

THE PEOPLE'S REPUBLIC OF CHINA TRADEMARK LAW

Effective from November 1, 2019

BORSAM

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

Trademark Law of the People's Republic of China

(Adopted at the 24th Session of the Standing Committee of the Fifth National People's Congress on August 23, 1982; amended for the first time according to the Decision on Amending the Trademark Law of the People's Republic of China as adopted at the 30th Session of the Standing Committee of the Seventh National People's Congress on February 22, 1993; amended for the second time according to the Decision on Amending the Trademark Law of the People's Republic of China as adopted at the 24th Session of the Standing Committee of the Ninth National People's Congress on October 27, 2001; amended for the third time according to the Decision on Amending the Trademark Law of the People's Republic of China as adopted at the 4th Session of the Standing Committee of the Twelfth National People's Congress on August 30, 2013; and amended for the fourth time in accordance with the Decision to Amend Eight Laws Including the Construction Law of the People's Republic of China adopted at the 10th Session of the Standing Committee of the Thirteenth National People's Congress of the People's Republic of China on April 23, 2019)

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

Table of Contents

Chapter I General Provisions

Chapter II Application for Trademark Registration

Chapter III Trademark Registration Examination and Approval

Chapter IV Renewal, Modification, Assignment and Licensing of Registered Trademarks

Chapter V Declaration of Invalidation of Registered Trademarks

Chapter VI Administration of the Use of Trademarks

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

Chapter VIII Supplementary Provisions

Chapter I General Provisions

Article 1 This Law is formulated for the purposes of strengthening trademark administration, protecting the right to exclusively use a trademark, urging producers and dealers to guarantee the quality of goods and services, maintaining the reputation of trademarks, protecting the interests of consumers, producers and dealers, and promoting 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 take charge of trademark registration and administration across the country.

The administrative department for industry and commerce under the State Council shall establish a Trademark Appeal Board responsible for resolving trademark disputes.

Article 3 Registered trademarks are trademarks approved to be registered by the Trademark Office, including goods trademarks, service trademarks, collective marks, and certification marks. A trademark registrant shall have the right to exclusively use the registered trademark, which is protected by law.

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

For the purposes of this Law, “collective mark” means a mark registered in the name of a group, an association, or any other organization for the members of the organization to use in commercial activities to indicate their memberships in the organization.

For the purposes of this Law, “certification mark” means a mark controlled by an organization with supervising power over certain kind of goods or services but used by entities or individuals other than the organization on their goods or services to certificate the origins, raw materials, manufacturing methods, quality, or other specific characteristics of the goods or services.

Special matters concerning the registration and administration of collective marks and certification marks shall be provided for by the administrative department for industry and commerce under the State Council.

Article 4 Any natural person, legal person, or other organization needing to acquire the right to exclusively use a trademark on the goods or services thereof in the course of business operations shall apply to the Trademark Office for trademark registration. A bad faith application for trademark registration for a purpose other than use shall be rejected.

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

The provisions of this Law regarding goods trademarks are applicable to service trademarks.

Article 5 Two or more natural persons, legal persons, or other organizations may jointly apply to the Trademark Office for the registration of the same trademark, and jointly own and exercise the right to exclusively use the registered trademark.

Article 6 Where a registered trademark must be used on the goods prescribed by any law or administrative regulation, trademark registration must be applied for, and such goods may not be marketed without approval of trademark registration.

Article 7 In the application for registration or use of a trademark, the principle of good faith shall be followed.

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 trademark administration, interdict consumer frauds.

Article 8 Any sign capable of distinguishing the goods of a natural person, a legal person, or any other organization from those of others, including but not limited to

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

word, design, letter, numeral, three-dimensional symbol, combination of colors, and sound, as well as a combination of the above, may serve as a trademark for registration application.

Article 9 The trademark for registration shall be distinctive for easy identification, and may not be in conflict with any prior legal rights acquired by others.

A trademark registrant shall have the right to use the words “registered trademark” or a sign standing for registration.

Article 10 The following signs may not be used as trademarks:

(1) A sign identical with or similar to the name, national flag, national emblem, national anthem, military flag, military emblem, military anthem, or decorations, among others, of the People's Republic of China or identical with the name or symbol of a central state organ, the name of specific place where it is located, or the name or design of its landmark building.

(2) A sign identical with or similar to the name, national flag, national emblem, or military flag, among others, of a foreign country, except as permitted by the

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

government of the foreign country.

(3) A sign identical with or similar to the name, flag, or emblem of an international intergovernmental organization, except as permitted by the organization or except that it will usually not mislead the public.

(4) A sign identical with or similar to an official sign or an inspection mark which indicates control or provides guarantee, except as authorized.

(5) A sign identical with or similar to the name or sign of the Red Cross or the Red Crescent.

(6) A sign bearing ethnic discrimination.

(7) A sign which is deceptive and easily misleads the public regarding the quality or origin of goods.

(8) Signs detrimental to socialist morality or mores or having any other adverse effect. The name of any administrative division at or above the county level or the name of any foreign place known by the public may not be used as a trademark, except that

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

the place name has other meanings or is used as a part of a collective mark or certification mark. Existing registered trademarks using place names shall continue to be valid.

Article 11 The following signs may not be registered as trademarks:

- (1) A sign only bearing the generic name, design, or model of the goods.
- (2) A sign only directly indicating the quality, main raw materials, functions, uses, weight, quantity, or other features of goods.
- (3) Other signs lacking distinctiveness.

If a sign listed in the preceding paragraph has obtained distinctiveness through use and can be easily identified, it may be registered as a trademark

Article 12 Where the registration of a three dimensional trademark is applied for, it shall not be registered if it is only a shape resulting from the nature of the goods, a shape of the goods necessary for achieving a technical effect, or a shape to add a substantive value to the goods.

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

Article 13 The holder of a trademark well known by the relevant public may file a request for well-known trademark protection under this Law if believing that there is any infringement upon its rights.

Where a trademark for registration to be used on identical or similar goods is a copy, imitation, or translation of a well-known trademark of another party which has not been registered in China and may easily cause confusion, it shall not be registered and shall be prohibited from use.

Where a trademark for registration to be used on different or dissimilar goods is a copy, imitation, or translation of a well-known trademark of another party which has been registered in China, misleads the public, and may cause damage to the interests of the registrant of the well-known trademark, it shall not be registered and shall be prohibited from use.

Article 14 Whether a trademark is a well-known trademark shall be determined upon request of a party as a fact to be found in the handling of a trademark case. The following factors shall be taken into account in the determination of a well-known trademark:

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

- (1) Reputation of the trademark to the relevant public.
- (2) Duration of the use of the trademark.
- (3) Duration, extent, and geographical area of any publicity of the trademark.
- (4) Records of protection of the trademark as a well-known trademark.
- (5) Other factors relevant to the determination of a well-known trademark.

Where a party files a claim under Article 13 of this Law in the process of trademark registration examination or in the process of investigation of a trademark violation case by the administrative department for industry and commerce, the Trademark Office may determine whether the trademark is a well-known trademark if it is necessary for examination or handling the case.

Where a party files a claim under Article 13 of this Law in the process of resolution of a trademark dispute, the Trademark Appeal Board may determine whether the trademark is a well-known trademark if it is necessary for handling the case.

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

Where a party files a claim under Article 13 of this Law in the trial of a civil or administrative case involving trademark, the people's court designated by the Supreme People's Court may determine whether the trademark is a well-known trademark if it is necessary for trying the case.

Producers and dealers may not use the words “well-known trademark” on their goods and the packages or containers of their goods or for advertisements, exhibitions, and other commercial activities.

Article 15 Where an agent or a representative applies for registration of a trademark of the principal or the represented party in the agent's or the representative's own name without authorization, the trademark shall not be registered and shall be prohibited from use upon opposition from the principal or the represented party.

Where an applicant for registration of a trademark identical with or similar to an unregistered trademark in prior use by another party on identical or similar goods has any contractual, business or other relationship except the relationship described in the preceding paragraph with the other party and knows the existence of the unregistered trademark, the trademark shall not be registered upon opposition from the other party.

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

Article 16 Where a trademark contains a geographic indication of the goods but the goods do not originate from the region indicated thereon, thus misleading the public, the trademark shall not be registered and shall be prohibited from use; however, those that have been registered in good faith shall continue to be valid.

The geographic indication as mentioned in the preceding paragraph means a sign that indicates the region where the goods originate and the natural or human dimensions of which primarily decide the specific quality, reputation, or other features of the goods.

Article 17 Where a foreign national or a foreign enterprise applies for trademark registration in China, it shall be handled in accordance with an agreement concluded between the applicant's country and the People's Republic of China or an international treaty acceded to by both countries or according to the principle of reciprocity.

Article 18 An applicant may apply for trademark registration and handle other trademark-related matters by itself or through a legally formed trademark agency authorized by it.

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

A foreign national or a foreign enterprise intending to apply for trademark registration and handle other trademark-related matters in China shall authorize a legally formed trademark agency to do so.

Article 19 Trademark agencies shall follow the principle of good faith, abide by laws and administrative regulations, handle trademark registration applications and other trademark-related matters as authorized by clients, and maintain confidential clients' trade secrets known in acting for clients.

Where the trademark registration applied for by a client may be denied for any circumstances as described in this Law, a trademark agency shall clearly notify the client thereof.

Where a trademark agency knows or should have known that a client's trademark registration application falls under any circumstances as described in Articles 4, 15 and 32 of this Law, it may not accept the client's authorization.

Trademark agencies may not apply for registration of trademarks other than those applied for in acting for clients.

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

Article 20 A trademark agency association shall, according to its bylaws, strictly implement the membership conditions, and take disciplinary actions against members violating the self-regulatory rules of the sector. A trademark agency association shall disclose information on its new members and the disciplinary actions taken against its members to the public in a timely manner.

Article 21 International registration of trademarks shall comply with the rules established by the relevant international treaties concluded or acceded to by the People's Republic of China, and the specific measures shall be developed by the State Council.

Chapter II Application for Trademark Registration

Article 22 A trademark registration applicant shall, according to the prescribed classification of goods, enter the class and designation of goods on which the trademark is to be used, and file an application for registration.

A trademark registration applicant may, in a single application, apply for registration of the same trademark on goods of different classes.

Trademark registration applications and other relevant documents may be filed in written or data message form.

Article 23 Where a registered trademark needs to be exclusively used on any goods beyond the approved scope of use, a separate application for registration shall be filed.

Article 24 Where any sign of a registered trademark needs to be modified, a new application for registration shall be filed.

Article 25 Where, within six months from the day when a trademark registration

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

applicant firstly filed an application for registration of a trademark in a foreign country, it applies for registration in China of the same trademark to the used on identical goods, it may enjoy priority according to an agreement concluded between the foreign country and the People's Republic of China or an international treaty acceded to by both countries, or on the principle of mutual acknowledgement of the right of priority.

To claim priority under the preceding paragraph, the applicant shall file a written declaration when filing an application for trademark registration and, within three months, submit a duplicate of the application documentation firstly filed; an applicant failing to file the written declaration or failing to submit the duplicate of application documentation within the prescribed time limit shall be deemed to have not claimed priority.

Article 26 Where a trademark is used for the first time on the goods displayed at an international exhibition sponsored or acknowledged by the Chinese Government, the user as an applicant for registration of the trademark may enjoy priority within six months from the date of display of the goods.

To claim priority under the preceding paragraph, the applicant shall file a written

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

declaration when filing the application for trademark registration and, within three months, submit certification documents on the name of the exhibition in which the goods were displayed, the evidence of using the trademark on the displayed goods, and the date of exhibition, among others; an applicant failing to file the written declaration or failing to submit the certification documents within the prescribed time limit shall be deemed to have not claimed priority.

Article 27 Matters declared and materials provided for an application for trademark registration shall be authentic, accurate, and complete.

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

Chapter III Trademark Registration Examination and Approval

Article 28 For a trademark registration application, the Trademark Office shall complete examination within nine months after receiving the application documents and, if the application complies with the relevant provisions of this Law, preliminarily approve and publish it.

Article 29 Where, in the course of examination, the Trademark Office deems it necessary to require an explanation or amendment of a trademark registration application, it may require the applicant to provide an explanation or amendment. The applicant's failure to provide such an explanation or amendment shall not affect the decision of the Trademark Office upon examination.

Article 30 Where the trademark for registration does not comply with the relevant provisions of this Law or is identical with or similar to another party's trademark which has been registered or preliminarily approved for use on identical or similar goods, the Trademark Office shall reject the application and shall not publish the trademark.

Article 31 Where two or more trademark registration applicants apply for registration of identical or similar trademarks to be used on identical or similar goods, the trademark, the registration of which is applied for first, shall be preliminarily approved

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

and published; or if the applications are filed on the same day, the trademark which is used first shall be preliminarily approved and published, while the applications of the others shall be rejected without publication.

Article 32 No application for trademark registration may infringe upon the existing prior rights of others, and bad-faith registration by illicit means of a trademark with a certain reputation already used by another party shall be prohibited.

Article 33 For a preliminarily approved and published trademark, within three months from the date of publication, a prior rights holder or an interested party which believes that paragraph 2 or 3 of Article 13, Article 15, paragraph 1 of Article 16, Article 30, Article 31, or Article 32 of this Law is violated or any person that believes that Article 4, Article 10, Article 11, Article 12, or paragraph 4 of Article 19 of this Law is violated may file an opposition with the Trademark Office. If no opposition has been filed upon expiry of the publication period, the registration shall be approved, a certificate of trademark registration shall be issued, and a publication shall be made.

Article 34 Where a trademark registration application is rejected or publication is denied, the Trademark Office shall notify the applicant in written form. The applicant may apply to the Trademark Appeal Board for a review within 15 days after receiving

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

the notice. The Trademark Appeal Board shall make a decision within nine months after receiving the application, and notify the applicant of its decision in written form. Under special circumstances, the time limit may be extended by three months with the approval of the administrative department for industry and commerce under the State Council. Against the decision of the Trademark Appeal Board, the party concerned may institute an action in a people's court within 30 days after receiving the notice.

Article 35 Where an opposition is filed against a trademark which has been preliminarily approved and published, the Trademark Office shall hear the facts and reasons from both the opponent and the applicant, investigate and verify them, make a decision to approve or disapprove the registration within 12 months upon expiry of the publication period, and notify the opponent and the applicant of its decision in written form. Under special circumstances, the time limit may be extended by six months with the approval of the administrative department for industry and commerce under the State Council.

In the case of approval of registration, the Trademark Office shall issue a certificate of trademark registration, and publish the registered trademark. The opponent may,

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

under Article 44 and 45 of this Law, request the Trademark Appeal Board to declare the trademark registration to be invalid.

In the case of disapproval of registration, the applicant may apply to the Trademark Appeal Board for a review within 15 days after receiving the notice. The Trademark Appeal Board shall make a decision upon review within 12 months after receiving the application, and notify the opponent and the applicant in written form. Under special circumstances, the time limit may be extended by six months with the approval of the administrative department for industry and commerce under the State Council. Against the decision of the Trademark Appeal Board, the applicant may institute an action in a people's court within 30 days after receiving the notice. The people's court shall notify the opponent to participate in the action as a third party.

Where, in a review conducted according to the preceding paragraph, the Trademark Appeal Board must determine the involved prior rights based on the results of another case being tried by a people's court or handled by an administrative agency, it may suspend the review. After the cause of suspension is eliminated, the review process shall be resumed.

Article 36 Where, upon expiry of the statutory time limit, the party concerned fails to

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

apply for a review of a decision of the Trademark Office to reject a trademark registration application or deny registration or fails to institute an action in a people's court against a decision of the Trademark Appeal Board upon review, the decision to reject a trademark registration application or deny registration or the decision upon review shall take effect.

Where trademark registration is approved after all oppositions are determined as unfounded upon examination, the time of the applicant obtaining the right to exclusively use the trademark commences from the date of expiry of the three-month preliminary approval publication period. The right to exclusively use the trademark is not retrospective to another party's use of a mark identical with or similar to the trademark on identical or similar goods during the period from the date of expiry of the publication period to the date of decision to approve registration; however, such other party shall compensate the trademark registrant for any losses caused by its use in bad faith.

Article 37 An application for trademark registration or an application for trademark review shall be examined in a timely manner.

Article 38 A trademark registration applicant or a trademark registrant which

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

discovers that there is any evident error in the trademark application documents or registration documents may apply for correction. The Trademark Office shall make correction within its functions according to the law, and notify the party concerned.

The correction of errors as mentioned in the preceding paragraph shall not involve any substantive content of the trademark application documents or registration documents.

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

Chapter IV Renewal, Modification, Assignment and Licensing of Registered Trademarks

Article 39 The period of validity of a registered trademark shall be ten years, commencing from the date of approval of registration.

Article 40 A trademark registrant intending to continue to use the registered trademark upon expiry of the period of validity shall undergo the renewal formalities within 12 months before expiry according to the relevant provisions. If failing to do so, the trademark registrant may be granted a six-month grace period. The period of validity of each renewal is ten years, commencing from the day after the expiry date of the last period of validity. If the renewal formalities are not undergone within the grace period, the registration of the trademark shall be cancelled.

The Trademark Office shall publish renewed registered trademarks.

Article 41 Where the name or address of registrant or any other registered matter of a registered trademark needs to be modified, an application for modification shall be filed.

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

Article 42 Where a registered trademark is assigned, the assignor and the assignee shall enter into an assignment agreement, and jointly file an application with the Trademark Office. The assignee shall guarantee the quality of goods on which the registered trademark is used.

A trademark registrant intending to assign the registered trademark shall concurrently assign all its similar registered trademarks on identical goods or all its identical or similar registered trademarks on similar goods.

Where any assignment may easily cause confusion or have any other adverse effect, the Trademark Office shall disapprove it, and notify the applicant of disapproval in written form with an explanation of reasons.

After the assignment of a registered trademark has been approved, it shall be published. The assignee shall have the right to exclusively use the registered trademark from the date of publication.

Article 43 A trademark registrant may, by entering into a trademark licensing contract, license another party to use its registered trademark. The licensor shall supervise the quality of the goods on which the licensee uses the licensor's registered trademark.

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

The licensee shall guarantee the quality of the goods on which the registered trademark is used.

In the licensed use of another party's registered trademark, the name of licensee and the origin of goods must be indicated on the goods on which the registered trademark is used.

Where another party is licensed to use a registered trademark, the licensor shall report the license to the Trademark Office for recordation, and the Trademark Office shall publish it. An unrecorded license may not be used as a defense against a third party in good faith.

Chapter V Declaration of Invalidation of Registered Trademarks

Article 44 Where a registered trademark violates Article 4, Article 10, Article 11, Article 12, or paragraph 4 of Article 19 of this Law, or its registration was acquired by fraud or any other illicit means, the Trademark Office shall declare invalidation of the registered trademark; and any other organization or individual may petition the Trademark Appeal Board to declare invalidation of the registered trademark.

The Trademark Office shall notify the party concerned in written form of its decision to declare invalidation of the registered trademark. Against the decision of the Trademark Office, the party concerned may apply to the Trademark Appeal Board for a review within 15 days after receiving the notice. The Trademark Appeal Board shall make a decision within nine months after receiving the review application, and notify the party concerned of its decision in written form. Under special circumstances, the time limit may be extended by three months with the approval of the administrative department for industry and commerce under the State Council. Against the decision of the Trademark Appeal Board, the party concerned may institute an action in a people's court within 30 days after receiving the notice.

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

Where any other organization or individual petitions the Trademark Appeal Board to declare invalidation of a registered trademark, the Trademark Appeal Board shall, after receiving the application, notify the party concerned in written form, and specify a time limit for submission of defense. The Trademark Appeal Board shall make a ruling to sustain the registered trademark or declare invalidation of the registered trademark within nine months after receiving the application, and notify the party concerned of its decision in written form. Under special circumstances, the time limit may be extended by three months with the approval of the administrative department for industry and commerce under the State Council. Against the ruling of the Trademark Appeal Board, the party concerned may institute an action in a people's court within 30 days after receiving the notice. The people's court shall notify the opposite party in the trademark ruling proceedings to participate in the action as a third party.

Article 45 Where a registered trademark violates paragraph 2 or 3 of Article 13, Article 15, paragraph 1 of Article 16, Article 30, Article 31, or Article 32 of this Law, a prior rights holder or an interested party may petition the Trademark Appeal Board for declaration of invalidation of the registered trademark within five years from the date of trademark registration. If the registration is acquired in bad faith, a well-known trademark holder shall not be subject to the five-year time limit.

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

After receiving a petition for declaring invalidation of a registered trademark, the Trademark Appeal Board shall notify the party concerned in written form, and specify a time limit for submission of defense. The Trademark Appeal Board shall make a ruling to sustain the registered trademark or declare invalidation of the registered trademark within 12 months after receiving the petition, and notify the party concerned of its decision in written form. Under special circumstances, the time limit may be extended by six months with the approval of the administrative department for industry and commerce under the State Council. Against the ruling of the Trademark Appeal Board, the party concerned may institute an action in a people's court within 30 days after receiving the notice. The people's court shall notify the opposite party in the trademark ruling proceedings to participate in the action as a third party.

Where, in reviewing a petition for declaration of invalidation of a registered trademark under the preceding paragraph, the Trademark Appeal Board must determine the involved prior rights based on the results of another case being tried by a people's court or handled by an administrative agency, it may suspend the review process. After the cause of suspension is eliminated, the review process shall be resumed.

Article 46 Where, upon expiry of the statutory time limit, the party concerned fails to

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

apply for a review of a decision of the Trademark Office to declare invalidation of a registered trademark or fails to institute an action in a people's court against the Trademark Appeal Board's decision upon review or ruling to sustain a registered trademark or declare invalidation of a registered trademark, the decision of the Trademark Office or the Trademark Appeal Board's decision upon review or ruling shall take effect.

Article 47 The Trademark Office shall publish registered trademarks declared to be invalid under Article 44 or 45 of this Law, and the right to exclusively use such a registered trademark shall be deemed void at the inception.

A decision or ruling to declare invalidation of a registered trademark is not retrospective to a judgment, ruling, or consent judgment made and enforced by a people's court, a trademark infringement case decision made and enforced by an administrative department for industry and commerce, or a trademark assignment contract or license contract executed before the trademark is declared to be invalid. However, the trademark registrant shall compensate others for losses caused by its bad faith.

Trademark infringement damages, trademark assignment fees, and trademark

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

royalties which are not returned under the preceding paragraph shall be all or partially returned if the principle of fairness is evidently violated otherwise.

Chapter VI Administration of the Use of Trademarks

Article 48 For the purposes of this Law, “use of a trademark” means using a trademark on goods, on the packages or containers of goods, in the trade documents of goods, or for advertisements, exhibitions, and other commercial activities for the purpose of identifying the origin of goods.

Article 49 Where, in using a registered trademark, the trademark registrant changes the registered trademark, the name or address of the registrant, or any other registered matter without approval, the local administrative department for industry and commerce shall order the registrant to make correction within a prescribed time limit; and if the registrant fails to do so within the time limit, the Trademark Office shall cancel the registered trademark.

Where a registered trademark becomes a common name of goods on which it is approved to be used or the use of the registered trademark has ceased for three consecutive years without good reasons, any entity or individual may apply to the Trademark Office for cancellation of the registered trademark. The Trademark Office shall make a decision within nine months after receiving the application. Under special circumstances, the time limit may be extended by three month with the

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

approval of the administrative department for industry and commerce under the State Council.

Article 50 Where a registered trademark is cancelled, declared to be invalid, or not renewed upon expiry, the Trademark Office shall, during one year from the date of cancellation, declaration of invalidation, or expiration, approve no application for registration of a trademark identical with or similar to the trademark.

Article 51 Where any party violates Article 6 of this Law, the local administrative department for industry and commerce shall order the party to apply for registration within a certain time limit, and may impose a fine of not more than 20% of the illegal business revenues if the amount of illegal business revenues reaches 50,000 yuan or impose a fine of not more than 10,000 yuan if there is no illegal business revenue or the amount of illegal business revenues is less than 50,000 yuan.

Article 52 Where any party intentionally uses an unregistered trademark as a registered one or uses an unregistered trademark in violation of Article 10 of this Law, the local administrative department for industry and commerce shall stop the use of the trademark and order the party to make correction within a prescribed time limit, may circulate a notice thereon, and may impose a fine of not more than 20% of the

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

illegal business revenues if the amount of illegal business revenues reaches 50,000 yuan or impose a fine of not more than 10,000 yuan if there is no illegal business revenue or the amount of illegal business revenues is less than 50,000 yuan.

Article 53 Any party violating paragraph 5, Article 14 of this Law shall be ordered to make correction and fined 100,000 yuan by the local administrative department for industry and commerce.

Article 54 Against a decision of the Trademark Office to cancel or not to cancel a registered trademark, the party concerned may, within 15 days after receiving a notice of the decision, apply to the Trademark Appeal Board for a review. The Trademark Appeal Board shall make a decision within nine months after receiving the application, and notify the party concerned of the decision in written form. Under special circumstances, the time limit may be extended by three months with the approval of the administrative department for industry and commerce under the State Council. Against the decision of the Trademark Appeal Board, the party concerned may institute an action in a people's court within 30 days after receiving the notice.

Article 55 Where, upon expiry of the statutory time limit, the party concerned fails to apply for a review of a decision of the Trademark Office to cancel a registered

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

trademark or fails to institute an action in a people's court against a decision of the Trademark Appeal Board upon review, the decision to cancel the registered trademark or the decision upon review shall take effect.

The Trademark Office shall publish registered trademarks which are cancelled, and the right to exclusively use such a registered trademark shall be terminated from the date of publication.

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

Article 56 The right to exclusively use a registered trademark shall be limited to the trademark approved for registration and the goods on which the trademark is approved to be used.

Article 57 Any of the following conduct shall be an infringement upon the right to exclusively use a registered trademark:

(1) Using a trademark identical with a registered trademark on identical goods without being licensed by the trademark registrant.

(2) Using a trademark similar to a registered trademark on identical goods or using a trademark identical with or similar to a registered trademark on similar goods, without being licensed by the trademark registrant, which may easily cause confusion.

(3) Selling goods which infringe upon the right to exclusively use a registered trademark.

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

(4) Forging or manufacturing without authorization the labels of a registered trademark of another party or selling the labels of a registered trademark forged or manufactured without authorization.

(4) Replacing a registered trademark without the consent of the trademark registrant and putting the goods with a substituted trademark into the market.

(5) Intentionally providing facilitation for infringement upon others' right to exclusively use a registered trademark or aiding others in committing infringement upon the right to exclusively use a registered trademark.

(7) Otherwise causing damage to the right to exclusively use a registered trademark of others.

Article 58 Where any entity uses a registered trademark or an unregistered well-known trademark of others as a trade name in its enterprise name to mislead the public, if any unfair competition is constituted, it shall be handled in accordance with the Anti-Unfair Competition Law of the People's Republic of China.

Article 59 The holder of the right to exclusively use a registered trademark shall

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

have no right to preclude others from legitimately using the common name, design or model of goods on which the trademark is used, the direct indications of the quality, main raw materials, functions, uses, weight, quantity, and other features of goods, or the place name in the trademark.

Where a three dimensional registered trademark comprises a shape resulting from the nature of the goods, a shape of the goods necessary for achieving a technical effect, or a shape to add substantive value to the goods, the holder of the right to exclusively use the registered trademark shall have no right to preclude others from legitimately using such a shape.

Where, before a trademark registrant applies for trademark registration, another party has used an identical or similar trademark with a certain reputation on identical or similar goods prior to the trademark registrant, the holder of the right to exclusively use the registered trademark shall have no right to preclude such other party from continuing to use the trademark for original purposes, but may require such other party to add a distinctive mark.

Article 60 Where any dispute arises from any of infringements upon the right to exclusively use a registered trademark as set out in Article 57 of this Law, the parties

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

concerned shall resolve the dispute through negotiation; and if they are reluctant to resolve the dispute through negotiation or the negotiation fails, the trademark registrant or an interested party may institute an action in a people's court or request the administrative department for industry and commerce to handle the dispute.

If the administrative department for industry and commerce handling the dispute determines that an infringement is constituted, it shall order immediate cessation of infringement and confiscate and destroy the infringing goods and the tools mainly used for manufacturing the infringing goods and counterfeiting the labels of the registered trademark, and may impose a fine of not more than five times the illegal business revenues if the amount of illegal business revenues reaches 50,000 yuan or a fine of not more than 250,000 yuan if there is no illegal business revenue or the amount of illegal business revenues is less than 50,000 yuan. If trademark infringement has been committed twice or more within five years or there are other serious circumstances, a heavier punishment shall be imposed. If goods infringing the right to exclusively use a registered trademark are sold without knowledge of such infringement, and the seller is able to prove that the goods are legally acquired and provide the supplier, the administrative department for industry and commerce shall order cessation of sale.

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

Where any dispute arises regarding the amount of damages for infringement upon the right to exclusively use a registered trademark, the parties concerned may request the administrative department for industry and commerce handling the dispute to conduct mediation or institute an action in a people's court in accordance with the Civil Procedure Law of the People's Republic of China. If the parties concerned fail to reach an agreement upon mediation by the administrative department for industry and commerce or fail to fulfill a mediation agreement after being executed, the parties concerned may institute an action in 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 according to the law any infringement upon the right to exclusively use a registered trademark; and those suspected of a crime shall be transferred to the judicial authority in a timely manner according to the law.

Article 62 The administrative departments for industry and commerce at or above the county level may exercise the following powers based on evidence of suspected illegal acts or any reports when investigating suspected infringement upon the right to exclusively use a registered trademark of others:

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

(1) Questioning the party concerned and investigating information on infringement upon the right to exclusively use a registered trademark of others.

(2) Consulting and copying the contracts, invoices, account books, and other materials of the party concerned relating to infringement.

(3) Conducting on-site inspection of the place where the party concerned is suspected of engaging in activities which infringe upon the right to exclusively use a registered trademark of others.

(4) Examining items relating to infringement; or seizing or impounding items infringing upon the right to exclusively use a registered trademark of others as proved by evidence.

The party concerned shall assist and cooperate with the administrative department for industry and commerce exercising the powers prescribed in the preceding paragraph, and may not refuse assistance or cooperation or impede the exercise of such powers.

Where, in investigating a trademark infringement case, there is any dispute over the

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

ownership of the trademark or a right holder institutes a trademark infringement action in a people's court, the administrative department for industry and commerce may suspend the investigation. After the cause of suspension is eliminated, it shall resume or terminate the investigation procedure.

Article 63 The amount of damages for infringement upon the right to exclusively use a registered trademark shall be determined according to the actual losses suffered by the right holder from the infringement; where it is difficult to determine the amount of actual losses, the amount of damages may be determined according to the benefits acquired by the infringer from the infringement; where it is difficult to

determine the right holder's losses or the benefits acquired by the infringer, the amount of damages may be a reasonable multiple of the royalties. If the infringement is committed in bad faith with serious circumstances, the amount of damages shall be the amount, but not more than five times the amount, determined in the aforesaid method. The amount of damages shall include reasonable expenses of the right holder for stopping the infringement.

Where the right holder has made its best efforts to adduce evidence but the account books and materials related to infringement are mainly in the possession of the

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

infringer, in order to determine the amount of damages, a people's court may order the infringer to provide such account books and materials; and if the infringer refuses to provide the same or provide any false ones, the people's court may determine the amount of damages by reference to the claims of and the evidence provided by the right holder.

Where it is difficult to determine the actual losses suffered by the right holder from the infringement, the profits acquired by the infringer from the infringement, or the royalties of the registered trademark, a people's court may award damages of not more than five million yuan according to the circumstances of the infringement.

The people's court that tries a trademark dispute case shall, at the request of the right holder, order destruction of goods on which a registered trademark is falsely used, except under special circumstances; order destruction of materials and tools primarily used for the manufacture of such goods without compensation; or under special circumstances, order prohibition of the said materials and tools from entering commercial channels without compensation.

Goods on which a registered trademark is falsely used may not enter commercial channels even if the registered trademark so used is removed only.

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

Article 64 Where the holder of a right to exclusively use a registered trademark claims damages, and the alleged infringer argues that the right holder has never used the registered trademark, a people's court may require the holder of the right to exclusively use a registered trademark to provide evidence of its actual use of the registered trademark in the last three years. If the holder of the right to exclusively use a registered trademark is neither able to prove its actual use of the registered trademark in the last three years nor able to prove that it has suffered other losses from the infringement, the alleged infringer shall not be liable for damages.

Where any goods infringing a right to exclusively use a registered trademark are sold without knowledge of such infringement, and the seller is able to prove that the goods are legally acquired and provide the supplier, the seller shall not be liable for damages.

Article 65 Where a trademark registrant or an interested party has evidence that another party is committing or will commit an infringement upon the right to exclusively use the registered trademark, and irreparable damage will be caused to its lawful rights and interests if the infringement is not stopped in a timely manner, it may apply to a people's court for an order of cessation of relevant acts and property preservation before instituting an action in the people's court.

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

Article 66 In order to stop infringement, a trademark registrant or an interested party may apply to a people's court for preservation of evidence before instituting an action if any evidence may be destroyed or lost or difficult to obtain at a later time.

Article 67 Where, without being licensed by the trademark registrant, a party uses a trademark identical with the registered trademark on identical goods, if any crime is constituted, the party shall be subject to criminal liability according to the law in addition to compensating the victim for losses.

Where a party forges or manufactures without authorization the labels of a registered trademark of another party or sells the labels of a registered trademark forged or manufactured without authorization, if any crime is constituted, the party shall be subject to criminal liability according to the law in addition to compensating the victim for losses.

Where a party knowingly sells goods on which a registered trademark is falsely used, if any crime is constituted, the party shall be subject to criminal liability according to the law in addition to compensating the victim for losses.

Article 68 Where a trademark agency commits any of the following conduct, the

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

administrative department for industry and commerce shall order it to make correction within a prescribed time limit and impose a warning and a fine of but not less than 10,000 yuan but not more than 100,000 yuan on it; its directly liable person in charge and other directly liable personnel shall be fined not less than 5,000 yuan but not more than 50,000 yuan; and if any crime is constituted, criminal liability shall be investigated:

- (1) Forging or altering any legal document, seal, or signature or using any forged or altered legal document, seal, or signature in handling trademark-related matters.
- (2) Acquiring trademark agency business by defaming other trademark agencies or disturbing the trademark agency market order by other illicit means.
- (3) Violating Article 4 or paragraph 3 or 4 of Article 19 of this Law.

For a bad faith application for trademark registration, administrative punishment such as warning and fine shall be imposed according to the circumstances; and for a bad faith suit over a trademark, the people's court shall impose punishment according to the law.

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

Where a trademark agency commits any conduct mentioned in the preceding paragraph, the administrative department for industry and commerce shall record it into its credit file; and if the circumstances are serious, the Trademark Office and the Trademark Appeal Board may also decide to stop accepting its trademark agency business, and publish it.

A trademark agency which, in violation of the principle of good faith, infringes upon the lawful rights and interests of clients shall assume civil responsibility in accordance with the law, and the trademark agency association shall, according to its bylaws, take disciplinary actions against it.

Article 69 The staff members of state organs who engage in trademark registration, administration, and review must enforce laws impartially, have integrity and self-discipline, be devoted to their duties, and provide services with manners.

The Trademark Office, the Trademark Appeal Board, and staff members of state organs who engage in trademark registration, administration, and review may not engage in trademark agency and goods production and trading activities.

Article 70 The administrative departments for industry and commerce shall establish

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

and improve their internal supervision rules, and conduct supervisory inspections on the enforcement of laws and administrative regulations and compliance with disciplines by the staff members of state organs who are responsible for trademark registration, administration, and review.

Article 71 Where any staff members of a state organ engaging in trademark registration, administration, or review neglect duties, abuse powers, practice favoritism, make falsehood, illegally handle any trademark registration, administration, or review matters, accept any property from the parties concerned, or seek any improper benefits, if any crime is constituted, they shall be subject to criminal liability according to the law; or if no crime is constituted, disciplinary actions shall be taken against them according to the law.

BORSAM

INTELLECTUAL PROPERTY

Patent | Trademark | Copyright | Litigation

Chapter VIII Supplementary Provisions

Article 72 Fees shall be charged for a trademark registration application and the handling of other trademark matters, and the specific fee rates shall be prescribed separately.

Article 73 This Law shall come into force on March 1, 1983. The Regulation on Trademark Administration issued by the State Council on April 10, 1963, shall be repealed concurrently; and any other provisions on trademark administration in conflict with this Law shall expire concurrently.

Trademarks registered before this Law comes into force shall continue to be valid.