

# On the Application of Negative Elements of Registered Trademarks

Dongmei Yang, Badexi Xiang, Jiajia Liu, Li Li  
Sichuan Yibin University, Yibin 6440000, China.

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**Abstract:** After several amendments to China's trademark law and the trademark administrative trial conducted by the court for many years, it has adjusted people's disputes over the ownership of trademarks, realized the integration of interests and thus established a relatively stable order. Since the judgment of "WeChat", "MLGB" and other trademark cases, the application of the negative elements of registered trademarks has rapidly entered the research of intellectual property scholars, and has become a common concern of academic and judicial practice. This project will study the negative elements of registered trademarks from a new perspective and direction in the field research and literature search, and take MLGB as an example to solve the existing problems of trademark invalidation and revocation, We should improve and refine the existing laws related to the trademark management system, and publicize the relevant trademark management system.

**Keywords:** Registered Trademark; Negative Elements; MLGB; Problem

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## Introduction

The negative elements of a registered trademark refer to the elements that do not register and prohibit the use of a trademark because it infringes on the prior rights or legitimate interests of others and violates the trademark law prohibiting the registration or use of some landmark provisions. The reason why the negative elements are stipulated is not only to enable the trademark applicant to avoid misunderstandings in time and reduce the burden of judicial practice when applying, but also to solve the trademark litigation in accordance with relevant elements and provisions, improve judicial efficiency and form a good judicial environment.

## 1. Research status of the negative elements of registered trademarks

After several amendments to China's trademark law and the trademark administrative trial conducted by the court for many years, it has adjusted people's disputes over the ownership of trademarks, realized the integration of interests and established a relatively stable order. However, since the judgment of "WeChat", "MLGB" and other trademark cases, the application of the negative elements of registered trademarks has rapidly entered the study of intellectual property scholars, and has become a common issue in academic and judicial practice.

① In terms of political background: China has made many amendments to the Trademark Law, indicating the importance and protection of trademark registration. The importance and complexity of the negative elements of registered trademarks, to some extent, hinder the practice and development of the Trademark Law. In the essence of socialist democracy, people are difficult to use their power to solve relevant problems because of the complexity of the negative elements of trademark registration.

② Economic background: With the development of the market economy, the Trademark Law plays an increasingly important role in China's socialist market economy. The Trademark Law has become an important department law to escort the development of the socialist market economy. Trademarks also bring huge economic benefits, which leads to the registration of trademarks with adverse effects under the trend of interests, which has triggered a heated discussion in the academic community.

③ Cultural background: In the construction of socialist culture with Chinese characteristics, the state emphasizes on cultivating civilized and moral customs and deepening the reform of cultural system. The "adverse effect" clause of the negative element of registered trademark is also affected by this, which is frequently used in judicial practice and widely discussed in academic circles.

## **2. Classification of Negative Elements of Registered Trademarks**

The issue of negative elements of registered trademarks is mainly based on the issue of invalidation of registered trademarks, followed by the issue of trademark revocation. First of all, there are two types of trademark invalidation: one is initiated by the Trademark Office, which mainly believes that the registered trademark damages the public interest, which is relatively rare.

Harmful to socialist morality or other adverse effects: all trademark elements that contain negative and negative effects on China's political, economic, cultural, religious, national, moral and other social and public interests and public order, or those that may mislead consumers about the characteristics and sources of goods such as quantity, quality, price and model, can be included in this item.

Other lack of significant features: such as the trade place name, trade terms or signs commonly used in the industry or related industries. In this case, the most prominent one is the case of Langke Youpan. How to define a business term that belongs to this occupational category? Then we can judge whether the trademark's saliency has disappeared or degraded. However, for the definition of business terms in different professions, different judges have different ideas. We will make a summary based on browsing a large number of judicial documents and many cases.

## **3. Analysis of Negative Elements of Registered Trademarks -- Taking MLGB as an Example**

### **3.1 Case background**

The Supreme Court has released the annual intellectual property cases and 50 typical intellectual property cases of Chinese courts, including the case of "MLGB" trademark registration. The dispute over the registration of this trademark has lasted for two years, and finally ended in the second trial. In the case of invalidation of the "MLGB" trademark, the trademark registrant emphasized that the original intention of applying for registration and using the MLGB trademark was "MYLIFE'S GETTING BETTER", and there was no subjective intention of using the meaning of swearing to derogate from others. The disputed trademark is composed of the letter "MLGB", which is not a fixed foreign language vocabulary, but in combination with the screenshots of the submitted network language and other evidence, in order to purify the network environment, guide the mainstream cultural values, and stop the act of catering to the "three customs" in the way of edging ball, it is determined that the disputed trademark itself has a negative meaning and a low style.

### **3.2 Reflection brought by the case**

① Before registering a trademark, an enterprise must conduct a comprehensive search of the trademarks of the same or similar products that have been registered or are under review, so as to avoid being unable to register due to duplication, similarity and similarity.

② In order to avoid malicious preemption of trademarks by peers or others, we must pay attention to the confidentiality of trademark logo and creativity before applying for registration of trademarks. Because once the trademark is maliciously registered, enterprises will face a "nightmare" if they want to regain the trademark again, which will consume a lot of money and time.

## **4. Measures to solve the negative elements of registered trademarks**

### **4.1 Clarify the boundary of trademark invalidation**

Due to the different fonts involved in the trademark, the appearance of various fonts may sometimes differ greatly, and the same is true of the graphics in the trademark. If the text or graphics change greatly from the pattern at the time of registration, making it form a different appearance image, it may constitute a self-changing registered trademark or even posing as a registered trademark. If the changed appearance image is similar to the registered trademark of others, it may also constitute trademark infringement.

### **4.2 Clarify the consequences of violation**

① Non-standard use of trademarks, general trademarks are not protected by law, and registered trademarks are likely to be revoked.

② It may constitute an illegal act of pretending to be a registered trademark and may face administrative punishment.

③ Once infringement is constituted, not only administrative liability but also civil liability shall be borne.

### **4.3 Improve the popularization of public trademark knowledge**

First, make a thorough investigation and do a good job in basic work. Through inquiry, household survey and other ways to find out the trademark resources, understand the base number and use of registered trademarks in the jurisdiction, the intention of key business entities to register trademarks, as well as new situations and new problems in the cultivation and protection of trademarks, and guide various market entities to apply for registration in a timely manner.

Second, strengthen publicity and popularize trademark knowledge. Organize relevant personnel to learn trademark knowledge, use the Intellectual Property Day to carry out extensive publicity, create a strong atmosphere of intellectual property awareness within the jurisdiction, and organize law enforcement personnel to guide enterprises in the jurisdiction, improve the trademark awareness of operators, encourage enterprises to pay more attention to the development, application and protection of independent intellectual property, improve the competitiveness of independent brands, create an active trademark registration and standardize the use of trademarks.

Third, strictly enforce the law and strengthen trademark protection. Conscientiously implement the requirements of the provincial and municipal market supervision bureaus on combating infringement and counterfeiting, actively carry out activities to combat trademark infringement and counterfeiting, carry out trademark infringement law enforcement inspection focusing on general merchandise, food, household appliances, etc., strengthen and standardize trademark supervision and management, further curb infringement and counterfeiting and other illegal acts, and protect the legitimate rights and interests of consumers and trademark registrants, Strengthen the awareness of intellectual property protection of market operators and operators.

## **5. Summary**

This project takes the study of the negative elements of registered trademarks -- a series of dispute cases such as MLGB as the research object, and makes a comprehensive and specific study on how to apply various negative elements of registered trademarks. The premise of trademark protection is to apply for registration, and the negative elements of trademark registration are harmful to socialist morality or other adverse effects; Other lack of obvious characteristics; There are four main types of disputes: confusion and misleading the public. There is no comprehensive and specific research on the negative elements of registered trademarks in the existing research, so it is also difficult to apply it to judicial practice. This paper studies the comprehensive and specific application of the negative elements of registered trademarks under specific circumstances from the perspective of combining relevant hot cases and relevant theoretical literature.

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