



THE IP DIGEST BY TENGYU



April 2025

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 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 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 forward, 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.

Fast Track for Proof of Trademark Cancellation | Beijing Tengyu Uses Intelligent Monitoring System to capture online and offline trademark use evidence to complete the initial evidence burden of trademark non-use cancellation

- The Origin of Non-Use Cancellation System

China's three-year non-use cancellation system for registered trademarks (abbreviated as "non-use cancellation") originated from the legislative purpose of the Trademark Law. It was first included in the 1993 PRC Trademark Law. Its purpose is to clean up idle registered

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marks, prevent trademark hoarding and malicious registration, and promote the real use of trademarks. Therefore, the non-use cancellation procedure has been widely adopted in China's trademark matters in recent years.



- **Changes In The Initial Burden of Proof for Non-use Cancellation Applicants**

Since the legislative purpose of the cancellation system is to clean up idle registered trademarks and maliciously hoarded trademarks, the China National Intellectual Property Administration ("CNIPA") has always had a relatively light proof requirement for non-use applicants: they only need to provide preliminary evidence to prove that there is reasonable doubt that the applied trademark is not in use. However, in recent years, the number of no-use applications has increased year by year, and even appeared to be rampant. On the one hand, in order to cope with the growing number of rejected applications, the right holders have widely adopted the non-use procedure as a way to remove registration barriers. On the other hand, some applicants (not excluding malicious competitors) have filed non-use applications for the same registered trademark several times in succession in order to create obstacles to the use of trademarks for companies that are legally registered, truly used, and operated in good faith, and disrupt normal operations, resulting in a sudden increase in the cost of trademark registrants to maintain trademark registration and use trademarks, seriously affecting the normal operation of companies.

In view of the serious challenge to the original intention of the non-use system, in order to balance the interests of all parties and avoid the proliferation of malicious non-use applications and the disruption of the order of trademark registration management, we have observed that the CNIPA has recently issued a large number of notices of correction of non-use applications, requiring the applicants to submit preliminary evidence to prove that the applied trademark has not been truly and effectively put into commercial use. The current notice requires the following preliminary evidence: 1. Basic information of the applicant, including business scope, business status or existence status, trademark registration status and other information; 2. Whether the applicant is in business or existence, it should provide investigation reports and evidence such as the sales of goods or services provided by the applicant, business premises or office premises; 3. Evidence gathered online for filing cancellation should be on comprehensive online platforms, and industrial websites to prove the use of trademarks on the goods and/or services, etc. The relevant search should provide full-page screenshots of 5 consecutive pages starting from the homepage, and the platform search provided should be no less than 3.

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● 申请人应就被申请撤销商标连续三年未使用的事实提供初步调查证据，主要包括以下内容：

（一）被申请撤销商标注册人基本信息，包括经营范围或业务范围、经营状态或存续状态、商标注册情况等信息。

（二）注册人为经营或存续状态的，应提供注册人商品销售或服务提供、经营场所或办公场所等调查报告及证据。

（三）被申请撤销商标在综合性网上平台、商标核定注册使用商品或服务的行业性网站等平台检索调查证据，相关检索应提供自首页开始连续5页的整页检索截图，提供的平台检索应不少于3个。

This move by CNIPA will inevitably increase the burden of proof for the applicants who wish to non-use others' mark. How should non-use applicants and trademark agencies respond? Will the CNIPA further issue explanations to further refine and clarify the matter? We will wait and see.

- **Tengyu Uses Intelligent Monitoring System to Quickly Complete the Initial Burden of Proof**

In response to the above-mentioned correction notice from CNIPA, in the absence of further clarification on the details and the platforms include, Tengyu uses the intelligent monitoring system to reach various comprehensive network platforms, including but not limited to Baidu, Sohu.com, NetEase, Sina Weibo, Bing, JD.com, Tmall, Taobao, Pinduoduo etc., as well as offline physical stores, companies, and shops across the country. Through this channel, Tengyu can quickly obtain information, and only needs to screen the information to obtain relevant online evidence. In addition, for offline evidence, Tengyu also uses the online identification + offline visit model to complete the initial burden of proof.



In the context of the adjustment of the trademark non-use application rules, applicants are required to submit systematic and quantified evidence to prove non-use. The above monitoring system enables Tengyu to easily assist customers in collecting online evidence,

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conducting onsite investigations, obtaining registrant qualification certificates and generating systematic analysis reports. This method can help non-use applicants to complete the initial burden of proof quickly, comprehensively and cost-effectively. Under the new circumstances, the intelligent monitoring system has become an important helper for Tengyu's clients to safeguard their own rights and interests and make reasonable use of trademark resources.

- **Tengyu's internal investigation team further assist the evidence collection**

In response to the new requirement of CNIPA for the submission of "investigation reports and evidence of business premises and office premises" for non-use cancellation application, if the aforementioned intelligent monitoring system is unable to provide relevant evidence, Tengyu's internal investigation team can also be activated in a timely manner to provide high-quality and cost-effective on-site investigation and evidence collection services, further helping clients cope with the strict requirements for non-use cancellation application.

Tengyu Landmark Case| Should the Court at the Customs Location Has Jurisdiction based on a Temporary Customs Detention?

Recently, Tengyu represented the client in a copyright dispute case before Ningbo Beilun Court. Our lawyer Mr. Li Xinhao won on behalf of the client in the jurisdictional objection procedure in accordance with the Civil Procedure Law and relevant judicial interpretations. The court ultimately ruled to transfer the case from the local court where the Customs located to the court where the defendant is located. This case shows a new possibility in terms of jurisdictional determination in intellectual property disputes and holds significant reference to similar cases.

- **Case Review**

The plaintiff, an international company, filed a lawsuit before Ningbo City Beilun District Court, where the court has jurisdiction based on that the Customs where the suspected infringing goods was temporarily detained. Our lawyer noticed that the Beilun Customs had temporarily detained the suspected goods, and issued a decision wherein they indicated that the Customs is not able to confirm whether the detained goods has infringed upon the plaintiff's copyright, and subsequently released the detained goods. Therefore, the Customs location cannot be recognized as the location of the infringement. And it is arguable whether it can be recognized as the "seizure location" as stipulated in Article 4 of the Supreme People's Court's Interpretation on Several Issues Concerning the Application of Law in the Trial of Copyright Civil Dispute Cases. Therefore, our lawyer consider we should file an jurisdiction objection and thus transfer the case to be under jurisdiction of the court of defendant's domicile. And the Beilun Court finally supported our objection and ruled that the case should be transferred to the court where the defendant is located.

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被告[REDACTED]，对本案管辖权提出的
异议成立，本案移送浙江省[REDACTED]人民法院审理。

如不服本判决，可在裁定书送达之日起十日内，向本院
递交上诉状，并按对方当事人人数提出副本，上诉于浙江省
宁波市中级人民法院。

审 判 员 [REDACTED]



本件与原本核对无异

法官助理 [REDACTED]
代书记员 [REDACTED]

- **Legal Basis**

Article 29 of the Civil Procedure Law provided that when the Lawsuits are filed for infringement, the case should be under the jurisdiction of the People's Court at infringement location or at the defendant's domicile. Article 4 of the Supreme People's Court's Interpretation on Several Issues Concerning the Application of Law in the Trial of Copyright Civil Dispute Cases provided that the civil lawsuits are filed for copyright infringement, the case shall be under jurisdiction of the People's court where the infringing acts were committed, the infringing copies are stored or seized, or the defendant is located. The location of storing infringing copies refers to the place where infringing copies are stored or hidden in large quantities or for business purposes. The seizure location refers to the place where customs, copyright protection center, or industrial and commercial administration authorities seize or detain the infringing copies.

- **Legal Analysis**

Seizure and detention measures are temporary actions taken by administration authorities to stop infringing acts which holds legal and timely effects. The validity of seizure and detention measures is a key factor to determine the jurisdictional court at the seizure location. In this case, the detention measures are canceled on the basis that the infringement cannot be determined. In that case, there is room to question, whether the detained products can still be regarded as infringing products. And subsequently, the factual basis to consider the court of detention as the qualified jurisdictional court is questionable.

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- **Significance**

In this case, the court clarifies the boundaries of determining the "seizure location" in intellectual property cases, and thus safeguarding the defendants' litigation rights. Particularly, under circumstance of frequent cross-border e-commerce disputes, this case provides important strategic references for companies to deal with lawsuits at courts in different cities or regions.

- **Conclusion**

Court jurisdiction is the first battleground in litigation and it is one of the crucial procedural rights for the parties concerned. For some circumstances, the court jurisdiction will affect litigation costs and the fairness. Our lawyers helped the companies take the initiative position in complex disputes based on their profound understanding of legal provisions and rich practical experience.

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