

Trademark Law of the People's Republic of China (2019 Amendment)¹

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Chapter I: General Provisions

Article 1

This Law is enacted in order to strengthen the administration of trademarks, protect exclusive rights to trademarks, encourage producers and operators to ensure the quality of goods and services, maintain trademark reputation, safeguard the interests of consumers and producers/operators, and promote the development of the socialist market economy.

Article 2

¹Translated by Health Law Asia – Pharmaceutical, Medical Device, and Cosmetics Law



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The Trademark Office under the State Administration for Industry and Commerce of the State Council is responsible for the nationwide registration and administration of trademarks. The State Administration for Industry and Commerce shall establish a Trademark Review and Adjudication Board, which is responsible for handling trademark disputes.

Article 3

A trademark approved for registration by the Trademark Office shall be considered a registered trademark, including product trademarks, service trademarks, collective trademarks, and certification trademarks. The registrant of a trademark shall enjoy exclusive rights to the trademark, which are protected by law.

For the purposes of this Law, a collective trademark refers to a trademark registered in the name of a group, association, or other organization for use by its members in commercial activities, to indicate the user's membership in that organization.

For the purposes of this Law, a certification trademark refers to a trademark controlled by an organization with supervisory authority over a particular product or service, which is used by units or individuals outside the organization on their products or services to certify the origin, materials, manufacturing methods, quality, or other specific characteristics of such products or services.

Special provisions regarding the registration and administration of collective trademarks and certification trademarks shall be formulated by the State Administration for Industry and Commerce.

Article 4

Natural persons, legal persons, or other organizations that require exclusive rights to a trademark for their goods or services in the course of production and business activities shall apply to the Trademark Office for trademark registration. Malicious applications for trademark registration that are not intended for actual use shall be rejected.

The provisions of this Law concerning product trademarks shall also apply to service trademarks.

Article 5

Two or more natural persons, legal persons, or other organizations may jointly apply to the Trademark Office for registration of the same trademark and shall jointly enjoy and exercise the exclusive rights to that trademark.



Article 6

Goods for which the use of a registered trademark is required by laws or administrative regulations must be registered as trademarks. Goods not approved for registration shall not be sold in the market.

Article 7

Applications for trademark registration and the use of trademarks shall be conducted in accordance with the principle of good faith. Users of trademarks shall be responsible for the quality of the goods on which the trademarks are used. Administrative authorities for industry and commerce at all levels shall, through trademark administration, prevent acts that deceive consumers.

Article 8

Any sign capable of distinguishing the goods of a natural person, legal person, or other organization from those of others—including words, designs, letters, numbers, three-dimensional signs, color combinations, sounds, and combinations of the foregoing elements—may be applied for registration as a trademark.

Article 9

A trademark applied for registration shall possess distinctive features, be easily identifiable, and shall not conflict with the legitimate rights previously obtained by others. The registrant of a trademark shall have the right to indicate “Registered Trademark” or to use the corresponding registration symbol.

Article 10

The following signs shall not be used as trademarks:

1-Signs identical or similar to the national name, flag, emblem, anthem, military flag, military emblem, military anthem, or medals of the People's Republic of China, as well as signs identical or similar to the names or emblems of central state organs, the names of specific locations, or the names or designs of landmark buildings of such organs;

2-Signs identical or similar to the national name, flag, emblem, or military flag of a foreign country, except with the consent of the government of that country;



3-Signs identical or similar to the name, flag, or emblem of an intergovernmental international organization, except with the consent of that organization or where such use is unlikely to mislead the public;

4-Signs identical or similar to official marks or inspection stamps indicating control or certification, except with authorization;

5-Signs identical or similar to the names or emblems "Red Cross" or "Red Crescent";

6-Signs that contain ethnic discrimination;

7-Signs that are deceptive and likely to mislead the public regarding the quality, characteristics, or origin of goods;

8-Signs that are harmful to socialist morality or have other adverse effects.

Place names of administrative divisions at the county level or above, or foreign place names well known to the public, shall not be used as trademarks. However, this shall not apply where the place name has other meanings or forms part of a collective or certification trademark; trademarks already registered using place names shall remain valid.

Article 11

The following signs shall not be registered as trademarks:

1-Signs that consist solely of the generic name, design, or model of the goods;

2-Signs that consist solely of indications directly describing the quality, main raw materials, function, intended use, weight, quantity, or other characteristics of the goods;

3-Signs lacking any distinctive features.

However, signs listed in the preceding paragraph that have acquired distinctiveness through use and are readily recognizable may be registered as trademarks.

Article 12

For trademarks applied for registration as three-dimensional signs, shapes that arise solely from the inherent nature of the goods, shapes that are necessary to achieve a technical effect, or shapes that give the goods substantial value shall not be registered.

Article 13



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Where a trademark is well known to the relevant public, and its holder believes that its rights have been infringed, the holder may request protection for the well-known trademark in accordance with the provisions of this Law.

A trademark applied for registration in respect of identical or similar goods that is a reproduction, imitation, or translation of another party's well-known trademark not registered in China, and is likely to cause confusion, shall not be registered and its use shall be prohibited.

A trademark applied for registration in respect of goods that are neither identical nor similar, which is a reproduction, imitation, or translation of another party's well-known trademark already registered in China, and misleads the public, thereby being likely to harm the interests of the registrant of the well-known trademark, shall not be registered and its use shall be prohibited.

Article 14

A well-known trademark shall be recognized as a fact to be determined when necessary for handling trademark-related cases, upon the request of the parties involved. The recognition of a well-known trademark shall take into account the following factors:

- 1-The degree of awareness of the trademark among the relevant public;
- 2-The duration of use of the trademark;
- 3-The duration, extent, and geographical scope of any publicity for the trademark;
- 4-The record of protection of the trademark as a well-known trademark;
- 5-Other factors demonstrating that the trademark is well-known.

In the course of trademark registration examination or in administrative enforcement actions against trademark violations conducted by the administrative department for industry and commerce, where a party asserts its rights in accordance with Article 13 of this Law, the Trademark Office may, based on the needs of examination or case handling, make a determination regarding the well-known status of the trademark.

In the course of handling trademark disputes, where a party asserts its rights in accordance with Article 13 of this Law, the Trademark Review and Adjudication Board may, based on the needs of the case, make a determination regarding the well-known status of the trademark.

In the trial of civil or administrative trademark cases, where a party asserts its rights in accordance with Article 13 of this Law, the people's court designated by the Supreme People's Court may, based on the needs of the case, make a determination regarding the well-known status of the trademark.

Producers and business operators shall not use the wording “well-known trademark” on goods, packaging, or containers, nor may they use it in advertising, exhibitions, or other commercial activities.

Article 15

Where an agent or representative, without authorization, applies to register a trademark in their own name that belongs to the principal or the person represented, and the principal or the person represented raises an objection, the trademark shall not be registered and its use shall be prohibited.

Where a trademark applied for registration for identical or similar goods is identical or similar to a previously used but unregistered trademark of another party, and the applicant, having a contractual, business, or other relationship with that party beyond those specified in the preceding paragraph, is aware of the existence of that trademark, and the other party raises an objection, the trademark shall not be registered.

Article 16

A trademark that contains a geographical indication of goods shall not be registered and its use shall be prohibited if the goods do not originate from the region indicated and the trademark is likely to mislead the public; however, registrations that have been obtained in good faith shall remain valid.

For the purposes of the preceding paragraph, a geographical indication refers to a sign that indicates that the goods originate from a certain region, and that the specific quality, reputation, or other characteristics of the goods are essentially determined by the natural or human factors of that region.

Article 17

Where a foreign national or foreign enterprise applies for trademark registration in China, the application shall be processed in accordance with the agreements concluded between the applicant's home country and the People's Republic of China, or the international treaties to which both countries are parties, or on the basis of the principle of reciprocity.

Article 18

An application for trademark registration or the handling of other trademark matters may be conducted personally or entrusted to a legally established trademark agency.



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Where a foreign national or foreign enterprise applies for trademark registration or handles other trademark matters in China, they shall entrust a legally established trademark agency to act on their behalf.

Article 19

Trademark agencies shall adhere to the principles of honesty and good faith, comply with laws and administrative regulations, and handle trademark registration applications or other trademark matters in accordance with the instructions of the principal; they shall have a duty of confidentiality with respect to any trade secrets of the principal learned in the course of their agency.

Where the trademark applied for by the principal may fall under circumstances prohibiting registration as provided by this Law, the trademark agency shall explicitly inform the principal.

A trademark agency shall not accept an engagement where it knows or ought to know that the trademark applied for by the principal falls within the circumstances specified in Articles 4, 15, and 32 of this Law.

Except for trademarks applied for registration in connection with the agency services it provides, a trademark agency shall not apply to register any other trademarks.

Article 20

Organizations of the trademark agency industry shall, in accordance with their articles of association, strictly implement the conditions for admitting members and impose disciplinary measures on members who violate the industry's self-regulatory standards.

Such organizations shall promptly disclose to the public the members they admit and the disciplinary actions taken against members.

Article 21

International registration of trademarks shall follow the systems established under the relevant international treaties concluded or acceded to by the People's Republic of China. The specific measures shall be prescribed by the State Council.

Chapter II: Application for Trademark Registration

Article 22



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A trademark registration applicant shall, in accordance with the prescribed classification of goods, specify the classes of goods and the names of the goods on which the trademark is to be used, and submit a registration application.

A trademark registration applicant may apply to register the same trademark for multiple classes of goods in a single application.

Trademark registration applications and other relevant documents may be submitted in written form or by means of data messages.

Article 23

Where a registered trademark is required to obtain the exclusive right to use the trademark on goods beyond the approved scope of use, a separate application for trademark registration shall be filed.

Article 24

Where a registered trademark is required to be altered in its mark, a new application for trademark registration shall be filed.

Article 25

Where a trademark registration applicant files an application for trademark registration in China for the same goods and with the same trademark within six months from the date on which the applicant first filed an application for trademark registration in a foreign country, the applicant may claim a right of priority in accordance with an agreement concluded between that foreign country and China, or an international treaty to which both countries are parties, or on the principle of mutual recognition of priority.

Where priority is claimed pursuant to the preceding paragraph, a written declaration shall be submitted at the time the application for trademark registration is filed, and a copy of the documents of the first trademark registration application shall be submitted within three months; where no written declaration is submitted or the copy of the application documents is not submitted within the prescribed time limit, priority shall be deemed not to have been claimed.

Article 26



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Where a trademark is first used on goods exhibited at an international exhibition sponsored or recognized by the Chinese Government, the applicant for registration of that trademark may claim a right of priority within six months from the date of exhibition of the goods.

Where priority is claimed pursuant to the preceding paragraph, a written declaration shall be submitted at the time the application for trademark registration is filed, and supporting documents, including the name of the exhibition at which the goods were exhibited, evidence of the use of the trademark on the exhibited goods, and the dates of exhibition, shall be submitted within three months; where no written declaration is submitted or the supporting documents are not submitted within the prescribed time limit, priority shall be deemed not to have been claimed.

Article 27

The matters declared and the materials submitted for the purpose of applying for trademark registration shall be true, accurate, and complete.

Chapter III: Examination and Approval of Trademark Registration

Article 28

The Trademark Office shall complete the examination of a trademark application within nine months from the date of receipt of the application documents. If the application complies with the relevant provisions of this Law, the Office shall issue a preliminary approval and publish it for announcement.

Article 29

During the examination process, if the Trademark Office considers that the content of a trademark application requires clarification or amendment, it may request the applicant to provide such clarification or make amendments. Failure by the applicant to respond or make amendments shall not affect the Trademark Office's decision on the examination.

Article 30

A trademark application shall be rejected and not published if the applied-for trademark:

Fails to comply with the relevant provisions of this Law; or is identical or confusingly similar to a trademark that has already been registered or preliminarily approved for the same or similar goods by another party.



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Article 31

Where two or more applicants apply to register identical or confusingly similar trademarks for the same or similar goods, the trademark application that is preliminarily approved and published first shall take precedence. If applications are submitted on the same day, the trademark that is used first shall be preliminarily approved and published, and other applications shall be rejected and not published.

Article 32

An application for trademark registration shall not infringe the prior rights of others, nor shall it attempt to register a trademark already in use by another party and with established influence through improper means.

Article 33

Within three months from the date of preliminary approval and announcement of a trademark, a prior rights holder or any interested party who believes that the trademark violates the provisions of Article 13, Paragraphs 2 and 3, Article 15, Article 16, Paragraph 1, Article 30, Article 31, or Article 32 of this Law, or any person who believes that it violates Article 4, Article 10, Article 11, Article 12, or Article 19, Paragraph 4, may file an opposition with the Trademark Office. If no opposition is filed within the announcement period, the trademark shall be approved for registration, a trademark registration certificate shall be issued, and the registration shall be published.

Article 34

For a trademark application that has been rejected or not published, the Trademark Office shall notify the applicant in writing. If the applicant is dissatisfied with the decision, they may apply for a review by the Trademark Review and Adjudication Board within fifteen days from the date of receipt of the notice.

The Trademark Review and Adjudication Board shall make a decision within nine months from the date of receipt of the application and shall notify the applicant in writing. In special circumstances requiring an extension, the period may be extended by three months with the approval of the State Administration for Market Regulation.

If a party is dissatisfied with the decision of the Trademark Review and Adjudication Board, they may file a lawsuit with the People's Court within thirty days from the date of receipt of the notice.

Article 35

Where an opposition is filed against a preliminarily approved and announced trademark, the Trademark Office shall hear statements of facts and arguments from both the opposer and the applicant. After investigation and verification, the Office shall decide whether to approve the registration within twelve months from the expiry of the announcement period and notify the opposer and the applicant in writing. In special circumstances requiring an extension, the period may be extended by six months with the approval of the State Administration for Market Regulation.

Where the Trademark Office decides to approve registration, a trademark registration certificate shall be issued, and the registration shall be published. If the opposer is dissatisfied with the decision, they may, in accordance with Articles 44 and 45 of this Law, request the Trademark Review and Adjudication Board to declare the registered trademark invalid.

Where the Trademark Office decides not to approve registration, and the applicant is dissatisfied, the applicant may apply for review by the Trademark Review and Adjudication Board within fifteen days from the date of receipt of the notice. The Board shall make a review decision within twelve months from the date of receipt of the application and notify both the opposer and the applicant in writing. In special circumstances requiring an extension, the period may be extended by six months with the approval of the State Administration for Market Regulation. If the applicant is dissatisfied with the decision of the Board, they may file a lawsuit with the People's Court within thirty days from the date of receipt of the notice. The People's Court shall notify the opposer to participate as a third party in the proceedings.

During the review process by the Trademark Review and Adjudication Board, if the determination of prior rights involved must rely on the outcome of another case currently being adjudicated by a People's Court or handled by an administrative authority, the review may be suspended. Once the cause for suspension is eliminated, the examination procedure shall resume.

Article 36

When the statutory period expires, if a party does not apply for review of a rejection or non-registration decision made by the Trademark Office, or does not file a lawsuit with the People's Court against a review decision made by the Trademark Review and Adjudication Board, the rejection, non-registration, or review decision shall take effect.

For a trademark that is approved for registration following examination of an opposition, the applicant shall acquire exclusive trademark rights from the date three months after the expiry of the preliminary approval announcement period. Actions taken by others during the period from the expiry of the announcement period to the issuance of the registration approval decision involving the use of identical or confusingly similar marks on the same or similar goods



shall not have retroactive effect; however, any loss caused to the trademark registrant by malicious use shall be compensated.

Article 37

Applications for trademark registration and applications for trademark review shall be examined in a timely manner.

Article 38

If a trademark applicant or registrant discovers obvious errors in the trademark application documents or registration documents, they may apply for correction. The Trademark Office shall, within its statutory authority, make the correction and notify the party concerned.

The correction referred to in the preceding paragraph shall not involve the substantive content of the trademark application documents or registration documents.

Chapter IV: Renewal, Change, Assignment, and Licensing of Registered Trademarks

Article 39

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

Article 40

When a registered trademark is about to expire and needs to continue to be used, the trademark registrant shall apply for renewal in accordance with the regulations within twelve months prior to the expiration. If the renewal is not completed within this period, a six-month grace period may be granted. Each renewal shall be valid for ten years, calculated from the day after the expiry of the previous term. If the renewal is not completed upon expiry, the registered trademark shall be canceled.

The Trademark Office shall publish the renewal of the registered trademark.

Article 41

If a registered trademark requires a change in the name or address of the registrant or other registration matters, the registrant shall submit a request for such change.

Article 42

When a registered trademark is assigned, the assignor and the assignee shall sign a trademark assignment agreement and jointly submit an application to the Trademark Office. The assignee shall ensure the quality of the goods on which the registered trademark is used.

When assigning a registered trademark, the registrant shall also assign trademarks that are similar and registered for the same goods, or identical or similar trademarks registered for similar goods.

Assignments that are likely to cause confusion or have other adverse effects shall not be approved by the Trademark Office, which shall notify the applicants in writing and state the reasons.

Once the assignment of a registered trademark is approved, it shall be published. The assignee shall acquire exclusive trademark rights from the date of publication.

Article 43

A trademark registrant may license others to use their registered trademark through a trademark license contract. The licensor shall supervise the quality of the goods on which the licensed trademark is used. The licensee shall ensure the quality of the goods on which the licensed trademark is used.

When using a registered trademark under a license, the licensee must indicate their name and the place of origin of the goods on which the trademark is used.

The licensor shall file the trademark license with the Trademark Office for recordation, and the Office shall publish it. A trademark license not filed for recordation shall not affect the rights of bona fide third parties.

Chapter V: Declaration of Invalidity of Registered Trademarks

Article 44

A registered trademark shall be declared invalid by the Trademark Office if it violates the provisions of Articles 4, 10, 11, 12, or Paragraph 4 of Article 19 of this Law, or if it was obtained through deception or other improper means. Other organizations or individuals may request the Trademark Review and Adjudication Board to declare the registered trademark invalid.

Where the Trademark Office decides to declare a registered trademark invalid, it shall notify the parties concerned in writing. If a party is dissatisfied with the decision of the Trademark Office, they may apply for a review by the Trademark Review and Adjudication Board within fifteen days from the date of receipt of the notice. The Board shall make a decision within nine



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months from the date of receipt of the application and notify the parties in writing. In special circumstances requiring an extension, the period may be extended by three months with the approval of the State Administration for Market Regulation. If a party is dissatisfied with the decision of the Board, they may file a lawsuit with the People's Court within thirty days from the date of receipt of the notice.

Where other organizations or individuals request the Trademark Review and Adjudication Board to declare a registered trademark invalid, the Board shall, upon receipt of the application, notify the relevant parties in writing and set a deadline for submission of a defense. The Board shall make a ruling to either maintain the registered trademark or declare it invalid within nine months from the date of receipt of the application and notify the parties in writing. In special circumstances requiring an extension, the period may be extended by three months with the approval of the State Administration for Market Regulation. If a party is dissatisfied with the Board's ruling, they may file a lawsuit with the People's Court within thirty days from the date of receipt of the notice. The People's Court shall notify the opposing party in the trademark ruling procedure to participate as a third party in the proceedings.

Article 45

For a registered trademark that violates the provisions of Article 13, Paragraphs 2 and 3, Article 15, Article 16, Paragraph 1, Article 30, Article 31, or Article 32 of this Law, the prior rights holder or any interested party may request the Trademark Review and Adjudication Board to declare the registered trademark invalid within five years from the date of registration. For trademarks registered in bad faith, the owner of a well-known trademark is not subject to the five-year limitation.

Upon receipt of an application to declare a registered trademark invalid, the Trademark Review and Adjudication Board shall notify the relevant parties in writing and set a deadline for submission of a defense. The Board shall make a ruling to either maintain the registered trademark or declare it invalid within twelve months from the date of receipt of the application and notify the parties in writing. In special circumstances requiring an extension, the period may be extended by six months with the approval of the State Administration for Market Regulation. If a party is dissatisfied with the Board's ruling, they may file a lawsuit with the People's Court within thirty days from the date of receipt of the notice. The People's Court shall notify the opposing party in the trademark ruling procedure to participate as a third party in the proceedings.

During the examination of an invalidation request in accordance with the preceding paragraph, if the determination of prior rights involved must rely on the outcome of another case currently being adjudicated by a People's Court or handled by an administrative authority, the review may be suspended. Once the cause for suspension is eliminated, the examination procedure shall resume.



Article 46

When the statutory period expires, if a party does not apply for review of a decision by the Trademark Office declaring a registered trademark invalid, or does not file a lawsuit with the People's Court against a review decision or ruling of the Trademark Review and Adjudication Board to maintain a registered trademark or declare it invalid, the decision of the Trademark Office or the review decision or ruling of the Board shall take effect.

Article 47

A registered trademark declared invalid in accordance with Articles 44 and 45 of this Law shall be announced by the Trademark Office, and the exclusive right to use the registered trademark shall be deemed to have never existed from the outset.

A decision or ruling declaring a registered trademark invalid shall not have retroactive effect on judgments, rulings, or mediation agreements concerning trademark infringement cases that were rendered and enforced by a people's court prior to the declaration of invalidity, nor on administrative decisions on trademark infringement cases that were rendered and enforced by the administrative departments for industry and commerce, nor on trademark assignment or licensing contracts that have already been performed. However, where losses are caused to others due to the bad faith of the trademark registrant, compensation shall be provided.

Where the non-refund of trademark infringement damages, trademark assignment fees, or trademark licensing fees pursuant to the preceding paragraph would clearly violate the principle of fairness, such amounts shall be refunded in whole or in part.

Chapter VI: Administration of Trademark Use

Article 48

For the purposes of this Law, the "use of a trademark" refers to the use of a trademark on goods, the packaging or containers of goods, or transactional documents relating to goods, or the use of a trademark in advertising, exhibitions, and other commercial activities, for the purpose of identifying the source of goods.

Article 49

Where a trademark registrant, in the course of using a registered trademark, alters the registered trademark, the name or address of the registrant, or other registered particulars on its own initiative, the local administrative department for industry and commerce shall order the registrant to make corrections within a prescribed time limit; where the registrant fails to

make corrections upon expiration of the time limit, the Trademark Office shall revoke the registered trademark.

Where a registered trademark becomes the generic name of the goods for which it is approved to be used, or where it has not been used for three consecutive years without justifiable reasons, any entity or individual may apply to the Trademark Office for revocation of the registered trademark. The Trademark Office shall render a decision within nine months from the date of receipt of the application; where special circumstances require an extension, the period may be extended by three months upon approval by the administrative department for industry and commerce under the State Council.

Article 50

Where a registered trademark is revoked, declared invalid, or not renewed upon expiration, the Trademark Office shall, within one year from the date of revocation, declaration of invalidity, or cancellation, refuse to approve applications for the registration of trademarks identical with or similar to the said trademark.

Article 51

Where Article 6 of this Law is violated, the local administrative department for industry and commerce shall order the violator to apply for trademark registration within a prescribed time limit. Where the illegal business revenue reaches RMB 50,000 or more, a fine of not more than 20 percent of the illegal business revenue may be imposed; where there is no illegal business revenue or the illegal business revenue is less than RMB 50,000, a fine of not more than RMB 10,000 may be imposed.

Article 52

Where an unregistered trademark is falsely represented as a registered trademark, or where the use of an unregistered trademark violates the provisions of Article 10 of this Law, the local administrative department for industry and commerce shall order cessation of the illegal act, order rectification within a prescribed time limit, and may circulate a notice of criticism. Where the illegal business revenue reaches RMB 50,000 or more, a fine of not more than 20 percent of the illegal business revenue may be imposed; where there is no illegal business revenue or the illegal business revenue is less than RMB 50,000, a fine of not more than RMB 10,000 may be imposed.

Article 53



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Where the provisions of Paragraph 5 of Article 14 of this Law are violated, the local administrative department for industry and commerce shall order rectification and impose a fine of RMB 100,000.

Article 54

Where a party is dissatisfied with a decision of the Trademark Office to revoke or not to revoke a registered trademark, it may apply to the Trademark Review and Adjudication Board for review within fifteen days from the date of receipt of the notification. The Trademark Review and Adjudication Board shall render a decision within nine months from the date of receipt of the application and notify the party in writing. Where special circumstances require an extension, the period may be extended by three months upon approval by the administrative department for industry and commerce under the State Council.

Where a party is dissatisfied with the decision of the Trademark Review and Adjudication Board, it may institute legal proceedings before a people's court within thirty days from the date of receipt of the notification.

Article 55

Where, upon expiration of the statutory time limit, a party does not apply for a review of the Trademark Office's decision to revoke a registered trademark, or does not institute legal proceedings before a people's court against the review decision of the Trademark Review and Adjudication Board, the decision to revoke the registered trademark and the review decision shall take effect.

A revoked registered trademark shall be announced by the Trademark Office, and the exclusive right to use the registered trademark shall terminate as of the date of such announcement.

Chapter VII: Protection of Exclusive Rights to Registered Trademarks

Article 56

The exclusive right to use a registered trademark shall be limited to the trademark as approved for registration and to the goods for which the use of the trademark has been approved.

Article 57

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

- 1.Using a trademark identical with a registered trademark on the same type of goods without the permission of the trademark registrant;
- 2.Using, without the permission of the trademark registrant, a trademark similar to the registered trademark on the same type of goods, or using a trademark identical with or similar to the registered trademark on similar goods, where such use is likely to cause confusion;
- 3.Selling goods that infringe upon the exclusive right to use a registered trademark;
- 4.Forging, or manufacturing without authorization, representations of another person's registered trademark, or selling such forged or unauthorized trademark representations;
- 5.Replacing the registered trademark without the consent of the trademark registrant and placing the goods bearing the replaced trademark back on the market;
- 6.Intentionally providing facilitation for acts infringing upon another person's exclusive right to use a registered trademark, or assisting others in committing such infringing acts;
- 7.Causing other damage to another person's exclusive right to use a registered trademark.

Article 58

Where another person's registered trademark or an unregistered well-known trademark is used as the trade name element of an enterprise name in a manner that misleads the public and constitutes an act of unfair competition, such conduct shall be dealt with in accordance with the *Anti-Unfair Competition Law of the People's Republic of China*.

Article 59

With respect to generic names, designs, or model numbers of the goods contained in a registered trademark, or elements that directly indicate the quality, principal raw materials, function, use, weight, quantity, or other characteristics of the goods, or geographical names contained therein, the owner of the exclusive right to use the registered trademark shall have no right to prohibit others from making legitimate use thereof.

With respect to a registered three-dimensional trademark, where it contains a shape resulting from the nature of the goods themselves, a shape of the goods necessary to achieve a technical effect, or a shape that gives the goods substantial value, the owner of the exclusive right to use the registered trademark shall have no right to prohibit others from making legitimate use thereof.

Where, prior to the application for trademark registration, another person has already used a trademark identical with or similar to the registered trademark on the same or similar goods and such trademark has acquired a certain degree of influence, the owner of the exclusive right to use the registered trademark shall have no right to prohibit that person from continuing to



use the trademark within the original scope of use; however, the trademark registrant may require the user to add appropriate distinguishing signs.

Article 60

Where any of the acts infringing upon the exclusive right to use a registered trademark as listed in Article 57 of this Law gives rise to a dispute, the parties may resolve the dispute through consultation. Where the parties are unwilling to consult or where consultation fails, the trademark registrant or an interested party may institute legal proceedings before a people's court or request the administrative department for industry and commerce to handle the matter.

Where the administrative department for industry and commerce handles the matter and determines that an infringement has been established, it shall order the immediate cessation of the infringing act, confiscate and destroy the infringing goods, and confiscate the tools primarily used to manufacture infringing goods or to forge registered trademark representations. Where the illegal business revenue reaches RMB 50,000 or more, a fine of not more than five times the illegal business revenue may be imposed; where there is no illegal business revenue or the illegal business revenue is less than RMB 50,000, a fine of not more than RMB 250,000 may be imposed. Where trademark infringement is committed two or more times within five years, or where other serious circumstances exist, heavier penalties shall be imposed.

Where a party sells goods without knowing that they infringe upon the exclusive right to use a registered trademark and is able to prove that the goods were lawfully acquired and to identify the supplier, the administrative department for industry and commerce shall order the cessation of sales.

Where a dispute arises over the amount of compensation for infringement of the exclusive right to use a trademark, the parties may request mediation by the administrative department for industry and commerce handling the matter, or institute legal proceedings before a people's court in accordance with the *Civil Procedure Law of the People's Republic of China*. Where mediation fails or where a mediation agreement is not performed after taking effect, the parties may institute legal proceedings before a people's court in accordance with the *Civil Procedure Law of the People's Republic of China*.

Article 61

The administrative department for industry and commerce shall have the authority to investigate and punish acts infringing upon the exclusive right to use a registered trademark in accordance with the law. Where a crime is suspected, the case shall be promptly transferred to the judicial authorities for handling in accordance with the law.

Article 62

When investigating and handling suspected acts infringing upon another person's exclusive right to use a registered trademark on the basis of evidence of suspected illegal conduct already obtained or reports received, the administrative departments for industry and commerce at or above the county level may exercise the following powers:

To question the relevant parties and investigate circumstances related to the infringement of another person's exclusive right to use a registered trademark;

To consult and copy contracts, invoices, account books, and other relevant materials relating to the alleged infringing activities of the parties concerned;

To conduct on-site inspections of the premises where the parties are suspected of engaging in activities infringing upon another person's exclusive right to use a registered trademark;

To inspect items related to the infringing activities; where there is evidence proving that such items infringe upon another person's exclusive right to use a registered trademark, such items may be sealed up or seized.

When lawfully exercising the powers prescribed in the preceding paragraph, the administrative departments for industry and commerce shall be assisted and cooperated with by the parties concerned, who shall not refuse or obstruct such enforcement.

In the process of investigating and handling trademark infringement cases, where there is a dispute over trademark ownership or where the right holder has simultaneously instituted a trademark infringement action before a people's court, the administrative department for industry and commerce may suspend the investigation and handling of the case. Upon elimination of the reasons for suspension, the investigation and handling procedure shall be resumed or terminated, as appropriate.

Article 63

The amount of compensation for infringement of the exclusive right to use a trademark shall be determined based on the actual losses suffered by the right holder as a result of the infringement. Where the actual losses are difficult to determine, the amount may be determined based on the benefits obtained by the infringer from the infringement. Where both the losses suffered by the right holder and the benefits obtained by the infringer are difficult to determine, the amount may be reasonably determined by reference to a multiple of the trademark licensing fee.

Where the infringement of the exclusive right to use a trademark is committed maliciously and the circumstances are serious, the amount of compensation may be determined at not less than one time and not more than five times the amount determined in accordance with the above



methods. The amount of compensation shall include reasonable expenses incurred by the right holder to prevent the infringement.

For the purpose of determining the amount of compensation, where the right holder has made every reasonable effort to provide evidence, but the account books and materials related to the infringing conduct are primarily in the possession of the infringer, the people's court may order the infringer to provide such account books and materials. Where the infringer refuses to provide them or provides false account books or materials, the people's court may determine the amount of compensation by reference to the claims of the right holder and the evidence provided.

Where the actual losses suffered by the right holder, the benefits obtained by the infringer, and the trademark licensing fee are difficult to determine, the people's court may, based on the circumstances of the infringing conduct, award compensation of up to RMB 5,000,000.

When adjudicating trademark dispute cases, upon the request of the right holder, the people's court shall, except under special circumstances, order the destruction of goods bearing counterfeit registered trademarks. With respect to materials and tools mainly used to manufacture goods bearing counterfeit registered trademarks, the court shall order their destruction without compensation; or, under special circumstances, shall order that such materials and tools be prohibited from entering commercial channels, without compensation.

Goods bearing counterfeit registered trademarks shall not enter commercial channels merely after the counterfeit registered trademarks have been removed.

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The administrative department for industry and commerce shall have the authority to investigate and punish acts infringing upon the exclusive right to use a registered trademark in accordance with the law. Where a crime is suspected, the case shall be promptly transferred to the judicial authorities for handling in accordance with the law.

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1-To question the relevant parties and investigate circumstances related to the infringement of another person's exclusive right to use a registered trademark;

2-To consult and copy contracts, invoices, account books, and other relevant materials relating to the alleged infringing activities of the parties concerned;



3-To conduct on-site inspections of the premises where the parties are suspected of engaging in activities infringing upon another person's exclusive right to use a registered trademark;

4-To inspect items related to the infringing activities; where there is evidence proving that such items infringe upon another person's exclusive right to use a registered trademark, such items may be sealed up or seized.

When lawfully exercising the powers prescribed in the preceding paragraph, the administrative departments for industry and commerce shall be assisted and cooperated with by the parties concerned, who shall not refuse or obstruct such enforcement.

In the process of investigating and handling trademark infringement cases, where there is a dispute over trademark ownership or where the right holder has simultaneously instituted a trademark infringement action before a people's court, the administrative department for industry and commerce may suspend the investigation and handling of the case. Upon elimination of the reasons for suspension, the investigation and handling procedure shall be resumed or terminated, as appropriate.

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Where the infringement of the exclusive right to use a trademark is committed maliciously and the circumstances are serious, the amount of compensation may be determined at not less than one time and not more than five times the amount determined in accordance with the above methods. The amount of compensation shall include reasonable expenses incurred by the right holder to prevent the infringement.

For the purpose of determining the amount of compensation, where the right holder has made every reasonable effort to provide evidence, but the account books and materials related to the infringing conduct are primarily in the possession of the infringer, the people's court may order the infringer to provide such account books and materials. Where the infringer refuses to provide them or provides false account books or materials, the people's court may determine the amount of compensation by reference to the claims of the right holder and the evidence provided.



Where the actual losses suffered by the right holder, the benefits obtained by the infringer, and the trademark licensing fee are difficult to determine, the people's court may, based on the circumstances of the infringing conduct, award compensation of up to RMB 5,000,000.

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Goods bearing counterfeit registered trademarks shall not enter commercial channels merely after the counterfeit registered trademarks have been removed.

Article 64

Where the proprietor of an exclusive right to use a registered trademark claims damages, and the alleged infringer raises a defense on the ground that the proprietor has not used the registered trademark, the People's Court may require the proprietor to provide evidence of actual use of the registered trademark within the preceding three years.

Where the proprietor cannot prove actual use of the registered trademark within the preceding three years and also cannot prove that other losses have been caused by the infringing act, the alleged infringer shall not bear liability for damages.

A party who sells goods without knowing that they infringe another's exclusive right to use a registered trademark, and who can prove that the goods were obtained lawfully and can identify the supplier, shall not bear liability for damages.

Article 65

Where a trademark registrant or an interested party has evidence showing that another person is committing, or is about to commit, an act infringing the exclusive right to use its registered trademark, and that failure to stop such act in a timely manner will cause irreparable harm to its lawful rights and interests, the registrant or interested party may, in accordance with the law, apply to the People's Court before instituting a lawsuit for an order to cease the relevant act and for preservation of property.

Article 66

For the purpose of stopping an infringing act, where evidence may be destroyed or become difficult to obtain in the future, the trademark registrant or an interested party may, in



accordance with the law, apply to the People's Court before instituting a lawsuit for preservation of evidence.

Article 67

Where, without the permission of the trademark registrant, a trademark identical to the registered trademark is used on the same kind of goods, and the act constitutes a crime, criminal liability shall be pursued in accordance with the law, in addition to compensation for the losses suffered by the right holder.

Where a person forges or unlawfully manufactures another's registered trademark symbols, or sells forged or unlawfully manufactured registered trademark symbols, and the act constitutes a crime, criminal liability shall be pursued in accordance with the law, in addition to compensation for the losses suffered by the right holder.

Where a person knowingly sells goods bearing a counterfeit registered trademark, and the act constitutes a crime, criminal liability shall be pursued in accordance with the law, in addition to compensation for the losses suffered by the right holder.

Article 68

Where a trademark agency commits any of the following acts, the administrative department for industry and commerce shall order it to make corrections within a prescribed time limit, give a warning, and impose a fine between RMB 10,000 and 100,000; the persons directly in charge and other persons directly responsible shall be given a warning and fined between RMB 5,000 and 50,000; where a crime is constituted, criminal liability shall be pursued in accordance with the law:

1-During the handling of trademark matters, forging, altering, or using forged or altered legal documents, seals, or signatures;

2-Soliciting trademark agency business by slandering other trademark agencies or by other means, or disrupting the order of the trademark agency market by improper means;

3-Violating the provisions of Article 4, and Paragraphs 3 and 4 of Article 19 of this Law.

Where a trademark agency commits any of the acts prescribed in the preceding paragraph, the administrative department for industry and commerce shall record it in the credit archive; where the circumstances are serious, the Trademark Office and the Trademark Review and Adjudication Board may decide to suspend acceptance of its trademark agency business and make a public announcement.

Where a trademark agency, in violation of the principle of good faith, infringes upon the lawful interests of its client, it shall bear civil liability according to law, and shall also be subject to



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disciplinary sanctions by the trademark agency industry organization in accordance with its articles of association.

For malicious applications of trademark registration, administrative penalties such as warnings and fines shall be imposed according to the circumstances; for malicious initiation of trademark litigation, the People's Court shall impose penalties in accordance with the law.

Article 69

State functionaries engaged in trademark registration, administration, and review shall enforce the law impartially, maintain integrity and self-discipline, remain loyal to their duties, and provide courteous service.

The Trademark Office, the Trademark Review and Adjudication Board, and state functionaries engaged in trademark registration, administration, and review shall not engage in trademark agency services or in the production or business operation of goods.

Article 70

Administrative departments for industry and commerce shall establish and improve internal supervision systems, and shall supervise and inspect the implementation of laws and administrative regulations, as well as compliance with discipline, by state functionaries responsible for trademark registration, administration, and review.

Article 71

Where state functionaries engaged in trademark registration, administration, and review neglect their duties, abuse their powers, engage in malpractice for personal gain, unlawfully handle matters concerning trademark registration, administration, or review, or accept property from parties and seek improper benefits, and the circumstances constitute a crime, criminal liability shall be pursued in accordance with the law; where the circumstances do not constitute a crime, disciplinary sanctions shall be imposed in accordance with the law.

Chapter VIII Supplementary Provisions

Article 72

Fees shall be paid for applications for trademark registration and for the handling of other trademark matters; the specific standards for such fees shall be prescribed separately.



Article 73

This Law shall enter into force on March 1, 1983. The *Regulations on Trademark Administration* promulgated by the State Council on April 10, 1963 shall be repealed at the same time; other provisions concerning trademark administration that are inconsistent with this Law shall become invalid simultaneously.

Trademarks registered before the implementation of this Law shall remain valid.