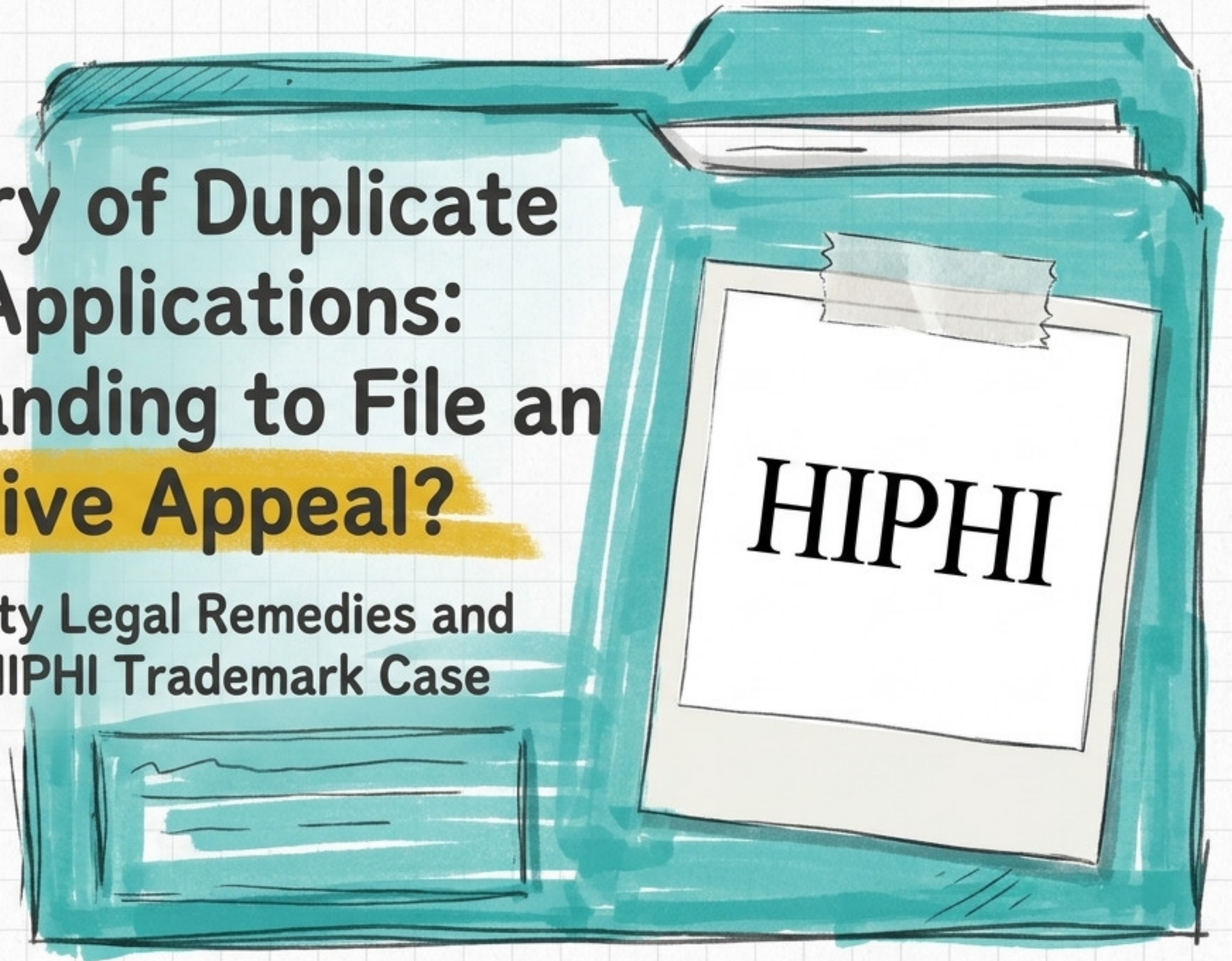


The Boundary of Duplicate Trademark Applications: Who Has Standing to File an Administrative Appeal?

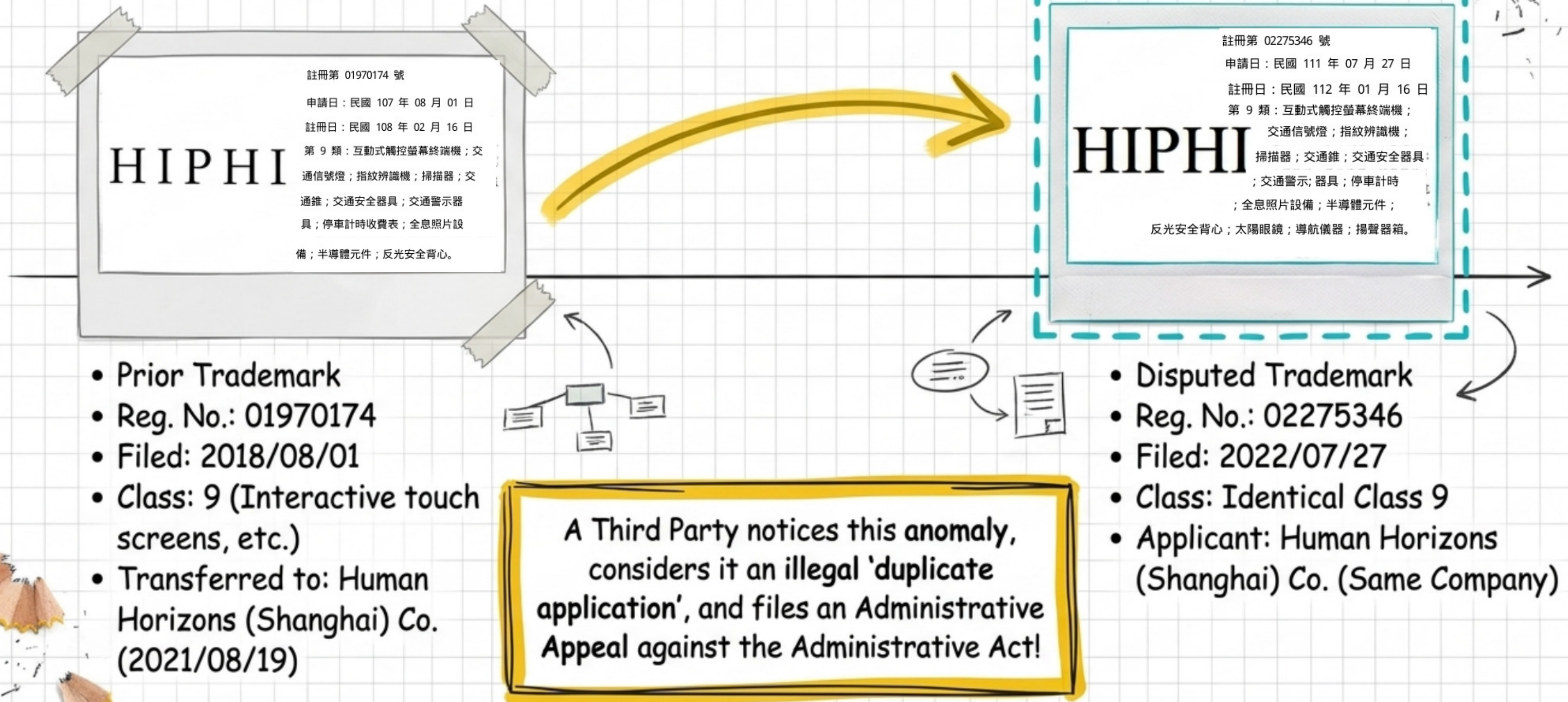
Examining Third-Party Legal Remedies and
Limits through the HIPHI Trademark Case

Source: Intellectual Property and
Commercial Court 2023 Xing-Shang-Su
No. 57 Administrative Judgment

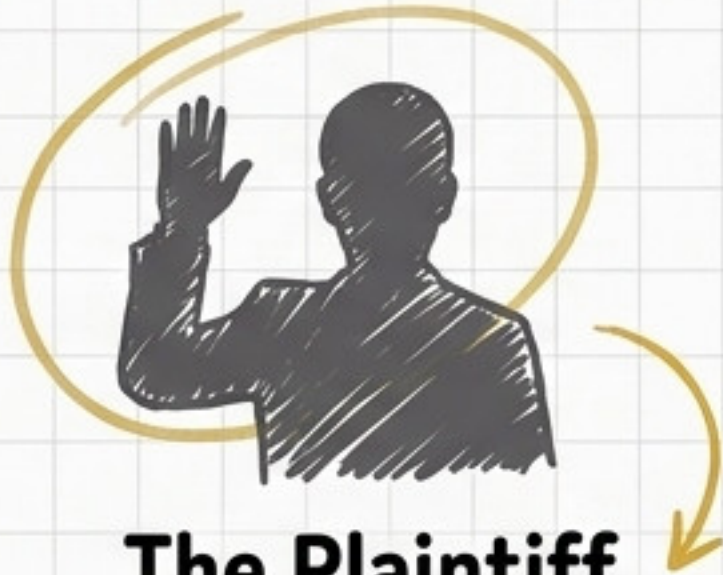
Date: 2024/06/03



Case Replay: Identical Trademarks, Applied Again?

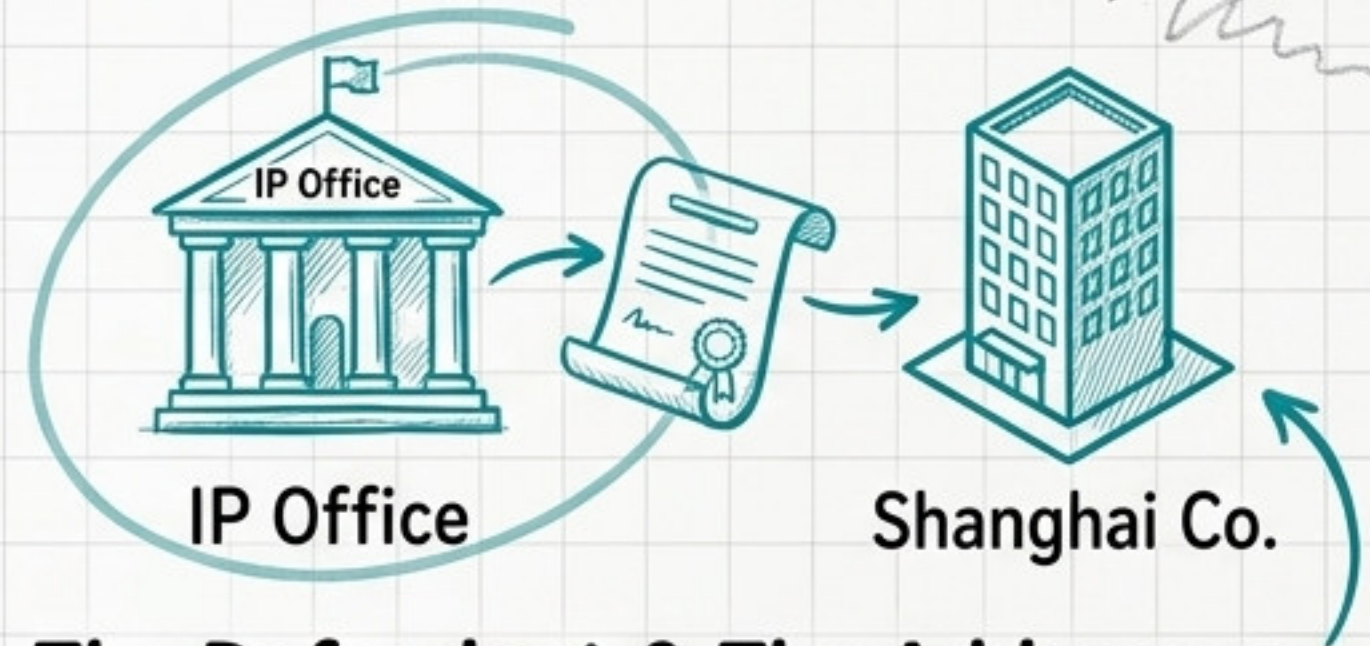
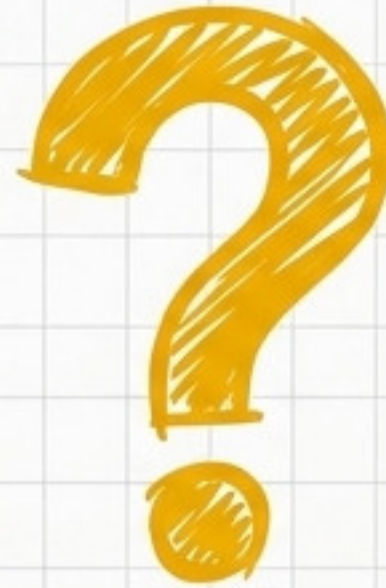


Courtroom Confrontation: Who is the Insider?



The Plaintiff

- **Identity:** Third Party (Non-owner of the trademark)
- **Action:** Files an Administrative Appeal against the disputed mark.
- **Claim:** Violation of Trademark Act Article 35 Paragraph 1.



The Defendant & The Addressee

- **Defendant:** The agency issuing the approval (IP Office).
- **Addressee:** Human Horizons (Shanghai) Co.
- **Fact:** The Administrative Act's legal effects occur exclusively between these two entities.

Core Issue: Does an outsider (Third Party) have standing to challenge this Administrative Act?

The Admission Ticket: Who Can Open the Door to Legal Relief?



According to Administrative Appeal Act Article 18 & Article 1:

Any natural person, legal entity, or other Addressee and Interested Party affected by an Administrative Act may file an Administrative Appeal.

What constitutes an Interested Party?

Court Interpretation:

- ✓ Must possess a 'legal' interest, not just a factual one.
- ✓ The legal effects of the Administrative Act must cause 'direct injury' to their rights or interests.
- ✗ Excludes mere 'factual' or 'economic' interests!

The Court's Cognitive Filter: Protective Norm Theory

1. Water Inlet: Legal Norms
(e.g., Trademark Act)

Public Interest

2. Filter Paper:
Normative Purpose

- Protects only "Public Interest"?
→ Spillover (Fails)
- Safeguards "Specific Individual Rights"? → Filters through

3. Filtered Result:
Subjective Public Right

Only when a law intends to protect specific individuals can one claim a Subjective Public Right and become a legal Interested Party. Mere reflex interests do not grant standing!

Applying the Filter: Who Does the Trademark Act Protect?

The Plaintiff claims a violation of Trademark Act Article 35.1.
What is the protective scope of this law?



1. Safeguards the Trademark Owner

Grants exclusive use of the registered trademark.



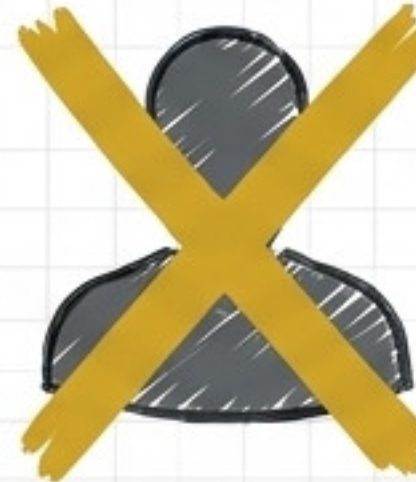
2. Protects Consumer Interests

Ensures easy identification and prevents confusion.



3. Maintains Market Order

Upholds the public interest of fair competition.



4. Impact on a Third Party?

Before the owner enforces exclusive rights against others, the registration result causes NO direct impact on a third party's concrete rights.

Conclusion: This article does NOT grant a Third Party the Subjective Public Right to dispute the registration outcome.

Myth Busting: "I participated in the process, so I am an Interested Party?"

The Plaintiff's Belief:

"I submitted a Third-Party Observation and filed an Opposition against the disputed mark. I participated in the examination process, so I am undoubtedly an Interested Party!"

The Court's Reality Check: **INCORRECT!**

1. **Third-Party Observation:** Merely assists examiners in blocking bad-faith applications. It does NOT grant party status.
2. **Filing an Opposition:** Part of public scrutiny. However, before the agency issues a decision, whether rights are actually harmed remains undecided.

You cannot automatically upgrade to an 'Interested Party' just by participating!

Statutory Patchwork Fails: Exclusivity of Legal Remedies

The Plaintiff attempted a scattergun approach, citing various unrelated laws. The Court rejected them all:

- ✗ - Administrative Litigation Act Article 4
(Action for Revocation)
- ✗ - Administrative Procedure Act Article 123
(Revocation of a Beneficial Administrative Act)
- ✗ - Trademark Act rules on Revocation for three
years of non-use

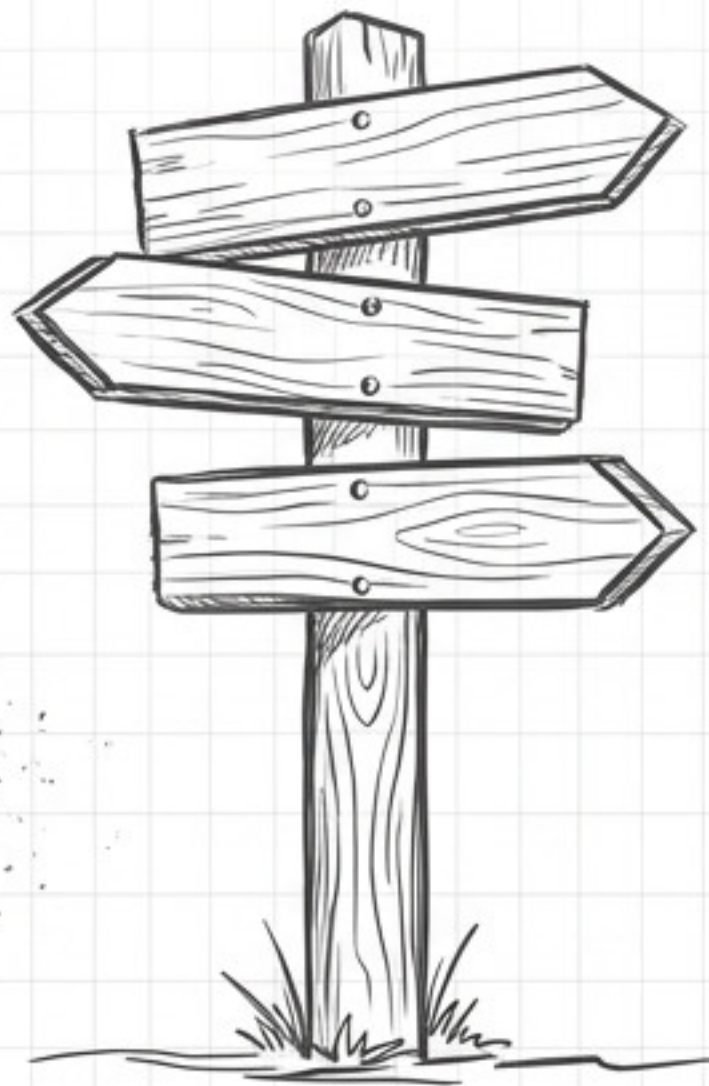
The Court's View:

The legislative purpose of these statutes is **NOT** to allow arbitrary challenges against so-called "duplicate registrations".

The Trademark Act dictates exclusive statutory procedures for disputes. These procedures do not include a 'duplicate application' cause of action.

If Administrative Appeal is Blocked, What Should a Third Party Do?

Instead of ramming the locked door of an Administrative Appeal, use the designated statutory channels:



File Administrative Appeal

Result: Appeal Dismissed as Inadmissible
(No direct injury, non-addressee).

1. Opposition

Filed during the statutory period after publication (Public Scrutiny).

2. Invalidation

Challenges specific statutory flaws of an already registered mark.

Synthesis & Conclusion: Key Judgments & Practical Insights

Plaintiff's Lawsuit Dismissed

The Plaintiff failed to prove how the registration caused "direct injury". A mere factual or economic connection does not fulfill the criteria for an Interested Party.

No Subjective Public Right, No Standing

Under the Protective Norm Theory, Trademark Act Article 35 protects owners and market order. It does not grant third parties the right to dispute registration outcomes.

Choose the Right Battlefield

"Duplicate application" is not grounds for arbitrary public revocation. Challenges must strictly utilize specific procedures like Opposition or Invalidation.