

# 中华人民共和国商标法

## Trademark Law of the People's Republic of China

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

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

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

(Adopted at the 24th Session of the Standing Committee of the Fifth National People's Congress on 23 August 1982; revised for the first time according to the Decision on the Amendment of the Trademark Law of the People's Republic of China adopted at the 30th Session of the Standing Committee of the Seventh National People's Congress, on 22 February 1993; and revised for the second time according to the Decision on the Amendment of the Trademark Law of the People's Republic of China adopted at the 24th Session of the Standing Committee of the Ninth National People's Congress on 27 October 2001)

### 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. This Law is enacted for the purposes of improving the administration of trademarks, protecting the exclusive right to use trademarks, and of encouraging producers and operators to guarantee the quality of their goods and services and maintain the reputation of their trademarks, with a view to protecting the interests of consumers, producers and traders and to promoting the development of 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 Trademark Office of the administrative authority for industry and commerce under the State Council shall be responsible for the registration and

administration of trademarks throughout the country. The administrative authority for industry and commerce under the State Council shall establish a Trademark Review and Adjudication Board which shall be responsible for handling matters 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. A registered trademark, include a trademark for goods, a service mark, a collective mark and a certification mark, refers to a trademarks that have been approved and registered by the Trademark Office. The trademark registrants shall enjoy the exclusive right to use the marks, which shall be protected by law. In this law, a collective mark refers to a mark which is registered in the name of a group, an association or any other organization and to be used by its members in their commercial activities to indicate their membership.

In this law, a certification mark refers to a mark which is controlled by an organization capable of supervision a particular type of goods or service which is used in respect of goods or services by other organizations or individuals who do not belong to the said organization, with a view to certifying the origin, raw material, mode of manufacture of goods or performance of services, quality or other characteristics of the goods or services.

Rules for the particular matters of registration and administration of collective and certification marks shall be promulgated by the administrative authority for industry and commerce under the State Council.

第四条 自然人、法人或者其他组织对其生产、制造、加工、拣选或者经销的商品，需要取得商标专用权的，应当向商标局申请商品商标注册。

自然人、法人或者其他组织对其提供的服务项目，需要取得商标专用权的，应当向商标局申请服务商标注册。

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 organization, intending to acquire the exclusive right to use a trademark for the goods produced, manufactured, processed, selected or marketed by him or it, shall file an application for the registration of the trademark with the Trademark Office.

Any natural person, legal person or other organization, intending to acquire the exclusive right to use a service mark for the service provided by him or it, shall file an application for the registration of the service mark with the Trademark Office.

Provisions made in this law concerning trademarks shall 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 entities or other organizations may jointly file an application for the registration for the same trademark with the Trademark Office, and jointly enjoy and exercise the exclusive right to use the trademark.

第六条 国家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. As for any of such goods, as prescribed by the State, that must bear a registered trademark, a trademark registration must be applied for. Where no trademark registration has been granted, such goods cannot be marketed.

第七条 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 user of a trademark shall be responsible for the quality of the goods in respect of which the trademark is used. The administrative authorities for industry and commerce at different levels shall, through the administration of trademarks, stop any practice that deceives 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可视性标志，包括文字、图形、字母、数字、三维标志和颜色组合，以及上述要素的组合，均可以作为商标申请注册。

Article 8. Any visual sign capable of distinguishing the goods or service of one natural person, legal person or any other organization from those of others, including words, devices, letters of numerals, three-dimensional symbols, combinations of colors or any combination of the above elements may be applied for the registration of a trademark.

第九条 申请注册的商标，应当有显著特征，便于识别，并不得与他人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. Where a trademark is applied for registration, it shall be so distinctive as to be distinguishable and it shall not conflict with any other legal rights acquired earlier by others.

The registrant of a trademark has the right to use the words of "registered trademark" or other registration sign to indicate that his or its trademark 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、军旗、勋章相同或者近似的，以及同中央国家机关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、军旗相同或者近似的，但该国政府同意的除外；

（三）同政府间国际组织的名称、旗帜、徽记相同或者近似，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）夸大宣传并带有欺骗性的；

（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 words or devices shall not be used as trademarks:

(1) those identical with or similar to the State name, national flag, national emblem, military flag, or decorations, of the People's Republic of China; and those identical with the names of particular venues where the Central State government organizations are located, or with the names or graphs of the symbolic buildings or the Central State government organizations;

2) those identical with or similar to the State names, national flags, national emblems or military flags of foreign countries, except that consent has been given by the relevant country's government;

(3) those identical with or similar to the names, flags or emblems or names, of international intergovernmental organizations, except that the organizations agree otherwise on the use or that it is not easy for the use to mislead the public;

(4) those identical with or similar to official signs and hallmarks indicating control and warranty, except that the use thereof is otherwise authorized;

(5) those identical with or similar to the names or symbols of the Red Cross or the Red Crescent;

(6) those having the nature of discrimination against any nationality;

(7) those having the nature of exaggeration and fraud in advertising goods or services;

(8) those detrimental to socialist morals or customs, or having other unhealthy influences.

The geographical names as the administrative divisions at or above the county level and the foreign geographical names well-known to the public shall not be used as trademarks, but such geographical names as have otherwise meanings or as an element of a collective mark or a certification mark shall be exclusive. Where a trademark using any of the above-mentioned geographical names has been approved and 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) 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 a trademark:

(1) those which consist exclusively of generic names, designs or models of the goods in respect of which the trademark is used;

(2) those which consist exclusively of signs or indications that have direct reference to the quality, main raw materials, function, intended purpose, weight, quantity or other characteristics of goods or services;

(3) those which are devoid of any distinctive character.

Where trademarks under the preceding paragraphs have acquired distinctiveness through use and become easily distinguishable, they may be registered as trademarks.

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 the registration of a trademark, it shall not be registered if it consists exclusively of the shape which results from the nature of the goods themselves, the shape of goods which is necessary to obtain a technical result, or the shape which gives substantial value to the goods.

第十三条 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. A trademark that is applied for registration in identical or similar goods shall not be registered and its use shall be prohibited, if it is a reproduction, an imitation or a translation, of another party's well-known mark that is not registered in China and it is liable to create confusion.

A trademark that is applied for registration in non-identical or dissimilar goods shall not be registered and its use shall be prohibited, if it is a reproduction, an imitation or a translation, of a well-known mark which is registered in China, misleads the public, and the interests of the registrant of the well-known mark are likely to be damaged by such use.

第十四条 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。

Article 14. In determining whether a mark is well-known or not, the following factors shall be considered

- (1) the degree of knowledge of the relative public;
- (2) the duration of use;
- (3) the duration of time, degree and geographical range of any publicity of the mark;
- (4) any record of the mark being protected as a well-known mark;
- (5) other factors which makes the mark well-known.

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。

Article 15. Where the agent or representative of a person who is the owner of a mark applies, without such owner's authorization, for the registration of the mark in his own name, if the owner opposes the registration applied for, the application shall be refused and the use of the mark shall be prohibited.

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. Where a trademark contains or consists of a geographic indication which respect to goods not originating in the place indicated, misleading the public as to the true place of origin, the application for registration shall be refused and the use of the mark shall be prohibited. But for those marks that have obtained registration in good faith shall continue to be valid.

Geographical indications mentioned in the preceding paragraph are indications that identify a particular good as origination in a region, where a given quality, reputation or other characteristic of the goods is essentially attributable to its natural or human factors.

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. Any foreigner or foreign enterprise intending to apply for the registration of a trademark in China shall file an application in accordance with any agreement concluded between the People's Republic of China and the country to which the applicant belongs, or according to the international treaty to which both countries are parties, or on the basis of the principles of reciprocity.

第十八条 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，应当委托国家认可的具有商标代理资格的组织代理。

Article 18. Any foreigner or foreign enterprise intending to apply for the registration of a trademark or for any other matters concerning a trademark in China shall entrust any of such organizations as recognized to be qualified for trademark agency by the State to act

as his or its agent.

## 第二章 商标注册的申请

### Chapter II. Application for Trademark Registration

第十九条 申请商标注册的，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。

Article 19. An applicant for the registration of a trademark shall, in a form, indicate, in accordance with the prescribed classification of goods, the class of the goods and the designation of the goods in respect of which the trademark is to be used.

第二十条 商标注册申请人在不同类别的商品上申请注册同一商标的，应当按商品分类表提出注册申请。

Article 20. Where any applicant for registration of a trademark intends to apply the same trademark for goods in different classes, an application for registration shall be filed in respect of each class of the prescribed classification of goods.

第二十一条 注册商标需要在同一类的其他商品上使用的，应当另行提出注册申请。

Article 21. Where a registered trademark is to be used in respect of other goods of the same class, a new application for registration shall be filed.

第二十二条 注册商标需要改变其标志的，应当重新提出注册申请。

Article 22. Where the sign of a registered trademark is to be altered, a new registration shall be applied for.

第二十三条 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 23. Where, after the registration of a trademark, the name, address or other registered matters concerning the registrant change, an application regarding the change shall be filed.

第二十四条 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 24. Any applicant for the registration of a mark in China who has previously duly filed an application to register the same mark in connection with the same goods in a foreign country may enjoy the right of priority in accordance with any agreement concluded between the PRC 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, provided that the application in China is filed within six months from the date on which the application was first filed in the foreign country.

Anyone claiming the right of priority according to the preceding paragraph shall so state in writing at the time of filing the application and shall submit, within three months, a copy of the original in writing when it or he files the application for the trademark registration, and submit, within three months, a copy of the application documents it or he first filed for the registration of the trademark; where the applicant fails to make the claim in writing or submit the copy of the application documents within the time limit, the claim shall be deemed not to have been made for the right of priority.

第二十五条 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 25. Where an application uses a trademark for the first time on goods displayed at an international exhibition sponsored or recognized by the Chinese government, he or it may claim the right of priority, provided he or it files an application for the registration of the mark within six months from the date of the exhibition.

Anyone claiming the right of priority in accordance with the provision in the preceding paragraph shall so state in writing at the time of filing the application, and shall submit, within three months, the name of the exhibition, evidence certifying the use of the mark on the goods displayed, and documents validating the date of the exhibition. An applicant who fails to claim in writing or to submit the documents required within the specified period shall be deemed as not having claimed the right of priority.

第二十六条 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 26. Matters declared and documents provided for the purpose of the application for the registration of a trademark shall be true, accurate and complete.

### 第三章 商标注册的审查和核准

#### Chapter III. Examination for and Approval of Trademark Registration

第二十七条 申请注册的商标，凡符合本法有关规定的，由商标局初步审定，予以公告。

Article 27. Where a trademark the registration of which has been applied for is in conformity with the relevant provisions of this Law, the Trademark Office shall, after examination, preliminarily approve the trademark and publish it.

第二十八条 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 28. Where a trademark the registration of which has been applied for is not in conformity with the relevant provisions of this Law, or it is identical with or similar to the trademark of another party that has, in respect of the same or similar goods, been registered or, after examination, preliminarily approved, the Trademark Office shall refuse the application and shall not publish the said trademark.

第二十九条 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 29. Where two or more applicants apply for the registration of identical or similar trademarks for the same or similar goods, the preliminary approval, after examination, and the publication shall be made for the trademark which was first filed. Where applications are filed on the same day, the preliminary approval, after examination, and the publication shall be made for the trademark which was the earliest used, and the applications of the others shall be refused and their trademarks shall not be published.

第三十条 对初步审定的商标，自公告之日起三个月内，任何人都可以提出异议。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 30.** Any person may, within three months from the date of the publication, file an opposition against the trademark that has, after examination, been preliminarily approved. If no opposition has been filed at the expiration of the specified period, the registration shall be approved, a certificate of trademark registration shall be issued and the trademark shall be published.

第三十一条 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 31.** No trademark application shall infringe upon another party's existing prior rights. Nor shall an applicant register in an unfair means a mark that is already in use by another party and has certain influence.

第三十二条 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，由商标评审委员会做出决定，并书面通知申请人。

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 32.** Where the application for registration of a trademark is refused and no publication of the trademark is made, the Trademark Office shall notify the applicant of the same in writing. Where the applicant is dissatisfied, he or it may, within fifteen days from receipt of the notification, apply for a review to the Trademark Review and Adjudication Board, which shall make a decision and notify the applicant of the same in writing.

Where any party concerned is dissatisfied with the decision of the Trademark Review and Adjudication Board, he or it may within 30 days from receipt of the corresponding notice, institute legal proceedings with the people's court.

第三十三条 对初步审定、予以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，做出裁定。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，由商标评审委员会做出裁定，并书面通知异议人和被异议人。

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复审程序的对方当事人作为第三人参加诉讼。

Article 33. Where an opposition is filed against the trademark that has, after examination, been preliminarily approved and published, the Trademark Office shall hear both the opponent and the opposed state facts and grounds, and shall, after investigation and verification, make a ruling. Where any party is dissatisfied, he or it may, within fifteen days from receipt of the notification, apply for a review to the Trademark Review and Adjudication Board, which shall make a ruling and notify both the opponent and the opposed in writing.

Where any interested party is dissatisfied with the ruling of the Trademark Review and Adjudication Board, he or it may, within 30 days from the receipt of the notice, institute legal proceedings with the people's court. The People's Court shall notify the other party in the trademark review proceedings to be a third party to the litigation.

第三十四条 当事人在法定期限内对商标局做出的裁定不申请复审或者对商标评审委员会做出的裁定不向人民法院起诉的，裁定生效。

经裁定异议不能成立的，予以核准注册，发给商标注册证，并予公告；经裁定异议成立的，不予核准注册。

经裁定异议不能成立而核准注册的，商标注册申请人取得商标专用权的时间自初审公告三个月期满之日起计算。

Article 34. Where the interested party does not, within the statutory time limit, apply for the reexamination of the adjudication by the Trademark Office or does not institute legal proceedings in respect of the adjudication by the Trademark Review and Adjudication Board, the adjudication takes effect.

If it is decided that the opposition is not justified, the registration shall be approved, a certificate of trademark registration shall be issued and the trademark shall be published. If it is decided that the opposition is justified, no registration shall be approved.

Where it is decided that the opposition is not justified and the mark shall be registered, the date on which the applicant acquires the mark's exclusive right of use shall be counted from the day three months after its preliminary publication.

第三十五条 对商标注册申请和商标复审申请应当及时进行审查。

Article 35. Application for trademark registration and trademark registration review shall be examined without delay.

第三十六条 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 36.** Where a trademark applicant or trademark registrant finds an obvious error in the documents of application or registration, he or it may apply to have it corrected. The Trademark Office shall ex officio make corrections in accordance with law and notify the party concerned.

The correction of errors provided in the preceding paragraph shall not involve substantive matters in the application or registration documents.

#### 第四章 注册商标的续展、转让和使用许可

#### Chapter IV. Renewal, Assignment and Licensing of Registered Trademarks

第三十七条 注册商标的有效期为十年，自核准注册之日起计算。

**Article 37.** The period of validity of a registered trademark shall be ten years, counted from the date of approval of the registration.

第三十八条 注册商标有效期满，需要继续使用的，应当在期满前六个月内申请续展注册；在此期间未能提出申请的，可以给予六个月的宽展期。宽展期满仍未提出申请的，注销其注册商标。

每次续展注册的有效期为十年。

续展注册经核准后，予以公告。

**Article 38.** Where the registrant intends to continue to use the registered trademark beyond the expiration of the period of validity, an application for renewal of the registration shall be made within six months before the said expiration. Where no application therefore has been filed within the said period, a grace period of six months may be allowed. If no application has been filed at the expiration of the grace period, the registered trademark shall be cancelled.

The period of validity of each renewal of registration shall be ten years.

Any renewal of registration shall be published after it has been approved.

第三十九条 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 39. Where a registered trademark is assigned, the assignor and assignee shall sign an agreement for the assignment and jointly file an application with the Trademark Office. The assignee shall guarantee the quality of the goods in respect of which the registered trademark is used.

The assignment of a registered trademark shall be published after it has been approved. The assignee shall enjoy the exclusive right to use the mark from the date of publication.

第四十条 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。

商标使用许可合同应当报商标局备案。

Article 40. Any trademark registrant may, by signing a trademark license contract, authorize other persons to use his or its registered trademark. The licensor shall supervise the quality of the goods in respect of which the licensee uses his registered trademark, and the licensee shall guarantee the quality of the goods in respect of which the registered trademark is used.

Where any party is authorized to use a registered trademark of another party, the name of the licensee and the origin of the goods must be indicated on the goods that bear the registered trademark.

The trademark license contract shall be submitted to the Trademark Office for record.

## 第五章 注册商标争议的裁定

### Chapter V. Adjudication of Disputes Concerning Registered Trademarks

第四十一条 已经注册的商标，违反本法第十条、第十一条、第十二条规定的，或者是以欺骗手段或者其他不正当手段取得注册的，由商标局撤销该注册商标；其他单位或者个人可以请求商标评审委员会裁定撤销该注册商标。

已经注册的商标，违反本法第十三条、第十五条、第十六条、第三十一条规定的，自商标注册之日起五年内，商标所有人或者利害关系人可以请求商标评审委员会裁定撤销该注册商标。对恶意注册的，驰名商标所有人不受五年的时间限制。

除前两款规定的情形外，对已经注册的商标有争议的，可以自该商标经核准注册之日起五年内，向商标评审委员会申请裁定。

商标评审委员会收到裁定申请后，应当通知有关当事人，并限期提出答辩。

Article 41. Where a registered trademark stands in violation of the provisions of Articles 10, 11 and 12 of this Law, or the registration of a trademark was acquired by fraud or any other unfair means, the Trademark Office shall cancel the registered trademark in question; and any other organization or individual may request the Trademark Review and Adjudication Board to make an adjudication to cancel such a registered trademark.

Where a registered trademark stands in violation of the provisions of Articles 13, 15, 16 and 31 of this Law, the owner of the mark or any interested party may, within five years from the date of registration, request the Trademark Review and Adjudication Board to make an adjudication to cancel such a registered trademark.

Where a registration was obtained in bad faith, the owner of a well-known trademark shall not be bound by the five-year limitation.

In addition to those cases as provided in the preceding two paragraphs, a prior registrant disputing a registered trademark may, within five years from the date of approval of the trademark registration, apply to the Trademark Review and Adjudication Board for adjudication.

The Trademark Review and Adjudication Board shall, after receipt of the application for adjudication, notify the parties concerned and request them to respond with arguments within a specified period.

第四十二条 对核准注册前已经提出异议并经裁定的商标，不得再以相同的事实和理由申请裁定。

Article 42. Where a trademark, before its being approved for registration, has been the object of opposition and decision, no application for adjudication may be filed based on the same facts and grounds.

第四十三条 商标评审委员会做出维持或者撤销注册商标的裁定后，应当书面通知有关当事人。

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 43. After the Trademark Review and Adjudication Board has made an adjudication either to maintain or to cancel a registered trademark, it shall notify the

parties concerned of the same in writing.

Where any party concerned is dissatisfied with the decision of the Trademark Review and Adjudication Board, he or it may, within thirty days from receipt of the notice, institute legal proceedings in the People's Court. The People's Court shall notify the other party in the trademark adjudication proceeding to be a third party to the litigation.

## 第六章 商标使用的管理

### Chapter VI. Administration of the Use of Trademarks

第四十四条 使用注册商标，有下列行为之一的，由商标局责令限期改正或者撤销其注册商标：

- (一) 自行改变注册商标的；
- (二) 自行改变注册商标的注册人名义、地址或者其他注册事项的；
- (三) 自行转让注册商标的；
- (四) 连续三年停止使用的。

Article 44. Where any person who uses a registered trademark has committed any of the following acts, the Trademark Office shall order him to rectify the situation within a specified period or even cancel the registered trademark:

- (1) where a registered trademark is altered unilaterally (that is, without the required registration);
- (2) where the name, address or other registered matters concerning the registrant of a registered trademark are changed unilaterally (that is, without the required application);
- (3) where the registered trademark is assigned unilaterally (that is, without the required approval);
- (4) where the use of the registered trademark has ceased for three consecutive years.

第四十五条 使用注册商标，其商品粗制滥造，以次充好，欺骗消费者的，由各级工商行政管理部门分别不同情况，责令限期改正，并可以予以通报或者处以罚款，或者由商标局撤销其注册商标。

Article 45. Where a registered trademark is used in respect of the goods that have been roughly or poorly manufactured, or whose superior quality has been replaced by



inferior quality, so that consumers are deceived, the administrative authorities for industry and commerce at different levels shall, according to the circumstances, order rectification of the situation within a specified period, and may, in addition, circulate a notice of criticism or impose a fine, and the Trademark Office may even cancel the registered trademark.

第四十六条 注册商标被撤销的或者期满不再续展的，自撤销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 46. Where a registered trademark has been cancelled or has not been renewed at the expiration, the Trademark Office shall, during one year from the date of the cancellation or removal thereof, approve no application for the registration of a trademark that is identical with or similar to the said trademark.

第四十七条 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，可以并处罚款。

Article 47. Where any person violates the provisions of Article 6 of this Law, the local administrative authority for industry and commerce shall order him to file an application for the registration within a specified period, and may, in addition, impose a fine.

第四十八条 使用未注册商标，有下列行为之一的，由地方工商行政管理部门予以制止，限期改正，并可以予以通报或者处以罚款：

- (一) 冒充注册商标的；
- (二) 违反本法第十条规定的；
- (三) 粗制滥造，以次充好，欺骗消费者的。

Article 48. Where any person who uses an unregistered trademark has committed any of the following, the local administrative authority for industry and commerce shall stop the use of the trademark, order him to rectify the situation within a specified period, and may, in addition, circulate a notice of criticism or impose a fine:

- (1) where the trademark is falsely represented as registered;
- (2) where any provision of Article 10 of this Law is violated;
- (3) where the manufacture is of rough or poor, or where superior quality is replaced by inferior quality, so that consumers are deceived.

第四十九条 对商标局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，由商标评审委员会做出决定，并书面通知申请人。

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 49. Any party concerned dissatisfied with the decision of the Trademark Office to cancel a registered trademark may, within fifteen days from receipt of the corresponding notice, apply for a review with the Trademark Review and Adjudication Board, which shall make a decision and notify the applicant in writing.

Where any interested party dissatisfied with the decision of the Trademark Review and Adjudication Board, he or it may, within 30 days from receipt of the notice, institute legal proceedings in the People's Court.

第五十条 对工商行政管理部门根据本法第四十五条、第四十七条、第四十八条的规定做出的罚款决定，当事人不服的，可以自收到通知之日起十五日内，向人民法院起诉；期满不起诉又不履行的，由有关工商行政管理部门申请人民法院强制执行。

Article 50. Any interested party dissatisfied with the decision of the administrative authority for industry and commerce to impose a fine under the provisions of Article 45, Article 47 or Article 48 may, within fifteen days from receipt of the corresponding notice, institute legal proceedings with the People's Court. If there have been instituted no legal proceedings or no performance of the decision has been made at the expiration of the said period, the administrative authority for industry and commerce may request the People's Court for compulsory execution thereof.

## 第七章 注册商标专用权的保护

### Chapter VII Protection of the Exclusive Rights to Use Registered Trademarks

第五十一条 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 51. The exclusive right to use a registered trademark is limited to the trademark which has been approved for registration and to the goods in respect of which the use of the trademark has been approved.

第五十二条 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，在同一种商品或者类似商品上使用与其注册商标相同或者近似的商标的；

(二) 销售侵犯注册商标专用权的商品的；

- (三) 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;
- (四) 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;
- (五) 给他人的注册商标专用权造成其他损害的。

Article 52. Any of the following acts shall be an infringement of the exclusive right to use a registered trademark:

(1) using a trademark that is identical with or similar to a registered trademark in respect of the same or similar goods without the authorization from the trademark registrant;

(2) selling goods that infringe the exclusive right to use a registered trademark;

(3) counterfeiting, or making, without authorization, representations of a registered trademark of another person, or selling such representations of a registered trademark as were counterfeited, or made without authorization;

(4) replacing another party's registered trademark, without authorization, and selling goods bearing such a replaced trademark;

(5) causing, in other respects, prejudice to the exclusive right of another person to use a registered trademark.

第五十三条 有本法第五十二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、销毁侵权商品和专门用于制造侵权商品、伪造注册商标标识的工具, 并可处以罚款。当事人对处理决定不服的, 可以自收到处理通知之日起十五日内依照《中华人民共和国行政诉讼法》向人民法院起诉; 侵权人期满不起诉又不履行的, 工商行政管理部门可以申请人民法院强制执行。进行处理的工商行政管理部门根据当事人的请求, 可以就侵犯商标专用权的赔偿数额进行调解; 调解不成的, 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 53. Where a dispute arises after a party commits any of such acts to infringe the exclusive right to use a registered trademark as provided for in Article 52 of this Law, the parties involved shall settle the dispute through consultation. Where the parties refuse to pursue consultation or where consultation has failed, the trademark registrant or interested party may institute legal proceedings with the People's Court, or request the administrative authority for industry and commerce for actions. The administrative authority for industry and commerce shall, upon determining the trademark infringement has taken place, order the infringer to immediately stop the infringing act, confiscate and

destroy the infringing goods and any instruments specifically used to manufacture the infringing goods and counterfeit representations of the registered trademarks, and even impose a fine. Where any interested party is dissatisfied with the decision of the administrative authority for industry and commerce, he or it may, within 15 days from the date of receipt of the notification, institute legal proceedings with the people's court in accordance with the Administrative Procedural Law of the People's Republic of China. If there are no legal proceedings instituted or no performance of the decision at the expiration of the said period, the administrative authority for industry and commerce may request the People's Court for compulsory execution thereof. Where a party so requests, the administrative authority for industry and commerce handling a dispute may mediate in settling the amount of damages. Where mediation fails, a party may institute legal proceedings with the People's Court in accordance with the Civil Procedural Law of the People's Republic of China.

第五十四条 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 54. The administrative authority for industry and commerce has the power to investigate and handle by law any conduct infringing upon the exclusive right to use a registered trademark. Where a crime is suspected to have been committed, the case shall be promptly transferred to the judicial authority to be dealt with in accordance with law.

第五十五条 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、帐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。

Article 55. When investigating activities suspected of having infringed upon another party's exclusive right to use a registered trademark, the administrative authority for industry and commerce at or above the county level may, based on the obtained evidences suspected of illegal conduct or information supplied by a member of the public, exercise

the following functions and authorities;

(1) to inquire of the interested about the case; to investigate into such circumstances as involved infringement upon other parties' exclusive right to use a registered trademark;

(2) to examine or reproduce the interested party's contracts, invoices and account books and other materials as involved infringement upon other parties' exclusive right to use a registered trademark;

(3) to conduct an on-site inspection of the premises where the party has carried out acts allegedly infringing upon another party's exclusive right to use a registered trademark;

(4) to check up such articles as relate to the infringing act and may seal or take into custody articles which are proven to have infringed upon another party's exclusive right to use a registered trademark.

When the administrative authority for industry and commerce exercises such functions and powers as enumerated in the preceding paragraph, the interested parties shall assist and cooperate and shall not refuse or obstruct to do so.

第五十六条 侵犯商标专用权的赔偿数额，为侵权人在侵权期间因侵权所获得的利益，或者被侵权人在被侵权期间因被侵权所受到的损失，包括被侵权人为制止侵权行为所支付的合理开支。

前款所称侵权人因侵权所得利益，或者被侵权人因被侵权所受损失难以确定的，由人民法院根据侵权行为的情节判决给予五十万元以下的赔偿。

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的并说明提供者的，不承担赔偿责任。

Article 56. The amount of damages for infringement of the exclusive right to use a registered trademark shall be the profit that the infringer has earned through the infringement during the period of the infringement or the losses that the period of the infringe has suffered through the infringement during the period of the infringement, including any reasonable expenses the infringe has incurred in his or its efforts to stop the infringement.

Where the profit earned because by the infringer or losses suffered by the infringe through the infringement referred to in the preceding paragraph can not be determined, the people's court shall decide an amount of damages not more than 500,000 yuan RMB, depending on the circumstances of the infringing acts.

Where a party unknowingly sells goods that infringe upon another party's exclusive right to use a registered trademark but is able to prove that he or it has obtained the goods lawfully and is able to identify the supplier, he or it shall not be held liable for damages.

第五十七条 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。

人民法院处理前款申请，适用《中华人民共和国民事诉讼法》第九十三条至第九十六条和第九十九条的规定。

Article 57. Where a trademark registrant or any interested submits evidence proving that another party is engaged in or will soon engage in actions that infringe upon the former's exclusive right to use his or its registered trademark and that, unless they are stopped promptly, it will cause irreparable damages to its legitimate rights and interests, he or it may, before filing a lawsuit, apply to the people's court for the granting of an injunction prohibition the relevant acts and taking measures for property preservation.

The People's Court handling the application under the preceding paragraph shall apply the provisions of Articles 93 to Article 96 and Article 99 of the Civil Procedural Law of the People's Republic of China.

第五十八条 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在起诉前向人民法院申请保全证据。

人民法院接受申请后，必须在四十八小时内做出裁定；裁定采取保全措施的，应当立即开始执行。

人民法院可以责令申请人提供担保，申请人不提供担保的，驳回申请。

申请人在人民法院采取保全措施后十五日内不起诉的，人民法院应当解除保全措施。

Article 58. With a view to prohibiting trademark infringing acts and where evidences may be destroyed or lost or become unobtainable in the future, a trademark registrant or interested party may file an application with the people's court for preservation of the evidence before instituting legal proceedings to the people's court.

The People's Court shall make a decision within 48 hours after receipt of the application. Where the people's court decides to provide preservative measures, the decision shall be enforced immediately.

The People's Court may order the applicant to provide guaranty. Where no guaranty provided, the people's court shall reject the application.

Where the applicant fails to institute legal proceedings within 15 days after the people's court grants the preservative measures, the people's court shall rescind the said measures.

第五十九条 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 59. Where any party, without the authorization from the trademark registrant, uses a trademark that is identical with a registered trademark in respect of the same goods, if it constitutes a crime, the party shall be prosecuted, according to law, for its criminal liabilities in addition to compensating the losses the infringer suffers.

Where any party counterfeits, or makes, without authorization, representations of a registered trademark of another party, or sells such representations of a registered trademark as were counterfeited, or made without authorization, if it constitutes a crime, the party shall be prosecuted, according to law, for its criminal liabilities.

Where any party sells goods that he knows bear a counterfeited registered trademark, if it constitutes a crime, the party shall be prosecuted, according to law, for its criminal liabilities in addition to compensating the losses the infringer suffers.

第六十条 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 60. State functionaries engaged in trademark registration, administration and review shall be impartial in implementing the law, incorruptible and self-disciplined, devoted to their duties and shall be courteous and honest in their delivery of service.

State functionaries of the Trademark Office and the Trademark Review and Adjudication Board and other personnel engaged in trademark registration, administration and review shall not be involved in trademark agency services or in any activity of manufacturing and trading goods.

第六十一条 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 61. Administrative authorities for industry and commerce shall establish and perfect an internal supervisory system to supervise and inspect the way state functionaries responsible for trademark registration, administration and review implement laws and administrative regulations and observe disciplines.

第六十二条 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，依法给予行政处分。

Article 62. Where state functionary engaged in trademark registration, administration and review are derelict of duty, abuse their power, and practice fraud for personal gains; where they handle trademark registration, administration and review matters in violation of the law. Where they accept money or properties from a party in a trademark matter; where they seek improper gains; and where the case is so serious as to constitute a crime. They shall be prosecuted, according to law, for their criminal liabilities. Where the case does not constitute a crime, the person involved shall be subject to administrative disciplinary measures according to law.

## 第八章 附则

### Chapter VIII. Supplementary Provisions

第六十三条 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 63. Any application for a trademark registration and for other matters concerning a trademark shall be subject to payment of the fees as prescribed. The schedule of fees shall be prescribed separately.

第六十四条 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 64. This Law shall enter into force on March 1, 1983. The "Regulations Governing Trademarks" promulgated by the State Council on April 10, 1963 shall be abrogated on the same date, and any other provisions concerning trademarks contrary to



this Law shall cease to be effective at the same time.

Trademarks registered before this Law enters into force shall continue to be valid.