

# Study on the Regulatory Management System for Idle Registered Trademarks

Siyu Ding

The People's Public Security University of China, Beijing, China

---

**Abstract:** There are a large number of unused trademarks in the huge volume of registered trademarks in China, which wastes trademark resources, administrative trademark examination resources and judicial resources, disturbs the normal trademark order and market order. At present, China's law on the disposal of unused registered trademarks can only be based on the "If the trademark owner does not use the registered trademark for three years, the third party has the right to apply for its cancellation" system to make the unused trademark rights to the elimination of the new round of reform of the trademark law, although the new provisions to explain the use of trademarks, but a single provision cannot give full play to the effect of the supervision of unused registered trademarks. The regulation and supervision of unused trademarks should be based on the establishment of a standardized management system for unused trademarks at the macro level, which includes prevention, identification and relief, and at the micro level, unused trademarks with different causes should be classified into different categories and phases to be discussed and dealt with.

**Keywords:** Registered Trade Mark; Idle Trade Mark; Trade Mark Regulation.

---

## 1. Presentation of the issue

Currently China is making great strides towards becoming a major intellectual property country, as one of the world's five largest intellectual property offices, from January to May 2023, China's trademark applications were 2,770,000 pieces; trademark registrations were 1,679,000 pieces. As of May 2023, there were 43.963 million valid registered trademarks. [1] Trademark applications with the epidemic after the recovery of the economy has a rising trend, and the existing amount of effective registered trademarks year by year, China has been ranked first in the world for many years in the amount of registered trademarks, but the amount of existing registered trademarks does not mean that the quality of quality: on the one hand, the amount of effective registered trademarks in stock is huge, on the other hand, the amount of trademark applications year by year, it can be seen that China's current huge amount of effective registered trademarks are still not able to meet the Market demand. It is thus concluded that the rate of unused trademarks is too high, and there is a waste of trademark resources.

According to the relevant data, China's registered trademarks in 30% to 50% of the proportion of the state in the idle, did not play the function of the trademark identification of goods and services, resulting in a waste of trademark resources, this phenomenon constitutes an obstacle to the registration of new trademark applications, and further waste of trademark administrative review resources and intellectual property rights of judicial resources in such a large body of effective registered trademarks, such as idle trademarks to regulate the management, and even the risk of disrupting the normal trademark order and market order. In such a large volume of effective registered trademarks, if the unused trademarks are not regulated and managed, there is even the risk of disturbing the normal trademark order and market order.

## 2. The Dangers and Causes of Unused Trade Marks

### 2.1. The Dangers of Unused Trade Marks

#### 2.1.1. Waste of Limited Trade Mark Resources

The registration of trademarks in China includes words, graphics, letters, numbers, three-dimensional signs, colour combinations, sounds, and combinations of the above elements. Although the revision of China's Trademark Law shows the possibility of recognising other elements to constitute a trademark, the commonly used elements of trademarks in China are limited to words, graphics, letters and numerals, and the resources of trademarks with identification functions are also limited under the limited composition of elements. If the prior registered trade mark is not used and left unused, i.e., it does not play the function of identifying goods or services, and does not play the role of identifying goods or services in the market, it is a waste of limited trade mark resources.

#### 2.1.2. Obstruction of Legitimate Use by Other Trade Mark Applicants

China's application for registration of trademarks using the principle of registration as the main, use as a supplement, the applicant does not need to rely on the evidence of use of the trademark can be in compliance with the conditions of the trademark registration. At the same time, obtain the trademark right complete exclusive rights, others that is, can not be in the same kind of goods or similar commodities on the same or similar to the registration of trademarks, even if other people use in the first place cannot continue to carry out the normal commercial use, or else constitute infringement. The existence of an unused trademark impedes the proper application of other trademark applicants, which in turn impedes their proper intent to use the trademark.

### **2.1.3. Waste of Resources for Administrative Trademark Examination and Judicial Resources for Intellectual Property**

After the applicant obtains a registered trademark and leaves it unused, it not only wastes the trademark administrative review resources that were previously examined for the trademark, but also when others register the same or similar trademarks that are not used, the trademark examiner will compare the existing valid registered trademarks to determine whether the new trademark application is registered. If, after comparison, the trademark applied for registration and the valid idle trademark constitute the same or similar in the meaning of the trademark law, the application shall be rejected. Due to the low cost of trademark administrative review and litigation for the applicant, the applicant will review or Sue for his rights in accordance with legal procedures in the case that the trademark registration is rejected or not registered. Invisibly, due to the idle of registered trademarks, a lot of trademark administrative review resources and intellectual property judicial resources are wasted.

### **2.1.4. Disturbing the Normal Trade Mark Order and Market Order**

The function of the trademark is to identify goods or services, which is the value of the trademark, but also the legislative basis of China's trademark law. But the trademark injection without the use of the trademark, it cannot play the function and value of the trademark, and the trademark injection without the use of the trademark impede the others on the legitimate use of the trademark, triggering the trademark demand for enterprises and individuals on the trademark of the malicious competition, breeding malicious registered trademark resale speculative behaviour, disrupting the normal order of trademarks, not conducive to the normal business of enterprises to create economic value, disrupt the normal order of China's market.

## **2.2. Causes of Unused Trade Marks**

Broadly speaking, all the trademarks that have been registered but not used at this stage are idle trademarks. From China's commercial practice can be seen, China's idle trademark can be divided into subjective reasons for not using and objective reasons for not being able to use.

### **2.2.1. Unused Trade Marks that are Subjectively Unused**

#### **2.2.1.1 Unused Trade Marks Registered for the Protection of Prior Rights and Not Used**

The registration of similar or identical trademarks in the same or similar classes by the right holder based on the protection of its own prior rights has resulted in the situation that the trademark is registered but not used. Strictly speaking, the registration of this kind of trademark belongs to the part of the enterprise's business strategy planning, and the enterprise may use the unused trademarks in its subsequent operation and development; at the same time, these enterprises hold unused trademarks similar to their own trademarks in order to exclude the use by other people. The avoidance of misidentification of their own well-known trademarks and the exclusion of others from the malicious use of trademarks similar to the trademark itself is the embodiment of the function of trademark identification, this kind of unused trademarks to play its value of protection of similar well-known trademarks already in use. Commercial practice is often well-known trademark or form a certain

degree of popularity of the trademark right person will own the trademark has been used for the registration of similar trademarks, this similar trademark idle not only will not disturb the market order, but also play a role in maintaining the existing market order.

### **2.2.1.2 Unused Trade Marks that are Hoarded for Profit and not Used**

With the development of China's market economy and the reform of the commercial registration system, the registration of trademarks as the identification of goods and services is also more and more convenient, several reforms of China's Trademark Law gradually allow individuals to apply for the registration of trademarks as well as trademark examination time limit to improve administrative efficiency, these initiatives play a role in encouraging the development of small and medium-sized enterprises, promote brand development, but also reduce the cost of trademark application and registration, in particular China's trademark applicants can obtain the full legal rights and interests of trademarks after applying for registration of a procedure, a small investment can be obtained by the huge output of the exclusive right to trademarks to breed improper speculative psychology, some malicious investors will be registered trademarks as a means of profit-making, pre-emptive registration of other people in the prior use of brand trademarks, and then sued for infringement of the legitimate rights and interests of others in the case of layers in addition to the endless.

### **2.2.2. Unused Trade Marks that are Objectively Unusable**

#### **2.2.2.1 Unclaimed and Unused Trade Marks Due to the Death or Termination of the Trade Mark Registrant**

When the trademark right holder dies or terminates the registered trademark during the validity period, the trademark becomes de facto unowned, and the subject of ownership of such trademark right dies and no inheritance occurs, so it is an unowned trademark. According to the relevant provisions of the Civil Code of China on unclaimed property and the attributes of trademarks, which are essentially public resources, the ownership of such trademarks is vested in the state from the moment of the demise of the subject of ownership. The granting and termination of trademark rights in China is managed by the Trademark Review and Adjudication Board of the State Intellectual Property Office (SIPO), which is therefore empowered to take over such trademarks and manage them.

#### **2.2.2.2 Idle Trade Marks That cannot be Used Because the Trade Mark Right Holder has Changed Its Business Scope, Restructured or Gone Bankrupt**

As the most active subject of the market economy, the operation and restructuring of enterprises often cannot be foreseen in advance, resulting in changes in the scope of business or the failure to change the relevant registrations in time for the restructuring of enterprises, resulting in the situation that trademarks cannot be used de facto, but the subject of the trademark right still exists. Due to the frequent turnover of market entities, the number of such unused trademarks should not be underestimated.

#### **2.2.2.3 Use of the Trade Mark by the Subject of the Ownership of the Trade Mark is Still in the Pipeline**

This situation includes cases where the trademark is in a state where it is not suitable for use and cases where the

trademark is in a state where it can be used, but the owner of the trademark is still in the process of preparing how to use the trademark. The former includes cases where the trademark is in the process of being transferred, the trademark is in the process of being inherited, or the trademark has been filed for pre-litigation preservation and cannot be used. The latter arises from the expanding volume of China's market economy and the increasing number of business entities that require long-term preparations before they can be put on the market.

### **3. Analysis of the Necessity of Constructing a Regulatory Management System for Idle Trademarks**

#### **3.1. The Construction of a Standardised Management System for Unused Trademarks is in Line with China's Current National Conditions.**

The establishment of a standardised management system for idle trademarks in China is a realistic need for the current high rate of idle trademarks in China, which according to the statement of Cheng Jing, a member of the Chinese People's Political Consultative Conference (CPPCC) in 2018, has reached a national rate of 30%, with the rate of idleness on some categories even reaching 50%. A large number of idle trademarks are not used, at the same time, there are a large number of trademarks can not be approved for registration because of the similarity with the registered idle trademarks, the existence of idle trademarks cause the fact that the value of intellectual property rights is difficult to be achieved, and idle trademarks urgently need to be regulated and managed to give play to the value it should have as a trademark.

#### **3.2. The Construction of the System of Regulating the Management of Unused Trademarks Conforms to the Current Legislation in China.**

China's protection of trademark right started late, in the construction of the system and legislation focus on the protection of trademark right. Nowadays, China's trademark law has been able to meet international standards in terms of legislation, and strict standards have been adopted for the protection of trademark rights, which can be seen in China's law on the determination of similar trademarks not only objectively requires that the constituent elements of the isolation of the comparison and the overall comparison, but also subjectively stipulates that the general public's attention and the general public's standards to determine whether it is known or not and whether it is confusing or not. In the examination of similar trademarks, the administrative authorities will also consider whether it constitutes the factor of misidentification of source. Both legal provisions, administrative enforcement and judicial practice adopt strict criteria to recognise similar trademarks and protect existing trademark rights.

The negative effect of strict protection of existing trademark rights is that a large number of new trademark applications can not be passed, and at the same time, there are a large number of unused trademarks in the existing trademarks can not serve the market, resulting in the loss of

the value of trademark resources in both directions. Therefore, China's current protection of trademark rights should not only focus on the elimination of infringement of trademark rights, but also focus on the existing registered trademarks, especially the unused trademarks on the standard management.

### **3.3. The Construction of a Standardised Management System for Unused Trademarks can Reduce the Waste of Resources**

For commercial subjects, the cost of trademark administrative review and judicial litigation is relatively low, a large number of trademark administrative disputes into the judicial process, taking up limited trademark review resources and judicial resources, behind the trademark rights dispute is a large number of administrative resources and judicial resources to support the procedural justice of the trademark law, the waste of resources caused by unused trademarks is far more than a trademark, a name. If it is possible to prevent unused trademarks before the approval of trademarks, effectively supervise the trademarks during the period of their existence, take timely measures for unused trademarks after identifying unused trademarks, and classify unused trademarks into categories for control, not only can it reduce the waste of administrative and judicial resources, reduce disputes and litigation, but also revitalise part of the unused trademarks, clean up part of the unused trademarks, and realise the value of the trademark use.

### **4. The Idle Trademark Normative Management System Constructs the Path to Explore the Analysis**

#### **4.1. Macro-planning of a System for Regulating and Managing Unused Trademarks**

Not all idle trademarks are in the state of wasting trademark resources and abusing trademark rights, and the degree of harm of idle trademarks of different causes varies. Therefore, the establishment of a standardised management system for idle trademarks should be planned on a macro level, with the goal of realising the value of trademarks, and establishing a clear path to clean up the resources of idle trademarks. Specifically, according to the time sequence of trademark registration and use, we can establish a preventive mechanism for unused trademarks before the approval of trademark registration, establish a trademark supervision system during the validity period of registered trademarks, identify and manage unused trademarks of different categories in a timely manner, and take measures for unused trademarks of different causes in a timely manner after identifying the causes of unused trademarks; and horizontally, differentiate the control of unused trademarks of different causes, and regulate the management of unused trademarks in different categories.

## **4.2. Micro-construction of the Regulatory Management System for Unused Trademarks**

### **4.2.1. Vertical Procedural Construction of the Regulatory Management System for Unused Trademarks**

#### **4.2.1.1 Establishment of a Preventive Mechanism for Unused Trademarks before Trademark Registration**

The regulation of unused trademarks should be prevented before it is too late, and the generation of unused trademarks should be prevented from the main body of trademark registration, the act of trademark registration and the registered trademark itself. In China's increasingly mature trademark environment, there are a lot of "professional trademark registrants" waiting for the opportunity to use trademarks to make profits, and their use of hoarding and registration of trademarks to obtain illegal benefits is not always successful, they should be from the perspective of improving the cost of illegal trademark registration institutions and personnel focus on the record, for which the application for trademark registration should be examined; for the simultaneous submission of the application for trademark registration should be examined; for the same period of time, the registration of trademarks submitted by the main body to prevent the generation of idle trademarks. Trademark registration application should be examined; for the same or similar trademarks submitted at the same time, evidence of use should be used as the material to support the approval of registration, so as to reduce the hoarding of idle trademarks; for the dynamics of trademarks held by trademark registration agencies should be statistically analysed according to the time period, and trademark movement measurement standards should be set up, and the trademark registration agencies that have hoarded trademarks for a long period of time without using them should be banned.

#### **4.2.1.2 Establishment of a System for the Submission of Evidence of the Use of a Trade Mark After Registration**

The life of a trademark lies in its use, and the realisation of the value of a trademark also lies in its use. Evidence of trademark use is the most intuitive criterion to identify idle trademarks and non-idle trademarks, and the establishment of a trademark use evidence submission system is an effective means to realise the supervision of trademarks, it also provides a powerful basis for the identification of idle trademarks. Specifically, the main body of the trademark use evidence submitted for the main body of the trademark ownership, the evidence received relative body for the State Intellectual Property Office of the Trademark Review and Adjudication Board, the time of submission can be based on the number of trademark renewal, based on more than 90% of small and medium-sized enterprises in our country survived less than three years, China's registered trademark is valid for ten years, which has been applied to the trademark for three consecutive years without a valid reason for non-use of any of the main body can be lift the legal provisions of the trademark cancellation application, so after the approval of the registration of the trademark in the first renewal, the registrant every three years to submit evidence of legal use of the registered trademark within the period. Renewal of the trademark represents the extension of the use of the trademark and the stability of the use of the trademark, and after the first renewal of the trademark, the submission of evidence of use of the trademark can be adjusted to once every five years. The

method of filing evidence of use of a trademark shall be flexible, accepting electronic service, service by mail, etc.

#### **4.2.1.3 Establishment of a Mechanism for Identifying and Classifying Unused Trade Marks during the Life of a Trade Mark**

The identification of idle trademarks is mainly based on the system of submitting evidence of use during the life of trademarks. The Trademark Review and Adjudication Board shall urge the trademark owner who fails to submit the evidence of use on time to submit the evidence of use of the trademark and the description of the situation within a time limit; The trademark ownership subject who has not submitted the evidence of use shall be examined at the expiration of the term, and whether it has died or terminated, and whether there is the occurrence of trademark inheritance shall be recorded. The filing of idle trademarks is divided according to the death or termination of the trademark owner, the objective situation that the trademark owner does not have the use of the trademark right, the trademark owner registered in bad faith, the trademark owner registered defensively, and the trademark owner is still preparing for the use of the trademark.

At the same time, establish idle trademark incidental review mechanism. The application scenario is that when a new trademark is filed for registration, incidental examination is carried out for similar or identical trademarks cited. If the cited trademark is the malicious registration of the first three categories of idle trademarks above that do not actually have the purpose of using the trademark, the trademark rights of the cited trademark should be restricted, and it no longer constitutes a prior right obstacle for others to obtain new trademark rights. The incidental examination of idle trademarks can not only identify the missing fish of idle trademarks, but also eliminate their obstacles to the legitimate use of new trademarks. Moreover, from the point of view of exerting the use value of registered trademarks, the newly applied trademarks have more room for use, and this incidental review can accurately activate idle trademarks to a certain extent and reduce the effective idle rate of registered trademarks.

#### **4.2.1.4 Establishment of a Platform for Revitalisation of Unused Trademarks**

As a limited resource, it usually takes about one year to apply for a registered trademark, while it only takes 6-10 months to transfer a trademark, facilitating the transaction of unused trademarks is a beneficial action for many parties. [2] There are many high-quality trademarks with great use value and potential commercial value among idle trademarks. The establishment of a platform for revitalisation of idle trademarks jointly by official and private institutions can fully contact the information and status of idle trademarks, promote the transaction of idle trademarks, and apply idle trademarks to the market as soon as possible to give full play to the value of trademarks.

### **4.2.2. Horizontal Classification of Unused Trademarks Regulatory Management System**

#### **4.2.2.1. Control of Unused Registered Trade Marks in the Category of Death or Termination of the Subject of Ownership of the Trade Mark**

Procedurally, once an idle trademark is identified as such an unowned trademark, the Trademark Review and Adjudication Board shall announce the status of the trademark, and after the announcement period expires without

objection, the unowned trademark will flow into the trademark trading platform, and the proceeds from the transaction will be used as public welfare income for the development of the trademark cause; if no transaction of the trademark occurs for a certain period of time, the Trademark Review and Adjudication Board shall announce the trademark before cancellation, and after the expiration of the announcement period without objection, the right of the trademark will be extinguished. Then the right of the trademark will be eliminated.

#### **4.2.2.2 Control of Unused Registered Trademarks in the Category of Objective Circumstances in Which the Subject of Trademark Ownership does not have the Right to use the Trademark**

This kind of situation mainly includes the change of the business scope of the trademark ownership subject, the bankruptcy procedure of the trademark right subject, the change of the trademark right subject without registering the trademark situation. The trademark subject objectively no longer has the situation of using the trademark right, but this kind of trademark is different from the owner of the trademark, the trademark right subject still exists, so the trademark Review and Adjudication Board should send a letter to inform the right subject that the trademark is idle, and submit the evidence of use within the time limit. At the same time, after the expiration of the trademark can flow into the trademark trading platform to play the residual value.

#### **4.2.2.3 Control of Unused Registered Trade Marks in the Bad Faith Registration Class of the Subject of Trade Mark Ownership**

Most of the trademarks registered in bad faith by the subject of trademark ownership for the purpose of obtaining illegal benefits, snatching the brand or similar brand trademarks already used by others, such trademarks do not have the purpose of use, and do not comply with the legal purpose of trademark registration, once identified as such trademarks and failed to submit evidence of use by the expiry of the period of proof, the Trademark Review and Adjudication Board shall cancel the trademarks ex officio, and prohibit the subject of the right to approve the registration again.

#### **4.2.2.4 Control of Unused Registered Trade Marks in the Defensive Registration Class of the Subject of Trade Mark Ownership**

Defensive trademarks registered to protect their own prior rights play the function of protecting the existing well-known trademarks or rights and interests, such registration shall be protected by the laws of China, and such unused trademarks only need to submit the evidence of the survival of prior rights

on schedule.

#### **4.2.2.5 Control of Unused Registered Trademarks in the Category of the Use of the Trademark by the Subject of Ownership of the Trademark Which is Still in the Process of Preparation**

From encouraging business entities to register trademarks to protect their rights and interests, China now encourages business entities to establish quality brands and promote well-known trademarks. In the process of the trademark can not provide evidence of the use of the need to submit the relevant information, the Trademark Review and Adjudication Board may extend the period of evidence or deadline for evidence. For the long preparation period and in the short term there is no plan for the use of the trademark business entities, the long-term non-use of the trademark is foreseeable, so such idle trademarks need to be submitted to the preparatory period of the relevant information, the Trademark Review and Adjudication Board may, depending on the circumstances of the extension of the deadline for the submission of evidence of the use of trademarks.

## **5. Conclusion**

The new round of trademark law reform pays more attention to the construction of trademark quality, will explain the use of trademarks into the draft trademark law, but the expiration of the failed to explain the registered trademarks are cancelled there is still inappropriate, cancellation of trademarks is a kind of public power to interfere with private rights, should be careful and then. It is a way to balance public rights and private rights and improve the utilization rate of trademarks, which should be promoted on the basis of large-scale trials. In order to fundamentally reduce the number of idle trademarks, reduce the waste of trademark resources and administrative and judicial resources, give full play to the use value of trademarks, and cultivate high-quality trademark brands, the whole process of supervision and standardized management of idle trademarks can be conducted.

## **References**

- [1] Intellectual Property Statistics Bulletin 2023, No. 7.
- [2] Wang Lianfeng, Shen Yiping. On the construction of the system for clearing idle registered trademarks [J]. Intellectual Property, 2019, No. 220(06):35-41.
- [3] ZHONG Hongbo, He Zhuolu, Dong Peng et al. Legislative suggestions on cleaning up idle trademarks [J]. China Trademark, 2021, (06):69-78.
- [4] Yang Xiao. Optimizing Mechanism of Allocation of trademark resources in our country -- from Cost analysis as entry point [J]. China Trademark, 2022, (08):33-38.