

中华人民共和国商标法（2019年修订）

Trademark Law of the People's Republic of China (Revised in 2019)

中华人民共和国主席令第29号 2019年4月23日

Order of the President of the People's Republic of China No.29 April 23, 2019

（1982年8月23日第五届全国人民代表大会常务委员会第二十四次会议通过根据1993年2月22日第七届全国人民代表大会常务委员会第三十次会议《关于修改〈中华人民共和国商标法〉的决定》第一次修正 根据2001年10月27日第九届全国人民代表大会常务委员会第二十四次会议《关于修改〈中华人民共和国商标法〉的决定》第二次修正 根据2013年8月30日第十二届全国人民代表大会常务委员会第四次会议《关于修改〈中华人民共和国商标法〉的决定》第三次修正 根据2019年4月23日第十三届全国人民代表大会常务委员会第十次会议《关于修改〈中华人民共和国建筑法〉等八部法律的决定》第四次修正）

(Adopted at the 24th Meeting of the Standing Committee of the Fifth National People's Congress on August 23, 1982; amended for the first time in accordance with the Decision on Revising the Trademark Law of the People's Republic of China adopted at the 30th Meeting of the Standing Committee of the Seventh National People's Congress on February 22, 1993; amended for the second time in accordance with the Decision on Revising the Trademark Law of the People's Republic of China adopted at the 24th Meeting of the Standing Committee of the Ninth National People's Congress on October 27, 2001; amended for the third time in accordance with the Decisions on Revising the Trademark Law of the People's Republic of China adopted at the Fourth Meeting of the Standing Committee of the 12th National People's Congress on August 30, 2013; and amended for the fourth time in accordance with the Decision on Revising Eight Laws Including the Construction Law of the People's Republic of China adopted at the Tenth Meeting of the Standing Committee of the 13th National People's Congress on April 23, 2019)

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第一章 总则 Chapter I General Provisions

第一条 为了加强商标管理，保护商标专用权，促使生产、经营者保证商品和服务质量，维护商标信誉，以保障消费者和生产、经营者的利益，促进社会主义市场经济的发展，特制定本法。

Article 1 The Trademark Law of the People's Republic of China (hereinafter referred to as "the Law") is enacted for the purposes of improving the administration of trademarks, protecting the exclusive right to use a trademark, encouraging producers or operators to guarantee the quality of their goods or services and maintain the reputation of their trademarks, with a view to protecting the interests of consumers, producers and operators and promoting the development of the socialist market economy.

第二条 国务院工商行政管理部门商标局主管全国商标注册和管理的工作。

国务院工商行政管理部门设立商标评审委员会，负责处理商标争议事宜。

Article 2 The administrative department for industry and commerce under the State Council has established a Trademark Office to take charge of matters concerning trademark registration and administration throughout the country.

The administrative department for industry and commerce under the State Council has established a Trademark Review and Adjudication Board to be responsible for handling of trademark disputes.

第三条 经商标局核准注册的商标为注册商标，包括商品商标、服务商标和集体商标、证明商标；商标注册人享有商标专用权，受法律保护。

本法所称集体商标，是指以团体、协会或者其他组织名义注册，供该组织成员在商事活动中使用，以表明使用者在该组织中的成员资格的标志。

本法所称证明商标，是指由对某种商品或者服务具有监督能力的组织所控制，而由该组织以外的单位或者个人使用于其商品或者服务，用以证明该商品或者服务的原产地、原料、制造方法、质量或者其他特定品质的标志。

集体商标、证明商标注册和管理的特殊事项，由国务院工商行政管理部门规定。

Article 3 "Registered trademark" refers to trademarks that have been approved by and registered with the Trademark Office, including goods marks, service marks, collective marks and certification marks. The registrant of a trademark enjoys the exclusive right to use the trademark, which shall be protected by law.

"Collective mark" in the Law refers to a mark registered in the name of a group, association, or any other organization and used in business activities by its members to indicate their membership.

"Certification mark" in the Law refers to a mark which is controlled by an organization that exercises supervision over particular goods or services and which is used to indicate that third-party goods or services meet certain standards pertaining to place of origin, raw materials, mode of manufacture, quality, or other specific characteristics.

Special matters pertaining to the registration and administration of collective marks and certification marks shall be specified by the administrative department for industry and commerce under the State Council.

第四条 自然人、法人或者其他组织在生产经营活动中，对其商品或者服务需要取得商标专用权的，应当向商标局申请商标注册。不以使用为目的的恶意商标注册申请，应当予以驳回。

本法有关商品商标的规定，适用于服务商标。

Article 4 Any natural person, legal person, or other organizations that needs to acquire the exclusive right to use a trademark in the production and operation activities shall file an application for trademark registration with the Trademark Office. The application for trademark registration that is malicious and not filed for the purpose of use shall be refused.

Provisions of the Law regarding goods marks apply to service marks.

第五条 两个以上的自然人、法人或者其他组织可以共同向商标局申请注册同一商标，共同享有和行使该商标专用权。

Article 5 Two or more natural persons, legal persons, or other organizations may jointly file an application for the registration of the same trademark with the Trademark Office, jointly enjoying and exercising the exclusive right to use the trademark.

第六条 法律、行政法规规定必须使用注册商标的商品，必须申请商标注册，未经核准注册的，不得在市场销售。

Article 6 With respect to goods requiring the use of a registered trademark according to the laws and administrative laws and regulations, an application for trademark registration shall be filed; the goods may not be sold on the market before the registration thereof is approved.

第七条 申请注册和使用商标，应当遵循诚实信用原则。

商标使用人应当对其使用商标的商品质量负责。各级工商行政管理部门应当通过商标管理，制止欺骗消费者的行为。

Article 7 The application for registration and use of a trademark shall be based on the principle of good faith.

Users of a trademark shall be liable for the quality of the goods on which the trademark is used. The administrative department for industry and commerce at all levels shall, through the administration of trademarks, prohibit any practice that defrauds the consumers.

第八条 任何能够将自然人、法人或者其他组织的商品与他人的商品区别开的标志，包括文字、图形、字母、数字、三维标志、颜色组合和声音等，以及上述要素的组合，均可以作为商标申请注册。

Article 8 Any sign that distinguishes the goods of a natural person, legal person, or other organizations from those of others, including any word, device, letter, number, three-dimensional sign, color combination, sound and combination thereof, may be registered as a trademark.

第九条 申请注册的商标，应当有显著特征，便于识别，并不得与他在先取得的合法权利相冲突。

商标注册人有权标明“注册商标”或者注册标记。

Article 9 The trademark applied for registration shall have distinctive characteristics for identification, and shall not conflict with the prior legitimate rights of others.

The registrant of a trademark has the right to indicate the wording 'Registered Trademark' or a sign indicating that it is registered.

第十条 下列标志不得作为商标使用：

（一）同中华人民共和国的国家名称、国旗、国徽、国歌、军旗、军徽、军歌、勋章等相同或者近似的，以及同中央国家机关的名称、标志、所在地特定地点的名称或者标志性建筑物的名称、图形相同的；

（二）同外国的国家名称、国旗、国徽、军旗等相同或者近似的，但经该国政府同意的除外；

（三）同政府间国际组织的名称、旗帜、徽记等相同或者近似的，但经该组织同意或者不易误导公众的除外；

（四）与表明实施控制、予以保证的官方标志、检验印记相同或者近似的，但经授权的除外；

（五）同“红十字”、“红新月”的名称、标志相同或者近似的；

（六）带有民族歧视性的；

（七）带有欺骗性，容易使公众对商品的质量等特点或者产地产生误认的；

（八）有害于社会主义道德风尚或者有其他不良影响的。

县级以上行政区划的地名或者公众知晓的外国地名，不得作为商标。但是，地名具有其他含义或者作为集体商标、证明商标组成部分的除外；已经注册的使用地名的商标继续有效。

Article 10 The following signs shall not be used as trademarks:

1. Those identical with or similar to the State name, national flag, national emblem, national anthem, military flag, army emblem, military songs, medals and others of the People's Republic of China; those identical with the names and signs of central state organs, names of the specific locations thereof, or those identical with the names or device of landmark buildings;

2. Those identical with or similar to the state names, national flags, national emblems or military flags of foreign countries, unless permitted by the government of the country;

3. Those identical with or similar to the names, flags, or emblems of international inter-governmental organizations, unless permitted by the organization concerned or unlikely to mislead the public;

4. Those identical with or similar to an official sign or inspection seal that indicates control and guarantee, unless it is authorized;
5. Those identical with or similar to the names or signs of the Red Cross or the Red Crescent;
6. Those of discrimination against any race;
7. Those of fraud that may easily mislead the public in the characteristics such as the quality of goods, or place of production; and
8. Those detrimental to socialist morals or customs, or having other unhealthy influences.

The geographical names of administrative divisions at or above the county level and foreign geographical names well-known to the public shall not be used as trademarks, except for geographical names that contain other meanings or constitute parts of a collective mark or certification mark. Where a trademark bearing any of the above-mentioned geographical names has been registered, it shall continue to be valid.

第十一条 下列标志不得作为商标注册：

- (一) 仅有本商品的通用名称、图形、型号的；
- (二) 仅直接表示商品的质量、主要原料、功能、用途、重量、数量及其他特点的；
- (三) 其他缺乏显著特征的。

前款所列标志经过使用取得显著特征，并便于识别的，可以作为商标注册。

Article 11 The following signs shall not be registered as trademarks:

1. Marks that only bear the generic names, devices, or model numbers of the goods;
2. Marks that simply indicate the quality, main raw materials, function, use, weight, quantity or other features of the goods;
3. Marks that lack distinctive characteristics.

The signs referred to in the preceding paragraph may be registered as a trademark where it has acquired distinctiveness through use and is readily distinguishable.

第十二条 以三维标志申请注册商标的，仅由商品自身的性质产生的形状、为获得技术效果而需有的商品形状或者使商品具有实质性价值的形状，不得注册。

Article 12 Where a three-dimensional sign is applied for registration as a trademark, application shall be rejected if the three-dimensional sign merely indicates the shape

inherent in the nature of the goods concerned or if the three-dimensional sign is only dictated by the need to achieve technical effects or the need to give the goods substantive value.

第十三条 为相关公众所熟知的商标，持有人认为其权利受到侵害时，可以依照本法规定请求驰名商标保护。

就相同或者类似商品申请注册的商标是复制、摹仿或者翻译他人未在中国注册的驰名商标，容易导致混淆的，不予注册并禁止使用。

就不相同或者不相类似商品申请注册的商标是复制、摹仿或者翻译他人已经在中国注册的驰名商标，误导公众，致使该驰名商标注册人的利益可能受到损害的，不予注册并禁止使用。

Article 13 Holders of trademarks known to the public may seek for protection of well-known trademarks in accordance with the provisions hereof, when they believe that their rights have been infringed.

Where a mark is a reproduction, imitation, or translation of a third party's well-known trademark that has not been registered in China in respect of identical or similar goods, which is likely to lead to confusion, such mark shall not be registered and shall be prohibited from being used.

Where a mark is a reproduction, imitation, or translation of a third party's well-known trademark that has been registered in China in respect of different or other types of goods, which may mislead the public and damage the interests of the registrant of the well-known trademark, such mark shall not be registered and shall be prohibited from being used.

第十四条 驰名商标应当根据当事人的请求，作为处理涉及商标案件需要认定的事实进行认定。认定驰名商标应当考虑下列因素：

- (一) 相关公众对该商标的知晓程度；
- (二) 该商标使用的持续时间；
- (三) 该商标的任何宣传工作的持续时间、程度和地理范围；
- (四) 该商标作为驰名商标受保护的记录；
- (五) 该商标驰名的其他因素。

在商标注册审查、工商行政管理部门查处商标违法案件过程中，当事人依照本法第十三条规定主张权利的，商标局根据审查、处理案件的需要，可以对商标驰名情况作出认定。

在商标争议处理过程中，当事人依照本法第十三条规定主张权利的，商标评审委员会根据处理案件的需要，可以对商标驰名情况作出认定。

在商标民事、行政案件审理过程中，当事人依照本法第十三条规定主张权利的，最高人民法院指定的人民法院根据审理案件的需要，可以对商标驰名情况作出认定。

生产、经营者不得将“驰名商标”字样用于商品、商品包装或者容器上，或者用于广告宣传、展览以及其他商业活动中。

Article 14 Well-known trademarks shall be, as requested by the party involved, determined as those facts that are required to be determined when handling trademark-related cases. The following factors shall be considered in determining a well-known trademark:

1. The popularity degree of the trademark in its trading areas;
2. The duration the trademark has been in use;
3. The duration, extent and geographical range of advertising and publicity of the trademark;
4. The records on the protection of the trademark as a well-known trademark; and
5. Other reasons for the reputation of the trademark.

During the process of registered trademark review or investigation of cases in violation of laws concerning trademarks by the administrative department for industry and commerce, where the parties involved claim their rights in accordance with the provisions of Article 13 hereof, the Trademark Office may, as required by such review or handling, determine whether the trademarks are well-known trademarks or not.

During the settlement of disputes in connection with trademarks, where the parties involved claim their rights in accordance with the provisions of Article 13 hereof, the Trademark Review and Adjudication Board may, as required by case handling, determine whether the trademarks are well-known trademarks or not.

During the process of hearing civil or administrative cases concerning trademarks, where the parties involved claim their rights in accordance with the provisions of Article 13 hereof, the people's court designated by the Supreme People's Court may, as required by case hearing, determine whether the trademarks are well-known trademarks or not.

Producers and operators shall neither use characters such as "Well-known Trademark" in the goods, on the packaging or vessels nor apply the same for advertising, exhibition or other commercial activities.

第十五条 未经授权，代理人或者代表人以自己的名义将被代理人或者被代表人的商标进行注册，被代理人或者被代表人提出异议的，不予注册并禁止使用。

就同一种商品或者类似商品申请注册的商标与他人在先使用的未注册商标相同或者近似，申请人与该他人具有前款规定以外的合同、业务往来关系或者其他关系而明知该他人商标存在，该他人提出异议的，不予注册。

Article 15 In the event that an agent or a representative seeks to register the client's trademark in its own name without the authorization of the client and faces objection from the client, such trademark shall not be registered and be prohibited from being used.

Where a trademark that the applicant applies for registration with respect to the same or similar goods is the same as or similar to an unregistered trademark that has been used by others, and there is contractual, business or any other relation between the applicant and others in addition to previous provisions, such trademark shall not be registered when the others raise objections.

第十六条 商标中有商品的地理标志，而该商品并非来源于该标志所标示的地区，误导公众的，不予注册并禁止使用；但是，已经善意取得注册的继续有效。

前款所称地理标志，是指标示某商品来源于某地区，该商品的特定质量、信誉或者其他特征，主要由该地区的自然因素或者人文因素所决定的标志。

Article 16 In the event that a trademark containing a geographical indication of goods misleads the public for the goods does not come from the location as stated in the indication, such trademark shall not be registered and shall be prohibited from being used. However, if the registration has been obtained in goodwill, such registration shall continue to be valid.

The geographical indication set forth in the preceding paragraph refers to a sign indicating the place of origin of the goods of which the special quality, reputation or other characteristics are primarily determined by the natural conditions or other humanistic conditions of the location involved.

第十七条 外国人或者外国企业在中国申请商标注册的，应当按其所属国和中华人民共和国签订的协议或者共同参加的国际条约办理，或者按对等原则办理。

Article 17 A foreigner or foreign enterprise applying for trademark registration in China shall be subject to the agreement concluded by and between the country to which the applicant belongs and the People's Republic of China, or the international treaty to which both countries are parties, or on the basis of the principle of reciprocity.

第十八条 申请商标注册或者办理其他商标事宜，可以自行办理，也可以委托依法设立的商标代理机构办理。

外国人或者外国企业在中国申请商标注册和办理其他商标事宜的，应当委托依法设立的商标代理机构办理。

Article 18 Matters concerning application for trademark registration or other issues in connection with trademarks may be handled independently, or a qualified trademark agency that has been established in accordance with laws may be entrusted.

The foreigner or foreign enterprise that needs to apply for the registration of a trademark or handle any other trademark matters in China shall authorize an organization qualified as a trademark agency.

第十九条 商标代理机构应当遵循诚实信用原则，遵守法律、行政法规，按照被代理人的委托办理商标注册申请或者其他商标事宜；对在代理过程中知悉的被代理人的商业秘密，负有保密义务。

委托人申请注册的商标可能存在本法规定不得注册情形的，商标代理机构应当明确告知委托人。

商标代理机构知道或者应当知道委托人申请注册的商标属于本法第四条、第十五条和第三十二条规定情形的，不得接受其委托。

商标代理机构除对其代理服务申请商标注册外，不得申请注册其他商标。

Article 19 The trademark agency shall apply for registered trademarks or handle any other trademark matters authorized by the clients based on the principle of integrity, honesty and credibility and in accordance with laws and administrative rules and regulations; and the trademark agency shall assume confidentiality obligations for trade secrets of the client obtained during the agency.

The trademark that the client applies for registration may not be registered in accordance with the Law, in which case the trademark agency shall explicitly notify the client.

The trademark agency knows or has already known that, where the client applies for a trademark that falls into Article 4, Article 15 and Article 32 hereof, the trademark agency shall not accept the entrustment.

Except for the registration of trademarks on behalf of client, the trademark agency shall not apply for the registration of any other trademarks.

第二十条 商标代理行业组织应当按照章程规定，严格执行吸纳会员的条件，对违反行业自律规范的会员实行惩戒。商标代理行业组织对其吸纳的会员和对会

员的惩戒情况，应当及时向社会公布。

Article 20 The industry organization of trademark agency shall strictly implement conditions on absorption of members in accordance with the provisions its articles of association, and shall impose penalty on those members that have breached the self-discipline standards of the industry. Such absorption of or penalty on members by the industry organization shall be made available to the public on a timely basis.

第二十一条 商标国际注册遵循中华人民共和国缔结或者参加的有关国际条约确立的制度，具体办法由国务院规定。

Article 21 International registration of trademarks shall be subject to the system that has been established by conclusion or participation in relevant international treaty with specific measures subject to the provisions of the State Council.

第二章 商标注册的申请 Chapter II Application for Trademark Registration

第二十二条 商标注册申请人应当按规定的商品分类表填报使用商标的商品类别和商品名称，提出注册申请。

商标注册申请人可以通过一份申请就多个类别的商品申请注册同一商标。

商标注册申请等有关文件，可以以书面方式或者数据电文方式提出。

Article 22 An applicant for trademark registration shall fill in the class and the designation of the goods on which the trademark is to be used in accordance with the prescribed classification of goods and file the registration application.

An applicant for trademark registration may apply for registering the same trademark for several classes of goods through one application.

Documents concerning application for trademark registration may be filed in writing or via data message.

第二十三条 注册商标需要在核定使用范围之外的商品上取得商标专用权的，应当另行提出注册申请。

Article 23 If a registered trademark needs to secure the exclusive rights to use a registered trademark on goods beyond the verified range of use, a separate application for registration shall be filed.

第二十四条 注册商标需要改变其标志的，应当重新提出注册申请。

Article 24 If a registered trademark needs to change its sign, a new registration application shall be filed.

第二十五条 商标注册申请人自其商标在外国第一次提出商标注册申请之日起六个月内，又在中国就相同商品以同一商标提出商标注册申请的，依照该外国同中国签订的协议或者共同参加的国际条约，或者按照相互承认优先权的原则，可以享有优先权。

依照前款要求优先权的，应当在提出商标注册申请的时候提出书面声明，并且在三个月内提交第一次提出的商标注册申请文件的副本；未提出书面声明或者逾期未提交商标注册申请文件副本的，视为未要求优先权。

Article 25 Where an applicant for trademark registration files an application for trademark registration in China within six months of filing the first application for registering the same trademark for the same goods in a foreign country, the applicant may have priority in accordance with any agreement concluded by and between the People's Republic of China and the foreign country concerned, or with the international treaty to which both countries are parties, or on the basis of the principle of reciprocity.

An applicant claiming priority in accordance with the preceding paragraph shall state in writing at the time of filing the trademark registration application and shall submit a copy of the first-filed trademark registration application within three months. An applicant who neither claims priority in writing nor submits a copy of the said trademark registration application shall be deemed as not claiming priority.

第二十六条 商标在中国政府主办的或者承认的国际展览会展出的商品上首次使用的，自该商品展出之日起六个月内，该商标的注册申请人可以享有优先权。

依照前款要求优先权的，应当在提出商标注册申请的时候提出书面声明，并且在三个月内提交展出其商品的展览会名称、在展出商品上使用该商标的证据、展出日期等证明文件；未提出书面声明或者逾期未提交证明文件的，视为未要求优先权。

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

An applicant claiming priority in accordance with the preceding paragraph shall state in writing at the time of filing the trademark registration application and shall submit the name of the exhibition within three months, evidence showing the use of the mark on the goods displayed, and documents validating the date of the exhibition. An applicant who neither claims priority in writing nor submit the necessary documents shall be deemed as not claiming priority.

第二十七条 为申请商标注册所申报的事项和所提供的材料应当真实、准确、完整。

Article 27 Matters and all the information submitted for trademark application shall be authentic, accurate, and complete.

第三章 商标注册的审查和核准 Chapter III Examination and Approval of Trademark Registration

第二十八条 对申请注册的商标，商标局应当自收到商标注册申请文件之日起九个月内审查完毕，符合本法有关规定的，予以初步审定公告。

Article 28 For a trademark applied for registration, the Trademark Office shall, within nine months upon receipt of application documents for trademark registration, complete the examination. Where the provisions of the Law have been complied with, the Trademark Office shall make an announcement on preliminary examination and determination.

第二十九条 在审查过程中，商标局认为商标注册申请内容需要说明或者修正的，可以要求申请人做出说明或者修正。申请人未做出说明或者修正的，不影响商标局做出审查决定。

Article 29 During the process of examination, where the Trademark Office considers that the contents of the application for trademark registration are required to be explained or revised, it may ask the applicant to make explanation or correction; the failure of the applicant to make such explanation or correction will exert no effort on the decision made by the Trademark Office.

第三十条 申请注册的商标，凡不符合本法有关规定或者同他人在同一种商品或者类似商品上已经注册的或者初步审定的商标相同或者近似的，由商标局驳回申请，不予公告。

Article 30 Where a trademark to be applied for registration is in nonconformity with the relevant provisions of the Law, or it is identical with or similar to the trademark of another person that has, in respect of the same or similar goods, been registered or preliminarily approved, the Trademark Office shall refuse the application without announcement.

第三十一条 两个或者两个以上的商标注册申请人，在同一种商品或者类似商品上，以相同或者近似的商标申请注册的，初步审定并公告申请在先的商标；同一天申请的，初步审定并公告使用在先的商标，驳回其他人的申请，不予公告。

Article 31 Where two or more applicants apply for the registration of identical or similar trademarks for the same or similar goods, the preliminary approval and the announcement shall be made for the trademark that was first filed. Where applications are filed on the same day, the preliminary approval, and the announcement shall be made for the trademark that is used the earliest, and the applications of the others shall be refused without announcement.

第三十二条 申请商标注册不得损害他人现有的在先权利，也不得以不正当手段抢先注册他人已经使用并有一定影响的商标。

Article 32 The trademark application shall neither infringe upon another party's prior existing rights, nor be an improper means to register a trademark that is already in use by another party and enjoys substantial influence.

第三十三条 对初步审定公告的商标，自公告之日起三个月内，在先权利人、利害关系人认为违反本法第十三条第二款和第三款、第十五条、第十六条第一款、第三十条、第三十一条、第三十二条规定的，或者任何人认为违反本法第四条、第十条、第十一条、第十二条、第十九条第四款规定的，可以向商标局提出异议。公告期满无异议的，予以核准注册，发给商标注册证，并予公告。

Article 33 Where any prior right owner or interested person believes that provisions of Paragraphs 2 and 3 of Article 13, Article 15, Paragraph 1 of Article 16, Article 30, Article 31 or Article 32 of the Law have been breached or any person believes that the provisions of Article 4, Article 10, Article 11, Article 12 or Paragraph 4 of Article 19 have been violated, it may raise an objection to the Trade Office against a trademark that has been published after a preliminary examination within three months from the date of announcement. When no objections have been raised upon expiration of such period, the application shall be approved for registration with issuance of a certificate of trademark registration and announcement of the trademark.

第三十四条 对驳回申请、不予公告的商标，商标局应当书面通知商标注册申请人。商标注册申请人不服的，可以自收到通知之日起十五日内向商标评审委员会申请复审。商标评审委员会应当自收到申请之日起九个月内做出决定，并书面通知申请人。有特殊情况需要延长的，经国务院工商行政管理部门批准，可以延长三个月。当事人对商标评审委员会的决定不服的，可以自收到通知之日起三十日内向人民法院起诉。

Article 34 The Trademark Office shall notify the applicant in writing of the trademark that has been rejected and has not been published. The applicant who is dissatisfied with the decision may apply to the Trademark Review and Adjudication Board for a review within 15 days from receipt of the notice. The Trademark Review and Adjudication Board shall make a ruling within nine months from receipt of the

application, and notify the applicant in writing. In case of prolonging such period for certain special situations, it may be prolonged for three months after the approval of the administrative department for industry and commerce under the State Council. In the event that the party concerned is dissatisfied with the ruling of the Trademark Review and Adjudication Board, it may appeal to the People's Court within 30 days from receipt of the notice.

第三十五条 对初步审定公告的商标提出异议的，商标局应当听取异议人和被异议人陈述事实和理由，经调查核实后，自公告期满之日起十二个月内做出是否准予注册的决定，并书面通知异议人和被异议人。有特殊情况需要延长的，经国务院工商行政管理部门批准，可以延长六个月。

商标局做出准予注册决定的，发给商标注册证，并予公告。异议人不服的，可以依照本法第四十四条、第四十五条的规定向商标评审委员会请求宣告该注册商标无效。

商标局做出不予注册决定，被异议人不服的，可以自收到通知之日起十五日内向商标评审委员会申请复审。商标评审委员会应当自收到申请之日起十二个月内做出复审决定，并书面通知异议人和被异议人。有特殊情况需要延长的，经国务院工商行政管理部门批准，可以延长六个月。被异议人对商标评审委员会的决定不服的，可以自收到通知之日起三十日内向人民法院起诉。人民法院应当通知异议人作为第三人参加诉讼。

商标评审委员会在依照前款规定进行复审的过程中，所涉及的在先权利的确定必须以人民法院正在审理或者行政机关正在处理的另一案件的结果为依据的，可以中止审查。中止原因消除后，应当恢复审查程序。

Article 35 In the event that an objection is raised against a trademark published after preliminary examination, the Trademark Office shall consider the facts and grounds submitted by both the dissenting party and the person challenged and shall decide on whether the registration is allowed within 12 months upon the expiration of announcement after investigation and verification, and notify the dissenting party and the person challenged in writing. In case of prolonging such period for certain special situations, it may be prolonged for six months after the approval of the administrative department for industry and commerce under the State Council.

Where the Trademark Office decides to approve the registration, it shall grant a certificate of trademark registration to the person challenged and publish the same. In case the dissenting party is dissatisfied, it may request to the Trademark Review and Adjudication Board for nullification of the registered trademark according to Article 44 and Article 45 hereof.

Where the Trademark Office decides not to approve the registration and the person challenged is dissatisfied, it may apply to the Trademark Review and Adjudication Board for review within 15 days upon receipt of the notice, which shall, with 12 months upon receipt of the notice, make a ruling for the review and notify the dissenting party and the person challenged in writing. In case of prolonging such period for certain special situations, it may be prolonged for six months after the approval of the administrative department for industry and commerce under the State Council. In the event that the person challenged is still dissatisfied with the ruling of such review, it may file a lawsuit before the People's Court within 30 days upon receipt of the notice. The People's Court shall notify the dissenting party of participation in the proceedings as a third party.

During the review by the Trademark Review and Adjudication Board in accordance with previous provisions, where the determination of prior rights involved is based on another case that the people's court is hearing, or the administrative organization is handling, such review may be suspended. After the cause for such suspension is eliminated, the review shall be resumed.

第三十六条 法定期限届满，当事人对商标局做出的驳回申请决定、不予注册决定不申请复审或者对商标评审委员会做出的复审决定不向人民法院起诉的，驳回申请决定、不予注册决定或者复审决定生效。

经审查异议不成立而准予注册的商标，商标注册申请人取得商标专用权的时间自初步审定公告三个月期满之日起计算。自该商标公告期满之日起至准予注册决定做出前，对他人在同一种或者类似商品上使用与该商标相同或者近似的标志的行为不具有追溯力；但是，因该使用人的恶意给商标注册人造成的损失，应当给予赔偿。

Article 36 Upon expiry of the legal term, in the event that no party concerned applies for review against the rejection or refusal decision by the Trademark Office or files any lawsuit with respect to the ruling of review by the Trademark Review and Adjudication Board before the People's Court, such rejection, refusal decision or ruling of review shall come into force.

Where the above-mentioned objection is disconfirmed upon examination and thus the registration of the trademark in question is approved, the date of acquiring the exclusive right to use a trademark by the applicant shall be calculated as of the expiration of three-month announcement period of preliminary examination. From the expiry of the announcement period of the trademark till the ruling on approval of registration, there will be no retroactive effects for uses of symbols the same as or similar to the trademark or on the same or similar goods by others; however, where such hostility of users causes losses to the trademark registrant, the users shall

compensate the same.

第三十七条 对商标注册申请和商标复审申请应当及时进行审查。

Article 37 The application for registration and review of trademarks shall be examined on a timely basis.

第三十八条 商标注册申请人或者注册人发现商标申请文件或者注册文件有明显错误的，可以申请更正。商标局依法在其职权范围内作出更正，并通知当事人。

前款所称更正错误不涉及商标申请文件或者注册文件的实质性内容。

Article 38 When the trademark application applicant or the registrant finds obvious mistakes in the trademark application documents or registration documents, it may apply for correction. The Trademark Office shall make corrections within its power of authorities and notify the party concerned.

The corrections referred to in the last paragraph shall not involve material contents of the trademark application or registration documents.

第四章 注册商标的续展、变更、转让和使用许可 Chapter IV Renewal, Alteration, Assignment and Licensing of Registered Trademarks

第三十九条 注册商标的有效期为十年，自核准注册之日起计算。

Article 39 The period of validity of a registered trademark shall be ten years, starting from the day the registration is approved.

第四十条 注册商标有效期满，需要继续使用的，商标注册人应当在期满前十二个月内按照规定办理续展手续；在此期间未能办理的，可以给予六个月的宽展期。每次续展注册的有效期为十年，自该商标上一届有效期满次日起计算。期满未办理续展手续的，注销其注册商标。

商标局应当对续展注册的商标予以公告。

Article 40 When it is necessary to continue using the registered trademark upon expiration of period of validity, an application for renewal shall be made within 12 months before the expiration. If such an application cannot be filed within that period, an extension period of six months may be granted. The period of validity for each renewal of registration shall be ten years as of the next day of the previous period of validity. If the formalities for renewal have not been handled upon expiration of period of validity, the registered trademarks will be deregistered.

The Trademark Office shall announce the registered trademarks for renewal.

第四十一条 注册商标需要变更注册人的名义、地址或者其他注册事项的，应当提出变更申请。

Article 41 An application for alteration shall be filed if the name, address or the other registered matters of the registrant is required to be altered.

第四十二条 转让注册商标的，转让人和受让人应当签订转让协议，并共同向商标局提出申请。受让人应当保证使用该注册商标的商品质量。

转让注册商标的，商标注册人对其在同一种商品上注册的近似的商标，或者在类似商品上注册的相同或者近似的商标，应当一并转让。

对容易导致混淆或者有其他不良影响的转让，商标局不予核准，书面通知申请人并说明理由。

转让注册商标经核准后，予以公告。受让人自公告之日起享有商标专用权。

Article 42 In case of assignment of registered trademark, the transferor shall sign a transfer agreement with the transferee and jointly file an application with the Trademark Office. The transferee shall guarantee the quality of the goods on which the trademark is used.

For assignment of registered trademarks, the trademark registrant shall assign similar trademarks on the same goods or the same or similar trademarks on similar goods.

The Trademark Office shall not approve assignment of registered trademarks that may easily lead to confusion or other adverse effects, and notify the applicant in writing stating reasons thereof.

The assignment of a registered trademark shall be published after it has been approved. The transferee enjoys exclusive right to use the trademark as of the date of announcement.

第四十三条 商标注册人可以通过签订商标使用许可合同，许可他人使用其注册商标。许可人应当监督被许可人使用其注册商标的商品质量。被许可人应当保证使用该注册商标的商品质量。

经许可使用他人注册商标的，必须在使用该注册商标的商品上标明被许可人的名称和商品产地。

许可他人使用其注册商标的，许可人应当将其商标使用许可报商标局备案，由商标局公告。商标使用许可未经备案不得对抗善意第三人。

Article 43 The trademark registrant may, by concluding a trademark licensing

contract, authorize other persons to use the registered trademark. The licensor shall supervise the quality of the goods on which the licensee uses the licensor's registered trademark, and the licensee shall guarantee the quality of the goods on which the registered trademark is used.

The party authorized to use others' registered trademark shall indicate the name of the licensee and the place of origin on the goods that bear the registered trademark.

When granting others to use the registered trademarks, the licensor shall file the license of the trademarks with the Trademark Office for records, which shall announce the same. Without putting the licensing of the trademark on records, the trademark shall not be used to defend the bona fide third party.

第五章 注册商标的无效宣告 Chapter V Nullification of Registered Trademarks

第四十四条 已经注册的商标，违反本法第四条、第十条、第十一条、第十二条、第十九条第四款规定的，或者是以欺骗手段或者其他不正当手段取得注册的，由商标局宣告该注册商标无效；其他单位或者个人可以请求商标评审委员会宣告该注册商标无效。

商标局做出宣告注册商标无效的决定，应当书面通知当事人。当事人对商标局的决定不服的，可以自收到通知之日起十五日内向商标评审委员会申请复审。商标评审委员会应当自收到申请之日起九个月内做出决定，并书面通知当事人。有特殊情况需要延长的，经国务院工商行政管理部门批准，可以延长三个月。当事人对商标评审委员会的决定不服的，可以自收到通知之日起三十日内向人民法院起诉。

其他单位或者个人请求商标评审委员会宣告注册商标无效的，商标评审委员会收到申请后，应当书面通知有关当事人，并限期提出答辩。商标评审委员会应当自收到申请之日起九个月内做出维持注册商标或者宣告注册商标无效的裁定，并书面通知当事人。有特殊情况需要延长的，经国务院工商行政管理部门批准，可以延长三个月。当事人对商标评审委员会的裁定不服的，可以自收到通知之日起三十日内向人民法院起诉。人民法院应当通知商标裁定程序的对方当事人作为第三人参加诉讼。

Article 44 The Trademark Office shall annul the registered trademark if it violates the provisions of Articles 4, 10, 11, 12 or Paragraph 4 of Article 19 of the Law, or it was acquired by fraud or any other improper means. Other units or individuals may request the Trademark Review and Adjudication Board for a ruling to annul such a registered trademark.

The Trademark Office shall notify the party concerned in writing of the nullification of the registered trademarks. Where the party concerned is dissatisfied with the ruling may apply to the Trademark Review and Adjudication Board for a review within 15 days from the receipt of the notice. The Trademark Review and Adjudication Board shall make a ruling within nine months from the receipt of the application, and notify the party concerned in writing. In case of prolonging such period for certain special situations, it may be prolonged for three months after the approval of the administrative department for industry and commerce under the State Council. In the event that the party concerned is dissatisfied with the ruling of the Trademark Review and Adjudication Board, it may appeal to the People's Court within 30 days from receipt of the notice.

Where other units or individuals request the Trademark Review and Adjudication Board for nullification of a registered trademark, the Trademark Review and Adjudication Board shall notify relevant parties upon receipt of the application, and request them to submit arguments within a specified time. The Trademark Review and Adjudication Board shall make a ruling on maintaining or nullification of registered trademark, and notify the party concerned of such ruling. Where the period is required to be prolonged in special circumstances, it may be extended by three months after the approval of the administrative department for industry and commerce under the State Council. In the event that the party concerned is dissatisfied with the ruling of the Trademark Review and Adjudication Board, it may appeal to the People's Court within 30 days from receipt of the notice. The people's court shall notify the counterparty of the trademark ruling procedures of participation in the proceedings as a third party.

第四十五条 已经注册的商标，违反本法第十三条第二款和第三款、第十五条、第十六条第一款、第三十条、第三十一条、第三十二条规定的，自商标注册之日起五年内，在先权利人或者利害关系人可以请求商标评审委员会宣告该注册商标无效。对恶意注册的，驰名商标所有人不受五年的时间限制。

商标评审委员会收到宣告注册商标无效的申请后，应当书面通知有关当事人，并限期提出答辩。商标评审委员会应当自收到申请之日起十二个月内做出维持注册商标或者宣告注册商标无效的裁定，并书面通知当事人。有特殊情况需要延长的，经国务院工商行政管理部门批准，可以延长六个月。当事人对商标评审委员会的裁定不服的，可以自收到通知之日起三十日内向人民法院起诉。人民法院应当通知商标裁定程序的对方当事人作为第三人参加诉讼。

商标评审委员会在依照前款规定对无效宣告请求进行审查的过程中，所涉及的在先权利的确定必须以人民法院正在审理或者行政机关正在处理的另一案件的结果为依据的，可以中止审查。中止原因消除后，应当恢复审查程序。

Article 45 Where a registered trademark stands in violation of the provisions of Paragraphs 2 and 3 of Article 13, Article 15, Paragraph 1 of Article 16, Article 30, Article 31 and Article 32 hereof, the prior right owner or interested party may, within five years upon the registration date of such trademark, apply to the Trademark Review and Adjudication Board for nullifying the same. In the event of malicious registration, owners of well-known trademark may exempt from the aforesaid five-year duration.

The Trademark Review and Adjudication Board shall, upon receipt of the application for nullification, notify the party concerned and request the same to respond with arguments within a specified period. The Trademark Review and Adjudication Board shall, within 12 months upon receipt of such application, make a ruling on maintaining or nullification of registered trademark, and notify the party concerned of such ruling in writing. In case of prolonging such period for certain special situations, it may be prolonged for six months after the approval of the administrative department for industry and commerce under the State Council. In the event that the party concerned is dissatisfied with the ruling of the Trademark Review and Adjudication Board, it may appeal to the People's Court within 30 days from receipt of the notice. The people's court shall notify the counterparty of the trademark ruling procedures of participation in the proceedings as a third party.

During the review of nullification by the Trademark Review and Adjudication Board in accordance with previous provisions, where the determination of prior rights referred to is based on another case that the people's court is hearing or the administrative authority is handling, such review may be suspended. After the cause for such suspension is eliminated, the review shall be resumed.

第四十六条 法定期限届满，当事人对商标局宣告注册商标无效的决定不申请复审或者对商标评审委员会的复审决定、维持注册商标或者宣告注册商标无效的裁定不向人民法院起诉的，商标局的决定或者商标评审委员会的复审决定、裁定生效。

Article 46 Upon expiry of the legal term, in the event that no party concerned applies for review against the decision of nullification of the registered trademark by the Trademark Office or files any lawsuit with respect to maintaining or nullification of the registered trademark by the Trademark Review and Adjudication Board before the People's Court, the decision of the Trademark Office or review decisions or ruling of the Trademark Review and Adjudication Board shall come into force.

第四十七条 依照本法第四十四条、第四十五条的规定宣告无效的注册商标，由商标局予以公告，该注册商标专用权视为自始即不存在。

宣告注册商标无效的决定或者裁定，对宣告无效前人民法院做出并已执行的商

标侵权案件的判决、裁定、调解书和工商行政管理部门做出并已执行的商标侵权案件的处理决定以及已经履行的商标转让或者使用许可合同不具有追溯力。但是，因商标注册人的恶意给他人造成的损失，应当给予赔偿。

依照前款规定不返还商标侵权赔偿金、商标转让费、商标使用费，明显违反公平原则的，应当全部或者部分返还。

Article 47 The registered trademark deemed as invalid according to Article 44 and Article 45 shall be announced by the Trademark Office and the exclusive right to use such registered trademark deemed as inexistence ab initio.

The decision or adjudication of nullifying a registered trademark has no retroactive effect upon trademark infringement verdicts, adjudications or mediation agreements made by the People's Court that have been enforced, trademark infringement decisions made by the administrative department for industry and commerce that have been made and enforced or trademark assignment or license contracts which have been performed; provided, however, where the hostility of the trademark registrant causes losses to others, the trademark registrant shall compensate the same.

When the trademark infringement damages, assignment fee and trademark royalties will not be returned according to previous regulations, which is obviously contrary to fairness, the trademark infringement damages, assignment fee and trademark royalties shall be returned in whole or part.

第六章 商标使用的管理 Chapter VI Administration of the Use of Trademarks

第四十八条 本法所称商标的使用，是指将商标用于商品、商品包装或者容器以及商品交易文书上，或者将商标用于广告宣传、展览以及其他商业活动中，用于识别商品来源的行为。

Article 48 The use of trademarks herein refers to such activities as using trademarks on goods, goods packaging or containers and goods transaction documents, or using trademarks in advertising, exhibits and other commercial events so as to identify the sources thereof.

第四十九条 商标注册人在使用注册商标的过程中，自行改变注册商标、注册人名义、地址或者其他注册事项的，由地方工商行政管理部门责令限期改正；期满不改正的，由商标局撤销其注册商标。

注册商标成为其核定使用的商品的通用名称或者没有正当理由连续三年不使用的，任何单位或者个人可以向商标局申请撤销该注册商标。商标局应当自收到申请之日起九个月内做出决定。有特殊情况需要延长的，经国务院工商行政管

理部门批准，可以延长三个月。

Article 49 Where a trademark registrant, at his/her discretion, alters the registered trademark, name or address of the registrant or other information during use of the registered trademark, the local administrative department for industry and commerce shall order such registrant to rectify the same. Where no rectification has been made upon expiration of the prescribed period, the Trademark Office shall revoke the registered trademark in question.

Where a registered trademark has become the generic name of the designated goods or stays unused for three consecutive years, any unit or individual may apply to the Trademark Office for revoking the same, which shall make decision within nine months upon receipt of such application. In case of prolonging such period for certain special situations, it may be prolonged for three months after the approval of the administrative department for industry and commerce under the State Council.

第五十条 注册商标被撤销、被宣告无效或者期满不再续展的，自撤销、宣告无效或者注销之日起一年内，商标局对与该商标相同或者近似的商标注册申请，不予核准。

Article 50 If a registered trademark is revoked, nullified or subject to no renewal upon expiration of the period of validity, the Trademark Office shall not approve any application for the registration of a trademark identical with or similar to the said trademark within one year as of the day of the revocation, nullification or cancellation.

第五十一条 违反本法第六条规定的，由地方工商行政管理部门责令限期申请注册，违法经营额五万元以上的，可以处违法经营额百分之二十以下的罚款，没有违法经营额或者违法经营额不足五万元的，可以处一万元以下的罚款。

Article 51 In the event of a violation of the provisions of Article 6 hereof, the local administrative department for industry and commerce shall order the violator to file an application for registration within a specified period; in the event of illegal business revenue of over CNY50,000, a fine up to 20% of such revenue may be imposed; in the event of no illegal business revenue or illegal business revenue of less than CNY50,000, a fine up to CNY10,000 may be imposed.

第五十二条 将未注册商标冒充注册商标使用的，或者使用未注册商标违反本法第十条规定的，由地方工商行政管理部门予以制止，限期改正，并可以予以通报，违法经营额五万元以上的，可以处违法经营额百分之二十以下的罚款，没有违法经营额或者违法经营额不足五万元的，可以处一万元以下的罚款。

Article 52 If the unregistered trademark is falsely represented as a registered one, or

use of an unregistered trademark is in violation of Article 10 hereof, the local administrative department for industry and commerce shall stop such use, order rectification of the situation within a specified period, and may circulate a notice; in the event of illegal business revenue of over CNY50,000, a fine up to 20% of such revenue may be imposed; in the event of no illegal business revenue or business revenue of less than CNY50,000, a fine up to CNY10,000 may be imposed.

第五十三条 违反本法第十四条第五款规定的，由地方工商行政管理部门责令改正，处十万元罚款。

Article 53 In the event of a violation of provisions of Paragraph 5 of Article 14 hereof, the local administrative department for industry and commerce shall order a correction and impose a fine of CNY100,000.

第五十四条 对商标局撤销或者不予撤销注册商标的决定，当事人不服的，可以自收到通知之日起十五日内向商标评审委员会申请复审。商标评审委员会应当自收到申请之日起九个月内做出决定，并书面通知当事人。有特殊情况需要延长的，经国务院工商行政管理部门批准，可以延长三个月。当事人对商标评审委员会的决定不服的，可以自收到通知之日起三十日内向人民法院起诉。

Article 54 The party concerned that is dissatisfied with the decision of the Trademark Office to repeal or refuse to repeal the registered trademark may, within 15 days from the receipt of notice, apply to the Trademark Review and Adjudication Board for a review. The Trademark Review and Adjudication Board shall make a decision within nine months upon receipt of such application and notify the party concerned in writing. In case of prolonging such period for certain special situations, it may be prolonged for three months after the approval of the administrative department for industry and commerce under the State Council. The party concerned is dissatisfied with the decision of the Trademark Review and Adjudication Board may institute legal proceedings with the People's Court within 30 days from the receipt of notice.

第五十五条 法定期限届满，当事人对商标局做出的撤销注册商标的决定不申请复审或者对商标评审委员会做出的复审决定不向人民法院起诉的，撤销注册商标的决定、复审决定生效。

被撤销的注册商标，由商标局予以公告，该注册商标专用权自公告之日起终止。

Article 55 Upon expiry of the legal term, in the event that no party concerned applies for review against revocation of the registered trademark or files any lawsuit with respect to the decision of review by the Trademark Review and Adjudication Board before the People's Court, such decision of revocation and the decision of review of

registered trademark shall come into force.

The Trademark Office shall publish the revoked registered trademark and the exclusive right to use the same shall cease as of the date of announcement.

第七章 注册商标专用权的保护 Chapter VII Protection of the Exclusive Right to Use a Registered Trademark

第五十六条 注册商标的专用权，以核准注册的商标和核定使用的商品为限。

Article 56 The exclusive right to use a registered trademark shall be limited to trademarks that have been approved for registration and to goods on which the use of the trademark has been approved.

第五十七条 有下列行为之一的，均属侵犯注册商标专用权：

（一）未经商标注册人的许可，在同一种商品上使用与其注册商标相同的商标的；

（二）未经商标注册人的许可，在同一种商品上使用与其注册商标近似的商标，或者在类似商品上使用与其注册商标相同或者近似的商标，容易导致混淆的；

（三）销售侵犯注册商标专用权的商品的；

（四）伪造、擅自制造他人注册商标标识或者销售伪造、擅自制造的注册商标标识的；

（五）未经商标注册人同意，更换其注册商标并将该更换商标的商品又投入市场的；

（六）故意为侵犯他人商标专用权行为提供便利条件，帮助他人实施侵犯商标专用权行为的；

（七）给他人的注册商标专用权造成其他损害的。

Article 57 Any of the following conducts shall constitute 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 goods without the licensing of the trademark registrant;

2. Using a trademark that is similar to a registered trademark on the same goods, or using a trademark that is identical with or similar to a registered trademark on similar goods, which may be easily confusing, without the licensing of the trademark

registrant;

3. Selling goods that violate the exclusive right to use a registered trademark;
4. Counterfeiting or arbitrarily forging others' registered trademark, or selling the counterfeited or arbitrarily forged trademarks;
5. Altering the trademark registrant's registered trademark without authorization of the same and selling goods bearing such altered trademark;
6. Providing convenience for or even help others to infringe the exclusive right to use a registered trademark on purpose;
7. Other conducts causing prejudice to others' exclusive right to use its registered trademark.

第五十八条 将他人注册商标、未注册的驰名商标作为企业名称中的字号使用，误导公众，构成不正当竞争行为的，依照《中华人民共和国反不正当竞争法》处理。

Article 58 Using characters of the registered or unregistered well-known trademarks of others in the name of an enterprise to mislead the public that constitutes unfair competition shall be subject to the Anti-Unfair Competition Law of the People's Republic of China.

第五十九条 注册商标中含有的本商品的通用名称、图形、型号，或者直接表示商品的质量、主要原料、功能、用途、重量、数量及其他特点，或者含有的地名，注册商标专用权人无权禁止他人正当使用。

三维标志注册商标中含有的商品自身的性质产生的形状、为获得技术效果而需有的商品形状或者使商品具有实质性价值的形状，注册商标专用权人无权禁止他人正当使用。

商标注册人申请商标注册前，他人已经在同一种商品或者类似商品上先于商标注册人使用与注册商标相同或者近似并有一定影响的商标的，注册商标专用权人无权禁止该使用人在原使用范围内继续使用该商标，但可以要求其附加适当区别标识。

Article 59 The exclusive right owner of a registered trademark may not prohibit others from rightful use of the generic names, models or designs of the goods, or direct reference to the quality, main raw materials, function, use, weight, quantity or other features of the goods, or geographical names as included in the registered trademark.

The exclusive right owner of a registered trademark of 3D symbols may not prohibit

others from rightful use of the shapes generated from the nature of the goods in respect of which the trademark is used, or shapes of the goods to realize certain technical effects, or shapes to provide the goods with substantive values.

Where an identical or similar trademark with certain influence has been used, prior to the use by the trademark registrant, with respect to the same goods or similar goods by others before the trademark registrant's application for trademark registration, the exclusive right owner may not prohibit the user of the aforesaid trademark from continuous use of such trademark within the original scope but may request its user for addition of proper logos for distinction purpose.

第六十条 有本法第五十七条所列侵犯注册商标专用权行为之一，引起纠纷的，由当事人协商解决；不愿协商或者协商不成的，商标注册人或者利害关系人可以向人民法院起诉，也可以请求工商行政管理部门处理。

工商行政管理部门处理时，认定侵权行为成立的，责令立即停止侵权行为，没收、销毁侵权商品和主要用于制造侵权商品、伪造注册商标标识的工具，违法经营额五万元以上的，可以处违法经营额五倍以下的罚款，没有违法经营额或者违法经营额不足五万元的，可以处二十五万元以下的罚款。对五年内实施两次以上商标侵权行为或者有其他严重情节的，应当从重处罚。销售不知道是侵犯注册商标专用权的商品，能证明该商品是自己合法取得并说明提供者的，由工商行政管理部门责令停止销售。

对侵犯商标专用权的赔偿数额的争议，当事人可以请求进行处理的工商行政管理部门调解，也可以依照《中华人民共和国民事诉讼法》向人民法院起诉。经工商行政管理部门调解，当事人未达成协议或者调解书生效后不履行的，当事人可以依照《中华人民共和国民事诉讼法》向人民法院起诉。

Article 60 In the event of infringement of the registered trademark as specified in Article 57 hereof that leads to disputes, the parties concerned shall settle such disputes through negotiations; where no negotiation is prospective or fails, the trademark registrant or any interested party may file a lawsuit before the People's Court or request the administrative department for industry and commerce for handling.

Where the foresaid infringement is confirmed, the administrative department for industry and commerce shall order the infringer to cease such infringement, confiscate and destroy the infringing goods and tools used in producing such goods or forging logos of the registered trademark. In the event of illegal business revenue of over CNY50,000, a fine up to five times of the revenue may be imposed; in the event of no illegal business revenue or illegal business revenue of less than CNY50,000, a fine up to CNY250,000 may be imposed; in the event of trademark infringement of more than two times within five years or other serious circumstances, a heavier punishment shall

be given. Where a seller with no knowledge of its infringing goods can prove the legality of acquiring such goods and point out the provider, the administrative department for industry and commerce shall order the seller to cease selling its goods.

Where there is dispute concerning the amount of compensation for infringing the exclusive right to use the trademark, the party concerned may request the administrative department for industry and commerce for mediation or file a lawsuit before the People's Court pursuant to the Civil Procedure Law of the People's Republic of China; In case of absence of agreements or nonperformance of mediation agreement upon effectiveness after the mediation by the administrative department for industry and commerce, any party concerned may file a lawsuit before the People's Court pursuant to the Civil Procedure Law of the People's Republic of China.

第六十一条 对侵犯注册商标专用权的行为，工商行政管理部门有权依法查处；涉嫌犯罪的，应当及时移送司法机关依法处理。

Article 61 The administrative department for industry and commerce has the power to investigate any conduct that infringes the exclusive right to use a registered trademark. In the event that a crime is suspected to have been committed, the administrative department for industry and commerce shall promptly transfer the case to the judicial department to be dealt with in accordance with the law.

第六十二条 县级以上工商行政管理部门根据已经取得的违法嫌疑证据或者举报，对涉嫌侵犯他人注册商标专用权的行为进行查处时，可以行使下列职权：

- （一）询问有关当事人，调查与侵犯他人注册商标专用权有关的情况；
- （二）查阅、复制当事人与侵权活动有关的合同、发票、账簿以及其他有关资料；
- （三）对当事人涉嫌从事侵犯他人注册商标专用权活动的场所实施现场检查；
- （四）检查与侵权活动有关的物品；对有证据证明是侵犯他人注册商标专用权的物品，可以查封或者扣押。

工商行政管理部门依法行使前款规定的职权时，当事人应当予以协助、配合，不得拒绝、阻挠。

在查处商标侵权案件过程中，对商标权属存在争议或者权利人同时向人民法院提起商标侵权诉讼的，工商行政管理部门可以中止案件的查处。中止原因消除后，应当恢复或者终结案件查处程序。

Article 62 The administrative department for industry and commerce at or above the county level may, based on the available evidence of illegal conduct or information

supplied by a member of the public, may exercise the following power in investigating activities suspected of infringing upon others' exclusive right to use a registered trademark:

1. Question the parties concerned and investigate the circumstances in connection with the infringement of others' exclusive right to use a registered trademark;
2. Look up and copy the contracts, invoices, books, and other materials pertaining to the trademark-infringing activities of the parties concerned;
3. Conduct an on-site inspection of the premises where the party concerned is suspected of carrying out activities that have infringed upon others' exclusive right to use a registered trademark;
4. Inspect the articles involved in trademark-infringing activities. Articles that are proven to have infringed upon others' exclusive right to use a registered trademark may be sealed and taken into custody.

The parties concerned shall assist in and cooperate with the administrative department for industry and commerce when the latter exercises the powers provided for in the preceding paragraph in accordance with the law and shall not refuse or obstruct.

During the process of investigating and handling a trademark infringement case, in case that any dispute arises with respect to the trademark ownership or the right owner files a lawsuit regarding such infringement before the People's Court, the administrative department for industry and commerce may suspend the aforesaid process. As the cause for suspension is eliminated, the process shall be restored or closed.

第六十三条 侵犯商标专用权的赔偿数额，按照权利人因被侵权所受到的实际损失确定；实际损失难以确定的，可以按照侵权人因侵权所获得的利益确定；权利人的损失或者侵权人获得的利益难以确定的，参照该商标许可使用费的倍数合理确定。对恶意侵犯商标专用权，情节严重的，可以在按照上述方法确定数额的一倍以上五倍以下确定赔偿数额。赔偿数额应当包括权利人为制止侵权行为所支付的合理开支。

人民法院为确定赔偿数额，在权利人已经尽力举证，而与侵权行为相关的账簿、资料主要由侵权人掌握的情况下，可以责令侵权人提供与侵权行为相关的账簿、资料；侵权人不提供或者提供虚假的账簿、资料的，人民法院可以参考权利人的主张和提供的证据判定赔偿数额。

权利人因被侵权所受到的实际损失、侵权人因侵权所获得的利益、注册商标许可使用费难以确定的，由人民法院根据侵权行为的情节判决给予五百万元以下

的赔偿。

人民法院审理商标纠纷案件，应权利人请求，对属于假冒注册商标的商品，除特殊情况外，责令销毁；对主要用于制造假冒注册商标的商品的材料、工具，责令销毁，且不予补偿；或者在特殊情况下，责令禁止前述材料、工具进入商业渠道，且不予补偿。

假冒注册商标的商品不得在仅去除假冒注册商标后进入商业渠道。

Article 63 The amount of compensation for infringing the exclusive right to use the trademark shall be determined based on the right owner's actual losses due to infringement or the infringer's actual interests obtained due to the same if the actual losses are hard to be determined, or may be determined based on times of the royalties of the registered trademark when both the losses or the infringer's actual interests obtained are hard to be determined. For seriously malicious infringement, the amount of compensation may be between one time to five times the aforesaid amount determined in light of the foregoing regulations. The amount of compensation shall include reasonable expenses of the right owner to prevent the infringement.

For the purpose of determining the amount of compensation, where the account books and information regarding the infringement are held by the infringer while the right owner has put to the proof as practical as possible, the People's Court may order the infringer submit such account books and information; in case the infringer refuses to submit the account books and information or submit a false version thereof, the People's Court may determine the amount of compensation with reference to the right owner's claim and proof.

Where it is hard to determine the right owner's actual losses due to infringement, the infringer's actual interests obtained due to the same or the royalties of the registered trademark, the People's Court shall, based on the actual circumstance of infringement, bring in a verdict of amount up to CNY5 million.

In hearing a case of trademark dispute, the People's Court may, at the request of the right owner, order to destroy the goods bearing counterfeit registered trademark, unless under special circumstances; order to destroy the materials and tools mainly used to manufacture the goods bearing counterfeit registered trademarks, without compensation; or, under special circumstances, order to prohibit the aforesaid materials and tools from entering any commercial channel without compensation.

Goods bearing counterfeit registered trademarks shall not be put into any commercial channel by merely having their counterfeit registered trademarks removed.

第六十四条 注册商标专用权人请求赔偿，被控侵权人以注册商标专用权人未使用注册商标提出抗辩的，人民法院可以要求注册商标专用权人提供此前三年内

实际使用该注册商标的证据。注册商标专用权人不能证明此前三年内实际使用过该注册商标，也不能证明因侵权行为受到其他损失的，被控侵权人不承担赔偿责任。

销售不知道是侵犯注册商标专用权的商品，能证明该商品是自己合法取得并说明提供者的，不承担赔偿责任。

Article 64 Where the owner of the exclusive right to use a registered trademark claims for compensation and the infringer challenge raises a plea that such owner has never used the registered trademark in question, the People's Court may request such owner to provide the proof of using the trademark over the past three years. In case such owner fails to neither provide the aforesaid proof nor the proof of losses due to infringement, the infringer challenged shall bear no liability for compensation.

Where a seller selling goods who is ignorant of infringing others' registered trademark can prove the legality of acquiring such goods and point out the provider, such seller shall be exempted from liabilities for compensations.

第六十五条 商标注册人或者利害关系人有证据证明他人正在实施或者即将实施侵犯其注册商标专用权的行为，如不及时制止将会使其合法权益受到难以弥补的损害的，可以依法在起诉前向人民法院申请采取责令停止有关行为和财产保全的措施。

Article 65 Where a trademark registrant or any interested party could prove that the infringement in process or to be conducted on the exclusive right to use the registered trademark will cause irretrievable losses to their legal interests if lack of prevention in a timely manner, they may apply to the People's Court for taking such measures as ordering the infringer to cease relevant behaviors and property preservation before filing any lawsuit.

第六十六条 为制止侵权行为，在证据可能灭失或者以后难以取得的情况下，商标注册人或者利害关系人可以依法在起诉前向人民法院申请保全证据。

Article 66 In order to stop trademark infringing activities, a trademark registrant or an interested party may, prior to filing a lawsuit, apply to the People's Court for evidence preservation when such evidence may be destroyed or lost or become unobtainable in the future.

第六十七条 未经商标注册人许可，在同一种商品上使用与其注册商标相同的商标，构成犯罪的，除赔偿被侵权人的损失外，依法追究刑事责任。

伪造、擅自制造他人注册商标标识或者销售伪造、擅自制造的注册商标标识，构成犯罪的，除赔偿被侵权人的损失外，依法追究刑事责任。

销售明知是假冒注册商标的商品，构成犯罪的，除赔偿被侵权人的损失外，依法追究刑事责任。

Article 67 Any person who, without the permission of trademark registrants, uses a trademark identical with the registrant's trademark for the same goods, where the case constitutes a crime, shall be prosecuted according to the law for its criminal liabilities, in addition to compensation of the losses suffered by the infringed.

Any person who forges or counterfeits others' registered trademark or sells registered trademarks that are forged or counterfeited shall, if the act constitutes a crime, be investigated for criminal responsibility according to the law in addition to compensation of the losses suffered by the infringed.

Any person who knowingly sells goods bearing counterfeit registered trademarks shall, if the act constitutes a crime, be investigated for criminal responsibility according to the law in addition to compensation of the losses suffered by the infringed.

第六十八条 商标代理机构有下列行为之一的，由工商行政管理部门责令限期改正，给予警告，处一万元以上十万元以下的罚款；对直接负责的主管人员和其他直接责任人员给予警告，处五千元以上五万元以下的罚款；构成犯罪的，依法追究刑事责任：

（一）办理商标事宜过程中，伪造、变造或者使用伪造、变造的法律文件、印章、签名的；

（二）以诋毁其他商标代理机构等手段招徕商标代理业务或者以其他不正当手段扰乱商标代理市场秩序的；

（三）违反本法第四条、第十九条第三款和第四款规定的。

（四）对恶意申请商标注册的，根据情节给予警告、罚款等行政处罚；对恶意提起商标诉讼的，由人民法院依法给予处罚。

商标代理机构有前款规定行为的，由工商行政管理部门记入信用档案；情节严重的，商标局、商标评审委员会并可以决定停止受理其办理商标代理业务，予以公告。

商标代理机构违反诚实信用原则，侵害委托人合法利益的，应当依法承担民事责任，并由商标代理行业组织按照章程规定予以惩戒。

Article 68 If a trademark agency has any one of the following conducts, the administrative department for industry and commerce shall order the agency organization to rectify the same within a specified time, give corresponding warning

and impose a fine of more than CNY10,000 up to CNY100,000; and give warnings to management in direct charges and the other persons in direct charge and impose a fine of more than CNY5,000 up to CNY50,000; those who have committed crimes shall be held for criminal responsibilities:

1. Forging/altering legal documents, seals or signatures or using forged/altered legal documents, seals or signatures during the process of handling trademark-related matters;
2. Soliciting agency business by slandering other trademark agencies or disturbing the trademark agency market order by other unjust means; and
3. Violating the provisions of Article 4, Paragraphs 3 and 4 of Article 19 of the Law.
4. In the event of any malicious application for trademark registration, such administrative penalties as giving a warning and imposing a fine shall be given, depending on the specific circumstance; in the event of maliciously lodging a lawsuit regarding trademark, the People's Court shall impose penalties in accordance with the law.

Where a trademark agency has had conducts stipulated in the previous paragraph, it will be recorded by the administrative department for industry and commerce in the files of credits; in case of serious circumstances, the Trademark Office and the Trademark Review and Adjudication Board may cease accepting its agency business and make relevant announcement.

Where a trademark agency violates the principle of good faith and thus infringes the client's legal interests, such organization shall bear relevant civil liability according to law and be punished by the industry organization of trademark agency in accordance with the articles of association.

第六十九条 从事商标注册、管理和复审工作的国家机关工作人员必须秉公执法，廉洁自律，忠于职守，文明服务。

商标局、商标评审委员会以及从事商标注册、管理和复审工作的国家机关工作人员不得从事商标代理业务和商品生产经营活动。

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

State personnel in the Trademark Office and the Trademark Review and Adjudication Board and other personnel engaging in trademark registration, administration, and review shall not be involved in trademark agency services, production, or the trading of goods.

第七十条 工商行政管理部门应当建立健全内部监督制度，对负责商标注册、管理和复审工作的国家机关工作人员执行法律、行政法规和遵守纪律的情况，进行监督检查。

Article 70 The administrative department for industry and commerce shall establish a comprehensive internal supervisory system to supervise and inspect the state personnel responsible for trademark registration, administration, and review in the law and administrative rules and regulations implementation and discipline observance.

第七十一条 从事商标注册、管理和复审工作的国家机关工作人员玩忽职守、滥用职权、徇私舞弊，违法办理商标注册、管理和复审事项，收受当事人财物，牟取不正当利益，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予处分。

Article 71 The state personnel engaging in trademark registration, administration, and review who neglect their duty, abuse their official power, commit fraud for personal considerations, handle trademark registration matters in violation of laws, accept money or properties from a party concerned or seek improper gains, shall be prosecuted according to the law for their criminal liabilities if the case constitutes a crime. For the case that does not constitute a crime, the personnel involved shall be subject to sanctions.

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第七十二条 申请商标注册和办理其他商标事宜的，应当缴纳费用，具体收费标准另定。

Article 72 Applicants for trademark registration and the handling of other trademark matters shall be subject to fee payment, the specific charging standards of which will be prescribed separately.

第七十三条 本法自 1983 年 3 月 1 日起施行。1963 年 4 月 10 日国务院公布的《商标管理条例》同时废止；其他有关商标管理的规定，凡与本法抵触的，同时失效。

本法施行前已经注册的商标继续有效。

Article 73 The Law shall come into force as of March 1, 1983. The Administrative Regulations on Trademark promulgated by the State Council on April 10, 1963 shall simultaneously be repealed, and any other provisions concerning trademark administration that conflict with the Law shall be ineffective simultaneously.

Trademarks registered before the implementation of the Law shall continue to be valid.