



The Fight Against Bad Faith Filings in China

- The effect of the new law on recent few cases

NTD Intellectual Property Attorneys

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- **The New TML became effective on Nov. 1, 2019**
 - **Key Articles in the TML Targeting Bad Faith Filings**

Article 68.4 – The applicant of bad faith filings is subject to fine

Article 19.3 – The agent knowingly representing cases in violation of A4, A15, A32 is subject to fine

《规范商标申请注册行为若干规定》第3条

Several Provisions on Regulating Trademark Registration Applications

“Bad Faith Filings” include :

- (1) Bad faith filings **without intent to use** ----- **Article 4**
- (2) Copying, imitating, translating **WKTm** of others ----- **Article 13**
- (3) Bad faith filings by **agents** or other **business partners** ----- **Article 15**
- (4) Infringing **prior rights** of others ----- **Article 32**
- (5) Filings by **cheating** or **other improper measures** ----- **Article 44.1**
- (6) Other bad faith filings against **public order and good customs**, or having other **negative influence on the society** ----- **Article 10.1**

Fine to the applicant/agent

A68.4 – The applicant of bad faith filings is subject to fine

- **Having illegal gains : 3 times of the illegal gains, up to 30k RMB**
- **No illegal gains : up to 10k RMB**

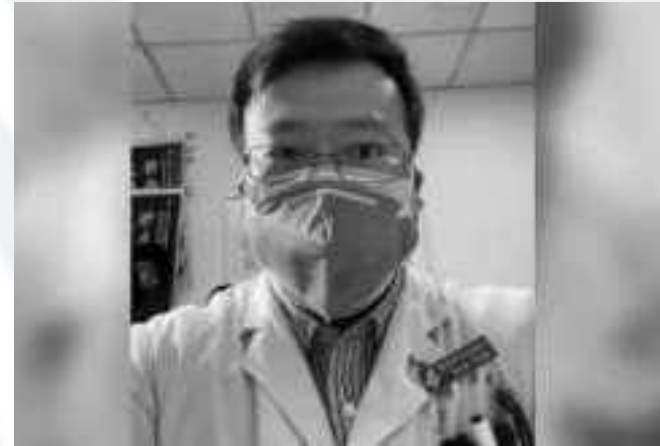
A19.3 – The agent knowingly representing cases in violation of A4, A15, A32 is subject to fine

- **Agency Company : 10k to 100k RMB**
- **Legal representative and Agent : 5k to 50k RMB**

➤ Heroes During The Epidemic



钟南山
Nanshan Zhong



李文亮
Wenliang Li

➤ The Hero Hospitals



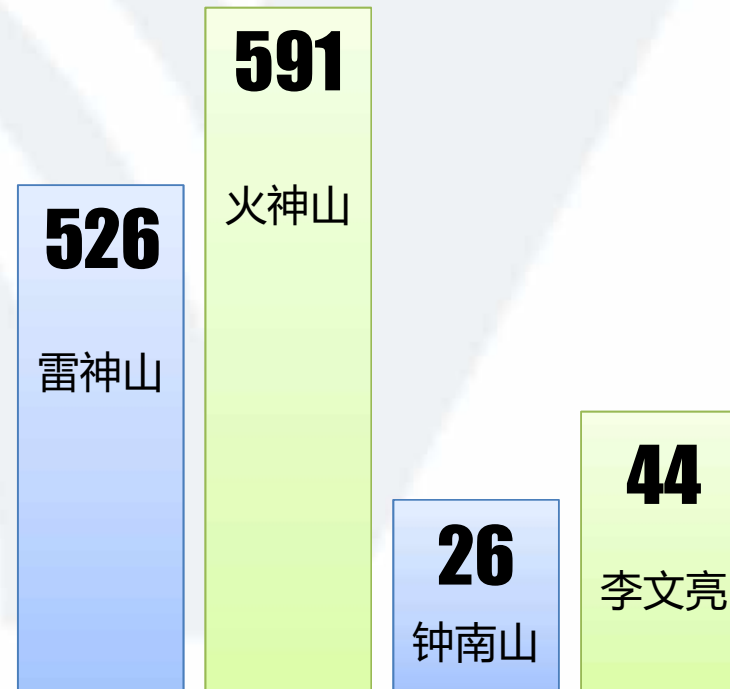
火神山医院
(Culcan Mountain Hospital)



雷神山医院
(Thor Mountain Hospital)

➤ Pre-emptive Registrations

Since 3 February 2020, the marks “雷神山”, “火神山”, “钟南山” and “李文亮” have been pre-emptively registered in many classes, which are mainly focused on the medical industry, such as classes 5, 10 and 44, by hundred applicants, including the companies and individual applicants, with a large number of trademark agencies involved.



➤ Action by CTMO

■ All rejected by CTMO

based on **A10.1.8** -

Negative Influence on the Society



商标局依法驳回第一批63件与疫情相关的不良影响商标

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3月3日，商标局对进入实质审查阶段的63件与疫情相关的“火神山”“雷神山”“钟南山”等商标注册申请，已依法作出驳回决定。

此次驳回63件商标注册申请均以易造成社会不良影响，适用商标法第十条一款八项依法予以驳回，包括27件“火神山”、24件“雷神山”、3件“钟南山”、3件“方舱”等商标注册申请，涉及41个申请人，共23个商品和服务类别。

火神山医院、雷神山医院是武汉抗击疫情前线医院名称，是疫情防控期间全社会舆论关注焦点，是全国人民团结一心，抗击疫情的重要标志之一。火神山、雷神山医院以外的其他申请人将其作为商标注册易造成重大社会不良影响，依法应予驳回。

钟南山是中国工程院院士、著名呼吸病学专家，2003年抗击“非典”先进人物，国家卫生健康委员会高级别专家组组长。申请人未经本人授权将其姓名作为商标申请注册，易造成重大社会不良影响，依法应予驳回。

新冠肺炎疫情发生后，随着媒体的报道，方舱医院成为社会公众熟知的词汇，“方舱”作为商标申请注册，易造成重大社会不良影响，依法应予驳回。

截至目前，商标局已对“火神山”“雷神山”等1500余件与此次新冠肺炎疫情相关的商标注册申请实施管控。下一步，对进入审查阶段的管控商标依法予以驳回。

➤ Further punishments by local authorities – the very first cases under the new law

- Fines on applicants – A10.1.8
- 800 RMB to 10k RMB

- Fines on agents – A32
- 10k to 100k on the agency companies
5k to 10 k on agent



➤ The Statement by CNIPA - A10.1.8. v A32

国家知识产权局办公室关于新冠肺炎疫情 防控期间规制商标恶意申请行为 有关法律适用问题的函

2019年4月23日修改、11月1日施行的《商标法》明确禁止恶意商标注册申请行为，2019年10月11日公布、12月1日施行的《规范商标申请注册行为若干规定》对相关内容进行了细化。

2020年1月27日，武汉市卫生健康委员会批准设立武汉火神山（雷神山）医院，其作为法人组织依法享有名称权。同时，火神山（雷神山）医院是武汉抗击疫情前线医院，是疫情防控期间社会和舆论关注的焦点，是凝聚力量和意志、坚定抗击疫情的重要标志之一，具有特殊的意义。火神山（雷神山）医院以外的其他申请人将其作为商标注册易造成重大社会不良影响。李文亮是武汉市中心医院眼科医生，因接诊感染新冠肺炎不幸去世，成为社会广泛关注的公众人物。将其姓名作为商标使用或者注册，涉嫌侵害死者姓名、名誉，易造成重大社会不良影响。

综上，申请人申请注册“火神山”“雷神山”“李文亮”等商标的行为，属于《商标法》第十条第（八）项和《规范商标申请注册行为若干规定》第三条第（六）项所指的有不良影响的行

为，同时属于《商标法》第三十二条和《规范商标申请注册行为若干规定》第三条第（四）项所指的损害他人现有的在先权利的行为，从维护当前防疫工作大局出发，应依据《商标法》第六十八条第四款、《规范商标申请注册行为若干规定》第十二条的规定，予以从重处罚。

国家知识产权局办公室
2020年4月8日

**Those bad faith filings
are in violation of
both A10.1.8. and A32.**



Comments and Advice

- 1. The fine on bad faith applicants and their agents is possible now**
- 2. The legal grounds for fine on bad faith agent is limited, but the amount of fine is higher**
- 3. When you got a valid decision based on bad faith filings, go to local authority to seek further punishment on the applicants/agents**

Thank You



NTD Intellectual Property Attorneys
Tel: (86)10-63611666
Email: Christopher.shen@chinantd.com
www.chinantd.com