

Interpretation by the Supreme People's Court of the Issues Relating to Application of Law to Pre-trial Suspension of Acts of Infringement of Exclusive Right to Use Trademarks and to Evidence Preservation
(Adopted at the 1203rd Meeting of the Judicial Committee of the Supreme People's Court on 25 December 2001, and enters into force on 22 January 2002)

The Interpretation of the Issues Relating to Application of Law to Pre-trial Suspension of Acts of Infringement of Exclusive Right to Use Trademarks and to Evidence Preservation is hereby made as follows in accordant with the relevant provisions of the General Principles of the Civil Law of the People's Republic of China, the Trademark Law of the People's Republic of China (hereinafter referred to as the Trademark Law) and the Civil Procedure Law of the People's Republic of China (hereinafter referred to as the Civil Procedure Law) with a view to protecting the legitimate rights and interests of the trademark registrants and interested parties:

Article 1 Pursuant to the provisions of Articles 57 and 58 of the Trademark Law, the trademark registrants and interested parties may file applications with the People's Court for ordering pre-trial suspension of acts of infringement of the exclusive right to use trademarks or for evidence preservation.

The interested parties who may file said applications include licensees of registered trademark licensing contracts and lawful heirs of the property right in registered trademarks. Of the licensees of registered trademark licensing contracts, the monopolizing exclusive (excluding the licensor and any other licensee) licensees of registered trademark licensing contracts may alone file the application with the People's Court; the exclusive (excluding any other licensee) licensees of registered trademark licensing contracts may do so where the trademark registrants do not.

Article 2 The applications for ordering pre-trial suspension of acts of infringement of exclusive right to use trademarks or for evidence preservation shall be filed with the People's Court having the jurisdiction over trademark cases of the places where the infringing acts occur or where the defendants have their domicile.

Article 3 Trademark registrants and interested parties filing applications for ordering pre-trial suspension of acts of infringement of exclusive right to use trademarks shall submit written applications. In the written applications shall be indicated:

- (1) the interested party and the basic information thereof;
- (2) specific subject matter and scope of the application; and
- (3) cause of the application, including the specific statement that failure to promptly suspend the infringement will cause suffer irreparable injury to the legitimate rights and interests of the trademark registrants and interested parties.

Trademark registrants and interested parties filing applications for evidence preservation shall submit written applications. In the written applications shall be indicated:

- (1) the interested party and the basic information thereof;
- (2) specific subject matter and scope of the application;
- (3) object attestable by the evidence of which preservation is requested; and
- (4) cause of application, including specific statement that the evidence is like to be destroyed or hard to be obtained afterwards, and the interested party and, moreover, his or its agent ad litem cannot collect evidence on their own for objective reasons.

Article 4 When filing the application for ordering pre-trial suspension of acts of infringement of exclusive right to use trademark, the applicant shall submit the following evidence:

- (1) The trademark registrant shall submit the Certificate of Trademark Registration, and the interested party shall submit the trademark licensing contract, documents submitted for filing with the Trademark Office and a copy of the Certificate of Trademark Registration; where an exclusive licensee of registered trademark licensing contract files an application, it or he shall submit proof that the trademark registrant has waived application; where an heir of the property right in a registered trademark files an application, it or he shall submit proof of its or his inheritance or ongoing inheritance.
- (2) Evidence attesting that the respondent is executing or is going to execute the act of infringement of the exclusive right to use the registered trademark, including the accused infringing goods.

Article 5 The adjudication made by the People's Court on pre-trial suspension of acts of infringement of exclusive right to use trademark or on evidence preservation shall be limited to the scope as of the application filed by the trademark registrant and interested party.

Article 6 When filing the application for pre-trial suspension of an act of infringement of exclusive right to use trademark, the applicant shall provide guaranty.

Where an applicant's application for pre-trial evidence preservation is likely to involve property loss to the respondent, the People's Court may order the applicant to provide guaranty accordingly.

Where the guaranty provided by the applicant in the form of pledge, hypothecation or the like, the People's Court shall give its permission.

Where the applicant does not provide the guaranty, the application shall be rejected.

When determining the scope of the guaranty, the People's Court shall take account of the income from the sales of the goods in respect of which the relevant act is ordered to be suspended, the appropriated fees for warehousing and care-taking thereof, the reasonable injury likely to be caused by suspending the relevant act, etc..

Article 7 Where, in the course of enforcing the adjudication to suspend the relevant act, great injury is likely to be caused to the respondent because of the adoption of the measure, the People's Court may order the applicant to provide additional guaranty accordingly. Where the applicant fails to do so, the relevant suspension measures may be cancelled.

Article 8 The measure adopted in adjudication on suspension of an act of infringement of exclusive right to use trademark shall not be cancelled because of the provision of guaranty by the respondent, except that the applicant otherwise agrees.

Article 9 Where the application filed by a trademark registrant or an interested party for suspension of an act of infringement of exclusive right to use trademark, after being accepted by the People's Court, meets the requirement set forth in Article 4 of this Interpretation upon examination, the People's Court shall make an adjudication in writing within 48 hours; the adjudication ordering the respondent to suspend the act of infringement of exclusive right to use trademark shall be immediately enforced.

The People's Court making the adjudication on suspension of a relevant act shall promptly notify the respondent thereof no later than the fifth day from the date of making the adjudication.

Article 10 Any interested party who is not satisfied with the adjudication on pre-trial suspension of an act of infringement of exclusive right to use trademark may make one application for reconsideration within ten days from the date of receipt of the adjudication. The enforcement of the adjudication shall not be suspended during the reconsideration.

Article 11 The People's Court shall examine the reconsideration application filed by the interested party as to the following:

- (1) Whether the act the respondent is executing or is going to execute infringes the exclusive right to use the registered trademark involved;
- (2) Whether not taking the relevant measure would result in irreparable injury to the legitimate rights and interests of the applicant;
- (3) Provision of the guaranty by the applicant; and
- (4) Whether ordering the respondent to suspend the relevant act would prejudice public interests.

Article 12 Where a trademark registrant or an interested party does not institute legal proceedings within fifteen days after the People's Court adopts the measure to suspend the relevant act or to preserve evidence, the People's Court shall cancel the measure adopted pursuant to the adjudication.

Article 13 Where the applicant does not institute legal proceedings or the erroneous application causes injury to the respondent, the respondent may institute legal proceedings in the People's Court having the jurisdiction, requesting the applicant to make compensation, or requesting for compensation of damages in the proceedings instituted by the trademark registrant or interested party against infringement of the exclusive right to use trademark. The People's Court may simultaneously handle the matter.

Article 14 The adjudication on suspension of an act of infringement of the exclusive right to use trademark shall normally remain valid until the date on which the legal instrument of final instance takes effect.

The People's Court may also fix a specific time limit for suspending the relevant act according to the circumstances of the case; at the expiration of the time limit, the People's Court may make adjudication to continue the suspension of the relevant act at the request of, and in line with the provision of the additional guaranty by the interested party.

Article 15 Any respondent contravenes the People's Court's adjudication on the suspension of an act of infringement of the exclusive right to use trademark or on evidence preservation shall be treated pursuant to the provision of Article 102 of the Civil Procedure Law.

Article 16 Where a trademark registrant or an interested party requests to first suspend an infringement of the exclusive right to use registered trademark when instituting legal proceedings in the People's Court against the trademark infringement or in the legal proceedings, the People's Court may first make the adjudication. The matter provided for in the foregoing relating to the application, evidence submission, determination of guaranty, enforcement of adjudication and reconsideration shall be handled pursuant to the provisions of this Judicial Interpretation.

Article 17 In respect of cases of pre-trial suspension of acts of infringement of the exclusive right to use trademarks and of evidence preservation, the applicants shall pay the fees according to the Methods of the People's Court for Collecting Litigation Fees and the Supplementary Provisions thereof.

(Source: [China Patent Agent](#)(H.K.) Ltd.)