Introduction and Application of Clean Hands Doctrine in Trademark Cases Involving Non-Use Cancellation*

— A Study of the "小惡魔" Case

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Under China's trademark legislation, the non-use defence can only be raised against a claim for damages, rather than cessation of infringement. An accused infringer is unable to assert a defence against a claim for cessation of infringement where the claim is based on a registered trademark that has not been used for three consecutive years. A long idle trademark still confers exclusive rights that can hinder latecomers from production and business operation. This is not only in violation of the trademark law's purpose of maintaining fair competition, but also detrimental to the development of market economy. Most scholars focus on legislation, suggesting that the decision on trademark cancellation should take effect retroactively to the date of the request for non-use cancellation, thereby negating the trademark's validity fundamentally; [1] or that the non-use defence should be strengthened such that the accused infringer can defence against the right holder's cessation of infringement claim. [2] Nevertheless, before the revision of the trademark law, the above legislative suggestions cannot provide solutions for judicial practice, and such cases like the "小惡魔" case [3] have to find another way out.

I. The "小惡魔" case: Case brief and the key issue

Company G is the licensed user of the trademark "小惡魔". In 2022, Company B filed a request for cancellation with the China National Intellectual Property Administration, followed by non-use cancellation examination, re-examination and administrative proceedings. In 2023, Company G initiated a lawsuit, requesting the court to order Company B to cease trademark infringement and unfair competition, make an apology, eliminate the impact and compensate for losses on the grounds that Company B used the words "小惡魔" in clothing product titles, and as a search keyword on online platforms and in promotion of clothing products. Company B argued that no entity in the market had done business under the trademark "小惡魔", and a request for trademark cancellation had been filed before the lawsuit initiated by Company G. In 2024, the Beijing Intellectual Property Court determined that the evidence submitted by the trademark owner could not prove the effective commercial use of the trademark in suit for three consecutive years prior to Company B's request for trademark cancellation, and revoked the reexamination decision which maintained the registration of the trademark in suit on part of the registered goods, such as clothing. In 2025, the Beijing High Court affirmed the first-instance judgment.

The key issue in the civil case is whether Company G's claims for cessation of infringement and damages are tenable after the cancellation of the trademark for non-use for three consecutive years. The judgment focused on the validity of the trademark during the non-use cancellation examination, reexamination and administrative proceedings. The court held that the validity of the trademark cancelled due to non-use for three consecutive years can be divided into three stages: prior to the request for cancellation, the trademark was valid; from the date of filing the request for cancellation to the date of publishing the cancellation, the trademark was formally valid but had substantively lost its value for trademark protection; and subsequent to the date of publishing the cancellation, the trademark right terminated. The accused infringement occurred in the first two stages. The functions of a trademark to identify source and carry goodwill explain why it is protected by law. The cancellation of a trademark due to non-use indicates that the trademark did not exert the source-identifying and goodwill-carrying functions at the time when the non-use cancellation was initiated and therefore lost its protection value. The examination, reexamination and administrative proceedings regarding the non-use cancellation inevitably render the date of publishing the cancellation later than the date of losing protection value. As such, the trademark cancelled due to non-use should not receive retroactive judicial protection from the initiation of non-use cancellation to the date of publishing the cancellation.

The court decided that the trademark in suit was legally valid in the aforesaid first stage, and the accused conducts constituted trademark infringement and unfair competition; however, pursuant to Article 64.1 of the Trademark Law, if the registered trademark owner can prove neither that the registered trademark had been put into actual use in the previous three years, nor that it suffered other losses due to the infringement, the accused infringer is not liable for compensation. In this case, Company B filed an application for cancellation of the trademark application due to non-use on 9 June 2022, and the effective administrative judgment has now determined that the trademark owner failed to submit evidence to prove its effective use of the registered trademark in suit during the three-year period. Therefore, the accused infringement did not cause actual losses to Company G, and Company G's claim for damages is unfounded. Since the trademark in suit had lost its value for judicial protection in the second stage, Company G's claims for cessation of infringement and damages lacked legal basis and were rejected. [4]

II. Confusion about retroactivity: Does the publication of trademark cancellation have retroactive effect?

In the "小惡魔" case, the date of filing the request for cancellation was determined as the time point when the cancelled registered trademark lost its protection value, in such a way to prevent the accused infringer from bearing unreasonable liability for infringement due to the late publication of trademark cancellation. The trademark was "formally valid but substantively invalid" from the date of filing the request for cancellation to the date of publishing the cancellation. Such a judging rationale was also reflected in the "MING JUE and device" case, in which the court held that the cancellation of a registered trademark due to non-use for three consecutive years meant that the trademark right failed to exert its commercial value during its validity period, so there were no substantive interests deserving protection, and there was no need to provide it with retroactive judicial protection. [5] In the "MING JUE" and "小惡魔" cases, the courts actually acknowledged the retroactive effect of the publication of trademark cancellation. However, Article 55.2 of the Trademark Law (2019) stipulates that the exclusive rights on a trademark shall be terminated from the date of publication, or in other words, the publication of trademark cancellation has no retroactive effect. This provision means that there is no room for argument over the validity of a trademark during the examination, reexamination and administrative proceedings regarding the non-use cancellation, and there is no semantically neutral option for the literal interpretation of the effective date of the decision on cancellation.

The final judgment of the "小惡魔" case is problematic because the judges created law to grant the retroactive effect to the publication of trademark cancellation, which impairs the trademark registration system based on acquisition through registration. The greatest advantage of the acquisition-through-registration system lies in the clear trademark ownership and defined scope of rights. Although the system is susceptible to tricky problems like trademark hoarding, if the stability of rights obtained under the system can be easily undermined, the system will lose its comparative advantage over acquisition through use. [6] In the present case, the "formal validity" of the trademark was separated from the "judicial value warranting substantive protection". Article 49.2 of the Trademark Law, on which the court's judgment was based, only stipulates the right to request cancellation and the cancellation procedures, with no mention of the effective date of the decision on cancellation; however, Article 55.2 of the Trademark Law, which sets forth the effective date of the decision on cancellation, was not taken as the basis for judgment.

The stability of rights refers to not only the stability in acquiring a right, but also the definiteness in cancelling a right. The judging rationale that a trademark can be "formally valid but substantially invalid" places the point at which a trademark right terminates in an unstable state, which is contrary to the legal provisions. As such, the order of trademark conducts shaped by the acquisition-through-registration system is undermined.

To sum up, from the initiation of the trademark cancellation to the publication of trademark cancellation, the fundamental right basis of Company G's claims should not be directly denied. The claim for damages can be exempted in the light of the non-use defence under Article 64.1 of the Trademark Law. The key issue here is the cease of infringement. This article attempts to make an analysis under the clean hands doctrine.

III. Clean hands doctrine: No one can take advantage of his own wrong

1. What is the clean hands doctrine

The clean hands doctrine is rooted in the maxim which states that one "who comes into equity must come with clean hands", which means no one shall take advantage of his own wrong. The application of the doctrine can maintain the credibility of courts, in such a way to "protect the court against the odium that would follow its interference to enable a party to profit by his own wrong-doing". [7] The doctrine has been recognized by the U.S. Supreme Court since the early days of the United States, and Judge Posner even advocated that the clean hands doctrine shall not be applied only to lawsuits where equitable relief is sought. [8] For instance, in *Manhattan Medicine Co. v. Wood*, the plaintiff applied for an injunction to restrain the defendants from using an accused trademark of the plaintiff on certain medicines prepared by them, and to compel an accounting for the profits made from such use in their sale of the medicines. The court held that those who come into a court of equity seeking equity must come with pure hands and a pure conscience. If they claim relief against the frauds of others, they must themselves be free from the imputation. If the sales made by the plaintiff and his firm are effected, or sought to be, by misrepresentation and falsehood, they cannot be listened to when they complain that, by the fraudulent rivalry of others, their own fraudulent profits are diminished. [9]

Legal principles "when concretized or typified to a certain extent, begin to manifest in the form of specific rights, obligations or legal relationships" [10], thereby forming legal rules. In comparison with the principle of good faith, the clean hands doctrine has a clearer evaluation rationale and a more explicit logical structure. Given that not all provisions named "principles" are principles, can the clean hands doctrine be regarded as a rule derived from the concretized principle of good faith? This article is of the view that the clean hands doctrine is a legal principle.

First, the clean hands doctrine is closer to an ideal, ought-to-be and optimal command. According to the theories of Alexy, principles are "norms requiring that something be realized to the greatest extent possible, given the legal and factual possibilities" [11], the essence of which is "an abstract, nascent manifestation that has not yet been connected with the finite possibilities of the normative world and the real world, and that ought, or only ought, to be" [12]. The clean hands doctrine is closer to the "most primordial, ought-to-be" state of legal principles. Second, the application of the clean hands doctrine is more in line with the application of principles. Unlike the rigid, all-or-nothing application of rules, the application of principles requires a weighing up of strengths of various considerations. It is a prevailing view in the academic circle that the clean hands doctrine shall not be applied absolutely through subsumption, but be applied in conjunction with other principles. Third, although there are relatively definite application standards for the clean hands doctrine, the specific legal effects cannot be determined by the meaning thereof, and the clean hands doctrine cannot be combined with other legal rules to form a complete norm. Therefore it cannot be considered as an ordinary provision.

2. The clean hands doctrine is the sub-principle of the principle of good faith

There have been a few studies in China that touch upon the clean hands doctrine, but the relationship between the clean hands doctrine and the principle of good faith has not been made clear, which has a bearing on the application route of the doctrine in the absence of legal provisions. [13] Masanobu Kato, a Japanese scholar, considers the clean hands doctrine to be secondary to the principle of good faith, stating that "in strict adherence to the principle of good faith, the following acts shall not be performed … those who have engaged in improper acts request legal remedies for their acts" [14]. The common low theories also incorporate the maxim that "no one can take advantage of his own wrong" under the framework of good faith.[15] The clean hands doctrine is the sub-principle of the principle of good faith:

First, the clean hands doctrine is the embodiment of the correcting function of the principle of good faith.

The law-correcting function that the principle of good faith has is not to correct specific legal provisions, but to set forth provisos for individual cases in the judicial application of those provisions, thereby enabling outcomes to differ from the conventional application thereof.[16] In other words, since the strict application of a specific rule may result in serious injustice in a case, it is necessary to bring the correcting function of the principle of good faith into play to restrict the application of the specific rule. In view of the difference in functions, the principle of good faith is sub-divided into the principle of good faith for right restriction, the principle of good faith for law correction, and the principle of good faith as an act standard.[17]

The clean hands doctrine, as a law correcting tool, imposes restrictions on the application of specific rules by requiring that "no one can take advantage of his own wrong". To be specific, according to Radbruch's Formula, where substantive laws that are contradictory to justice to an intolerable degree such that laws become "incorrect laws", the substantive laws lost their validity as laws. Furthermore, where the value of the maxim that "no one can take advantage of his own wrong" outweighs the substantive reasons for rules, judges must restrict the application of the rules in individual cases. Similar to the *exceptio doli* in Roman law, the clean hands doctrine functions to overcome the limitations of statutory laws, so as to achieve fairness in individual cases and substantive justice in the face of rigid legal provisions, which is in harmony with the core value of objective good faith.

Second, the value evaluation under the clean hands doctrine accords with the core value of objective good faith.

Hart proposed that a rule has its core and penumbra. For certain words, there must be a core of settled meaning, but there will be, as well, a penumbra of debatable cases.[18] According to the distinction between core and penumbra, the principle of good faith has developed its new connotations in practice, the core values of which are always consistent with that of the principle of good faith.

The value evaluation under the clean hands doctrine is in line with the core value of objective good faith of the principle of good faith. Objective good faith is a conduct norm, not a mental state, requiring civil subjects not to harm or even to benefit others when performing obligations or exercising rights.[19] Objective good faith is of extreme significance for maintaining market transaction order. If market entities are all desired to gain benefits from their improper conducts and further harm others' interests or the public interest, transaction security will no longer be guaranteed. Everyone will be worried about suffering losses in transactions, thereby causing market disorder and economic recession. The core value of objective good faith lies in that a party's conducts should refrain from harming the interests of the counterparty or the public interest, protect reasonable reliance, and maintain the general level of integrity in transaction fields, thereby accomplishing the fair distribution of benefits. In a market economy, civil subjects often have a reasonable expectation that the counterparties will derive benefit through proper conducts. The clean hands doctrine aligns with the core value of objective good faith by means of guaranteeing the reasonable reliance.

Third, the coherence between the clean hands doctrine and the principle of good faith is also embodied in the consistency between the clean hands doctrine and the relevant rules under the principle of good faith in terms of value evaluation.

In addition to prove the consistency therebetween in value evaluation from a positive perspective, it is also necessary to demonstrate from a negative perspective that the clean hands doctrine does not contradict with the existing laws in relation to the principle of good faith. Since the principle of good faith in trademark law originates from the Civil Code, effort shall be made to examine whether the value evaluation pursuant to the specific rules on objective good faith in the Civil Code is consistent with that under the clean hands doctrine.[20] The rules on objective good faith in the Civil Code mostly reflect the spirit of having due care of the counterparty's interests, and exercising rights and performing obligations in a proper manner.

(1) Article 132 stipulates that no right holder shall harm the national interest, the public interest, or the legitimate rights and interests of others by abuse of his rights.

(2) Article 590 stipulates the debtor's obligation of notification in case of force majeure, which embodies the spirit of good faith in caring for others.

(3) Article 1198 stipulates the tort liability of a specific subject who breached the duty of care, wherein the duty of care is a subordinate norm derived from the principle of

good faith [21], and stems from caring for others in objective good faith.

It can be seen that the value evaluation of improper conducts pursuant to the rules regarding objective good faith is consistent with that under the clean hands doctrine. The clean hands doctrine and the value evaluation embodied in the above-mentioned legal provisions are all aimed to punish improper conducts. The former requires that no one shall take advantage of his improper conducts, and the latter imposes the liability for breach of contract or tort on those who violate special obligations. [22]

IV. Solution path: Application of the clean hands doctrine in the "小惡魔" case

1. Premise for application

The application of principles is premised on the exhaustion of legal rules. At present, there is no legal basis for directly rejecting a claim for cessation of infringement solely based on the non-use of trademark.

In this regard, there is a view that the legal principle that civil rights shall not be abused can be used to reject the trademark owner's claim for cessation of infringement. [23] Abuse of trademark rights is manifested in two forms: one is the malice at the time of trademark registration, and the other is the malice arising from the exercise of trademark rights. [24] Company G is not the owner of the trademark in suit, but obtained a license to use the trademark from the trademark owner. The acquisition of right was legitimate, and there was no evidence proving that Company G harmed others' interests or the public interest out of subjective malice. Thus, Company G's claim for cessation of infringement of a valid trademark can hardly be regarded as an abuse of trademark right.

Honestly, the principle of prohibition of abuse of rights and the clean hands doctrine display extreme similarity in that the conducts subject to them are based on inherently valid rights, which however are abused, thereby resulting in legal consequences unfavourable to the actors. But they differ in major functions and scope of application. The principle of prohibition of abuse of rights places emphasis on regulating the scope of the exercise of rights, whereas the clean hands doctrine aims to correct the unreasonable distribution of benefits, which may result from improper exercise of rights or other legal facts. [25] That is, the former focuses on the exercise of rights itself, while the latter pays attention to improper conducts in addition to the exercise of rights. After all, not all benefits are manifested as rights, and the law's protection of individual interests does not necessarily take the form of rights.

2. Criteria for Application

The clean hands doctrine regulates benefits from improper conducts. The judging standards shall be constructed from the perspectives of benefits, improper conducts and the relevance therebetween.

(1) Improperness of conducts

Improper conduct may be the exercise of rights itself, or any conduct prior to the exercise of rights but closely associated with it.

Under the system of acquisition through registration, a registered trademark that has not been put into use is in essence an expectant right subject to a suspenseful condition. When the trademark is put into actual use, the suspenseful condition is fulfilled and the expectant right becomes a vested right. [26] The trademark owner has the obligation to fulfil the suspenseful condition within a specified period. The acquisition of a trademark through registration is based on the presumption of the symbol's future source-identifying function. If the trademark is not put into actual use, the signification of the trademark symbol cannot be established, the source-identifying function of the trademark cannot be generated, and the purpose of the trademark law for urging the right holder to use the trademark in production and operation and for promoting the development of market economy can in no way be realized.

In the present case, the trademark owner did not put the trademark "小惡魔" into effective, commercial use in the three years before Company B's request for trademark cancellation due to non-use, and breached its obligation to fulfil the suspenseful condition for the expectant right within the specified period. Therefore, the conduct of the trademark owner is improper.

(2) Tangibility of benefits

"[A brand is] in contrast to an invention which many firms can reuse without undermining its value. Viewed from this perspective, trademarks are private goods." [27] The grant of Company G's claim for cessation of infringement will repel Company B's continuous use of the symbol "小惡魔", exclude the competing activities of Company B from commercial channels, render consumers improperly rectify the correct relationship that should have existed between the trademark symbol and its user, and unduly undermine the signification of the symbol. As a result, Company G would gain benefits from the exclusive commercial use of the symbol "小惡魔".

(3) Probability of causation

The clean hands doctrine does not apply unless the wrongful conduct is "directly connected with and material to the matter in litigation" [28]. The "fruit of the poisonous tree" doctrine in criminal procedure law originates from the clean hands doctrine. The claim for cessation of infringement in the present case is also a "fruit of the poisonous tree" in some sense, which can illustrate the causal relationship between the improper conduct and the resulting benefits. The validity of the trademark in suit (the "tree") has been tainted by the right holder's non-use for consecutive years, and the claim for cessation of infringement (the "fruit") based on the trademark has been tainted as well. There has been established a clear causation between the above-mentioned improper conduct and the claim for cessation of infringement, so Company G's claim shall be rejected under the clean hands doctrine.

(4) Appropriateness of benefit deprivation

The deprivation of benefits shall be commensurate with the severity of the improper conduct, and the right holders shall not be punished simply because of minor wrongdoing. In the present case, the trademark had not been used for more than three consecutive years, which exceeds the preparation period for trademark use as stipulated in China's Trademark Law and is not a minor wrongdoing.

To sum up, Company G's claim for cessation of infringement can be rejected under the clean hands doctrine, which is the sub-principle of the principle of good faith stipulated in Article 7.1 of the Trademark Law. Unlike the final judgment in the present case that directly denied the right that forms the basis of the claim for cessation of infringement, "a judgment made under the principle of good faith is only effective for an individual case, and does not create an absolute right that is universally applicable". [29] The principle of good faith is applied to refrain the party that violates the clean hands doctrine from exercising the right to claim cessation of infringement on the premise of a valid trademark, and to only correct the unreasonable distribution of benefits in an individual case without denying the existence of the right itself. This is why such application is consistent with Article 55.2 of the Trademark Law.

V. Conclusion

Taken the "小惡魔" case as an example, this article offers a solution to the problem that the validity of a trademark is improperly prolonged due to the late publication of trademark cancellation as a result of procedural delays under the clean hands doctrine in the absence of clear rules and in light of principle-based trade-offs. As constrained by human rationality, it is unlikely to master a fundamental principle in its entirety at a given moment, and what can be grasped is only a certain part. Therefore, legal principles are in the process of evolution, during which fundamental principles give rise to different sub-principles, which in turn deepen people's understanding of the fundamental principles. Thus, the fundamental principles and sub-principles develop reciprocally. The principle of good faith accomplishes its self-development with the clean hands doctrine.■

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The 22nd Shanghai International Intellectual Property Forum Held

The 22nd Shanghai International Intellectual Property Forum (SIIPF), themed "Intellectual Property and Artificial Intelligence," opened on 18 October 2025. The forum hosted the awards ceremony for the 5th Shanghai Intellectual Property Innovation Awards.

Shanghai Vice Mayor Xie Dong, CNIPA Deputy Commissioner Lu Pengqi, and WIPO Deputy Director General Wang Binying presented the awards to the winners of the Shanghai Intellectual Property Innovation Awards.

The BRIPC Best Practice Cases for Granted Chinese Patents from Belt and Road Partner Countries were released during the forum.

Over the three-day event, participants from China and abroad engaged in in-depth discussions on topics such as IP management in the AI era, IP governance and innovation ecosystem construction, and new commercialization paradigms for high-value patents.

Source: CNIPA