

Trademark Law of the People's Republic of China

(Adopted at the 24th Session of the Standing Committee of the Standing Committee of the Fifth National People's Congress on August 23, 1982, and amended according to the "Decision on the Revision of the Trademark Law of the People's Republic of China" adopted at the 30th Session of the Standing Committee of the Seventh National People's Congress, on February 22, 1993)

In case of discrepancy, the original version in Chinese shall prevail.

Chapter I. General Provisions

Article 1.

This Law is enacted for the purposes of improving the administration of trademarks, protecting the exclusive right to use a trademark, and of encouraging producers to guarantee the quality of their goods and maintain the reputation of their trademarks, with a view to protecting consumers' interests and to promoting the development of socialist commodity economy.

Article 2.

The Trademark Office of the administrative authority for industry and commerce under the State Council shall be responsible for the registration and administration of trademarks throughout the country.

Article 3.

A registered trademark means a trademark that has been approved and registered by the Trademark Office. The trademark registrant shall enjoy an exclusive right to use the trademark, which shall be protected by law.

Article 4.

Any enterprise, institution, or individual producer or trader, intending to acquire the exclusive right to use a trademark for the goods produced, manufactured, processed, selected or marketed by it or him, shall file an application for the registration of the goods trademark with the Trademark Office.

Any enterprise, institution, or individual producer or trader, intending to acquire the exclusive right to use a service mark for the services provided by it or him, shall file an application for the registration of the service mark with the Trademark Office. The provisions made in this Law concerning goods trademarks shall apply to service marks.

Article 5.

As for any of such goods, as prescribed by the State, that must bear a registered trademark, a trademark registration must be applied for. Where no trademark registration has been granted, such goods cannot be sold on the market.

Article 6.

Any user of a trademark shall be responsible for the quality of the goods in respect of which the trademark is used. The administrative authorities for industry and commerce at different levels shall, through the administration of trademarks, exercise supervision over the quality of the

goods and shall stop any practice that deceives consumers.

Article 7.

Any word, device or their combination that is used as a trademark shall be so distinctive as to be distinguishable. Where a registered trademark is used, it shall carry the indication of "Registered Trademark" or a sign indicating that it is registered.

Article 8.

In trademarks, the following words or devices shall not be used:

- (1) those identical with or similar to the State name, national flag, national emblem, military flag, or decorations, of the People's Republic of China;
- (2) those identical with or similar to the State names, national flags, national emblems or military flags of foreign countries;
- (3) those identical with or similar to the flags, emblems or names, of international intergovernmental organizations;
- (4) those identical with or similar to the symbols, or names, of the Red Cross or the Red Crescent;
- (5) those relating to generic names or designs of the goods in respect of which the trademark is used;
- (6) those having direct reference to the quality, main raw materials, function, use, weight, quantity or other features of the goods in respect of which the trademark is used;
- (7) those having the nature of discrimination against any nationality;
- (8) those having the nature of exaggeration and fraud in advertising goods; and
- (9) those detrimental to socialist morals or customs, or having other unhealthy influences.

The geographical names as the administrative divisions at or above the county level and the foreign geographical names well-known to the public shall not be used as trademarks, but such geographical names as have otherwise meanings shall be exclusive. Where a trademark using any of the above-mentioned geographical names has been approved and registered, it shall continue to be valid.

Article 9.

Any foreigner or foreign enterprise intending to apply for the registration of a trademark in China shall file an application in accordance with any agreement concluded between the People's Republic of China and the country to which the applicant belongs, or according to the international treaty to which both countries are parties, or on the basis of the principle of reciprocity.

Article 10.

Any foreigner or foreign enterprise intending to apply for the registration of a trademark or for any other matters concerning a trademark in China shall entrust any of such organizations as designated by the State to act as his or its agent.

Chapter II. Application for Trademark Registration

Article 11.

An applicant for the registration of a trademark shall, in a form, indicate, in accordance with the prescribed classification of goods, the class of the goods and the designation of the goods in respect of which the trademark is to be used.

Article 12.

Where any applicant intends to use the same trademark for goods in different classes, an application for registration shall be filed in respect of each class of the prescribed classification of goods.

Article 13.

Where a registered trademark is to be used in respect of other goods of the same class, a new application for registration shall be filed.

Article 14.

Where any word or device of a registered trademark is to be altered, a new registration shall be applied for.

Article 15.

Where, after the registration of a trademark, the name, address or other registered matters concerning the registrant change, an application regarding the change shall be filed.

Chapter III. Examination for and Approval of Trademark Registration

Article 16.

Where a trademark the registration of which has been applied for is in conformity with the relevant provisions of this Law, the Trademark Office shall, after examination, preliminarily approve the trademark and publish it.

Article 17.

Where a trademark the registration of which has been applied for is not in conformity with the relevant provisions of this Law, or it is identical with or similar to the trademark of another person that has, in respect of the same or similar goods, been registered or, after examination, preliminarily approved, the Trademark Office shall refuse the application and shall not publish the said trademark.

Article 18.

Where two or more applicants apply for the registration of identical or similar trademarks for the same or similar goods, the preliminary approval, after examination, and the publication shall be made for the trademark which was first filed. Where applications are filed on the same day, the preliminary approval, after examination, and the publication shall be made for the trademark which was the earliest used, and the applications of the others shall be refused and their trademarks shall not be published.

Article 19.

Any person may, within three months from the date of the publication, file

an opposition against the trademark that has, after examination, been preliminarily approved. If no opposition has been filed, or if it is decided that the opposition is not justified, the registration shall be approved, a certificate of trademark registration shall be issued and the trademark shall be published. If it is decided that the opposition is justified, no registration shall be approved.

Article 20.

The Trademark Review and Adjudication Board, established under the administrative authority for industry and commerce under the State Council, shall be responsible for handling trademark disputes.

Article 21.

Where the application for registration of a trademark is refused and no publication of the trademark is made, the Trademark Office shall notify the applicant of the same in writing. Where the applicant is dissatisfied, he may, within fifteen days from receipt of the notification, apply for a review. The Trademark Review and Adjudication Board shall make a final decision and notify the applicant in writing.

Article 22.

Where an opposition is filed against the trademark that has, after examination, been preliminarily approved and published, the Trademark Office shall hear both the opponent and applicant state facts and grounds and shall, after investigation and verification, make a decision. Where any party is dissatisfied, he may, within fifteen days from receipt of the notification, apply for a review, and the Trademark Review and Adjudication Board shall make a final decision and notify both the opponent and applicant in writing.

Chapter IV. Renewal, Assignment and Licensing of Registered Trademarks

Article 23.

The period of validity of a registered trademark shall be ten years, counted from the date of approval of the registration.

Article 24.

Where the registrant intends to continue to use the registered trademark beyond the expiration of the period of validity, an application for renewal of the registration shall be made within six months before the said expiration. Where no application therefor has been filed within the said period, a grace period of six months may be allowed. If no application has been filed at the expiration of the grace period, the registered trademark shall be cancelled.

The period of validity of each renewal of registration shall be ten years. Any renewal of registration shall be published after it has been approved.

Article 25.

Where a registered trademark is assigned, both the assignor and assignee shall jointly file an application with the Trademark Office. The assignee shall guarantee the quality of the goods in respect of which the registered trademark is used.

The assignment of a registered trademark shall be published after it has been approved.

Article 26.

Any trademark registrant may, by signing a trademark license contract, authorize other persons to use his registered trademark. The licensor shall supervise the quality of the goods in respect of which the licensee uses his registered trademark, and the licensee shall guarantee the quality of the goods in respect of which the registered trademark is used. Where any party is authorized to use a registered trademark of another person, the name of the licensee and the origin of the goods must be indicated on the goods that bear the registered trademark.

The trademark license contract shall be submitted to the Trademark Office for record.

Chapter V. Adjudication of Disputes Concerning Registered Trademarks

Article 27.

Where a registered trademark stands in violation of the provisions of Article 8 of this Law, or the registration of a trademark was acquired by fraud or any other unfair means, the Trademark Office shall cancel the registered trademark in question; and any other organization or individual may request the Trademark Review and Adjudication Board to make an adjudication to cancel such a registered trademark.

In addition to those cases as provided for in the preceding paragraph, any person disputing a registered trademark may, within one year from the date of approval of the trademark registration, apply to the Trademark Review and Adjudication Board for adjudication.

The Trademark Review and Adjudication Board shall, after receipt of the application for adjudication, notify the interested parties and request them to respond with arguments within a specified period.

Article 28.

Where a trademark, before its being approved for registration, has been the object of opposition and decision, no application for adjudication may be filed based on the same facts and grounds.

Article 29.

After the Trademark Review and Adjudication Board has made a final adjudication either to maintain or to cancel a registered trademark, it shall notify the interested parties of the same in writing.

Chapter VI. Administration of the Use of Trademarks

Article 30.

Where any person who uses a registered trademark has committed any of the following, the Trademark Office shall order him to rectify the situation within a specified period or even cancel the registered trademark:

- (1) Where any word, device or their combination of a registered trademark is altered unilaterally (that is, without the required registration);
- (2) where the name, address or other registered matters concerning the

registrant of a registered trademark are changed unilaterally (that is, without the required application);

(3) where the registered trademark is assigned unilaterally (that is, without the required approval); and

(4) where the registered trademark has ceased to be used for three consecutive years.

Article 31.

Where a registered trademark is used in respect of the goods that have been roughly or poorly manufactured, or whose superior quality has been replaced by inferior quality, so that consumers are deceived, the administrative authorities for industry and commerce at different levels shall, according to the circumstances, order rectification of the situation within a specified period, and may, in addition, circulate a notice of criticism or impose a fine, and the Trademark Office may even cancel the registered trademark.

Article 32.

Where a registered trademark has been cancelled or has not been renewed at the expiration, the Trademark Office shall, during one year from the date of the cancellation or removal thereof, approve no application for the registration of a trademark that is identical with or similar to the said trademark.

Article 33.

Where any person violates the provisions of Article 5 of this Law, the local administrative authority for industry and commerce shall order him to file an application for the registration within a specified period, and may, in addition, impose a fine.

Article 34.

Where any person who uses an unregistered trademark has committed any of the following, the local administrative authority for industry and commerce shall stop the use of the trademark, order him to rectify the situation within a specified period, and may, in addition, circulate a notice of criticism or impose a fine:

(1) where the trademark is falsely represented as registered;

(2) where any provision of Article 8 of this Law is violated; and

(3) where the manufacture is rough or poor, or where superior quality is replaced by inferior quality, so that consumers are deceived.

Article 35.

Any party dissatisfied with the decision of the Trademark Office to cancel a registered trademark may, within fifteen days from receipt of the corresponding notice, apply for a review. The Trademark Review and Adjudication Board shall make a final decision and notify the applicant in writing.

Article 36.

Any party dissatisfied with the decision of the administrative authority for industry and commerce to impose a fine under the provisions of Article 31, Article 33 or Article 34 may, within fifteen days from receipt of the

corresponding notice, institute legal proceedings with the people's court. If there have been instituted no legal proceedings or made no performance of the decision at the expiration of the said period, the administrative authority for industry and commerce may request the people's court for compulsory execution thereof.

Chapter VII. Protection of the Exclusive Rights to Use Registered Trademarks

Article 37.

The exclusive right to use a registered trademark is limited to the trademark which has been approved for registration and to the goods in respect of which the use of the trademark has been approved.

Article 38.

Any of the following acts shall be an infringement of the exclusive right to use a registered trademark:

- (1) to use a trademark that is identical with or similar to a registered trademark in respect of the same or similar goods without the authorization of the proprietor of the registered trademark;
- (2) to sell goods that he knows bear a counterfeited registered trademark;
- (3) to counterfeit, or to make, without authorization, representations of a registered trademark of another person, or to sell such representations of a registered trademark as were counterfeited, or made without authorization;
- (4) to cause, in other respects, prejudice to the exclusive right of another person to use a registered trademark.

Article 39.

Where any party has committed any of such acts to infringe the exclusive right to use a registered trademark as provided for in Article 38 of this Law, the infringer may request the administrative authority for industry and commerce at or above the county level for actions. The administrative authority for industry and commerce shall have the power to order the infringer to immediately stop the infringing act and to compensate the infringer for the damages suffered by the latter. The amount of compensation shall be the profit that the infringer has earned through the infringement during the period of the infringement or the damages that the infringer has suffered through the infringement during the period of the infringement. Where the infringement of the exclusive right to use a registered trademark is not serious enough to constitute a crime, the administrative authority for industry and commerce may impose a fine. Where any interested party is dissatisfied with the decision of handling made by the administrative authority for industry and commerce to order him to stop the infringing act or to impose a fine, he may, within fifteen days from receipt of the notice, institute legal proceedings with the people's court. If there have been instituted no legal proceedings or made no performance of the decision (to impose a fine) at the expiration of the said period, the administrative authority for industry and commerce shall request the people's court for compulsory execution thereof.

Where the exclusive right to use a registered trademark has been infringed, the infringer may institute legal proceedings directly with the people's court.

Article 40.

Where any party passes off a registered trademark of another person, and the case is so serious as to constitute a crime, he shall be prosecuted, according to law, for his criminal liabilities in addition to his compensation for the damages suffered by the infringer.

Where any party counterfeits, or makes, without authorization, representations of a registered trademark of another person, or sells such representations of a registered trademark as were counterfeited, or made without authorization, and the case is so serious as to constitute a crime, he shall be prosecuted, according to law, for his criminal liabilities in addition to his compensation for the damages suffered by the infringer.

Where any party sells goods that he knows bear a counterfeited registered trademark, and the case is so serious as to constitute a crime, he shall be prosecuted, according to law, for his criminal liabilities in addition to his compensation for the damages suffered by the infringer.

Chapter VIII. Supplementary Provisions

Article 41.

Any application for a trademark registration and for other matters concerning a trademark shall be subject to payment of the fee as prescribed. The schedule of fees shall be prescribed separately.

Article 42.

The Implementing Regulations under this Law shall be drawn up by the administrative authority for industry and commerce under the State Council. They shall enter into force after they have been submitted to and approved by the State Council.

Article 43.

This Law shall enter into force on March 1, 1983. The "Regulations Governing Trademarks" promulgated by the State Council on April 10, 1963 shall be abrogated on the same date, and any other provisions concerning trademarks contrary to this Law shall cease to be effective at the same time.

Trademarks registered before this Law enters into force shall continue to be valid.