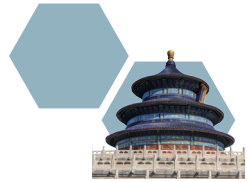

CONTENT



1 Introduction	5
1.1 About trademarks	5
1.2 Trademark protection in China	5
2 Overview of China's Trademark Registration System	8
2.1 Type of trademarks	8
2.2 Marks that shall not registered as trademarks in China	9
2.2.1 Marks that shall not be used as trademarks	9
2.2.2 Marks that shall not be registered as trademarks	11
3 China's Trademark Registration System and Application Requirements for Trademark Registration	12
3.1 China's trademark registration system	12
3.2 Application requirements for trademark registration	12
3.2.1 Direct national applications	12
3.3.2 Applications for international registration of trademarks	18
4 Examination, Opposition and Registration	22
4.1 Examination of applications for trademark registration	22
4.1.1 Formal examination	22
4.1.2 Substantive examination	23
4.1.3 Examination period	25
4.2 Refusal of trademarks	25
4.2.1 Grounds of refusal	25
4.2.2 Application division	27
4.2.3 Reexamination of refusal	27



Content

4.3 Preliminary approval	28
4.4 Trademark opposition	29
4.4.1 Opposition period	30
4.4.2 Grounds of opposition	30
4.4.3 Subject of opposition	32
4.4.4 Examination of trademark opposition	32
4.5 Registration	34
5 Procedures and Rights after Trademark Registration	35
5.1 Procedures after registration	35
5.1.1 Revocation of registered trademarks	35
5.1.2 Cancellation of registered trademarks	36
5.1.3 Invalidation of registered trademarks	37
5.1.4 Judicial review of procedures of granting and confirmation of trademark rights	39
5.1.5 Renewal	40
5.2 Rights enjoyed by trademark registrants	41
5.2.1 Exclusive right to use	41
5.2.2 Assignment	41
5.2.3 Licensing	41
5.2.4 Pledge of exclusive right to use a registered trademark	43
6 Official Fees at Various Stages	44
7 Infringement and Remedy	45
7.1 Infringement act	45
7.2 Warning letter	47



CONTENT



7.3 Administrative remedy	47
7.3.1 Administrative investigation by intellectual property administrative authority	47
7.3.2 Customs protection	49
7.4 Civil remedy	50
7.4.1 Subject enjoying the right of action	50
7.4.2 Limitation of action	51
7.4.3 Preservation before action	51
7.4.4 Civil liability	53
7.5 Criminal remedy	54
7.5.1 Criminal acts	54
7.5.2 Definition of the same kind of goods	56
7.5.3 Definition of identical trademark	56
8 Communications (Contacts and Services) of China National Intellectual Property Administration	58
9 Practical Tips on Trademark Protection in China	59
9.1 Online trademark search system	59
9.2 Relevant tips on online application	59
9.3 Interpretations of classification table of similar goods	61
9.4 Strategic suggestions on trademark protection of enterprises	61
9.4.1 Make standardized use of trademarks after registration	61
9.4.2 Pay attention to generate and retain evidence of use to avoid the risk of trademark revocation	62
9.4.3 Establish early warning of exclusive right to use a trademark	62



1 Introduction

1.1 About trademarks

A trademark is a mark used to identify and distinguish the source of goods and services. A trademark shall have distinctive features which enable consumers to recognize and remember, and then plays the function and role of indicating the source of goods and services. The distinctive features are the core attributes of a trademark, and a mark without any distinctive feature cannot play the role of a trademark.

1.2 Trademark protection in China

According to Article 4 of the Trademark Law of the People's Republic of China (hereinafter referred to as the Trademark Law), any natural person, legal person, or other organization that needs to obtain the exclusive right to use a trademark for its goods or services during production and business operations shall apply for trademark registration with the Trademark Office of China National Intellectual Property Administration (hereinafter referred to as the Trademark Office). According to Article 6 of the Trademark Law, where a registered trademark is required to be used for some goods by laws or administrative regulations, an application for trademark registration shall be made. No such goods may be marketed without an approved and registered trademark.

It can be seen that the acquisition of exclusive right to use a trademark in China follows the principle of registration, with voluntary registration as the leading factor and compulsory registration as the supplement. According to



Article 19 of the Law of the People's Republic of China on Tobacco Monopoly, applications for trademark registration shall be made for cigarettes, cigars and packaged cut tobacco. At present, registered trademarks must be used for tobacco products in China.

At the same time, China's trademark protection is compatible with the concept of use and strengthens the requirements for the use of trademarks, which is at least embodied in the following aspects:

1. According to Article 4 of the Trademark Law, any application for bad-faith trademark registration not made for the purpose of using the trademark shall be rejected.

2. The unregistered trademark used earlier shall be conditionally protected in accordance with the law. For example, according to the second paragraph of Article 13 of the Trademark Law, where the trademark of an identical or similar kind of goods is a reproduction, imitation, or translation of another person's well-known trademark not registered in China, no application for its registration may be granted and its use shall be prohibited; according to Article 15 of the Trademark Law, the applicant shall not register a trademark already used by another party based on contractual, business relationship or other relationships; according to Article 32 of the Trademark Law, no applicant for trademark application may, by illegitimate means, rush to register trademark that is already in use by another person and has certain influence; and according to appropriate protection for the right of prior use of trademark in the third paragraph of Article 59 of the Trademark Law, where before a trademark registrant applies for registration of a trademark, another party has used a trademark that is of certain influence and is identical with or similar to the registered trademark on the same kind of goods or similar goods, the holder of the exclusive right to use the



registered trademark shall have no right to prohibit the said party from continued use of the trademark within the original scope of use, however, the holder may require the latter to add a proper mark for distinguishment.

3. According to the second paragraph of Article 49 of the Trademark Law, where a registered trademark has not been put in use for three consecutive years without a justifiable reason, the registered trademark will be revoked upon request.

4. According to Article 31 of the Trademark Law, the prior application shall prevail, and the prior use will be taken into account according to the specific circumstances, specifically, where two or more applicants apply to register identical or similar trademarks for use on the same kind of goods or similar goods, the Trademark Office shall first conduct examination of, give approval to and announce the trademark whose registration is applied for earlier than the rest. Where the applications are filed on the same day, the Trademark Office shall first examine, give approval to and announce the trademark which is used earlier than the rest, and it shall reject the applications for registration of the other trademarks.

China's trademark protection is a stronger protection system which is constructed by the Trademark Law and a series of trademark laws and regulations for registered trademarks. The following will focus on introducing China's trademark legal protection system centering on trademark registration.

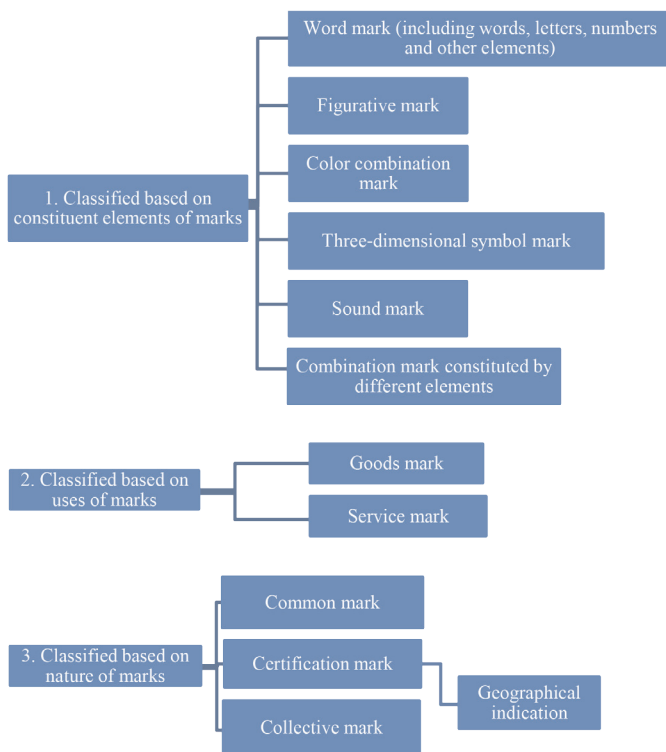




2 Overview of China's Trademark Registration System

2.1 Type of trademarks

At present, the trademarks that can be registered in China are generally classified as follows according to the different classification methods:



Further explanations:

A geographical indication refers to a sign indicating the place of origin of the goods and that the special quality, reputation or other characteristics of the goods



are primarily determined by the natural conditions or humanistic conditions of the region. In accordance with the Regulations for the Implementation of the Trademark Law of the People's Republic of China (hereinafter referred to as the Regulations for the Implementation of the Trademark Law), geographical indications may be applied for registration as certification marks or collective marks. Where a foreigner or a foreign enterprise applies for the registration of a geographical indication in China, it shall provide proof that such geographical indication is protected by laws in its own name in its country of origin.

2.2 Marks that shall not registered as trademarks in China

In China, not all marks can be registered as trademarks. The Trademark Law stipulates that the following marks cannot be registered as trademarks:

2.2.1 Marks that shall not be used as trademarks

Not being used as trademarks means that the marks are prohibited from being used as trademarks in addition to being registered as trademarks.

According to Article 10 of the Trademark Law, the following marks shall not be used as trademarks:

1. Those identical with or similar to the State name, the national flag, emblem or anthem, the military flag, emblem or songs, or medals of the People's Republic of China; or those identical with the names or emblems of Central State organs, the names of the specific locations where the Central State organs are seated; or those identical with the names or designs of landmark buildings;

2. Those identical with or similar to the State name, national flag, national emblem or military flag etc., of a foreign country, except with the consent of the government of that country;



3. Those identical with or similar to the name, flag or emblem of an international inter-governmental organization, except with the consent of that organization or except where it is unlikely to mislead the public;

4. Those identical with or similar to an official mark or inspection stamp that indicates control and guarantee, except where authorized;

5. Those identical with or similar to the symbol or name of the Red Cross or the Red Crescent;

6. Those having the nature of discrimination against any nationality;

7. Those that are deceptive and are likely to mislead the public in terms of the quality, place of production or other characteristics of the goods; and

8. Those detrimental to socialist ethics or customs, or having other unwholesome influences.

No geographical names of administrative divisions at or above the county level and foreign geographical names known to the public shall be used as trademarks, except where geographical names have other meanings or constitute part of a collective mark or certification mark. Registered trademarks that use



geographical names shall remain valid.

2.2.2 Marks that shall not be registered as trademarks

Marks lacking distinctive features

According to Article 11 of the Trademark Law, the following marks shall not be registered as trademarks. But any mark may be registered as a trademark where it has acquired distinctive features through use and is readily identifiable.

1. Where the mark bears only generic name, design or model number of the goods concerned;
2. Where it only directly indicates the quality, principal raw materials, function, use, weight, quantity or other features of the goods; and
3. Marks that otherwise lack distinctive features.

Three-dimensional marks only with functionality

According to Article 12 of the Trademark Law, application for registration of a three-dimensional mark as a trademark shall not be granted, where the mark merely indicate the shape inherent in the nature of the goods concerned, or it is only indicated by the need to achieve technical effects or the need of give the goods substantive value.





3 China's Trademark Registration System and Application Requirements for Trademark Registration

3.1 China's trademark registration system

At present, China's trademark registration system has the following two types:

1. An application for registration can be filed directly with the Trademark Office in accordance with the Trademark Law of the People's Republic of China, referred to as "direct national application".

2. An application for Madrid international registration of marks can be filed with the World Intellectual Property Organization (WIPO) in accordance with the Madrid Agreement Concerning the International Registration of Marks and Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, referred to as "international application"

The above two different trademark registration application systems have some differences in application requirements, required documents and procedures.

3.2 Application requirements for trademark registration

3.2.1 Direct national applications

Applicants' subject qualification requirements

1. Applicants for common marks: these may be natural persons, legal persons or other organizations.

2. Applicants for collective marks: these may be group organizations,



collective organizations or industry associations, but cannot be single businesses or individual operators.

3. Applicants for certification marks: these shall be organizations that have the ability to supervise certain goods or services.

4. Applicants for geographical indications: these shall be local non-profit-making groups, associations or other organizations, generally legal persons of social groups or public institutions, of which business scope is related to the geographical indication products used under their supervision.

Declaration of goods and services

China is the member state of the Nice Union and adopts the International Classification of Goods and Services for the Purposes of the Registration of Marks (the Nice Classification). The current Nice Classification divides goods and services into 45 categories, including 1-34 categories for goods and 35-45 categories for services. The Trademark Office divides the goods and services of Nice Classification into similar groups, adds the names of goods and services commonly used in China in light of the actual situations, and formulates the Classification Table of Similar Goods and Services (hereinafter referred to as the Classification Table). In applying for trademark registration, the categories of trademarks and the names of goods or services to be used shall be filled in according to the Classification Table.

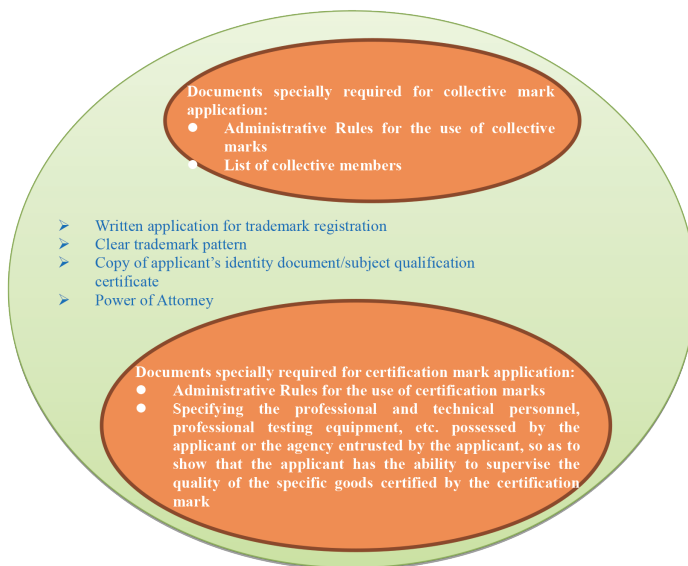
Refer to the Declaration Guide for Goods and Services for the Purposes of the Registration of Marks issued by the Trademark Office (website: <http://sbj.cnipa.gov.cn/sbsq/sphfwfl/>) for details about how to declare the categories and names of goods and services.

Requirements for application documents

Where an applicant directly files an application for trademark registration



with the Trademark Office, the following documents shall be prepared:



Further explanations:^[1]

1. Explanations on the applicant's identity documents

Where an applicant is a legal person or any other organization, the relevant registration certificate shall be provided. Where an applicant is a legal person or other organizations of Chinese Mainland, the registration certificate marked with unified social credit code shall be provided.

Where an applicant is a natural person, the valid identity documents shall be submitted. Where an applicant is a natural person of Chinese Mainland, the subject qualification certificate certifying his or her business activities shall also be provided.

[1] Guide for Application for Registration of Goods Marks and Service Marks issued by the Trademark Office of China National Intellectual Property Administration on November 26, 2019 http://sbj.cnipa.gov.cn/sbsq/sqzn/201811/t20181107_276860.html



Where the same applicant applies for registration of more than one trademark at the same time, only one set of identity documents is required.

2. Explanations on trademark pattern

(1) General pattern requirements

A trademark pattern shall be submitted for each application for trademark registration, which shall be no more than 10 cm in length and no less than 5 cm in width. Where an application is filed for the registration of a color pattern as a trademark, the color pattern shall be submitted. Where no color is designated, a black and white pattern shall be submitted.

(2) Three-dimensional marks

- Where an application is filed for the registration of a three-dimensional mark as a trademark, the applicant shall make a statement in the application and explain how the trademark is used in the description of trademark.

- The applicant shall submit a pattern capable of determining the three-dimensional shape, and the submitted trademark pattern shall contain at least three views, which may be three-dimensional views, multi-views or three-dimensional renderings.

- The applicant can either make a textual description of a three-dimensional mark in the description of trademark, or declare a waiver of exclusive right to use the part of no claim of rights of the trademark in the written application.

(3) Color combination marks

- Where an application is filed for the registration of a color combination as a trademark, the applicant shall make a statement in the written application.

- The applicant shall submit a clear color pattern. A trademark pattern shall be a color block indicating the way in which the colors are combined or a graph outline indicating the positions in which the colors are used. The graph outline is



not a constituent element of the trademark and must be represented by a dotted line rather than a solid line.

- The applicant shall list the color name and the color number in the description of trademark, and describe the specific way in which the color combination mark is used in commercial activities

- The applicant shall submit a combination of two or more colors as a trademark pattern, and the application for registration of a single color shall be rejected.

(4) Sound marks

- Where an application is filed for the registration of a sound mark as a trademark, the applicant shall make a statement in the written application and explain the way in which the mark is used in the description of trademark.

- The applicant shall submit a sound sample that meets the requirements. The sound sample shall be stored in an audio file with a format of wav or mp3 and a size of less than 5MB.

- The sound used as a trademark in the application shall be described in a staff notation or simplified notation and appended with textual description. Where it is impossible to describe in a staff notation or simplified notation, the description in words shall be made.

Document descriptions on application for right of priority

Where an applicant claims right of priority, a written statement shall be submitted, and the supporting documents of right of priority shall be submitted at the same time or within three months from the date of application. Where the written statement is not submitted or the information in the written statement is unclear and incomplete, the claim shall be deemed not to have been made for the right of priority. Where the supporting documents of right of priority are not



submitted within the time limit or are not submitted completely, or the supporting documents are insufficient to prove that the applicant enjoys the right of priority, the right of priority shall be invalid.

Document descriptions on application for registration with another person's portrait as a trademark pattern

Where an application for registration is filed with another person's portrait as a trademark pattern, the applicant shall give an explanation, and a power of attorney from the portrait right holder shall be attached. Where the portrait right holder has died, the supporting documents of the applicant's authority to dispose of the portrait shall be attached.

Where an application for the registration is filed with one's own portrait as a trademark pattern, the applicant shall give an explanation, and no power of attorney is required.

Explanations on documents in foreign languages

Where all certificates, supporting documents and evidentiary materials submitted by the applicant are in a foreign language, a Chinese translation thereof shall be attached. Where it is not attached, it shall be deemed that the certificates, supporting documents or evidentiary materials have not been submitted.

Explanations on entrusted trademark agency

Where a foreigner or a foreign enterprise having no habitual residence or business office in China applies for trademark registration or handles other trademark matters in China, it shall entrust a trademark agency established according to law in China to handle the matters.

A trademark agency shall not accept entrustment from two parties with a conflict of interest in the same case and shall have the obligation to keep



confidential the trade secrets of its client which it learns in the process of agency.

Multi-class application for same trademark

In China, an applicant may apply for registration of the same trademark for multiple categories of goods and/or services through one application, namely, “multi-class application of one trademark”. At present, the official fee of “multi-class application of one trademark” is same with that of “single-class application of one trademark”.

3.3.2 Applications for international registration of trademarks

Applications for international registration of trademarks means the applications for trademark registration filed in accordance with the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, mainly including (1) applications for international registration of trademarks to WIPO through the Trademark Office based on the trademarks that have been registered or applied for in China, and (2) applications designating territorial extension to China through the WIPO, hereinafter referred to as “application designating territorial extension to China for international registration”.

As China’s trademark registration examination system is mainly introduced herein, only the application designating territorial extension to China for international registration will be introduced.

Ways of application

The applicant may, in accordance with the provisions of the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to the Madrid Agreement Concerning the International Registration of



Marks, submit an international application for trademark registration to the WIPO through his/her office of origin, and designate or later designate the territorial extension of the protection to China.

Refusal period

The Trademark Office will examine the application designating territorial extension to China for international registration within the refusal period stipulated in the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks. Where the Trademark Office fails to issue a notification of refusal or a notification of partial refusal within the refusal period, the application for territorial extension shall be deemed to have been approved.

The refusal period shall be calculated from the date on which the notification is sent by the International Bureau. The applications designating territorial extension to China by the office of origin for contracting parties to the protocol shall be rejected within 18 months from the date of notification; and other applications designating territorial extension to China for international registration shall be rejected within 12 months from the date of notification.

Period of validity of international registration of trademarks

The period of validity of an international registered trademark that is protected in China shall be 10 years calculated from the date of international registration or a later designated date.

International opposition

With respect to the applications designating territorial extension to China for international registration, the opponent who meets the conditions prescribed in Article 33 of the Trademark Law may file an opposition with the Trademark



Office within 3 months from the first day of the next month following the publication of the WIPO Gazette of International Marks.

Where the applicant for opposition is a foreign enterprise or a foreigner, it shall entrust a trademark agency established according to law in China to handle the opposition.

Certificate of international registration of trademarks

With respect to the applications designating territorial extension to China for international registration, the Trademark Office will not issue the trademark registration certificate after the trademark is approved for registration, and the applicant can apply to the Trademark Office to issue the “certificate of international registration of trademarks”.

Applications for transfer of international registration to China’s domestic registration

An application for transfer of international registration to China’s domestic registration means that if, within five years from the date of the international registration, a basic application or basic registration of the office of origin is rejected, expired, abandoned, cancelled or invalid in whole or in part, the office of origin applies to the International Bureau to cancel all or part of the goods and services listed in the international registration, which is also known as “principle of central strike”. In this case, the applicant of the original international registration may file an application for domestic registration of the same trademark with the Trademark Office of China, transferring the international registration to China’s domestic registration. The application is filed on the date of its international registration or a later designated date. Where the right of priority has been granted the international registration, the same right of priority



may also be granted the application.

Requirements for application for transfer of international registration to China's domestic registration:

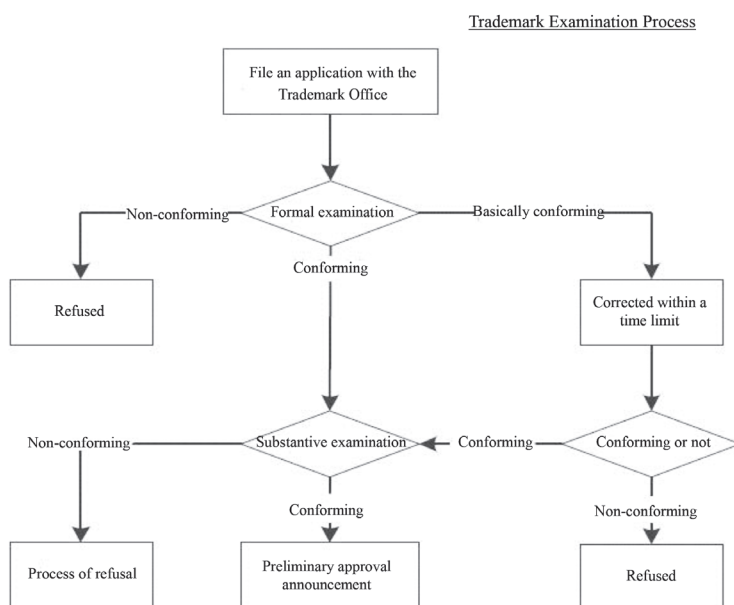
1. The original international registered trademark is a valid trademark in China.
2. The original international registered trademark is cancelled in accordance with the fourth paragraph of Article 6 of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks.
3. The application shall be filed within 3 months from the date of revocation of the international registration.
4. The trademark information submitted in the application shall be consistent with the original international registered trademark information.
5. The goods and/or services listed in the application shall not exceed the scope of protection of the original international registration.
6. The trademark agency established according to law in China shall be entrusted to file the application with the Trademark Office.
7. The fees shall be paid in accordance with the domestic trademark registration standards.



4 Examination, Opposition and Registration

4.1 Examination of applications for trademark registration

The examination of applications for trademark registration is divided into two stages in terms of procedures: formal examination and substantive examination. Refer to the flow chart below for details:



4.1.1 Formal examination

The formal examination mainly includes the following contents:

1. Whether the applicant has the subject qualification of applying for trademark registration;
2. Whether the completion of application and the trademark pattern conform



to the provisions, whether the category of the designated goods or services is correct, and whether the name of designated goods or services is standardized and specific;

3. Whether the applicant who needs to entrust an agency according to law has entrusted a trademark agency established according to law to handle the matters; and whether the power of attorney is completed in accordance with the provisions;

4. Whether the supporting documents to be submitted are complete;

5. Whether the trademark fees are paid in full and on time.

Where the application procedures are complete and conforming and the fees are paid in full and on time, the Trademark Office shall accept the application; Where the application procedures are incomplete or non-conforming or the fees are not paid, the Trademark Office shall refuse the application; Where the application procedures are basically complete or basically conforming, but corrections shall be made, the Trademark Office shall notify the applicant of making corrections as required within the prescribed time limit. Where no correction be made within the time limit or the corrections are not made as required, the Trademark Office shall refuse the application.

The Trademark Office shall not conduct formal examination on the application designating territorial extension to China for international registration.

4.1.2 Substantive examination

The substantive examination mainly includes the following contents:

1. Whether the trademark violates the prohibitory provisions of the Trademark Law.

2. Whether the trademark has legal constituent elements, whether it has distinctive features.



3. Whether the three-dimensional trademark has functionality.

4. Whether the trademark is identical with or similar to a trademark of another person on the same kind of goods or similar goods that has been applied for or registered earlier.

5. Whether it is an application for bad-faith trademark registration not made for the purpose of using the trademark.

6. Examination on whether it is a trademark other than the ones entrusted to the agency will be conducted if it is a trademark agency that applies for trademark registration.

With respect to the application designating territorial extension to China for international registration, the substantive examination shall include the following contents in addition to the above:

1. Whether designated goods or services are incorrectly classified or unacceptable in China. As there is no correction procedure for an application designating territorial extension to China, the application for territorial extension will be rejected directly if the designated goods or services are incorrectly classified or unacceptable in China.

2. Whether the relevant materials are submitted within the prescribed time limit by those who require the protection of three-dimensional marks, color combinations or sound marks as trademarks or the protection of collective marks or certification marks. Where the materials are not submitted within the prescribed time limit, the Trademark Office shall reject the application for





territorial extension.

4.1.3 Examination period

According to the current examination schedule, the formal examination of direct national applications will be completed within 1 month from the date of filing the application for trademark registration, and the substantive examination will be completed within 4 months from the date of filing the application for trademark registration.

4.2 Refusal of trademarks

4.2.1 Grounds of refusal

The grounds of refusal of application for trademark registration in the Trademark Law can be divided into absolute grounds and relative grounds according to different nature.

Absolute grounds

The absolute grounds of refusal of application for trademark registration include the following:

1. Article 4 of the Trademark Law: An application for bad-faith trademark registration not made for the purpose of using the trademark shall be rejected.
2. Article 10 of the Trademark Law: Please refer to article 1 of section (2) of Part II for details.
3. Article 11 of the Trademark Law: Please refer to paragraph (1), article 2 of section (2) of Part II for details.
4. Article 12 of the Trademark Law: Please refer to paragraph (2), article 2 of section (2) of Part II for details.
5. Fourth paragraph of Article 19 of the Trademark Law: a trademark agency



shall not apply for registration of trademarks other than the ones entrusted to it.

Relative grounds

The relative grounds of refusal of application for trademark registration include the following:

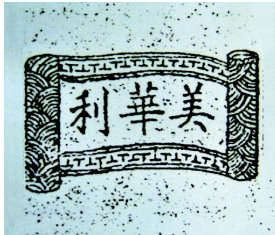
1. First paragraph of Article 16 of the Trademark Law: Where a trademark bears a geographical indication of the goods when the place indicated is not the origin of the goods in question, thus misleading the public, the trademark shall not be registered and its use shall be prohibited; however, where the registration is obtained in good will, it shall be valid.

2. Article 30 of the Trademark Law: where a trademark, for the registration of which an application is made, that does not conform to the relevant provisions of this Law or that is identical with or similar to the trademark already registered by another person or is given preliminary examination and approval for use on the same kind of goods or similar goods, the Trademark Office shall reject the application and shall not announce that trademark.

3. Article 31 of the Trademark Law: where two or more applicants apply to register identical or similar trademarks for use on the same kind of goods

or similar goods, the trademark office shall first conduct examination of, give approval to and announce the trademark whose registration is applied for earlier than the rest. Where the applications are filed on the same day, the trademark office shall first examine, give approval to and announce the trademark which is used earlier than the rest, and it shall reject the applications for registration of the other trademarks and shall not





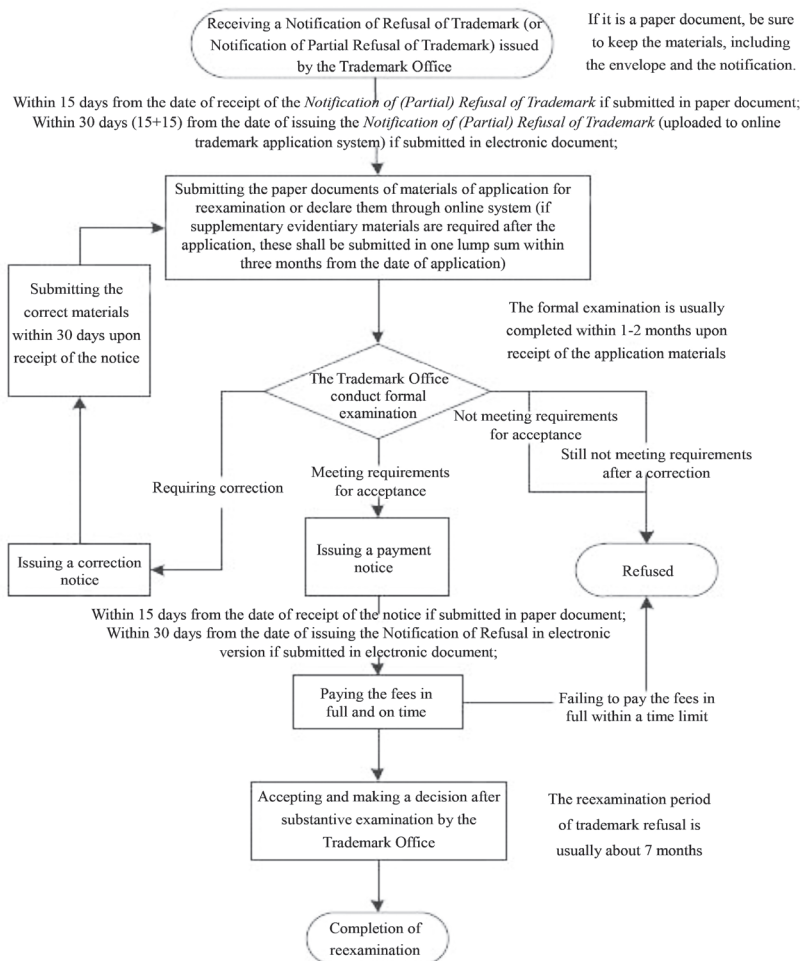
announce that trademarks.

4.2.2 Application division

Where an application for trademark registration is rejected in respect of partially designated goods, the applicant may divide the preliminary approved part of the application into another application, and the divided application shall retain the application date of the original application. The applicant shall, within 15 days from the date of receiving the Notification of Partial Refusal of Application for Trademark Registration from the Trademark Office, file a division application with the Trademark Office. A new application number shall be generated for the preliminary approved application that is divided, and the announcement shall be made by the Trademark Office.

4.2.3 Reexamination of refusal

If the applicant is dissatisfied with the decision of refusal made by the Trademark Office, he or she may, within the prescribed time limit, apply to the Trademark Office for a reexamination. Refer to the following figure for the specific process of reexamination of refusal:



4.3 Preliminary approval

Where an application for trademark registration is in conformity with the provisions or an application for the registration of a trademark used on partially designated goods or services is in conformity with the provisions, upon examination of the application for trademark registration, the Trademark Office

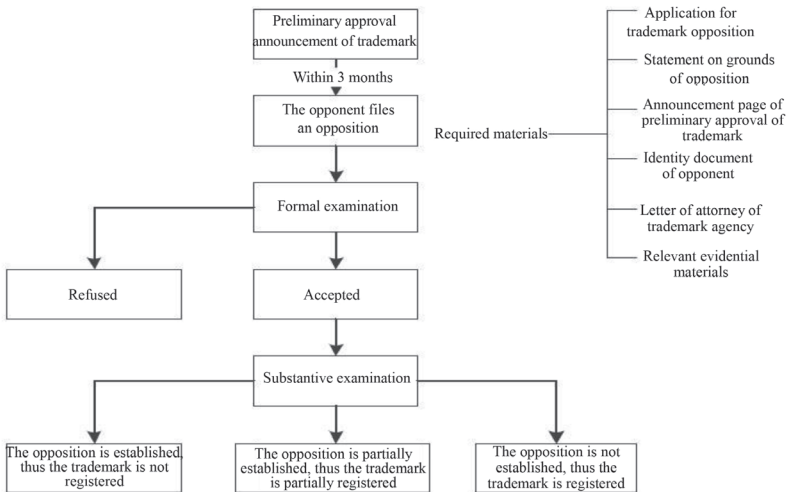


shall give preliminary approval and make the announcement.

4.4 Trademark opposition

According to Article 33 of the Trademark Law, if a holder of prior rights or an interested party holds that the trademark announced upon preliminary approval is in violation of the provisions of the second or third paragraph of Article 13, Article 15, the first paragraph of Article 16, Article 30, Article 31, or Article 32 of this Law, he or she may, within three months from the date of the preliminary approval announcement, raise an objection to the Trademark Office. Any party that is of the opinion that the aforesaid trademark is in violation of Article 4, Article 10, Article 11, Article 12 or the fourth paragraph of Article 19 of this Law may raise objections to the Trademark Office within the same three-month period.

Refer to the following figure for the specific process of trademark opposition:





4.4.1 Opposition period

The statutory opposition period is 3 months. The opposition period shall be calculated from the next day after the date (excluded) of preliminary approval announcement a trademark. The opposition period shall expire on the corresponding day in the last month of the preliminary approval announcement of a trademark.

Where there is no corresponding day in that month, the opposition period shall expire on the last day of that month; and where the opposition period expires on a holiday, it shall expire on the first working day following that holiday.



4.4.2 Grounds of opposition

The Trademark Law clearly defines the scope of grounds of opposition and divides them into two categories: absolute grounds and relative grounds.

Absolute grounds

The absolute grounds of opposition are the same as the absolute grounds of refusal of application for registration. Please refer to paragraph (1), article 1 of section (2) of Part IV for details.

Relative grounds

The relative grounds of opposition include:

1. Paragraphs 2 and 3 of Article 13 of the Trademark Law:



Where the trademark of an identical or similar kind of goods is a reproduction, imitation, or translation of another person's well-known trademark not registered in China and is liable to cause public confusion, no application for its registration may be granted and its use shall be prohibited.

Where the trademark of a different or dissimilar kind of goods is a reproduction, imitation, or translation of another person's well-known trademark registered in China and it misleads the public so that the interests of the owner of the registered well-known trademark are likely to be impaired, no application for its registration may be granted and its use shall be prohibited

2. Article 15 of the Trademark Law:

Where an agent or representative, without authorization of the client, seeks to register in its own name the client's trademark and the client objects, the trademark shall not be registered and its use shall be prohibited.

An application for registering a trademark for the same kind of goods, or similar goods shall not be approved if the trademark under application is identical with or similar to an unregistered trademark already used by another party, the applicant is clearly aware of the existence of the trademark of such another party due to contractual, business or other relationships with the latter other than those prescribed in the preceding paragraph, and such another party raises objections to the trademark registration application in question.

3. Paragraph 1 of Article 16 of the Trademark Law: Please refer to item (a) of paragraph (2), article 1, section (2) of Part IV for details.

4. Article 30 and Article 31 of the Trademark Law: Please refer to items (b) and (c) of paragraph (2), article 1, section (2) of Part IV for details.

5. Article 32 of the Trademark Law: No applicant for trademark application may infringe upon another person's existing prior rights, nor may he or she, by



illegitimate means, rush to register a trademark that is already in use by another person and has certain influence.

4.4.3 Subject of opposition

For the subject of opposition of absolute grounds, the opponent may be any person, including natural person, legal person or other organizations. For the subject of opposition of relative grounds, the opponent may be any holder of prior rights or any interested party.

4.4.4 Examination of trademark opposition

Formal examination

The formal examination of trademark opposition mainly includes the following contents:

1. Whether there is a clear opposed trademark;
2. Whether the opposition is filed within the statutory opposition period;
3. Whether the subject qualification of the opponent is qualified;
4. Whether the opposition has clear grounds, factual and legal basis for opposition;
5. Whether the formal requirements of opposition application materials conform to the legal provisions;
6. Whether opposition fees are paid in full and on time according to law.

Where, upon examination, the requirements for acceptance are met, the opposition shall be accepted, and a notice of acceptance shall be issued to the opponent. The Trademark Office shall refuse an application for trademark opposition under any of the following circumstances:

1. The opposition is not filed within the statutory opposition period;
2. The applicant's subject qualification and grounds of opposition do not



conform to the provisions of Article 33 of the Trademark Law;

3. There are no clear grounds, factual or legal basis for opposition;

4. The same opponent files an opposition again against the same trademark based on the same grounds, factual and legal basis.

Substantive examination

1. Contents of substantive examination of trademark opposition: mainly including examination of grounds, factual and legal basis for opposition and relevant evidential materials.

2. Results of opposition examination:

(1) Where the opposition is not established, the Trademark Office will make a decision to approve the registration, issue a trademark registration certificate and make an announcement. Where the opponent is dissatisfied with the decision, it may file a request with the Trademark Office for invalidation of the registered trademark in accordance with law.

(2) Where the opposition is established, the Trademark Office will make a decision to reject the registration. Where the opponent is dissatisfied with the decision, it may, within 15 days from the date of receipt of the notification, apply to the Trademark Office for reexamination.





(3) Where the opposition is partially established and partially not established, the Trademark Office will make a decision to reject the registration partially and approve the registration partially. Where the opponent is dissatisfied with the decision, it may, within 15 days from the date of receipt of the notification, apply to the Trademark Office for reexamination. Where the opponent is dissatisfied with the decision, it may file a request with the Trademark Office for invalidation of the registered trademark in accordance with law.

4.5 Registration

Where there is no opposition to a trademark that has been preliminarily approved after examination at the expiration of 3-month announcement period, or where the opposition is not established upon the opposition procedures, the registration shall be approved, a trademark registration certificate shall be issued, and the trademark shall be announced.

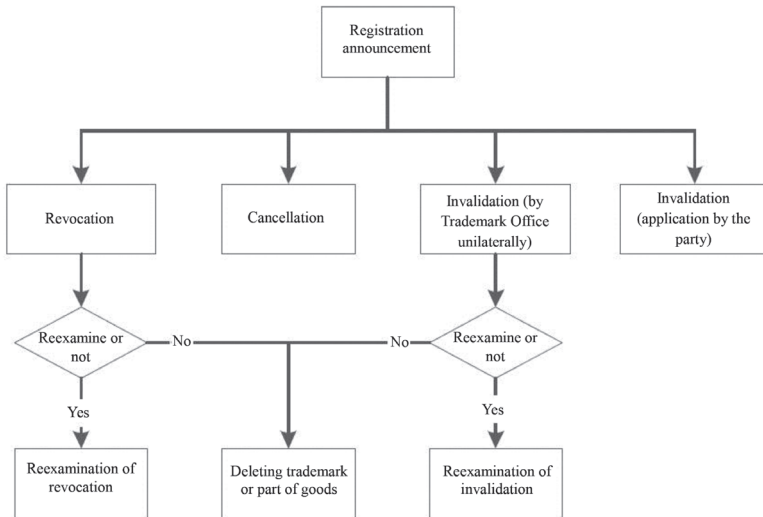
The period of validity of a registered trademark shall be 10 years from the date of approval of registration. Where a trademark has been approved for registration due to the unestablished opposition upon examination, the time for the trademark registration applicant to acquire the exclusive right to use the trademark shall be calculated from the date of expiration of 3-month period after preliminary approval announcement.



5 Procedures and Rights after Trademark Registration

5.1 Procedures after registration

As shown in the figure below, after being approved for registration, the trademark may go through procedures such as revocation, cancellation, invalidation, etc.:



5.1.1 Revocation of registered trademarks

Causes for revocation

1. Where a trademark registrant, without approval, alters a registered trademark, the name or address of the registrant, or other matters concerning the registration, the intellectual property administrative authority shall order corrections within a prescribed time limit. Where no corrections are made within



the time limit, the Trademark Office shall revoke the registered trademark.

2. Where a registered trademark has become a generic name of the goods approved for use or has not been used for three consecutive years without a justifiable reason, any unit or individual may apply to the Trademark Office for the revocation of the registered trademark. After accepting the application, the Trademark Office will notify the trademark registrant, and the trademark registrant shall submit a reply within 2 months from the date of receipt of the notification, or submit the evidential materials on using the trademark before the application for revocation of the trademark or state the justifiable reasons for not using the trademark. Where no reply is made at the expiration of the time limit, or the evidential materials of using the trademark are not provided at the expiration of the time limit, or evidential materials are invalid without a justifiable reason, the Trademark Office shall revoke the registered trademark.

Reexamination of revocation

Where any party is dissatisfied with the decision of the Trademark Office to revoke or not revoke a registered trademark, it may, within 15 days from the date of receipt of the notification, apply to the Trademark Office for reexamination.

Legal effect of revocation

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

5.1.2 Cancellation of registered trademarks

After the registration of a trademark has been approved, the trademark registrant may apply to the Trademark Office for the cancellation of its registered trademark or the cancellation of the registration of its trademark on partially



designated goods. Where the cancellation has been approved by the Trademark Office, the exclusive right to use the registered trademark or the effect of the exclusive right to use the registered trademark on the partially designated goods shall be suspended as of the date on which the Trademark Office receives the application for cancellation.

5.1.3 Invalidation of registered trademarks

The invalidation of a registered trademark refers to the invalidation of a registered trademark that violates the relevant provisions of the Trademark Law by the Trademark Office *ex officio* or according to the application of the applicant. The procedure is a way of eliminating trademark rights.

Grounds of invalidation

The grounds of invalidation, like the grounds of refusal and opposition of application for trademark registration, can be divided into absolute grounds and relative grounds.

1. Absolute grounds: In addition to all the absolute grounds for partial refusal of application for trademark registration as stipulated in paragraph (1), article 1 of section (2) of Part IV, these also include the one that the registration of a trademark was obtained by fraudulent or other illegitimate means as stipulated in Article 44 of the Trademark Law.

2. Relative grounds: These are same with relative grounds of opposition as stipulated in paragraph (2), article 2 of section (4) of Part IV.

Invalidation procedures

There are two types of invalidation procedures:

1. Invalidation *ex officio*

The invalidation *ex officio* means that the Trademark Office invalidates



a registered trademark that violates absolute grounds ex officio, which is a procedure involving unilateral party. Where a trademark registrant is dissatisfied with the decision of the Trademark Office to invalidate ex officio, it shall apply to the Trademark Office for reexamination.

2. Invalidation according to application

The invalidation according to application means that the Trademark Office invalidates a registered trademark that violates absolute grounds and/or relative grounds according to application by the applicant, which is a procedure involving two parties.

Where an application for invalidation is filed on absolute grounds, the applicant may be any person; where the application for invalidation is filed on relative grounds, the applicant shall be any holder of prior right or any interested party.

Where the applicant for invalidation and the trademark registrant are dissatisfied with the decision made by the Trademark Office on invalidation according to the application of the applicant, they shall directly file an action in the Beijing Intellectual Property Court.

Invalidation period

Where a registered trademark stands in violation of the absolute grounds, the Trademark Office or the applicant may initiate invalidation procedures against the registered trademark at any time after registration.

Where a registered trademark stands in violation of the relative grounds, any prior right holder or any interested party may, within five years from the date of registration of the trademark, file a request with the Trademark Office to invalidate the registered trademark. Where a trademark is registered in bad-faith, the owner of the well-known trademark shall not be restricted by the five-year period.

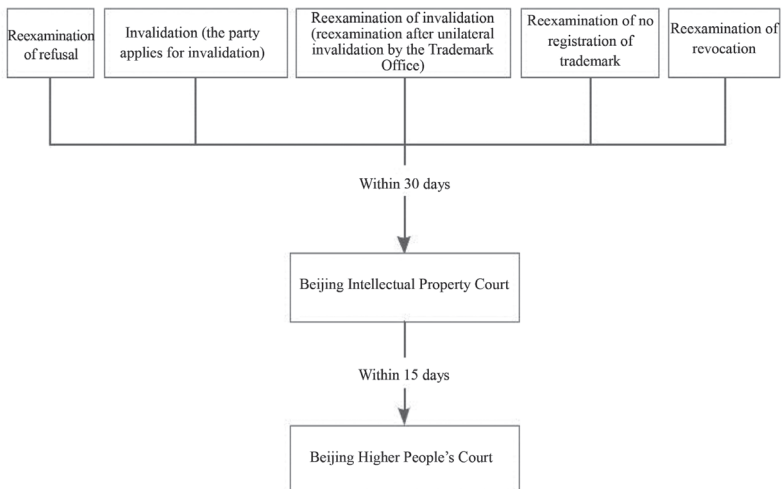


Effect of invalidation

Where a registered trademark is invalidated, the invalidation of the registered trademark shall be announced by the Trademark Office, and the exclusive right to use the registered trademark shall be deemed as not having existed from the very beginning.

The invalidation of a registered trademark shall not have retrospective effect on the judgments, rulings and mediation agreements of trademark infringement cases made and enforced by the people's court prior to the invalidation, the handling decisions of trademark infringement cases made and enforced by the intellectual property administrative authority, as well as the contracts for assignment or licensed use of a trademark that have been already performed. However, if any loss has been caused through the ill intentions of a trademark registrant to any other party, such loss shall be compensated.

5.1.4 Judicial review of procedures of granting and confirmation of trademark rights





As shown in the above figure, where any party is dissatisfied with the decision of reexamination of refusal, reexamination of revocation, invalidation (invalidation according to application), reexamination of invalidation (reexamination after invalidation ex officio), or the reexamination of no registration of a trademark, it may, within 30 days from the date of receipt of the notification, file an action before the Beijing Intellectual Property Court. Where any party is dissatisfied with the judgment of the Beijing Intellectual Property Court, it may, within 15 days from the date of service of the written judgment of first instance, appeal to the Beijing Higher People's Court.

5.1.5 Renewal

Where a registered trademark needs to be used continuously after the expiration of its period of validity, an application for renewal shall be filed by the trademark registrant within 12 months before the expiration. Where no application has been filed within the said period, a grace period of 6 months may be provided. The period of validity of each renewal of registration shall be 10 years from the next day after the expiration of the previous period of validity of the trademark. Where no application for renewal has been filed before the expiration, the registered trademark shall be canceled.





5.2 Rights enjoyed by trademark registrants

After the registration is approved by the Trademark Office, the trademark registrant shall enjoy the exclusive rights to use the trademark. The exclusive rights to use a trademark mainly includes the exclusive right to use a registered trademark, the assignment right, the license right of the registered trademark and the pledge of exclusive right to use the trademark.

5.2.1 Exclusive right to use

A trademark registrant shall have the exclusive right to use his or her own registered trademark, and no third party may use a mark identical with or similar to the registered trademark of the trademark registrant on the same kind of goods or similar goods or services without permission.

5.2.2 Assignment

A trademark registrant may assign his or her registered trademark to another person in accordance with legal procedures. According to Article 42 of the Trademark Law, to assign a registered trademark, the assignor and assignee shall sign an assignment agreement and jointly file an application with the Trademark Office. When transferring a registered trademark, the trademark registrant shall transfer, along with it, other similar trademarks he or she has registered for the same kind of goods, and other identical and similar trademarks he or she has registered for similar goods. The assignee shall enjoy the exclusive right to the use of the trademark starting from the date the announcement of approval for assignment is made.

5.2.3 Licensing

According to Article 43 of the Trademark Law, a trademark registrant may, by concluding a trademark license agreement, authorize another person to use



his or her registered trademark. The licensor shall supervise the quality of the goods on which the licensee uses his or her registered trademark, and the licensee shall guarantee the quality of the goods on which the registered trademark is to be used. If any person is authorized to use the registered trademark of another person, the name of the licensee and the origin of the goods shall be indicated on the goods that bear the registered trademark. A licensor who licenses others to use his or her registered trademark shall submit the trademark license to the Trademark Office for file, and the Trademark Office shall announce the trademark license. Without filing, the trademark license shall not be used against a bona fide third party.

At present, the trademark licenses in China mainly include: (1) exclusive licenses, which refers to that the trademark registrant licenses a single licensee to use its registered trademark for an agreed period, within a specified territory and in an agreed manner and where the trademark registrant, in accordance with the agreement, can not use the registered trademark; (2) sole licenses, which refers to that the trademark registrant licenses a single licensee to use its registered trademark for an agreed period, within a specified territory and in an agreed manner and where the trademark registrant, in accordance with the agreement, may use the registered trademark but not license other parties to use the registered trademark; and (3) common licenses, which refers to that the trademark registrant licenses other parties to use its registered trademark for an agreed period, within a specified territory and in an agreed manner and where the trademark registrant may use the registered trademark by itself and may license other parties to use the registered trademark.



5.2.4 Pledge of exclusive right to use a registered trademark

A trademark registrant may, as a debtor or a guarantor, pledge its own exclusive rights to use a trademark that can be assigned according to law as a debt guarantee. According to law, where the exclusive rights to use a registered trademark is pledged, the pledger and the pledgee shall conclude a written pledge contract and jointly file an application for registration of pledge right with the Trademark Office. The identical or similar trademarks registered by the trademark registrant on the same or similar goods/services shall be pledged together. The pledge period shall not exceed the registration period of the pledged trademark.

Where the application documents for registration of pledge right are completed and conforming, the Trademark Office shall accept the application. The date of acceptance shall be the date of registration. The Trademark Office shall, within 2 working days from the date of registration, issue the Certificate of Registration of Pledge Right of Exclusive Right to Use a Trademark to both parties.



6 Official Fees at Various Stages

Charge items	Charging standard for paper application (by category, RMB)	Charging standard for online application receiving electronic documents (by category, RMB)
Fees for acceptance of trademark registration	RMB 300 (limited to 10 items in this category. For more than 10 items, each additional item will be charged RMB 30)	RMB 270 (limited to 10 items in this category. For more than 10 items, each additional item will be charged RMB 27)
Fees for acceptance of trademark examination (including reexamination of refusal, reexamination of no registration, reexamination of cancellation, reexamination of invalidation and reexamination of invalidation ex officio)	RMB 750	RMB 675
Fees for trademark opposition	RMB 500	RMB 450
Fees for change	RMB 150	RMB 0
Fees for acceptance of assignment of a registered trademark	RMB 500	RMB 450
Fees for acceptance of renewal of trademark registration	RMB 500	RMB 450
Fees for acceptance of extension of renewal of registration	RMB 250	RMB 225
Fees for filing of trademark license agreement	RMB 150	RMB 135
Fees for re-issuance of trademark registration certificate	RMB 500	RMB 450
Fee for issuance of trademark certification	RMB 50	RMB 45
Fees for acceptance of registration of collective marks	RMB 1500	RMB 1350
Fees for acceptance of registration of certification marks	RMB 1500	RMB 1350
Fees for revocation of trademark	RMB 500	RMB 450



7 Infringement and Remedy

7.1 Infringement act

According to the Trademark Law, the Regulations for the Implementation of the Trademark Law, the Interpretation of the Supreme People's Court Concerning the Application of Laws in the Trial of Cases of Civil Disputes Arising from Trademarks and the annual report of the Supreme People's Court on intellectual property cases, any of the following acts shall be an infringement of the exclusive right to use a registered trademark:

1. Using a trademark that is identical with a registered trademark on the same kind of goods without permission of the trademark registrant;
2. Using a trademark that is similar to a registered trademark on the same kind of goods, or using a trademark that is identical with or similar to a registered trademark on the similar goods, without permission of the trademark registrant, which may cause confusion;
3. Selling goods that infringe upon the exclusive right to use a registered trademark. However, where a party unknowingly sells goods that infringe upon another person's exclusive right to use a registered trademark, but can prove that it has obtained the goods legitimately and is able to identify the supplier, it shall not be held liable for damages.
4. Counterfeiting, or making without permission the representations of another person's registered trademark, or selling such representations;
5. Altering the registered trademark without permission of the trademark registrant and put the goods bearing such an altered trademark on the market;
6. Helping another person to infringe the exclusive right to use a registered trademark with intention to provide convenience for infringing upon the exclusive



right to use the registered trademark. The act of providing convenience includes “providing storage, transportation, postal service, printing, concealment, business site, online commodity trading platform, etc.”

7. Otherwise causing damage to another person’s exclusive right to use its registered trademark, including:

(1) Using any sign which is identical with or similar to the registered trademark of another person on the same kind of goods or similar goods, as the designation or decoration of the goods for the purpose of misleading the public.

(2) Using the words that are identical or similar to the registered trademark of another person as the name of one’s enterprise on identical or similar goods so that the relevant public is liable to be misled.

(3) Copying, imitating or translating the registered well-known trademark of another person or the major part thereof to use on non-identical or dissimilar goods as a trademark for the purpose of misleading the public so that the interests of the registrant of the well-known trademark may be damaged.

(4) Registering the words or characters identical with or similar to the registered trademark of another person as a domain name and engaging in the electronic commerce of relevant goods trading via the domain name so that the relevant public is liable to be misled.

(5) Resale of genuine goods after modification: the resale of goods after they are sold through normal and legal commercial channels usually does not constitute an infringement. However, where the goods are substantially changed in the resale process, resulting in a change in the connection between the goods and the source, and the continued use of the trademark involved on the goods without fulfilling the obligation of reasonable notification to consumers will easily lead to confusion and damage the interests of the trademark owner, it shall



constitute a trademark infringement.

(6) Recycling behaviors that can lead to confusion and misidentification constitute the trademark infringement: recycling behaviors in line with national policy orientation also shall not damage the legitimate interests of another person. Where the use of recycled containers fails to reasonably evade the trademark right or other legitimate rights of another person and is sufficient to cause confusion and misidentification of consumers about the source of goods or services, it shall constitute a trademark infringement.

7.2 Warning letter

A trademark registrant or an interested party may send a warning letter to the infringer requesting him/her to stop the infringement immediately.

When an alleged infringer claims a defense of “legitimate source” by citing the provisions of paragraph 2 of Article 64 of the Trademark Law, and where a trademark registrant or an interested party provides evidence to prove that a warning letter reflecting the possibility of infringement has been sent to the seller in the dispute over trademark infringement and the seller has received the warning letter, the people’s court may, in principle, assume that the seller knows that the goods he or she sells are infringing goods.

7.3 Administrative remedy

7.3.1 Administrative investigation by intellectual property administrative authority

Handling according to application

In accordance with the provisions of the Trademark Law, where a trademark



infringement dispute occurs, a trademark registrant or an interested party may file an action with the people's court or request the intellectual property administrative authority to handle it. Where an infringement is confirmed, the intellectual property administrative authority may:

1. Order the infringer to stop the infringement immediately: where a party unknowingly sells the goods that infringe upon another person's exclusive right to use a registered trademark, but can prove that it has obtained the goods legitimately and is able to identify the supplier, the intellectual property administrative authority shall order him/her to stop the sale.

2. Confiscate and destroy infringing goods and tools mainly used for manufacturing the infringing goods and forging representations of registered trademarks.

3. Administrative fine: where the amount of illegal business revenue is more than RMB 50,000, a fine of less than five times the amount of illegal business revenue may be imposed; and where there is no illegal business revenue or the amount of illegal business revenue is less than RMB 50,000, a fine of less than RMB 250,000 may be imposed. Whoever commits trademark infringement more than twice within five years or has other serious circumstances shall be given a heavier punishment.

4. Civil compensation mediation: for a dispute over the amount of compensation for the infringement of the exclusive right to use a trademark, any party may request the intellectual property administrative authority handling the dispute for mediation, or may file an action with the people's court. Where, after mediation by the intellectual property administrative authority, the parties fail to reach an agreement or fail to perform the mediation agreement after it comes into force, any party may file an action with the people's court.



Ex officio investigation

In addition, the intellectual property administrative authority may, investigate ex officio the acts infringing upon the exclusive right to use a registered trademark, and exercise the right to question and investigate, the right to consult and copy, the right to inspect, and the right to seal up and detain according to law.

In the course of investigating a case of trademark infringement, where there is any dispute over the ownership of the trademark or the right holder simultaneously files an action for trademark infringement with the people's court, the intellectual property administrative authority may suspend the investigation of the case.

7.3.2 Customs protection

The customs protection of intellectual property rights means the protection provided by the customs for the exclusive rights to use a trademark, copyrights and the related rights, and patent rights related to import or export goods and protected under the laws and administrative regulations of the People's Republic of China.

Customs record of trademark rights

A trademark registrant may apply to the General Administration of Customs for filing of his or her intellectual property rights. The General Administration of Customs shall, within 30 working days from the date of receiving all the application documents, make a decision on whether to approve the filing and notify the applicant in writing.

The customs record shall take effect from the date of approval by the General Administration of Customs and shall be valid for 10 years. Where the period of validity of the trademark right is less than 10 years from the date on



which the filing takes effect, the period of validity of the customs record shall be subject to that of the trademark right. A trademark registrant may, within 6 months prior to its expiration of the period of validity, apply to the General Administration of Customs for a renewal of the filing.

Detainment of suspected infringing goods

Where a trademark registrant finds that the suspected infringing goods are about to be imported or exported, he or she may file an application to the customs at place of entry or exit of the goods for detainment of such suspected infringing goods. Where the customs discovers that the imported and exported goods are suspected of infringing upon the right of the registered trademark, it shall immediately notify the trademark registrant in writing, and the trademark registrant may apply for detainment and provide a guaranty.

Where any detained suspected infringing goods are ascertained to have infringed upon the trademark right after the investigation of the customs, they shall be confiscated by the customs.

7.4 Civil remedy

In accordance with the provisions of Paragraph 1 of Article 60 of the Trademark Law, a trademark registrant or an interested party may file an action with the people's court to investigate the infringer for civil liabilities such as stopping the infringement and compensating for losses.

7.4.1 Subject enjoying the right of action

The subjects filing an action for trademark infringement generally include trademark registrants, licensees of trademark license agreements, assignees of trademark right assignment contracts, and successors of trademark property rights



and obligations caused by the death of registrants, merger, division, bankruptcy and closure of enterprises.

When the exclusive right to use a registered trademark is infringed upon, the licensee of the exclusive license agreement may file an action with the people's court; the licensee of the sole license agreement may file an action jointly with the trademark registrant or file an action on its own initiative in case the trademark registrant refuses to file an action, and the licensee of the common license agreement may, upon the explicit authorization of the trademark registrant, file an action.

7.4.2 Limitation of action

The limitation of action for infringement of the exclusive right to use a registered trademark shall be three years from the date on which a trademark registrant or an interested party knows or should have known that the right has been damaged and the obligor.

Where a trademark registrant or an interested party files an action for more than three years, and the infringement continues at the time of the action, the people's court shall, within the period of validity of the exclusive right to use the registered trademark, order the defendant to stop the infringement, and the amount of damages for infringement shall be calculated three years forward from the date on which the right holder files an action with the people's court.

7.4.3 Preservation before action

Evidence preservation before action

In order to stop infringement, a trademark registrant or an interested party may apply to the people's court for evidence preservation in accordance with law before action under the circumstance where evidence may be destroyed or



difficult to obtain later.

Act preservation before action

Where a trademark registrant or an interested party has evidence to prove that another person is infringing or is about to infringe upon his or her exclusive rights to use a registered trademark, and the failure to stop such infringement in time will cause irreparable damage to his or her legitimate rights and interests, he or she may apply to the people's court for measures to order stopping the relevant act preservation. After accepting the application, the people's court shall make a ruling within 48 hours. If the ruling is made to adopt preservation measures, such measures shall be implemented immediately.

1. Jurisdiction

An application for act preservation before action shall be filed with the people's court having respective jurisdiction over the intellectual property disputes in the place where the respondent has his or her domicile or the people's court having jurisdiction over the case.

2. Guaranty

The applicant applying for act preservation shall provide a guaranty according to law. The amount of guaranty provided shall be equal to the losses that the respondent may suffer as a result of implementing the preservation measures, including reasonable losses such as sales revenues and storage fees of the products involved in an order to stop the infringement.

3. Period of preservation measures

Where the people's court orders the adoption of act preservation measures, the period of preservation measures shall be reasonably determined according to the request of the applicant or the specific circumstances of the case. The effect of an order to stop the infringement upon trademark rights shall generally be



maintained until the judgment of the case takes effect.

4. Wrongful preservation

Where the application is wrong, the applicant shall compensate the respondent for the losses incurred by the preservation. Where the applicant withdraws the application for act preservation or applies for the rescission of the act preservation measures, it shall not be exempted from liability for compensation.

7.4.4 Civil liability

Stopping infringement and fine

In the trial of cases of disputes over infringement upon exclusive right to use a registered trademark, the people's court may, in accordance with Article 179 of the Civil Code of the People's Republic of China, Article 60 of the Trademark Law and the specific circumstances of the case, order the infringer to bear civil liabilities of stopping the infringement, removing the nuisance, eliminating the danger, compensating for the losses, eliminating the effects, etc., and may make a decision of civil sanction of imposing a fine and confiscating the infringing goods, counterfeited representations of trademarks and properties such as materials, tools and equipment mainly used for the production of the infringing goods.

Where the intellectual property administrative authority has imposed an administrative penalty on the same act infringing upon the exclusive right to use a registered trademark, the people's court shall no longer impose a civil sanction.

Compensation for losses

The amount of compensation for the infringement of the exclusive right to use a trademark shall be determined on the basis of the actual losses that the right owner has suffered as a result of the infringement. Where it is



difficult to determine the actual losses, the amount of compensation shall be determined according to the profits that the infringer has earned as a result of the infringement; and where it is difficult to determine the losses suffered by the right holder or the profits earned by the infringer, the amount of compensation shall be reasonably determined based on the multiple of the royalty for the trademark. If there is malicious infringement upon the exclusive right to use a trademark, with serious circumstances, the amount of compensation may be more than one up to five times the aforesaid determined amount. The amount of compensation shall include reasonable expenses paid by the right holder for stopping the infringement.

Where it is difficult to determine the actual losses that the right owner has suffered as a result of the infringement, the profits that the infringer has earned as a result of the infringement, or the royalty of the registered trademark, the people's court shall, according to the circumstances of the infringement, award a compensation of no more than RMB five million.

7.5 Criminal remedy

7.5.1 Criminal acts

Article 67 of the Trademark Law stipulates three acts infringing upon the exclusive right to use a trademark for which the criminal liability shall be investigated:

1. Where a person, without permission of the owner of a registered trademark, uses a trademark that is identical with the registered trademark on the same kind of goods or service, which constitutes a crime, he or she shall, in addition to compensating losses caused by the infringer, be investigated for



criminal responsibility in accordance with law.

2. Where a person sells goods that he or she knows bears a counterfeit registered trademark, which constitutes a crime, he or she shall, in addition to compensating losses caused by the infringer, be investigated for criminal responsibility in accordance with law.

3. Where a person counterfeits, or makes without permission the representations of another person's registered trademark or sells such representations, which constitutes a crime, shall, in addition to compensating the losses caused by the infringer, be investigated for criminal responsibility in accordance with law.

The three criminal acts mentioned above correspond to the following provisions of the Criminal Law of the People's Republic of China:

Article 213 of the Criminal Law: Whoever, without permission from the owner of a registered trademark, uses a trademark which is identical with the registered trademark on the same kind of commodities shall, if the circumstances are serious, be sentenced to fixed-term imprisonment of not more than three years and shall also, or shall only, be fined; if the circumstances are especially serious, he or she shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years and shall also be fined.

Article 214 of the Criminal Law: Whoever knowingly sells commodities bearing counterfeit registered trademarks shall, if the amount of sales is relatively large or there are other serious circumstances, be sentenced to fixed-term imprisonment of not more than three years, and shall also, or shall only, be fined; if the amount of sales is huge or there are other especially serious circumstances, he or she shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years and shall also be fined.



Article 215 of the Criminal Law: Whoever forges or without authorization of another makes representations of the person's registered trademarks or sells such representations shall, if the circumstances are serious, be sentenced to fixed-term imprisonment of not more than three years, and shall also, or shall only, be fined; if the circumstances are especially serious, he or she shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years and shall also be fined.

7.5.2 Definition of the same kind of goods

The goods with the same name and the goods with different names but referring to the same thing may be identified as “the same kind of goods” as prescribed in Article 213 of the Criminal Law. In identifying the “the same kind of goods”, a comparison shall be made between the goods for which the registered trademark of the right holder is approved for use and the goods actually produced and sold by the actor.

7.5.3 Definition of identical trademark

Under any of the following circumstances, it may be identified as a “trademark identical with another person's registered trademark” as prescribed in Article 213 of the Criminal Law:

1. Having made changes in the font style, capital or lower case letters, the horizontal and vertical arrangements of texts of a registered trademark, which is substantially not different from the registered trademark;
2. Having made changes in the space between texts, letters and numbers of the registered trademark, which is substantially not different from the registered trademark;
3. Having made a change in color of the registered trademark, not affecting



the manifestation of the distinctive features of the registered trademark;

4. Adding only the generic name of goods, model and other elements lacking distinctive features to the registered trademark, not affecting the manifestation of the distinctive features of the registered trademark;

5. Substantially having no difference from the three-dimensional mark and graphic elements of the three-dimensional registered trademark; and

6. Other trademarks that substantially have no difference from the registered trademark and are sufficient to mislead the public.





8 Communications (Contacts and Services) of China National Intellectual Property Administration

Mailing address: No. 6, Xitucheng Road, Jimenqiao, Haidian District,
Beijing City

Postal Code: 100088

Tel.: 010-62083114

The main responsibilities of the International Cooperation Department of the China National Intellectual Property Administration are as follows:

1. Planning and coordinating of foreign-related intellectual property matters, and organize and participate in the negotiations of treaties and agreements related to intellectual property.

2. Organizing and coordinating the contacts of relevant departments with WIPO and other international (overseas) intellectual property organizations.

3. Taking charge of international cooperation and exchange activities related to patent and foreign affairs of China National Intellectual Property Administration.

In addition, the public services network of China National Intellectual Property Administration (test run, website: http://ggfw.cnipa.gov.cn:8010/PatentCMS_Center/) has been put into use and is available for queries.



9 Practical Tips on Trademark Protection in China

9.1 Online trademark search system

The public can inquire the information on application for trademark registration through the website of Trademark Office of National Intellectual Property Administration (<http://sbj.cnipa.gov.cn/sbcx/>). It shall be noted that the data information of the online trademark search system is not updated in real time, and there is a certain lag. It is only for reference and does not have legal effect.

9.2 Relevant tips on online application

Up to now, the Trademark Office has launched the online application functions including application for domestic registration of trademarks and application for change, license, assignment and renewal, application for international registration of trademarks, reexamination of refusal of trademark, trademark opposition, cancellation of registered trademark of which the use has ceased for three consecutive years, and invalidation of registered trademark.

When filing an application online, any party shall pay attention to the following points:

1. Acceptance time and temporary adjustment: the acceptance time of online applications by the Trademark Office is 08:00 to 20:00 on the statutory working days and holidays (except seven-day holiday for National Day and Spring Festival and system maintenance days). In case of temporary adjustment for some reasons, the time indicated in the announcement on the website shall prevail.



2. Compliance with submission standards: the submission of an electronic trademark application shall comply with the prescribed file formats, data standards, operation specifications and transmission methods. If the electronic trademark application documents fail to be normally received by the online trademark service system, these shall be deemed not to have been submitted.

3. Determination of submission date: the submission date of an electronic trademark application is subject to the time when the online service system of the Trademark Office receives the electronic trademark application documents or materials.

4. Incompatibility between electronic versions with paper versions: after a party submits an electronic trademark application, the Trademark Office will not accept any subsequent materials related to the application submitted in paper form.

5. Calculation of service period: the trademark documents electronically delivered by the Trademark Office shall be deemed to have been served on the parties within 15 days from the date of their issuance.

6. Check of system documents: for trademark documents electronically delivered by the Trademark Office, the parties shall timely log in the online service system of the Trademark Office to check. As the failure to log in or check does not fall under the failure to serve under Article 10 of the Regulations for the Implementation of the Trademark Law, the service shall not be made by an announcement.

The parties may click here to read the Guides for Online Trademark Applications (website: http://wssq.sbj.cnipa.gov.cn:9080/tmsve/wssqsy_getBullList.xhtml) before application for more details.



9.3 Interpretations of classification table of similar goods

The 45 categories in the Classification Table formulated by China contain category titles, [notes], and names of goods and services. The names of goods and services listed in the Classification Table are standard names. The Nice classification is revised annually and the Classification Table is adjusted accordingly.

It is impossible for the Classification Table to cover all similar goods and services. Whether goods or services are similar shall be determined based on the comprehensive judgment of the general understanding of the relevant public on the goods or services. The Classification Table may serve as a reference for trademark examiners, trademark agents and trademark registration applicants to judge similar goods or services, and for administrative and judicial organs to judge similar goods or services when handling trademark cases.

9.4 Strategic suggestions on trademark protection of enterprises

9.4.1 Make standardized use of trademarks after registration

In order to maintain the exclusive right of registered trademarks and prevent infringement risks, the trademark registrants shall standardize the use of registered trademarks. Generally speaking, the enterprises shall pay attention to the following points:

1. Principle of strict compliance: in principle, the trademark registrant using the registered trademark in commercial activities shall strictly keep the trademark pattern consistent with that as stated in the trademark registration certificate.

2. Nuance exception: where the trademark in actual use is slightly different from the trademark approved for registration, but the distinctive features of the



trademark have not been changed, it may be deemed as the use of the registered trademark.

3. Fixation of approved goods: the approved goods or services are listed after the trademark is approved for registration, and the actual use of the trademark cannot exceed the scope of approval.

4. Change of nominal address: a trademark registrant shall file an application for change with the Trademark Office in a timely manner in accordance with the law after any change occurs in the name, address of the trademark registrant and other matters concerning registration.

5. Standard marking: if a registered trademark is used, “registered trademark” or registration mark “®” “©” may be marked on the goods, goods packaging, instructions or other attachments.

6. Prohibition on well-known publicity: producers and operators shall not use the words of “well-known trademark” on goods, goods packaging or containers, or in advertising, exhibitions or other commercial activities, otherwise they will be ordered to make corrections and fined RMB 100,000.

9.4.2 Pay attention to generate and retain evidence of use to avoid the risk of trademark revocation

In order to avoid the risk of revocation of a trademark of which the use has ceased for three consecutive years, an enterprise shall generate and retain evidence of the use of the trademark in advance.

9.4.3 Establish early warning of exclusive right to use a trademark

An enterprise shall establish a comprehensive trademark monitoring system according to different needs, including but not limited to:

1. Monitoring of its own trademarks: an enterprise shall establish a



trademark archives management system, provide a complete list of trademarks, and make comprehensive monitoring of its trademarks, especially the renewal of the registered trademarks, so as to prevent the loss of the exclusive right to use the registered trademarks due to missing the renewal period.

2. Monitoring of another person's trademarks: by monitoring another person's trademarks, an enterprise can take timely actions to initiate procedures of trademark opposition or invalidation or revocation due to cessation of use for three consecutive years so as to avoid its own trademark rights from being affected. In addition, the monitoring of the competitors' trademarks can timely understand the competitors' latest business layout or trends.

3. Monitoring of torts: the field of e-commerce is a high incidence of trademark infringement. The monitoring of use of trademarks on major e-commerce platforms can timely find clues of infringement and eliminate potential risks of infringement as soon as possible.