

中华人民共和国商标法

Trademark Law of the People's Republic of China

中华人民共和国主席令 第六号

《全国人民代表大会常务委员会关于修改〈中华人民共和国商标法〉的决定》已由中华人民共和国第十二届全国人民代表大会常务委员会第四次会议于 2013 年 8 月 30 日通过，现予公布，自 2014 年 5 月 1 日起施行。

中华人民共和国主席 习近平
2013 年 8 月 30 日

Order No. 6 of the President of the People's Republic of China

The Decision of the Standing Committee of the National People's Congress on Revising the "Trademark Law of the People's Republic of China", adopted at the 4th Session of the Standing Committee of the Twelfth National People's Congress of the People's Republic of China on August 30, 2013, is hereby promulgated and shall come into effect as of May 1, 2014.

President of the People's Republic of China Xi Jinping
August 30, 2013

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 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）

(Adopted on August 23, 1982 at the 24th Session of the Standing Committee of the Fifth National People's Congress, amended for the first time according to the Decision on Amending the Trademark Law of the People's Republic of China of the 30th Session of the Standing Committee of the Seventh National People's Congress on February 22, 1993, amended for the second time according to the Decision on Amending the Trademark Law of the People's Republic of China of the 24th Session of the Standing Committee of the Ninth National People's Congress on October 27, 2001, amended for the third time according to the Decision on Amending the Trademark Law of the People's Republic of China of the 4th Session of the Standing Committee of the Twelfth National People's Congress on August 30, 2013)

第二章 商标注册的申请
第三章 商标注册的审查和核准
第四章 注册商标的续展、变更、转让和使用许可
第五章 注册商标的无效宣告
第六章 商标使用的管理
第七章 注册商标专用权的保护
第八章 附 则

Table of Contents

Chapter 1. General Provisions
Chapter 2. Application for Trademark Registration
Chapter 3. Examination and Approval of Trademark Registration
Chapter 4. Renewal, Modification, Assignment and Licensing of Registered Trademarks
Chapter 5. Announcement of Invalidity of Registered Trademarks
Chapter 6. Administration of Trademark Use
Chapter 7. Protection of the Exclusive Right to Use a Registered Trademark
Chapter 8. Supplementary Provisions

第一章 总 则

Chapter 1: 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 formulated in order to strengthen the administration of trademarks, protect the exclusive rights to use a trademark, induce manufacturers and business operators to ensure the quality of goods and services and uphold the reputation of trademarks, thereby safeguarding the interests of consumers, manufacturers and business 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 Trademark Office of the Department for the Administration of Industry and Commerce of the State Council shall be in charge of trademark registration and administration for the whole country.

The Department for the Administration of Industry and Commerce of the State Council shall establish a Trademark Review and Appeals Board, which shall be responsible for handling trademark dispute matters.

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 Trademarks approved for registration by the Trademark Office are registered trademarks, and shall include trademarks for goods, trademarks for services, collective marks and certification marks. Trademark registrants shall enjoy the exclusive right to use a trademark, which shall be protected by law.

For the purpose of this Law, the term “collective mark” means a sign that has been registered in the name of a group, association or other organization and that is intended to be used by the members of the organization in their commercial activities in order to indicate the user as a qualified member of the organization.

For the purpose of this Law, the term “certification mark” means a sign that is controlled by an organization which has a supervisory capacity over certain goods or services and that is used by units or individuals, other than the relevant organization, on their goods or services in order to certify the origin, raw materials, manufacturing methods, quality or other special qualities of the goods or services.

Special matters concerning the registration and administration of collective marks and certification marks shall be provided for in regulations formulated by the Department for the Administration of Industry and Commerce of 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。

本法有关商品商标的规定，适用于服务商标。

Article 4 Natural persons, legal persons or other organizations that need to obtain an exclusive right to use a trademark for their goods or services in activities associated with production and business operation shall apply to the Trademark Office for registration of a trademark.

The provisions of this Law relating to trademarks for goods shall be applicable to trademarks for services.

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 apply to the Trademark Office to register one trademark and jointly enjoy and exercise the exclusive right to use the relevant 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 An application to register a trademark is required for goods that the law or administrative regulations stipulate must be used with registered trademarks, and if the trademark is not approved for registration, the goods are not to be sold on the market.

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 Applications for registration and use of trademarks shall comply with the principles of honesty and good faith.

Trademark users shall be responsible for the quality of the goods on which their trademark is used. The Departments for the Administration of Industry and Commerce at all levels shall, through the administration of trademarks, curb acts that deceive 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 capable of distinguishing the goods of one natural person, legal person or other organization from those of another, including words, figures, letters, numbers, three-dimensional signs, color combinations and sounds, etc., or combinations of the aforementioned elements, may be the subject of applications for 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 Trademarks for which registration is applied shall have distinctive features, be easy to distinguish, and not be in conflict with the prior lawful rights obtained by another.

The holder of a registered trademark has the right to use the expression “注册商标 (*Registered Trademark*)” or the registration symbol.

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 are not to be used as trademarks:

(1) those that are the same as or similar to the State name, national flag, national emblem, military flag, military emblem, military songs or military medals of the People's Republic of China, and those that are identical to the name, signs, specific names of venues, or the names or images of landmarks of the Central State authorities;

(2) those that are the same as or similar to the State names, national flags, national emblems or military flags, etc. of a foreign country, unless approved by the relevant State government;

(3) those that are the same as or similar to the name, flag or emblem, etc. of an inter-governmental international organization, unless approved by the relevant organization or that the use is unlikely to mislead the public;

(4) those that are the same as or similar to official signs or hallmarks indicating control or warranty, unless authorized;

(5) those that are the same as or similar to the name or sign of the "Red Cross" or the "Red Crescent";

(6) those that are discriminatory to ethnic groups;

(7) those that are of a deceptive nature, and are liable to create mistaken recognition among the public as to the quality, other characteristics or the places of origin of the relevant goods;

(8) those that harm socialist morality or customs or that have other adverse effects.

Names of administrative districts at or above the county level and commonly-known foreign place names may not be used as trademarks, except where such names have other meanings or are a component of a collective mark or certification mark. Trademarks that are already registered and that use place names 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 are not to be registered as trademarks:

(1) those that consist exclusively of the generic name, design or model number of the relevant goods;

(2) those that consist only of a direct indication of the quality, main raw materials, functions, intended purpose, weight, quantity or other characteristics of the goods;

(3) those that otherwise lack distinctiveness.

The signs mentioned in the preceding paragraph may be registered as trademarks if they have acquired distinctiveness and have become easily distinguishable through use.

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 A three-dimensional sign that is the subject of an application for a registered trademark may not be registered if it consists exclusively of the shape of the goods that results from the nature of the goods themselves, or the shape of the goods that is necessary to obtain a technical result or the shape that gives substantial value to the goods.

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 For trademarks that are popular to the relevant public and that are believed to have been infringed, the trademark holder can request well-known trademark protection according to this Law.

A trademark that constitutes a reproduction, an imitation or a translation of another's well-known trademark not registered in China that is liable to create confusion, and that is the subject of an application for registration for identical or similar goods, shall be refused registration, and its use shall be prohibited.

A trademark that constitutes a reproduction, an imitation or a translation of another's well-known trademark registered in China and that is the subject of an application for registration for dissimilar goods or services shall be refused registration, and its use shall be prohibited, if the use of the relevant trademark would confuse the public and possibly prejudice the interests of the registrant of the well-known trademark.

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 Upon request by the concerned party, a well-known trademark shall be recognized as a fact that needs to be determined for the handling of the trademark case.

When recognizing a well-known trademark, the following elements shall be considered:

- (1) the degree of notoriety of the trademark among the relevant public;
- (2) the length of continuous use of the trademark;
- (3) The continuous length, degree and geographical scope of the publicity for the trademark;
- (4) the record of protection of the trademark as a well-known trademark; and
- (5) other elements related to the trademark being well-known.

In the course of examination of a trademark registration, or when a Department for the Administration of Industry and Commerce is in the course of investigating and handling a trademark case in violation of the law, if the concerned party is asserting rights pursuant to Article 13 of this Law, the Trademark Office, through examination and handling of the requirements of the case, may recognize the well-known status of the trademark.

In the course of handling of a trademark dispute, if the concerned party is asserting rights pursuant to Article 13 of this Law, the Trademark Review and Appeals Board, through handling the requirements of the case, may recognize the well-known status of the trademark.

In the course of hearing a trademark civil action or administrative case, if the concerned party is asserting rights pursuant to Article 13 of this Law, the People's Courts appointed by the Supreme People's Court, through the requirements for hearing the case, may recognize the well-known status of the trademark.

Manufacturers and business operators are not to use the “well-known trademark” wording on goods, packaging or the containers for goods, or in advertising, exhibitions or other business 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 If an agent or representative registers a trademark of its principal in its own name without authorization, and its principal lodges an opposition, registration of the trademark is to be refused and its use prohibited.

If the trademark applied for registration is identical or similar to the prior unregistered trademark of another that is used on the same or similar goods, and the applicant has a contractual or business

relationship, or any other relationship with that person other than that indicated in the preceding paragraph, such that the applicant was clearly aware of the existence of the other's trademark, and that other person were to lodge an opposition, it shall not be registered.

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 If a trademark contains a geographical indication of the goods and the goods do not originate from the area indicated by that indication, causing the public to be misled, registration of the trademark is to be refused and use prohibited. However, it shall continue to be valid if registration has been obtained in good faith.

The term "geographical indication" in the preceding paragraph refers to an indication that identifies goods as originating from a particular area, where a given quality, reputation or other characteristics of the goods are mainly determined by the natural elements or the cultural elements of the relevant area.

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 Foreigners or foreign enterprises that apply to register trademarks in China shall handle matters according to the agreements entered into between their country and the People's Republic of China or international treaties that both countries have joined, or handle matters according to 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 Applications for registration of a trademark or other trademark-related matters may be handled on one's own, or may be handled by entrusting a trademark agency established in accordance with law.

Applications for the registration of a trademark or the handling of other trademark matters in China by foreigners or foreign enterprises, shall be handled by entrusting a trademark agency established in accordance with law.

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 A trademark agency shall comply with the principles of honesty and good faith, and abide by laws and administrative regulations when handling applications for registration of a trademark or other trademark matters entrusted by its principal, and is to assume the obligation of keeping confidential trade secrets made known by its principal in the course of its representation.

If there exist circumstances in which a principal's application for registration of a trademark are not to be registered as stipulated by this Law, the trademark agency shall explicitly inform the principal.

If a trademark agency knows or should know that an application for registration of a principal's trademark entails circumstances that are stipulated by Article 15 and Article 32 of this Law, the representation is not to be accepted.

A trademark agency is not to file trademark applications other than for the registration of trademarks that are the subject of its agency services.

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 Organizations in the trademark agency industry in accordance with articles of incorporation, shall strictly implement the requirements for admitting members, and shall take disciplinary action against any member that violates the scope of industry self-regulation. Organizations in the trademark agency industry shall make known to the public in a timely manner these admitted members and the circumstances of disciplinary action against members.

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 registrations of trademarks shall be in accordance with relevant international treaties to which the People's Republic of China has concluded or joined, and specific measures shall be formulated by the State Council.

第二章 商标注册的申请

Chapter 2: 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 a trademark registration shall fill in and submit a form for the class of goods and name of goods for which the trademark will be used in accordance with the prescribed goods classification table.

An applicant for a trademark registration may file one application for the registration of the same trademark for goods in multiple classes.

An application for the registration of a trademark and other relevant documents may be submitted in written form or in electronic form.

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 When a registered trademark must obtain exclusive use rights on goods outside its designated scope, 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 When the sign of a registered trademark must be changed, a new application for registration 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 If, within six months of the date for which an applicant for a trademark registration first applied for registration of its trademark in a foreign country, the applicant applies for registration of the same trademark for the same goods in China, it shall enjoy a right of priority according to an agreement entered into between the applicant's home country and China, or an international treaty in which the applicant's home country and China have both joined, or pursuant to the principle of reciprocal recognition of the right of priority.

If the applicant claims a right of priority according to the preceding paragraph, it shall submit a written declaration when submitting an application for trademark registration and, within three months, submit copies of the application documents submitted when the applicant initially applied for registration of the trademark. If the applicant does not submit a written declaration or fails to timely submit copies of the application documents for registration of the trademark, it shall be deemed that no right of priority is claimed.

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 If a trademark is first used for goods exhibited at an international exhibition held or recognized by the Chinese government, the applicant for registration of the relevant trademark shall enjoy priority within six months of the date of exhibition of the goods.

If the applicant claims a right of priority according to the preceding paragraph, it shall submit a written declaration when submitting an application for trademark registration and, within three months, submit evidential documents such as the name of the exhibition where the goods were exhibited, evidence of use of the trademark for the goods exhibited, the date of exhibition, etc. If the applicant does not submit a written declaration or fails to timely submit the evidential documents, it shall be deemed that no right of

priority is claimed.

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 When applying for registration of a trademark, the specifics reported and the materials submitted shall be truthful, accurate and complete.

第三章 商标注册的审查和核准

Chapter 3. 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 any trademark for which registration is applied, the Trademark Office shall complete the examination within nine months of the date on which the application documents are received, and if it conforms to the relevant provisions of this Law, then it shall be preliminarily approved by the Trademark Office and gazetted.

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 examination, if the Trademark Office believes that the content of a trademark registration application needs to be explained or corrected, it may require the applicant to make an explanation or correction. Failure by the applicant to make an explanation or correction shall not affect the Trademark Office's issuance of a decision on examination.

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 If a trademark for which registration is applied does not conform to the relevant provisions of this Law or is the same as or similar to a trademark that has been registered by another or preliminarily approved for use on the same or similar goods, the application shall be rejected by the Trademark Office, and the trademark is not to be gazetted.

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 If two or more applicants for trademark registrations apply for registration of the same or similar trademarks for use on the same or similar goods, the trademark that is first filed is to be preliminarily approved and gazetted; and if applications are filed on the same day, the trademark that is first used is to be preliminary approved and gazetted, and the applications filed by others are to be rejected and are not to be gazetted.

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 An application for the registration of a trademark may not prejudice the existing right of priority of another, and improper means may not be used to preemptively register a third party's trademark that is already in use and has a certain degree of 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十条、第十一条、第十二条规定的，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 For trademarks that are preliminarily approved, if the owner of a pre-existing right or any interested party believes that the trademark violates the provisions of Article 13 (2), (3), Article 15, Article 16 (1), Article 30, Article 31, or Article 32 of this Law, or if anybody believes that the trademark violates the provisions of Article 10, Article 11 or Article 12, they may lodge an opposition with the Trademark Office. If no opposition is lodged before the expiration of the gazettal period, it will be approved for registration, a trademark registration certificate will be issued, and the registration gazetted.

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 Applicants for trademark registrations whose trademark applications are rejected and not gazetted shall be notified in writing by the Trademark Office. If the applicant for a trademark registration is dissatisfied, it may apply for review to the Trademark Review and Appeals Board within fifteen days of receipt of the notification. The Trademark Review and Appeals Board shall make a decision within nine months of receipt of the application, and it shall notify the applicant in writing. If the time limit requires extension for special circumstances, it can be extended for three months upon approval by the Department for the Administration of Industry and Commerce of the State Council. If the concerned party is dissatisfied with the decision of the Trademark Review and Appeals Board, it may file suit with a People's Court within thirty days of receipt of the notification.

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 If an opposition is lodged against a trademark that has been preliminarily approved and gazetted, the Trademark Office shall hear the facts and grounds stated by the opponent and the respondent and, through investigation and verification, shall issue a decision within twelve months after the end of the gazettal period regarding whether the application should or should not be approved for registration, and notify the opponent and the respondent in writing. If the time limit requires extension for special

circumstances, it can be extended for six months upon approval by the Department for the Administration of Industry and Commerce of the State Council.

If the Trademark Office decides to approve the registration, a trademark registration certificate will be issued, and the registration gazetted. If the opponent is dissatisfied with the decision, the opponent may file a request to the Trademark Review and Appeals Board in accordance with the provisions of Article 44 or Article 45 of this Law for declaring the registered trademark invalid.

If the Trademark Office decides not to approve the registration, and the respondent is dissatisfied with the decision, the respondent may file an application for review with the Trademark Review and Appeals Board within fifteen days of receipt of the notification. The Trademark Review and Appeals Board shall make a review decision within twelve months of receipt of the application. If the time limit requires extension for special circumstances, it can be extended for six months upon approval by the Department for the Administration of Industry and Commerce of the State Council. If the respondent is dissatisfied with the decision made by the Trademark Review and Appeals Board, it may file suit with a People's Court within thirty days of receipt of the notification. The People's Court shall notify the opponent to participate in the suit as a third party.

The Trademark Review and Appeals Board can suspend its examination in the process of handling a review pursuant to the proceeding paragraph when the necessity of determining relevant prior rights depends on the result of another case that is pending with a People's Court or an administrative authority. It shall resume the examination procedure when the cause for the suspension has been eliminated.

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 If, upon the expiry of the statutory time limit, a concerned party has neither applied for review of a decision on the rejection of an application by the Trademark Office or a decision disapproving a registration, nor filed suit with a People's Court against a review decision made by the Trademark Review and Appeals Board, the decision to reject an application, disapprove registration, or the review decision shall become effective.

When an opposition to a trademark is held untenable and registration approval is granted, the time when the applicant for the trademark registration obtains the exclusive trademark right is counted from the date of expiration of the three-month period following preliminary approval and gazettal. It shall have no retroactive effect on another's use of identical or similar marks on the same or similar goods during the period from the expiration of the gazettal period until the mark is granted registration, but damages caused to the trademark registrant by the user's bad faith shall be compensated.

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 Applications for trademark registrations and applications for trademark review shall be examined in a timely manner.

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 If an applicant for a trademark registration or a trademark registrant finds that the trademark application documents or registration documents have an obvious error, it may apply for correction. The Trademark Office is to make the correction within its scope of legal authority, and to notify the concerned party.

The act of correcting an error referred to in the preceding paragraph does not apply to the substantive content of the trademark application documents or registration documents.

第四章 注册商标的续展、变更、转让和使用许可

Chapter 4. Renewal, Modification, 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 A registered trademark is valid for 10 years, calculated from the date 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 If a registered trademark must continue to be used after expiration of its validity period, the trademark registrant shall handle renewal formalities according to regulations within twelve months before the expiration of the validity period, and if an application is not filed during this period, a six-month extension period may be granted. Each renewal of registration shall be valid for a period of ten years, and shall be counted from the date of the expiration of the previous validity period. If a registered trademark is not subject to renewal formalities at the expiration of the validity period, it shall be cancelled. The Trademark Office shall gazette the renewal of a trademark registration upon approval.

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 If the name or address of the registrant or other registration items for a registered trademark require modification, an application for modification shall be filed.

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 For the assignment of a registered trademark, the assignor and assignee shall execute an assignment agreement and jointly file an application with the Trademark Office. The assignee shall

guarantee the quality of the goods for which the registered trademark is used.

When assigning a registered trademark, the trademark registrant shall assign all together any similar trademarks registered by that registrant on the same goods or identical or similar trademarks registered by that registrant on similar goods.

The Trademark Office is not to approve an application for assignment of a registered trademark that may easily lead to confusion or other adverse effects, and shall notify the applicant in writing with an explanation of its reasons.

An assignment of a registered trademark is to be gazetted after approval. The assignee shall enjoy the exclusive right to use the trademark from the date of gazettal.

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 A trademark registrant may license use of its registered trademark to another by executing a trademark license contract. The licensor shall supervise the quality of the goods for which the licensee uses its registered trademark. The licensee shall guarantee the quality of the goods for which the relevant registered trademark is used.

When using another's registered trademark under license, one must indicate the name of the licensee and the place of origin of the goods on the goods for which the relevant registered trademark is used.

When licensing its registered trademark to another, the licensor shall record the trademark use license with the Trademark Office, and the Trademark Office will gazette the recordal. A trademark use license that is not recorded is not to be used against a third party acting in good faith.

第五章 注册商标的无效宣告

Chapter 5. Announcement of Invalidity of Registered Trademarks

第四十四条 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 Registered trademarks that violate the provisions of Article 10, 11 or 12 or for which registration was obtained by deceptive or other improper means shall be declared invalid by the Trademark Office. Other units or individuals may request the Trademark Review and Appeals Board to declare the invalidity of such trademarks.

When the Trademark Office has issued a decision to declare a registered trademark invalid, it shall notify the concerned party in writing. If the concerned party is dissatisfied with the decision of the Trademark Office, it may file an application for review with the Trademark Review and Appeals Board within fifteen days of receipt of the notification. The Trademark Review and Appeals Board shall issue a decision within nine months of receipt of the application and notify the concerned party in writing. If the time limit requires extension for special circumstances, it can be extended three months upon approval by the Department for the Administration of Industry and Commerce of the State Council. If a concerned party is dissatisfied with the decision made by the Trademark Review and Appeals Board, it may file suit with a People's Court within thirty days of receipt of the notification.

For other units or individuals that request the Trademark Review and Appeals Board to declare the invalidation of such registered trademarks, the Trademark Review and Appeals Board shall notify the relevant concerned party in writing and specify a time limit for the party to submit a response. The Trademark Review and Appeals Board shall issue a decision within nine months of receipt of the application and notify the concerned party in writing. If the time limit requires extension for special circumstances, it can be extended three months upon approval by the Department for the Administration of Industry and Commerce of the State Council. If a concerned party is dissatisfied with the decision made by the Trademark Review and Appeals Board, it may file suit with a People's Court within thirty days of receipt of the notification. The People's Court shall notify the relevant other party involved in the procedures for adjudicating the trademark to participate in the suit 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 If a registered trademark violates Article 13 (2), (3), Article 15, Article 16 (1), Article 30, Article 31 or Article 32, the owner of a pre-existing right or any interested party may, within five years of the date of registration of the trademark, request the Trademark Review and Appeals Board declare the registered trademark invalid. For trademarks that are registered in bad faith, the owner of a well-known trademark shall not be subject to such five-year time limit.

After the Trademark Review and Appeals Board receives an application for declaring a registered trademark invalid, it shall notify the relevant concerned party in writing and determine a time limit for submitting a response. The Trademark Review and Appeals Board shall issue a decision within twelve months of receipt of the application and notify the concerned party in writing. If the time limit requires

extension for special circumstances, it can be extended six months upon approval by the Department for the Administration of Industry and Commerce of the State Council. If a concerned party is dissatisfied with the decision made by the Trademark Review and Appeals Board, it may file suit with a People's Court within thirty days of receipt of the notification. The People's Court shall notify the relevant other party involved in the procedures for adjudicating the trademark to participate in the suit as a third party.

The Trademark Review and Appeals Board can suspend its examination in the process of handling a review pursuant to the preceding paragraphs when the necessity of determining relevant prior rights depends on the result of another case that is pending with a People's Court or an administrative authority. It shall resume the examination procedure when the cause for the suspension has been eliminated.

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 If, upon the expiry of the statutory time limit, a concerned party has neither applied for review of the decision on declaring a registered trademark invalid made by the Trademark Office, nor filed suit with a People's Court against the review decision or a ruling on maintaining or declaring invalid a registered trademark made by the Trademark Review and Appeals Board, the relevant decision of the Trademark Office and the relevant review decision or ruling of the Trademark Review and Appeals Board shall become effective.

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 A registered trademark that has been declared invalid in accordance with Article 44 or Article 45 of this Law shall be gazetted by the Trademark Office, and the exclusive right to use the registered trademark shall be deemed not to have existed from the beginning.

The decision or ruling on declaring a registered trademark invalid shall have no retroactive effect on any written judgment, ruling or mediation agreement on trademark infringement that has been made and enforced by a People's Court, or on a decision in a dispute over trademark infringement issued and enforced by a Department for the Administration of Industry and Commerce, or on any trademark assignment or license contract that has been performed prior to the declaration of invalidity. However, damages caused to others by the trademark registrant's bad faith shall be compensated.

If failure to refund compensation for trademark infringement, trademark transfer fees and royalties pursuant to the preceding paragraph is in obvious violation of the principle of fairness, a full or partial refund shall be made.

第六章 商标使用的管理

Chapter 6. Administration of Trademark Use

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 For the purposes of this Law, “trademark use” refers to acts that distinguish the source of goods in which a trademark is used on the goods, the packaging of goods, or the container for goods, as well as transaction documents for goods, or a trademark is used in advertising, in an exhibition or in other business activities.

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 If, in the course of using a registered trademark, a registrant alters the registered trademark on its own, or the registrant’s name or address or any other registration item, the local Department for the Administration of Industry and Commerce shall order rectification within a specified time period; and if no rectification is made within the specified time period, the Trademark Office shall cancel the registered trademark.

If the registered trademark has become the generic name of its designated goods, or the registered trademark has not been used for three consecutive years without legitimate reasons, any unit or individual may apply to the Trademark Office to cancel the registered trademark. The Trademark Office shall issue a decision within nine months of receipt of the application. If the time limit requires extension for special circumstances, it can be extended three months upon approval by the Department for the Administration of Industry and Commerce of 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, declared invalid or is not renewed upon expiration of the validity period, the Trademark Office shall not approve applications for registration of trademarks that are the same as or similar to the trademark within one year of the date on which the trademark is revoked, declared invalid or canceled.

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 case of a violation of the provisions of Article 6, the local Department for the Administration of Industry and Commerce shall order that an application for registration be filed within a specified period, and a fine of not more than 20% of the illegal business revenue may be imposed if the amount of business revenue is RMB 50,000 or more, or a fine of not more than RMB 10,000 may be imposed if there is no illegal business revenue or the amount of illegal business revenue is less than RMB 50,000.

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 In the case of passing off an unregistered trademark as registered, or use of an unregistered trademark in violation of the provisions of Article 10 of this Law, the local Department for the Administration of Industry and Commerce shall put an end to the acts, order rectification within a specified period, and may additionally circulate a notice, or impose a fine of not more than 20% of the illegal business revenue if the amount of business revenue is RMB 50,000 or more, or a fine of not more than RMB 10,000 may be imposed if there is no illegal business revenue or the amount of illegal business revenue is less than RMB 50,000.

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 case of a violation of the Article 14 (5) of this Law, the local Department for the Administration of Industry and Commerce is to order rectification, and issue a fine of RMB 100,000.

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 If a concerned party is dissatisfied with a decision of the Trademark Office to cancel or not to cancel a registered trademark, it may, within fifteen days of receipt of the notification, apply for review to the Trademark Review and Appeals Board. The Trademark Review and Appeals Board shall issue a decision within nine months of receipt of the application and notify the concerned party in writing. If the time limit requires extension for special circumstances, it can be extended three months upon approval by the Department for the Administration of Industry and Commerce of the State Council. If the concerned party is dissatisfied with the decision of the Trademark Review and Appeals Board, it may file suit with a People's Court within thirty days of receipt of the notification.

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 If, upon the expiry of the statutory time limit, a concerned party has neither applied for review of a decision cancelling a registered trademark made by the Trademark Office, nor filed suit with a People's Court against the review decision issued by the Trademark Review and Appeals Board, the decision cancelling a registered trademark or the review decision shall become effective.

The Trademark Office shall gazette the cancellation of a registered trademark, and the exclusive right to use the registered trademark shall terminate as of the date of gazettal.

第七章 注册商标专用权的保护

Chapter 7. 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 is limited to the registered trademark as approved and the goods on which the trademark has been approved for use.

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 following acts constitutes infringement of an exclusive right to use a registered trademark:

- (1) the use of a trademark that is the same as a registered trademark on the same or similar goods without authorization by the trademark registrant;
- (2) the use of a trademark that is similar to a registered trademark on the same goods, or a trademark that is the same or similar on similar goods, without authorization by the trademark registrant, and easily leading to confusion;
- (3) the sale of goods that infringe the exclusive right to use a registered trademark;
- (4) the forgery or unauthorized manufacture of representations of another's registered trademark, or sale of representations of a registered trademark that were forged or manufactured without authorization;
- (5) substituting a registered trademark without the consent of the trademark registrant and putting back on the market goods bearing the substituted trademark;
- (6) intentional provision of facilitating conditions for acts of infringing another's exclusive right to use a trademark and helping others to carry out acts of infringing the exclusive right to use a trademark;
or
- (7) causing other harm to another's exclusive right to use a 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 In a case where one uses another's registered trademark or unregistered well-known trademark as a trade name in its enterprise name, and such use is liable to mislead the public and constitutes unfair competition, it is to be handled in accordance with the *Law of People's Republic of China Against Unfair Competition*.

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 owner of the exclusive right to use a registered trademark has no right to prohibit others from fair use of the generic names, designs, or model numbers of the relevant goods, or [elements] directly indicating the quality, primary raw materials, functions, intended purposes, weight, quantity, or other characteristics of the relevant goods or a place name contained therein.

The owner of the exclusive right to use a registered trademark has no right to prohibit others from fair use of the shape contained in a three-dimensional mark resulting from the nature of the goods, or the shape of the goods that is necessary for achieving a technical result, or the shape of the goods that adds substantial value to the goods.

If prior to the filing of an application for registration of a trademark by a trademark registrant, another party had used a trademark that has acquired a certain degree of influence and that is identical or similar to the registered trademark on the same or similar goods, the owner of the exclusive right to use the registered trademark has no right to prohibit the user from continuing to use the relevant trademark within the original scope of use, but may request the addition of an appropriate distinguishing sign.

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 If any of the acts of infringing the exclusive right to use a registered trademark specified in Article 57 of this Law leads to a dispute, it can be resolved through consultation by the relevant parties. If there is an unwillingness for consultation or if consultation is unsuccessful, the trademark registrant or interested party may handle the case by filing suit with a People's Court or, alternatively, file a petition with a Department for the Administration of Industry and Commerce.

If the matter is handled by a Department for the Administration of Industry and Commerce and a determination of infringement is established, it may order immediate cessation of the infringing acts, confiscation and destruction of the infringing goods and tools used mainly to produce the infringing goods and to counterfeit the labels of the registered trademark, and may additionally impose a fine not more than five times the amount of illegal business revenue if the amount of illegal business revenue is RMB 50,000 or more, or a fine of not more than RMB 250,000 if there is no illegal business revenue or the amount of illegal business revenue is less than RMB 50,000. In cases involving two or more acts of trademark infringement or any other serious circumstances within a five-year period, a heavier punishment shall be imposed. Selling goods without knowledge that they constituted an infringement of

the exclusive right to use a registered trademark shall be subject to an order by the Department for the Administration of Industry and Commerce to cease sales when there is evidence that the goods were lawfully obtained and it can be shown from whom they were obtained.

In relation to disputes over the amount of damages for infringement of the exclusive right to use the trademark, the concerned parties can request the Department for the Administration of Industry and Commerce handling the matter to conduct mediation, or can file suit with a People's Court in accordance with the *Civil Procedure Law of the People's Republic of China*. If, after mediation by the Department for the Administration of Industry and Commerce, the parties fail to reach an agreement or to implement an effective mediation agreement, the concerned parties may file suit with a People's Court in accordance with 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 Departments for the Administration of Industry and Commerce have the power to investigate and handle cases of infringement of the exclusive right to use a registered trademark in accordance with the law, and if a criminal offense is suspected, shall promptly transfer the case to the judicial authorities for handling 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 Departments for the Administration of Industry and Commerce at or above the county level may exercise the powers set forth below when investigating and handling cases of suspected infringement of another's exclusive right to use a registered trademark in light of evidence of a suspected violation of the law or a report of a violation that has been obtained:

- (1) question relevant concerned parties and investigate the circumstances related to the infringement of the exclusive right to use the registered trademark of another;
- (2) consult and copy the concerned party's contracts, invoices, account books and other relevant materials related to the infringing activities;
- (3) conduct a site inspection of the place where the concerned party is suspected of being engaged in activities infringing upon the exclusive right to use a registered trademark of another; and

(4) inspect articles connected with the infringing activities, and a Department for the Administration of Industry and Commerce may seal up or impound articles for which there is evidence of infringement of the exclusive right to use a registered trademark of another.

When a Department for the Administration of Industry and Commerce is exercising the powers stipulated in the preceding paragraph in accordance with the law, the concerned party shall assist and cooperate with the exercise of such powers and may not refuse to assist or cooperate or interfere therein.

If, in the course of investigating a trademark infringement case, there is a dispute regarding ownership of the trademark right, or the right owner simultaneously files a trademark infringement suit with a People's Court, the Department for the Administration of Industry and Commerce may suspend its investigation of the case. The procedure for investigating the case shall be resumed or concluded when the cause for the suspension is eliminated.

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三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三百万元以下的赔偿。

Article 63 The amount of damages for infringement of the exclusive right to use a trademark shall be determined according to the actual losses of the right owner caused by the infringement, and if it is difficult to determine the amount of actual losses, then determined according to the amount of the benefits gained by the infringer from the infringement, and if it is difficult to determine the amount of actual losses or benefits gained, may be determined by the reasonable multiple of the royalties for the registered trademark. When the infringement of the exclusive right to use a trademark is committed in bad faith and involves serious circumstances, the amount of damages may be an amount not less than one time and not more than three times the amount determined according to the above methods. The amount of damages shall include the reasonable expenses incurred by the right owner in stopping the infringement.

When a People's Court determines the amount of damages, if the right owner has made efforts to provide evidence, and the account books and materials relating to the infringement are mainly possessed by the infringing party, the People's Court may order the infringer to provide the account books and materials relating to the infringement for purposes of determining the amount of damages. If the infringing party does not provide, or provides false account books and materials, the People's Court may determine the amount of damages by referring to the claims made and evidence provided by the right owner.

If it is difficult to determine the amount of actual losses of the right owner caused by the infringement, the amount of the benefits gained by the infringing party, or the royalties for the registered trademark, the People's Court shall, depending on the circumstances of the infringement, render a judgment awarding damages below RMB 3,000,000.

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 If the owner of the exclusive right to use a registered trademark claims damages and the alleged infringing party submits a claim that the owner of the exclusive right to use the registered trademark has not used the registered trademark, the People's Court may require the owner of the exclusive right to use the registered trademark to provide evidence of actual use of the registered trademark within the previous three years. If the owner of the registered trademark is unable to prove actual use of the registered trademark within the previous three years, or is unable to prove that it has suffered any other loss as a result of the infringement, the alleged infringing party shall not assume liability for compensation.

In the case of selling goods without knowledge that they constituted an infringement of the exclusive right to use a registered trademark, if there is evidence that the goods were lawfully obtained and can be shown from whom they were obtained, there shall be no liability for damages.

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 If a trademark registrant or an interested party has evidence showing that another person is carrying out or about to carry out an act of infringement of the exclusive right to use the trademark, and failure to immediately halt the act would cause damage to its lawful rights and interests that would be difficult to remedy, it may apply to a People's Court for an injunction against the act and an order of preservation of property according to the law and prior to instituting an action.

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 A trademark registrant or an interested party may apply to a People's Court for the preservation of evidence prior to the institution of proceedings according to the law and in order to halt infringing conduct if such evidence might be destroyed, lost or difficult to obtain later.

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 If, without authorization from the trademark registrant, a trademark is used that is identical to the registered trademark for the same goods constitutes a criminal offense, the infringer, in addition to compensating for the damages suffered by the party whose rights have been infringed, will be liable for criminal prosecution according to law.

Where the forgery or unauthorized manufacture of representations of another's registered trademark, or the sale of trademark representations that were forged or manufactured without authorization, constitutes a criminal offense, the infringer, in addition to compensating for the damages suffered by the party whose

rights have been infringed, will be liable for criminal prosecution according to law.

Where the sale of goods with knowledge that the goods are counterfeit constitutes a criminal offense, the infringer, in addition to compensating for the damages suffered by the party whose rights have been infringed, will be liable for criminal prosecution according to law.

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) 违反本法第十九条第三款、第四款规定的。

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 Where any of the following acts is committed by a trademark agency, the Department for Administration of Industry and Commerce is to order rectification to be made within specified time limit and issue a warning, and a fine not less than RMB 10,000 and not more than RMB 100,000 is to be imposed; and for personnel directly in charge and other responsible personnel, a fine not less than RMB 5,000 and not more than RMB 50,000 shall be imposed, and a warning issued; and when the acts constitute a criminal offense, liability for criminal prosecution shall be pursued according to law:

- (1) forging, altering or using forged or altered legal documents, seals or signatures in handling trademark-related matters;
- (2) soliciting trademark agency business by such means as defaming other trademark agencies or disturbing the order of the trademark agency market by any other improper means;
- (3) acts in violation of Article 19 (3), (4) of this Law.

If a trademark agency commits any of the aforesaid acts, it shall be recorded in the credit files by the Department for the Administration of Industry and Commerce. If the circumstances are serious, the Trademark Office or Trademark Review and Appeals Board may decide to cease acceptance of the trademark agency business conducted by the trademark agency and gazette the decision.

Any trademark agency violating the principles of honesty and good faith and causing harm to the lawful interests of the principal shall bear civil liability in accordance with the law, and shall be subject to disciplinary actions taken by the organization for the trademark agency according to its 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 The employees of State organs engaged in trademark registration, administration and review must act impartially, uphold the law, have integrity, be self-disciplined, be dedicated to their duties and provide courteous service.

Employees of the Trademark Office and the Trademark Review and Appeals Board, and those employees of State organs that are engaged in trademark registration, administration and review may not engage in trademark agency business or in activities associated with the production of, or dealing in 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 Departments for the Administration of Industry and Commerce are to establish sound internal supervision systems and supervise and examine the enforcement of the law and administrative regulations and the compliance with disciplinary rules of those employees of State organs that are responsible for trademark registration, administration and review.

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 If an employee of a State organ that is engaged in trademark registration, administration or review is derelict in his duties, abuses his authority, practices favoritism, commits irregularities, violates the law when handling trademark registration, administration or review matters, accepts property from a concerned party, or seeks to derive improper gain, and such act constitutes a criminal offense, he shall be prosecuted in accordance with the law. If the act is insufficient to constitute a criminal offense, he shall be subject to sanctions in accordance with the law.

第八章 附则

Chapter 8. Supplementary Provisions

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 Fees shall be paid for applications for trademark registration and handling of other trademark matters. The specific fee standards shall be determined 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 This Law shall be implemented from March 1, 1983. *The Regulations for Trademark Administration* promulgated by the State Council on April 10, 1963 shall be repealed at the same time. Other regulations concerning the administration of trademarks which conflict with this Law shall become ineffective at the same time.

Trademarks registered prior to the implementation of this Law shall remain valid.