

Opinions on Several Issues Concerning Service Trademark Protection

(issued by the State Administration for Industry and Commerce on March 30 1999)

These opinions on the several issues concerning service trademark protection are expressly set forth below with a view to effectively implementing the Trademark Law and ensuring the protection of exclusive service trademark right:

1. A service trademark is a symbol that a service provider uses to distinguish its service from that provided by another operator.

A service trademark is composed of word, device or their combination.

2. The related provisions of the Trademark Law and its Implementing Regulations governing acts infringing trademarks of goods also apply to service trademarks; the principles judging the similarity of goods and trademarks of goods also apply to services and service trademarks.

3. Similar services refer to those that have related purpose, manner and object of service or those that are specially associated.

Similar service trademarks refer to those that are apt to create confusion on the part of consumers in respect of the origin of services owing to their pronunciation, form and meaning of words, the composition and color of devices or the general composition of words and devices compared with those of registered trademarks.

4. Where acts of service and goods used to provide the service are specifically related, the service is deemed similar to the goods used to provide the service.

5. The following acts are ones of infringement upon service trademarks

(1) Using, without authorization, service trademarks identical with or similar to others' service trademarks for identical or similar services;

(2) Using, without authorization, words identical with or similar to others' service trademarks as names of service for identical or similar services in such a manner as to create confusions;

(3) Counterfeiting, making, without authorization, signs of service trademarks or selling signs of others' service trademarks that are counterfeited or made without authorization:

The acts mainly refer to counterfeiting, making, without authorization, goods (e.g. tableware in restaurant and beverage industry) bearing signs of others' service trademarks

used within the service industry or selling such goods that are counterfeited or made without authorization;

(4) Using advertisement, mass media or other means that guides consumption, or using, without authorization, service trademarks identical with or similar to others' service trademarks so as to create confusions;

(5) Deliberately making available convenient conditions to infringers by providing them with places, tools, auxiliary equipment and service staff to execute infringing acts and introducing clients (consumers); or doing so for infringers to warehouse, transport, post and hide goods bearing signs of service trademarks.

6. Acts impairing others' exclusive trademark rights that are not made clear in Article 38(1) to (3) of the Trademark Law and Rule 41 of the Implementing Regulations thereof are the trademark-infringing acts defined in Article 38(4) of the former.

The impairment of others' exclusive service trademark right includes possibility of impairment.

7. Using service trademarks in the following circumstances is deemed the use of service trademarks:

(1) Places of service;

(2) Signboards of service;

(3) Tools of service;

(4) Cards, postcards and presents, etc. bearing service trademarks for service use;

(5) Business transaction instruments, account books, invoices and contracts, etc. bearing service trademarks;

(6) Advertisements and other promotional materials; and

(7) Other articles used to provide service.

Others' normal use of symbols commonly used in the service industry and normal use of business names (shop names), names geographic names, names of place of service to indicate special features of a service and to explicate items of service do not constitute acts of infringement upon service trademarks, except that intention of unfair competition is obviously identifiable.

8. Acts of infringement upon others' service trademarks that are well-known to a degree and acts of infringement two or more times upon others' exclusive service trademarks right shall be deemed acts subject to serious punishment.

9. Illegal business turnover from infringement of service trademarks is one made by infringing acts in the period of infringement. In normal situations, the amount of money made by acts of using, without authorization, trademarks identical with or similar to others' service trademarks in service is illegal business turnover.

Where there exists only an act of advertisement, without execution of service, the illegal business turnover shall be computed on the basis of the advertisement fee; where there are only bills relating to acts of provision of service, without corresponding evidence to the execution of the service, illegal business turnover shall be computed on the basis of the amount of the bills.

10. The evidence on the basis of which illegal business turnover is computed includes:

(1) Contracts;

(2) Account books;

(3) Invoices;

(4) Advertisements; and

(5) Other evidence.