

China Raises Evidentiary Threshold for Filing Non-Use Trademark Cancellations

October 27, 2025 – The TMCA

by Lilian Shi, Janet Wong, and Eileen Xu



In May 2025, the China National Intellectual Property Administration (**CNIPA**) released updated Guidelines on applications for three-year non-use cancellation actions against registered trademarks (**Updated Guidelines**). A key change is that the evidentiary threshold for petitioners to commence a three-year non-use cancellation action is now significantly higher than before.

In the past, to meet the initial filing expectations, a petitioner would only need to submit minimal search results suggesting possible “non-use” of the challenged registration to the Chinese Trademark Office (**TMO**). Such materials were often limited to a few pages of general search-engine results (e.g., from Baidu.com or Bing.com). There were no specific requirements on search keywords or platform coverage.

Starting earlier this year, we have observed a shift in the TMO’s practice in that it has significantly tightened its acceptance standards for three-year non-use cancellation cases. Office actions are now frequently issued requesting petitioners provide supplemental searches and the results of investigations to substantiate alleged “non-use”.

While the Updated Guidelines now provide a non-exhaustive list of acceptable preliminary evidence, no definitive protocol has been issued on how to conduct investigations. Based on recent office actions and examiner feedback, however, the following practitioner tips can help structure a preliminary investigation that meets the TMO's standards:

1. Conduct general searches across major Chinese search engines (e.g., Baidu.com, Bing.com), major e-commerce platforms (e.g., JD.com, Taobao.com, Tmall.com), and leading social media (e.g., WeChat, Weibo, Xiaohongshu/RedNote, Douyin/TikTok).
2. Undertake industry-specific searches tailored to the designated goods and services. For example, for "clothing", "shoes" and "socks", include several leading category-specific platforms or marketplaces relevant to each category.
3. If the registrant is an individual, perform business or proprietary searches under the registrant's name to ascertain whether they own or control any company or business. If they do, provide evidence that the subject mark is not used by any such entity.
4. For each platform (general and industry-specific), use keyword formats such as "trademark + one designated item". For example, with the "clothing/shoes/socks" search: run and preserve distinct searches for "trademark + clothing", "trademark + shoes" and "trademark + socks". Include timestamps, URLs, search parameters, and consecutive-page screenshots where practicable.
5. For a device mark, or a device element of a composite mark, consider AI-assisted image searches to identify potential use or confusion with similar visuals.
6. If the petitioner and registrant are located in the same city, the TMO may request an on-site investigation report with greater detail regarding use or non-use of the registrant's mark.

In addition, petitioners are increasingly asked to state their reason for the non-use cancellation action (e.g., removing a cited prior mark) and to submit an undertaking confirming that the non-use investigation materials are truthful, accurate and complete.

Taken together, the initial evidentiary burden on the petitioners is significantly higher than before.

We believe that these changes reflect the TMO/CNIPA's response to the at times abusive use of non-use cancellation proceedings in China in recent years. This surge in non-use cancellation cases is likely driven by stricter trademark examination practices, where overcoming a cited mark through argument on dissimilarity or via consent/co-existence arrangements has become increasingly difficult, if not impossible. This situation has left non-use cancellation proceedings as a last resort for many applicants.

China's trademark registration system works on a first-to-file basis, and actual use is not a requirement. Because of this, there are many registered marks not in use. In our experience, the heightened preliminary-evidence standard will not prevent well-founded petitions in most cases; however, the added time and cost may deter abusive filings.

While the Updated Guidelines set clearer expectations, the TMO's actual practices are still evolving. We recommend preparing stronger preliminary investigations now and monitoring examiner trends—then wait and see how examination practice evolves over the coming months.

