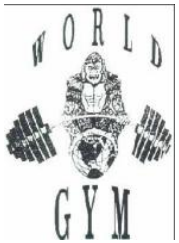
Trademark Squatters: Theory and Evidence from Chile

Carsten Fink Christian Helmers Carlos Ponce

November 16, 2014

Who owns these brands?



What...who?

Gabriel Marconi
Carlos Pozo
Eduardo Alvarez
Pierpaolo Zaccarelli
Jorge Araya
Confecciones Michelangelo
Jose Jorge Sala
Kim Kyung Yoo
Jaime Galemiri
Gabriel Ugaz
Confecciones Y Tejidos MYM

A look into the Chilean trademark register

Solicitud	Registro	Clase	Denominación	Titular
75076	240661	25	ARMANI	HIRMAS GIACAMAN ALBERTO PEDRO
76574	237855	...	G-ARMANI	GIORGIO ARMANI S.P.A.
80723	245315	3	GIORGIO ARMANI	GIORGIO ARMANI S.P.A.
88876	0	...	EMPORIO ARMANI	SPENCER LEDESMA PATRICK
88876	0	...	EMPORIO ARMANI	MAXIMILIANO STINISKY N.
128494	0	...	GIORGIO ARMANI	ACOSTA GEORGES GUILLERMO
134214	0	25	ARMANI	GRUNWALD GLUCK JUAN
164978	0	25	ARMANI	LIZAMA ROSALES LUIS ANTONIO
167670	368009	...	EMPORIO ARMANI	GA MODEFINE S.A.
174507	373313	...	G. ARMANI	GA MODEFINE S.A.
174508	373314	...	G. ARMANI	GA MODEFINE S.A.
177974	376173	...	GIORGIO ARMANI	GA MODEFINE S.A.
178397	0	25	ARMANI	HIRMAS GIACAMAN ALBERTO PEDRO
178398	0	...	ARMANI	HIRMAS GIACAMAN ALBERTO PEDRO

Definition

- Trademark squatting describes the
  - ⊕ registration of a trademark on a product, service, or trading name (including commercial and industrial establishments) that is
  - ⊕ marketed by another company that has invested in the goodwill associated with that product, service, or trading name.
- Trademark squatters can be registered companies as well as individuals.
- Squatting **not** necessarily result of (systematic) mistakes by the trademark office

Let's talk about $$$: anecdotal evidence

⊗ *He Doesn't Make Coffee, but He Controls 'Starbucks' in Russia*

- Sergei A. Zuykov registered trademark for Starbucks in Russia
- Demanded US$ 600,000 for re-assignment
- Claims to successfully squat (e.g. sold 5 trademarks to Audi for US$ 25,000)
- Typical price US$ 30,000 – US$ 60,000

⊗ In Chile practitioners report average price demanded by squatters US$ 2,000 – US$ 10,000

Direct evidence for Chile – **reassignment**

- Direct evidence for successful squatting: trademark ownership transferred from squatter to brandowner

- 71 such trademarks filed by Inmobiliaria e Inversiones Oasis (Jorge Halabi Nacrur) between November 2002 and January 2003
- Brandowner **Sisco Textiles** opposes all 71 applications in January/April 2003:

- Opposition to all filings dropped in August 2011
- Trademarks registered in April 2012
- All trademarks re-assigned to **Sisco Textiles.**

Why Chile?

- **Anecdotal evidence on squatting**
- Trademarks widely used (575,000 filings 1991-2010)
- Trademarks are relatively cheap to register
- No use requirement (though relative grounds examination)
- Chile is not a party to the Madrid system
- Small, remote but fast growing emerging market

Our research questions

1. Is there squatting? Is it quantitatively an important phenomenon?
2. Is there any systematic pattern in squatting behavior?
3. What is the effect of squatting on brand owners?
4. What features of the legal system favor squatting?

The economics of squatting

- Squatters obtain rents from

  1. Selling (licensing) the trademark to the corresponding brand owner
  2. Using the trademark and the embodied goodwill to market own products
  3. Deter product market entry of (foreign) competitors
  4. Harm competing importers

The economics of squatting

- Focus: **selling (licensing) the trademark to the corresponding brand owner**

- 2 risk-neutral agents:
  1. Agent 1: Brand owner
  2. Agent 2: Squatter

- Multi-stage game:
  1. Application phase
  2. Cancellation-negotiation phase

The economics of squatting

- Application cost: c_i for agent $i = 1, 2$
  - $c_1 \geq c_2 > 0$

- Probability that trademark is granted: λ
  - Brand owner: $\lambda = 1$
  - Squatter: $\lambda \in (0, 1)$

Application phase

- **Date 0**: Brand owner decides to file application:
  - *Uncertainty over brand value*
    - Profits of i depend on brand value
    - Value depends on state of market, which is good or bad.
    - Good with probability $\mu \in (0, 1)$
    - If good, profits h, where $0 < c_1 < h$ and $\mu h > c_1$
  - *Uncertainty over squatter presence*
    - Squatter present with probability $\xi \in [0, 1]$

- **Date 1**: If the brand owner has **not** registered the brand, squatter decides to file application
  - Squatter finds out whether state of market good or bad

- **Date 2**: If nobody has registered the brand, the brand owner has a last chance of doing so.
  - Brand owner finds out whether state of market good or bad

Cancellation-negotiation phase

- Squatter has obtained trademark

- Brand owner has to choose:
  1. Do nothing:
     - Payoff zero for i
  2. Request cancellation of the squatted trademark:
     - Payoff for brand owner $\tilde{h} - k$ with $\tilde{h} \leq h$
     - Payoff zero for squatter
  3. Negotiate with the squatter to buy the squatted trademark:
     - Generalized Nash bargaining game

Equilibrium without Squatting ($\xi = 0$)

- Brand owner:
  - Trademark at **Date 0**: *anticipatory value*

$$v_1 = \mu h - c_1 \tag{1}$$

  - Trademark at **Date 2**: *value of waiting*

$$w_1 = \mu(h - c_1) \tag{2}$$

  - *Net value of waiting*:

$$w_1 - v_1 = (1 - \mu)c_1 > 0 \tag{3}$$

Proposition 1: The brand owner will wait until date 2 to register the brand.

Equilibrium with Squatting ($\xi > 0$)

- **Cancellation-Negotiation Phase**:
  - Squatter has registered trademark
  - Assume expensive cancellation: $\tilde{h} - k \leq 0$.
  - Price p at which the trademark will be sold to brand owner solves:

$$\max_{p} \left(h - p\right)^{1-\tau} \left(p\right)^{\tau}$$

    where $\tau \in (0, 1)$ is relative bargaining power of squatter.
  - Unique price $p^* = \tau h$
  - Payoffs for brand owner and squatter are:

$$n_1^* = h - p^* = \left(1 - \tau\right) h, \tag{4}$$

$$n_2^* = p^* = \tau h. \tag{5}$$

Equilibrium with Squatting ($\xi > 0$)

- **The Application Phase**:
  - *Squatter*: at date 1 if state is good payoff:
$$\pi_2^* = \lambda\tau h - c_2 \tag{6}$$
  - *Brand owner*: payoff $h - c_1$ if brand registered at date 2 which happens with probability:
$$\mu\xi(1-\lambda) + \mu(1-\xi)$$
  - *Brand owner*: payoff n_1^* when a squatter registeres the trademark application, which happens with probability:
$$\mu\xi\lambda$$
  - Value of waiting in presence of squatting:
$$w_1^* = w_1 - \underbrace{\mu\lambda\xi(\tau h - c_1)}_{\text{Squatting Tax}} \tag{7}$$

Equilibrium with Squatting ($\xi > 0$)

- *Squatting active* equilibrium:
  - *a.* Brand owner waits up to date 2 to register brand iff cost (weakly) higher than c_1^*, the *smallest* possible cost that makes the net value of waiting positive:

$$c_1 \geq c_1^* \equiv \frac{\mu\lambda\xi}{\mu\lambda\xi + (1-\mu)}\tau h \tag{8}$$

  - *b.* Squatter, after observing good state, files trademark application iff cost (weakly) smaller than c_2^*, the *largest* possible cost that makes squatting profitable:

$$c_2 \leq c_2^* \equiv \lambda\tau h \tag{9}$$

Proposition 2: A squatting active equilibrium exists if, and only if:

a. $c_2 \leq c_2^* \leq c_1^* \leq c_1$; or:

b. $c_1^* \leq c_2 \leq c_1 \leq c_2^*$,

holds.

The economics of squatting: equilibria

Proposition 3: If:

a. $0 < c < c_1^*$, there is a unique pre-emptive equilibrium;

b. $c_1^* \leq c \leq c_2^*$, there is a unique squatting active equilibrium;

c. $c_2^* < c$, there is a unique squatting free equilibrium.

The economics of squatting: equilibria

Proposition 3: If:

a. $0 < c < c_1^*$, there is a unique pre-emptive equilibrium;

b. $c_1^* \leq c \leq c_2^*$**, there is a unique squatting active equilibrium;**

c. $c_2^* < c$, there is a unique squatting free equilibrium.

The Chilean trademark system

- Trademarks in either product or service classes (1991-2010)
- Application fee is around USD$ 85 per class
- Opposition within 30 days following publication (fee USD$ 113)
- Relative grounds examination
- Registration fee of USD$170
- No legal requirement for demonstrating (any intent to) use of a trademark

Data

- All trademark filings by residents and non-residents with INAPI 1991-2010 (575,000 filings)
- Identification of unique applicant
- Detailed legal status information
- Digitization of opposition information
- Digitization of cancelation information

Identifying squatters: criteria

1. Applicant type: companies and individuals
2. Rejected applications ratio
3. Opposition ratio
4. Revocation ratio
5. Simultaneous filings
6. Diversity of Nice classes
7. Priority
8. Trademark use
9. Products vs services
10. Well-known brands

Companies and individuals $\geq$ 2 trademarks

$\Rightarrow$ Squatter Score

'Squatter Score' examples:

TM	Characteristics									Score
	nul	oppo	reject	class	sim	priority	use type	product	brand	
Qian y Chien ltda	25.10	1.26	2.53	2.17	4.03	0.21	-0.48	-0.25	-0.07	**0.89**
Examples	chicago bulls; beavis & butthead; real madrid; 7 eleven; new york knicks; san francisco 49ers; nfl; miami dolphins; denver broncos; oakland raiders; versatchi; universal studios; 2000 sidney australia									
Humberto Mardones	-0.08	1.59	1.39	1.80	7.97	0.05	-0.32	5.93	8.36	**0.77**
Examples	iron maiden; the beatles; usa olimpic; metallica; university of georgia; 49ers; university of michigan; university of miami; jimi hendrix; iron man; superbowl									
Hans J. Huttinger	13.02	0.83	1.82	1.55	-0.12	0.05	3.03	5.93	-0.12	**0.75**
Examples	jever; wernesgrüner; berentzen; lavazza; pilsner urquell; budvar; segafreddo; bitburger; moorhuhn									

Notes: Score normalized $[0, 1]$. Individual characteristics scores standardized.

Comparison of squatter characteristics: companies & individuals

	Mean		Std. Dev.		T-test
	Squatter	All other	Squatter	All other	difference
Opposition	0.370	0.160	0.309	0.311	**-13.980**
Invalidation	0.095	0.009	0.241	0.085	**-16.098**
Rejection	0.675	0.365	0.345	0.441	**-14.426**
Simultaneous filings	0.626	0.629	0.161	0.155	0.453
Class diversity	0.627	0.630	0.317	0.297	0.188
Priority	0.002	0.018	0.026	0.118	**2.793**
Type of use	0.121	0.078	0.216	0.228	**-3.857**
Product	0.739	0.529	0.328	0.455	**-9.619**
Top brand	0.150	0.004	0.358	0.063	**-45.684**

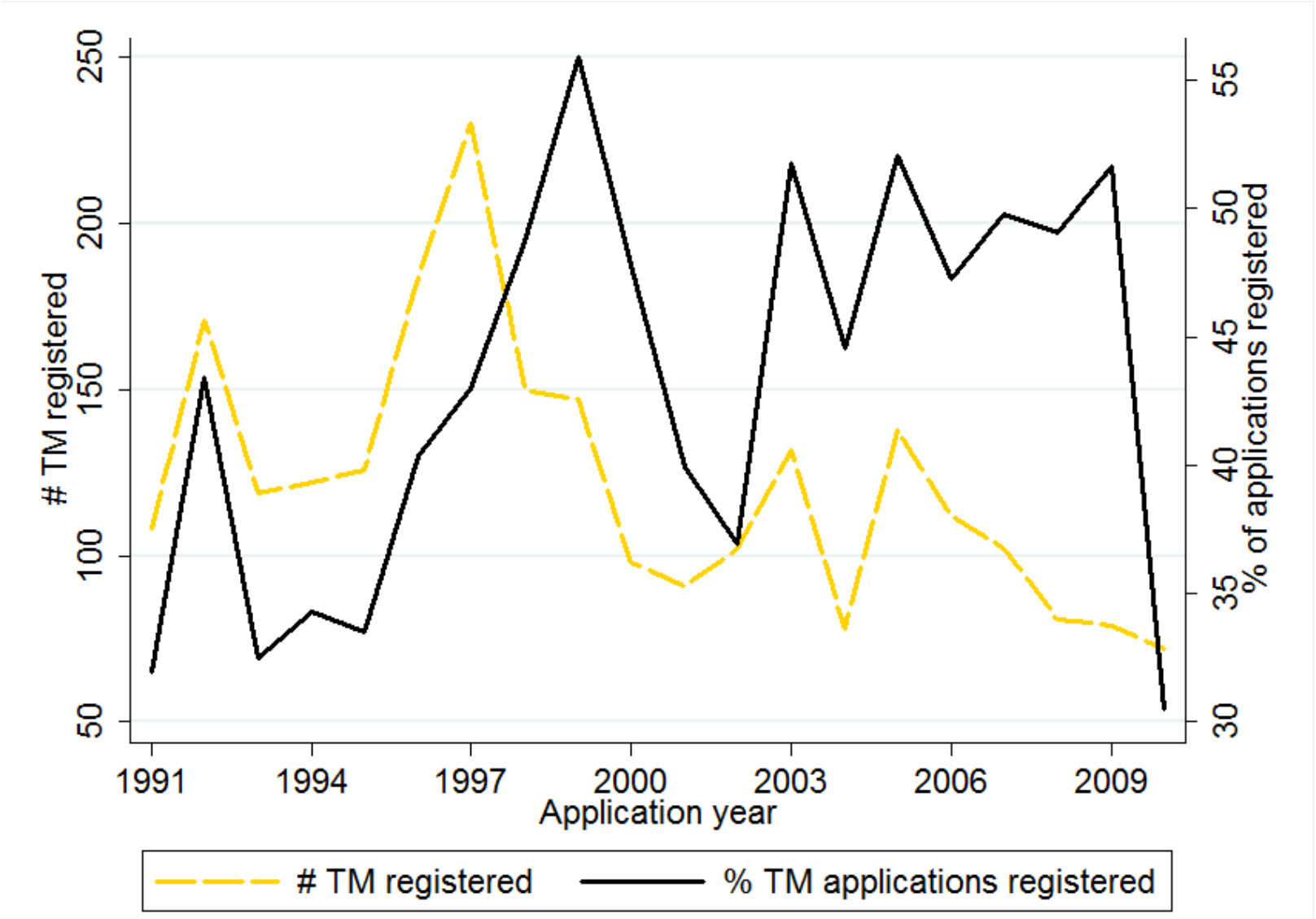
Comparison of squatter characteristics: companies & individuals

	Mean		Std. Dev.		T-test
	Squatter	All other	Squatter	All other	difference
Opposition	0.370	0.160	0.309	0.311	**-13.980**
Invalidation	0.095	0.009	0.241	0.085	**-16.098**
Rejection	0.675	0.365	0.345	0.441	**-14.426**
Simultaneous filings	0.626	0.629	0.161	0.155	0.453
Class diversity	0.627	0.630	0.317	0.297	0.188
Priority	0.002	0.018	0.026	0.118	**2.793**
Type of use	0.121	0.078	0.216	0.228	**-3.857**
Product	0.739	0.529	0.328	0.455	**-9.619**
Top brand	0.150	0.004	0.358	0.063	**-45.684**

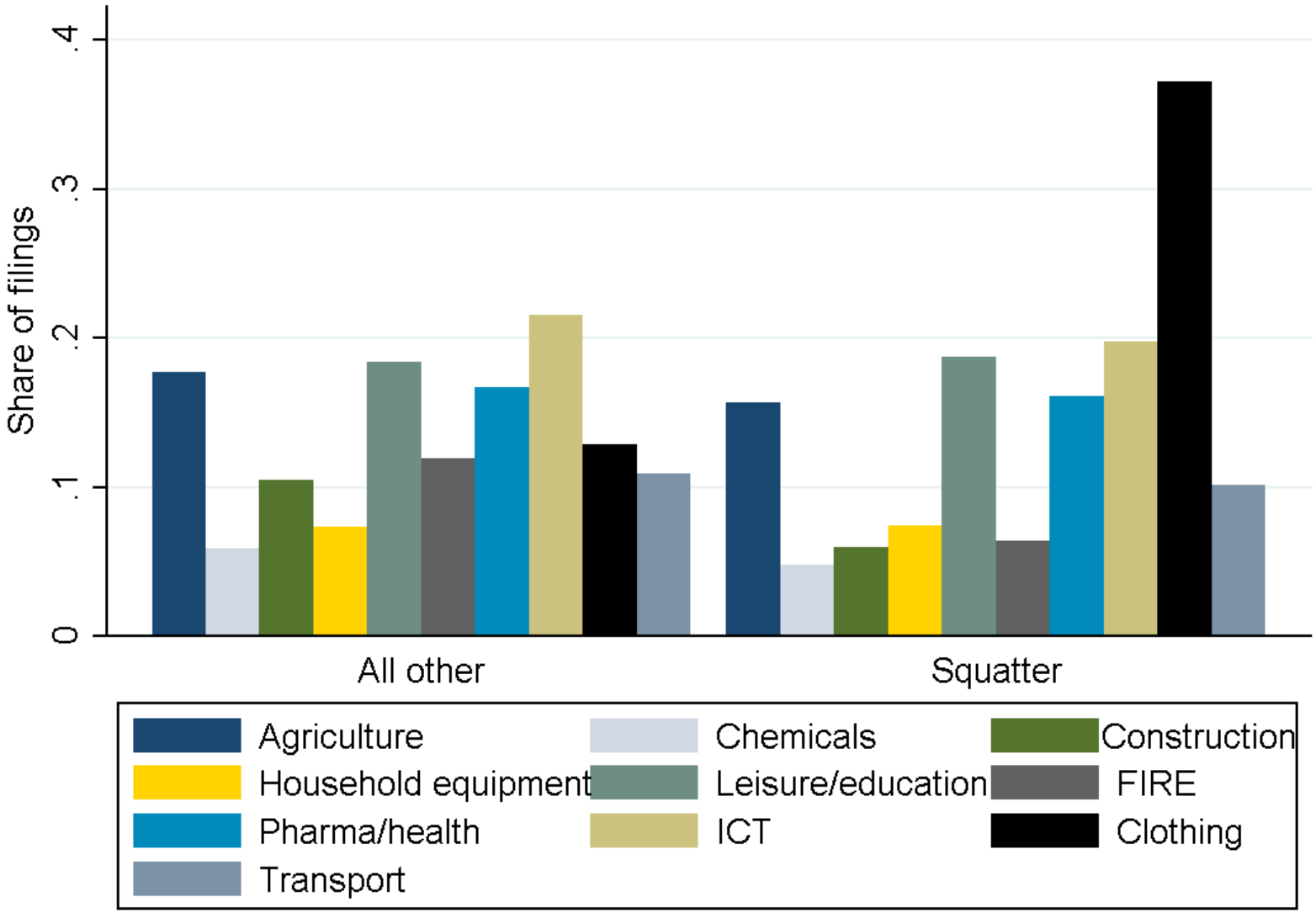
Comparison of squatter characteristics: companies & individuals

	Mean		Std. Dev.		T-test
	Squatter	All other	Squatter	All other	difference
Opposition	0.370	0.160	0.309	0.311	**-13.980**
Invalidation	0.095	0.009	0.241	0.085	**-16.098**
Rejection	0.675	0.365	0.345	0.441	**-14.426**
Simultaneous filings	0.626	0.629	0.161	0.155	0.453
Class diversity	0.627	0.630	0.317	0.297	0.188
Priority	0.002	0.018	0.026	0.118	**2.793**
Type of use	0.121	0.078	0.216	0.228	**-3.857**
Product	0.739	0.529	0.328	0.455	**-9.619**
Top brand	0.150	0.004	0.358	0.063	**-45.684**

Descriptive evidence: registered TMs



Descriptive evidence: economic activities



The effect of squatters on brand owners – **opposition**

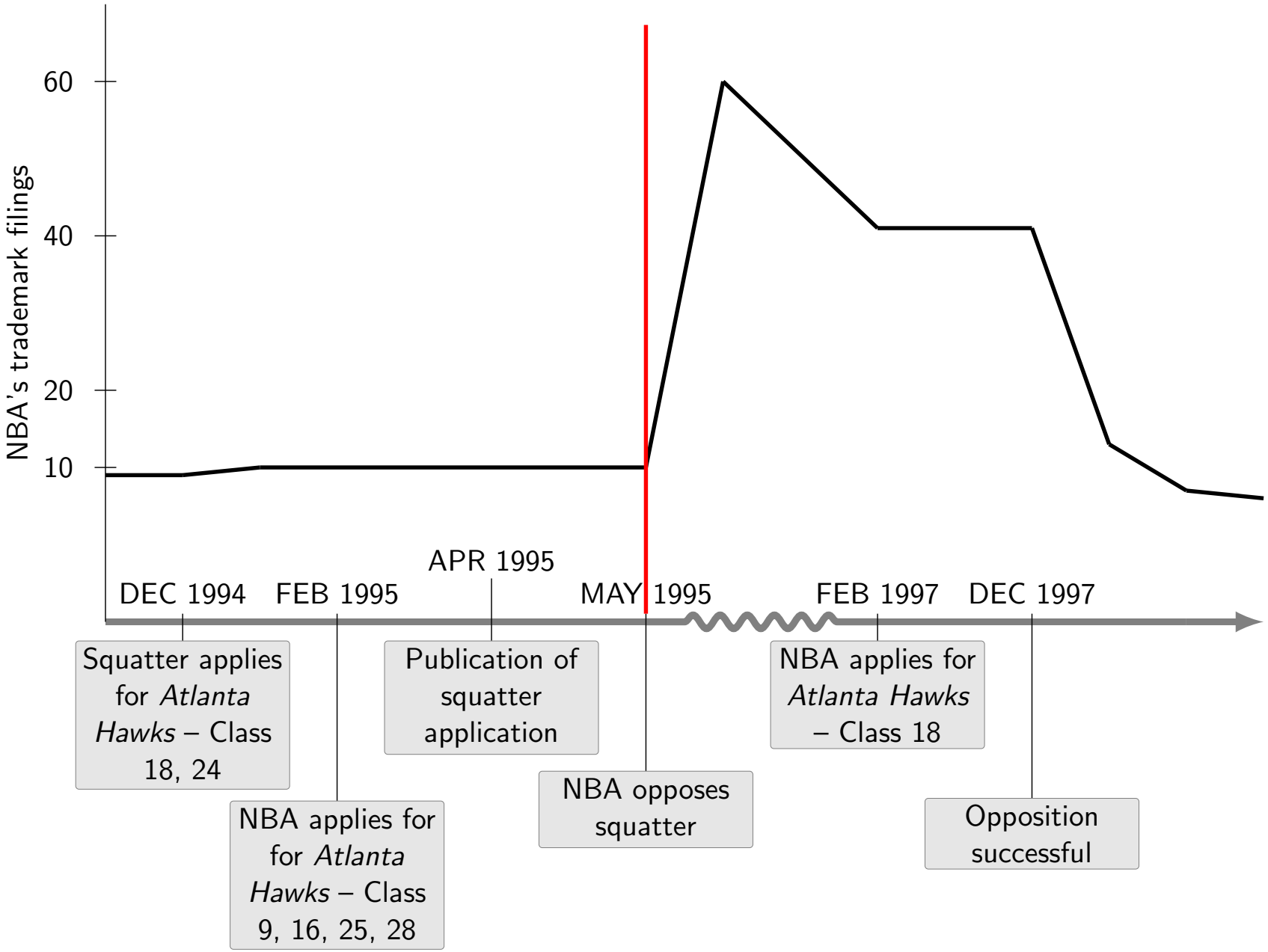
⊕ Filing behavior of brand owners after having opposed a squatter application **for the first time:**

- Event study

$$tm_{i\tau} = \alpha + \beta_s O_{i\tau=0} \times SQ_i + \beta_o O_{i\tau=0} + X_{i\tau} + \mu_i + \theta_\tau + \varepsilon_{i\tau}$$

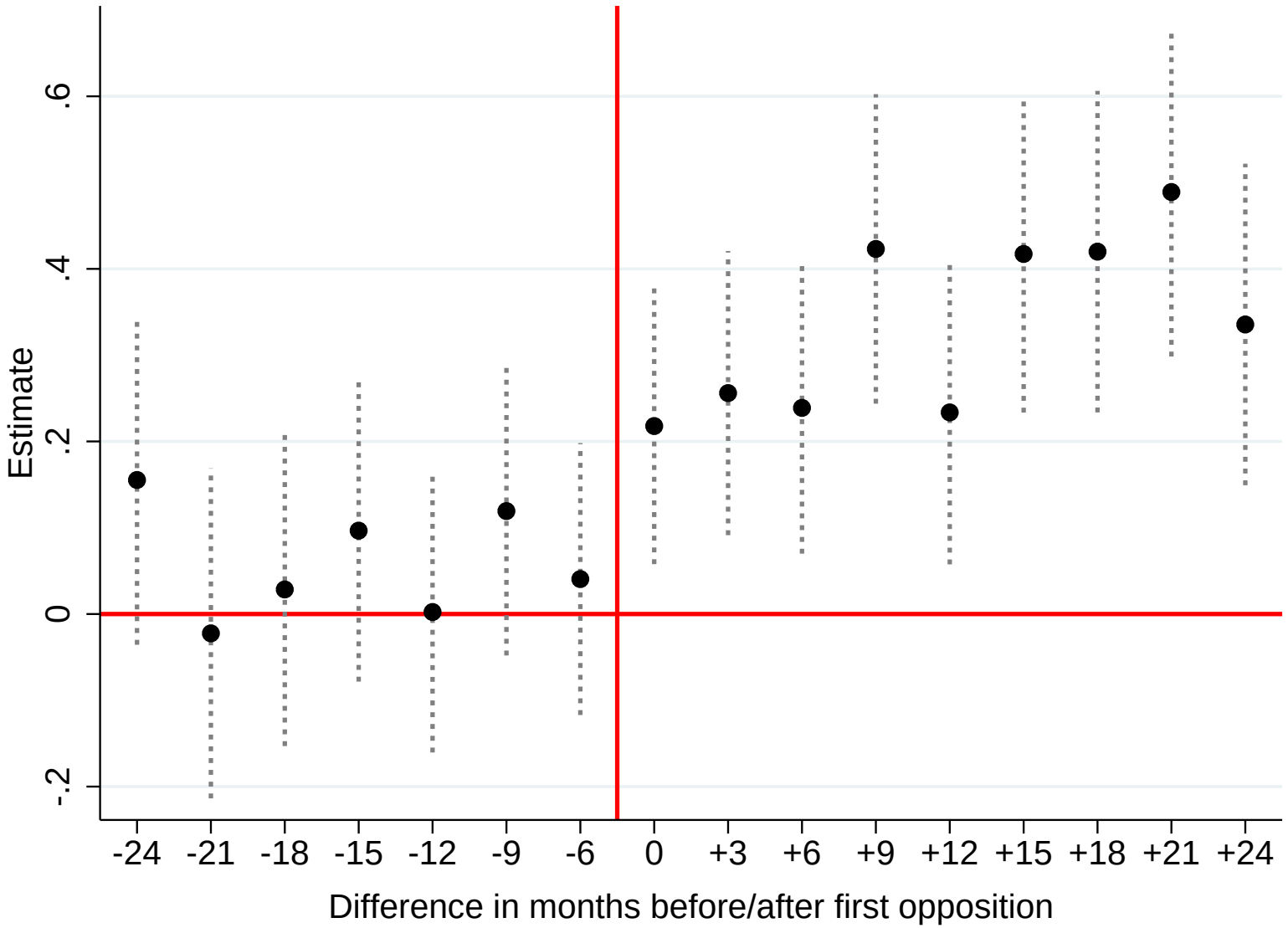
where $tm_{i\tau}$ filings by brand owner i in τ (including brand owners opposing a squatted trademark filing as well as brand owners opposing a filing by a 'legitimate' applicant), μ_i applicant-level fixed effects, θ_τ time trend, $X_{i\tau}$ applicant-level controls. $O_{i\tau=0}$ dummy variably equal to one once a brand owner opposed *for the first time* a trademark.

Example: The NBA's response to squatting



Opposition event study: $-/+24$ months after 1st opposition:

$$tm_{i\tau} = \alpha + \sum_{\tau=-24}^{\tau=-24} \beta_s O_{i\tau=0} \times SQ_i + \mu_i + \theta_\tau + \varepsilon_{i\tau}$$



Brand owner vs matched control group pre/post-opposition (1st opposition) filing behavior

	+/-24 months		+/-36 months	
	All	Foreign	All	Foreign
Post-opp.× Squatted TM	0.404**	0.615*	0.392***	0.549***
	(0.180)	(0.364)	(0.150)	(0.275)
Post-opposition	-0.295	-0.482***	-0.855***	-0.927***
	(0.199)	(0.342)	(0.193)	(0.367)
ln(TM stock)	1.259***	1.497***	1.041***	1.150***
	(0.117)	(0.329)	(0.082)	(0.008)
Time dummies	Yes	Yes	Yes	Yes
Brand/TM owner FE	Yes	Yes	Yes	Yes
# Observations	32,672	11,665	46,808	16,638
Brand owners	977	412	977	412
Control TM owners	977	286	977	286

Brand owner vs matched control group pre/post-opposition (1st opposition) filing behavior

	+/-24 months		+/-36 months	
	All	Foreign	All	Foreign
Post-opp.× Squatted TM	0.404**	0.615*	0.392***	0.549***
	(0.180)	(0.364)	(0.150)	(0.275)
Post-opposition	-0.295	-0.482***	-0.855***	-0.927***
	(0.199)	(0.342)	(0.193)	(0.367)
ln(TM stock)	1.259***	1.497***	1.041***	1.150***
	(0.117)	(0.329)	(0.082)	(0.008)
Time dummies	Yes	Yes	Yes	Yes
Brand/TM owner FE	Yes	Yes	Yes	Yes
# Observations	32,672	11,665	46,808	16,638
Brand owners	977	412	977	412
Control TM owners	977	286	977	286

Brand owner vs matched control group pre/post-opposition (1st opposition) trademark fencing behavior

	Propensity to file in new Nice classes			
	+/-24 months		+/-36 months	
Post-opp.× Squatted TM	0.304***	0.359***	0.283***	0.321***
	(0.088)	(0.092)	(0.077)	(0.079)
Post-opposition	-0.936***	-1.629***	-1.191***	-1.841***
	(0.136)	(0.145)	(0.142)	(0.149)
ln(TM stock)		1.362***		1.085***
		(0.079)		(0.058)
Time dummies	Yes	Yes	Yes	Yes
Brand/TM owner FE	Yes	Yes	Yes	Yes
# Observations	16,541	16,541	26,079	26,079
Brand owners	513	513	594	594
Control TM owners	480	480	569	569

Brand owner vs matched control group pre/post-opposition (1st opposition) trademark fencing behavior

	Propensity to file in new Nice classes			
	+/-24 months		+/-36 months	
Post-opp.× Squatted TM	0.304***	0.359***	0.283***	0.321***
	(0.088)	(0.092)	(0.077)	(0.079)
Post-opposition	-0.936***	-1.629***	-1.191***	-1.841***
	(0.136)	(0.145)	(0.142)	(0.149)
ln(TM stock)		1.362***		1.085***
		(0.079)		(0.058)
Time dummies	Yes	Yes	Yes	Yes
Brand/TM owner FE	Yes	Yes	Yes	Yes
# Observations	16,541	16,541	26,079	26,079
Brand owners	513	513	594	594
Control TM owners	480	480	569	569

Brand owner vs matched control group pre/post-opposition (1st opposition) trademark fencing behavior

	Propensity to file in areas other than main business			
	+/-24 months		+/-36 months	
Post-opp.× Squatted TM	0.285***	0.323***	0.331***	0.375***
	(0.092)	(0.097)	(0.079)	(0.084)
Post-opposition	-0.597***	-1.362***	-0.665***	-1.503***
	(0.141)	(0.151)	(0.141)	(0.149)
ln(TM stock)		1.776***		1.626***
		(0.101)		(0.077)
Time dummies	Yes	Yes	Yes	Yes
Brand/TM owner FE	Yes	Yes	Yes	Yes
# Observations	14,210	14,210	22,938	22,938
Brand owners	438	438	487	487
Control TM owners	411	411	466	466

Brand owner vs matched control group pre/post-opposition (1st opposition) trademark fencing behavior

	Propensity to file in areas other than main business			
	+/-24 months		+/-36 months	
Post-opp.× Squatted TM	0.285***	0.323***	0.331***	0.375***
	(0.092)	(0.097)	(0.079)	(0.084)
Post-opposition	-0.597***	-1.362***	-0.665***	-1.503***
	(0.141)	(0.151)	(0.141)	(0.149)
ln(TM stock)		1.776***		1.626***
		(0.101)		(0.077)
Time dummies	Yes	Yes	Yes	Yes
Brand/TM owner FE	Yes	Yes	Yes	Yes
# Observations	14,210	14,210	22,938	22,938
Brand owners	438	438	487	487
Control TM owners	411	411	466	466

Conclusion

Conclusion

- Squatting exists beyond anecdotal level

Conclusion

- Squatting exists beyond anecdotal level
- Evidence for systematic squatting

Conclusion

- Squatting exists beyond anecdotal level
- Evidence for systematic squatting
- Outcome not of systematic mistakes but market uncertainty

Conclusion

- Squatting exists beyond anecdotal level
- Evidence for systematic squatting
- Outcome not of systematic mistakes but market uncertainty
- Impact on filings by brand owners – evidence for preemptive filings and potential overprotection

Conclusion

- Squatting exists beyond anecdotal level
- Evidence for systematic squatting
- Outcome not of systematic mistakes but market uncertainty
- Impact on filings by brand owners – evidence for preemptive filings and potential overprotection

$\Rightarrow$ Inefficient strategic response

Conclusion

- Squatting exists beyond anecdotal level
- Evidence for systematic squatting
- Outcome not of systematic mistakes but market uncertainty
- Impact on filings by brand owners – evidence for preemptive filings and potential overprotection

$\Rightarrow$ Inefficient strategic response

- Are squatters enforcing trademarks that they should not have been able to register?

Conclusion

- Squatting exists beyond anecdotal level
- Evidence for systematic squatting
- Outcome not of systematic mistakes but market uncertainty
- Impact on filings by brand owners – evidence for preemptive filings and potential overprotection

$\Rightarrow$ Inefficient strategic response

- Are squatters enforcing trademarks that they should not have been able to register?
- Policy response?

Conclusion

- Squatting exists beyond anecdotal level
- Evidence for systematic squatting
- Outcome not of systematic mistakes but market uncertainty
- Impact on filings by brand owners – evidence for preemptive filings and potential overprotection

$\Rightarrow$ Inefficient strategic response

- Are squatters enforcing trademarks that they should not have been able to register?
- Policy response?
  - Fee shifting in revocation proceedings

Conclusion

- Squatting exists beyond anecdotal level
- Evidence for systematic squatting
- Outcome not of systematic mistakes but market uncertainty
- Impact on filings by brand owners – evidence for preemptive filings and potential overprotection

$\Rightarrow$ Inefficient strategic response

- Are squatters enforcing trademarks that they should not have been able to register?
- Policy response?
  - Fee shifting in revocation proceedings
  - Use requirement

Conclusion

- Squatting exists beyond anecdotal level
- Evidence for systematic squatting
- Outcome not of systematic mistakes but market uncertainty
- Impact on filings by brand owners – evidence for preemptive filings and potential overprotection

$\Rightarrow$ Inefficient strategic response

- Are squatters enforcing trademarks that they should not have been able to register?
- Policy response?
  - Fee shifting in revocation proceedings
  - Use requirement
  - "Black list"