

Trademark Law of the People's Republic of China

(Adopted at the 24th Meeting of the Standing Committee of the Fifth National People's Congress on August 23, 1982 and promulgated by Order No.10 of the Standing Committee of the National People's Congress on August 23, 1982; amended for the first time in accordance with the Decision on Revising the Trademark Law of the People's Republic of China adopted at the 30th Meeting of the Standing Committee of the Seventh National People's Congress on February 22, 1993; and amended for the second time in accordance with the Decision on Revising the Trademark Law of the People's Republic of China adopted at the 24th Meeting of the Standing Committee of the Ninth National People's Congress on October 27, 2001)

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Chapter I General Provisions

Article 1 This Law is enacted for the purpose of improving the administration of trademarks, protecting the exclusive right to the use of a trademark, and encouraging producers and dealers to guarantee the quality of their goods and services and preserve the credibility of trademarks, so as to protect the interests of consumers, producers and dealers and promote the development of the socialist market economy.

Article 2 The Trademark Office of the administrative department for industry and commerce under the State Council shall be in charge of the work of trademark registration and administration throughout the country.

The administrative department for industry and commerce under the State Council shall establish a Trademark Review and Adjudication Board to be responsible for handling trademark disputes.

Article 3 Registered trademarks refer to trademarks that are registered with the approval of the Trademark Office, including trademarks for goods and services, collective trademarks and certification trademarks. The owner of a registered trademark shall enjoy the exclusive right to the use of the trademark, which shall be protected by law.

For purposes of this Law, a collective trademark refers to one that is registered in the name of a group, association, or any other organization for use in business by its members to indicate membership.

For purposes of this Law, a certification trademark refers to one that is controlled by an organization which is capable of exercising supervision over a particular kind of goods or services and that is used by a unit other than the organization or by an individual for its or his goods or services, and is designed to certify the indications of the place of origin, raw materials, mode of manufacture, quality, or other specified properties of the said goods or services.

Particulars pertaining to the registration and administration of collective trademarks and certification trademarks shall be formulated by the administrative department for industry and commerce under the State Council.

Article 4 Any natural person, legal person, or other organization that needs to acquire the exclusive right to the use of a trademark for the goods or he produces, manufactures, processes, selects, or markets shall file an application for registration of the trademark of the goods with the Trademark Office.

Any natural person, legal person, or other organization that needs to acquire the exclusive right to the use of a service trademark for the services it or he provides shall file an application for registration of the service trademark with the Trademark Office.

Provisions regarding the goods trademarks in this Law shall be applicable to service trademarks.

Article 5 Two or more natural persons, legal persons, or other organizations may jointly file an application with the Trademark Office for the registration of one and the same trademark and jointly enjoy and exercise the exclusive right to the use of the trademark.

Article 6 With respect to goods on which the State requires the use of a registered trademark, an application for trademark registration shall be filed; the goods may not be sold on the market before registration is granted.

Article 7 The user of a trademark shall be responsible for the quality of the goods on which the trademark is used. The administrative departments for industry and commerce at all levels shall, through the administration of trademarks, put an end to any practice that deceives consumers.

Article 8 Any visible sign that can serve to distinguish the goods of a natural person, legal person, or other organization from those of another, including any word, design, letter of the alphabet, numeral, three-dimensional symbol and color combination, or any combination of the above, may be made a trademark for application for registration.

Article 9 A trademark submitted for registration shall bear noticeable characteristics and be readily distinguishable, and it may not conflict with the legitimate rights obtained by others earlier.

A trademark registrant shall have the right to indicate the wording "Registered Trademark" or the sign showing that the trademark is registered.

Article 10 None of the following signs may be used as trademarks:

(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; those identical with the

names of the specific locations that are seats of central state organs; or those identical with the names or designs of landmark buildings;

(2)those identical with or similar to the state names, national flags, national emblems or military flags of foreign countries, with the exception of those the use of which is permitted by the government of the country concerned;

(3)those identical with or similar to the names, flags or emblems of international inter-governmental organizations, with the exception of those the use of which is permitted by the organization concerned or is not liable to mislead the public;

(4)those identical with or similar to an official mark or inspection stamp that indicates control and guarantee, except where authorized;

(5)those identical with or similar to the symbol or name of the Red Cross or the Red Crescent;

(6)those having the nature of discrimination against any nationality;

(7)those constituting exaggerated and deceitful advertising; and

(8)those detrimental to socialist ethics or customs, or having other unwholesome influences.

No geographical names of administrative divisions at or above the county level or foreign geographical names known to the public may be used as trademarks, except where geographical names have other meanings or constitute part of a collective trademark or certification trademark. Registered trademarks in which geographical names are sued shall remain valid.

Article 11 None of the following marks may be registered as trademarks:

(1)where the mark bears only the generic name, design, or model number of the goods concerned;

(2)where it just directly indicates the quality, principal raw materials, function, use, weight, quantity or other features of the goods; and

(3)where distinctive characteristics are lacking.

Any mark mentioned in the preceding paragraph may be registered as a trademark if it has acquired distinctive features through use and is readily distinguishable.

Article 12 No application for registration of a three-dimensional sign as a trademark may be granted, where the sign merely indicates the shape inherent in the nature of the goods concerned, or it is only dictated by the need to achieve technical effects or the need to give the goods substantive value.

Article 13 Where the trademark of an identical or similar kind of goods is a reproduction, imitation, or translation of another person's well-known trademark not registered in China and is liable to cause public confusion, no application for its registration may be granted and its use shall be prohibited.

Where the trademark of a different or dissimilar kind of goods is a reproduction, imitation, or translation of another person's well-known trademark not registered in China and it misleads the public so that the interests of the owner of the registered well-known trademark are likely to be impaired, no application for its registration may be granted and its use shall be prohibited.

Article 14 The following factors shall be considered in determining whether or not a trademark is a well-known one:

- (1) the degree of public recognition in its trading areas;
- (2) the duration in which it has been in use;
- (3) the duration and extent of its advertising, and the geographical areas the advertising has covered;
- (4) the records of protection it has gained as well-known trademark; and
- (5) other factors serving to make it well known.

Article 15 Where an agent or representative, without authorization of the client, seeks to register in its own name the client's trademark and the client objects, the trademark shall not be registered and its use shall be prohibited.

Article 16 Where a trademark bears a geographical indication of the goods when the place indicated is not the origin of the goods in question, thus misleading the public, the trademark shall not be registered and its use shall be prohibited. However, where the registration is obtained in goodwill, it shall remain valid.

The geographical indication mentioned in the preceding paragraph means the origin of the goods the special qualities, credibility or other characteristics of the goods and it is primarily determined by the natural factors or other humanistic factors of the place indicated.

Article 17 Where a foreigner or foreign enterprise applies for trademark registration in China, the matter shall be handled in accordance with any agreement concluded between the country to which the applicant belongs and the People's Republic of China, or any international treaty to which both countries are parties, or on the basis of the principle of reciprocity.

Article 18 Where a foreigner or foreign enterprise intends to apply for the registration of a trademark or handle other trademark matters in China shall entrust an organization that is approved by the State and is qualified for serving as a trademark agent.

Chapter II Application for Trademark Registration

Article 19 An applicant for trademark registration shall fill in the specified form of classification of goods as to the class and trade name designation of the goods on which the trademark is to be used.

Article 20 If an applicant intends to use the same trademark on goods in different classes, he shall submit an application for each class on the basis of the specified form of classification of goods.

Article 21 If a registered trademark needs to be used on other goods of the same class, a separate application for registration shall be filed.

Article 22 If a change needs to be made in the signs of a registered trademark, an application shall be filed anew.

Article 23 If a change needs to be made in the name or address of the owner of a registered trademark or in any other registered matter, an application for the change shall be filed.

Article 24 Where an applicant, within six months from the date he applies for registration of his trademark for the first time in a foreign country, again applies in China for registration of one and the same trademark for the same goods, he may, in accordance with any agreement concluded between the foreign country concerned and the People's Republic of China or any international treaty to which both countries are parties, or on the basis of the priority principle mutually accepted, enjoy priority.

Where, in accordance with the preceding paragraph, an applicant claims priority, he shall so state in writing at the time when he files the application for trademark registration and shall, within three months, submit a copy of the original application he files for the first time. Failure on the part of the applicant to make the statement in writing or to submit a copy of the original application before the expiration of the time limit shall be regarded as not claiming priority.

Article 25 The applicant for registration of a trademark that is used for the first time on goods displayed at an international exhibition organized or recognized by the Chinese Government may, within six months from the date the said goods are placed on exhibition, enjoy priority.

Where, in accordance with the preceding paragraph, an applicant claims priority, he shall so state in writing at the time when he files the application for trademark registration and shall, within three months, submit the name of the exhibition, evidence supporting the use of the trademark on the goods displayed, documents proving the date the exhibition, etc. failure to make the statement in writing or to submit the documents before the expiration of the time limit shall be regarded as not claiming priority.

Article 26 Matters stated in the application for trademark registration and all information provided shall be truthful, accurate and complete.

Chapter III Examination and Approval of Trademark Registration

Article 27 Any trademark, for the registration of which an application is made, conforms to the relevant provisions of this Law shall undergo preliminary examination and approval by the Trademark Office, which shall announce it.

Article 28 Where a trademark, for the registration of which an application is made, that does not conform to the relevant provisions of this Law or that is identical with or similar to the trademark already registered by another person or is given preliminary examination and approval for use on the same kind of goods or similar goods, the Trademark Office shall reject the application and shall not announce that trademark.

Article 29 Where two or more applicants apply to register identical or similar trademarks for use on the same kind of goods or similar goods, the Trademark Office shall first conduct examination of, give approval to and announce the trademark whose registration is applied for earlier than the rest. Where the applications are filed on the same day, the Trademark Office shall first examine, give approval to and announce the trademark which is used earlier than the rest, and it shall reject the applications for registration of the other trademarks and shall not announce them.

Article 30 Any person may, within three months from the date a trademark is announced, raised an objection to the trademark that has undergone preliminary examination and obtained approval. Where no objection is raised at the expiration of the time limit, the trademark shall be registered upon approval, a trademark registration certificate shall be issued, and the matter shall be announced.

Article 31 No applicant for trademark application may infringe upon another person's existing prior rights, nor may he, by illegitimate means, rush to register a trademark that is already in use by another person and has certain influence.

Article 32 Where an application for trademark registration is rejected and the trademark is not announced, the Trademark Office shall notify the applicant of the matter in writing. Where the applicant is dissatisfied, he may, within fifteen days from date the notification is received, apply to the Trademark Review and Adjudication Board for review, and the Board shall make a decision and notify the applicant of its decision in writing.

Where the applicant is dissatisfied with the decision of the Trademark Review and Adjudication Board, he may, within 30 days from the date the notification is received, bring a suit in a People's Court.

Article 33 Where an objection is raised against a trademark that has undergone preliminary examination has been given approval and announced, the Trademark Office shall hear the facts and reasons stated by the objector and the objected and shall make a decision after investigation and verification. Where a party is dissatisfied with the decision, it may, within 15 days from the date the notification is received, apply to the Trademark Review and Adjudication Board for a review. The Board shall give a ruling and notify both the objector and the objected in writing.

Where a party is dissatisfied with the ruling of the Trademark Review and Adjudication Board, it may, within 30 days from the date the notification is received, bring a suit in a People's Court. The People's Court shall notify the other party involved in the trademark review proceedings to participate in the proceedings as the third party.

Article 34 Where a party does not apply to the Trademark Office for a review of the Office's decision or bring a suit in a People's Court against the ruling of the Trademark Review and Adjudication Board within the statutory limit, the decision and ruling shall go into effect.

Where it is determined that the objection is not justified, the trademark shall be registered upon approval, a trademark registration certificate shall be issued, and the trademark shall be announced. Where it is determined that the objection is justified, no approval shall be granted for registration of the trademark.

Where it is determined that the objection is not justified and approval is granted to registration of the trademark, the date on which the applicant for trademark registration obtains its exclusive right to the use of the trademark shall be counted from the day on which the three months following the preliminary examination and announcement of the trademark expire.

Article 35 Applications for trademark registration and for review shall be examined without delay.

Article 36 Where an applicant for trademark registration or a registrant discovers an obvious error in the trademark application or registration documents, he may apply for its correction. The Trademark Office shall, in accordance with law and within the limits of its functions and powers, make the correction and shall notify the party of the matter.

The correction of errors mentioned in the preceding paragraph shall not involve substantive matters in the application or registration documents.

Chapter IV Renewal, Assignment and Licensing of Registered Trademarks

Article 37 The period of validity of a registered trademark shall be 10 years, counted from the day the registration is approved.

Article 38 If an owner needs to continue to use his registered trademark after the period of validity expires, an application for renewal of registration shall be made within six months before the expiration. If the owner fails to do so within that period of time, an extension period of six months may be granted. If no application is filed before the extension period expires, the registered trademark shall be cancelled.

The period of validity for each renewal of registration shall be 10 years.

After renewal of registration is approved, it shall be announced.

Article 39 To assign a registered trademark, the assignor and assignee shall sign an assignment agreement and jointly file an application with the Trademark Office. The assignee shall guarantee the quality of the goods on which the registered trademark is used.

After the assignment of a registered trademark is approved, it shall be announced. The assignee shall enjoy the exclusive right to the use of the trademark starting from the date the announcement is made.

Article 40 The owner of a registered trademark may, by concluding a trademark licensing contract, authorize another person to use his registered trademark. The licensor shall supervise the quality of the goods on which the licensee uses his registered trademark, and the licensee shall guarantee the quality of the goods on which the registered trademark is to be used.

If any person is authorized to use the registered trademark of another person, the name of the licensee and the origin of the goods shall be indicated on the goods that bear the registered trademark.

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

Chapter V Determination of Disputes Concerning Registered Trademarks

Article 41 Where a trademark is registered in violation of the provisions of Article 10, 11, or 12 of this Law, or it is registered by deceitful or other illegitimate means, the Trademark Office shall cancel the trademark. Any unit or individual may request that the Trademark Review and Adjudication Board make a ruling to cancel such a registered trademark.

Where a trademark is registered in violation of the provisions of Article 13, 15, 16, or 31 of this Law, the owner of the trademark or any interested party may, within five years from the date the trademark is registered, request that the Trademark Review and Adjudication Board make a ruling to cancel the trademark. Where the trademark is registered with ill will, the owner of the well-known trademark shall not be limited by the five-year period.

In addition to circumstances specified in the preceding two paragraphs, any person who intends to take issue on a registered trademark may, within five years from the date the trademark is registered upon approval, apply to the Trademark Review and Adjudication Board for a ruling.

After receiving the application for a ruling, the Trademark Review and Adjudication Board shall notify the parties concerned and ask them to put forward their arguments within a specified time limit.

Article 42 With regard to a trademark against which objections are raised and on which a ruling is made prior to its registration with approval, the same facts and reasons may not be used in another application for a ruling.

Article 43 After the Trademark Review and Adjudication Board has made a ruling either to maintain or to revoke a registered trademark, it shall notify the party concerned of the ruling in writing.

Where the party is dissatisfied with the ruling of the Trademark Review and Adjudication Board, he may, within 30 days from the date the notification is received, bring a suit in a People's Court. The People's Court shall notify the other party involved in the trademark adjudication proceedings to take part in the legal proceedings as the third party.

Chapter VI Administrative Control of the Use of Trademarks

Article 44 Where a trademark user commits any of the following acts, the Trademark Office shall order it to rectify the situation within a time limit or revoke the registered trademark:

- (1) altering the registered trademark by himself;
- (2) altering the name, address, or other particulars in the registration by himself;
- (3) assigning the trademark by himself; or
- (4) ceasing the use of the registered trademark for three consecutive years.

Article 45 If registered trademarks are used on coarsely manufactured goods that are passed off as quality goods, thus deceiving consumers, the administrative departments for industry and commerce at various levels shall, on the merits of each case, order rectification of the situation within a time limit and may, in addition, circulate a notice on the matter or impose a fine, or the Trademark Office may revoke the registered trademarks.

Article 46 If a registered trademark is revoked or is not renewed at the expiration of its period of validity, the Trademark Office shall not approve any application for the registration of a trademark identical with or similar to the said trademark within one year from the date it is revoked or cancelled.

Article 47 In the event of a violation of the provisions of Article 5 of this Law, the local administrative department for industry and commerce shall order the violator to file an application for registration within a time limit and may, in addition, impose a fine.

Article 48 Where a person commits any of the following acts by using an unregistered trademark, the local administrative department for industry and commerce shall stop him from using the trademark, order him to make rectification within a time limit and may, in addition, circulate a notice on the matter or impose a fine:

- (1) passing off the trademark as a registered one;
- (2) violating the provisions of Article 8 of this Law; or
- (3) using the trademark on coarsely manufactured goods that are passed off as quality goods, thus deceiving consumers.

Article 49 Where a party is dissatisfied with the decision made by the Trademark Office to revoke his registered trademark, he may, within 15 days from the date the notification is received, apply to the Trademark Review and Adjudication Board for a review. The Trademark Review and Adjudication Board shall make a decision and notify the applicant in writing.

Where the party is dissatisfied with the decision of the Trademark Review and Adjudication Board, it may, within 30 days from the date the notification is received, bring a suit in a People's Court.

Article 50 Where the party is dissatisfied with the decision made by the administrative department for industry and commerce to impose a fine under Article 45, 47, or 48 of this Law, he may, within 15 days from the date the notification is received, bring a suit in a People's Court. If the party neither brings a suit at the expiration of the time limit nor complies with the decision, the administrative department for industry and commerce concerned shall request the People's Court to enforce the decision.

Chapter VII Protection of the Exclusive Right to the Use of a Registered Trademark

Article 51 The exclusive right to the use of a registered trademark shall be limited to trademarks which are registered upon approval and to goods the use of a trademark on which is approved.

Article 52 Any of the following acts shall constitute an infringement on the exclusive rights to the use of a registered trademark:

- (1) using a trademark that is identical with or similar to the registered trademark on the same or similar goods without permission of the owner of the registered trademark;
- (2) selling goods that infringe on the exclusive right to the use of a registered trademark;
- (3) counterfeiting, or making without authorization, representations of another person's registered trademark, or selling such representations;
- (4) altering a registered trademark without permission of its owner and selling goods bearing such an altered trademark on the market; and
- (5) impairing in other manners another person's exclusive right to the use of its registered trademark.

Article 53 When a dispute arises as a result of any of the acts infringing upon another person's exclusive right to the use of a registered trademark as mentioned in Article 52 of this Law, the parties involved shall settle the dispute through consultation. Where the parties are not willing to do so or where consultation fails, the owner of the registered trademark or any interested party may bring a suit in a People's Court or request the administrative department for industry and commerce to handle the matter. When the said department determines that the fact of infringement is established, it shall order the infringer to cease infringing upon that right immediately, and it shall confiscate and destroy the goods involved and the tools specially used to manufacture the said goods and counterfeit the representations of the registered trademark, and may also impose a fine. Where the party is dissatisfied with the decision of the department, he may, within 15 days from the date the notification is received, bring a suit in a People's Court in accordance with the Administrative Procedure Law of the People's Republic of China. Where the infringer neither brings a suit at the expiration of the time limit nor complies with the decision, the administrative department for industry and commerce may request the People's Court to enforce its decision. The administrative department for industry and commerce that handles the dispute may, as requested by the party, mediate as a settlement on the amount of compensation for the infringement of the exclusive right to the use of the trademark. Where mediation fails, the party may, in accordance with the Civil Procedure Law of the People's Republic of China, bring a suit in a People's Court.

Article 54 The administrative department for industry and commerce shall have the power to investigate any act infringing upon the exclusive right to the use of a registered trademark. Where a crime is suspected to have been committed, it shall promptly transfer the case to a judicial department for handling in accordance with law.

Article 55 When an administrative department for industry and commerce at or above the county level, on the basis of the evidence or information, obtained for a suspected violation of law, conducts investigation into a suspected infringement of another person's exclusive right to the use of a registered trademark, it may exercise the following functions and powers:

- (1) questioning the parties concerned to find out the facts regarding the infringement of another person's exclusive right to the use of a registered trademark;
- (2) checking and reproducing the parties' contracts, invoices, account books, and other materials relating to the infringement;

(3)conducting on-the-spot inspection of the premises where the suspected party carries out activities infringing upon another person's exclusive right to the use of a registered trademark; and

(4)inspecting articles involved in the infringement; sealing or seizing the articles that are proven to been used for infringing upon another person's exclusive right to the use of a registered trademark.

When the administrative department for industry and commerce exercises the functions and powers provided for in the preceding paragraph in accordance with law, the parties shall assist and cooperate with it and may not refuse to do so or stand in its way.

Article 56 The amount of compensation for infringement of the exclusive right to the use of a trademark shall be the amount of the profits that the infringer has earned as a result of the infringement during the period of the infringement, or the amount of the losses that the infringed has suffered as a result of the infringement during the period of the infringement, including any reasonable expenses the infringed has paid in its effort to put an end to the infringement.

Where the profits earned by the infringer or the losses suffered by the infringed as a result of the infringement, as mentioned in the preceding paragraph, are hard to determine, the People's Court shall, on the basis of the circumstances of the infringement, decide to make it not more than RMB 500,000 yuan.

Where a person unknowingly sells goods which represent an infringement upon another person's exclusive right to the use of a registered trademark but can prove that they are obtained by himself lawfully and can identify the supplier, he shall not bear the liability to pay compensation.

Article 57 Where the owner of a registered trademark or any interested party has evidence proving that another party is committing or will soon commit an act that infringes upon his exclusive right to the use of its registered trademark and that, unless it is stopped promptly, will cause irreparable harm to his legitimate rights and interests, he may, before filing a lawsuit, apply to the People's Court for ordering the cease of the act and for adopting measures to preserve his property.

In handling the application mentioned in the preceding paragraph, the People's Court shall apply the provisions in Articles 93 through 96 and in Article 99 of the Civil Procedure Law of the People's Republic of China.

Article 58 In order to put a stop to an infringement, the owner of a registered trademark or the interested party may, under conditions where evidence may be missing or become unobtainable in future and prior to filing a lawsuit, apply to the People's Court for preserving the evidence.

The People's Court shall make a ruling within 48 hours from the time it accepts the application. Once a ruling to have the evidence preserved is made, it shall be enforced immediately.

The People's Court may order the applicant to provide a surety. Where no surety is provided, the People's Court may reject the application.

Where the applicant fails to bring a lawsuit within 15 days after the People's Court adopts the preservation measure, the People's Court shall rescind the measure.

Article 59 Where a person, without permission of the owner of a registered trademark, uses a trademark that is identical with the owner's on the same kind of goods, which constitutes a crime, he shall, in addition to compensating losses suffered by the infringed, be investigated for criminal responsibility in accordance with law.

Anyone who counterfeits or makes without permission the representations of another person's registered trademark or sells such representations which constitutes a crime, shall, in addition to compensating the losses suffered by the infringed, be investigated for criminal responsibility in accordance with law.

Anyone who knowingly sells goods bearing counterfeit registered trademarks, which constitutes a crime, shall, in addition to compensating the losses suffered by the infringed, be investigated for criminal responsibility in accordance with law.

Article 60 Functionaries of State organs engaged in trademark registration, administration, and review shall be impartial in implementing the law, honest and self-disciplined, and devoted to their duties, and shall provide services with civility.

No functionaries of State organs working in the Trademark Office and the Trademark Review and Adjudication Board or engaged in trademark registration, administration, and review may work for trademark agencies or engage in the manufacture or marketing of goods.

Article 61 Administrative departments or industry and commerce shall establish and improve an internal supervision system to supervise and inspect the way State organ functionaries in charge of trademark registration, administration, and review implement laws and administrative regulations and observe discipline.

Article 62 Where a State organ functionary working in trademark registration, administration, and review neglects his duty, abuses his power, and engages in malpractice for personal gain, violates the law in trademark registration, administration, and review, accepts money or things of value from a party, or seeks illegitimate interests, and where the case is so serious as to constitute a crime, he shall be investigated for criminal responsibility in accordance with law. Where the case does not constitute a crime, he shall be given administrative sanction in accordance with law.

Chapter VIII Supplementary Provisions

Article 63 Applicants for trademark registration and persons having other trademark matters handled shall pay a fee, the specific rates of which shall be determined separately.

Article 64 This Law shall go into effect as of March 1, 1983. The Regulations on Trademark Administration promulgated by the State Council on April 10, 1963 shall be annulled simultaneously, and any other provisions concerning trademark administration that conflict with the provisions of this Law shall be nullified at the same time.

Trademarks registered before this Law goes into effect shall remain valid.