

Opinions on Resolution of Several Issues Concerning Trademarks and Enterprise Names

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With a view to effectively implementing the Trademark Law and the related regulations on registration and administration of enterprise names, to ensuring the protection of exclusive trademark right and right of enterprise names and to safeguarding the order of fair competition and public interests, the opinions are hereby expressly set forth as follows on the resolution of the several issues concerning trademarks and enterprise names: 1.The exclusive trademark right and the right of enterprise names are both rights established by legal procedures and protected respectively by the laws and regulations on trademark and registration and administration of enterprise names.

2.The exclusive trademark right and the right of enterprise names shall be acquired in accordance with the principle of honesty and good faith set out in the General Principles of the Civil Law and the Anti-Unfair Competition Law, without committing unfair competition by making use of the reputation of another's trademark and enterprise name.

3.A trademark is a symbol composed of word, device or their combination and used to distinguish origins of different goods or services; an enterprise name is a sign composed of administrative division, shop name, business or operation feature and form of organization with the shop name being the key mark distinguishing different enterprises, and used to set apart the different subjects of the market.

4.The identicalness and similarity of the word in a trademark and the shop name in an enterprise name create confusion (including the possibility to confuse, same as below) on the part of others regarding the subjects of the market and origins of their goods or services, and, consequently, constitute unfair competition and this shall be stopped according to law.

5.The confusions as stated in the preceding paragraph mainly include the following circumstances: (1)Registration, as a trademark, a word identical with or similar to the shop names in others' enterprise names causes the related public to mistake or confuse the enterprise name owner with the trademark applicant; and (2)Registration, as a shop name in an enterprise name, a word identical with or similar to another's registered trademark causes the related public to mistake or confuse the trademark registrant with the enterprise name owner.

6.The confusion of a trademark and an enterprise name shall be handled by applying to the principles of maintaining fair competition and protecting the interests of the prior lawful right holders.

7.Handling cases of confusion of trademark and enterprise name shall meet these conditions: (1)The trademark and the enterprise name have got confused, which impairs the lawful rights and interests of a prior rightholder; (2)The trademark has been registered and the enterprise name put on record; and (3)A request (including one raised, but

unresolved) has been filed within the five years from the date of trademark registration or putting on record of enterprise name, but with exclusion to registration or putting on record in bad faith.

8. Where they think that their own rights and interests are impaired, trademark registrants or enterprise name owners may file written complaints with the state or provincial administrations for industry and commerce, together with related evidence of impairment of their rights and interests.

9. Where a case of confusion of a trademark with an enterprise name occurs in the same provincial administrative region, it shall be dealt with by the administration for industry and commerce of the province. If it is a case involving more than one provincial administrative region, it is handled by the State Administration for Industry and Commerce (SAIC). Cases in which protection of exclusive trademark right is claimed are handled by the enterprises registration departments of the administration for industry and commerce at or above provincial level. Where an enterprise name should be changed, after the competent department handles the case together with the administrative authority for trademark affairs according to the provisions relating to the registration and administration of enterprise names, the name shall be changed with the approval by the competent authority for enterprise names and submitted, for filing, to the Trademark Office and the Enterprise Registration Office of SAIC. Cases in which protection of the right of enterprise names is claimed are handled by the administrative authority for trademark affairs under the administration for industry and commerce at or above provincial level. Where registered trademarks should be invalidated, opinions shall be raised by the competent authority and submitted, for decision, to the Trademark Office of SAIC, and the Trademark Office of SAIC shall deal with the matter together with the department in charge of enterprise registration according to the relevant provisions of the Trademark Law and its Implementing Regulations.

10. Acts of using trademarks or enterprise names in violations of the related provisions regulating the administration of trademarks and the registration administration of enterprise names and creating confusions shall be investigated and handled by the administrative authority vested with jurisdiction.