

Intellectual Property Powerhouse Strategy Perspective: A Study on Legal Risks of Trademark Pledge: Taking Zhejiang Province as an Example

Jia Chen

China Jiliang University, Hangzhou, Zhejiang, China

Abstract: As a key component of intellectual property financing, trademark pledge financing has attracted much attention. However, the legal risks in its practice have gradually become prominent, and Zhejiang Province, a region with rapid development of trademark pledge financing, makes the legal risks in its related practices particularly worthy of exploration. This study analyzes the current practice of trademark pledge financing in Zhejiang Province, sorts out the existing legal risks, and explores risk avoidance paths in combination with regional development characteristics. The research finds that the legal risks of trademark pledge financing in Zhejiang Province are characterized by the interweaving of universality and regional particularity, which are difficult to eliminate completely, but some risks can be effectively avoided through the improvement of legal systems. Based on this, the study puts forward targeted suggestions for promoting the practice of trademark pledge financing in Zhejiang Province, providing a reference for optimizing the regional trademark pledge financing environment.

Keywords: Trademark Pledge; Legal Risk; Pledge Realization; Zhejiang Province

1. Introduction

Intellectual property, as the greatest driving force in the 21st century for boosting economic development, improving people's livelihood, and advancing scientific and technological progress, has triggered competitions in this field among various countries and regions worldwide. As the largest developing country and the second-largest economy in terms of GDP in the world, China is naturally not willing to lag behind. In 2023, the national patent and trademark pledge financing volume reached 853.99 billion yuan, a year-on-year increase of

75.4%, benefiting 37,000 enterprises.

Among intellectual property pledges, trademark right pledge is favored by enterprises due to its uniqueness. Trademark right pledge financing refers to a practice where right holders such as enterprises pledge their legally owned registered trademark rights to obtain funds from financial institutions and repay the funds on schedule. As a new type of pledge financing method, it has become a viable option worthy of consideration for small and medium-sized enterprises in terms of financing. Despite the rapid growth in the scale of China's intellectual property pledge financing business, the overall development level remains low, and it is currently in a situation where it is praised but not widely adopted. The main focus of this paper is to explore the reasons behind this phenomenon and analyze the legal risks of trademark right pledge.

This paper selects the legal risks of trademark right pledge as the research object and takes the practical development of Zhejiang Province as a case for analysis. As a pioneer in trademark right pledge, Zhejiang Province issued the "Interim Provisions on Trademark Exclusive Right Pledge Loans in Zhejiang Province" as early as 2009. In 2020, Zhejiang took the lead in establishing an intellectual property pledge registration service window across the province, accumulating a wealth of practical experience. Meanwhile, through the specific case of Zhejiang Province, we can conduct an empirical analysis of the legal risks existing in trademark right pledge, allowing us to infer the general situation from the specific [1].

2. Overview of the Practice of Trademark Pledge in Zhejiang Province

2.1 The Current Situation of Trademark Right Pledge Financing in Zhejiang Province

This chapter will analyze typical financing models, with Hangzhou as a prime example,

focusing on the Hangzhou model. In this model, enterprises use trademark rights as collateral to apply for loans from banks and other financial institutions. Asset evaluation agencies assess the value of the enterprises' trademark rights, guarantee companies provide guarantees for the enterprises' financing, and banks and other financial institutions decide whether to issue loans based on the evaluation results. This model requires a relatively sound value evaluation system and trading platform. Currently, the Zhejiang Intellectual Property Online Platform provides integrated services, and in its knowledge financial market section, it builds a bridge for communication between enterprises and banks as well as other financial institutions. Financial institutions settled on this platform include Zhejiang Mintai Commercial Bank, Zhejiang Tailong Commercial Bank, Zhejiang Chouzhou Commercial Bank, etc [2]. Meanwhile, the government plays an important role in enterprises' trademark right pledge financing. The government provides policy support for enterprise financing. In the Administrative Measures for the Special Fund for the Construction of Hangzhou Intellectual Property Operation Service System, the government grants policy subsidies to guarantee institutions, evaluation institutions, and financial institutions. It awards hundreds of thousands of yuan to banking financial institutions with high pledge amounts, and grants rewards to institutions providing guarantee services and evaluation services at a standard not exceeding 10% of the actual service fees they charge [3].

In the Hangzhou model, a financing risk-sharing model of "risk compensation fund + cooperative institution guarantee" has been formed. The government compensates for trademark right pledge financing in the form of special funds. By strengthening policy guidance, it has formulated and issued the Administrative Measures for Hangzhou Patent Right Pledge Financing Risk Compensation Fund to establish a compensation fund to share and compensate for risk losses incurred by policy-based guarantees for small, medium, and micro enterprises in carrying out trademark pledge financing services. The Administrative Measures clarify the conceptual connotation of trademark right pledge financing and determine the objects, funding standards, and conditions of risk compensation projects. The Hangzhou

Intellectual Property Bureau has invested 30 million yuan in the initial phase of the risk subsidy fund, publicly selected excellent cooperative guarantee institutions in accordance with prescribed procedures, signed cooperation agreements with them, and guided them in carrying out intellectual property pledge financing guarantee business. Under this model, the risk borne by banking financial institutions shall not be less than 20% [4]. The Administrative Measures clearly stipulate the limited proportion of risk compensation from the risk compensation fund: if the compensation rate of the cooperative guarantee institution is less than or equal to 1%, the risk compensation fund shall bear 50% of the loss of the cooperative guarantee institution; if the compensation rate exceeds 1% but is less than or equal to 3%, the risk compensation fund shall bear 25% of the loss of the cooperative guarantee institution; if the compensation rate exceeds 3%, the risk compensation fund shall suspend external compensation.

2.2 Legal Risks of Trademark Pledge in Zhejiang Province

2.2.1 Trademark rights are vulnerable to infringement

Trademark infringement cases occur frequently, which will undoubtedly have an adverse impact on both parties involved in trademark right pledge. The value of the trademark may also decrease as a result, which is an important consideration for banks and other financial institutions. In trademark right pledge, due to external factors such as contract disputes and legal infringements, if legal and effective remedies cannot be taken in a timely manner, it is highly likely to cause the loss or reduction of the trademark value [2]. In the case of trademark infringement disputes between Wenzhou Quchaqu Catering Management Co., Ltd. and Pinchuang Tianxia (Beijing) Technology Development Co., Ltd., the defendant was the operator of the involved website "xxx.com". From September 2018 to June 2020, the defendant marked the project information of "Quchaqu" on the "xxx.com" website operated by it, which belongs to the same service as the restaurant and restaurant approved for use of the No. 11111365 "Quchaqu" registered trademark. The prominently used words "Quchaqu" are the same as the trademark. Prior to this, the plaintiff

obtained a maximum credit loan of 5 million yuan from Zhejiang Tailong Commercial Bank by pledging 11 trademark rights of the enterprise. The above-mentioned trademark infringement behavior of the defendant affected the right holder of the trademark and hindered the realization of its rights. In accordance with the provisions of Article 63, Paragraph 3 of the Trademark Law of the People's Republic of China, the court determined that the defendant's compensation amount was 50,000 yuan, taking into account factors such as the popularity of the involved trademark, the nature of the defendant's website, the defendant's subjective fault in infringement, the duration of infringement, and the reasonable expenses incurred by the plaintiff to stop the infringement. The "Quchaqu" trademark in this case was recognized as a well-known trademark in Wenzhou in 2017, and the plaintiff obtained a loan of 5 million yuan from Tailong Commercial Bank by pledging this trademark right. The above statements indicate that the trademark in this case is not an ordinary one; it has a huge value, which has reached 5 million yuan in the internal value evaluation system of commercial banks and other financial institutions. However, the trademark infringer infringed this trademark with huge value and certain popularity for as long as two years, but the court ruled that it should compensate 50,000 yuan. This can only reflect the compensation function of the law and the principle of making good the loss in law, which only compensates the loss of the infringed party, but fails to thoroughly punish the infringer. Such a legal orientation will undoubtedly reduce the infringement cost of the infringer and increase the rights protection cost of the victim. If the rights protection cost of the infringed party is too high, the infringed party may give up safeguarding its legitimate rights and indulge the infringer in infringing upon it.

To a large extent, the vulnerability of trademark rights to infringement stems from the inherent legal characteristics of trademark rights as intellectual property. In decades of practical development, this obstacle has not been effectively solved [5].

2.2.2 The scope of the subject matter of trademark rights pledge is restricted

Before the implementation of the Civil Code of the People's Republic of China (hereinafter referred to as the Civil Code) in January 2021,

the legal basis for trademark right pledge originated from Article 223 of the Property Law of the People's Republic of China (hereinafter referred to as the Property Law). Article 223 defines the eligibility of transferable exclusive rights to registered trademarks, and stipulates the scope of trademark right pledge subjects through legal provisions, thereby excluding unregistered trademarks from a side perspective. The currently applicable Civil Code follows this legislative path and adopts the same legislative form in Item 5 of Article 440. Among the excluded unregistered trademarks are unregistered well-known trademarks. Unregistered well-known trademarks have high recognition and reputation in the market economy, and their trademarks have high economic value. In practice, due to malicious registration of trademarks and the neglect of trademark rights holders, there are a large number of unregistered well-known trademarks. Article 13 of the Trademark Law has special provisions on the protection of well-known trademarks. When a well-known trademark is infringed, the law shall provide timely and effective protection. Both registered and unregistered well-known trademarks can apply for protection of relevant trademark rights through relevant legal procedures when they are infringed. For example, the "Huanyu" trademark of Zhejiang Huanyu Construction Group was maliciously registered at the beginning of the 21st century. Due to the protection provisions of Article 13 of the Trademark Law, in 2014, the "Huanyu" trademark used by Zhejiang Huanyu Construction Group Co., Ltd. on Class 37 construction services in the International Classification of Goods and Services for Trademark Registration was recognized as a well-known trademark. The protection of unregistered well-known trademarks by the Trademark Law indicates that they have certain value, which is conducive to maintaining market order and promoting the healthy development of the market. Unregistered well-known trademarks have high popularity in the market through actual use, are well-known to the public, and have high value. The purpose of trademark right pledge is to promote enterprise operators to carry out pledge financing. If unregistered well-known trademarks are excluded from the threshold of trademark right pledge, and the scope of trademark right pledge

subjects is restricted, making high-value trademarks unable to carry out pledge financing, it will damage market circulation efficiency, which obviously violates the original intention of the construction of the trademark right pledge system [6].

2.2.3 Legal risks of trademark pledge registration

The former Property Law adopted the doctrine of registration for validity regarding trademark right pledge. Its Article 227 stipulates that if the property rights in intellectual property rights such as exclusive rights to registered trademarks, patent rights, and copyrights are pledged, the parties shall conclude a written contract. The pledge right is established when the relevant competent authority completes the pledge registration. The validity of a trademark right pledge cannot rely solely on the mutual agreement of both parties [7]; it must go through registration and public announcement by the competent authority. The validity of a trademark right pledge contract does not mean the establishment of the trademark right pledge, which takes effect only after registration by the relevant authorities. The signing of the pledge contract is a prerequisite for the establishment of the pledge; in addition, a series of cumbersome procedures are required: the pledgor and the pledgee submit an application to the relevant authorities, provide valid pledge contracts and other documents, the relevant authorities conduct a substantive review of the documents, and issue a Trademark Exclusive Right Pledge Registration Certificate after the review. This doctrine of registration for validity carries certain risks, which will hinder the improvement of efficiency, increase time and resource costs, and affect the value of trademark right pledge financing [8]. In 2009, Zhejiang Province formulated the Interim Provisions on Trademark Exclusive Right Pledge Loans in Zhejiang Province (hereinafter referred to as the Provisions) in accordance with the provisions of the Property Law of the People's Republic of China, Guarantee Law of the People's Republic of China, Trademark Law of the People's Republic of China and other relevant laws and regulations, combined with the actual situation in Zhejiang Province. These Provisions are an extension of the Property Law's doctrine of registration for validity in local practice.

The mainstream registration models are

respectively the doctrine of registration for validity and the doctrine of registration for opposition. The doctrine of registration for opposition is completely opposite to the doctrine of registration for validity adopted in China. Under the doctrine of registration for opposition, the establishment of a trademark right pledge contract means the validity of the pledge right, without the need for substantive review by relevant authorities. Whether to register or not is a choice for the pledgor and the pledgee, which can be freely decided according to the will of both parties. Registration is no longer a valid requirement for the pledge right, but unregistered rights cannot oppose bona fide third parties. The doctrine of registration for opposition in the field of trademark right pledge has gained certain recognition in overseas regions; for example, Japan has adopted the doctrine of registration for opposition. The pledgee's claim to the value of the trademark right is only an intangible possession. Since the object of the trademark right is intangible property, the pledgee cannot actually possess it. The trademark right is still actually controlled by the pledgor. Although the trademark right can continue to be used during the pledge period, and although the law restricts the rights of the pledgor, the pledgee cannot actually exercise control [9].

After 14 years of implementation, the Property Law has now been replaced by the Civil Code, and both contain the same legislative thinking. Article 440 of the Civil Code indicates that China still adopts the doctrine of registration for validity in terms of trademark right pledge. The adoption of the doctrine of registration for validity will give rise to certain legal risks. For example, if the pledgor and the pledgee reach an agreement and sign a pledge contract, the contract is valid, but the pledge right has not yet been established. If, due to special circumstances, the registration and public announcement are not realized, the right holder can only request the protection of their legitimate rights and interests through the liability for breach of contract stipulated in the contract, and the market order of transactions is easily damaged. In addition, the cumbersome procedures of the doctrine of registration for validity will definitely reduce the efficiency of establishing pledge rights, lower the willingness of the parties involved in the pledge, and raise the threshold, which is undoubtedly a waste of

valuable resources and has an adverse impact on the improvement of the trademark right pledge system.

2.2.4 Difficulties in the enforcement of trademark pledge rights

The realization of trademark pledge rights means that when the pledgor fails to perform the due debt or when the circumstances for realizing the pledge rights as agreed by the parties occur, the pledgee has the right to be paid first from the chattel. Before the promulgation of China's Civil Code, the realization of trademark pledge rights was stipulated by the Property Law. The Property Law stipulated in its Article 229 (a catch-all clause) that the realization of pledge rights over rights shall apply to the provisions on the realization of pledge rights over chattels. Such a stipulation lacks a certain degree of rigor, ignores the differences between pledge over rights and pledge over chattels, has no clear understanding of the particularity of pledge over rights, and simply confuses pledge over rights with pledge over chattels. Articles 436 and 446 of the Civil Code have not made changes to the above system and still follow the provisions from the era of the Property Law. The ways to realize pledge rights over rights are single and unsuitable for trademark rights. China's statutory ways to realize trademark pledge rights mainly include: the pledgee may, through agreement with the pledgor, convert the pledged property into money, or be paid first from the proceeds of auction or sale of the pledged property. Therefore, the mainstream ways to realize trademark pledge rights in China are these three: auction, sale, and conversion into money.

Conversion into money refers to the situation where the pledgor and the pledgee reach an agreement on the basis of equal consultation, sign an agreement, transfer the trademark right to the pledgee at a certain amount, and use the value of the trademark to repay the owed debt. This way of realization respects the will of both right holders, reduces the cost of realizing the trademark right into cash, and improves efficiency. However, due to the particularity of trademark pledge, the two parties are generally small and medium-sized enterprises and banking financial institutions. Banks, due to the particularity of their identity, cannot operate the trademark. Therefore, the way of converting into money is not a reasonable choice for

trademark pledge.

Auction means that in open competition, the right holder transfers their rights to the highest bidder. Sale refers to selling the pledged trademark right in exchange for money. Theoretically, compared with conversion into money, auction and sale can attract more interested subjects to compete, resulting in more proceeds, which is more conducive to debt repayment. But in practice, this way of realizing pledge rights involves cumbersome procedures, takes much time, and has high economic costs. In the auction market, the rate of unsuccessful auction of trademark rights is high, failing to achieve its original purpose.

Taking the auction of trademark rights in Zhejiang Province as an example, the author conducted data collation and analysis by searching with keywords such as "trademark rights", "Zhejiang Province", and "auction status: ended" on Ali Auction. The data in this article is selected from April 1 to April 30, 2024, with a sample size of 324, and the final unsuccessful auction rate is 69.13%. More than half of the right holders failed to successfully convert their rights into cash in practice, and their rights and interests could not be protected. To sum up, the author believes that the ways to realize pledge rights under the original system cannot cope with the particularity of trademark pledge, with poor applicability, which will undoubtedly hinder the conduct of trademark pledge activities and cause a waste of resources [10].

2.2.5 Difficulties in maintaining trademark value

In both rights pledge and chattel pledge, there has always been a major difficulty: how to maintain the value of the pledged property. Both the former Property Law and the current Civil Code stipulate the pledgor's obligation to maintain the value. Article 216 of the Property Law and Article 433 of the Civil Code state that if the pledged property is damaged or its value is reduced due to reasons not attributable to the pledgee, the pledgor is obligated to provide security or settle the debt in advance. However, this is difficult to achieve in practice. Due to the inherent legal characteristics of trademark rights and external influencing factors, the value of the pledged property is unstable and hard to maintain. Furthermore, the instability of value requires the pledgor to provide additional guarantees, which further increases legal risks.

The value of trademark rights is often related to the business operations of enterprises. A good brand image is the source of the value of an enterprise's trademark, and the brand image is closely linked to the enterprise's operating income and brand investment.

3. Causes of Legal Risks in Trademark Right Pledge in Zhejiang Province

There are various manifestations of legal risks concerning trademark right pledge, which can be mainly divided into legal risks arising from the inherent attributes of trademark rights, legal risks in the realization of trademark pledge rights, legal risks in trademark right registration and public announcement, and legal risks in the guarantee value of trademark rights. Therefore, we need to analyze the causes of legal risks in trademark right pledge from the above perspectives in a targeted manner.

3.1 The Inherent Legal Characteristics of Trademark Rights

As a type of intellectual property right, trademark rights have an intangible object. Trademark rights embody the right holder's dominion over their owned trademark. Compared with tangible objects, the right holder cannot fully possess the trademark. The exclusivity and exclusiveness of trademark rights cannot reach the absolute level of ownership. The intangibility of the object of trademark rights facilitates trademark infringement.

The temporality of trademark rights increases the legal risks of trademark right pledge and affects the pledgee's confidence in trademark right pledge. As a type of intellectual property right, temporality is a common feature of intellectual property. Article 39 of the Trademark Law stipulates that the protection period of a registered trademark is ten years. If the period expires and the right holder fails to apply through legal procedures, the trademark right shall be extinguished. The cancellation of the trademark right means the loss of the subject matter of the trademark right pledge, which will greatly affect the rights of the pledgee and add additional risks. At the same time, the legal risks brought by the temporality of trademark rights also affect the realization of the trademark right pledge. In the process of auctioning, selling, or converting the trademark into money, the protection period of the

trademark has, to a certain extent, become a consideration for trademark purchasers.

3.2 The Effectiveness of Trademark Right Pledge upon Registration

Trademark right pledge adopts the doctrine of registration for validity, where registration not only serves as a method of public notice but also constitutes a valid requirement for the establishment of trademark right pledge. The inherent flaws of the doctrine of registration for validity will undoubtedly increase unnecessary legal risks. Under the application of the doctrine of registration for validity, a pledge contract signed based on the mutual consent of both parties cannot produce the legal effect of establishing a pledge right. This is undoubtedly inconsistent with the basic spirit of civil law, i.e., autonomy of will. Meanwhile, as a valid requirement, registration demands that the registration authority conduct substantive reviews, which will inevitably lead to cumbersome registration procedures, increased costs, and prolonged processing time. As an important category of intellectual property rights, trademark rights are characterized by time sensitivity, and legal risks such as sharp fluctuations in the value of trademarks may arise during the lengthy review process. In addition, if the registration authority makes errors in registration during substantive reviews, the issue of risk liability will also affect the confidence of the parties involved in the pledge. In contrast, the doctrine of registration for opposition embodies the principle of respecting the parties' autonomy of will contained in civil law. Once both parties reach an agreement on the trademark right pledge, the trademark right pledge can be established. Under the doctrine of registration for opposition, the parties can obtain the right to oppose bona fide third parties by deciding whether to register, which grants them the right to choose and respects their autonomy of will. Pledge financing prioritizes efficiency, and the doctrine of registration for opposition well meets this demand, as it not only respects the freedom of subjects but also satisfies their pursuit of efficiency [11].

3.3 The Single Way to Realize the Pledge Right of Trademark Rights

In practice, pledged assets are still disposed of through traditional methods of pledge enforcement, namely realizing the pledge right

by means of set-off, sale, auction, etc. Such methods of pledge enforcement ignore the characteristics of trademark right pledge, restrict the enforcement of trademark pledge rights in a disguised form, fail to bring into play the true value of trademarks, and waste precious resources. The particularity of trademark rights determines that their value is strongly correlated with the reputation of the goods and services they represent, making it difficult to forcibly separate them. If business entities passively perform their operational obligations, it will lead to a decline in the value of the trademark, which also results in difficulties in monetizing the trademark right and low recognition from market entities.

It is difficult to form a trademark right trading market. Due to restrictions such as the domain-specific nature of trademark rights, the group of potential transferees is limited, making it hard to find suitable transferees in transactions and resulting in a narrow scope of market transactions. Moreover, trademark right pledge requires both parties to possess certain professional knowledge, and evaluating the value of a trademark is also challenging. The combination of these factors makes it difficult to monetize trademark rights. The original methods of pledge enforcement cannot fundamentally solve the predicament faced in the enforcement of trademark pledge rights.

3.4 Instability of Trademark Value

The instability of trademark value is the biggest challenge in trademark right pledge, as it not only affects the realization of trademark pledge rights but also hinders the maintenance of trademark value. When discussing the value of a trademark, it is essential to first clarify the source of its value. Initially, a trademark was merely a symbol used to identify the source of goods or services. With the rapid development of the market economy, trademarks have evolved to possess a new function: demonstrating business reputation.

Take "Alibaba Group" as an example. In recent years, Alibaba Group has encountered difficulties in its production and operation. Externally, it faces impacts from e-commerce platforms such as Pinduoduo and JD.com; internally, it is plagued by chaos in internal management and frequent changes in senior personnel. These issues have also impacted Alibaba's brand value. According to the

analysis report of China's 500 Most Valuable Brands released by the World Brand Lab, Alibaba Group has fallen from the 10th place at its peak in 2016 to the 20th place in 2023, with a decline in its brand value. It is evident that the value of a trademark is correlated with the operation of an enterprise and fluctuates accordingly.

4. Thoughts Based on Practice - Suggestions for Promoting Trademark Right Pledge

4.1 Improve Trademark Relief Channels

The remedy for trademark infringement is premised on effectively stopping trademark infringement acts. For trademark infringement, the punitive damages system is a powerful remedy, which can effectively prevent infringement. Punitive damages exert the functions of punishment and put an end to unlawful infringing acts. The punitive damages system plays an important role in cracking down on trademark infringement. By increasing the economic costs of infringers, the punitive damages system can effectively curb the occurrence of trademark infringement and safeguard the legitimate rights and interests of trademark owners. The punitive damages system has a strong deterrent effect on trademark infringers. Since infringers need to pay compensation exceeding the actual losses, this greatly increases the cost of trademark infringement. When infringers intend to commit infringement, they will weigh the pros and cons, thereby reducing the occurrence of infringement to a certain extent. The punitive damages system is conducive to compensating for the losses of trademark owners. By ordering infringers to pay high compensation, the punitive damages system punishes their infringing acts and protects the legitimate rights and interests of the infringed.

Article 63 of China's Trademark Law stipulates the punitive damages system for trademark rights. For serious trademark infringement acts, the law adopts punitive compensation measures. This provision aims to severely crack down on trademark infringement, safeguard the legitimate rights and interests of trademark owners, and give play to the punitive, sanctioning and preventive functions of the punitive damages system [11].

4.2 Expand the Scope of Trademark Right

Pledge Subjects

Regarding the scope of trademark right pledge subjects stipulated by current laws, in order to better promote the realization of trademark value and the healthy development of pledge activities, the scope of trademark right pledge subjects should be expanded. The author believes that it is necessary to formulate corresponding regulations and rules to appropriately expand the scope of exclusive trademark right pledge subjects and recognize the legal effect of the pledge of unregistered well-known trademark rights. While incorporating unregistered well-known trademarks into the scope of exclusive trademark right pledge, we also need to clarify the rights and obligations of both parties in the pledge contract. For example, stipulate the pledgor's obligation to properly manage the unregistered well-known trademark and maintain the stability of the trademark's value to ensure the fairness, safety, and effectiveness of the transaction. At the same time, the procedures for pledge registration must be strictly regulated and constrained by legal provisions, which is conducive to reducing the transaction risks of both parties.

4.3 Improve the Pledge Registration of Exclusive Trademark Rights

To facilitate the rapid development of the trademark right pledge market, China should shift from the previously adopted doctrine of registration for validity to the doctrine of registration for opposition. From a legal and regulatory perspective, registration should be treated as a requirement for opposing third parties rather than the original validity requirement. Under such an institutional arrangement, it is true that pledge parties are no longer compelled to register the trademark right pledge, which provides them with a certain degree of choice. This institutional reform reduces the costs of pledge transactions, cuts down unnecessary administrative procedures and expenses, and enables pledge activities to proceed more efficiently.

Moreover, under the registration for opposition system, the establishment of the pledge contract means the establishment of the pledge right. Once the pledgee and the pledgor reach an agreement, the pledge right is realized without the need to wait for the completion of registration. This institutional design not only

protects the rights and interests of the pledgee but also enhances the convenience and efficiency of pledge transactions.

4.4 Innovate Approaches to Realize Trademark Pledge Rights

At present, the existing path for realizing trademark right pledges in China is relatively narrow, which is not conducive to giving full play to the advantages of trademark right pledges and may easily lead to resource waste. Therefore, the author believes that on the basis of the existing trademark right pledge system, we should innovate new approaches to realize trademark right pledges. Drawing on the excellent experience of intellectual property pledge in developed countries such as the United States, we should formulate new approaches to realize trademark right pledges that are in line with China's national conditions in a context-appropriate manner.

M-CAM, a U.S. patent consulting company, is a company specializing in intangible asset investment and financing, and is currently the world's largest insurer of intangible assets. It has established the Certified Asset Purchase Price (CAPP) mechanism. Under this mechanism, it has an agreement with financial institutions that if an enterprise fails to repay its debts, the company will invest in purchasing the pledged collateral to realize the creditor's rights of the financial institutions. This practical model has improved the efficiency of pledges and reduced commercial risks.

China can establish a third-party institution between financial institutions and enterprises for trademark right pledges. The main task of this third-party institution is to ensure the realization of trademark right pledges. Through evaluating enterprise operations and trademark right pledges, it is willing to bear part of the risks, but such risk assumption must be controlled within a certain scope. When an enterprise is unable to repay its debts, this third-party institution will purchase the pledged trademark to ensure the monetization of the trademark. The third-party institution will be responsible for the subsequent operation of the trademark right, and can improve the efficiency of resource utilization by allowing others to use the trademark, among other means [12].

5. Conclusion

Against the backdrop of strengthened

intellectual property strategies, the vigorous development momentum of trademark right pledge financing remains unabated, with its financing quota continuously climbing to new heights. However, at the same time, a series of legal risks closely related to trademark right pledge financing have gradually become prominent. These risks include potential infringement acts against trademark rights, the narrow scope of trademark right pledge subjects, the difficulty in maintaining trademark value, and the challenges faced in the process of realizing pledge rights. The existence of these legal risks undoubtedly hinders the further expansion and application of trademark right pledge financing.

Among the numerous legal risks of trademark right pledge, some can be resolved through sound laws, regulations, and systems. However, other legal risks stem from the inherent characteristics of trademark rights themselves. Acquired systems cannot alter these innate characteristics; they can only minimize the possibility of such risks occurring.

In response to the current legal risks and challenges faced by trademark right pledge, the author puts forward suggestions on the basis of existing laws and regulations, such as adopting the doctrine of registration for opposition expanding the scope of trademark right pledge subjects, improving trademark relief channels, and innovating approaches to realize pledge rights. It is difficult for the author to fully grasp all specific situations encountered in practice. The improvement of the exclusive trademark right pledge system is a long-term and complex task, which must be based on rich practical experience and can be gradually matured and improved through continuous practical exploration and in-depth research. Therefore, the viewpoints and suggestions put forward in this paper have certain limitations in terms of breadth and depth.

References

- [1] Trigeorgis L, Baldi F, Katsikeas C S. Valuation of brand equity and retailer growth strategies using real options. *Journal of Retailing*, 2021(97): 523-544
- [2] Dong X K. The Value of Consumers' Perception in the Application of Trademark Law and Its Realization. *Northern Legal Science*, 2023, 17(02): 89-105.
- [3] Van Nam T, Quynh N T N, Chung P D, et al. Recommendations for Improvement of Laws and Regulations for Trademark Pricing Services in Vietnam. *Webology*, 2022, 19(1): 1504-1520.
- [4] Zheng H W, Wang K. On the Promotional Function of Trademarks and Their Legal Significance. *Zhejiang Academic Journal*, 2024, (02): 110-116
- [5] Wu H D. Interpretation of the Conceptual System and Analysis of Norm Application of Malicious Trademark Registration. *Modern Law Science*, 2023, 45(01): 17-33.
- [6] Wang T P. Systematic Interpretation of the Protection System for Unregistered Trademarks in China. *Law Science*, 2018(08): 135-150.
- [7] Jin X J, Zhang H. The Optimization Path of China's Trademark Right Acquisition System from the Perspective of Comparative Law. *Journal of Law Application*, 2022, (05): 130-139.
- [8] Li Y J, Xiao S T. Reflections on the Coexistence of Registration Opposition and Registration Effectiveness Modes in China's Property Law. *Northern Legal Science*, 2010, 4(03): 38-42.
- [9] Liu B Y. Suggestions for Improving China's Pledge System. *Modern Law Science*, 2017, 39(06): 48-60.
- [10] Herz B, Mejer M. Effects of the European Union trademark: Lessons for the harmonization of intellectual property systems. *Research Policy*, 2019, 48(7): 1841-1854.
- [11] Long W M, Qi M Z. On the Credit Function of Trademarks. *Journal of Capital Normal University (Social Science Edition)*, 2023, (04): 87-95.
- [12] Li Z H. On the Institutional Dilemmas and Legal Solutions in the Protection of Enterprise Name Rights. *Studies in Law and Business*, 2023, 40(04): 174-187.