

# **BAD FAITH: FOCUS ON USE**

## **商标恶意注册：重点关注使用问题**

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BAD FAITH

恶意注册

## Broad concept:

Can cover any trade mark registration made with a "dishonest state of mind".

**NOT FOCUSED ON USE!**

## 广义概念:

可以涵盖任何  
“不诚实”  
的商标注册。

**不重点关注商标的使用!**



**FOCUS ON GENUINE USE**

**重点关注商标的实际使用**

**Revocation**

for non-use 5 years after  
registration

**撤销**

注册后连续五年不使用的  
商标



## BAD FAITH

## 恶意注册

- **NOT** necessarily **2 signs** in conflict.
- When 2 signs:
  - Use of the **earlier right** is NOT a requisite.
  - Nor is use of the **contested trade mark**.

- **未必是两个商标**发生冲突。
- 当存在两个商标时：
  - **在先商标**是否使用并非必要条件。
  - **系争商标**是否使用亦非必要条件。

## BAD FAITH

## 恶意注册

Bad faith can arise where the primary intention is:

- to **block** a third party's use of an earlier right or ;
- to **benefit** from the earlier right's attractiveness through using the contested trade mark on the EU market.

主要意图是如下情形的，可能存在恶意注册：

- **阻止**第三方使用在先商标的；
- 通过在欧盟市场使用系争商标，攀附在先商标以**牟取利益**的。



29/09/2021, T-592/20, AGATE

**Key point: whether the applicant was aware of the use of the earlier right**

- Nature of the market
- Period of use of identical or similar earlier right
- Chronology of events

= relevant factors for assessing the **presumption of knowledge**

**关键点：申请人是否明知在先商标的使用**

- 市场性质
- 相同或类似在先商标的使用期限
- 事件年表

= 对**知情推定**进行判断的相关因素

29/09/2021, T-592/20, AGATE

The evidence provided shows only **use** of the prior Chinese trade mark 'Agate' in Bulgaria between 2014 and 2017.

提供的证据仅显示在2014年至2017年间，在保加利亚**使用了在先中国商标** "Agate" 。



29/09/2021, T-592/20, AGATE

For assessment of bad faith, it is not the use of the contested trade mark that is examined, but rather whether the proprietor intended to make use of the contested trade mark.

判断是否恶意注册，并非通过审查系争商标的实际使用，而应考察权利人是否具有使用系争商标的意图。

**NO INTENTION TO USE OF THE  
CONTESTED  
TRADE MARK!**

**本案中，权利人无意使  
用系争商标！**



07/09/2022, T-627/21, MONSOON

季风

There is bad faith when it becomes apparent, that the contested trade mark was applied

注册系争商标明显

without intending to use it,

无意使用,

solely with a view to preventing a third party from entering the market.

目的仅为阻止第三方进入市场的，属于恶意注册。

## CONCLUSION

## 结论

- Bad faith when the contested trade mark is used.
- Bad faith as well when no intention at all of using contested trade mark if there is **no rationale**.
- 不当使用系争商标，会被认定恶意。
- 无意使用系争商标，**没有合理原因的**，也会被认定恶意。



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Thank you