

THE PEOPLE'S REPUBLIC OF CHINA TRADEMARK LAW

Effective from May 1, 2014

BORSAM

CHINA TRADEMARK LAW

Effective from May 1st, 2014

Adopted at the 24th Session of the Standing Committee of the Fifth National People's Congress on August 23, 1982, as amended according to the "Decision on the Revision of the Trademark Law of the People's Republic of China" adopted at the 30th Session of the Standing Committee of the Seventh National People's Congress on February 22, 1993, and the "Decision on the Revision of the Trademark Law of the People's Republic of China" adopted at the 24th Session of the Standing Committee of the Ninth National People's Congress on October 27 2001, and amended for the third time according to the "Decision on the Revision of the Trademark Law of the People's Republic of China" adopted at the 4th Session of the Standing Committee of the Twelfth National People's Congress on August 30, 2013.

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CHAPTER 1 GENERAL PROVISIONS

Article 1. This Law is enacted for the purposes of improving the administration of trademarks, protecting the exclusive right to use a trademark, and encouraging producers to guarantee the quality of their goods and maintain the reputation of their trademarks, with a view towards protecting consumers' interests and promoting the development of a socialist market economy.

Article 2. The Trademark Office of the State Administration for Industry and Commerce under the State Council shall be responsible for the registration and administration of trademarks throughout the country.

Industrial and commercial administrative department of the State Council set up TRAB, responsible for handling trademark disputes.

Article 3. A registered trademark means a trademark that has been approved and registered by the Trademark Office. A trademark registrant shall enjoy an exclusive right to use the trademark, which shall be protected by law.

For the purposes of this law, a collective mark is a mark registered in the name of a group, association, or any other organization and used by its members to indicate membership.

For the purposes of this law, a certification mark is a mark which is owned by an organization that exercises supervision over a particular product or service and which is used to indicate that third-party goods or services meet certain standards pertaining to place of origin, raw materials, mode of manufacture, quality, or other characteristics.

Particulars pertaining to the registration and administration of collective marks and certification marks shall be formulated by the State Administration for Industry and Commerce under the State Council.

Article 4. Any natural person, legal person, or other organization desirous of acquiring the exclusive

right to use a trademark for the goods produced, or services and activities offered by it or him shall file an application for the registration of the goods or service mark with the Trademark Office.

The provisions in this law concerning goods trademarks shall apply to service marks.

Article 5. Two or more natural persons, legal persons, or other organizations may jointly file an application for the registration of a trademark and jointly enjoy and exercise an exclusive right to use the mark.

Article 6. For goods that must be used in connection with a registered trademark as prescribed by the laws and administrative regulations, a trademark registration must be applied for. Where no trademark registration has been granted, such goods cannot be sold on the market.

Article 7. Any application or usage of a trademark shall abide by principles of good faith.

Any user of a trademark shall be responsible for the quality of the goods in connection with which the trademark is used. The administrative authorities for industry and commerce at all levels shall exercise supervision over the quality of the goods and shall prohibit any practice that defrauds the consumer.

Article 8. An application may be made to register as a trademark any mark, including any word, device, any letter of the alphabet, any number, three-dimensional symbol, color combination and sound, or any combination thereof, that identifies and distinguishes the goods of a natural person, legal person, or other organization from those of others.

Article 9. A trademark seeking registration shall be so distinctive as to be distinguishable and shall not infringe upon the prior legitimate rights of others.

A trademark registrant shall have the right to display the wording "Registered Trademark" or a sign indicating that it is registered.

Article 10. The following words or devices shall not be used as trademarks:

- 1) Those identical with or similar to the State name, national flag, national emblem, national anthem, military flag, army emblem, military song, or decorations of the People's Republic of China; those identical with a State Organ's name, symbol, or the names of the specific locations that are seats of central state organs; or those identical with the names or designs of landmark buildings;
- 2) Those identical with or similar to the state names, national flags, national emblems or military flags of foreign countries, except with the permission of the government of the country involved;
- 3) Those identical with or similar to the flags, emblems, names or others of international inter-governmental organizations, except with the permission of the organization concerned or where no likelihood of public confusion exists;
- 4) Those identical with or similar to an official mark or inspection seal that indicates control and guarantee, except where authorized;
- 5) Those identical with or similar to the symbols or names of the Red Cross or the Red Crescent;
- 6) Those that discriminate against any nationality;
- 7) Those in the nature of fraud in advertising that easily confuses the public with the quality or other characteristics or origins of the goods, or the place of origin of the goods;
- 8) Those detrimental to socialist morals or customs, or having other unhealthy influences.

The geographical names of administrative divisions at or above the county level and foreign geographical names well-known to the public shall not be used as trademarks, except for geographical names that have other meaning or constitute part of a collective mark or certification mark. Registered trademarks that use geographical names shall continue to be valid.

Article 11. The following marks are not permitted to be registered as a trademark:

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- 1) Names, devices, or designs that are generic to a class or group of goods;
- 2) Marks that merely indicate the quality, principal raw materials, function, use, weight, quantity or other features of the goods in respect of which the marks are used;
- 3) Other marks that lack distinctive characteristics.

A mark to which the above provisions are applicable but which has acquired distinctiveness through use and is readily distinguishable may be registrable as a trademark.

Article 12. Registration shall be refused where a three-dimensional design merely indicates the shape inherent in the nature of the goods concerned. Registration also shall be refused where a three-dimensional design is only dictated by the need to achieve technical effects or the need to give the goods substantive value.

Article 13. Should any rights of a trademark well known to the relevant public be infringed, the trademark holder can follow the relevant provisions in this law to request the protection of the said famous trademark.

Where a mark is a reproduction, imitation, or translation of a third-party's famous trademark which has not been registered in China and where the goods are identical or similar, which may cause public confusion and damage the interests of the registrant of the famous mark, no registration shall be granted and the use of the mark shall be prohibited.

Where a mark is a reproduction, imitation, or translation of a third-party's famous trademark which has been registered in China and where the goods are not identical or dissimilar, which may mislead the public and cause injury to the interests of the registrant of the famous trademark, no registration shall be granted and the use of the mark shall be prohibited.

Article 14. A famous trademark, based on the parties' request, can be defined when the facts in each

case dealing with the relevant trademark support such a conclusion. The following factors shall be considered in making such a determination:

- 1) The degree of public recognition of the mark in its trading areas;
- 2) How long the mark has been in use;
- 3) The duration and extent of advertising and publicity of the mark, and the geographical extent of the trading areas in which the mark is used;
- 4) the protection of the mark as a famous trademark;
- 5) Other reasons for the fame of the trademark.

In examining a trademark registration and in the course of investigating cases involving illegal use of trademarks handled down by the authorities for industry and commerce may, upon a claim filed by the parties involved in accordance with Article 13 of this law, the Trademark Office may make a determination as to whether a trademark is a famous trademark.

In the process of handling a trademark dispute, the parties may, in accordance with Article 13 of this law, make such claims in regard to whether a trademark is famous; The Trademark Review and Adjudication Board may, in accordance with the needs of a specific case, make a determination as to whether a trademark is famous.

In the course of hearing civil and administrative trademark cases, the parties involved may claim rights according to the provisions of Article 13 of this Law, and according to the specific circumstances and needs of each case, the Supreme Court-appointed People's Courts may make a determination, based on the specific circumstances and needs of each case, as to whether a mark is famous.

A producer or operator shall not use the words "Famous Trademark" on its goods, packaging, or container, or in its advertising, exhibitions or other commercial activities.

Article 15. Where an agent or representative, without the authorization of the principal, seeks to register in the agent's name the principal's trademark and where the principal objects, registration shall be refused and the use of the mark shall be prohibited.

Where a trademark used on an identical or similar product that is considered for registration and that is the same or similar to a prior user of an unregistered trademark, the registrant, where no prior contractual agreement or business relationship exists between the registrant and prior user, may not register its trademark where the prior user's mark is clearly in use and an opposition to the trademark's registration has been filed.

Article 16. Where a trademark includes a geographical sign that does not describe the location or the origin of the goods in question, the term causes confusion among members of the public and shall be refused registration. Its use as a trademark also shall be prohibited. However, where a registration has been obtained in goodwill, such registration shall continue to be valid.

The geographical sign referred to in the above paragraph means that it is the place of origin on the goods at issue and that the special qualities, reputation or other characteristics of the goods are primarily determined by the natural conditions or other humanistic conditions of the geographical location involved.

Article 17. Any foreigner or foreign enterprise desirous of applying for the registration of a trademark in China shall file an application in accordance with any agreement concluded between the People's Republic of China and country to which the applicant belongs, or according to the international treaty to which both countries are parties, or on the basis of the principle of reciprocity.

Article 18. An applicant may independently handle trademark registration other trademark matters, and may also authorize a legally established trademark agency to handle trademark matters.

Any foreigner or foreign enterprise desirous of applying for the registration of a trademark or processing any other trademark matters in China shall retain any of the organizations designated by the State to be

his or its agent.

Article 19. A trademark agency shall abide by principles of good faith, abide by relevant laws and administrative regulations, and handle trademark registration and other trademark matters according to the instructions of its principals; a trademark agency shall also be obliged to keep secret any confidential information and trade or business secrets obtained through the performance of its duties.

Where a principal applies for registration of any trademark that may not be registered in accordance with this Law, the trademark agency shall explicitly inform the principal.

Where a trademark agency knows or should know that a trademark registration applied for by the principal violates the provisions of Article 15 and Article 32 of this law, the trademark agency shall not act as an agent for said principal in application for registration of that trademark.

Except for applying the use of one's own trademark, a trademark agency shall not register other trademarks.

Article 20. A Trademark Agency Organization shall, according to the regulations, strictly enforce standards for qualification of membership, and severely punish those members who violate standards of self-discipline. A Trademark Agency Organization shall make available to the public membership information and information related to the disciplining of membership and agency organization who have violated its standards.

Article 21. A Trademark Agency Organization involved in the registration of international trademarks shall abide by establishing regulations concluded to in international treaties signed by or joined in by the People's Republic of China. Specific measures shall be formulated by the State Council.

CHAPTER 2 APPLICATION FOR TRADEMARK REGISTRATION

Article 22. The applicant shall indicate on the application the class of goods and describe the goods with

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which the mark is used, based on the prescribed schedule of classes of goods, and shall file an application.

The applicant can apply the same trademark for goods in different classes with an application.

The trademark registration applications and other relevant documents can be filed in writing or by other electronic means of data transmission.

Article 23. Where a trademark registrant intends to use the trademark in connection with other goods in the same class for which the registration was granted, a new application shall be filed.

Article 24. Where any word or device of a registered trademark is to be altered, a new application shall be filed.

Article 25. An application for registration of a mark filed by a party that has previously duly filed an application to register the same mark in connection with the same goods in a foreign country shall be accorded priority in accordance with any agreement concluded between the PRC and the foreign country concerned, or with the international treaty to which both countries are parties, or on the basis of the principle of reciprocity, provided that the application in China is filed within six months from the date on which the application was first filed in the foreign country.

An applicant claiming priority in accordance with the above provision shall so state in writing at the time of filing the application and shall submit within three months a copy of the original trademark application. An applicant who fails to claim priority in writing or to submit a copy of the original trademark application by the specified time shall be deemed as not claiming priority.

Article 26. Where an applicant uses a trademark for the first time on goods displayed at an international exhibition organized or recognized by the Chinese Government, it may claim priority provided it files an application to register the mark within six months from the date of the exhibition.

An applicant claiming priority in accordance with the above provision shall so state in writing at the time

of filing the application and shall submit within three months the name of the exhibition, evidence proving the use of the mark on the goods displayed, and documents validating the date of the exhibition. An applicant who fails to claim priority in writing or to submit the papers shall be deemed as not claiming priority.

Article 27. Matters submitted in the trademark application and all information provided shall be truthful, accurate, and complete.

CHAPTER 3 EXAMINATION AND APPROVAL OF TRADEMARK APPLICATION

Article 28. Where a trademark application complies with the relevant provisions of this Law, the Trademark Office shall complete its examination within nine months from the time of its acceptance of the application, and shall publish its preliminary examination.

Article 29. Where the content of trademark registration application is deemed to require further explanation or revision in the course of examination, the Trademark Office may require the applicant to submit further explanation or revision. Where no explanation or revision is given by the applicant, a lack of said revision or explanation will not affect the Trademark Office's examination decision.

Article 30. Where a trademark application does not comply with the relevant provisions in this Law or is identical with or similar to a registered trademark used in connection with the same or similar goods, its registration shall be refused by the Trademark Office after examination and the mark shall not be published.

Article 31. Where two or more applicants apply to register identical or similar trademarks for use in connection with the same or similar goods, the Trademark Office shall first examine and approve for publication the mark with the earliest application date. Where the applications are filed on the same date, the Trademark Office shall first examine and approve for publication the mark with the earliest date of

use. Registration of the other trademark applications shall be refused and the marks shall not be published.

Article 32. No trademark application shall infringe upon another party's existing prior rights. Nor shall an applicant rush to register in an unfair manner a mark that is already in use by another party and enjoys substantial influence.

Article 33. Any holder of prior rights, or interested party may, within three months from the date of publication, in violation of the provisions of Article 13 Paragraph 2, Article 13 Paragraph 3, Article 15, Article 16 Paragraph 1, Article 30, Article 31, or Article 32, or any person may, in violation of the provisions of Article 10, Article 11, or Article 12, file to oppose a trademark application that has been published after a preliminary examination and approval. Where no opposition is filed after three months, the application shall be approved for registration, a certificate of registration shall issue, and the mark shall be published.

Article 34. Where registration is refused and the mark has not been published, the Trademark Office shall notify the applicant of the refusal in writing. Where the applicant is dissatisfied, it may, within fifteen days from receipt of the notification, apply for a review. The Trademark Review and Adjudication Board shall make a final decision within nine months from the acceptance of the application, and notify the applicant in writing. If an extension is needed, upon the approval of the department of industry and commerce administration under the State Council, the time limit can be extended for a further three months.

Where the applicant is dissatisfied with the decision of the Trademark Review and Adjudication Board, it may appeal to the People's Court within 30 days from receipt of the notification.

Article 35. Where an opposition is filed against a trademark application published after a preliminary examination, the Trademark Office shall hear the facts and grounds submitted by the opposing party as well as the opposed, shall make a decision on whether or not to approve the application for registration within the twelve months from the date of publication after investigation and verification, and shall notify the opposing party and the opposed of its decision, in writing. If an extension is needed, upon the

approval of the department of industry and commerce administration under the State Council, the time limit can be extended a further three months.

If the Trademark Office makes a decision to approve an application for registration, a certificate of registration shall be issued, and the mark shall be published. If the opposing party is dissatisfied with the decision, it may file a request for invalidation of the registered trademark according to the provisions of Article 44 or Article 45 of this Law to the Trademark Review and Adjudication Board.

Where the Trademark Office makes a decision to approve an application for registration, and if the opposing party is dissatisfied with the decision, it may file its dissatisfaction, within 15 days from the receipt of notification, in writing, to the Trademark Review and Adjudication Board for further review. The Trademark Review and Adjudication Board shall make a review decision within twelve months from the acceptance of the application, and notify the opposed and the opposing party in writing. If an extension is needed, upon the approval of the department of industry and commerce administration under the State Council, the time limit can be extended for another three months. If the opposing party is dissatisfied with the decision of the Trademark Review and Adjudication Board, it may institute legal proceedings with a People's Court within thirty days from its receipt of notification. The People's Court shall notify the opposing party in the trademark review proceedings, who shall participate in the proceedings as a third party.

In the course of review of the Trademark Review and Adjudication Board, in accordance with the provisions of the preceding paragraph, if determining the relevant prior rights will be based on an outcome determined by a court, or handled by an administrative organization, review for the trademark may be suspended. The proceedings for the review shall resume after the causes of the suspension have been eliminated.

Article 36. After the expiration of the time limit, where an applicant fails to apply to the Trademark Office for a review of the office's overruling decision or decision of no registration, or to institute legal proceedings with a People's Court contesting the decision of the Trademark Review and Adjudication Board, the decision shall go into effect.

Where an applicant fails to apply to the Trademark Office for a review of the Office's decision or to institute legal proceedings with a People's Court contesting the decision of the Trademark Review and Adjudication Board within the statutory time limits, the decision shall go into effect. Actions where others use an identical or similar mark for the same or similar goods are not retroactive within the period of time from the expiration date of its publication period to the date of making the approval application for registration. Where the mark was used with ill will and caused damages to an applicant, the party with ill will shall be held liable for damages.

Article 37. Trademark applications and applications for review shall be examined promptly.

Article 38. Where a trademark applicant or trademark registrant discovers an obvious error on the trademark application or on the certificate of registration, it may apply to have it corrected. The Trademark Office shall make corrections to the extent permitted by its functions and powers in accordance with the law and shall notify the party concerned.

CHAPTER 4 RENEWAL, ASSIGNMENT, AND LICENSING of TRADEMARK REGISTRATIONS

Article 39. A trademark registration shall remain valid for a period of ten years from the date of approval for registration.

Article 40. Where the registrant intends to continue to use the registered trademark beyond the 10-year period, an application to renew the registration shall be made within twelve months prior to the date of expiration. Where no application for renewal is filed within the six-month period, a grace period of six months is allowed. A trademark registration may be renewed each time for a period of ten years within one day after the expiration of the previous validity time. If no application for renewal is filed at the expiration of the grace period, the registered trademark shall be cancelled.

After a trademark registration is renewed, it shall be published.

Article 41. Where, after the registration of a trademark, the name, address, or other matters pertaining to the registrant change, an application regarding the change shall be filed.

Article 42. To assign a registered trademark, the assignor and assignee shall sign a transfer agreement and jointly file an application with the Trademark Office. The assignee shall guarantee the quality of the goods in connection with which the mark is used.

To assign a registered trademark, where a trademark registrant registered a similar trademark on the same goods, or the same or similar trademark on similar goods, the trademark registrant shall concurrently assign its trademarks.

The Trademark Offices shall not approve any assignment for a trademark, which may cause public confusion or other unhealthy influence, and shall notify the applicant of the reasons for the refusal in writing.

The assignment of a registered trademark shall be published after it has been approved. The assignee shall enjoy exclusive right to use the mark starting from the date of publication.

Article 43. A trademark registrant may, by signing a trademark licensing agreement, authorize other parties to use its registered trademark. The licensor shall supervise the quality of the goods in connection with which the licensee uses its registered trademark and the licensee shall guarantee the quality of the goods in respect of which the registered trademark is used.

Where a party is licensed to use another party's registered trademark, the name of the licensee and the place of origins of the goods must be indicated on the goods that bear the registered trademark.

Where a party is licensed to use another party's registered trademark, the licensor shall submit the trademark license to the Trademark Office for its records. The Trademark Office shall publish all such records received. A trademark license without recordation with the Trademark Office cannot be used against any third parties.

CHAPTER 5 ADJUDICATION OF DISPUTES CONCERNING REGISTERED TRADEMARKS

Article 44. Where a trademark registration violates the provisions of Articles 10, 11, and 12 of this Law, or the registration of a trademark was acquired by fraud or any other improper means, the Trademark Office shall invalidate the registration at issue. Any organization or individual may request that the Trademark Review and Adjudication Board make a ruling to invalidate such a registered trademark.

To make a ruling to invalidate a registered trademark, the Trademark Office shall notify the parties in writing. The parties who refuse to accept the Trademark Office's decision may apply for a review within 15 days after receiving the decision. The Trademark Review and Adjudication Board shall make its final decision within nine months from its acceptance of the review application, and notify the applicant in writing. If an extension is needed, upon approval of the department of industry and commerce administration under the State Council, the time limit can be extended for three months. The parties, if not satisfied with the review decision of the Trademark Review and Adjudication Board may, within 30 days after receiving the reviewing decision, bring suit to a People's Court.

If any organization or individual requests that the Trademark Review and Adjudication Board make a ruling to invalidate such a registered trademark, the Trademark Review and Adjudication Board shall notify the relevant parties after receiving the request, and request them to submit arguments by a specified time. After the Trademark Review and Adjudication Board have made a final ruling either to maintain or to invalidate a registered trademark, it shall notify the interested parties accordingly in writing. If an extension is needed, upon the approval of the department of industry and commerce administration under the State Council, the time limit can be extended for three months. Where an interested party is dissatisfied with the ruling of the Trademark Review and Adjudication Board, it may, within thirty days from the receipt of notification, institute legal proceedings in a People's Court. The People's Court shall notify other interested parties in the trademark adjudication proceedings to take part in the legal proceedings as third parties.

Article 45. Where a trademark registration violates the provisions of Articles 10 Paragraph 2 and Paragraph 3, Article 15, Article 16 Paragraph 1, Article 30, Article 31 or Article 32 of this Law, any holder of prior rights or any interested party may, within five years from the date of registration, request that the Trademark Review and Adjudication Board make a ruling to invalidate the trademark's registration. Where the registration was obtained with ill will, the owner of a famous trademark shall not be bound by the five-year limitation.

The Trademark Review and Adjudication Board shall, after receipt of an application for invalidating a trademark, notify the interested parties and request them to submit arguments by a specified time. The Trademark Review and Adjudication Board shall make a final ruling either to maintain or to invalidate a registered trademark within twelve months from the acceptance of the application, and notify the parties in writing. If an extension is needed, upon the approval of the department of industry and commerce administration under the State Council, the time limit can be extended for six months. Where the interested party is dissatisfied with the ruling of the Trademark Review and Adjudication Board, it may, within thirty days from the receipt of notification, institute legal proceedings in a People's Court. The People's Court shall notify the other interested parties in the trademark adjudication proceedings to take part in the legal proceedings as third parties.

In the course of review for invalidating the announcements of the Trademark Review and Adjudication Board in accordance with provisions of the preceding paragraph, if determining the involving prior rights shall be based on the outcome of judged by the court, or handled by administration organization, review for the trademark can be suspended. The proceedings for review shall resume after the causes of the suspension have been eliminated.

Article 46. After the expiration of the time limit, where the parties fail to bring suit to a People's Court for a review of invalidating the registered trademark handled by the Trademark Office, or review decisions, decisions on maintaining the registered trademark or decisions regarding invalidating the registered trademark handled by the Trademark Review and Adjudication Board, the decision of the Trademark Office, review decisions or rulings of the Trademark Review and Adjudication Board, shall go into effect.

Article 47. In the event that a registered trademark is invalidated according to the provisions of Article 44 or Article 45, the invalidation of a registered trademark shall be publicized by the Trademark Office, and the exclusive right to use that trademark shall be deemed as not having existed from the very beginning of proceedings.

A decision or ruling pertaining to the invalidation of a registered trademark shall not be applied retrospectively against prior rulings, nor made and enforced by, the administrative department of industry and commerce concerning trademark infringement cases, or contracts for the transfer of a trademark or for an already enacted licensed use of a trademark. However, if any loss has been caused through the ill will of a trademark registrant to any other party, such loss shall be compensated.

The damages for trademark infringement, transfer fees or royalties for trademark rights, in accordance with the provision of the preceding paragraph, shall be refunded in whole or in part.

CHAPTER 6 ADMINISTRATION OF THE USE OF TRADEMARKS

Article 48. The use of trademarks as stipulated in this Law refers to the affixation of trademarks to commodities, commodity packaging or containers, as well as commodity exchange documents or the use of trademarks in advertisements, exhibitions, and for other commercial activities, in order to identify the source of the goods.

Article 49. Where a trademark registrant alters a registered trademark without approval, the name, address, or other matters concerning the registrant without approval, the Trademark Office shall order it to rectify the situation by a specified time; If they still fail to rectify during the specified time period, the Trademark Office shall cancel the registered trademark.

Where a registered trademark is becoming a generic name in a category of approved goods, and the mark has not been used for a period greater than three years without any justifiable reasons, any organization or individual may request that the Trademark Office make a decision to cancel such registered trademark. The Trademark Office shall make a decision within nine months from its

acceptance of an application for the cancellation of a registered trademark due to nonuse. If an extension is needed, upon the approval of the department of industry and commerce administration under the State Council, the time limit can be extended for a further three months.

Article 50. Where a registered trademark has been cancelled, invalidated or has not been renewed upon expiration, the Trademark Office shall not approve any application for the registration of a trademark that is identical to or similar with the said trademark for a period of one year from the date of cancellation, invalidation, or the date of expiration.

Article 51. Where a party violates the provisions of Article 6 of this Law, the local administrative authority for industry and commerce shall order it to file an application to register the mark within a specified period and may, if the amount of earnings of illegal operation is more than RMB 50000, impose a fine not more than 20 percent of earnings; if there is no illegal earnings or the amount of earnings of illegal operation is less than RMB 50000, it may be imposed a fine less than RMB 10000.

Article 52. Where a party that uses an unregistered trademark has committed misrepresenting the trademark as registered, or violating the provision of Article 10 of this Law, the local administrative authority for industry and commerce shall prohibit the use of the trademark, and order the misrepresenting party to rectify the situation within a specified period; if the amount of earnings in illegal operations amounts to more than RMB 50000, a fine shall be imposed upon that party of no less than twenty percent of the illicit earnings; if there are no illegal earnings, or the amount of the earnings is less than RMB 50000, a fine of less than RMB 10000 shall be imposed.

Article 53. Where a party violates the provision of Article 15 Paragraph 5, the local administrative authority for industry and commerce shall order the party to rectify the situation and impose a fine of RMB 100000.

Article 54. Any party that is dissatisfied with the decision of the Trademark Office to cancel or not cancel a trademark registration may, within 15 days from receipt of notification, apply to the Trademark Review and Adjudication Board for a review. The Trademark Review and Adjudication Board shall make a final decision within nine months from the acceptance of the application, and notify the applicant in writing. If

an extension is needed, upon the approval of the department of industry and commerce administration under the State Council, the time limit can be extended for a further three months. Where the applicant is dissatisfied with the decision of the Trademark Review and Adjudication Board, it may appeal to the People's Court within 30 days from receipt of the notification.

Article 55. After the expiration of the time limit, where an applicant fails to apply to the Trademark Office for a review of the office's decision to cancel a trademark's registration, or to institute legal proceedings with a People's Court contesting the review decision of the Trademark Review and Adjudication Board, the decision of canceling the registration, or review decision, shall go into effect.

A registered trademark that be canceled shall be publicized by the Trademark Office, and the exclusive right to use the registered trademark shall be suspended from the date of publication.

CHAPTER 7 PRPTECTION OF THE EXCLUSIVE RIGHTS TO USE REGISTERED TRADEMARKS

Article 56. The exclusive right to use a registered trademark is limited to the trademark which has been approved for registration and to the goods in connection with which the trademark is to be used.

Article 57. Any of the following constitutes an infringement of the exclusive right to use a registered trademark:

- 1) Using a trademark that is identical with a registered trademark in connection with the same goods without the authorization of the owner of the registered trademark;
- 2) Using a trademark that is similar to a registered trademark in connection with the same goods, or that is identical with or similar to a registered trademark in connection with the same or similar goods, without the authorization of the owner of the registered trademark, which may cause public confusion;

- 3) Selling goods that violate the exclusive right to use a registered trademark;
- 4) Counterfeiting, or making, without authorization, representations of another party's registered trademark, or selling such representations;
- 5) Altering another party's registered trademark without authorization and selling goods bearing such an altered trademark;
- 6) Help any others to infringe the exclusive right to use its registered trademark with intention to provide convenience for infringing the exclusive right to use its registered trademark;
- 7) Otherwise causing prejudice to another party's exclusive right to use its registered trademark.

Article 58. Where a party uses a famous trademark as registered, or unregistered, as an enterprise name and confuses the public, if it constitutes unfair competition, the infringer shall be handled in accordance with the Anti Unfair Competition Law of the People's Republic of China.

Article 59. An exclusive rights holder of a registered trademark shall have no right to prohibit other people from using in normal use the common name, logo or model contained in the relevant registered trademark or the quality, principal raw materials, functions, uses, weight, quantity, geographic name or other features that are explicitly expressed in the registered trademark.

Where three-dimensional registered trademarks are by the product's own nature essentially the shape of the product, and provide the goods bearing the mark with a specific value, a trademark holder shall have no right to prohibit other parties from reasonably using a similar shape to realize a similar special or technical effect.

Where an identical or similar trademark has been used in connection with the same goods or similar goods by others before the registrant's application, the exclusive right holder of said registered trademark shall have no right to prohibit other people from using the aforesaid trademark from

continuous use of such trademark within the original scope, but may request its users to add proper marks for distinction.

Article 60. When a dispute arises after a party commits any of the acts infringing upon another party's exclusive right to use a registered trademark as enumerated in Article 57 of this Law, the parties involved shall settle the dispute through consultation. Where the parties refuse to pursue consultation or where consultation has failed, the trademark registrant or any interested party may institute legal proceedings with a People's Court or ask the administrative authority for industry and commerce to handle the matter.

Upon determining that trademark infringement has taken place, the administrative authority for industry and commerce shall order the infringer to cease its infringing activity immediately, confiscate and destroy the infringing goods, and any instruments mainly used to manufacture the infringing goods and counterfeit registered trademark. If the amount of illegal earnings is greater than RMB 50,000, a fine up to 5 times the amount of the illicit earnings may be imposed; if there is no illicit business revenue, or the total amount of illicit business revenue is less than RMB 50,000, a fine up to RMB 250,000 may be imposed; if trademark infringement occurs more than 2 times within a period of 5 years or other serious circumstances, a severe punishment shall be given. Where a seller with no knowledge of its infringing goods can prove the legality of acquiring such goods and point out the provider, the administrative authority for industry and commerce shall order the seller to cease selling its goods and the latter may be ordered to stop selling the infringing goods.

Upon dispute of the amount of damages arising from infringing the exclusive right of the trademark, the parties involved may request the administrative authority for industry and commerce to mediate in settling the amount of damages, or may appeal to a People's Court in accordance with the Civil Procedure Law of the People's Republic of China.

Article 61. The administrative authority for industry and commerce is authorized to investigate any conduct infringing upon the exclusive right to use a registered trademark. Where a crime is suspected to have been committed, the administrative authority for industry and commerce shall promptly turn over the case to the judicial department to be dealt with in accordance with the law.

Article 62. Administrative authorities for industry and commerce above the county level may, based upon existing evidence of illegal conduct or information supplied by a member of the public, exercise the following powers in investigating activities suspected of having infringed upon another party's exclusive right to use a registered trademark:

- 1) Question the parties involved and investigate the circumstances surrounding the infringement of another party's exclusive right to use a registered trademark;
- 2) Study and copy the parties' contracts, invoices, account books, and other materials pertaining to the trademark-infringing activities;
- 3) Conduct an on-site inspection of the premises where the party has carried out activities allegedly infringing upon another party's exclusive right to use a registered trademark;
- 4) Inspect articles involved in trademark-infringing activities. Articles that are proven to have infringed upon another party's exclusive right to use a registered trademark may be sealed and taken into custody.

When the administrative department of the preceding exercise powers prescribed by law, the parties shall assist and cooperate and shall not refuse, obstruct.

Upon the process of investigating activities suspected of having infringed upon another party's exclusive right to use a registered trademark, where any dispute arises with respected to the ownership of the trademark, or the right owner files lawsuits of trademark infringement to a People's Court, the administrative authorities for industry and commerce may suspend the aforesaid process. The proceedings for review shall resume or stop after the causes of the suspension have been eliminated.

Article 63. The amount of damages for infringing the exclusive right to use a trademark shall be actual losses that the right owner has suffered as a result of the infringement during the period of the infringement; where the losses suffered by the right owner cannot be determined, the amount of damages for trademark infringement shall be the profits that the infringer has earned as a result of the

infringement during the period of the infringement; where the losses suffered by the right owner, or the profits earned by the infringer, cannot be determined, the amount of damages shall be determined based on a reasonable amount that would be paid for a licensing royalty for the trademark right. If there is malicious infringement and an existence of serious circumstances, the amount may be more than one up to three times the aforesaid determined amount. The amount of damages will also include reasonable expenses the right owner has suffered to prevent the infringement.

For the purpose of determining the amount of damages, where the account books and information related to the infringement are held by the infringer, and where the rights owner has presented as much proof of its claims as is practically possible, a People's Court may order the infringer to submit such account books and information. If the infringer refuses to submit such account books and information, or submit a false version thereof, a People's Court may determine the amount of damages with reference to the right owner's claims and proof.

Where the actual losses suffered by the right owner, the profits earned by the infringer, or the licensing royalties of trademark infringement cannot be determined, a People's Court shall award damages up to RMB 3,000,000, depending on the facts of the case.

Article 64. Where the right owner of the exclusive right to use a registered trademark claims for damages and the infringer challenged raises a counterplea that the right owner has never used the trademark in question, a People's Court may order the right owner to submit proof of using the trademark over the past three years. <http://www.shenlantm.com>. Where the rights owner cannot provide the aforesaid proof or proof of losses due to the infringement, the infringer suspected shall bear no liability for any claimed losses.

Where a party unknowingly sells goods that infringe upon another party's exclusive right to use a registered trademark, but can prove that it has obtained the goods lawfully and is able to identify the supplier, it shall not be held liable for damages.

Article 65. Where a trademark registrant or any interested party submits evidence proving that another party is engaged in or will soon engage in actions that infringe upon the former's exclusive right to use its

registered trademark and that, unless they are stopped promptly, will cause irreparable injury to its legitimate rights and interests, may, before filing a lawsuit, apply to a People's Court for the granting of an injunction prohibiting the actions and protecting its assets.

Article 66. With a view towards prohibiting trademark-infringing activities and where evidence may be destroyed or lost or become unobtainable in the future, a trademark registrant or an interested party may, prior to filing a lawsuit, apply to a People's Court to have evidence preserved.

Article 67. Where a party, without the authorization of a trademark registrant, uses a mark identical to the registrant's mark and on the same goods as those in connection with which the registered mark is used, and where the case is so serious as to constitute a crime, the party shall be prosecuted, according to the law, for its criminal liabilities in addition to being required to compensate the infringer for the damages suffered by the infringer.

Where a party counterfeits, or makes, without authorization, representations of another party's registered trademark, or sells such representations, and the case is so serious as to constitute a crime, the party shall be prosecuted, according to the law, for its criminal liabilities in addition to being required to compensate the infringer for the damages suffered by the infringer.

Where a party sells goods that it knows bears a counterfeit registered trademark, and the case is so serious as to constitute a crime, the party shall be prosecuted, according to the law, for its criminal liabilities in addition to being required to compensate the infringer for the damages suffered by the infringer.

Article 68. Upon occurrence of the following circumstances, the administrative authority for industry and commerce shall order the related trademark agencies organization to rectify the same with a specified time and giving corresponding warning. A fine more than RMB 10000 up to RMB 100000 may be imposed on the trademark agencies organization and a fine more than RMB 5000 and up to RMB 50000 may be imposed on its agent in charge and other directly responsible persons. In case the case constitutes a crime, criminal responsibilities shall be affixed:

- 1) Forging, altering or using forged or altered legal documents, seals or signatures during the process handling trademark matters;
- 2) Soliciting trademark agency business by defaming another trademark agency or using other unfair manners to disturb the order of the trademark agency market;
- 3) Violating the provisions of Article 19 Paragraph 3 and Paragraph 4 of this Law;

Where a trademark agency organization has aforesaid circumstances, the administrative authorities for industry and commerce shall record aforesaid circumstance into the credit files. In case of serious circumstance, the Trademark Office, or the Trademark Review and Adjudication Board may order the trademark agency organization to stop processing business for trademark, and it shall be punished.

Where a trademark agency organization violates the principle of good faith and infringes the principal's legal interests, such organization shall assume civil liability according to the law, and be punished by the trademark trade organization according to the articles of association.

Article 69. Article 60 State personnel engaged in trademark registration, administration, and review shall be impartial in implementing the law, incorruptible and self-disciplined, and devoted to their duty, and shall provide civilized services.

State personnel in the Trademark Office and the Trademark Review and Adjudication Board and other personnel engaged in trademark registration, management, and review shall not be involved in trademark agency services or in the production or buying and selling of goods.

Article 70. Administrative authorities for industry and commerce shall establish and perfect an internal supervisory system to supervise and inspect the way state personnel responsible for trademark registration, administration, and review implement the law and administrative rules and regulations and observe discipline.

Article 71. Where state personnel engaged in trademark registration, administration, and review are

derelict of duty, abuse their office, and practice fraud for personal considerations; where they handle trademark registration, administration, and re-examination matters in violation of the law; where they accept money or properties from a party in a trademark matter; where they seek improper gains; and where the case is so serious as to constitute a crime, they shall be prosecuted, according to the law, for their criminal liabilities. Where the case does not constitute a crime, the worker involved shall be subject to disciplinary measures.

CHAPTER 8 SUPPLYMENTARY PROVISIONS

Article 72. Any application for a trademark registration and for the processing of other trademark matters shall be subject to the payment of the prescribed fee. The schedule of fees shall be prescribed separately.

Article 73. This Law shall enter in force on 1 March 1983. The Regulations for Trademark Administration promulgated by the State Council on 10 April 1963 shall be abrogated on the same date, and any other regulations pertaining to trademarks which conflict with this Law shall cease to be effective at the same time.

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