

On the Improvement of the Registration Confrontation Model in the Change of Special Movable Property Rights

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Abstract: At present, in China, the registration confrontation model is commonly used to address the issue of property rights changes in special movable properties. However, through the analysis of practical cases and the argumentation in legal theory, it is obvious that the property rights change model of "delivery effectiveness + registration confrontation" has flaws. In China's academic circle, there are currently four mainstream viewpoints regarding the change of special movable property rights: the coexistence of registration and delivery, the delivery theory, the registration theory, and the contract theory. The delivery theory fails to distinguish between special movable property and general movable property well, the registration theory fails to distinguish between special movable property and immovable property well, and the contract theory confuses the basic principle of distinction between property rights and creditor's rights. By analyzing its rationality and existing flaws, and drawing on the comparative law experience of Japan and Germany in good faith acquisition, a more complete rule for the change of special movable property rights has been explored. That is, both delivery and registration can be regarded as the effective conditions for the change of property rights, and when there is a conflict between the two, registration takes precedence over delivery. Such rules can not only clarify the ownership of property rights, but also improve transaction efficiency, and at the same time better balance the interests among all parties involved in the transaction.

Keywords: Special movable property, Doctrine of delivery, Doctrine of registration, Bona fide acquisition

1. Introduction

Special movable property refers to movable property such as automobiles, ships and aircraft that can be moved and have a special status. From the perspective of the rules of property rights change, special movable property is both distinct and related to general movable property and immovable property. Articles 209, 224 and 225 of the Civil Code clearly stipulate that the change of property rights in movable property shall be made public by delivery, and the change of property rights in immovable property shall be made public by registration. Special movable property, on the other hand, adopts the registration confrontation model. At the same time, Article 7 of the "Interpretation of the Supreme People's Court on the Application of Law in the Trial of Disputes over Sales Contracts" (hereinafter referred to as the "Interpretation on Sales Contracts") stipulates that when the validity of registration and delivery conflicts, the rule that delivery takes precedence over registration shall be adopted. Whether to adopt the registration confrontation model and whether the effect of

delivery takes precedence over registration has sparked heated discussions in the academic circle. The reason why the rules for the change of special movable property rights are both special and complex lies in the fact that the effects of delivery and registration are intertwined during the change process. The practical problems brought about by the special rules of property rights change, such as the sale of multiple items and the rules of motor vehicle accidents, urgently need to be solved by clarifying the ownership of property rights. This article will analyze the validity issues of registration and delivery in the change of special movable property rights.

2. Theoretical issues existing in the current viewpoints

The above-mentioned cases reveal the problems existing in the current judicial practice of registration confrontation, and the fundamental reason is that the credibility of registration cannot be guaranteed. In the registration adversarial model, registration merely serves as an adversarial condition. That is to say, the adversarial effect of registration is based on the establishment of the effective condition of delivery. In fact, the validity of registration is not only affected by possession + payment of a reasonable price, but also by delivery. Article 7 of the Interpretation on Sales Contracts is a supplementary explanation to Article 225 of the Civil Code, providing four common situations in the issue of multiple sales of one item and their solutions. Among them, the effectiveness level of delivery has been raised to the first place. The author believes that this point is questionable. Based on elaborating the existing viewpoints, the following text will analyze its flaws to find the direction for improvement.

2.1. Current academic understanding

2.1.1. Registration and delivery coexist

Both delivery and registration are effective conditions for the change of special movable property rights, and in terms of effect, registration is stronger than delivery. Some scholars hold that, generally speaking, ownership changes immediately after delivery. Registration means that the transferee acquires the right to oppose a third party. However, when there is a conflict between delivery and registration, since the register itself has strong authority, it can be used as a formal requirement for the change of special movable property rights, without the need for prior delivery as a prerequisite for the occurrence of resistance in registration. This view largely affirms the credibility of registration, making it easier for people to have a trust interest in registration, and at the same time, it is in line with the original intention of legislators to encourage registration.

2.1.2. Delivery theory

This view holds that delivery is an effective condition for the change of special movable property rights, and once delivered, the ownership is transferred. Since special movable property is ultimately a type of movable property, it should be consistent with the way of property rights change of general movable property. The provisions of Article 225 of the Civil Code regarding the change of special movable property rights are not a negation of the requirement in Article 224 of the same law that delivery is an effective condition for the change of movable property rights, but rather a supplement to the strength and scope of its effect. Article 7 of the "Interpretation of Sales Contracts" stipulates: Where a seller enters into multiple sales contracts for the same special movable property such as a ship, aircraft or motor vehicle, and all the sales contracts are valid, and the buyers all request the actual performance of the contracts, "Where the seller delivers the subject matter to one of the buyers and then registers the transfer of ownership for the other buyers, and the buyer who has received the

delivery requests that the ownership of the subject matter be registered under his own name, The people's court shall support it. This regulation adopts the viewpoint of the delivery theory.

2.1.3. Registration said

This view holds that although Article 225 of the Civil Code of our country merely stipulates that unregistered individuals cannot be used against third parties, in terms of its legislative purpose, it still requires registration. Although the Civil Code stipulates that special movable properties such as ships and motor vehicles are subject to registration opposition, after delivery, only the transfer of the property occurs without the transfer of ownership. The parties concerned can still undergo changes in property rights through registration.

2.1.4. The contract states

This view holds that the change of property rights in special movable property is subject to the effectiveness of a contract. As long as both parties have entered into a contract and it is valid, the property rights have been transferred, regardless of whether the two parties have completed the delivery or registration of the property. In this view, registration also plays the role of opposing a bona fide third party. That is to say, the property right obtained by the buyer merely through the signing of a contract is not a complete property right; it can only be opposed to a bona fide third party after registration. In a sale of multiple items, the first registered buyer can oppose all other buyers, including those who have completed the delivery but have not yet registered [1].

2.2. The flaws of the current viewpoints

All the above-mentioned viewpoints have their own merits, but it should be noted that the contract theory has obvious drawbacks. At present, the legal provisions and academic consensus in our country adopt the model of "delivery effectiveness + registration opposition" for the issue of selling multiple items of special movable property. The fourth viewpoint, however, changes the effectiveness of delivery to the effectiveness of contract while retaining the registration opposition, which is obviously unreasonable. From the perspective of system interpretation, when discussing the rules for the change of property rights in special movable properties, the focus should always be on the issue of property rights. Whether a contract is concluded or takes effect merely remains at the level of creditor's rights and cannot ultimately determine the orientation of property rights. There is an essential difference between property rights and creditor's rights. First of all, property rights are the direct control rights over objects. The right holder can directly control the objects according to their own will and exclude interference from others. A creditor's right is a claim right. A creditor can only request the debtor to fulfill the debt. Secondly, the establishment of property rights is usually based on legal acts, inheritance, expropriation and other legal reasons, and the types and contents of property rights are stipulated by law, and the parties cannot create them freely. The establishment of creditor's rights is generally based on contracts, tortious acts, unjust enrichment, etc. The parties can freely agree on the content of creditor's rights within the scope prescribed by law. This means that property rights are more standardized and stable than creditor's rights. Furthermore, compared with property rights, creditor's rights not only lack exclusivity but also can coexist with creditor's rights of the same content. Whether the purpose can be achieved is also determined by the debtor's will. In short, in the case of selling one item multiple times, the seller can enter into sales contracts with multiple buyers on the same subject matter.

The drawback of the delivery theory lies in its failure to distinguish special movable property from general movable property well. Both Article 224 and Article 225 of the Civil Code are provisions located in the section on movable property under the Property Rights chapter of the Civil Code, but

there are still differences between the two. The reason why the view of delivery exists or why Article 7 of the Interpretation on Sales Contracts establishes that delivery takes precedence over registration when there is a conflict between delivery and registration is mainly because Article 224 of the Civil Code establishes delivery as the sole effective condition for the change of general movable property rights. Since the law does not stipulate any other effective conditions, Article 225 of the Civil Code should maintain the provisions of Article 224, still regarding delivery as the sole effective condition for the change of special movable property rights, and registration as an opposing condition. It is undeniable that special movable property is indeed a type of movable property. However, when establishing the rules for the change of property rights, special movable property should not be confused with general movable property, as there are still differences between the two. Firstly, the distinction of special movable property is relatively high. For special movable property, whether it is a motor vehicle, a ship or an aircraft, their displacement, draft and passenger capacity are inherently different. Of course, for the same brand and model of special movable property, there is often no difference in performance indicators. However, for each type of special movable property, there will be an engine. For motor vehicles, each engine has its unique serial number, which is also an important criterion for motor vehicle registration. One of the important reasons why registration cannot be a prerequisite for the effectiveness of general movable property is that most of the general movable property belongs to the category of goods and lacks the conditions for registration, while special movable property clearly has distinctiveness. Secondly, the value of special movable property is huge. Overall, special movable properties have considerable value, and some even exceed immovable properties.

If the drawback of the delivery theory is that it fails to distinguish between special movable property and general movable property, then the drawback of the registration theory is that it fails to distinguish between special movable property and immovable property. High distinctiveness and huge value seem to be the characteristics of real estate as well. Special movable property is indeed similar to real estate in some aspects. Therefore, some scholars have proposed that the reliance on delivery should be broken away, and thus registration should be regarded as the sole effective condition in the change of property rights, just like immovable property. [2] As an important method of public notice, registration may be one of the effective conditions for the change of special movable property rights. However, does this mean that we can completely get rid of delivery? The author believes that this is debatable. Firstly, Article 209 of the Civil Code establishes that the sole effective condition for the change of immovable property rights is registration. It should be noted that Article 209 is located in the first section of Chapter 2 of the Civil Code regarding immovable property registration, while Article 225 is located in the second section of Chapter 2 regarding the delivery of movable property. Secondly, the law has not clearly stipulated whether the change of special movable property rights requires delivery or registration to take effect. Therefore, from both the perspective of literal meaning and the system, no sufficient basis can be found to support registration as the sole effective condition. Meanwhile, at present, the laws of our country merely regard the registration of motor vehicles as an administrative management means, without endowing it with significance in terms of property rights. The "Reply of the Ministry of Public Security on the Determination of Motor Vehicle Owners (Public Transport Administration [2000] No. 98)" clearly states that the motor vehicle registration handled by the public security organs is a registration of granting or denying access to roads, not a registration of motor vehicle ownership.

3. Reconstruction of the delivery and registration effect of special movable property

3.1. The rationality of the effectiveness of the delivery of special movable property

The rationality of delivery as an effective condition needs no further elaboration, as the law has clearly stipulated this and the prevailing view in the academic circle also acknowledges it. The current point of contention lies in whether delivery is the sole effective condition for the change of special movable property rights, that is, whether registration can also be an effective condition. The model of delivery effectiveness + registration opposition stipulated by law clearly distinguishes the effectiveness requirements from the opposition requirements. The author believes that such a strict division is actually a mechanical adherence to the registration opposition doctrine. The reason why the effective condition and the adversarial condition arise is essentially due to the conflict in the validity of delivery and registration in the case of multiple sales of one item. If the validity issue of the two when they conflict can be clarified, then there would be no need to discuss the effective condition and the adversarial condition anymore. The author believes that both delivery and registration should be effective conditions for the change of special movable property rights. First of all, taking delivery as the sole effective condition has drawbacks. The so-called effective condition is to clarify the ownership of rights. Once the property rights are clearly defined, the right holder can use, control and perform other acts on the object. However, it should be noted that the property right referred to here is an incomplete property right, meaning it cannot be opposed to a bona fide third party. Essentially, if the right holder merely enjoys a property right that is at risk of being seized by others at any time, then what is the significance of the property right attribution caused by delivery before? In short, for any object, it has no vitality of its own and anyone can use it. The significance of the existence of property rights lies in stipulating that only the true sole right holder can use the object while others cannot. An incomplete property right that does not have the effect of opposing a bona fide third party is actually nothing but formalism. That is to say, delivery as an effective condition for the change of property rights is just like a contract as an effective condition for a creditor's right. If the subjects of rights and obligations are merely divided between two people, then delivery as an effective condition is sufficient to clarify the rights and obligations relationship between the two parties. However, selling one item multiple times means that the subjects must be multiple people. At this point, delivery, as the sole effective condition, lacks the role of settling disputes.

3.2. The possibility of the registration of special movable property taking effect

It is worth noting that registration as a prerequisite for effectiveness also has a certain degree of rationality. As mentioned above, since the nature of special movable property lies between that of ordinary movable property and immovable property, and the law has clearly registered it as a prerequisite for opposition, special movable property must have the capacity for registration. Since delivery cannot be the sole effective condition for the change of special movable property rights, it cannot be simply regarded that registration is merely an opposing condition. The author believes that registration can be regarded as an effective condition for the following reasons:

First, the credibility of property rights can be fully guaranteed. Delivery is strictly speaking an instantaneous act, so generally only the two parties to the transaction know that the transaction has occurred. Before registration, people can only determine the ownership of an object by whether the subject possesses it, and this state of possession is equally unreliable. In the issue of selling one item multiple times, the possessor of the item is not necessarily the true right holder. The possessor could be a buyer who has completed the registration but has not yet delivered the item, or a seller who has sold the item to multiple buyers, or even the item may have been mortgaged. In conclusion, the appearance of rights that can be reflected by possession is highly inaccurate. However, the registration

system established on the basis of the register and the national unified registration system has very strong credibility. Both parties to the transaction and a third party can conveniently and accurately obtain information about the property rights of the item from the register. If the property rights of the item are very complex or there is a conflict of rights, generally, the third party will not actively participate in the transaction of the item if it is based on good faith. In this way, the ownership of property rights can be simplified from the source and the rights of bona fide third parties can be protected.

Second, it is in line with the legislative purpose and customs of the country. Since the law has established the registration confrontation model, it indicates that the legislators' original intention was to encourage everyone to register, thereby better protecting the legitimate rights and interests of rights holders and bona fide third parties. This is also reflected in other laws of our country. Article 9 of the Maritime Code of our country stipulates that the acquisition, transfer and extinction of the ownership of a ship shall be registered with the ship registration authority. What has not been registered shall not be enforceable against a third party. Admittedly, the law still adopts the model of registration confrontation, but it makes no mention at all whether delivery should be a condition for effectiveness. On the contrary, according to the first half of this article, isn't it also taking registration as the effective condition for the change of special movable property rights? In fact, strictly speaking, apart from the Maritime Code which clearly stipulates the role of registration in the change of property rights of ships, neither the Civil Aviation Law nor the Road Traffic Safety Law explicitly states this view. However, even if we take a step back, although the regulations are somewhat ambiguous from the perspective of property rights, from the perspective of administrative management, people subconsciously believe that registration is necessary. Take motor vehicles as an example. According to Article 10 and Article 25 of the "Regulations on Motor Vehicle Registration" of our country, whether it is the initial application for registration or the transfer of ownership, an application for registration must be made to the vehicle management office. Therefore, after purchasing a motor vehicle, most people will immediately think of going to the vehicle management office to handle the driving license, or if they have bought a second-hand car, they will handle the transfer procedures as soon as possible. In fact, they may not be clear about the substantive significance of registration. However, due to the fact that the registration system has always existed in our country, people have developed a certain degree of dependence on registration. Registration has become a habit.

Third, maintain transaction security and reduce the occurrence of fraud. Clarifying the ownership of property rights is essentially aimed at safeguarding the interests of bona fide third parties. Compared with delivery, registration is obviously more conducive to protecting the rights of bona fide third parties. After all, registration is handled by state organs. In order to be responsible for the registration result, it is necessary to conduct a substantive examination of the registration. Meanwhile, if there is an error in the registration, it also needs to make compensation. Delivery, however, is merely a transaction method established between the two parties involved in the transaction, without any third party to witness it. Once a conflict occurs, it is very difficult to restore the objective facts. Furthermore, in the actual transaction process of special movable property, the methods of delivery are diverse, and the parties can enjoy rights by claiming different methods of delivery. In the transaction process, a bona fide third party finds it difficult to determine the actual ownership of property rights merely by presenting the appearance of rights, which ultimately leads to damage to their own interests.

3.3. Review of the relationship between the delivery and registration conflicts of special movable property

The question of which takes precedence, delivery or registration, is answered in Article 10 of the "Judicial Interpretation of Sales Contracts". When a seller enters into a sales contract with multiple

buyers for the same subject matter and all the sales contracts are valid, if the buyer who has received and delivered the goods first requests the seller to perform the contractual obligations such as handling the transfer registration procedures of ownership, the people's court shall support such request. Obviously, delivery here takes priority over registration. The author believes that there are actually internal contradictions in the provisions of this judicial interpretation. From the perspective of system interpretation, Article 10, Paragraph 1 clearly stipulates that delivery takes precedence over registration. However, the fourth item further stipulates that when the buyer who has made the advance delivery applies for the change registration, the people's court shall support it. Since it has been made clear that delivery takes precedence over registration, why is it necessary to handle the change registration again? On the one hand, legislators believe that the validity of registration is very low; on the other hand, they are encouraging the delivered buyers to go through the registration process. Isn't this self-contradictory? [3] Therefore, the author cannot agree with the view that delivery takes precedence over registration.

The reason why good faith acquisition occurs in the transactions of special movable property in our country is the ambiguity of property rights. The reasons for the ambiguity of property rights are nothing more than the conflict of validity between registration and delivery and the subsequent existence of incomplete property rights. In China, there are special cases in the provisions of property rights for ships, automobiles and aircraft. They cannot be classified under the category of general movable property or immovable property. In Germany, in the issue of good faith acquisition, different rules apply respectively to movable and immovable properties. For the good faith acquisition of movable property, Article 932, Paragraph 2 of the German Civil Code stipulates that if the transferee knows or is unaware due to gross negligence that the property does not belong to the seller, it does not constitute good faith. For immovable property, Article 892 (1) of the German Civil Code stipulates that the possibility of good faith acquisition will only be ruled out when it is known that the seller is unqualified. Based on such regulations, there are no incomplete property rights in Germany. The way to obtain complete property rights is nothing more than the application of delivery for movable property and registration for immovable property. The seller can neither deliver the same item multiple times nor register it multiple times, thereby effectively reducing the occurrence of good faith acquisition.

Based on the provisions of China's Civil Code, it is clearly unrealistic to simply and brutally follow Germany's example of removing the type of special movable property as a property right. A reliable approach is obviously to define the scope of good faith third parties in good faith acquisition and clarify the validity relationship between registration and delivery. The determination of a bona fide third party may refer to the provisions of the Japanese Civil Code. Articles 177 and 178 of the Japanese Civil Code only stipulate that "failure to register shall not be enforceable against a third party", but do not impose any restrictions on the scope of third parties. In the early days of the Civil Code's formulation, academic theories tended to offer a negative literal interpretation. Except for the exceptional provisions in special laws, unregistered property rights holders could not oppose any third party, not even the infringer, except for the parties and their general successors. Unlike China, in the early days of Japan, the subjective psychological state of the third party was not discussed at all. Later, the distinction between kindness and malice gradually began to be discussed in the Japanese academic circle. As Japan's free trade economy is relatively developed, most scholars tend to give goodwill a relatively lenient scope. That is to say, if the right holder registers in a timely manner in the transaction behavior to protect their rights, this is naturally worthy of promotion. However, if the right holder fails to register, it is regarded as a failure to protect their own rights. At this time, even if a third party infringes upon their rights in bad faith, as long as they do not violate the law of free competition, the third party's behavior is protected by law. However, when a third party is not only malicious but also has reasons that violate good faith, such a third party is not protected. This is known as the exclusion

theory of malicious breach of trust. With the development of case law theory, the theory of excluding malicious faithless individuals has also been rapidly popularized and repeatedly attempted to be theorized. Compared with Japan, China explicitly requires that the third party act in good faith subjectively. Theoretically, in China, it is believed that under normal circumstances, a "good faith third party" refers to a third party who is unaware of the delivery of ships, aircraft, motor vehicles and other items, has paid a reasonable consideration and completed the registration. Correspondingly, the so-called "malicious" third party mainly refers to a third party who, after the change of the property rights of a special movable property occurs, knows or should know the fact of the change of property rights and has not registered it [4].

The author believes that since China demands subjective good faith from third parties, the scope of interpretation of good faith should be reasonably expanded. If the interpretation of good faith is overly restricted, it will be detrimental to reasonable competition in the modern market. It is actually debatable that merely knowing or being supposed to know the fact of the change of property rights excludes one from a bona fide third party. In actual transactions, it is very likely that the seller has already sold the special movable property to the first transferee but has not registered it. At this point, the second transferee will reasonably increase the offer within a certain range in order to obtain the item. Although the second transferee may know that the seller and the first transferee have signed an agreement, for the purpose of reasonable competition, they can still obtain the ownership of the goods. Therefore, when defining good faith, the theory of breach of trust malice in Japanese civil law should be drawn upon. The "breach of trust malice" not only knows the first transferee, but also its behavior is obviously out of the scope of free competition and deviates from the principles of good faith and abuse of rights [5]. In order to facilitate reasonable competition in the modern market, our country should adopt a relatively inclusive attitude in the interpretation of good intentions. However, the problem brought about by this is that it encourages the occurrence of malice. Therefore, it is particularly important to clarify the ownership of property rights by clarifying the validity of registration and delivery. Therefore, the significance of registration has once again been highlighted. For the expanded interpretation of good faith, merely delivering would not have any exclusivity. When registration can independently serve as an effective condition, that is, when registration acquires complete property rights, the buyer no longer needs to clarify their rights through delivery. At the same time, when there is a conflict between registration and delivery, registration taking precedence over delivery can also better protect the interests of the buyer and good faith third parties.

Registration takes precedence over delivery. Besides the reasons mentioned above, there are also the following reasons:

First, it is conducive to clarifying the ownership of property rights and effectively determining the division and resolving disputes. Special movable property is different from ordinary movable property. Many special movable properties are not only related to personal interests, but sometimes also to public interests. Especially in cases of infringement of special movable property, such as motor vehicle infringement, it is particularly important to determine the subjects of rights and obligations. Therefore, the state has the obligation to clarify the subjects of rights and obligations through registration. First of all, the registration is supported by a highly credible register and inherently has a distinct public notice nature. As long as a third party acts in good faith, they can easily inquire about the ownership information of the property without incurring excessive costs. Secondly, the property rights disclosed at the registration office are complete and clear. The register can clearly correspond the object to its possessor one by one, and if there are other property rights on the object, the register will also clearly record them.

Second, it is conducive to improving transaction efficiency. Special movable property as a means of transportation means that its range of activities is not overly restricted. If delivery takes precedence over registration, it will greatly slow down the transaction speed. Suppose a Chinese buyer wants to

purchase a ship from a German company. Then it may take half a month to one month for the ship to arrive at a Chinese port from a German port for delivery. However, the advantage of registration lies in that it can be processed by only the two parties involved in the transaction, regardless of the location of the item at that time. After all, the transfer of people is often much more convenient compared to that of specific objects. Apart from the issue of time, due to the uncertainty of special movable property, the subject of its rights may change multiple times. It is difficult to clarify the rights holder merely by delivery, thus triggering disputes. Registration is carried out in state organs, representing the credit of the state and often avoiding disputes. For instance, in Germany, for registered inland waterway vessels, the registration has presumptive power and credibility. Therefore, the right holders recorded in the register are presumed to be the true right holders [6]. In China, registration also has a similar effect and can effectively avoid disputes.

Thirdly, it is conducive to preventing fraudulent behavior. In the trading market, honesty and trustworthiness are important fundamental principles. Essentially, selling one item in multiple quantities is a form of fraud. Therefore, from the perspective of legislative purpose, the occurrence of selling one item in multiple quantities should be minimized as much as possible. The regulation that delivery takes precedence over registration essentially encourages people not to register. In this way, due to the weak publicity of delivery, it is more likely that the same item will be sold multiple times. If registration takes precedence over delivery, then the third party will obtain the information on the ownership of property rights from the registration information before the transaction, thereby reducing the occurrence of multiple sales of one item.

Therefore, when there is a conflict between registration and delivery, the principle of registration taking precedence over delivery should be adopted. From this perspective, the provisions of Article 7 of the "Judicial Interpretation on Sales Contracts" actually need to be improved.

4. Conclusion

At present, for the change of special movable property rights, the academic and practical circles still take the registration confrontation model as the mainstream view, in response to Article 225 of the Civil Code. However, through the analysis of the cases and by drawing on the legal provisions of foreign countries regarding this issue, the original registration confrontation model cannot solve the practical problems in the form of the optimal solution. Returning to the essence of property rights is to enable the property right holder to enjoy complete and reliable rights over the object, thereby protecting their rights from being infringed upon by others. Through the above analysis, in terms of the choice of public announcement methods, registration, compared with delivery, is not only more reasonable at the theoretical level of legal methods, but also can better protect the interests of rights holders when actually resolving disputes. Therefore, both registration and delivery should be the effective conditions for the change of special movable property rights, and when there is a conflict between the two, registration should take precedence over delivery.

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