



THE IP DIGEST

BY TENGYU



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1. Revision of the Guide on Non-use Cancellation Application against Registered Trademarks

In order to further improve the application efficiency and guide applicants in filing cancellation application against the registered trademarks on the basis of non-use for three consecutive years, the Trademark Office of China National Intellectual Property Administration released the Revision of the Guide on Non-use Cancellation Application against Registered Trademarks on May 25, 2025, which was originally issued in March 2023.

Here is the complete version of the revised Guide, and please note the major revision relates to the provision of evidence on non-use at the time of filing:

I. Legal basis and application requests

According to Article 49 of the Trademark Law of the People's Republic of China and Article 66 of the Regulations of the Implementation of the Trademark Law, if a registered trademark has not been used for three consecutive years without justifiable reasons, any entity or individual may apply to cancel this registration before China National Intellectual Property Administration (CNIPA). When the non-use cancellation application is filed, the applicant shall file grounds and evidence to specify the situation of the case.

II. Channels of the submission

- (I) Applicant submits the application via CNIPA's e-filing system.
- (II) Applicant submits the applications at CNIPA's office.
- (III) Entrust a recorded trademark agent to file the non-use cancellation application.

Please Contact Us

Tel: +8610-65055528

Email: IP@tengyulawyer.com

<http://www.tengyulawyer.com>

Address: Room 50528, Block D, Galaxy SOHO 2 Nanzhugan Hutong, Dongcheng District, Beijing 100010 China

III. Filing Materials

(I) Required documents

- Non-use Cancellation Application Form.
- Preliminary evidence obtained via investigation, such as online search results and market investigation reports, proving that the target mark has not been used for three consecutive years without justifiable reasons.
- Photocopy of the Applicant's identity documents (copy of business license, ID card, etc.) which should be sealed and/or executed.
- Power of Attorney if the application is filed by engaging a trademark agent.

(II) Specific Requirements

- All information on the application form should be authentic and the format of the same cannot be modified without authorization. The application shall be typed or printed.
- The name of the applicant and the seal (signature) of the applicant shall be consistent with the name in the applicant's identity document. If the applicant is an individual, the ID number shall be included.
- The applicant's address should be complete and consistent with that of applicant's identity document. If the applicant is an individual, the correspondence address is sufficient.
- If the application is filed by the trademark agent, the agent's name and seal, the attorney's name and signature should be included.
- If the application is filed to cancel a jointly owned trademark, the representative's name should be included.
- If the application is filed to cancel partial goods/services of the registered trademark, the to-be canceled goods/services items under the registered trademark shall be specified, and the semicolon (";") is used to separate each item. If the application is filed to cancel all of the goods/services under the registered trademark, the word "all" shall be indicated therein.
- According to the Regulations for Implementation of the Trademark Law, the applicant should illustrate the situation in the non-use cancellation application that the to-be canceled trademark has not been used for three consecutive years without justifiable reasons, and submit preliminary investigation evidence, such as online search results, market investigation reports, etc.
- If the applicant is a company or other organization, the company seal shall be affixed with the filing documents while if the applicant is an individual person, the signature of the applicant on the documents shall suffice. The company seal or signature shall be complete and in high resolution.
- The non-use cancellation application form should be prepared and filed based on the updated/current information of the registered trademark.
- The non-use cancellation application can be filed three years after the registration is published.

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- In accordance with Article 49 (2) of the Trademark Law, if the non-use cancellation is filed against an IR mark, it can be filed three years after the examination period expired. If the rejection period (examination period) expires whilst the IR trademark is still in the process of review against refusal or opposition procedures, the non-use cancellation application can only be filed three years after the decision on the approval registration taking effects.
- If the party is dissatisfied with the non-use cancellation decision, it may file a review application with CNIPA within 15 days from the date of receipt of the non-use cancellation decision.
- The applicant should carefully read through the Undertaking illustrated in the non-use cancellation form before proceeding. Once the application is filed, the applicant is deemed to have accepted the Undertaking.
- The applicant's identity documents and the power of attorney in non-use cancellation application shall satisfy the related requirements of Trademark Examination Guide issued by the CNIPA.

Preliminary evidence (of non-use to be submitted at the time of filing) obtained via investigation includes but is not limited to the following:

- 1) Basic Information:** business scope or operation scope, business status or existence status of the trademark registrant.
- 2) Market investigation:** the investigation is not limited to professional search platforms, official website of the registrant, WeChat public account, e-commerce platform, information of manufacturing/distribution, and onsite investigation and market investigation etc.

IV. Payment of the fees

After formality examination, the filed non-use cancellation is acceptable and the CNIPA will issue a payment notice to the applicant. The applicant can pay the official fees according to the requirements. Otherwise, the non-use cancellation application will be rejected.

V. Examination, document delivery and issuance of decision

After payment of the fees, the CNIPA will issue a notice of acceptance of the cancellation application to the applicant and issue a "Notice of Providing Evidence of Use of Registered Trademarks" to the trademark registrant. After receiving the evidence of use filed by the trademark registrant, the CNIPA will review the evidence materials and make a written decision on whether to cancel the registered trademark, and notify the parties or the trademark agency (if the trademark agency is engaged).

VI. Notes

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- Please read through the instructions on the back page of the application form carefully.
- The applicant's name, address, postal code, telephone number and other contact information must be clearly and accurately indicated for easy communication.

2. Typical Invalidation Case in respect of Protection of Characters Names of Movie --- "魔童哪吒(demon child Ne Zha)" Trademark Invalidation Case

• Case facts

On June 14, 2023, a Beijing film company ("the Applicant") filed an invalidation against trademark registration No. 40193162 "魔童哪吒(demon child Ne Zha)" (the "Disputed Mark") owned by a Chinese individual ("the Registrant").

The Applicant claimed that "魔童哪吒(demon child NeZha)" is the character name of the movie "Ne Zha" (direct translation: Ne Zha - the birth of the demon child) released by the Applicant on July 26, 2019, which established a high reputation and thus well-known among the relevant public. The Registrant has registered the Disputed Mark without Applicant's permission. The Registrant thus improperly utilized the reputation and influence of the Applicant's reputable movie and character name, enjoyed the Applicant's market advantage and business opportunity, which damaged the Applicant's legitimate rights and interests.

• Decision issued by CNIPA

CNIPA held that established commercial interest and business opportunities should belong to the Applicant. On the other hand, the Registrant should be aware of the popularity of the Applicant's movie and the character name but he still applied to register the disputed trademark and other similar ones, which could easily lead the public to mistakenly believe that there is a connection, infringe on the Applicant's interests and business opportunity, and thus should be considered as "damaging the prior rights of others" under Article 32 of the Trademark Law. Based on the above, CNIPA decided to invalidate the Disputed Mark.

• Typical Significance

This is the case wherein the commercialization rights of character names are being recognized as a "prior right" under Article 32 of the Trademark Law. This case again provide guidance on the protection of legal rights and interests in cultural and creative industry. Although the character names cannot be protected as works under Copyright Law in consideration of lacking originality, the market recognition and commercial value of the character names have been established, which can be

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protected as commercialization rights. When the stable market connection is formed between the character names and the right holders, the goodwill and public recognition of commercialization rights will produce economic value. Any trademark registration without the right holder's permission will not only disconnect the right holder and the names (movie names and/or character names) but may also mislead the public to believe that there is authorization or cooperation between the right holder and the registrant of the disputed marks, thereby damaging the right holder's market competitive priorities and the opportunities to develop the derivative products.

In this case, the evidence chain in relation to the reputation is completely established, and which can sufficiently prove and support commercialization rights. The movie and the characters have been substantially different from the traditional character of Ne Zha and become a unique modern commercial mark. The connection between the applicant and the movie and the characters have been widely recognized by relevant public. Therefore, the established commercialization rights and commercial value should be protected.

- **Our experiences in relation to the cases involving the confirmation of commercialization rights in China**

As a local law firm featuring IP related practices, our firm handles various cases in relation to the commercialization rights of character names. Around 10 years ago, our senior trademark attorney Ms. Ann Xu and her assistant won an invalidation case for the client on the basis of the commercialization rights of the character name from a world-renowned movie series. And that is the first case in China wherein the commercialization rights of character names/movie names are being recognized by the Court. This case opened up a historically new way to protect the movie names and characters names and cartoon names etc. and provide a significant solution to the movie and television program producers etc.

About Tengyu

Beijing Tengyu Law Firm is a Chinese local general firm with over decade's history. Starting with practices in Intellectual Property, Tengyu gradually became a law firm who is not only capable of providing legal services for both contentious and non-contentious IP issues, but also commercial dispute resolution, regulatory compliance, civil and criminal liability etc.

In the past years, Tengyu has made many significant achievements and breakthroughs, including recently being listed as one of the "2025 ALB China Firms to Watch". We continue to explore new areas of business, enhance our lawyers' and experts' capabilities, and actively participate in social welfare activities. These efforts not only bring new business opportunities to our firm but also bring more value to our clients and society.

At this new starting point, we will continue to uphold the professional, efficient, honest service concept, continue to explore new service models, to provide better legal services for both our clients locally and abroad. Going forwards, we will share with you the most updated Chinese IP Laws and Practices, as well as the latest developments and successful experiences of our firm.

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