

**Trademark Law
of the People's Republic of China
(2013 Revision)**

Passed by the 24th Session of the Standing Committee of the Fifth National People's Congress on 23 August 1982

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Chapter 1 General Principles

Article 1 This Law is formulated for the purposes of strengthening trademark administration, protecting exclusive rights to use trademark, promoting quality assurance for commodities and services by manufacturers and business operators, safeguarding

trademark reputation, protecting the interests of consumers, manufacturers and business operators, and promoting development of socialist market economy.

Article 2 The trademark bureau of the administration for industry and commerce department of the State Council shall be in charge of trademark registration and administration nationwide.

The administration for industry and commerce department of the State Council shall establish a trademark review and adjudication board to be responsible for handling trademark disputes.

Article 3 Trademarks approved and registered by the trademark bureau are registered trademarks, including commodity trademarks, service marks and collective trademarks, certification marks; trademark registrants enjoy exclusive rights to use trademark and are protected by the law.

A collective trademark referred to in this Law shall mean a mark registered in the name of a group, association or any other organization to be used by the organization's members in commercial activities and to indicate a user's membership in the said organization.

A certification mark referred to in this Law shall mean a mark controlled by an organization which has supervisory capacity over certain commodities or services to be used by organizations or individuals other than the said organization on their commodities or services to prove the place of origin, raw materials, manufacturing method, quality or other specific quality of the said commodities or services.

Specific matters pertaining to registration and administration of collective trademarks and certification marks shall be stipulated by the administration for industry and commerce department of the State Council.

Article 4 Natural persons, legal persons or any other organizations that need to obtain exclusive rights to use trademark for their commodities or services in the course of their manufacturing and business activities shall apply to a trademark bureau for trademark registration.

The provisions of this Law on trademarks for commodities shall apply to service marks.

Article 5 Two or more natural persons, legal persons or any other organizations may jointly apply to a trademark bureau for registration of the same trademark to jointly enjoy and exercise exclusive rights to use the said trademark.

Article 6 Commodities for which the use of registered trademark is stipulated by laws and administrative regulations shall apply for trademark registration, the commodities shall not be sold in the market prior to approval and registration.

Article 7 Application for registration and use of trademarks shall comply with the principles of honesty and trustworthiness.

Trademark users shall be responsible for the quality of the commodities which use the trademark. All levels of administration for industry and commerce shall curb consumer fraud activities through trademark administration.

Article 8 Any mark which can differentiate the commodities of a natural person, legal person or any other organization with the commodities of others, including text, graphics, alphabets, numbers, three-dimensional mark, color combination and sound, etc., and a combination of the aforesaid elements, may be registered as a trademark.

Article 9 A trademark to be registered shall possess distinctive characteristics to facilitate identification, and shall not conflict with prior legitimate rights obtained by others.

Trademark registrants shall have the right to state the wordings "registered trademark" or the registered mark.

Article 10 The following marks shall not be used as a trademark:

(1) a mark identical or similar to the country name, national flag, national emblem, national anthem, military flag, military emblem, military anthem, military medal, etc. of the People's Republic of China, and a mark identical to the name and logo of Central government agencies, name of the specific location where it is located or name or figure of landmark building;

(2) a mark identical or similar to the country name, national flag, national emblem, military flag of a foreign country, except with the consent of the said government;

(3) a mark identical or similar to the name, flag, emblem of an international inter-governmental organization, except with the consent of the said organization or where the public is unlikely to be misled;

(4) a mark identical or similar to an official logo or hallmark which indicates control or assurance, except where duly authorized;

(5) a mark identical or similar to the name or logo of "red cross", "red crescent";

(6) a mark which is racially discriminatory;

(7) a mark which is deceptive, easy to cause the public to be misled over the characteristics such as quality or place of origin of commodities; or

(8) a mark which is detrimental to socialist morals or has any other adverse impact.

Geographical names of administrative regions of county level and above or overseas geographical names well known by the public shall not be used as trademarks, except where a geographical name has any other meaning or where it is an integral part of a collective trademark or certification mark; trademarks bearing a geographical name which have been registered shall continue to be valid.

Article 11 The following marks shall not be registered as a trademark:

- (1) a mark which merely states the generic name, figure or model number of the commodities;
- (2) a mark which merely directly expresses the quality, key ingredients, functions, purposes, weight, quantity and other characteristics of the commodities; or
- (3) a mark which lacks salient features.

Where a mark mentioned in the preceding paragraph possesses salient features after use which can facilitate identification, it can be registered as a trademark.

Article 12 A three-dimensional mark which is merely a shape arising from the characteristics of the commodities or a shape of commodities required to obtain technical results or a shape which gives the commodities substantial value shall not be registered.

Article 13 Where the holder of a trademark which is well known by the relevant public is of the view that its rights are infringed upon, it may request for protection of well-known trademark pursuant to the provisions of this Law.

An application for registration of a trademark which is a replication, imitation or translation of other's well-known trademark not registered in China for use on identical or similar commodities which is easily misleading shall not be registered and the use of such a mark shall be prohibited.

An application for registration of a trademark which is a replication, imitation or translation of other's well-known trademark already registered in China for use on non-identical or non-similar commodities which is misleading to the public and may cause harm to the interests of the trademark registrant of the said well-known trademark shall not be registered and the use of such a mark shall be prohibited.

Article 14 Well-known trademarks shall be ascertained pursuant to the request of the party concerned for the purpose of ascertaining facts for handling of trademark cases. Ascertainment of a well-known trademark shall take into accounts the following factors:

- (1) the extent of the relevant public's familiarity with the said trademark;
- (2) the duration of continued use of the said trademark;

(3) the duration, extent and geographical scope of any promotional campaign for the said trademark;

(4) the record of the said trademark being protected as a well-known trademark; and

(5) any other factors for the said trademark's fame.

In the course of examination of trademark registration and handling of trademark-related illegal cases by the administration for industry and commerce, where a party concerned asserts its rights pursuant to the provisions of Article 13 of this Law, the trademark bureau may ascertain a well-known trademark based on the needs of examination and handling of the case.

In the course of handling trademark disputes, where a party concerned asserts its rights pursuant to the provisions of Article 13 of this Law, the trademark review and adjudication board may ascertain a well-known trademark based on the needs of handling the case.

In the course of trial of trademark-related civil and administrative cases, where a party concerned asserts its rights pursuant to the provisions of Article 13 of this Law, a People's Court designated by the Supreme People's Court may ascertain a well-known trademark based on the needs of trying the case.

Manufacturers and business operators shall not state the wordings "well-known trademarks" on commodities, commodity packaging or containers, or use the wordings in advertisements, promotions, exhibitions and other commercial activities.

Article 15 Where an agent or a representative registers the trademark of its principal in its own name without authorization, and the entrusting party raises an objection, the trademark shall not be registered and the use of such a trademark shall be prohibited.

For an application for registration of a trademark which is identical or similar to a unregistered trademark which has been used by another person for use on the same type of commodities or similar commodities, where the applicant is aware of the existence of the trademark due to contractual or business relationship or any other relationship with such person other than those stipulated in the preceding paragraph, and such person has raised an objection, the application shall not be approved.

Article 16 Where a trademark contains a geographical mark of the commodities, and the commodities are not sourced from the regions indicated by the said mark, thus misleading the public, the trademark shall not be registered and the use of such a trademark shall be prohibited, however, trademarks registered previously in good faith shall continue to be valid.

A geographical mark referred to in the preceding paragraph shall mean a mark which indicates that certain commodities are sourced from certain regions and in which the

specific quality, reputation or any other characteristics of the said commodities is mainly decided by the natural factors or human factors of the said region.

Article 17 Applications for trademark registration by foreigners or foreign enterprises in China shall be handled pursuant to the agreement executed between their country and the People's Republic of China or the international treaty to which their country and the People's Republic of China are participants, or pursuant to the principle of reciprocity.

Article 18 Applicants for trademark registration or any other trademark matters may handle the matter personally or entrust a trademark agency established pursuant to the law to handle the matter.

Foreigners or foreign enterprises applying for trademark registration in China and handling any other trademark matters shall entrust a trademark agency established pursuant to the law to handle the matter.

Article 19 Trademark agencies shall comply with the principle of honesty and trustworthiness, comply with laws and administrative regulations, handle trademark registration applications or any other trademark matters in accordance with the entrustment by the entrusting party; keep confidentiality of the entrusting party's commercial secrets which have come into its knowledge in the course of acting as an agent.

Where the trademark to be registered by the entrusting party may fall under the scope stipulated by this Law in which registration is not allowed, the trademark agency shall notify the entrusting party clearly.

Where a trademark agency is or should be aware that the trademark to be registered by the entrusting party falls under the circumstances stipulated in Article 15 and Article 32 of this Law, it shall not accept the entrustment.

The trademark agency shall not apply for registration of any other trademark in addition to the trademark registration as entrusted.

Article 20 Trademark agency industry organizations shall implement their member admission criteria stringently pursuant to the provisions of their articles of association and impose punishment on members who have violated the industry self-discipline norms. Trademark agency industry organizations shall promptly announce information pertaining to admission of members and punishment imposed on their members.

Article 21 International registration of trademarks shall comply with the system established by the relevant international treaty to which the People's Republic of China has concluded or acceded, the detailed measures shall be stipulated by the State Council.

Chapter 2 Trademark Registration Applications

Article 22 Applicants for trademark registration shall fill in the category and name of the commodities for which the trademark is used pursuant to the stipulated classification of commodities for the registration application.

Applicants for trademark registration may apply for registration of the same trademark through one application for commodities of various categories.

Trademark registration application documents may be submitted in hard copy or soft copy.

Article 23 Where it is necessary to obtain exclusive rights to use trademark for use of a registered trademark on commodities beyond the approved scope of use, a separate registration application shall be submitted.

Article 24 Where there is a need to change a registered trademark, a new registration application shall be submitted.

Article 25 Where an applicant for trademark registration submits a trademark registration application in China for the same trademark for identical commodities within six months from the date of submission of trademark registration application for the said trademark in a foreign country for the first time, the applicant shall enjoy pre-emptive rights pursuant to the agreement executed between the said foreign country and China or the international treaty to which the said foreign country and China are participants, or pursuant to the principle of mutual acknowledgement of pre-emptive rights.

An applicant asserting pre-emptive rights pursuant to the requirements of the preceding paragraph shall submit a written statement at the time of submission of trademark registration application, and submit the duplicate copy of the application documents for trademark registration for the first time within three months; failure to submit a written statement or failure to submit the duplicate copy of the application documents for trademark registration within the stipulated period shall be deemed as non-assertion of pre-emptive rights.

Article 26 Where a trademark is first used on commodities exhibited at an international exhibition organized or recognized by the Chinese Government, the applicant for trademark registration may enjoy pre-emptive rights within six months from the date of the exhibition of the said commodities.

Where the applicant asserts pre-emptive rights pursuant to the requirements of the preceding paragraph, it shall submit a written statement at the time of submission of trademark registration application, and submit proof documents for the name of exhibition of such commodities, proof of use of the said trademark on the commodities exhibited, date of exhibition, etc. within three months; failure to submit a written statement or failure to submit proof documents within the stipulated period shall be deemed as non-assertion of pre-emptive rights.

Article 27 Matters declared and materials submitted for trademark registration shall be true, accurate and complete.

Chapter 3 Examination and Approval of Trademark Registration

Article 28 For trademark registration applications, the trademark bureau shall complete examination within nine months from the date of receipt of the trademark registration application documents, a preliminary validation gazette shall be made for applications which comply with the relevant provisions of this Law.

Article 29 During the examination process, where the trademark bureau held that an explanation or correction is necessary for the contents of a trademark registration application, it may require the applicant to make the explanation or correction. The applicant's failure to make explanation or correction shall not affect the trademark bureau's making of an examination decision.

Article 30 Trademark to be registered which does not comply with the relevant provisions of this Law or the subject matter trademark which is identical or similar to a trademark registered by others for the same type of commodities or similar commodities or a trademark preliminarily validated shall be thrown out by the trademark bureau and shall not be gazetted.

Article 31 Where two or more applicants for trademark registration apply for registration of an identical or similar trademark for the same type of commodities or similar commodities, the earlier trademark registration shall be preliminarily validated and gazetted; where the trademark registration applications are submitted on the same day, the trademark which has been used earlier shall be preliminarily validated and gazetted, and the other applications shall be thrown out and shall not be gazetted.

Article 32 Trademark registration applications shall not harm existing prior rights of others, use of improper means to forestall registration of a trademark which is in use and has certain impact shall not be allowed.

Article 33 A prior rights holder or a stakeholder who held that a preliminarily validated and gazetted trademark violates the provisions of the second and third paragraphs of Article 13, Article 15, the first paragraph of Article 16, Article 30, Article 31 and Article 32 of this Law, or any person who held that a preliminarily validated and gazetted trademark violates the provisions of Article 10, Article 11 and Article 12 of this Law may raise an objection to the trademark bureau within three months from the date of gazette. Where no objection is raised during the gazette period, the trademark shall be registered, a trademark registration certificate shall be issued and the registered trademark shall be gazetted.

Article 34 For applications which are thrown out and trademarks which are not gazetted, the trademark bureau shall notify the trademark registration applicants in writing. A trademark registration applicant who disagrees with the decision may apply to the trademark review and adjudication board for review within 15 days from the date of receipt of the notice. The trademark review and adjudication board shall make a decision within nine months from the date of receipt of the application, and notify the applicant in writing. Where there is a need for extension of time under special circumstances, upon approval by the administration for industry and commerce department of the State Council, a three-month extension may be allowed. A party concerned who disagrees with the decision of the trademark review and adjudication board may file a lawsuit with a People's Court within 30 days from the date of receipt of the notice.

Article 35 In the case of an objection raised for a preliminarily validated and gazetted trademark, the trademark bureau shall heed the facts and reasons stated by the party which raises the objection and the party against whom the objection is raised, upon investigation and verification, the trademark bureau shall decide on registration or non-registration within 12 months from the date of expiry of the gazette period, and notify the party which raises the objection and the party against whom the objection is raised in writing. Where there is a need for extension of time under special circumstances, upon approval by the administration for industry and commerce department of the State Council, a six-month extension may be allowed.

Where a decision for registration is made, the trademark bureau shall issue a trademark registration certificate to successful registrants and the registered trademark shall be gazetted. Where the party which raises the objection disagrees with the decision, it may apply to the trademark review and adjudication board pursuant to the provisions of Article 44 and Article 45 of this Law for invalidation of the said registered trademark.

Where a decision for non-registration is made by the trademark bureau and the party against whom the objection is made disagrees with the decision, it may apply to the trademark review and adjudication board for review within 15 days from the date of receipt of the notice. The trademark review and adjudication board shall make a review decision within 12 months from the date of receipt of the application, and notify the party which raises the objection and the party against whom the objection is raised in writing. Where there is a need for extension of time under special circumstances, upon approval by the administration for industry and commerce department of the State Council, a six-month extension may be allowed. Where the party against whom the objection is made disagrees with the decision of the trademark review and adjudication board, it may file a lawsuit with a People's Court within 30 days from the date of receipt of the notice. The People's Court shall notify the party which raises the objection that it is listed as a third party in the lawsuit.

Where the determination of prior rights involved in a review by the trademark review and adjudication board pursuant to the provisions of the preceding paragraph is to be based on the outcome of the trial of a lawsuit by a People's Court or the outcome of another case

currently handled by the administrative authorities, examination may be suspended. The examination procedures shall be resumed upon elimination of the reason(s) for the suspension.

Article 36 Upon expiry of the statutory period, where a party concerned does not apply for review for a decision of the trademark bureau to throw out an application or a non-registration decision of the trademark bureau or does not file a lawsuit with a People's Court against a review decision of the trademark review and adjudication board, the decision to throw out an application, non-registration decision or review decision shall take effect.

For a trademark which is registered after an objection is examined and found to be unjustifiable, the trademark registration applicant shall be deemed to have obtained exclusive rights to use the trademark on the date of expiry of a three-month period from the preliminary validation and gazette. During the period from the date of expiry of gazette period for the said trademark to the date of registration decision, the rights shall not apply retrospectively on the use of a mark identical or similar to the said trademark by others on the same type of commodities or similar commodities; however, where the malice use of the user causes the trademark registrant to suffer losses, such user(s) shall make compensation.

Article 37 Trademark registration applications and trademark review applications shall be promptly examined.

Article 38 A trademark registration applicant or a registrant who discovers an obvious error in its trademark application documents or registration documents may apply for correction to be made. The trademark bureau shall make correction within its terms of reference pursuant to the law, and notify the party(ies) concerned.

Correction of error referred to in the preceding paragraph shall not involve substantive contents of the trademark application documents or registration documents.

Chapter 4 Renewal, Change, Transfer and Licensing of Registered Trademarks

Article 39 A registered trademark shall be valid for 10 years, commencing from the date of registration.

Article 40 Upon expiry of the validity period of a registered trademark, where the trademark registrant intends to continue using the trademark, it shall complete renewal formalities pursuant to the provisions within the 12-month period before the expiry date; where renewal formalities are not completed within the stipulated period, a six-month extension may be allowed. The validity period of each renewal shall be 10 years, commencing from the date following expiry of the preceding validity period of the said

trademark. Where renewal formalities are not completed upon expiry of the validity period, the registered trademark shall be cancelled.

The trademark bureau shall gazette renewed registered trademarks.

Article 41 In the event of change of name or address of the registrant or change in any other registration matters of a registered trademark, an application for change shall be submitted.

Article 42 In the case of transfer of registered trademark, the transferor and the transferee shall enter into a transfer agreement, and jointly submit an application to the trademark bureau. The transferee shall ensure the quality of the commodities on which the said registered trademark is used.

In the case of transfer of registered trademark, any similar trademark registered by the trademark registrant for the same type of commodities, or any identical or similar trademark for similar commodities shall be transferred together.

Transfers which may easily cause confusion or any other adverse impact shall not be approved by the trademark bureau, the applicant shall be notified in writing and the reason shall be stated.

Upon approval of transfer of a registered trademark, the transfer shall be gazetted. The transferee shall enjoy exclusive rights to use trademark within effect from the date of gazette.

Article 43 A trademark registrant may execute a trademark licensing contract to license the use of its registered trademark to others. The licensor shall supervise the quality of commodities on which the said registered trademark is used by the licensee. The licensee shall ensure the quality of commodities on which the said registered trademark is used.

For licensed use of a registered trademark, the name of the licensee and the place of origin of the commodities shall be stated on the commodities on which the said registered trademark is used.

For licensed use of a registered trademark, the licensor shall file record of the licensing of the said trademark with the trademark bureau, and the licensing shall be gazetted by the trademark bureau. Non-filing of the licensing of a trademark shall not be contested against a good faith third party.

Chapter 5 Invalidation of Registered Trademarks

Article 44 Where a registered trademark violates the provisions of Article 10, Article 11 or Article 12 of this Law, or the registration is obtained using fraudulent means or other

improper means, the registered trademark shall be invalidated by the trademark bureau; any other organization or individual may request that the trademark review and adjudication board declares the said registered trademark invalid.

Where the trademark bureau has made a decision on declaration of a registered trademark to be invalid, the party(ies) concerned shall be notified in writing. Where a party concerned disagrees with the decision of the trademark bureau, it may apply to the trademark review and adjudication board for review within 15 days from the date of receipt of the notice. The trademark review and adjudication board shall make a decision within nine months from the date of receipt of the application, and the party concerned shall be notified in writing. Where there is a need for extension of time under special circumstances, upon approval by the administration for industry and commerce department of the State Council, a three-month extension may be allowed. Where the party concerned disagrees with the decision of the trademark review and adjudication board, it may file a lawsuit with a People's Court within 30 days from the date of receipt of the notice.

Where any other organization or individual requests that the trademark review and adjudication board declare a registered trademark invalid, the trademark review and adjudication board shall, upon receipt of the application, notify the relevant party(ies) concerned in writing, and enter a plea within the stipulated period. The trademark review and adjudication board shall make a ruling on upholding or invalidation of the registered trademark within nine months from the date of receipt of the application, and notify the party concerned in writing. Where there is a need for extension of time under special circumstances, upon approval by the administration for industry and commerce department of the State Council, a three-month extension may be allowed. Where the party concerned disagrees with the ruling of the trademark review and adjudication board, it may file a lawsuit with a People's Court within 30 days from the date of receipt of the notice. The People's Court shall notify the counterparty in the trademark adjudication procedures that it is listed as a third party in the lawsuit.

Article 45 Where a registered trademark violates the provisions of the second and third paragraphs of Article 13, Article 15, the first paragraph of Article 16, Article 30, Article 31 or Article 32 of this Law, a prior rights holder or a stakeholder may, within five years from the date of trademark registration, request that the trademark review and adjudication board declares the said registered trademark invalid. For malicious registrations, holders of well-known trademarks shall not be subject to the five-year restriction.

The trademark review and adjudication board shall, upon receipt of an application for invalidation of registered trademark, notify the relevant party(ies) concerned in writing, and enter a plea within the stipulated period. The trademark review and adjudication board shall make a ruling on upholding or invalidation of registered trademark within 12 months from the date of receipt of the application, and notify the party(ies) concerned in writing. Where there is a need for extension of time under special circumstances, upon approval by the administration for industry and commerce department of the State Council, a six-month

extension may be allowed. Where a party concerned disagrees with the ruling of the trademark review and adjudication board, it may file a lawsuit with a People's Court within 30 days from the date of receipt of the notice. The People's Court shall notify the counterparty in the trademark adjudication procedures that it is listed as a third party in the lawsuit.

During the examination of a request for invalidation by the trademark review and adjudication board pursuant to the provisions of the preceding paragraph, where the determination of prior rights involved is to be based on the outcome of the trial of a lawsuit by a People's Court or the outcome of another case currently handled by the administrative authorities, examination may be suspended. The examination procedures shall be resumed upon elimination of the reason(s) for the suspension.

Article 46 Upon expiry of the statutory period, where a party concerned does not apply for a review in respect of the decision of the trademark bureau on invalidation of a registered trademark or does not file a lawsuit with a People's Court against the review decision of the trademark review and adjudication board or the ruling on upholding or invalidation of registered trademark, the decision of the trademark bureau or the review decision or ruling of the trademark review and adjudication board shall take effect.

Article 47 Registered trademarks invalidated pursuant to the provisions of Article 44 or Article 45 of this Law shall be gazetted by the trademark bureau, the exclusive rights to use the said registered trademark shall be deemed non-existent from the beginning.

A decision or ruling on invalidation of registered trademark shall not apply retrospectively on a judgment or ruling for a trademark infringement lawsuit passed by a People's Court prior to the invalidation which has been implemented, a mediation letter, a handling decision on a trademark infringement case made by the administration for industry and commerce which has been implemented or a trademark transfer or licensing contract which has been performed. However, where the malice of the trademark registrant causes others to suffer losses, the trademark registrant shall make compensation.

Where non-refund of trademark infringement compensation, trademark transfer fee or trademark licensing fee pursuant to the provisions of the preceding paragraph is evidently in violation of the principle of fairness, full or partial amount shall be refunded.

Chapter 6 Administration of Trademark Use

Article 48 Trademark use referred to in this Law shall mean use of a trademark on commodities, commodity packaging or containers and commercial transaction documents, or use of a trademark in advertisement and promotion, exhibition and other commercial activities, for identifying the source of commodities.

Article 49 Trademark registrants who make arbitrary changes to a registered trademark, the registrant's name or address or any other registration matter in the course of use of a registered trademark shall be ordered by the local administration for industry and commerce to make correction within a stipulated period; where correction is not made within the stipulated period, the registered trademark shall be revoked by the trademark bureau.

Where a registered trademark becomes a generic name of the commodities for which it is approved or a registered trademark has not been used for three years consecutively without a proper reason, any organization or individual may apply to the trademark bureau for revocation of the said registered trademark. The trademark bureau shall make a decision within nine months from the date of receipt of the application. Where there is a need for extension of time under special circumstances, upon approval by the administration for industry and commerce department of the State Council, a three-month extension may be allowed.

Article 50 Where a registered trademark is revoked, invalidated or not renewed upon expiry of its validity period, the trademark bureau shall, within one year from the date of revocation, invalidation or cancellation, not approve trademark registration applications for trademarks identical or similar to the said trademark.

Article 51 Persons who violate the provisions of Article 6 of this Law shall be ordered by the local administration for industry and commerce to submit registration application within a stipulated period, a fine of not more than 20% of the illegal turnover may be imposed on persons whose illegal turnover is RMB50,000 or more; where there is no illegal turnover or the illegal turnover is below RMB50,000, a fine of not more than RMB10,000 may be imposed.

Article 52 Persons who use a unregistered trademark to pose off as a registered trademark or whose use of a unregistered trademark violates the provisions of Article 10 of this Law shall be curbed by the local administration for industry and commerce and ordered to make correction within a stipulated period, and the punishment decision may be circulated, a fine of not more than 20% of the illegal turnover may be imposed on persons whose illegal turnover is RMB50,000 or more; where there is no illegal turnover or the illegal turnover is below RMB50,000, a fine of not more than RMB10,000 may be imposed.

Article 53 Persons who violate the provisions of the fifth paragraph of Article 14 of this Law shall be ordered by the local administration for industry and commerce to make correction and be subject to a fine of RMB100,000.

Article 54 Where a party concerned disagrees with the decision on revocation or non-revocation of registered trademark by the trademark bureau, it may apply to the trademark review and adjudication board for review within 15 days from the date of receipt of the notice. The trademark review and adjudication board shall make a decision within nine months from the date of receipt of the application, and notify the party(ies) concerned in

writing. Where there is a need for extension of time under special circumstances, upon approval by the administration for industry and commerce department of the State Council, a three-month extension may be allowed. Where a party concerned disagrees with the decision of the trademark review and adjudication board, it may file a lawsuit with a People's Court within 30 days from the date of receipt of the notice.

Article 55 Upon expiry of the statutory period, where a party concerned does not apply for a review in respect of the decision of the trademark bureau on revocation of a registered trademark or does not file a lawsuit with a People's Court against the review decision of the trademark review and adjudication board, the decision on revocation of registered trademark or the review decision shall take effect.

Revoked registered trademarks shall be gazetted by the trademark bureau, the exclusive rights to use registered trademarks shall terminate on the date of gazette.

Chapter 7 Protection of Exclusive Rights to Use Registered Trademarks

Article 56 Exclusive rights to use a registered trademark shall be limited to the approved registered trademark and the commodities for which the trademark is approved for use.

Article 57 Any of the following acts shall be deemed as infringement of exclusive rights to use registered trademarks:

- (1) use of a trademark identical to a registered trademark on the same type of commodities without licensing by the trademark registrant;
- (2) use of a trademark similar to a registered trademark on the same type of commodities without licensing by the trademark registrant, or use of a trademark identical or similar to the registered trademark on similar commodities which easily causes confusion;
- (3) sale of commodities which infringe upon exclusive rights to use registered trademarks;
- (4) forgery or unauthorized manufacturing of labels of other's registered trademark or sale of forged or unauthorized labels of other's registered trademark;
- (5) change of a registered trademark without the consent of the trademark registrant, and sale of commodities bearing the changed trademark in the market;
- (6) intentionally facilitating infringement of other's exclusive rights to use trademarks, assisting others in implementation of infringement of exclusive rights to use trademarks; or
- (7) causing harm to other's exclusive rights to use registered trademarks.

Article 58 Use of other's registered trademark or an unregistered well-known trademark as an enterprise name to mislead the public which constitutes unfair competition shall be dealt with pursuant to the Anti-unfair Competition Law of the People's Republic of China.

Article 59 In the case of a generic name, figure or model number of commodities in a registered trademark or direct expression of the quality, key ingredients, functions, purposes, weight, quantity and other characteristics of commodities in a registered name or a geographical name in a registered trademark, the holder of exclusive rights to use trademarks shall have no right to prohibit proper use by others.

In the case of a shape arising from the characteristics of the commodities in a registered three-dimensional trademark or a shape of commodities required to obtain technical results in a registered three-dimensional trademark or a shape which gives the commodities substantial value in a registered three-dimensional trademark, the holder of exclusive rights to use trademarks shall have no right to prohibit proper use by others.

Prior to a trademark registration application by a trademark registrant, where another party has used a trademark which is identical or similar to the registered trademark and has a certain reputation on the same type of commodities or similar commodities before the trademark registrant, the holder of exclusive rights to use registered trademarks shall have no right to prohibit the said user to continue use of the said trademark within the original scope of use, but may request that the user to insert appropriate additional distinguishing mark(s).

Article 60 In the event of a dispute arising from any of the acts of infringement of exclusive rights to use registered trademarks mentioned in Article 57 of this Law, the parties concerned shall negotiate for resolution; where the parties concerned are unwilling to negotiate or where negotiation is unsuccessful, the trademark registrant or a stakeholder may file a lawsuit with a People's Court or request that the administration for industry and commerce handles the dispute.

Where the administration for industry and commerce handling the dispute held that there is infringement, the infringer shall be ordered to stop the infringing act, the infringing commodities and the tools mainly used for manufacturing of the infringing commodities and forgery of registered trademark labels shall be confiscated and destroyed; for persons whose illegal turnover is RMB50,000 or more, a fine of not more than five times the amount of illegal turnover may be imposed; where there is no illegal turnover or the illegal turnover is below RMB50,000, a fine of not more than RMB250,000 may be imposed. Persons who have committed trademark infringement on two or more occasions within five years or persons who have committed other serious offences shall be subject to severe punishment. In the case of persons who engage in sale of commodities which infringe upon exclusive rights to use registered trademarks without knowledge of the infringement, where it can be proven that the commodities are obtained legitimately and the supplier of the said commodities can be stated, the offender shall be ordered by the administration for industry and commerce to stop selling the infringing commodities.

In the case of a dispute over the compensation amount for infringement of exclusive rights to use trademarks, the party concerned may request for mediation by the administration for industry and commerce handling the matter, and may file a lawsuit with a People's Court pursuant to the Civil Procedural Law of the People's Republic of China. Upon mediation by the administration for industry and commerce, where the parties concerned are unable to conclude an agreement or the mediation letter which has taken effect is not performed, the parties concerned may file a lawsuit with a People's Court pursuant to the Civil Procedural Law of the People's Republic of China.

Article 61 The administration for industry and commerce shall have the right to investigate infringement of exclusive rights to use registered trademarks pursuant to the law; where the case constitutes a criminal offence, the case shall be promptly forwarded to the judicial authorities for handling pursuant to the law.

Article 62 Administration for industry and commerce of county level and above may exercise the following powers in the investigation of an alleged infringement of other's exclusive rights to use registered trademarks based on the evidence or reporting of an illegal act or a suspect:

(1) interview the relevant party(ies) concerned, investigate into information pertaining to infringement of other's exclusive rights to use registered trademarks;

(2) read or make copies of contracts, invoices, accounts books and other relevant materials of the party(ies) concerned which relate to the infringement activities;

(3) conduct onsite inspection of the premises of the party(ies) concerned where the infringement of other's exclusive rights to use registered trademarks is allegedly committed; or

(4) inspect articles which relate to the infringement activities; may seize or confiscate articles for which there is evidence to prove infringement of other's exclusive rights to use registered trademarks.

When the administration for industry and commerce exercises the powers stipulated in the preceding paragraph pursuant to the law, the party(ies) concerned shall assist or render cooperation, and shall not refuse or hinder.

In the course of investigation of a trademark infringement case, where there is dispute over the ownership of trademark rights or the rights holder has simultaneously filed a trademark infringement lawsuit with a People's Court, the administration for industry and commerce may suspend investigation of the case. Upon elimination of the reason(s) for suspension, the investigation procedures shall be resumed or terminated.

Article 63 The compensation amount for infringement of exclusive rights to use trademarks shall be determined in accordance with the actual losses suffered by the rights

holder due to the infringement; where it is difficult to determine the actual losses, the compensation amount may be determined in accordance with the gains derived by the infringer from the infringement; where it is difficult to determine the losses of the rights holder or the gains derived by the infringer, the compensation amount shall be determined reasonably with reference to the multiples of the licensing fee of the said trademark. For malicious infringement of exclusive rights to use trademarks, in serious cases, the compensation amount shall be determined in accordance with the aforesaid method based on one to three times of the determined amount. The compensation amount shall include reasonable expenses incurred by the rights holder to curb the infringement.

In the determination of compensation amount by the People's Court, where the rights holder has provided proof to its best effort, and the accounts books and materials relating to the infringement are held by the infringer, the People's Court may order the infringer to provide accounts books and materials relating to the infringement; where the infringer does not provide accounts books and materials or where the accounts books and materials provided are false, the People's Court may determine the compensation amount with reference to the assertion of the rights holder and the evidence provided.

Where it is difficult to determine the actual losses suffered by the rights holder due to the infringement or the gains derived by the infringer from the infringement or the licensing fee of the registered trademark, the People's Court shall rule on a compensation amount of not more than RMB3 million based on the extent of the infringement.

Article 64 Where a holder of exclusive rights to use registered trademarks seeks compensation, the alleged infringer pleaded that the holder of exclusive rights to use registered trademarks has not used the registered trademark, the People's Court may require the holder of exclusive rights to use registered trademarks to provide evidence of actual use of the said registered trademark during the preceding three-year period. Where the holder of exclusive rights to use registered trademark cannot prove that it has actually used the said registered trademarks during the preceding three-year period, and cannot prove that it has suffered other losses due to the infringement, the alleged infringer shall not bear compensation liability.

Where a person who engages in sale of commodities which infringe upon exclusive rights to use registered trademarks without knowledge of the infringement can prove that the said commodities are obtained legitimately and the supplier of the said commodities can be stated, it shall not bear compensation liability.

Article 65 Where a trademark registrant or a stakeholder has evidence to prove that others are implementing or are going to implement infringement of its exclusive rights to use registered trademarks, and that it will suffer irreparable damage of its legitimate interests if the infringement is not stopped promptly, it may, prior to the lawsuit, apply to the People's Court pursuant to the law for an order to stop the relevant act(s) and for property preservation measures.

Article 66 For the purpose of curbing an infringement, where the evidence may be lost or destroyed or difficult to obtain in the future, a trademark registrant or a stakeholder may, prior to the lawsuit, apply to the People's Court for preservation of evidence pursuant to the law.

Article 67 Where the use of a trademark identical to a registered trademark on the same type of commodities without licensing by the trademark registrant constitutes a criminal offence, in addition to compensation of the losses of the infringed party, criminal liability shall be pursued in accordance with the law.

Where the forgery or unauthorized manufacturing of other's registered trademark labels or sale of forged or unauthorized registered trademark labels constitutes a criminal offence, in addition to compensation of the losses of the infringed party, criminal liability shall be pursued in accordance with the law.

Where the sale of commodities bearing a counterfeited registered trademark when the seller is aware of the counterfeit constitutes a criminal offence, in addition to compensation of the losses of the infringed party, criminal liability shall be pursued in accordance with the law.

Article 68 Trademark agencies which commit any of the following acts shall be ordered by the administration for industry and commerce to make correction within a stipulated period and be subject to a warning and a fine ranging from RMB10,000 to RMB100,000; the person(s)-in-charge who is/are directly responsible and other directly accountable personnel shall be subject to a warning and a fine ranging from RMB5,000 to RMB50,000; where the case constitutes a criminal offence, criminal liability shall be pursued in accordance with the law:

(1) forgery or alteration of legal documents, seals or signatures or use of forged or altered legal documents, seals or signatures in the course of handling trademark matters;

(2) solicitation of trademark agency business by defaming other trademark agencies, etc or use of improper means to disrupt the order of the trademark agency market; or

(3) violation of the provisions of the third and fourth paragraphs of Article 19 of this Law.

Trademark agencies which commit any of the acts stipulated in the preceding paragraph shall be recorded in the trustworthiness files of the administration for industry and commerce; in serious cases, the trademark bureau and the trademark review and adjudication board may decide to suspend acceptance of applications submitted by them as a trademark agent, and an announcement shall be made.

Trademark agencies which violate the principles of honesty and trustworthiness and harm the legitimate interests of an entrusting party shall bear civil liability pursuant to the law, and

shall be punished by the trademark agency industry organization pursuant to the provisions of its articles of association.

Article 69 State agency officers engaging in trademark registration, administration and review shall carry out law enforcement impartially, exercise probity and self-discipline, act with dedication, and provide services in a civilized manner.

Trademark bureau and the trademark review and adjudication board and State agency officers engaging in trademark registration, administration and review shall not engage in trademark agency business and manufacturing and business activities of commodities.

Article 70 Administration for industry and commerce shall establish and improve upon an internal supervision system, carry out supervision and inspection of implementation of laws, administrative regulations and discipline by State agency officers responsible for trademark registration, administration and review.

Article 71 In the case of State agency officers engaging in trademark registration, administration and review guilty of dereliction of duty, abusing official powers or corruption, handling trademark registration, administration and review matters in an illegal manner, receiving monies from a party concerned, or seeking improper gains, where the case constitutes a criminal offence, criminal liability shall be pursued in accordance with the law; where the case does not constitute a criminal offence, punishment shall be imposed pursuant to the law.

Chapter 8 Supplementary Provisions

Article 72 Fees shall be paid for trademark registration applications and handling of other trademark matters, detailed fee rates shall be stipulated separately.

Article 73 This Law shall be effective 1 March 1983. The Administrative Regulations on Trademarks promulgated by the State Council on 10 October 1963 shall be repealed simultaneously; where there is any discrepancy between this Law and other provisions on trademark administration, such other provisions shall become void simultaneously.

Trademarks registered prior to implementation of this Law shall continue to be valid.