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NEWSLETTER
Trademarks &
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AI & Trademarks

How AI Tools Accelerate
Trademark Abuse

INTA 2026 in London

Key Takeaways from the 148th Annual
Meeting

Descriptive Marks

Recent DPMA, BPatG and EU Decisions
on the Distinctiveness Threshold

Design Reform

Phase II from 1 July 2026



Trademark Squatting

How AI Tools Accelerate Trademark Abuse

Trademark squatting is not new. What is new is the speed and scale at which AI-powered tools can scan registers, identify unprotected names actively used in commerce, and file applications within seconds. Combined with automated marketplace takedowns, this creates serious economic risks for businesses that rely on unregistered names. Rights holders should review their portfolio strategy accordingly.

A New Type of Threat

Algorithms now scan trademark registers worldwide, identifying names that are actively used in commerce but not protected as registered marks. Once a gap is found, an application is filed to pressure the actual user into paying licence fees or buying the mark, or to exclude that user from continuing to use the term. The economic damage can be significant: marketplace platforms such as Amazon offer automated blocking mechanisms in favour of the new registered owner, meaning that legitimate users can lose access to their listings overnight. Particularly affected are smaller and medium-sized businesses that have not yet built up a structured trademark portfolio.

Legal Framework

German case law on bad-faith trademark applications offers a powerful defence. Building on its earlier rulings on domain grabbing, the Federal Court of Justice (BGH) has long held that registering a sign primarily in order to block a third party or to extract payment is contrary to good faith.

Bad-faith applications can be invalidated under Sect. 8 (2) No. 14 German Trademark Act and Art. 59 (1) (b) EUTMR. Indicia include the lack of any genuine intention to use, mass filings, and prior knowledge of third-party use.

Where the squatter actively enforces the mark, claims for damages and unfair-competition remedies under Sect. 4 No. 4 UWG may also be available.

However, even successful invalidation typically takes many months, during which the legitimate user remains exposed.

Practical Measures for Brand Owners

Given the speed at which automated squatting operates, prevention is far more effective than reaction. Companies should audit their portfolios and identify any commercially relevant names, slogans, or

product designations that are not yet covered by a registered trademark.

In addition to a defensive filing strategy, ongoing watch services should be implemented to ensure that third-party applications for identical or confusingly similar marks are identified at an early stage, and objections can be filed within the relevant opposition periods.

Marketplace seller-protection programmes should also be set up proactively, before a takedown is triggered by a squatter.

Outlook

The phenomenon of AI-driven trademark squatting is likely to grow as the underlying tools become cheaper and more accessible. The legal framework provides effective remedies, but the practical burden of enforcement remains with the rights holder.

- First, the cost-benefit analysis of trademark registration has fundamentally shifted. What may have been treated as a discretionary expense in the past has become a basic prerequisite of doing business online.
- Second, brand owners should not rely solely on national filings. Given the cross-border nature of e-commerce, EU trademarks and Madrid System registrations in key markets are typically more cost-effective than a patchwork of national rights.
- Third, marketplace and platform compliance teams should be briefed and trained to react quickly to takedown notices triggered by recently filed third-party marks, including by escalating cases to specialised counsel.
- Finally, legislators and trademark offices are beginning to consider whether existing examination practices can adequately address AI-driven mass filings. For the time being, however, vigilance on the part of brand owners remains the most reliable line of defence.

INTA 2026 in London

Key Insights and Takeaways from the 148th Annual Meeting at ExCeL London

From 2 to 6 May 2026, more than 10,000 IP professionals gathered at ExCeL London for the 148th Annual Meeting of the International Trademark Association (INTA). The programme spotlighted artificial intelligence, brand protection in digital marketplaces, and the practical impact of recent EU legislative reforms.

AI in Trademark Practice

Artificial intelligence dominated the conference agenda. Sessions covered AI-assisted trademark search and watch, the use of generative AI in clearance opinions, and the increasing volume of AI-driven mass filings in registers worldwide. Speakers underlined that, while AI is rapidly transforming portfolio management, human review remains essential, particularly for borderline distinctiveness assessments and conflict analysis. Several practical sessions also addressed AI's role in counterfeit detection on online marketplaces.

A particularly active discussion concerned the use of trademarks in AI training data and the implications of the EU AI Act. Practitioners exchanged views on the limits of the text-and-data-mining exception, on the practical scope of machine-readable opt-outs, and on litigation strategies in jurisdictions where the boundaries between copyright, trademark, and unfair-competition claims have started to shift in light of generative AI use cases.

Brand Enforcement in Digital Marketplaces

A second major track addressed enforcement against counterfeits and grey-market goods on global e-commerce platforms. The China Enforcement Update was once again a highlight, with representatives from the Supreme People's Court, the Supreme People's Procuratorate, and administrative authorities outlining the latest developments in civil, criminal, customs, and administrative measures.

First, a clear theme emerged that effective enforcement increasingly depends on combining traditional remedies (oppositions, invalidations, injunctions) with platform-based tools (brand registries, automated takedown systems, seller-verification programmes).

Brand owners that fail to integrate these channels risk delayed and less effective responses to infringement.

Second, several panels highlighted the value of cooperation between rights holders, customs, and platforms. Joint training, shared product identifiers, and synchronised takedown procedures were identified as the most effective means of containing large-scale counterfeit operations across borders.

Third, the importance of evidence preservation was repeatedly emphasised. With many infringements involving anonymous sellers and disposable accounts, structured workflows for documenting infringements at first detection are increasingly essential to successful follow-on litigation.

Takeaways for Brand Owners

Beyond the substantive sessions, INTA 2026 underlined how interconnected the global IP community has become. For brand owners, three practical takeaways stand out:

- Trademark portfolios should be reviewed annually with AI and online enforcement in mind, including coverage in jurisdictions where automated squatting and counterfeit activity are most prevalent.
- Enforcement strategies should systematically combine register-based remedies with marketplace-level tools, supported by clear escalation procedures.
- Coordination with external counsel across jurisdictions remains essential, particularly in fast-moving online environments where local presence and language capability can be decisive.

Descriptive Marks

Recent DPMA, BPatG and EU Decisions on the Distinctiveness Threshold

Where exactly the line between distinctive marks and descriptive indications runs continues to be tested in front of the DPMA, the EUIPO, and the appellate courts. A noteworthy series of recent decisions - several correcting an over-strict approach taken at first instance - illustrates the criteria that now drive examination practice. The message for applicants is mixed: there is renewed scope for creative wordings, but the requirements remain real and case-specific.

DPMA Practice under Review: Less Restrictive than Often Assumed

Recent decisions of the Federal Patent Court (BPatG) show a less restrictive approach to distinctiveness than is often assumed. The Court overturned several refusals by the German Patent and Trademark Office (DPMA) concerning newly coined or unusual word marks where descriptiveness arose only through multiple mental steps. Distinctiveness, the Court stressed, must be assessed from the spontaneous perception of the average consumer, not through analytical dissection. Coined terms that require additions, reinterpretations, or disregard of unusual spellings or diacritical signs are therefore generally distinctive.

The same pragmatic approach appears in cases concerning combinations of geographical names and common nouns. Such signs may be registrable where the geographical reference cannot reasonably be linked to the relevant goods or services. Registrability therefore depends heavily on the specific classes claimed.

English Wordings and the Limits of Assumed Language Skills

In several decisions concerning English-language marks, the BPatG criticised the DPMA for assuming English skills beyond the average German consumer's vocabulary. The office cannot rely on uncommon technical or idiomatic meanings where a term is normally understood only in a basic everyday sense. Expressions outside ordinary vocabulary are generally not immediately descriptive.

Applicants should therefore test whether alleged English meanings genuinely reflect the linguistic understanding of the relevant public. Specialist, idiomatic, or trade-specific interpretations are usually insufficient to establish descriptiveness. The same applies to ambiguous expressions: where a sign

permits several interpretations, the overall impression is decisive.

Word and Figurative Marks

The BPatG also confirmed that figurative elements can make otherwise descriptive wording distinctive if they create a recognisable overall impression rather than serving merely decorative purposes.

The General Court has adopted a stricter standard, holding that graphical elements must contribute independent semantic content capable of distracting from the descriptive meaning of the wording. Pure ornamentation, even if elaborate, is insufficient. Although this approach has been criticised as exceeding Art. 7 (1) (c) EUTMR, it underlines that figurative elements in EU filings should add conceptual value.

Practical Takeaways for Applicants

First, coined words that require a mental shift - unusual spellings, mixed-language elements, diacritical signs that do not fit the rest of the word, or letter combinations that only become meaningful through additions - are typically registrable as word marks, even where the components carry a descriptive echo. Creative wordplay remains a powerful tool, particularly where the relevant goods and services are not in fact addressed by the supposed meaning.

Second, when faced with a refusal, applicants should engage closely with the evidence cited by the office. A single source - such as one book title using a similar expression - rarely establishes a settled public understanding. Third, where figurative elements are relied upon, EUIPO practice and the General Court's approach call for a substantive contribution beyond ornamentation. Where this cannot be achieved, splitting goods and services and arguing distinctiveness on a class-by-class basis often unlocks at least partial protection.

EU Design Reform

Phase II of the Reform takes Effect on 1 July 2026

The EU Design Reform Package (Regulation (EU) 2024/2822 and Directive (EU) 2024/2823) is the most significant modernisation of European design law since 2002. After Phase I entered into force on 1 May 2025, Phase II will follow on 1 July 2026, introducing a revised representation regime, expanded protectable subject matter, and procedural simplifications. Rights holders should reassess their filing strategies now.

What Already Changed on 1 May 2025

Phase I brought the new terminology - Registered EU Design (REUD) and Unregistered EU Design (UEUD) - and a centralised filing system. Applications must now be filed directly with the EUIPO; national offices no longer accept EU design applications. The unity-of-class requirement was abolished, allowing applicants to combine up to 50 designs in different Locarno classes in a single multiple application.

A new exclusive right covering 3D printing was added, while two new limitations were introduced: identification and referencing acts in respect of products bearing a design, and acts of commentary, critique, or parody. Holders may now mark protected designs with the new © design notice. The fee structure was streamlined, although renewal fees have increased significantly:

Phase II - Key Innovations from 1 July 2026

The second phase of the reform is implemented through secondary legislation and addresses the most practically significant areas of design protection:

- First, the seven-view limit for representing a design will most likely be lifted. Applicants will be able to file a significantly higher number of static views.
- Second, designs may be represented in digital formats, such as JPEG files and, for animated or motion designs, MP4 video files.
- Third, the definitions of design and product are expanded to encompass animation, transitions, and other forms of visual effect. The definition of product now expressly covers non-physical objects, graphical user interfaces, spatial arrangements, and virtual environments.
- Fourth, the procedural framework for design invalidity proceedings before the EUIPO is further developed. Member States are also encouraged to introduce administrative invalidity proceedings at national level, lowering enforcement barriers for legitimate parties.

Together, these changes are expected to significantly increase both the volume and the diversity of designs registered in the EU.

Digital products such as app interfaces, animated icons, transitions, and AI-generated visual elements will become significantly easier to protect from 1 July 2026 onwards. For industries built around digital design, the new representation regime offers a long-awaited route to meaningful protection. Companies in the consumer-electronics, software, automotive, and luxury-goods sectors should review their pipeline of upcoming launches and consider whether filings should be deferred to take advantage of the broader options available after Phase II enters into force.

Practical Recommendations

Holders of existing design portfolios should review their filings. For designs scheduled for renewal, an early analysis of whether re-filing under the new representation regime might offer broader protection is recommended. For pending product launches, holding back filings until the new regime is in force may be advantageous, particularly where digital or animated elements are involved.

Companies should also document their design development processes carefully. The expanded scope of protection, in particular the addition of 3D printing as an exclusive right, makes it increasingly important to be able to demonstrate first disclosure dates and design history for both registered and unregistered protection.

Outlook

Member States must transpose the Directive into national law by 9 December 2027. Until then, divergences will persist between EU-level rules and national design regimes, particularly with regard to unregistered protection, the repair clause, and administrative invalidity proceedings.



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