the trademark has essentially been reduced to a symbol of enclosure. Consequently, any form of profit-making activities undertaken by the technology company based on the registered trademark is entirely unrelated to its own honest labor. The various manifestations of its exercise of an already "alienated" exclusive trademark right are, in essence, nothing more than monopolizing symbols under the guise of trademark rights, appropriating the intellectual achievements and accumulated goodwill of others. This conduct exceeds the purpose of trademark law, which is "to protect the investment and reputation of trademark users, thereby promoting industrial development and safeguarding the interests of the relevant public".^[43] It runs counter to fairness and justice, constituting an abuse of rights that goes beyond the legitimate boundaries of trademark rights; (F2)

(c) The benefits that the technology company derives from exercising its trademark rights are severely disproportionate to the potential harm caused to the rights of others or to the public interest

The exercise of trademark rights by the technology company not only disrupts and interferes with the normal business operations of the tourism company, directly harming its lawful rights and interests and adversely affecting its business reputation, but also objectively leads the relevant public to associate the technology company with "Gubei Water Town," thereby disrupting the normal order of market competition. In addition, if the disputed behaviors in question remain unregulated, they could encourage frequent and severe instances of opportunistic trademark registration practices—essentially turning trademark acquisition into a "money-laundering process" for malicious land-grabbers.^[44] From this perspective, while the alleged conducts may appear to bring commercial benefits and competitive advantages to the technology company, they will ultimately undermine China's trademark registration and management order. Therefore, the harm caused by the alleged conducts far outweighs any countervailing benefits they might bring.(F3)

In summary, the technology company's acts of exercising trademark rights, characterized by subjective malice, objective abuse of the rights, and a severe imbalance between the benefits obtained and the harm caused to others' interests or the public interest, collectively constitute the specific priority condition in this case, expressed as (F1 + F2 + F3)C2. Based on the priority condition, the conditional priority relationship between the principles is formed: the principle of prohibiting the abuse of the trademark rights (P2) takes precedence over the principle of the right to exercise trademark rights (P1). Consequently, a specific rule is also established within this conditional priority relationship: the abuse of trademark rights should be restricted, expressed as C2 → R. Therefore, the normative formula can be expressed as follows: when exercising trademark rights based on the identity of the trademark registrant,

^[43] Li Yang, *Fundamental Principles of Intellectual Property Law*, China Social Sciences Press, 2010, p. 714.

^[44] Li Chen, *Trademark Rights Remedies and Sign Squatting*, Henan Social Science, No. 1, 2006.

if the right holder possesses subjective malice, objectively abuses trademark rights, and the profits obtained are far less than the harm caused to the rights and interests of others, then the exercise of such trademark rights should be prohibited by law.

6. Conclusion

The standardized construction of judicial determination rules for trademark abuse is of great significance in balancing the protection of trademark rights and the maintenance of market competition order. In the current context of increasingly strengthened intellectual property protection, timely and effective regulation and crackdown on trademark rights abuse are not only essential for fostering the sound and orderly development of IP-related judicial protections, but also vital for creating a business environment characterized by honesty, trustworthiness, fairness, and impartiality. Moreover, such measures serve as a strong safeguard for both societal public interests and the lawful rights and interests of others. This paper, based on empirical analysis and combined with judicial practice, proposes specific normative paths for the identification standards and rules of trademark rights abuse, aiming to assist parties in providing evidences and judges in making judgments. In the future, with the continuous development of business practices, the forms of trademark abuse will become more complex and diverse. Therefore, we need to continuously pay attention to new issues in judicial practice, promptly improve the determination rules, to ensure the reasonable exercise of trademark rights, promote fair competition in the market, and drive the continuous improvement of the intellectual property protection system.

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