

Trademark Registration

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Legal Basis

The Chinese Trademark Law came into force on March 1, 1983. It was revised on February 22, 1993 and the revised law came into force on July 1, 1993. On October 27, 2001, it was revised again and the revised law came into force on December 1, 2001. On August 13, 2013, it was amended for the third time, which took effect from May 1, 2014. On April 23, 2019, the Chinese Trademark Law was amended for the fourth time, which came into force on November 1, 2019. The corresponding Implementing Regulations of the Chinese Trademark Law was enforced on September 15, 2002, was revised on April 29, 2014, and came into force on May 1, 2014.

China became a member of the World Intellectual Property Organization (WIPO) on

June 3, 1980. On March 19, 1985, China acceded to the Paris Convention for the Protection of Industrial Property (Stockholm Act). China became party to the Madrid Agreement Concerning the International Registration of Marks on October 4, 1989 and the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks on December 1, 1995. China became a party to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks on August 9, 1994.

Types of Marks

The term "trademark" used in the trademark law refers to marks used on goods and for services. Collective marks and certification marks are also registrable.

Said collective marks mean signs, which are registered in the name of a group, an association or other organizations to be used by the members thereof in their commercial activities to indicate their membership of the organizations.

Said certification marks mean signs which are controlled by organizations capable of supervising certain goods or services and used by entities or individual persons outside the organization for their goods or services to certify the origin, material, mode of manufacture, quality or other characteristics of the goods or services.

Geographical indication can be registered as collective mark or certification mark.

Registrable Marks

Registrable marks are any visually perceptible signs capable of distinguishing the

source of goods or services, including words, devices, letters of an alphabet, numerals, three-dimensional signs, combination of colours as well as the combination of such signs.

Registered trademarks shall be so distinctive as to be distinguishable, and shall not conflict with any prior right acquired by another person.

Well-Known Trademarks

The Trademark Office is responsible for recognition and administration of well-known trademarks. When a mark is under the procedure of review on non-approval for registration and invalidation, the Trademark Review and Adjudication Board may recognize a well-known trademark on the case-by-case basis. When there is a dispute over the registrability or infringement of a mark, the court may recognize a mark as a well-known trademark on the case-by-case basis.

The following factors shall be considered in recognizing a well-known trademark:

- reputation of the trademark in the relevant sector of the public;
- duration of use of the trademark;
- duration, degree, and geographical scope of any publicity for the trademark;
- history of protection of the trademark as a well-known trademark; and
- other factors contributing to the reputation of the trademark.

A trademark shall not be registered where the trademark constitutes a reproduction,

an imitation, or a translation of a well-known trademark of another person not registered in China and is likely to create confusion, if the trademark is the subject of an application for registration in respect of goods which are identical with or similar to the goods to which the well-known trademark applies. The use of such trademark is also prohibited.

A trademark shall not be registered where the trademark constitutes a reproduction, an imitation, or a translation of a well-known trademark of another person already registered in China and is likely to mislead the public and damage the interests of the owner of the registered well-known trademark, if the trademark is the subject of an application for registration in respect of goods which are not identical with or similar to the goods to which the well-known trademark applies. The use of such trademark is also prohibited.

Signs Unregistrable as Marks

The following signs shall not be registered as trademarks:

- signs which consist exclusively of generic names, designs or models of the goods in respect of which the trademark is used;
- signs which consist exclusively of direct indications of the quality, primary raw materials, functions, use, weight, quantity or other characteristics of the goods in respect of which the trademark is used; or
- signs which are devoid of any distinctive character.

Signs mentioned in the preceding paragraphs may be registered as trademarks if they have acquired distinctive character through use and are capable of being readily identified and distinguished.

If a three-dimensional sign consists exclusively of the shape, which results from the nature of the goods themselves, the shape of goods, which is necessary to obtain a technical result, or the shape, which gives substantial value to the goods, it shall not be registered as a trademark.

Signs cannot be Used as Marks

The following signs shall not be used as trademarks:

- those identical with or similar to the national name, national flag, national emblem, military flag, or decorations, of the People's Republic of China, or identical with the names of the places or the names and designs of landmark buildings where the central government agencies located;
- those identical with or similar to the national names, national flags, national emblems or military flags of foreign countries, unless the foreign government agrees on the use;
- those identical with or similar to the names, flags or emblems, of international intergovernmental organizations, unless that the organizations agree on the use or the public is not likely to be misled by such use;
- those identical with or similar to official signs or hallmarks showing official

control or warranty, unless the use is otherwise authorized;

- those identical with or similar to the symbols, or names, of the Red Cross or the Red Crescent;
- those having the nature of discrimination against any nationality;
- those having the nature of exaggeration and fraud in advertising goods; and
- those detrimental to socialist morals or customs, or having other unhealthy influences.

The geographical name of an administrative division at or above the county level or a foreign geographical name well-known to the public shall not be used as a trademark, unless the geographical name has another meaning or the geographical name is used as a component part of a collective mark or a certification mark. Registered trademarks consisting of or containing geographical names shall continue to be valid.

Classification (INTERNATIONAL CLASSIFICATION OF GOODS AND SERVICES

Ver.11)

China adopts the International Classification of Goods and Services formulated pursuant to the Nice Convention on November 1, 1988.

Designated goods/services for a trademark application must be clear.

One application can only cover one class of goods/services.

Conventional Priority

Conventional priority can be claimed within six months from the date of filing outside China. Priority documents must be submitted to the Trademark Office within three months from the date of filing in China.

If a trademark is first used on goods exhibited at an international exhibition sponsored or recognized by the Chinese government, the applicant for registration of trademark has a right of priority for a period of six months from the date of exhibition of the goods.

First-to-File Rule

The Trademark Law adopts a first-to-file rule for obtaining trademark rights. The first applicant to file an application for registration of a mark will pre-empt all other later applications for the same mark in the same class. If two or more applications are filed for the same mark in the same class on the same day, the trademark used first shall be accepted.

Where an application to register a mark has been rejected due to its identity or similarity to a previously registered mark, evidence of prior use will not be helpful for the purpose of challenging the registration, unless the mark is proved to be "well-known" under the law.

Filing Requirement

It is important to note that each application shall cover only one trademark in one

class. Each application must include the following documents:

- Application form;
- Power of Attorney signed by the applicant. Notarization and legalization of the Power of Attorney is not required;
- One clear sample of the trademark, the length and width of which shall be no more than 10 cm and no less than 5 cm;
- Priority document, if priority is claimed;
- Certificate of Incorporation of the applicant.

Examination

Applications are examined as to the formality and substance. Examination to the formality will include the correctness of document and classification. Examination to the substance will include the registrability of the mark and possible conflict with prior rights.

Amendment of Application

Amendment is only possible when required by the Trademark Office. At the stage of substance examination, amendment may lead to the deletion of part of the mark or of the specification.

Failure to make an amendment required by the Trademark Office may lead to the refusal of the application.

Divisional application

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.

Publication

Applications that have passed examination will be published in the Trademark Gazette, published weekly, for opposition purpose.

Registration/Duration/Renewal

A mark will become registered if within the period of three months following its publication there is no opposition filed against its registration, or the opposition filed is decided not justifiable.

A registration is valid for ten years starting from the date of registration and can be renewed indefinitely, each time for ten years.

Renewal applications shall be made within six months before the expiration date or, subject to payment of an additional fee, within six months after the expiration date.

Each renewal application shall include an application for renewal of trademark registration, a Power of Attorney and Certificate of Incorporation.

Madrid Registrations

An international registration in China under the Madrid Agreement or Protocol can be effective by notifying the Madrid Union Office to add China to the list of registration countries for a particular mark. Under the Madrid Agreement or Protocol, the Trademark Office has the right to reject trademarks not conforming to the China Trademark Law.

Scope of Protection

A registered mark is protected in respect of the goods/services registered, unless it is recognized as well-known trademark. In particular, any of the following acts shall be an infringement upon a registered mark:

- to use a trademark that is identical with or similar to a registered trademark in relation to identical or similar goods without the authorization of the owner of the registered trademark;
- to sell goods using a trademark that is identical with or similar to a registered trademark in relation to identical or similar goods without the authorization of the owner of the registered trademark;
- to counterfeit or make, without authorization, representations of a registered trademark of another person, or sell such representations;
- to change a registered trademark and put goods bearing the changed trademark on market without authorization of the owner of the registered trademark; or

- to provide convenience intentionally for such acts as infringe upon others' exclusive rights of trademark use, to facilitate others to commit infringement on the exclusive rights of trademark use;
- to cause, in other respects, prejudice to the exclusive right of another person to use a registered trademark.

Review of Refusal and Appeal

An application that is refused by the Trademark Office may be appealed to the Trademark Review and Adjudication Board within fifteen days from receipt of the notification.

If any party is not satisfied with the decision made by the Trademark Review and Adjudication Board, he may institute a legal action in court within 30 days from receipt of the notification.

Opposition and Appeal

If any party raises an opposition within 3 months after the publication of a trademark, the Trademark Office shall make a written decision on the opposition.

Where the Trademark Office has made a decision to grant registration of the trademark, it shall issue a trademark registration certificate and publish it. If the opponent is not satisfied with the decision, it may apply to the Trademark Review and Adjudication Board for invalidation of the registered trademark. Where the Trademark Office has made a decision not to register the trademark, and the

opposed party is not satisfied with the decision, it may apply to the Trademark Review and Adjudication Board for a review. If the opposed party is not satisfied with the review decision of the Trademark Review and Adjudication Board, it may, within 30 days from the date of receipt of the decision, institute legal proceedings before people's court.

Invalidation and Appeal

Where a registered trademark belongs to the said signs unregistrable as marks or signs cannot be registered as marks, or registration was obtained by fraud or any other unfair means, the Trademark Office shall cancel the registered trademark and any organization or individual may request the Trademark Review and Adjudication Board to make an adjudication to cancel such a registered trademark.

The owner of a trademark or any interested party may, within five years from the date of registration, request the Trademark Review and Adjudication Board to make an adjudication to cancel the registered trademark in the following cases:

- the registered trademark constitutes a reproduction, an imitation, or a translation, of a well-known trademark of another person not registered in China in respect of identical or similar goods and is likely to create confusion;
- the registered trademark constitutes a reproduction, an imitation, or a translation, of a well-known trademark of another person already registered in China in respect of non-identical or dissimilar goods and is likely to mislead the

public and damage the interests of the owner of the registered well-known trademark;

- the registered trademark has been obtained by the agent or representative of the original trademark owner without authorization;
- the registered trademark consists of or contains a geographical indication in respect of goods not originating in the region indicated, to such an extent as to mislead the public, unless such registrations were made in good faith;
- the registered trademark is similar or identical with other' s trademarks on the same or similar goods;
- the registered trademark conflicts with prior right of another person;
- the registered trademark is identical with a trademark which has been used by another person and enjoys certain reputation, and the registration was obtained by unfair means.

Where the registration has been made in bad faith, the owner of a well-known trademark shall not be bound by the five-year time limit.

If any party is not satisfied with the decision made by the Trademark Review and Adjudication Board, an appeal can be filed before court within 30 days from receipt of the decision.

Cancellation

A registration is subject to cancellation if not in use for three consecutive years. Use of a trademark includes its use on goods, packages or containers, or in trading documents, advertising, exhibition or other business activities.

Examination and Trial Term

The Trademark Law stipulates the time limit for the Trademark Office and the Trademark Review and Adjudication Board to examine and trial the following application items:

Application	Examination Term (Months)	Extensible Time (Months)
Trademark application	9	
Review of refusal	9	3
Opposition	12	6
Review on non-approval for registration	12	6
Invalidation (Absolute reasons)	9	3
Review on invalidation (Absolute reasons)	9	3
Invalidation (Relative reasons)	12	6
Non-use Cancellation	9	3
Review on non-use cancellation	9	3

The following periods of time shall not be included in the time limit for trademark examination and review:

- The time of serving the documents;
- The time for a party to provide supplementary and the time for submitting new

response as a result of the change of a party;

- The time needed for submitting evidence on use, negotiating, and drawing lots, when there are applications filed on the same day for registration of the same trademark;

- The time of waiting for the determination of priority;

- The time of waiting for the results of another case involving prior rights upon request of the applicant.

Recordation of Change of Name/Address/Assignment/License

All changes of registrant including name and/or address shall be recorded with the Trademark Office. The recordal of change should be made for all the registered trademarks owned by the same registrant at the same time.

When applying for the assignment of a registered trademark, the assignor and assignee shall jointly file an application for assignment to the Trademark Office. The assignment shall take effect only after it is approved and published by the Trademark Office.

For ordinary trademark assignment, it is not necessary to submit the assignment agreement signed by both parties. It is only necessary to file the signed declaration of consent for assignment required by the Trademark Office. However, for special trademark transfer, such as bankruptcy liquidation, the assignment agreement signed by both parties must be submitted. In addition, in some cases, when the

Trademark Office deems it necessary, the assignment agreement signed by both parties should be submitted.

All the same or similar registered trademarks on the same goods or similar goods of the same registrant should be assigned at the same time. Assignment of pending trademark application is also possible.

Trademark license is to be recorded with the Trademark Office. The Trademark Office shall arrange publication of the trademark license.

Marking

The owner of a registered trademark has the right to use the wording "Registered Trademark" or the sign showing that the trademark is registered.

Registering the Chinese Version for a Latin Mark

Registering the Chinese version for a Latin mark is necessary if the Chinese version is to be used. Even if it is not to be used, registration of its Chinese version is also necessary if the Latin mark has de facto obtained its Chinese version that is well accepted by consumers especially when the mark is coined.

Representation

Any foreign nationals intending to apply for trademark registrations or to handle other trademark matters in China shall be represented by an agent licensed by the Chinese government.