

RULES FOR IMPLEMENTATION OF TRADEMARK LAW

Effective from May 1, 2014

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Rules for Implementation of Trademark Law

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Chapter I General Provisions

Article 1 This Regulation is developed in accordance with the Trademark Law of the People's Republic of China (hereinafter referred to as the “Trademark Law”).

Article 2 The provisions of this Regulation governing goods trademarks shall also apply to service trademarks.

Article 3 To request well-known trademark protection under Article 13 of the Trademark Law, a trademark holder shall submit evidential materials proving that the trademark is a well-known trademark. As needed for trying or handling the case, the Trademark Office and the Trademark Appeal Board shall, based on the evidential materials submitted by the party, determine whether the trademark is a well-known trademark in accordance with Article 14 of the Trademark Law.

Article 4 The geographic indications as mentioned in Article 16 of the Trademark Law may be registered upon application as certification marks or collective marks in accordance with the Trademark Law and this Regulation.

Where a geographic indication is registered as a certification mark, any natural

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person, legal person or other organization whose goods satisfy the conditions for using the geographic indication may request the use of the certification mark, and the organization which controls the certification mark shall permit the use. Where a geographic indication is registered as a collective mark, any natural person, legal person or other organization whose goods satisfy the conditions for using the geographic indication may file a request for joining the group, association or other organization which has registered the geographic indication as a collective mark, and the group, association or other organization shall accept the natural person, legal person or other organization as a member according to its bylaws; or if the natural person, legal person or other organization chooses not to file a request for joining the group, association or other organization which has registered the geographic indication as a collective mark, the natural person, legal person or other organization is entitled to legitimately use the geographic indication, and the group, association or other organization has no right to prohibit the use.

Article 5 Where a party authorizes a trademark agency to apply for trademark registration or handle other trademark matters, a power of attorney shall be submitted, stating the authorized matters and the limit of power. If the client is a foreign national or a foreign enterprise, the power of attorney shall also state the client's nationality.

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The principle of reciprocity shall apply to the notarization and authentication requirements for the powers of attorney of foreign nationals or foreign enterprises and other relevant certification documents.

In an application for trademark registration or assignment, if the applicant or assignee is a foreign national or a foreign enterprise, a recipient within the territory of China shall be designated in the application form to receive the legal documents issued by the Trademark Office and the Trademark Appeal Board on subsequent trademark matters. The Trademark Office and the Trademark Appeal Board shall serve the legal documents on subsequent trademark matters upon the recipient within the territory of China.

The foreign national or foreign enterprise as mentioned in Article 18 of the Trademark Law means a foreign national or a foreign enterprise which does not have a habitual residence or business premises within China.

Article 6 The Chinese language shall be used in the application for trademark registration or in the handling of other trademark matters.

If any of the certificates, certification documents or evidential materials submitted

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under the Trademark Law and this Regulation is in a foreign language, a Chinese version shall be attached thereto; otherwise, the certificate, certification document or evidential material shall not be deemed to have been submitted.

Article 7 A staff member of the Trademark Office or the Trademark Appeal Board shall disqualify himself or herself, and a party or an interested party may request disqualification of the staff member:

- (1) The staff member is a party or is a near relative of a party or the agent thereof.
- (2) The staff member has any other relation with a party or the agent thereof, which may affect impartiality.
- (3) The staff member has an interest in the application for trademark registration or in the handling of other trademark matters.

Article 8 Where a trademark registration application and other relevant documents are filed in the form of data message as mentioned in Article 22 of the Trademark Law, they shall be filed on the Internet in accordance with the rules of the Trademark Office or the Trademark Appeal Board.

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Article 9 Except under the circumstances described in Article 18 of this Regulation, the date of submitting documents or materials by a party to the Trademark Office or the Trademark Appeal Board shall be the date of delivery if they are directly delivered by the party to the latter; the postmark date when the mail is sent if they are posted; or the day when the Trademark Office or the Trademark Appeal Board actually receives them if the postmark date is unclear or there is no postmark, unless the party is able to provide evidence on the actual postmark date. If they are delivered through an express delivery enterprise other than a postal enterprise, the date of submission shall be the day when the package is accepted by the express delivery enterprise; or the day when they are actually received by the Trademark Office or the Trademark Appeal Board if the date of acceptance of the package is not clear, unless the party is able to provide evidence on the actual date of acceptance of the package. If they are submitted in the form of data message, the date of submission shall be the day when the data message enters the electronic system of the Trademark Office or the Trademark Appeal Board.

When posting documents to the Trademark Office or the Trademark Appeal Board, a party shall use registered mail.

For documents submitted by a party to the Trademark Office or the Trademark

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Appeal Board in writing, the documents recorded in the archives of the Trademark Office or the Trademark Appeal Board shall prevail; and, for documents submitted in the form of data message, the documents recorded in the database of the Trademark Office or the Trademark Appeal Board shall prevail, unless the party has evidence to prove that the records in the archives or database of the Trademark Office or the Trademark Appeal Board are erroneous.

Article 10 The documents of the Trademark Office or the Trademark Appeal Board may be served upon a party by post, by direct delivery, in the form of data message, or by any other means. If the form of data message is adopted, the prior consent of the party shall be obtained. If the party has appointed a trademark agency for this purpose, the documents shall be deemed to have been served upon the party once they are served upon the trademark agency.

The date of service of the documents of the Trademark Office or the Trademark Appeal Board upon a party shall be the postmark date when they are received by the party if they are served by post; the documents shall be deemed to have been served upon the party after 15 days from the day when they are posted if the postmark date is unclear or there is no postmark, unless the party is able to prove the actual date of receipt; the date of service shall be the date of delivery if the documents are directly

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delivered by the Trademark Office or the Trademark Appeal Board upon the party; the documents shall be deemed to have been served upon the party after 15 days from the day when they are sent if the documents are served in the form of data message, unless the party is able to prove the date when the documents enter the electronic system of the party. If it is impossible to serve the documents by any of the aforesaid methods, they may be served by publication, and the documents shall be deemed to have been served upon the party after 30 days from the day when they are published.

Article 11 The following periods of time shall not be counted in the time limit for the examination or the trial of trademark matters:

- (1) The time of serving the documents of the Trademark Office or the Trademark Appeal Board by publication.
- (2) The time for a party to provide additional evidence or supplement and correct documents and the time for submitting a new statement of defense as a result of the change of a party.
- (3) The time needed for submitting evidence on use, negotiating, and drawing lots,

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when there are applications submitted on the same day for registration of the same trademark.

(4) The time of waiting for the determination of the right of priority.

(5) The time of waiting for the results of another case involving prior rights upon request of the applicant in the process of examination or trial.

Article 12 Except under the circumstances described in paragraph 2 hereof, the commencing date of any time limit as mentioned in the Trademark Law or this Regulation shall not be included in the time limit. If the time limit is calculated by year or month, it shall expire on the corresponding day of the last month; if the corresponding day does not exist in the last month, it shall expire on the last day of the last month; or if the expiry date of a time limit falls on a holiday, the time limit shall expire on the first working day after the holiday.

The period of validity of a registered trademark as mentioned in Articles 39 and 40 of the Trademark Law shall commence from a statutory date, and expire on the day before the corresponding day in the last month of the period of validity. If the corresponding day does not exist in the last month, the last day of the last month

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shall be the expiry date.

Chapter II Applications for Trademark Registration

Article 13 An application for trademark registration shall be prepared according to the published table of classification of commodities and services. For each trademark registration application, the applicant shall submit to the Trademark Office one copy of the Application Form for Trademark Registration and one copy of the trademark design; and, if it applies for registering a color combination or colored design as a trademark, the colored design and one copy of the black and white design; or if no color is specified, the black and white design.

The trademark designs shall be clear, easy to paste, printed on clean and durable paper or recorded in photographs, and in a size of not less than five centimeters but not more than ten centimeters in length and width.

Where an application is filed for registering a three-dimensional symbol as a trademark, it shall be stated in the application, the instructions for use of the trademark shall be provided, and a design including, at a minimum, the three-view drawing shall be submitted based on which the three-dimensional shape could be determined.

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Where an application is filed for registering a combination of colors as a trademark, it shall be stated in the application, and the instructions for use of the trademark shall be provided.

Where an application is filed for registering a sound trademark, it shall be stated in the application, a sound sample that meets the prescribed requirements shall be submitted, a description of the sound mark to be registered shall be provided, and the instructions for use of the trademark shall be provided. In addition to a textual description of the sound mark, the stave or numbered musical notation shall be used to describe the sound to be registered as a trademark; or if it is impossible to describe the sound mark with the stave or numbered musical notation, a textual description shall be provided. The trademark description shall be consistent with the sound sample.

Where an application is filed for registering a collective trademark or a certification mark, it shall be stated in the application, and a certification document on the eligibility of the applicant and the use management rules shall be submitted.

Where a trademark is in a foreign language or involves a foreign language, its meaning shall be explained.

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Article 14 To apply for trademark registration, an applicant shall submit its identity certificate. The name of the trademark registration applicant shall be identical with that indicated in the certificate submitted.

The preceding paragraph on an applicant's submission of its identity certificate shall apply to the handling of other trademark matters with the Trademark Office such as modification, assignment, renewal, opposition, and cancellation.

Article 15 The name of the goods or service shall be entered according to the class number and name indicated in the table of classification of commodities and services. Where the name of the goods or service is not included in the table of classification of goods and services, a description of the goods or service shall be attached.

The trademark registration applications and other relevant documents submitted in paper form shall be typewritten or printed.

Paragraph 2 hereof shall apply to the handling of other trademark matters.

Article 16 To jointly apply for registration of the same trademark or to handle other matters concerning a co-owned trademark, a representative shall be designated in

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the application. If no representative is designated, the first applicant named in the application shall be the representative.

The documents of the Trademark Office and the Trademark Appeal Board shall be served upon the representative.

Article 17 Where an applicant changes its name, address, agent, or document recipient, or removes any of the designated goods, it shall undergo the modification procedure with the Trademark Office.

Where an applicant transfers its application for trademark registration, it shall undergo the transfer procedure with the Trademark Office.

Article 18 The date of application for trademark registration shall be the day when the Trademark Office receives the application documents.

If all the application materials are submitted, the application documents are completed as required, and fees are paid, the Trademark Office shall accept the application, and notify the applicant in writing of the acceptance; or, if not all the application materials are submitted, any application document is not completed as

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required, or fees are not paid, the Trademark Office shall reject the application, and notify the applicant in writing of the rejection and the reasons for the rejection. If basically all the application materials are submitted or the application documents basically satisfy the relevant requirements, but any supplement or correction is needed, the Trademark Office shall notify the applicant of the supplement or correction, and require the applicant to make the designated supplement or correction and send the supplemented or corrected application documents back to the Trademark Office within 30 days of receipt of the notice. If the application documents are supplemented or corrected and sent back to the Trademark Office within the prescribed time limit, the original date of application shall be maintained; or if the applicant fails to make the supplement or correction within the prescribed time limit or as required, the Trademark office shall reject the application, and notify the applicant in writing of the rejection.

The conditions for accepting an application in paragraph 2 hereof shall apply to the handling of other trademark matters.

Article 19 Where two or more applicants apply for registration of identical or similar trademarks on identical or similar goods on the same day, each applicant shall submit evidence on its prior use of the trademark before application within 30 days of

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receipt of a notice from the Trademark Office. If the applicants use the trademarks on the same day or none of them has ever used the trademarks, the applicants may, within 30 days of receipt of a notice from the Trademark Office, conduct consultation, and submit their written agreement to the Trademark Office; or, if they are unwilling to conduct consultation or such consultation fails, the Trademark Office shall notify the applicants that one applicant shall be determined by drawing lots and the registration applications of others shall be dismissed. Where any applicant fails to draw lots after being notified by the Trademark Office, the applicant shall be deemed to have forgone its application, and the Trademark Office shall notify the applicant in writing of it.

Article 20 To claim the right of priority under Article 25 of the Trademark Law, the duplicates of the application documents for trademark registration filed by the applicant for the first time shall be certified by the trademark authority accepting the application, and state the application date and number.

Chapter III Examination of Trademark Registration Applications

Article 21 The Trademark Office shall, according to the relevant provisions of the Trademark Law and this Regulation, examine a trademark registration application accepted, and grant an initial approval to the application and publish the initial approval if the application meets the prescribed requirements or if the application only meets the prescribed requirements for registration of the trademark on a part of the designated goods. If the application fails to meet the prescribed requirements or the application only fails to meet the prescribed requirements for registration of the trademark on a part of the designated goods, the Trademark Office shall refuse the application or refuse the application for registration of the trademark on the part of the designated goods, and notify the applicant in writing of the refusal and the reasons for the refusal.

Article 22 Where the Trademark Office refuses an application for trademark registration on a part of the designated goods, the applicant may file a divisional application for the part which has been granted initial approval, and the date of application of the divisional application shall be the same as that of the parent application.

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If necessary, the applicant shall file an application for division with the Trademark Office within 15 days of receipt of the Notice on Partial Refusal of a Trademark Registration Application.

After receiving the application for division, the Trademark Office shall divide the original application into two pieces, assign a new application number to the divisional application which has been granted initial approval, and publish it.

Article 23 According to the provision of Article 29 of the Trademark Law, where the Trademark Office deems it necessary to require an explanation or amendment of a trademark registration application, the applicant shall provide an explanation or amendment within 15 days of receipt of a notice from the Trademark Office.

Article 24 Where an opposition is filed against a trademark which has been initially approved and published by the Trademark Office, the opponent shall submit the following opposition materials in duplicate to the Trademark Office by distinguishing the original from the duplicate:

(1) A completed application form for trademark opposition.

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(3) The opponent's identification.

(3) Proof on the opponent's capacity as a prior right holder or an interested party, if the opposition is filed on the ground that paragraph 2 or 3 of Article 13, Article 15, paragraph 1 of Article 16, Article 30, Article 31, or Article 32 of the Trademark Law has been violated.

The application form for trademark opposition shall have a specific claim and factual basis, to which the relevant evidential materials shall be attached.

Article 25 After receiving an application form for trademark opposition, if it is determined upon examination that the application satisfies the conditions for acceptance, the Trademark Office shall accept it, and issue a notice of acceptance to the applicant.

Article 26 Under any of the following circumstances, the Trademark Office shall reject an application for trademark opposition, and notify the applicant in writing of the rejection and the reasons for the rejection:

(1) The opposition application is not filed within the statutory time limit.

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(2) The opponent's capacity or the ground of opposition fails to satisfy the provision of Article 33 of the Trademark Law.

(2) The opposition lacks specific grounds, facts, or legal basis.

(4) The opponent files again an opposition to the same trademark on the basis of the same ground, facts and legal basis.

Article 27 The Trademark Office shall deliver the duplicates of the trademark opposition materials to the party against whom the opposition is filed, and require the party to submit a defense within 30 days of receipt of the duplicates of the trademark opposition materials. The party's failure to submit such a defense shall not affect the decision of the Trademark Office.

Where a party needs to provide additional evidential materials after filing an application for trademark opposition or submitting a defense, the party shall state it in the application or defense, and provide the same within three months after the application for trademark opposition or the defense is submitted. A party that fails to submit the same upon expiry of the prescribed time limit shall be deemed to have forgone the provision of additional evidential materials. However, for evidence which

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comes into existence after the expiry of the prescribed time limit or evidence which the party fails to submit within the prescribed time limit for good reasons, if it is submitted after the expiry of the prescribed time limit, the Trademark Office may admit such evidence after it is delivered to and cross-examined by the opposing party.

Article 28 A decision to deny registration as mentioned in paragraph 3 of Article 35 and paragraph 1 of Article 36 of the Trademark Law includes a decision to deny registration on a part of the designated goods.

For a trademark to which an opposition has been filed, if its registration has been published before the Trademark Office makes a decision to grant or deny registration, the publication shall be cancelled. If the registration is granted after the opposition is dismissed upon examination, its registration shall be published anew after the decision to grant registration comes into force.

Article 29 To apply for correction under Article 38 of the Trademark Law, a trademark registration applicant or a trademark registrant shall submit an application for correction to the Trademark Office. If the application satisfies the conditions for correction, the Trademark Office shall approve it and correct the relevant content; or

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if the application fails to satisfy the conditions for correction, the Trademark Office shall disapprove it, and notify the applicant in writing of the disapproval and the reasons for the disapproval.

Where a trademark of which an initial approval or the registration has been published is corrected, the correction shall be published.

Chapter IV Modification, Assignment and Renewal of Registered Trademarks

Article 30 Where the name or address of a trademark registrant or any other registered matter needs to be modified, an application for modification shall be filed with the Trademark Office. To modify the name of a trademark registrant, a modification certificate issued by the relevant registration authority shall also be submitted. In the case of approval, the Trademark Office shall issue a corresponding certificate to the trademark registrant, and publish it; or in the case of disapproval, the Trademark Office shall notify the applicant in writing of the disapproval and the reasons for the disapproval.

To modify the name or address of a trademark registrant, the trademark registrant shall concurrently modify all its registered trademarks; otherwise, the Trademark Office shall notify it of making correction within a prescribed time limit; and if the trademark registrant fails to do so, the trademark registrant shall be deemed to have forgone the application for modification, and the Trademark Office shall notify the applicant of it in writing.

Article 31 Where a registered trademark is assigned, the assignor and the assignee

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shall file an application for assignment of the registered trademark with the Trademark Office. The assignor and the assignee shall jointly undergo the application procedure for such assignment. If the application is approved, the Trademark Office shall issue a corresponding certificate to the assignee, and publish it.

Where a trademark registrant fails to concurrently assign all its registered trademarks identical with or similar to the registered trademark to be assigned by it on identical or similar goods, the Trademark Office shall notify it of making correction within a prescribed time limit; and if the trademark registrant fails to do so, the trademark registrant shall be deemed to have forgone the application for assignment, and the Trademark Office shall notify the applicant of it in writing.

Article 32 Where the right to exclusively use a registered trademark is transferred for inheritance or any other reason other than assignment, the party acquiring the right to exclusively use the registered trademark shall undergo the procedure for transfer of the right to exclusively use the registered trademark with the Trademark Office on the basis of the relevant certification or legal document.

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Where the right to exclusively use a registered trademark is transferred, all the registered trademarks of the right holder identical with or similar to the registered trademark to be transferred on identical or similar goods shall be transferred concurrently; otherwise, the Trademark Office shall notify the applicant of making correction within a prescribed time limit; and if the applicant fails to do so, the applicant shall be deemed to have forgone the application for transfer, and the Trademark Office shall notify the applicant of it in writing.

If an application for transfer of the right to exclusively use a registered trademark is approved, it shall be published, and the party acquiring the right to exclusively use the registered trademark through the transfer shall own the right to exclusively use the registered trademark from the date of publication.

Article 33 Where the registration of a trademark needs to be renewed, an application for renewal of trademark registration shall be submitted to the Trademark Office. If the application is approved, the Trademark Office shall issue a corresponding certificate, and publish it.

Chapter V International Registration of Trademarks

Article 34 The international registration of trademarks as mentioned in Article 21 of the Trademark Law means the international registration of trademarks under the Madrid system in accordance with the Madrid Agreement Concerning the International Registration of Marks (hereinafter referred to as the “Madrid Agreement”), the Protocol Relating to the Madrid Agreement Concerning the International Registration of Trademarks (hereinafter referred to as the “Protocol”), and the Common Regulations under the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to that Agreement.

Applications for international registration of trademarks under the Madrid system include applications for international registration of marks with China as the country of origin, applications for territorial extension to China, and other related applications.

Article 35 Whoever applies for international registration of a trademark with China as the country of origin shall have a genuine and valid business place in China, have a domicile in China, or have the nationality of China.

Article 36 An applicant whose trademark has been registered with the Trademark

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Office may, if the provision of Article 35 of this Regulation is satisfied, apply for international registration of the trademark in accordance with the Madrid Agreement.

An applicant whose trademark has been registered with the Trademark Office or whose application for trademark registration has been submitted to and accepted by the Trademark Office may, if the provision of Article 35 of this Regulation is satisfied, apply for international registration of the trademark in accordance with the Protocol.

Article 37 Whoever applies for international registration of a trademark with China as the country of origin shall apply to the International Bureau of the World Intellectual Property Organization (hereinafter referred to as the “International Bureau”) through the Trademark Office.

Whoever applies for subsequent designation, renunciation, or cancellation concerning the international registration of a trademark with China as the country of origin, if it is related to the Madrid Agreement, shall apply to the International Bureau through the Trademark Office. Whoever applies for the assignment, limitation, modification, or renewal concerning the international registration of a trademark with China as the country of origin, if it is related to the Madrid Agreement, may apply to the International Bureau through the Trademark Office or directly apply to the International Bureau.

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Whoever applies for the subsequent designation, assignment, limitation, renunciation, cancellation, modification, or renewal concerning the international registration of a trademark with China as the country of origin, if it is related to the Protocol, may apply to the International Bureau through the Trademark Office or directly apply to the International Bureau.

Article 38 To apply to the International Bureau through the Trademark Office for international registration of trademarks or other matters, application forms and other relevant materials that satisfy the requirements of the International Bureau and the Trademark Office shall be submitted.

Article 39 The goods or services designated in an application for international registration of a trademark may not go beyond the scope of goods or services in the domestic basic application or basic registration.

Article 40 If not all the application materials for international registration of a trademark are submitted or any application document is not completed as required, the Trademark Office shall reject the application, and the date of application shall not be retained.

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If basically all the application materials are submitted or the application documents basically satisfy the relevant requirements, but any supplement or correction is needed, the applicant shall make the supplement or correction within 30 days of receipt of the notice of supplement or correction; and if the applicant fails to do so, the Trademark office shall reject the application, and notify the applicant in writing of the rejection.

Article 41 To apply to the International Bureau through the Trademark Office for international registration of trademarks or other matters, fees shall be paid as required.

An applicant shall pay fees to the Trademark Office within 15 days of receipt of the payment notice sent by the Trademark Office. If the applicant fails to do so, the Trademark Office shall reject the application, and notify the applicant in writing of the rejection.

Article 42 The Trademark Office shall, within the time limit for refusal as set forth in the Madrid Agreement or the Protocol (hereinafter referred to as the “time limit for refusal”), examine an application for territorial extension to China according to the relevant provisions of the Trademark Law and this Regulation, make a decision, and

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notify the International Bureau. If the Trademark Office fails to send a notice of total or partial refusal within the time limit for refusal, the application shall be deemed to have been approved.

Article 43 Where an applicant for territorial extension to China requests protection of a three-dimensional symbol, a combination of colors, or a sound mark as a trademark or protection of a collective or certification mark, the applicant shall, within three months from the date when the trademark is entered into the International Register of the International Bureau, submit the relevant materials as listed in Article 13 of this Regulation to the Trademark Office through a legally formed trademark agency. If the required materials are not submitted within the prescribed time limit, the Trademark Office shall refuse the application for territorial extension.

Article 44 The World Intellectual Property Organization publishes matters related to the international registration of trademarks, and the Trademark Office does not publish them additionally.

Article 45 To an application for territorial extension to China, an opponent that satisfies the provision of Article 33 of the Trademark Law may file an opposition with the Trademark Office within three months from the first day of the next month after

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the World Intellectual Property Organization's "Gazette of International Marks" is published.

The Trademark Office shall notify the International Bureau of any opposition in the form of a decision of refusal.

The applicant may submit a defense within 30 days of receipt of the notice of refusal forwarded by the International Bureau. The defense and the relevant evidence shall be submitted to the Trademark Office through a legally formed trademark agency.

Article 46 The period of validity of an internationally registered trademark protected in China shall commence from the date of international registration or subsequent designation. Before the period of validity expires, the registrant may apply to the International Bureau for renewal, and a grace period of six months may be granted if the registrant fails to apply for renewal within the period of validity. After receiving a notice of approval of renewal from the International Bureau, the Trademark Office shall examine the application according to the law. If a notice of non-renewal is received from the International Bureau, the Trademark Office shall cancel the internationally registered trademark.

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Article 47 For assignment of an internationally registered trademark under a granted application for territorial extension to China, the assignee shall have a genuine and valid business place in a contracting party, have a domicile in a contracting party, or have the nationality of a contracting party.

If the assignor fails to concurrently assign all its trademarks identical with or similar to the internationally registered trademark on identical or similar goods or services, the Trademark Office shall notify the registrant to make correction within three months of receipt of the notice. If the registrant fails to do so, or the assignment tends to cause any confusion or have any other adverse impact, the Trademark Office shall make a decision that the assignment is invalid in China, and make a declaration to the International Bureau.

Article 48 To limit the designated goods or services under a granted application for territorial extension to China, if the designated goods or services after limitation fail to comply with the relevant requirements of China for the classification of goods or services or exceed the original scope of designated goods or services, the Trademark Office shall make a decision that the limitation is invalid in China, and make a declaration to the International Bureau.

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Article 49 An application for cancelling an internationally registered trademark under paragraph 2 of Article 49 of the Trademark Law shall be filed with the Trademark Office after three years from the expiry date of the time limit for refusal of the application for international registration of the trademark. If the application for international registration of the trademark is still under the procedure for refusal review or opposition when the time limit for refusal expires, an application shall be filed with the Trademark Office after three years from the day when the decision to grant registration made by the Trademark Office or the Trademark Appeal Board becomes effective.

An application for declaring the invalidation of an international registered trademark under paragraph 1 of Article 44 of the Trademark Law shall be filed with the Trademark Appeal Board upon expiry of the time limit for refusal of the application for international registration of the trademark. If the application for international registration of the trademark is still under the procedure for refusal review or opposition when the time limit for refusal expires, an application shall be filed with the Trademark Appeal Board after the decision to grant registration made by the Trademark Office or the Trademark Appeal Board becomes effective.

An application for declaring the invalidation of an international registered trademark

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under paragraph 1 of Article 45 of the Trademark Law shall be filed with the Trademark Appeal Board within five years from the expiry date of the time limit for refusal of the application for international registration of the trademark. If the application for international registration of the trademark is still under the procedure for refusal review or opposition when the time limit for refusal expires, an application shall be filed with the Trademark Appeal Board within five years after the decision to grant registration made by the Trademark Office or the Trademark Appeal Board becomes effective. If registration is acquired in bad faith, the holder of a well-known trademark is not subject to the five-year time limit.

Article 50 The following provisions of the Trademark Law and this Regulation are not applicable to the handling of matters concerning the international registration of trademarks:

(1) Article 28 and paragraph 1 of Article 35 of the Trademark Law regarding the time limits for examination and trial.

(2) Article 22 and paragraph 2 of Article 30 of this Regulation.

(3) Article 42 of the Trademark Law and Article 31 of this Regulation regarding

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(4) trademark assignment that requires the assigner and the assignee jointly apply and undergo the relevant procedure.

Chapter VI Trademark Review and Adjudication

Article 51 Trademark review and adjudication means that the Trademark Appeal Board tries trademark disputes in accordance with the provisions of Articles 34, 35, 44, 45, and 54 of the Trademark Law. To apply to the Trademark Appeal Board for trademark review and adjudication, a party shall have specific claims, facts, grounds, and legal basis, and provide corresponding evidence.

The Trademark Appeal Board shall, based on facts, try cases according to the law.

Article 52 For a review case against a decision of the Trademark Office to refuse a trademark registration application, the Trademark Appeal Board shall try it based on the decision of refusal of the Trademark Office, the facts, grounds, and claims submitted by the applicant for review, and the factual status at the time of review.

Where, in trying a review case against a decision of the Trademark Office to refuse a trademark registration application, the Trademark Appeal Board discovers that the trademark to be registered is in violation of the provision of Article 10, Article 11, Article 12, or paragraph 1 of Article 16 of the Trademark Law but the Trademark

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Office fails to make a decision of refusal under the provision, the Trademark Appeal Board may make a review decision to refuse the application under the provision. Before making the review decision, the Trademark Appeal Board shall hear the opinion of the applicant.

Article 53 For a review case against a decision of the Trademark Office to deny registration, the Trademark Appeal Board shall try it based on the decision of the Trademark Office to deny registration, the facts, grounds, and claims submitted by the applicant for review, and the opinion of the opponent in the original procedure.

In trying a review case against a decision of the Trademark Office to deny registration, the Trademark Appeal Board shall notify the opponent in the original procedure to participate and provide an opinion. If the opponent's opinion has a substantial impact on the trial result of the case, the opinion may serve as a basis of the trial. The opponent's non-participation or refusal to provide an opinion shall not affect the trial of the case.

Article 54 For a case where a party petitions the Trademark Appeal Board to declare invalidation of a registered trademark under Article 44 or 45 of the Trademark Law, the Trademark Appeal Board shall try it based on the facts, grounds, and claims in

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the application and defense submitted by the parties.

Article 55 For a review case against a decision of the Trademark Office to declare invalidation of a registered trademark under paragraph 1 of Article 44 of the Trademark Law, the Trademark Appeal Board shall try it based on the decision of the Trademark Office and the facts, grounds, and claims submitted by the applicant for review.

Article 56 For a review case against a decision of the Trademark Office to cancel or sustain a registered trademark under Article 49 of the Trademark Law, the Trademark Appeal Board shall try it based on the decision of the Trademark Office and the facts, grounds, and claims submitted by the applicant for review.

Article 57 Whoever applies for trademark review and adjudication shall submit an application to the Trademark Appeal Board, as well as the duplicates thereof according to the number of the respondents. To apply for review based on a written decision of the Trademark Office, the duplicates thereof shall also be submitted.

After receipt of the application, if it is determined upon examination that the application satisfies the conditions for acceptance, the Trademark Appeal Board shall

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accept it; or if it fails to satisfy the conditions for acceptance, the Trademark Appeal Board shall reject it, and notify the applicant in writing of the rejection and the reasons for the rejection. If any supplement or correction is needed, the Trademark Appeal Board shall notify the applicant of making the supplement or correction within 30 days of receipt of the notice. If the application still fails to satisfy the relevant provisions after supplement or correction, the Trademark Appeal Board shall reject it, and notify the applicant in writing of the rejection and the reasons for the rejection; or if the applicant fails to make the supplement or correction with the prescribed time limit, the application shall be deemed to have been withdrawn, and the Trademark Appeal Board shall notify the applicant in writing of it.

Where, after accepting an application for trademark review, the Trademark Appeal Board discovers that the application fails to satisfy the conditions for acceptance, it shall refuse the application, and notify the applicant in writing of the refusal and the reasons for the refusal.

Article 58 After accepting an application for trademark review and adjudication, the Trademark Appeal Board shall deliver a duplicate of the application to the opposing party in a timely manner, and require it to submit a defense within 30 days of receipt of the duplicate. The opposing party's failure to submit a defense within the

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prescribed time limit shall not affect the review and adjudication of the Trademark Appeal Board.

Article 59 Where a party needs to provide additional evidential materials after applying for review and adjudication or submitting a defense, it shall state it in the application or defense, and submit the same within three months after the application or defense is submitted. A party that fails to submit the same upon expiry of the prescribed time limit shall be deemed to have forgone the provision of additional relevant evidential materials. However, for evidence which comes into existence after the expiry of the prescribed time limit or evidence which the party fails to submit within the prescribed time limit for good reasons, if it is submitted after the expiry of the prescribed time limit, the Trademark Appeal Board may admit such evidence after it is delivered to and cross-examined by the opposing party.

Article 60 At the request of the applicant or according to the actual needs, the Trademark Appeal Board may decide to conduct an oral hearing of an application for review and adjudication.

Where the Trademark Appeal Board decides to conduct an oral hearing of an application for review and adjudication, it shall notify the parties of the date and

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location of the oral hearing and the reviewers 15 days before the oral hearing. A party shall provide a reply within the time limit specified in the notice.

The applicant's failure to provide a reply or participate in the oral hearing shall be deemed to have withdrawn the application for review and adjudication, and the Trademark Appeal Board shall notify the applicant in writing of it. If the respondent neither provides a reply nor participates in the oral hearing, the Trademark Appeal Board may make a decision by default.

Article 61 Before the Trademark Appeal Board makes a decision or ruling, an applicant for review and adjudication may file a written request with the Trademark Appeal Board for withdrawing the application with an explanation of the reasons, and if the Trademark Appeal Board grants the request, the review and adjudication procedure shall terminate.

Article 62 After withdrawing its application for trademark review and adjudication, an applicant may not apply for review and adjudication again based on the same facts and grounds. If the Trademark Appeal Board has made a ruling or decision on an application for trademark review and adjudication, no one may apply for review and adjudication again based on the same facts and grounds, except for an application to

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the Trademark Appeal Board for declaring invalidation of a registered trademark after the registration of the trademark is granted under the review procedure for a decision to deny registration.

Chapter VII Trademark Use Management

Article 63 In the use of a registered trademark, the words “registered trademark” or a registration symbol may be indicated on goods, packages of goods, specifications, or other attachments.

Registration symbols include the circled Chinese character “zhu” (注) and the circled capital letter “R” (®). When a registration symbol is used, it shall be displayed by immediately following the trademark in a superscript or subscript style.

Article 64 Where the Trademark Registration Certificate is lost or damaged, an application for replacement of the Trademark Registration Certificate shall be submitted to the Trademark Office. If it is lost, a declaration of loss shall be published on the Trademark Gazette. If it is damaged, it shall be surrendered to the Trademark Office when the application for replacement is submitted.

To request the Trademark Office to reissue a certificate on the modification, assignment, or renewal of a trademark, issue a trademark registration certificate or issue a certificate on the right of priority, the trademark registrant shall submit a corresponding written request to the Trademark Office. If the request satisfies the

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prescribed requirements, the Trademark Office shall issue a corresponding certificate; otherwise, the Trademark Office shall deny it, and notify the applicant of the denial and the reasons for denial.

Whoever forges or tampers with the Trademark Registration Certificate or any other trademark certification document shall be subject to criminal liability in accordance with the provisions of the Criminal Law regarding the crime of forging or tampering with certificates of state organs or other crimes.

Article 65 Where a registered trademark becomes a common name of the goods on which it is approved to be used as described in Article 49 of the Trademark Law, any entity or individual may apply to the Trademark Office for cancellation of the registered trademark, and evidential materials shall be attached to the application submitted. The Trademark Office shall notify the trademark registrant after accepting the application, and require the registrant to submit a defense within two months of receipt of the notice. The registrant's failure to provide the defense within the prescribed time shall not affect the decision of the Trademark Office.

Article 66 Where a registered trademark has not been used for three consecutive years without good reasons as described in Article 49 of the Trademark Law, any

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entity or individual may apply to the Trademark Office for cancellation of the registered trademark, and a relevant explanation shall be attached to the application submitted. The Trademark Office shall notify the trademark registrant after accepting the application, and require the registrant to submit evidential materials on use of the registered trademark before the application for cancellation is submitted or provide good reasons for the cease of use within two months of receipt of the notice. If the registrant fails to submit evidential materials on use of the registered trademark within the prescribed time limit or the submitted evidential materials are invalid and there are no good reasons, the Trademark Office shall cancel its registered trademark.

The evidential materials on use as mentioned in the preceding paragraph includes evidential materials on use of the registered trademark by the trademark registrant and evidential materials on use of the registered trademark by those licensed by the trademark registrant.

An application for cancelling a registered trademark on the ground that the registered trademark has not been used for three consecutive years without good reasons may be filed three years after the date of publication of the registration of the trademark.

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Article 67 The following circumstances are the good reasons as mentioned in Article 49 of the Trademark Law:

- (1) Force majeure.
- (2) Restrictions imposed by government policies.
- (3) Bankruptcy liquidation.
- (4) Other good reasons for which the trademark registrant is not responsible.

Article 68 Where the grounds based on which the Trademark Office or the Trademark Appeal Board cancels a registered trademark or declares invalidation of a registered trademark only involve a part of the designated goods, the registration used on this part of the designated goods shall be cancelled or declared invalid.

Article 69 To license others to use its registered trademark, the licensor shall undergo the recordation procedure and file the recordation materials with the Trademark Office within the term of the licensing contract. The recordation materials shall specify the licensor, the licensee, the term of license, and the scope of goods or services on which the use of the registered trademark is licensed, among others.

Article 70 To pledge the right to exclusively use a registered trademark, the pledger and the pledgee shall enter into a written pledge contract and jointly apply to the Trademark Office for pledge registration, and the Trademark Office shall publish it.

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Article 71 For a violation of the provision of paragraph 2 of Article 43 of the Trademark Law, the administrative department for industry and commerce shall order the violator to make correction within a prescribed time limit; if the violator fails to do so, order it to stop selling; and if the violator refuses to stop selling, impose a fine of not more than 100,000 yuan on the violator.

Article 72 To request well-known trademark protection under Article 13 of the Trademark Law, a trademark holder may file a request with the administrative department for industry and commerce. If the trademark has been determined by the Trademark Office as a well-known trademark under Article 14 of the Trademark Law, the administrative department for industry and commerce shall issue an order of desisting from using the trademark in violation of Article 13 of the Trademark Law, and confiscate and destroy all illegally used labels of the trademark or, if it is difficult to separate the labels from goods, confiscate and destroy both the labels and the goods.

Article 73 To voluntarily apply for cancelling its registered trademark or cancelling the registration of its trademark on a part of the designated goods, a trademark registrant shall file an application for voluntary cancellation of trademark with the TrademarkOffice, and surrender the original Trademark Registration Certificate.

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Where a trademark registrant's application for voluntarily cancelling its registered trademark or cancelling the registration of its trademark on a part of the designated goods is granted by the Trademark office, the right to exclusively use the registered trademark or effect of the right to exclusively use the registered trademark on the part of the designated goods shall terminate from the day when the Trademark Office receives the application for voluntary cancellation.

Article 74 Where a registered trademark is cancelled or is voluntarily cancelled under Article 73 of this Regulation, the original Trademark Registration Certificate shall be invalidated, which shall be published. If the registration of the trademark on a part of the designated goods is cancelled, or the trademark registrant voluntarily applies for cancelling the registration of its trademark on a part of the designated goods, the Trademark Registration Certificate shall be reissued upon examination, which shall be published.

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

Article 75 The provision of storage, transportation, mailing, or printing service, a concealment or business place, or an online commodity trading platform for the purpose of infringement upon another party's right to exclusively use a registered trademark shall be within the meaning of providing facilitation as mentioned in Article 57 (6) of the Trademark Law.

Article 76 The use of a sign identical with or similar to a registered trademark of any other person on identical or similar goods as the name or decoration of the goods, which misleads the public, shall be within the meaning of infringing upon the right to exclusively use a registered trademark as mentioned in Article 57 (2) of the Trademark Law.

Article 77 Any person may file a complaint or report on infringement upon the right to exclusively use a registered trademark with the administrative department for industry and commerce.

Article 78 The following factors may be taken into account in the calculation of the

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illegal business revenues as mentioned in Article 60 of the Trademark Law:

- (1) The sales price of infringing goods.
- (2) The marked price of unsold infringing goods.
- (3) The actual average sales price of verified infringing goods.
- (4) The median market price of genuine goods.
- (5) The infringer's business revenues resulting from the infringement.
- (6) Other factors enabling the reasonable calculation of the value of infringing goods.

Article 79 Under the following circumstances, the seller is able to prove that the goods are legally acquired by it as mentioned in Article 60 of the Trademark Law:

- (1) The seller has a supply list and receipts for goods payment to which the seal of the supplier is legally affixed, as verified or acknowledged by the supplier.

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(2) The seller has a purchase contract entered into with the supplier, as verified to have been truthfully performed.

(3) The seller has legal invoices on the purchase of goods, and the matters recorded in the invoices correspond to the goods involved.

(4) The seller is otherwise able to prove that the goods involved are legally acquired by it.

Article 80 Where a seller of goods infringing the right to exclusively use a registered trademark without knowledge of such infringement is able to prove that the goods are legally acquired by it and provide the supplier, the administrative department for industry and commerce shall order the seller to stop selling the goods, and notify the administrative department for industry and commerce at the place where the supplier of the infringing goods is located of the case.

Article 81 If the ownership of a registered trademark involved in a case is currently under trial by the Trademark Office or the Trademark Appeal Board or by a people's court, and the result of the trial may affect the determination of the nature of the case, it shall be within the meaning of a dispute over the ownership of the trademark as

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mentioned in paragraph 3 of Article 62 of the Trademark Law.

Article 82 In the process of investigating a trademark infringement case, the administrative department for industry and commerce may require the right holder to identify whether the goods involved in the case were produced by the right holder or produced under the licensing of the right holder.

Chapter IX Trademark Agency

Article 83 The trademark agency business as mentioned in the Trademark Law means that an agent, as authorized by a client, handles trademark registration application, trademark review and adjudication or any other trademark matter in the client's name.

Article 84 The trademark agencies as mentioned in the Trademark Law includes service institutions registered with the administrative departments for industry and commerce to engage in trademark agency business and law firms engaging in trademark agency business.

To provide agency services for trademark matters administered by the Trademark Office or the Trademark Appeal Board, a trademark agency shall undergo the recordation procedure with the Trademark Office in accordance with the following provisions:

(1) The trademark agency shall submit for verification its registration certificate issued by the administrative department for industry and commerce or its certificate issued by the justice administrative department on approval of formation of the law

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firm, and a photocopy thereof shall be retained by the Trademark Office.

(2) The basic information on the trademark agency shall be submitted, including but not limited to its name, domicile, person in charge, and contact information.

(3) The trademark agency shall submit a list of the names and contact methods of its trademark agents.

The administrative departments for industry and commerce shall create credit files for trademark agencies. Where any trademark agency violates the Trademark Law or this Regulation, the Trademark Office or the Trademark Appeal Board shall publish it, and record the violation into its credit file.

Article 85 The trademark agents for the purposes of the Trademark Law are the personnel of trademark agencies who engage in trademark agency business.

A trademark agent may not represent a client in his or her own name.

Article 86 The official seal of a trademark agency and the signatures of its trademark agents shall be affixed to the relevant application documents submitted by the

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trademark agency to the Trademark Office or the Trademark Appeal Board.

Article 87 Where a trademark agency applies for registration or acquisition of a trademark other than those for which it provides agency services, the Trademark Office shall not accept the application.

Article 88 The following conduct shall be within the meaning of disturbing the trademark agency market order by other illicit means as mentioned in item (2), paragraph 1 of Article 68 of the Trademark Law:

(1) Developing trademark agency business by fraud, false publicity, misleading information, or commercial bribery.

(2) Withholding facts, providing false evidence, or causing others to withhold facts or provide false evidence by threat or inducement.

(3) Representing both parties to a trademark case who have a conflict of interest.

Article 89 Where a trademark agency commits any conduct as mentioned in Article 68 of the Trademark Law, the administrative department for industry and commerce

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at or above the county level at the place where the violator is located or the illegal conduct occurs shall investigate and punish it, and notify the Trademark Office of the investigation and punishment.

Article 90 Where the Trademark Office or the Trademark Appeal Board stops accepting the trademark agency business of a trademark agency in accordance with Article 68 of the Trademark Law, it may make a decision to stop accepting the trademark agency business of the trademark agency for six months or more or permanently. Upon expiry of the period during which it stops accepting the trademark agency business of the trademark agency, the Trademark Office or the Trademark Appeal Board shall resume accepting the trademark agency business of the trademark agency.

A decision of the Trademark Office or the Trademark Appeal Board to stop or resume accepting the trademark agency business of a trademark agency shall be published on the website of the Trademark Office or the Trademark Appeal Board.

Article 91 The administrative departments for industry and commerce shall strengthen supervision and guidance of trademark agency associations.

Chapter X Supplementary Provisions

Article 92 Where a service mark in incessant use until July 1, 1993, is identical with or similar to a service mark registered by another party for identical or similar services, it may continue to be used. However, it may not continue to be used if it has not been used for three years or more after July 1, 1993.

Where a trademark in incessant use until the date on which the Trademark Office begins to accept applications for newly-added goods or services is identical with or similar to a trademark registered by another party on goods or services identical with or similar to the newly-added goods or services, it may continue to be used. However, it may not continue to be used if it has not been used for three years or more after the day on which the Trademark Office begins to accept applications for newly-added goods or service.

Article 93 The table of classification of goods and services used for trademark registration shall be developed and published by the Trademark Office.

The formats of documents used to apply for trademark registration or handle other trademark matters shall be developed and published by the Trademark Office and

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the Trademark Appeal Board.

The review and adjudication rules of the Trademark Appeal Board shall be developed and published by the administrative department for industry and commerce of the State Council.

Article 94 The Trademark Office shall maintain a Trademark Register to record the registered trademarks and other matters related to registration.

Article 95 The Trademark Registration Certificate and related certificates are evidence that the right holder has the right to exclusively use a registered trademark. Registered matters recorded in the Trademark Registration Certificate shall be consistent with the Trademark Register. For any discrepancy between them, the Trademark Register shall prevail, unless there is evidence that the Trademark Register is erroneous.

Article 96 The Trademark Office shall issue a Trademark Gazette to publish the registration of trademarks and other relevant matters.

The Trademark Gazette shall be published in paper or electronic form.

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Except for publication of service of process, it shall be deemed that the contents of publication have been known or should have been known by the public by the date of publication.

Article 97 To apply for trademark registration or handle other trademark matters, fees shall be paid. The fee items and rates shall be prescribed by the financial department of the State Council and the price department of the State Council respectively.

Article 98 This Regulation shall come into force on May 1, 2014.