

中国商标注册和保护

2023





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一、引言

中国的商标注册采用在先申请原则，即“先到先得”，同时在一定条件下为在先使用的商标提供一定的保护，比如在先使用并有一定影响的商标、未注册但构成驰名的商标可以用来异议或无效他人商标，被代表人或被代理人可以阻止代表人或代理人抢注其商标，权利人可以以有合同、业务往来或其他关系为由阻止他人抢注其在先使用的商标等。

近几年，随着中国商标申请和注册数量的增加，为了减少商标资源的空置和打击商标恶意注册，中国国家知识产权局也越来越重视对商标使用的要求。2019 年中国《商标法》修改的一个重要方面就是强调了商标申请注册的目的应为使用。

在打击商标恶意注册方面，中国国家知识产权局采取了多方面的措施。

一是推动完善相关法规。中国《商标法》2019 年修订中，将打击恶意囤积商标申请前移到注册审查阶段，对于不以使用为目的的恶意注册可以直接驳回。此外，国家市场监督管理总局还制定颁布了《规范商标申请注册行为若干规定》，该《规定》于 2019 年 12 月 1 日实施，对恶意商标注册行为的认定和处罚作出了具体规定。

二是进行准确辨识。通过设置商标审查指引词库，把一些社会敏感词、一些重要人名等列入词库，综合人工判断，在审查中准确



识别商标恶意注册行为。

三是组织专项打击。国家知识产权局多次开展打击恶意商标注册专项整治行动，重点打击包括恶意抢注他人具有较高知名度或者较强显著性的商标或者其他商业标志在内的多种商标恶意注册情形。

国家知识产权局同时还通过曝光典型案例、违法个人、企业和代理机构的方式对恶意注册人予以惩戒并对社会大众予以正面引导，为各类市场主体公平竞争、开展创新和自觉抵制商标恶意抢注行为营造良好的知识产权法治环境、市场环境和社会环境。

在商标保护方面，中国采用行政和司法双轨维权机制，为商标权利人提供全方位保护。2019年《商标法》修改加大商标侵权法定赔偿额，将法定赔偿额从300万元人民币提高到500万元人民币。同时，对于恶意侵犯商标权的行为，情节严重的，可以要求惩罚性赔偿，这一点在2013年《商标法》修改时就已经加入。

中国商标保护是以中国《商标法》及一系列商标法律法规构建的对商标更强有力的保护体系。下面将着重介绍以商标注册为主的中国商标法律保护体系。



二、中国商标相关法律及相关机构概况

（一）商标相关主要法律

中国商标注册和保护最基本和主要的法律为《商标法》及与之配套的《商标法实施条例》。中国同时是《商标国际注册马德里协定》和《商标国际注册马德里协定有关议定书》的缔约方。

（二）商标授权确权和权利保护相关机构

1. 商标授权确权机构

中国国家知识产权局是负责中国商标授权确权案件受理和审查



中国国家知识产权局



的唯一行政机关。中国国家知识产权局下属的商标局承担商标注册审查、行政裁决等具体工作。

当事人对于国家知识产权局的商标评审裁定或决定不服的，可以依法向人民法院提起行政诉讼。在此类行政诉讼中，国家知识产权局为被告。在有对方当事人的案件中，对方当事人为第三人。按照中国最高人民法院《关于北京、上海、广州知识产权法院案件管辖的规定》，不服国家知识产权局作出的有关商标授权确权裁定或者决定的行政诉讼代理人，由北京知识产权法院专属管辖，故北京知识产权法院是此类商标行政诉讼代理人一审的唯一管辖法院，上诉法院即北京知识产权法院的上一级法院，北京市高级人民法院。

2. 商标权利保护相关机构

中国商标保护采用行政和司法双轨制。遭遇商标侵权时，权利人既可以向行政机关寻求行政保护，也可以向法院等司法机关寻求司法保护。在司法保护中，侵权人除承担民事责任和行政责任外，在构成犯罪的情况下，还应承担刑事责任。详情请见本册子第七章的介绍。

| 保护方式 | 主管机构 |
|------|--------------------------|
| 行政保护 | 1. 各级市场监督管理部门 2. 各地海关 |
| 司法保护 | 具有管辖权的人民法院和其他司法机关 |



三、中国商标注册基本制度

（一）外国商标申请人在中国获得商标注册的途径

外国商标申请人取得中国商标注册有以下两种途径：

1. 直接国家申请

申请人可以直接向中国国家知识产权局递交商标注册申请。在中国没有经常居所的外国人、在中国没有营业所的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并在国家知识产权局备案登记的商标代理机构办理，备案的商标代理机构名单可以在国家知识产权局商标局的官方网站上查阅（<http://sbj.cnipa.gov.cn/sbj/sbdl/>）。

2. 马德里商标国际注册

符合条件的申请人也可以通过世界知识产权组织（WIPO）提交马德里商标领土延伸申请，即指定中国的马德里商标国际注册申请或后期指定申请。具体规定请参见 WIPO 网站（www.wipo.int）及国家知识产权局商标局网站有关国际注册的相关内容（<http://sbj.cnipa.gov.cn/sbj/gjzc/>）。

（二）商标申请人资格

自然人、法人或者其他组织均可以单独或共同向国家知识产权局申请注册商标。共同申请的，所有申请人共同享有和行使该商标专用权。



（三）在先申请原则

在中国，使用不是商标申请或注册的条件，先申请者获得注册，但在一定条件下对于在先使用给予一定的保护，比如在先使用并产生一定影响的商标或者未注册的驰名商标。

（四）优先权制度

根据《商标法》的规定，在两种情况下，商标申请人在中国申请商标时可以享受优先权：

1. 基于外国商标申请的优先权

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。

2. 基于国际展会的优先权

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。

（五）商标类型

《商标法》第八条规定：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。

《商标法》第三条规定：经国家知识产权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。

集体商标、证明商标

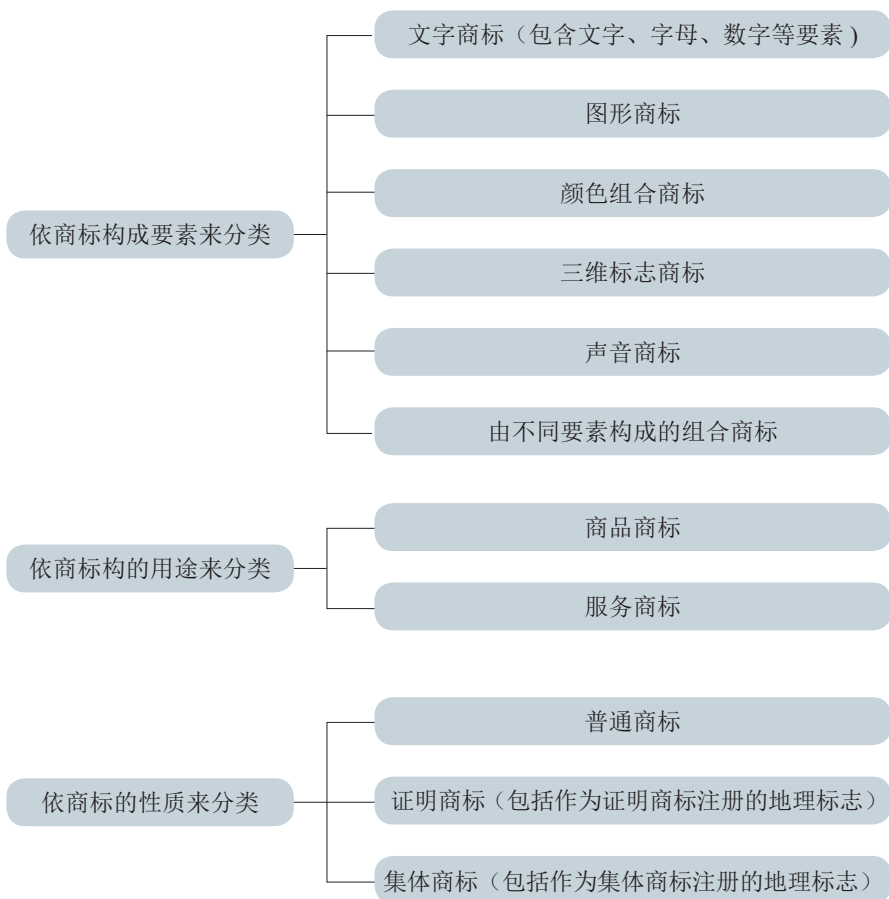
所谓集体商标，是指以团体、协会或者其他组织名义注册，供该组织成员在商事活动中使用，以表明使用者在该组织中的成员资格的标志。

所谓证明商标，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。

作为证明商标 / 集体商标注册的地理标志

中国《商标法》及《商标法实施条例》对于地理标志也提供了注册保护机制，地理标志可以作为证明商标或者集体商标申请注册。

以下以图表方式根据不同划分标准对商标类型予以分类：



（六）不得作为商标使用的标志

根据《商标法》第十条的规定，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。

县级以上新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。

（七）不得作为商标注册的标志

根据《商标法》第十一条的规定，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。

但上述标志如果经过使用已经取得显著特征，并便于识别的，可以作为商标注册。

另，根据《商标法》第十二条的规定，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。

（八）商品和服务

中国是尼斯联盟成员国，采用国际通用的《商标注册用商品和服务国际分类》（即尼斯分类）。现行尼斯分类将商品和服务分成 45 个大类，包括了 1-34 类的商品类别和 35-45 类的服务类别。中国国家知识产权局还在尼斯分类的基础上增加了一些中国常用商品和服务名称并进一步进行类似群组划分后制定《类似商品和服务区分表》（以下简称《区分表》）。

尼斯分类每年修订一次，《区分表》随之予以调整。另外，根据时代和科技的进步，中国国家知识产权局每年也会对《区分表》做出一定的修正。《区分表》是商标注册申请填报和审查时的有用工具和参考依据。

（九）商标申请提交方式

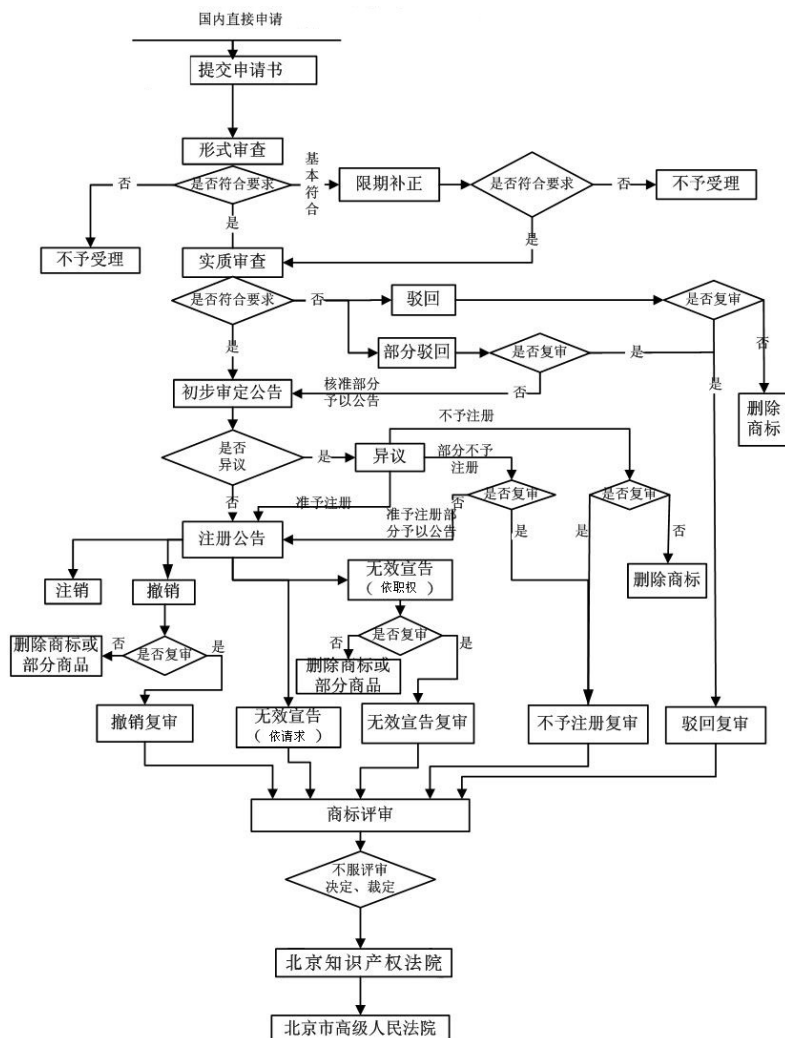
申请人既可以通过电子方式也可以通过纸件方式向中国国家知



知识产权局提交商标注册申请。电子申请更为便捷高效，绝大多数商标申请采用电子方式提交。

(十) 中国商标注册及后续事务主要流程简图

商标注册流程简图



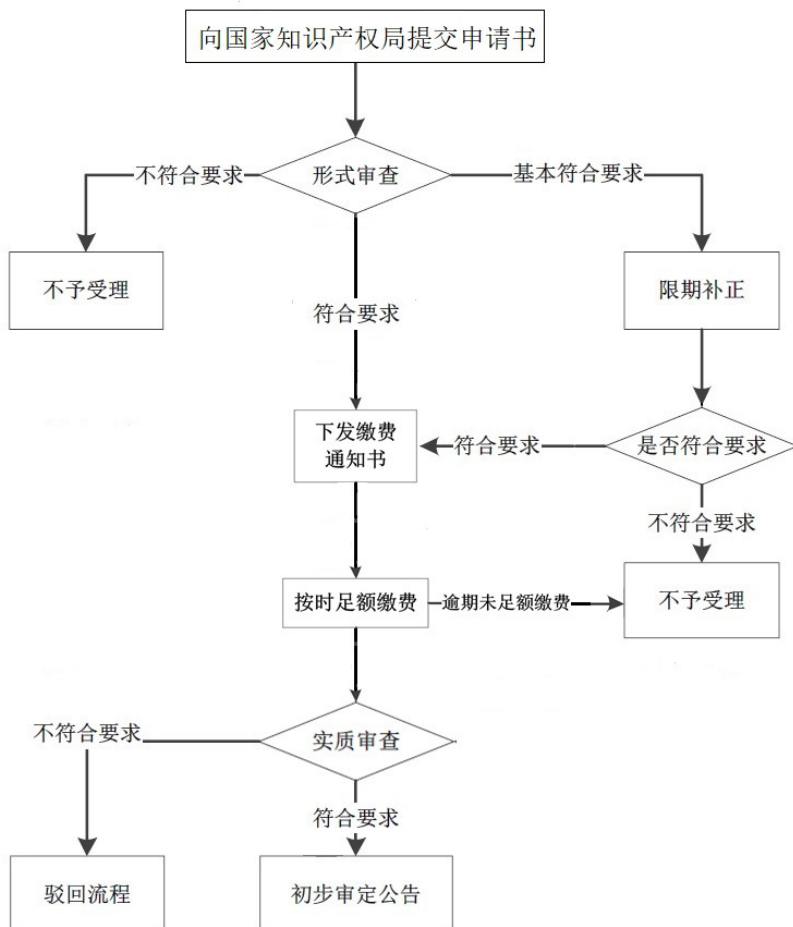


四、注册审查、驳回复审、异议和注册

（一）商标注册申请的审查

商标注册申请的审查从程序上分为两个阶段：即形式审查和实质审查。具体请参下方流程图：

商标审查流程





1. 形式审查

形式审查内容主要包括：

- (1) 申请人是否具有申请注册商标的主体资格；
- (2) 申请书填写、商标图样是否符合规定，指定的商品或服务类别是否正确、商品或服务项目是否规范具体；
- (3) 依法需要委托代理的申请人是否委托了依法设立的商标代理机构办理；委托书填写是否符合规定；
- (4) 应交送的证明文件是否完备；
- (5) 是否按时足额缴纳商标官费。

申请手续齐备并符合要求且按时足额缴纳费用的，国家知识产权局予以受理；申请手续不齐备或不符合要求或未缴纳官费的，国家知识产权局不予受理；申请手续基本齐备或者基本符合规定，但是需要补正的，国家知识产权局通知申请人在规定期限内按要求予以补正，期满未补正的或者未按要求补正的，国家知识产权局不予受理。

2. 实质审查

实质审查内容包括绝对理由审查和相对理由审查，主要为：

绝对理由

- (1) 商标是否违悖《商标法》的禁用条款；
- (2) 商标是否具备法定的构成要素，是否具有显著特征；
- (3) 三维标志商标是否具备功能性；
- (4) 是否为不以使用为目的的恶意商标注册申请；
- (5) 商标代理机构申请注册商标的，还会审查所申请的类别和服务是否为其代理服务；



相对理由

(6) 商标是否与他人在同一种商品或类似商品上在先申请或者注册的商标相同或近似。

3. 审查期限

根据《商标法》第二十八条的规定，国家知识产权局应于收到商标注册申请文件之日起九个月内审查完毕；自 2021 年起，商标注册申请平均审查周期已缩短至 4 个月。

4. 审查结果

商标注册实质审查有三种可能的结果，即初步审定、部分驳回和全部驳回。

(1) 初步审定

申请注册的商标符合商标法有关规定的，予以初步审定公告，公告期为三个月，他人可在公告期内对该商标申请提出异议。公告期满无异议的，国家知识产权局予以核准注册，发放电子商标注册证，并发布商标注册公告。

(2) 部分驳回和全部驳回

如果经过实质审查后，国家知识产权局认为申请商标部分或全部不符合《商标法》授权规定的，可以部分或者全部驳回该商标注册申请。申请人对驳回决定不服的，可以在期限内提起驳回复审申请；如果期限内无复审申请，则驳回决定生效，部分驳回的，核准部分予以初步审定公告，公告期为三个月，他人可在公告期内对该商标申请提出异议。公告期满无异议的，国家知识产权局予以核准注册，发放电子商标注册证，并发布商标注册公告。



5. 马德里商标国际注册指定中国的领土延伸申请的审查

针对马德里商标国际注册指定中国的领土延伸申请，国家知识产权局需在《商标国际注册马德里协定有关议定书》规定的驳回期限内对其进行审查。国家知识产权局在驳回期限内未发出驳回或者部分驳回通知的，该领土延伸申请视为核准。

驳回期限自国际局通知中国国家知识产权局之日起计算。原属局为纯议定书缔约方指定中国的领土延伸申请，驳回期限为通知之日起十八个月；其他缔约方指定中国的领土延伸申请，驳回期限为通知之日起十二个月。

针对马德里商标国际注册指定中国的领土延伸申请的审查标准和核准条件与直接中国国家申请相同，但针对国际注册的临时驳回理由除了前述实质审查结果不符合要求外，还可能包括：

- (1) 指定商品或服务分类有误；
- (2) 指定的商品或服务项目依据中国法律不可以被接受；
- (3) 三维标志、颜色组合、声音标志商标注册申请未在规定期限内提交商标描述和使用说明等相关材料；





(4) 集体商标、证明商标申请，未在规定期限内提交使用规则等相关材料。

(二) 商标驳回复审

1. 驳回复审提交时限

根据《商标法》第三十四条的规定，商标注册申请被驳回的，如果对驳回决定不服，申请人可以自收到驳回通知之日起十五日内向国家知识产权局申请复审；如国家知识产权局通过电子方式发送驳回通知书的，申请人可以在电子发文之日起三十日内向国家知识产权局申请复审，其中十五日视为送达时间。复审提交后需要提交补充材料的，申请人应在复审申请书中声明并于申请提交之日起三个月内提交。

2. 驳回复审审理期限

根据《商标法》第三十四条的规定，国家知识产权局应于收到驳回复审申请之日起九个月内做出决定。有特殊情况需要延长的，经批准，可以延长三个月。截至 2022 年 6 月，驳回复审申请实际平均审理时间已缩短至大约 6 个月。

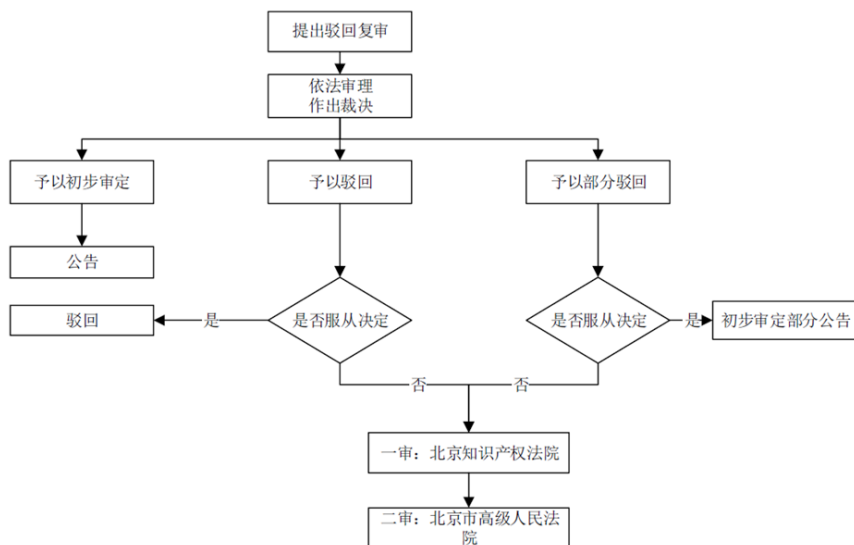
3. 驳回复审流程和审理结果

驳回复审的审查结果分为三种，即予以初步审定，予以全部驳回以及予以部分驳回。

对驳回复审决定不服的，申请人可以自收到决定之日起三十日内向北京知识产权法院提起行政诉讼。法定期限届满，申请人未起诉的，驳回复审决定生效。



驳回复审的具体流程参考下图：



4. 分割申请

商标注册申请被部分驳回，申请人提起驳回复审的，可以将该申请中初步审定的部分分割成另一件申请，分割后的申请保留原申请的申请日期。分割申请的提交时限与驳回复审提交时限相同。分割出来的初步审定部分生成新的申请号，由国家知识产权局予以公告；进入驳回复审的部分沿用原申请号。

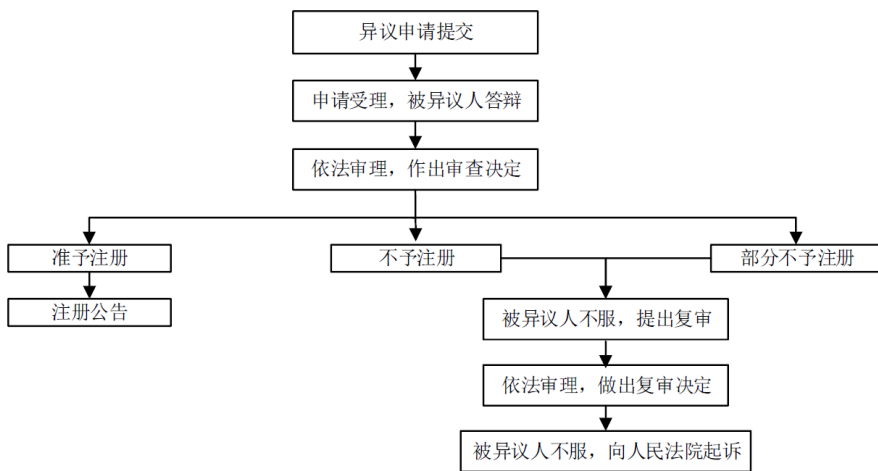
（三）商标异议

《商标法》第三十三条规定：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《商标法》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《商标法》第四条、第十条、第十一条、第十二条、第十九条第四款规定的，可以向国家知识产权局提出异议。

商标异议的具体流程参考下图：



1. 异议提交时限

对直接中国国家商标申请提出异议的期限为，自被异议商标初步审定公告日的次日起三个月内。

对马德里国际注册指定中国的领土延伸申请提出异议的，异议提出期限为自刊登该商标的世界知识产权组织《国际商标公告》出版的次月 1 日起三个月内。

2. 异议审理期限

根据《商标法》第三十五条的规定，对初步审定公告的商标提出异议的，国家知识产权局应自公告期满十二个月内做出是否准予注册的决定，有特殊情况需要延长的，经批准后可以延长六个月。



3. 异议理由

《商标法》明确限定了异议理由的范围，并将其分为绝对理由和相对理由两类。

（1）绝对理由，具体包括：

- I. 《商标法》第四条：不以使用为目的的恶意商标注册申请；
- II. 《商标法》第十条：不得作为商标使用的标志；
- III. 《商标法》第十一条：缺乏显著特征不得作为商标注册的标志；
- IV. 《商标法》第十二条：具有功能性不得注册的三维标志；
- V. 《商标法》第十九条第四款：商标代理机构不得申请注册其代理服务以外的商标。

（2）相对理由，具体包括：

- I. 《商标法》第十三条第二款和第三款：侵犯他人在先驰名商标的商标；
- II. 《商标法》第十五条：抢注被代理人、被代表人商标或其他特定关系人的商标；
- III. 《商标法》第十六条第一款：侵犯他人在先地理标志的商标；
- IV. 《商标法》第三十条和三十一条：与他人在先申请的商标构成相同 / 类似商品上的相同 / 近似商标；
- V. 《商标法》第三十二条（前半段）：侵犯他人商标权以外的在先权利的，如在先商号权、姓名权、肖像权、著作权、外观设计权等；
- VI. 《商标法》第三十二条（后半段）：与他人在先使用并具有一定影响的商标构成相同 / 类似商品上的相同 / 近似商标。



4. 异议人主体资格

对于绝对理由，异议人可以是任何人，包括自然人、法人或其他组织；对于相对理由，异议人应为在先权利人或利害关系人。

5. 异议的审查流程

（1）形式审查

商标异议形式审查主要包括以下内容：

- I . 是否有明确的被异议商标；
- II . 是否在法定异议时限内提出；
- III . 异议人的主体资格是否符合法律规定；
- IV . 异议申请有无明确的异议理由、事实和法律依据；
- V . 异议申请材料的形式要件是否符合法律规定；
- VI . 是否依法按时足额缴纳异议官费。

经审查，符合受理条件的，予以受理，向异议人发出受理通知书。

商标异议申请有下列情形之一的，国家知识产权局不予受理：

- I . 未在法定异议期限内提出的；
- II . 申请人主体资格、异议理由不符合《商标法》第三十三条规定的；
- III . 无明确的异议理由、事实和法律依据的；
- IV . 同一异议人以相同的理由、事实和法律依据针对同一商标再次提出异议申请的。

（2）实质审查

I . 商标异议实质审查内容：主要包括对异议理由、事实和法律依据及相关证据资料等内容的审查。

II . 异议审查结果



i . 异议理由不成立的, 国家知识产权局会做出准予注册的决定, 发给商标注册证, 并予以公告。异议人不服的, 可以在商标注册后依法向国家知识产权局请求宣告该注册商标无效。

ii . 异议理由成立的, 国家知识产权局会做出不予注册的决定, 被异议人不服的, 可以自收到通知之日起十五日内向国家知识产权局提出商标不予注册复审。

iii . 异议理由部分成立的, 国家知识产权局会做出部分不予注册的决定。被异议人对该决定不服的, 可以自收到通知之日起十五日内向国家知识产权局提出商标不予注册复审; 异议人对该决定不服的, 可以在商标注册后依法向国家知识产权局请求宣告该注册商标无效。

(四) 注册公告

对初步审定的商标, 三个月公告期满无异议的或经过异议程序, 异议理由不成立的, 予以核准注册, 发给电子商标注册证, 并予以公告。

(五) 注册商标有效期限

注册商标的有效期为 10 年, 自核准注册之日起计算。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 / 服务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。



五、商标权的处分和维护

（一）变更

根据《商标法》第四十一条规定：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。申请中的商标也可以办理商标变更。商标变更包括以下几种类型：

1. 商标申请人 / 注册人名义变更
2. 商标申请人 / 注册人地址变更
3. 集体商标 / 证明商标使用管理规则变更
4. 集体商标集体成员名单变更
5. 商标代理人 / 国内文件接收人变更
6. 删减商品或服务项目

根据《商标法实施条例》第三十条的规定，商标申请人 / 注册人变更名义或者地址时，应当将其全部注册商标一并变更；未一并变更的，国家知识产权局通知其限期改正；期满未改正的，视为放弃变更申请。

国家知识产权局核准商标变更的，将发给商标申请人 / 注册人相应的变更证明，并刊登变更公告。

（二）转让和移转

申请中和已注册的商标均可以办理转让或转移。

根据《商标法》第四十二条及《商标法实施条例》第三十一条的规定，转让注册商标的，转让人和受让人应当签订转让协议，并



共同向国家知识产权局提出申请。商标注册人对其在同一种商品 / 服务上注册的近似商标，或者在类似商品 / 服务上注册的相同或者近似商标，应当一并转让，未一并转让的，由国家知识产权局通知其限期改正；期满未改正的，视为放弃该移转注册商标的申请。受让人自转让核准公告之日起享有商标专用权。

根据《商标法实施条例》第三十二条的规定，注册商标专用权因转让以外的继承等其他事由发生移转的，接受该注册商标专用权的当事人应当凭有关证明文件或者法律文书到国家知识产权局办理注册商标专用权移转手续。注册商标专用权移转的，注册商标专用权人在同一种或者类似商品 / 服务上注册的相同或者近似的商标，应当一并移转；未一并移转的，由国家知识产权局通知其限期改正；期满未改正的，视为放弃该移转注册商标的申请。商标移转申请经核准的，予以公告。接受该注册商标专用权移转的当事人自公告之日起享有商标专用权。

（三）许可备案

根据《商标法》第四十三条的规定：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国家知识产权局备案，由国家知识产权局公告。商标使用许可未经备案不得对抗善意第三人。

目前中国商标使用许可主要包括类型：（1）独占使用许可，是指商标注册人在约定的期间、地域和以约定的方式，将该注册商标仅许可一个被许可人使用，且商标注册人亦依约定不得使用该注册商标；（2）排他使用许可，是指商标注册人在约定的期间、地域和以约定的方式，将该注册商标仅许可一个被许可人使用，同时商标注册人依约定可以使用该注册商标；（3）普通使用许可，是指商标注册人在约定的期间、地域和以约定的方式，许可他人使用其注册商标，对被许可人的数量没有限定，商标注册人亦可自行使用该注册商标。

国家知识产权局准予商标使用许可备案的，将予以公告。公告的内容包括：许可商标信息、被许可人名称、许可期限、许可使用的商品 / 服务。许可期限不能长于许可商标有效期限。

（四）注册商标专用权质押登记

商标注册人可以作为债务人或担保人，将自己所拥有的依法可以转让的商标专用权出质，作为债务担保。根据法律规定：以注册商标专用权出质的，出质人与质权人应当签订书面质权合同，并共同向国家知识产权局提出质权登记申请；商标注册人对其在相同或



类似商品 / 服务的注册相同或近似商标需一并质押；质押期限不得超过出质商标的注册期限。

质权登记申请书件齐备、符合规定的，国家知识产权局予以受理。受理日期即为登记日期。国家知识产权局自登记之日起两个工作日内向双方当事人发放《商标专用权质权登记证》。商标局设立质权登记簿，供相关公众查阅。

（五）注册商标的注销

商标获准注册后，商标注册人可以向国家知识产权局申请注销其注册商标或者注销其商标在部分指定商品或者服务上的注册。经国家知识产权局核准注销的，该注册商标专用权或者该注册商标专用权在该部分指定商品或者服务上的效力自国家知识产权局收到其注销申请之日起终止。

国家知识产权局核准商标注册人注销其注册商标的，将发放《核准注销通知书》；核准商标注册人注销其商标在部分指定商品上的注册的，将重新核发《商标注册证》，并予公告。

（六）续展

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 10 年，自该商标上一届有效期满次日起计算。国家知识产权局核准商标注册续展申请的，发给续展证明并予以公告。期满未办理续展手续的，注销该注册商标。



六、注册商标的撤销和无效宣告

（一）注册商标的撤销

1. 撤销事由

（1）依职权主动撤销的事由：自行改变注册商标、注册人名义、地址或者其他注册事项的，由知识产权行政管理机关责令限期改正；期满不改正的，由国家知识产权局撤销其注册商标；

（2）依申请撤销的事由：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，任何单位或者个人均可以向国家知识产权局申请撤销该注册商标。国家知识产权局受理后通知商标注册人，限其自收到通知之日起两个月内提交答辩，或提交该商标在撤销申请提出前使用的证据材料或者说明不使用的正当理由。需要注意的是，该期间为不变期间，不可延长；期满未答辩或期满未提供使用的证据材料或者答辩不被接受，或证据材料无效且没有正当不使用理由的，由国家知识产权局撤销该注册商标。

2. 撤销审理期限

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。国家知识产权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，经批准后可以延长三个月。

3. 撤销复审

对国家知识产权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 15 日内向国家知识产权局申请复审。



4. 撤销的法律效力

被撤销的注册商标，由国家知识产权局予以公告，该注册商标专用权自公告之日起终止。

（二）注册商标的无效宣告

注册商标的无效宣告，指国家知识产权局依其职权或依申请对违反《商标法》相关规定的注册商标宣告无效。该程序是商标权消灭的一种方式。国家知识产权局依职权宣告无效的数量相对不多，因此本部分主要介绍依申请的无效宣告程序。

依申请的商标无效宣告的具体流程参考下图：



1. 无效宣告提交时限

对违反绝对理由的注册商标，国家知识产权局或申请人可以在商标注册后的任何时间针对该注册商标发动无效宣告程序。



对违反相对理由的注册商标，在先权利人或者利害关系人自商标注册之日起五年内，可以请求国家知识产权局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。

2. 无效审理期限

对于依申请的商标无效宣告案件，国家知识产权局应当自收到申请之日起十二个月内做出裁定，并书面通知当事人。有特殊情况需要延长的，经批准可以延长六个月。

3. 无效宣告理由

无效宣告理由与商标异议理由基本相同，可分为绝对理由和相对理由两种。

(1) 绝对理由，具体包括：

- I. 《商标法》第四条：不以使用为目的的恶意商标注册申请；
- II. 《商标法》第十条：不得作为商标使用的标志；
- III. 《商标法》第十一条：缺乏显著特征不得作为商标注册的标志；
- IV. 《商标法》第十二条：具有功能性不得注册的三维标志；
- V. 《商标法》第十九条第四款：商标代理机构不得申请注册其

代理服务以外的商标；

VI. 《商标法》第四十四条：

以欺骗手段或者其他不正当手段取得注册的商标。

(2) 相对理由，具体包括：

- I. 《商标法》第十三条第二款和第三款：侵犯他人在先驰名商标的商标；





II. 《商标法》第十五条：抢注被代理人、被代表人商标或其他特定关系人的商标；

III. 《商标法》第十六条第一款：侵犯他人在先地理标志的商标；

IV. 《商标法》第三十条和三十一条：与他人在先申请的商标构成相同 / 类似商品上的相同 / 近似商标；

V. 《商标法》第三十二条（前半段）：侵犯他人商标权以外的在先权利的，如在先商号权、姓名权、肖像权、著作权、外观设计权等；

VI. 《商标法》第三十二条（后半段）：与他人在先使用并具有一定影响的商标构成相同 / 类似商品上的相同 / 近似商标。

4. 无效请求人主体资格

对于绝对理由，无效请求人可以是任何人，包括自然人、法人或其他组织；对于相对理由，无效请求人应为在先权利人或利害关系人。

5. 无效宣告审查流程

（1）形式审查

商标无效形式审查主要包括以下内容：

- I . 是否有明确的被请求商标；
- II . 是否在法定无效期限内提出；
- III . 无效请求人的主体资格是否符合法律规定；
- IV . 无效请求有无明确的无效理由、事实和法律依据；
- V . 无效请求材料的形式要件是否符合法律规定；
- VI . 是否依法按时足额缴纳无效请求官费。

经审查，符合受理条件的，予以受理，向无效请求人发出受理通知书。商标无效请求有下列情形的，国家知识产权局不予受理：

- I . 未在法定时限内提出的；



II . 申请人主体资格不符合法律规定的;

III . 不属于商标无效审理范围的;

IV . 未缴纳无效请求费用的。

(2) 实质审查

I . 商标无效实质审查内容: 主要包括对无效理由、事实和法律依据及相关证据资料等内容的审查。

II . 无效审查结果

i . 无效理由不成立的, 国家知识产权局会做出维持注册的裁定, 无效请求人不服的, 可以在收到裁定后 30 日内向北京知识产权法院提起行政诉讼。

ii . 无效理由成立的, 国家知识产权局会做出予以无效的决定, 商标注册人不服的, 也可以在收到裁定后 30 日内向北京知识产权法院提起行政诉讼。

iii . 无效理由部分成立的, 国家知识产权局会做出部分予以无效的决定。任何一方当事人不服的, 均可以在收到裁定后 30 日内向北京知识产权法院提起行政诉讼。

6. 无效宣告的效力

宣告无效的注册商标, 由国家知识产权局予以公告, 该注册商标专用权视为自始即不存在。

注册商标宣告无效, 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、调解书和知识产权行政管理机关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。



七、商标侵权与保护

（一）侵犯注册商标专用权的行为

依据《中华人民共和国商标法》、《中华人民共和国商标法实施条例》、《最高人民法院关于审理商标民事纠纷案件适用法律若干问题的解释》及最高人民法院知识产权案件年度报告案例，下列行为均构成侵犯注册商标专用权：

1. 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。

2. 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。

3. 销售侵犯注册商标专用权的商品的。但是，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。

4. 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。

5. 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。

6. 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。提供便利条件的行为包括“提供仓储、



运输、邮寄、印制、隐匿、经营场所、网络商品交易平台等”。

7. 给他人的注册商标专用权造成其他损害的，包括：

（1）在同一种商品或者类似商品上将与他人注册商标相同或者近似的标志作为商品名称或者商品装潢使用，误导公众的。

（2）将与他人注册商标相同或者相近似的文字作为企业的字号在相同或者类似商品上突出使用，容易使相关公众产生误认的。

（3）复制、摹仿、翻译他人注册的驰名商标或其主要部分在不相同或者不相类似商品上作为商标使用，误导公众，致使该驰名商标注册人的利益可能受到损害的。

（4）将与他人注册商标相同或者相近似的文字注册为域名，并且通过该域名进行相关商品交易的电子商务，容易使相关公众产生误认的。

（5）正品改装后的转售行为：商品通过正常合法的商业渠道售出后，再行转售的，通常不构成侵权。但是，如果商品在转售过程中进行了实质性改变，导致商品与来源之间的联系发生改变，在该商品上继续使用涉案商标且未对消费者履行合理告知义务的情况下，容易导致混淆并损害商标权人的利益，构成商标侵权。

（6）足以导致混淆、误认的回收利用行为构成商标侵权：符合国家政策导向的回收利用行为亦不能损害他人的合法利益。使用回收容器的行为未合理避让他人的商标权或其他合法权利，并足以导致消费者对商品或服务的来源产生混淆、误认的，构成商标侵权行为。

（7）足以对商标专用权造成损害的其他行为。



（二）商标权利人的维权途径

当遭遇商标侵权时，中国《商标法》赋予了商标注册人或利害关系人多种维权途径，既包括自力维权途径，如警告函、协商和解等；也包括公力维权途径，即行政机关提供的行政保护和司法机关提供的司法保护，司法保护又包括民事诉讼和刑事诉讼两种方式。

（三）警告函

发现侵权行为时，商标注册人或者利害关系人可以向侵权人发出侵权警告函，要求其立即停止侵权。

实践中，警告函往往是开启协商谈判的敲门砖，但警告函不是商标维权的必经程序，商标权利人或利害关系人亦可直接启动行政或司法维权程序。

警告函可以成为商标注册人或者利害关系人制止侵权行为、维护自己权益的快速便捷的自力救济武器，也可以在之后的其他维权程序中起到证明侵权人具有“明知”的主观故意的作用。收到警告函后仍不停止侵权行为的侵权人，可确认为恶意侵权，一定程度上加重其侵权责任。如：当被控侵权人系销售商时，其常常援引《商标法》第





六十四条第二款规定，抗辩其“不知道是侵犯注册商标专用权的商品”，所销售商品具有合法来源，从而主张不承担赔偿责任。如果商标注册人或者利害关系人能够证明已经向该销售商发出了能够反映侵权信息的警告函，销售商在收到该警告函后仍旧继续销售侵权商品的情况下，人民法院可以推定销售商明知其销售的是侵权商品，判令其承担赔偿责任。

需要注意的是，商标注册人或者利害关系人发出警告函之前，应当做好充分的调查取证、侵权分析、证据保全和自我商标防御布局等工作，以防止被警告方在一定条件下启动确认不侵权之诉等反制措施，令商标注册人或利害关系人陷入被动。在无确切证据或未进行充分评估的情况下，应慎重作出对方构成商标侵权的公开声明，以防对方因此反诉商标注册人或者利害关系人构成权利滥用、不正当竞争、侵犯企业名誉权等，给商标注册人或者利害关系人造成损害。此外，商标注册人或利害关系人在发送警告函或启动其他维权程序之前，应对自身商标情况进行评估核查，如自身商标的使用情况和自身商标的注册布局范围等，以防对方收到警告函后对其商标采取不使用撤销或抢注等行动。

（四）行政保护

中国《商标法》规定了行政和司法双轨保护机制，给予商标注册人更多的保护。商标行政保护指当遭遇商标侵权时，商标注册人或者利害关系人依据法律规定，向行政保护机关投诉，请求得到保护。行政保护机关包括各地的市场监督管理部门和各地海关，但海关保



护仅涉及商品进出口行为。

1. 市场监督管理部门的行政保护

商标注册人或利害关系人就中国境内的商标侵权行为可以向县级以上市场监督管理部门进行投诉，请求对侵权行为予以查处；市场监督管理部门亦有权主动查处商标侵权行为。

市场监督管理部门只负责查处市场上的商标侵权行为，不负责解决当事人的赔偿纠纷。当事人对赔偿数额存在争议时可以请求市场监督管理部门进行调解，但是该调解没有强制执行力，调解不成或者调解书生效后不履行的，当事人可以向人民法院起诉。

市场监督管理部门如认定侵权行为成立的，可以责令侵权人立即停止侵权行为，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，将从重处罚。

2. 海关的行政保护

(1) 海关保护的措施

海关的行政保护指与进出口货物有关的商标侵权查处。商标注册人或利害关系人发现侵权嫌疑货物即将进出口的，可以向货物进出境地海关请求采取保护措施，请求扣留侵权嫌疑货物；海关发现进出口货物有侵犯备案商标权嫌疑的应通知备案商标权利人。办理商标权海关备案是海关主动采取保护措施的前提条件，根据规定，已在中国大陆注册的商品商标可以向海关申请备案保护。请求海关扣



留侵权嫌疑货物时，备案商标权利人应在向海关提交的申请书中提供下列信息，并向海关提供不超过货物等值的担保：

- ① 商标权利人的名称或者姓名、注册地或者国籍等；
- ② 商标权相关信息，如商标名、商标号、类别、指定商品等；
- ③ 侵权嫌疑货物收货人和发货人的名称；
- ④ 侵权嫌疑货物名称、规格等；
- ⑤ 侵权嫌疑货物可能进出境的口岸、时间、运输工具等。
- ⑥ 商标权海关备案号（侵权嫌疑货物涉嫌侵犯备案商标权的）。

被扣留的侵权嫌疑货物，经海关调查后认定侵犯商标权的，由海关予以没收并作相应处理。

（2）商标权海关保护备案

商标权海关保护备案，是指商标注册人按照《知识产权海关保护条例》的规定，将其商标权相关信息在海关总署进行登记，以便海关在对进出口货物的监管过程中能够主动对其商标权实施保护。根据规定，已注册的商品商标可以向海关申请备案保护。申请商标注册商标海关备案时，应当提交包含下列信息的申请书以及相应的证明文件：

- ① 注册商标权利人的名称或者姓名、注册地或者国籍等；
- ② 注册商标权的商标名称、注册号、指定类别和商品及其他相关信息；
- ③ 注册商标权许可行使状况（如已有的被许可人信息）（如有的话）；
- ④ 注册商标权利人合法行使商标权的货物的名称、产地、进出



境地海关、进出口商、主要特征、价格等（如有的话）；

⑤ 已知的侵犯注册商标的货物的制造商、进出口商、进出境地海关、主要特征、价格等（如有的话）。

办理海关备案的好处在于：

- ①办理海关备案是海关采取主动保护措施的前提条件；
- ②申请海关备案有助于海关发现侵权货物；
- ③申请海关备案有助于减轻商标权利人的担保负担；
- ④办理海关备案可以对侵权人产生震慑作用。

商标注册人可将其注册商标向海关总署申请备案。海关总署在收到全部申请文件之日起 30 个工作日内作出是否准予备案的决定，并书面通知商标注册人。

海关备案自海关总署准予备案之日起生效，有效期为 10 年。自备案生效之日起商标权有效期不足十年的，海关备案有效期以商标权的有效期限为准。在有效期届满前 6 个月内，商标注册人可向海关总署申请续展备案。

（五）司法保护

1. 民事诉讼

商标注册人或利害关系人就可以就商标侵权行为向人民法院提起民事侵权诉讼，要求停止侵权、消除影响、赔偿损失。

（1）享有诉权的主体

提起侵害商标权诉讼的主体一般包括商标注册人、商标许可使用合同的被许可人、商标受让人、注册商标财产权的合法继承人等。



商标许可使用合同分为独占许可合同、排他许可合同和普通许可合同三种类型。许可类型不同，被许可人享受的诉权不同。独占许可合同的被许可人可以自己的名义向人民法院提起诉讼；排他许可合同的被许可人可以和商标注册人共同起诉，也可以在商标注册人不起诉的情况下，自行提起诉讼；普通许可合同的被许可人需经商标注册人明确授权，才可以提起诉讼。

（2）诉讼时效

侵犯注册商标专用权的诉讼时效为三年，自商标注册人或者利害关系人知道或者应当知道权利受到损害以及义务人之日起计算。

商标注册人或者利害关系人超过三年起诉的，如果侵权行为在起诉时仍在持续，在该注册商标专用权有效期限内，人民法院应当判决被告停止侵权行为，侵权损害赔偿数额应当自权利人向人民法院起诉之日起向前推算三年计算。

（3）保全措施

保全措施类型包括：证据保全、行为保全和财产保全。其中，行为保全相当于有的国家所实施的“临时禁令”。不同的保全措施具有不同的目的和要求。

① 证据保全

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，当事人在诉讼过程中可以依法向人民法院申请保全证据，人民法院也可以主动采取保全措施。如果情况紧急，利害关系人也可以在提起诉讼前向证据所在地、被申请人住所地或者对案件有管辖权的人民法院申请保全证据。证据保全可能对他人造成损失的，人民法院



可以责令申请人提供相应的担保，如果因保全错误而导致对他人造成损失的，申请人应予以赔偿。商标权利人或利害关系人因此可以在一定条件下请求人民法院对诸如对方账册等掌握在对方手中的可能灭失的证据采取证据保全措施，人民法院将根据具体情况决定是否核准请求。

② 行为保全

该行为保全措施相当于“临时禁令”。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，可以依法向人民法院申请采取责令停止有关行为保全的措施，人民法院也可以依职权采取行为保全措施。行为保全申请可以在起诉前或起诉中提出，起诉前的行为保全应向被申请人住所地或者对案件有管辖权的人民法院申请。申请行为保全，申请人应当提供相应担保；人民法院依职权采取行为保全措施的，根据具体情况确定是否需要当事人提供担保。保全申请有错误的，申请人应当赔偿被申请人因保全所遭受的损失。

③ 财产保全

人民法院对于可能因当事人一方的行为或者其他原因，使判决难以执行的案件，根据对方当事人的申请，可以裁定对其财产进行保全；当事人没有提出申请的，人民法院在必要时也可以主动采取财产保全措施。为了确保胜诉后能顺利获得赔偿，商标注册人或利害关系人可以在起诉前或诉讼中请求人民法院对被控侵权人的财产、银行账户等采取查封、扣押、冻结等保全措施。申请财产保全的应



提供担保，申请错误的，财产保全申请人应当赔偿被申请人因保全错误所遭受的损失。

（4）管辖

商标侵权民事诉讼由侵权行为地或者被告住所地法院管辖。

涉驰名商标侵权认定的第一审民事案件由侵权行为地或被告住所地知识产权法院或中级人民法院管辖（如无知识产权法院的）；经最高人民法院批准，也可以由基层人民法院管辖。



其他商标侵权民事案件由最高人民法院确定的基层人民法院管辖。如果标的额达到当地中级人民法院管辖标准的，由中级人民法院管辖。

（5）民事责任

对于商标侵权行为，商标注册人或利害关系人有权要求侵权人承担停止侵害、消除影响、赔偿损失的民事责任。

就侵权损害赔偿方面，对于恶意侵权行为，情节严重的，可以施以 1-5 倍的惩罚性赔偿。有关损失赔偿的具体计算方法，请参见下面的具体说明。

关于侵权赔偿数额的判定，人民法院将按照权利人因被侵权所受到的实际损失确定；实际损失难以确定的，可以按照侵权人因侵权所获得的利益确定；权利人的损失或者侵权人获得的利益难以确定的，参照该商标许可使用费的倍数合理确定。对恶意侵犯商标专



用权，情节严重的，可以在按照上述方法确定数额的一倍以上五倍以下确定赔偿数额。赔偿数额应当包括权利人为制止侵权行为所支付的合理开支。

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

2. 刑事诉讼

对于侵犯注册商标专用权构成犯罪的，除承担民事责任，赔偿被侵权人的损失以外，还应依法追究侵权人的刑事责任，侵犯商品商标或服务商标权利的行为均可能涉嫌犯罪，最高可处以十年以下有期徒刑并处罚金。

商标犯罪案件可以由公安机关立案侦查，由检察院向人民法院提起公诉；符合自诉条件的，也可以由商标权利人向人民法院提起自诉。

（1）商标犯罪行为

《商标法》第六十七条规定了应当追究刑事责任的三种商标犯罪行为：

① 未经商标注册人许可，在同一种商品、服务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；

② 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；

③ 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。

上述三种犯罪行为分别对应《中华人民共和国刑法》的如下罪名：

①《刑法》第二百一十三条规定的“假冒注册商标罪”：未经注册商标所有人许可，在同一种商品、服务上使用与其注册商标相同的商标，情节严重的或情节特别严重的”；

②《刑法》第二百一十四条规定的“销售假冒注册商标的商品罪”：销售明知是假冒注册商标的商品，违法所得数额较大或者有其他严重情节的或违法所得数额巨大或者有其他特别严重情节的；

③《刑法》第二百一十五条规定的“非法制造、销售非法制造的注册商标标识罪”：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，情节严重的或情节特别严重的。

（2）“假冒注册商标罪”中“同一种商品”的认定

名称相同的商品以及名称不同但指同一事物的商品，可以认定为刑法第二百一十三条规定的“同一种商品”。

“名称”通常指《商标注册用商品和服务国际分类表》中规定的商品名称。“名称不同但指同一事物的商品”是指在功能、用途、主要原料、消费对象、销售渠道等方面相同或者基本相同，相关公众一般认为是同一种事物的商品。

认定“同一种商品”，应当在权利人注册商标核定使用的商品和行为人实际生产销售的商品之间进行比较。

（3）“假冒注册商标罪”中“相同商标”的认定

具有下列情形之一，可以认定为“与其注册商标相同的商标”：

①与注册商标完全相同，无差别；

②改变注册商标的字体、字母大小写或者文字横竖排列，但与



注册商标之间基本无差别的；

③ 改变注册商标的文字、字母、数字等之间的间距，但与注册商标之间基本无差别的；

④ 改变注册商标颜色，但不影响体现注册商标显著特征的；

⑤ 在注册商标上仅增加商品通用名称、型号等缺乏显著特征要素，不影响体现注册商标显著特征的；

⑥ 与立体注册商标的三维标志及平面要素基本无差别的；

⑦ 其他与注册商标基本无差别、足以对公众产生误导的商标。

（4）管辖

商标犯罪案件由犯罪地公安机关立案侦查。必要时，可以由犯罪嫌疑人居住地公安机关立案侦查。

需要提请批准逮捕、移送审查起诉、提起公诉的，由该公安机关所在地的同级人民检察院、人民法院受理。

（5）刑事责任

“假冒注册商标罪”的刑事责任：情节严重的，处三年以下有期徒刑，并处或者单处罚金；情节特别严重的，处三年以上十年以下有期徒刑，并处罚金。

“销售假冒注册商标的商品罪”的刑事责任：违法所得数额较大或者有其他严重情节的，处三年以下有期徒刑，并处或者单处罚金；违法所得数额巨大或者有其他特别严重情节的，处三年以上十年以下有期徒刑，并处罚金”。

“非法制造、销售非法制造的注册商标标识罪”的刑事责任：情节严重的，处三年以下有期徒刑，并处或者单处罚金；情节特别严重的，处三年以上十年以下有期徒刑，并处罚金。



(六) 商标权行政保护和司法保护对比表

| | 行政保护 | | 司法保护 | |
|--------|--|---|--|--|
| | 市场监督管理部门的保护 | 海关保护 | 民事诉讼 | 刑事诉讼 |
| 适用条件 | 在中国市场上发现商标侵权的情形 | 进出口货物涉嫌商标侵权的情形 | 在中国市场上发现商标侵权的情形 | 在中国市场上发生的涉嫌犯罪的商标侵权行为 |
| 保护对象 | 商品商标、服务商标 | 商品商标 | 商品商标、服务商标 | 商品商标、服务商标 |
| 管辖 | 侵权行为地县级以上市场监督管理部门 | 货物进出境地海关 | 侵权行为地或被告住所地基层人民法院、中级人民法院管辖 | 1. 立案侦查：由犯罪地或者犯罪嫌疑人居住地的公安机关负责； 2. 公诉和审理：由该公安机关所在地的同级人民检察院、人民法院负责。 |
| 主要法律责任 | 停止侵权、没收 / 销毁侵权商品及制造工具、罚款。 | 停止侵权、没收侵权商品。 | 停止侵权、消除影响、赔偿损失。 | 有期徒刑、罚金。 |
| 优劣势对比 | 优势：程序简单、快捷，在阻止继续从事侵权行为方面具有明显优势； 劣势：行政行为具有非终局性，且不能判定侵权人承担赔偿责任。 | 优势 程序简单、快捷，在阻止继续从事侵权行为方面具有明显优势； 劣势：行政行为具有非终局性，且不能判定侵权人承担赔偿责任；仅针对进出口货物。 | 优势：人民法院判决具有终局性，且可以判定民事赔偿； 劣势：程序复杂，且当事人举证责任较重。 | 优势：人民法院判决具有终局性，可以有效震慑假冒商标的犯罪行为； 劣势：立案标准较高。 |



八、中国商标保护的实用提示

（一）商标网上检索系统

1. 社会公众可通过国家知识产权局商标局中国商标网“商标网上查询”系统（网址为：<http://sbj.cnipa.gov.cn/sbj/sbcx/>）查询在国家知识产权局记录的商标注册申请信息、商标公告信息和可被接受的商品 / 服务项目等信息。需要注意的是，该商标网上检索系统的数据信息并非实时更新，有一定滞后性，仅供参考，不具有法律效力。



2. 社会公众可通过国家知识产权局商标局中国商标网“商标评审裁定 / 决定文书”查询系统（网址为：<http://wsgs.sbj.cnipa.gov.cn:9080/tmpu/pingshen/getMain.html>）查询国家知识产权局作出的商标评审裁定和决定文书。需要注意的是，本栏目提供的文书仅供参考，不具法律效力。



2022年06月13日 星期一

国家知识产权局商标局 中国商标网
TRADEMARK OFFICE OF CHINA NATIONAL INTELLECTUAL PROPERTY ADMINISTRATION

商标评审裁定/决定文书

为进一步增强商标评审工作透明度，接受社会监督，我局将对评审裁定/决定文书全部即时公开。
本栏目提供的文书仅供查阅人参考，不具法律效力。非法使用本栏目文书信息给他人造成损害的，由非法使用人承担法律责任。

注册号:

商标名称:

申请人名称:

被申请人名称:

代理机构名称:

裁定/决定时间从: 选择开始日期 至 选择结束日期

3. 社会公众可通过国家知识产权局商标局中国商标网“商标异议决定文书”查询系统（网址为：<http://wsjgs.sbj.cnipa.gov.cn:9080/tmpu/yycw/getMain.html>）查询国家知识产权局作出的商标异议决定文书。需要注意的是，本栏目提供的文书仅供参考，不具法律效力。

2022年06月13日 星期一

国家知识产权局商标局 中国商标网
TRADEMARK OFFICE OF CHINA NATIONAL INTELLECTUAL PROPERTY ADMINISTRATION

商标异议决定文书

为进一步增强商标异议工作透明度，接受社会监督，我局将对商标异议决定书予以公开。
本栏目提供的文书仅供查阅人参考，不具法律效力。非法使用本栏目文书信息给他人造成损害的，由非法使用人承担法律责任。

注册号:

商标名称:

异议人名称:

异议人代理机构名称:

被异议人名称:

被异议人代理机构名称:

决定作出时间从: 选择开始日期 至 选择结束日期



(二) 中国商标注册各程序官费

| 收费项目 | 纸质申请官费(人民币) (一标一类) | 电子申请官费(人民币) (一标一类) |
|-----------|---|---|
| 商标注册申请费 | 300 元(限定本类 10 个项目。超过 10 项的, 每超过 1 项, 加收 30 元) | 270 元(限定本类 10 个项目。超过 10 项的, 每超过 1 项, 加收 27 元) |
| 补发商标注册证费 | 500 元 | 450 元 |
| 转让注册商标费 | 500 元 | 450 元 |
| 商标续展注册费 | 500 元 | 450 元 |
| 续展注册迟延费 | 250 元 | 225 元 |
| 商标变更费 | 150 元 | 0 元 |
| 出具商标证明费 | 50 元 | 45 元 |
| 集体商标注册申请费 | 1500 元 | 1350 元 |
| 证明商标注册申请费 | 1500 元 | 1350 元 |
| 商标异议费 | 500 元 | 450 元 |
| 撤销商标费 | 500 元 | 450 元 |
| 商标使用许可备案费 | 150 元 | 135 元 |
| 商标驳回复审费 | 750 元 | 675 元 |
| 商标不予注册复审费 | 750 元 | n/a |
| 商标无效宣告复审费 | 750 元 | n/a |
| 商标无效宣告费 | 750 元 | 675 元 |
| 撤销商标复审费 | 750 元 | n/a |



（三）企业商标保护的策略性建议

1. 关注商标实际使用图样和使用范围的变化，及时进行补充注册

商标注册人应随时关注使用商标的图样和使用商品是否与核准注册的商标信息完全一致，如果实际使用超出了商标注册核定使用的范围或者修改了核准使用的商标图样，应当及时进行商标补充注册，避免发生侵权使用风险或者违法使用风险。

2. 商标注册后需规范性使用

为了维持注册商标的专用权及防范法律风险，商标注册人需要对注册商标进行规范使用。一般来讲，企业应注意以下几点：

（1）严格一致原则：原则上，商标注册人在商业活动中使用注册商标应该严格保持与其商标注册证上载明的商标图样相一致。

（2）细微差别例外：实际使用的商标与核准注册的商标虽有细微差别，但未改变其显著特征的，可以视为注册商标的使用。

（3）核定商品固定：商标获准注册后均列明了核定的商品或服务，商标的实际使用不能超出核定范围。

（4）名义地址变更：商标注册人名义、地址等注册事项发生变化后，应当依法及时向商标局提出变更申请。

（5）规范标注标记：使用注册商标，可以在商品、商品包装、说明书或者其他附着物上标明“注册商标”或者使用注册标记“®”和“®”（该标记中的中文“注”表示“registered”）。

（6）驰名宣传禁止：无论是否被认定过驰名商标，生产、经营

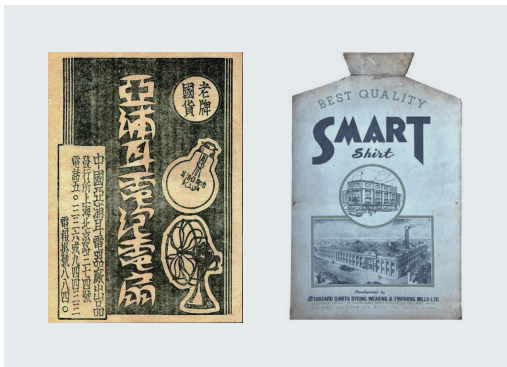


者均不得将“驰名商标”字样用于商品、商品包装或者容器上，或者用于广告宣传、展览以及其他商业活动中，否则会被责令改正，处十万元罚款。

3. 注意生成并保留使用证据，以规避商标被撤销之风险

为预防商标被他人提起连续三年不使用撤销之风险，企业应当提前生成并保留商标在中国的使用证据。

4. 建立商标监测和预警机制



企业应当按照不同需求建立全方位的商标监测体系，包括但不限于：

(1) 监测企业自身商标：企业应当建立商标档案管理制度，保存完整的商标清单，全面监测本

企业商标的注册和使用情况，尤其是注册商标的续展监测，以防止因错过续展期限而丧失注册商标专用权。

(2) 监测他人商标：企业对他人商标进行监测，可以及时采取行动，启动商标异议或无效宣告或三年不使用撤销等程序，避免自身商标权受到影响。此外，对竞争对手的商标进行监测，可及时了解到对手最新的商业布局或动向。

(3) 监测侵权行为：电子商务领域是商标侵权行为的高发地，对各大电子商务平台上商标使用行为的监测，可以及时发现侵权线索，尽早消除侵权隐患。



九、中国国家知识产权局的沟通(联系人和服务)

通讯地址：北京市海淀区蓟门桥西土城路 6 号

邮政编码：100088

总机：010-62083114

国家知识产权局国际合作司的主要职责：

1. 统筹协调涉外知识产权事宜，组织参加有关知识产权的条约、协议的谈判。
2. 组织协调有关部门与世界知识产权组织及其他国际（境外）知识产权组织的联系。
3. 负责专利、商标、地理标志工作的国际合作与交流活动以及国知局的外事工作。

此外，国家知识产权公共服务网（试运行版，网址为：http://ggfw.cnipa.gov.cn:8010/PatentCMS_Center/）已投入使用，可供查询使用。



Registration and Protection of Trademarks in China

2023





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Chapter I: Introduction

Trademark registration in China adopts a first-to-file principle, that is, "first come, first served". Meanwhile, under certain conditions, some level of protection is given to earlier-used trademarks. For instance, a trademark that has been used earlier and has produced certain influence in the market and an unregistered trademark that constitutes a well-known trademark can be used as a ground for an opposition or invalidation, a trademark owner can prevent his/her representative or agent from squatting his/her trademark, and a right holder of an earlier-used trademark can prevent trademark squatting of other parties on the grounds of contracts, business dealings or other relationships.

In recent years, with the increasing number of trademark applications and registrations in China, in order to reduce the idle trademark resources and combat trademark registrations in bad faith, CNIPA has paid more and more attention to the requirements for trademark use. An important aspect of the revision of China's Trademark Law in 2019 is to emphasize that the purpose of trademark application for registration should be to use.

In terms of combating trademark registration in bad faith, CNIPA has taken various measures.

First, to improve relevant laws and regulations. In the revision of Chinese Trademark Law in 2019, the procedure of combating hoarding of trademark application in bad faith was moved forward to the examination stage of registration applications, and registrations in bad faith that are not for use purpose can be directly refused. In addition, the State Admin-



istration of Market Regulation has formulated and published Provisions on Regulating Trademark Application for Registration, which was implemented on December 1, 2019 and made specific provisions on the judgment and punishment of trademark registrations in bad faith.

Second, to carry out accurate identification. A trademark examination guiding thesaurus is set to cover a number of socially sensitive words, important persons' names, etc., and combined with human judgment, to accurately identify bad-faith trademark registration in examination.

Third, to organize specific actions. CNIPA has carried out special actions against bad-faith trademark registrations for several times, focusing on combating a variety of bad-faith trademark registration situations, including squatting other parties' trademarks with high reputation or strong distinctiveness or other business signs in bad faith.

CNIPA also punished bad-faith registrants and gave positive guidance to the public by exposing typical cases, illegal individuals, enterprises and agencies, to create a favourable legal environment, market environment and social environment for intellectual property right protection, in



which all kinds of market players may compete fairly, carry out innovation and consciously resist bad-faith trademark registrations.

In terms of trademark protection, China adopts a dual-track of both administrative and judicial protection mechanism to provide comprehensive protection to right holders. The Trademark Law revised in 2019 has increased statutory damages for trademark infringement from RMB 3 million yuan to RMB 5 million yuan. For bad-faith infringement upon a trademark right which involves serious circumstances, punitive damages can be claimed, which was already added when the Trademark Law was revised in 2013.

China's trademark protection system is built on the Trademark Law and a series of trademark regulations and rules, which provides strong protection for trademarks. This document will focus on the registration-based trademark legal protection system in China.



CNIPA Headquarters



Chapter II: Trademark-Related Laws and Authorities in China

(I) Main laws and regulations related to trademarks

The basic and most important law for trademark registration and protection in China is the Trademark Law of the People's Republic of China (Trademark Law) as well as the Implementing Regulations for the Trademark Law of the People's Republic of China (Implementing Regulations). Meanwhile, China is a contracting party of Madrid Agreement Concerning the International Registration of Marks and Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks.

(II) Authorities related to trademark right granting, confirmation and protection

1. Authorities for trademark right granting and confirmation

The China National Intellectual Property Administration (CNIPA) is the sole administrative authority to receive and examine trademark right granting and confirmation cases in China. The Trademark Office under CNIPA is responsible for the specific work of conducting trademark registration examination, making review and adjudication decisions, etc.

If the concerned party is dissatisfied with a trademark review and adjudication decision of CNIPA, he or she may initiate an administrative lawsuit before the people's court in accordance with the law. In such proceedings, CNIPA is the defendant, and the opposite party, if any, is a third party. According to the Provisions of the Supreme People's Court on the Jurisdictions over Cases by Intellectual Property Courts in Beijing, Shanghai and Guangzhou, admin-



Administrative lawsuit cases against the adjudication or decision of CNIPA on the granting and confirmation of trademark rights shall be under the exclusive jurisdiction of the Beijing Intellectual Property Court, so Beijing Intellectual Property Court is the sole competent court of the first instance of such cases, and the appellate court is the higher-level court above Beijing Intellectual Property Court, that is, Beijing High People's Court.

2. Authorities for trademark right protection

China's trademark right protection adopts an administrative-and-judicial-dual-track system. In the case of trademark infringement, a right holder may seek administrative protection from an administrative authority or seek judicial protection from a judicial authority such as a court. In judicial protection, the infringer shall, in addition to the civil and administrative liability, be subject to criminal liability in case of a crime. Please refer to Chapter XII for more detailed information.

| Protection | Competent authority |
|---------------------------|---|
| Administrative protection | 1. Local administrations for market regulation at all levels 2. Customs of all localities throughout China |
| Judicial protection | People's courts and other judicial authorities |



Chapter III: Basic Information on Trademark Registration System in China

(I) Ways for a foreign applicant to register a trademark in China

There are two ways for a foreign applicant to register a trademark in China.

1. Direct national application

An applicant may directly file an application for trademark registration with CNIPA. A foreign applicant having no habitual residence or a foreign enterprise having no establishment in China shall entrust a legally-established trademark agency registered with CNIPA to apply for trademark registrations and handle other trademark-related matters in China. The list of trademark agencies recorded in CNIPA can be viewed on the official website of the Trademark Office of CNIPA (<http://sbj.cnipa.gov.cn/sbdl/>).

2. International trademark registration through Madrid System

An eligible applicant may also file, with the World Intellectual Property Organization (WIPO), an application for territorial extension of Madrid international trademark registrations, that is, an international registration designating or subsequently designating China. Please see details relating to international registrations at WIPO's website (www.wipo.int) and the website of the Trademark Office of CNIPA (<http://sbj.cnipa.gov.cn/gjzc/>).

(II) Eligibility of trademark applicants

Any individual, legal person or other organization can apply to CNIPA for trademark registrations, separately or jointly. In the case of a joint application, all applicants jointly enjoy and exercise the exclusive right to use the



trademark.

(III) First-to-file principle

In China, use is not a precondition for trademark application or registration. The first to file gets registered. However, under certain conditions, some level of protection is given to earlier-used trademarks, such as a trademark that has been used earlier and has produced a certain influence, or an unregistered well-known trademark.

(IV) Priority

According to the Trademark Law, trademark applicants can enjoy a right of priority when applying for trademark registrations in China under two circumstances:

1. Priority based on a foreign trademark application

Any applicant for the registration of a trademark in China who has previously duly filed an application to register the identical trademark in connection with the same goods in a foreign country may enjoy a right of priority in accordance with any agreement concluded between the People's Republic of China and the foreign country concerned, or with the international treaty to which both countries are parties, or on the basis of the principle of reciprocity, 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.

2. Priority based on international exhibitions

Any applicant who uses a trademark for the first time on goods displayed at an international exhibition sponsored or recognized by the Chinese government, may claim the right of priority, provided that the application



in China is filed within six months from the date of the exhibition.

(V) Types of trademarks

Subject to Article 8 of the Trademark Law, any signs, including words, devices, letters, numerals, three-dimensional symbols, color combinations, sound etc., or any combination of the above elements that are capable of distinguishing the goods of a natural person, legal person or other organization from those of others, may be applied for registration as trademarks.

Subject to Article 3 of the Trademark Law, registered trademarks refer to marks that are registered with the approval of CNIPA, including goods trademarks and service trademarks, collective trademarks and certification trademarks.

Collective trademark and certification trademark

A collective trademark refers to a trademark 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. A certification trademark refers to a trademark which is controlled by an organization capable of supervising a particular type of goods or services 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.

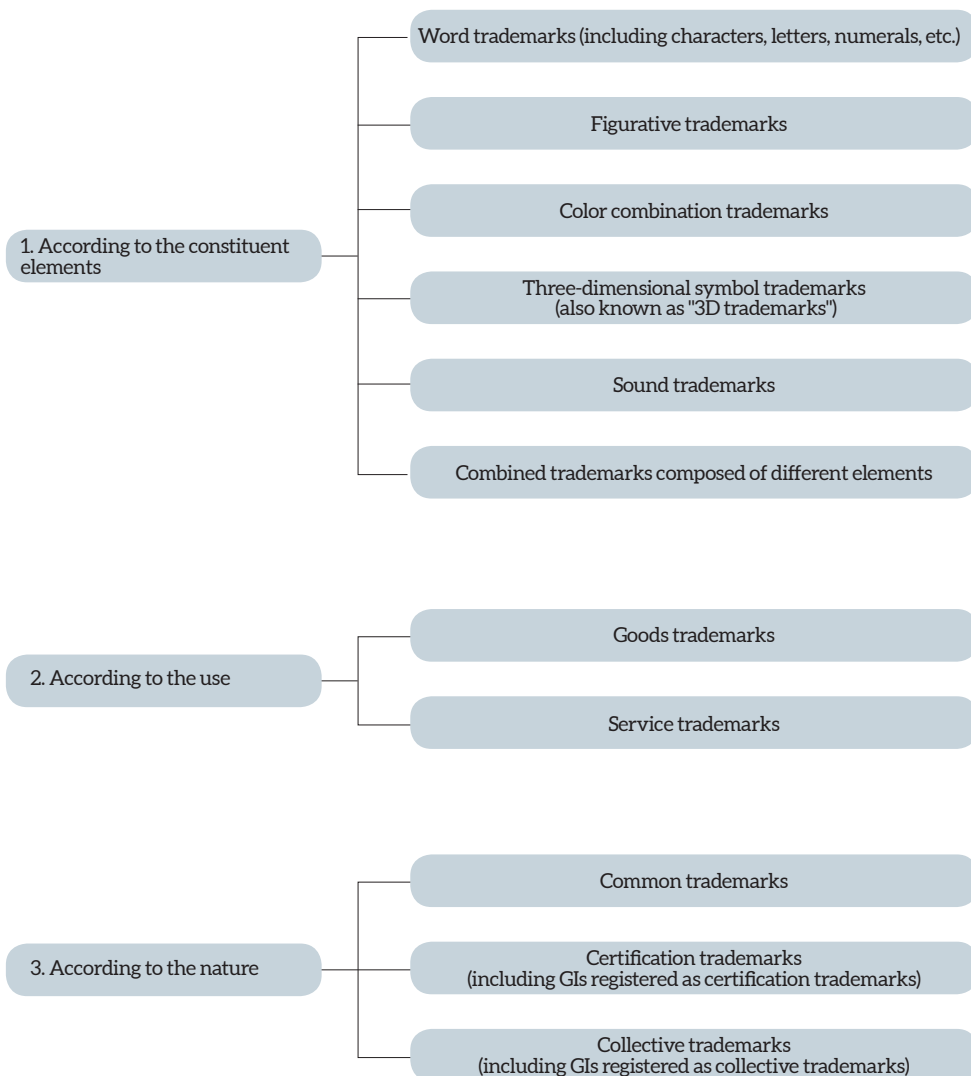
Geographical indications registered as certification trademarks / collective trademarks

The Trademark Law and its Implementing Regulations also provide regis-



tration protection mechanisms for geographical indications (GIs). GIs may be registered as certification trademarks or collective trademarks.

The types of trademarks are classified below according to different criteria in the form of a graph:





(VI) Signs which shall not be used as trademarks

Subject to Article 10 of the Trademark Law, the following signs shall not be used as trademarks:

1. Those identical with or similar to the State name, national flag, national emblem, national anthem, military flag, military emblem, military anthem, or decorations etc., of the People's Republic of China; and those identical with the names or symbols of the Central State government organizations, or with the names of the particular venues, where the Central State government organizations are located, or with the names or graphs of the symbolic buildings of the Central State government organizations;
2. Those identical with or similar to the State name, national flags, national emblems or military flags etc., of foreign countries, unless consent has been given by the government of the relevant country;
3. Those identical with or similar to the names, flags or emblems, etc., of international intergovernmental organizations, unless consent has been given by the relevant organization or the public is not likely to be misled by such use;
4. Those identical with or similar to official signs or hallmarks indicating control and warranty, unless authorization has been given;
5. Those identical with or similar to symbols or names of the Red Cross or the Red Crescent;
6. Those having the nature of discrimination against any nationality;
7. Those having the nature of fraud, which is likely to mislead the public



in terms of the features such as the quality of the goods, or the places of origins; and

8. Those detrimental to socialist morality or customs, or having other unhealthy influences.

The geographical names of the administrative divisions at or above the county level or 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 trademark or a certification trademark shall be exclusive. Where a trademark using any of the above-mentioned geographical name has been approved and registered, it shall remain valid.

(VII) Signs which shall not be registered as trademarks

Subject to Article 11 of the Trademark Law, the following signs shall not be registered as trademarks:

1. those which consist exclusively of the generic names, designs or models of the goods in respect of which the trademark is used;
2. those which consist exclusively of elements directly indicating the quality, primary raw materials, functions, intended purpose, weight, quantity or other characteristics of the goods; and
3. Other signs which are devoid of any distinctive character.

Any sign mentioned in the preceding paragraph may be registered as a trademark where it has acquired distinctiveness through use and become easily distinguishable.



In addition, subject to Article 12 of the Trademark Law, where a three-dimensional symbol is applied for 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.

(VIII) Classification of goods and services

China is a member state of the Nice Union and adopts the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (the Nice Classification). The current Nice Classification divides goods and services into 45 classes, including classes 1-34 for goods and classes 35-45 for services. Based on the Nice Classification, CNIPA also adds terms of goods and services commonly used in China and further divides each class into subclasses of similarity, thus formulating the Classification Table of Similar Goods and Services (the Classification Table).

The Nice Classification is revised once a year, and the Classification Table is adjusted accordingly. In addition, with the advances in science and technologies, CNIPA also revises the Classification Table every year. The Classification Table is a very useful tool and reference for filing and examining the trademark registration applications.

(IX) Means for filing a trademark application

An applicant may file a trademark application with CNIPA either electronically or in paper form. Because of the convenience and efficiency of electronic filing, it becomes the predominant way of trademark applications.

(X) Process diagram of trademark registration in China



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graph TD
    Start([Direct national application]) --> File[File an application]
    File --> Formality[Formality examination]
    Formality --> Conform1{Conform or not}
    Conform1 -- No --> NotAccepted1[Not accepted]
    Conform1 -- "Basically conform" --> Amend[Amend within a time limit]
    Amend --> Conform2{Conform or not}
    Conform2 -- No --> NotAccepted2[Not accepted]
    Conform2 -- Yes --> Substantive[Substantive examination]
    Substantive --> Conform3{Conform or not}
    Conform3 -- No --> Refusal[Refusal]
    Conform3 -- Yes --> Preliminary[Preliminary approval publication]
    Refusal --> ReviewRefusal{Review or not}
    ReviewRefusal -- Yes --> Preliminary
    ReviewRefusal -- No --> PartialRefusal[Partial refusal]
    PartialRefusal --> ReviewPartial{Review or not}
    ReviewPartial -- Yes --> Preliminary
    ReviewPartial -- No --> TotallyRefused[Totally refused]
    TotallyRefused --> ReviewTotally{Review or not}
    ReviewTotally -- Yes --> Preliminary
    ReviewTotally -- No --> TrademarkDeletion1[Trademark deletion]
    Preliminary --> Opposition{Opposition or not}
    Opposition -- Yes --> Opposition[Opposition]
    Opposition -- No --> Registration[Registration publication]
    Opposition -- Registered --> Registration
    Opposition --> ReviewOpposition{Review or not}
    ReviewOpposition -- Yes --> Regeneration[Publication of regeneration for approved part]
    Regeneration --> Registration
    ReviewOpposition -- No --> InvalidExOfficio[Invalidation (ex officio)]
    InvalidExOfficio --> ReviewInvalidExOfficio{Review or not}
    ReviewInvalidExOfficio -- Yes --> ReviewInvalidation[Review of invalidation]
    ReviewInvalidation --> TrademarkAdjudication[Trademark adjudication and review]
    ReviewInvalidExOfficio -- No --> DeletionPartial1[Deletion of trademark or partial goods]
    DeletionPartial1 --> TrademarkAdjudication
    Registration --> Cancellation[Cancellation]
    Registration --> Revocation[Revocation]
    Revocation --> ReviewRevocation{Review or not}
    ReviewRevocation -- No --> DeletionPartial2[Deletion of trademark or partial goods]
    DeletionPartial2 --> TrademarkAdjudication
    ReviewRevocation -- Yes --> ReviewRevocation[Review of revocation]
    ReviewRevocation --> TrademarkAdjudication
    TrademarkAdjudication --> Dissatisfied{Dissatisfied with the decision}
    Dissatisfied --> BeijingCourt[Beijing Intellectual Property Court]
    BeijingCourt --> BeijingHighCourt[Beijing High People's Court]
  
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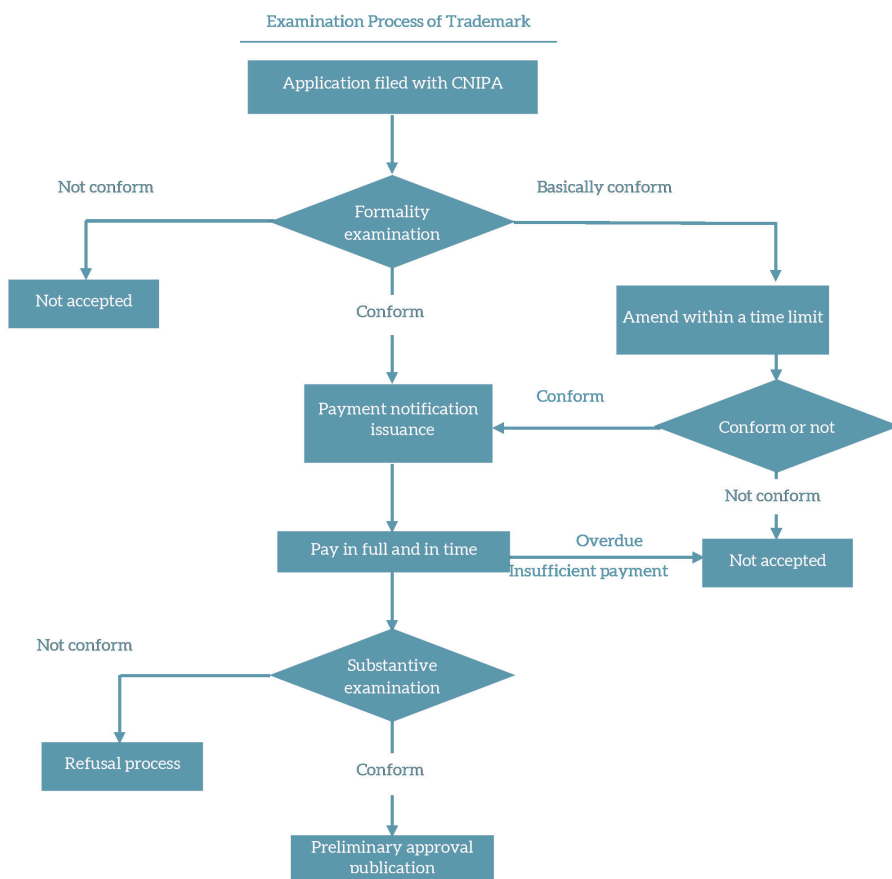
The flowchart illustrates the trademark registration process in China, starting with a direct national application. It details the steps from filing to adjudication, including various examination stages, oppositions, and potential outcomes like refusal, partial refusal, or deletion. The process concludes with a decision by the Beijing Intellectual Property Court, which can be appealed to the Beijing High People's Court.



Chapter IV: Examination, Review of Refusal, Opposition and Registration

(I) Examination of trademark registration application

The examination of trademark registration application is divided into two stages: formality examination and substantive examination. Please refer to the flowchart below for details:





1. Formality examination

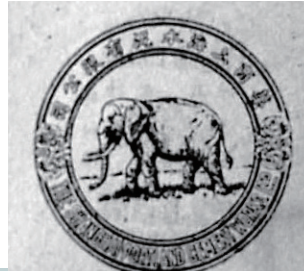
Formality examination mainly includes:

- (1) Whether the applicant has the subject qualification to apply for the registration of a trademark;
- (2) Whether the filling-in of the application form and the trademark reproduction meet the requirements, whether the classification of goods or services is correct, and whether the terms of goods or services are acceptable;
- (3) Whether a legally established trademark agency has been used where required, whether the power of attorney is filed in accordance with the requirements;
- (4) Whether the supporting documents required are complete;
- (5) Whether the official fees are paid in full and in time.

If the application formalities are complete, the application documents are filled in as required, and the fees are paid in full and in time, CNIPA shall accept the application; if the application formalities are not complete, the application documents are not filled in as required, or the applicant fails to pay the official fees, CNIPA shall not accept the application; if the application formalities are basically complete or the application documents are basically in compliance with the provisions, but there is a need for supplements or amendments, CNIPA shall notify the applicant to make supplements or amendments as required within the time limit; if the supplements or amendments are not made or not made as required within the time limit, CNIPA shall refuse to accept such application.

2. Substantive examination

Substantive examination includes examination based on absolute grounds and examination based on relative grounds, mainly as follows:



Absolute grounds

- (1) Whether the sign violates the prohibitory provisions of the Trademark Law;
- (2) Whether the sign has acceptable constituent elements with distinctiveness;
- (3) Whether the three-dimensional symbol has functionality;
- (4) Whether the application is filed with bad faith and not for the purpose of use;
- (5) Whether the classes and services applied is for relevant agency services, if the applicant is a trademark agency.

Relative grounds

- (6) Whether the sign is identical with or similar to an earlier trademark in respect of the same or similar goods/services applied or registered by others.

3. Examination period

Subject to Article 28 of the Trademark Law, CNIPA shall complete the examination of a trademark registration application within 9 months from the date of receiving the application. Since 2021, the average examination



period for a trademark registration application is shortened to 4 months.

4. Examination results

There are three possible results for the substantive examination, those are, preliminary approval, partial refusal and total refusal.

(1) Preliminary approval

Where a trademark application complies with the relevant provisions of the Trademark Law, it will be preliminarily approved and published for 3 months, during which a third party may file an opposition against it. If no opposition is filed upon expiry of the publication period, CNIPA will approve the registration of the trademark, issue an electronic registration certificate and publish such registration.

(2) Partial refusal and total refusal

If it is found that the trademark application partially or totally does not comply with the provisions of the Trademark Law after substantive examination, the trademark application will be partially or totally refused. If the applicant is dissatisfied with the refusal, a review of refusal can be requested within a time limit. If no review of refusal is requested within the time limit, the refusal by CNIPA takes effect. Where an application is partially refused, the approved part will be preliminarily approved and published for 3 months, during which a third party may file an opposition. If no opposition is filed upon expiry of the publication period, CNIPA will approve the registration of the trademark, issue an electronic registration certificate and publish such registration.

5. Examination on an international registration designating China through Madrid System

For an international trademark registration designating China, CNIPA



shall examine it within the period of refusal as required in the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks. If CNIPA fails to issue a notification of refusal or partial refusal within the period of refusal, the application for territorial extension shall be considered approved.

The period of refusal shall be calculated from the date when WIPO notifies CNIPA of the international registration. Designations originated from a pure Protocol contracting party shall be refused within 18 months from the date of notification and those originating from other contracting parties shall be refused within 12 months from the date of notification.

The examination criteria and approval conditions for an international registration are the same as those for direct Chinese national applications, but in addition to the aforementioned grounds for refusal, the provisional refusal for international registrations may also base on the following grounds:

- (1) The designated goods or services are wrongly classified;
- (2) The designated goods or services terms are not acceptable according to Chinese laws;
- (3) For the applications for trademark registration of three-dimensional symbols, color combinations and sound marks, relevant documents such as trademark descriptions and instructions for use fail to be submitted within the time limit;
- (4) For collective trademark and certification trademark applications, use rules and other relevant documents fail to be submitted within the time limit.

(II) Review of trademark refusal



1. Time limit for filing an application for review of refusal

Subject to Article 34 of the Trademark Law, where an application is refused and the applicant is dissatisfied with the refusal, a review application may be filed within 15 days from receipt of the refusal notification. If the refusal notification is issued by CNIPA electronically, the applicant may file an application for review of refusal within 30 days from the date of electronic issuance, of which 15 days is regarded as the delivery time. If the applicant intends to supplement relevant documents and evidence after the review request is filed, such documents and evidence shall be submitted within 3 months from the date on which the review is filed.

2. Time limit for examining a review of refusal

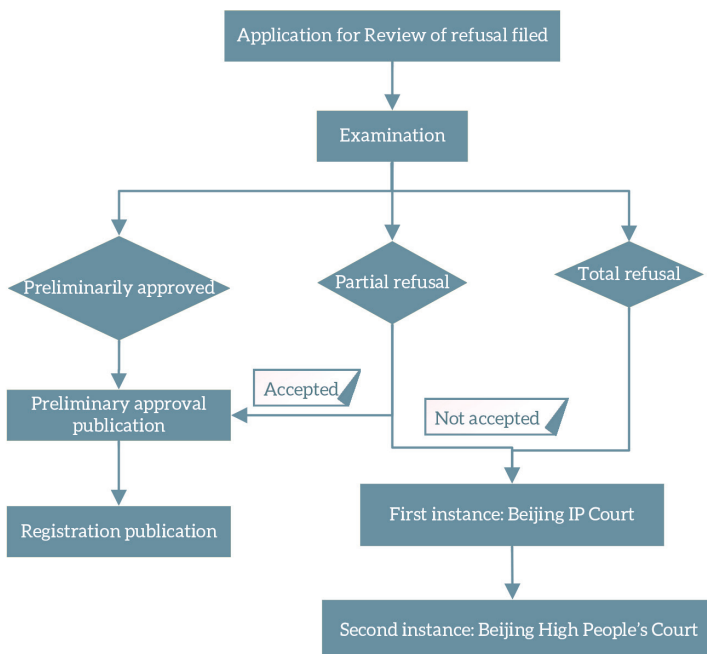
Subject to Article 34 of the Trademark Law, CNIPA shall make a decision on a review of refusal within 9 months from the date of receiving the application. Where it is necessary under special circumstance, the time limit can be extended for a further 3 months upon approval. As of June 2022, the average examination time for a review of refusal has been shortened to approximately 6 months.

3. Process and results of a review of refusal

There are three possible results on a review of refusal, i.e., preliminary approval, total refusal and partial refusal.

Where the applicant is dissatisfied with the decision on review of refusal, an administrative lawsuit may be brought to Beijing Intellectual Property Court within 30 days from the receipt of the decision. If no lawsuit is filed within the time limit, the decision will take effect.

Please refer to the below flowchart for the process of review of refusal:



4. Division

If an application for trademark registration is partially refused and the applicant files an application for review of refusal, the preliminarily approved part of the application may be divided into another application, which preserves the application date of the original application. The time limit for filing the application for division is the same as that for filing the application for review of refusal. A new application number is generated for the preliminarily approved part, which will be published by CNIPA. The part entering the review of refusal continues to use the original application number.

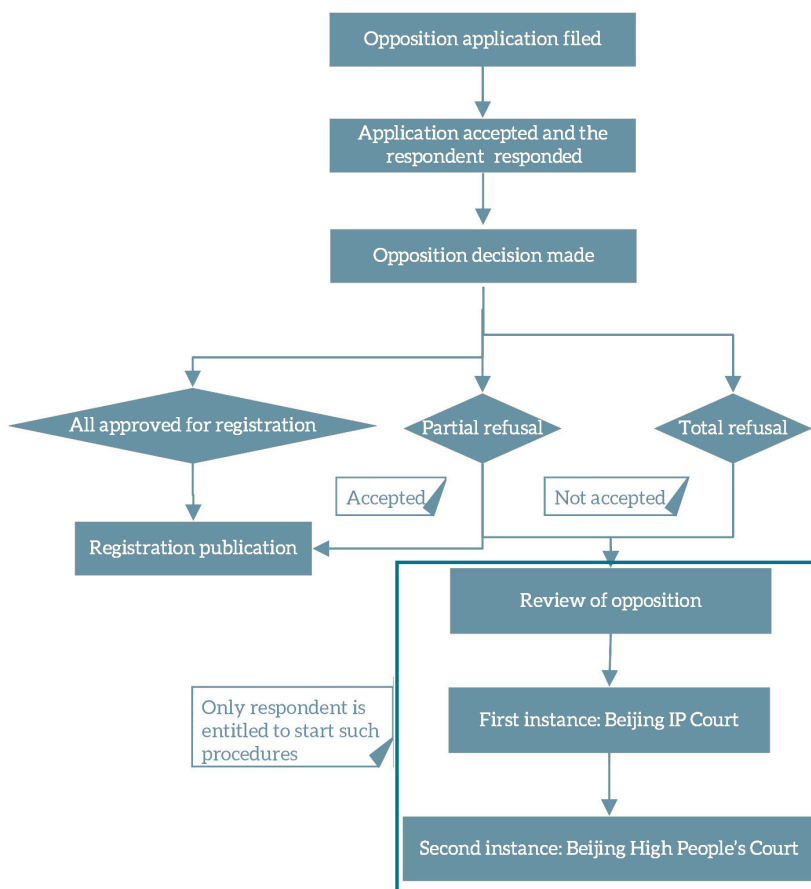
(III) Trademark opposition

Subject to Article 33 of the Trademark Law, for a preliminarily approved



trademark, if a holder of prior right or an interested party holds that the trademark published upon preliminary examination violates Articles 13 (the 2nd and 3rd paragraphs), 15, 16 (the 1st paragraph), 30, 31 and 32 of the Trademark Law, or any person holds that the trademark violates Articles 4, 10, 11, 12 and 19 of (the 4th paragraph) of the Trademark Law, he or she may file an opposition with CNIPA within 3 months from the date of publication.

Please refer to the below flowchart for the process of trademark opposition:





1. Time limit for filing an opposition

The time limit for filing an opposition against a national trademark application is 3 months from the day following the publication date of preliminary approval of the opposed trademark.

Where an opposition is filed against an international trademark registration designating China, the time limit for filing the opposition is 3 months from the 1st day of the month following the month indicated on the publication of the International Registration Gazette by WIPO.

2. Time limit for opposition examination

Subject to Article 35 of the Trademark Law, where an opposition is filed against the trademark published after preliminary examination, CNIPA shall make a decision on whether or not to approve the application for registration of the trademark within 12 months from the expiry date of the publication period. Where it is necessary under special circumstance, the time limit can be extended a further 6 months for examination upon approval.

3. Grounds for opposition

The Trademark Law clearly defines the scope of opposition grounds, and divides them into absolute grounds and relative grounds.

(1) Absolute grounds include:

- ① Article 4 of the Trademark Law: a bad-faith application for trademark registration not filed for the purpose of use;
- ② Article 10 of the Trademark Law: signs that shall not be used as a trademark;
- ③ Article 11 of the Trademark Law: signs devoid of any distinctive character shall not be registered as a trademark;
- ④ Article 12 of the Trademark Law: three-dimensional symbols that are



functional shall not be registered as a trademark;

⑤ Article 19 (the 4th paragraph) of the Trademark Law: a trademark agency shall not apply for any trademark on goods/services other than agency services.

(2) Relative grounds include:

① Article 13 (the 2nd and 3rd paragraphs) of the Trademark Law: infringing upon others' prior well-known trademarks;

② Article 15 of the Trademark Law: squatting a trademark of another person for whom the applicant acts as the representative or agent or with whom the applicant has other business relationship;

③ Article 16 (the 1st paragraph) of the Trademark Law: infringing upon others' prior geographical indications;

④ Articles 30 & 31 of the Trademark Law: registering a trademark identical with or similar to others' prior trademarks on the same or similar goods/services;

⑤ Article 32 (first part) of the Trademark Law: infringing upon existing prior rights of others' other than trademark rights, such as prior trade name rights, name rights, portrait rights, copyrights, and design rights, etc.;

⑥ Article 32 (second part) of the Trademark Law: registering a trademark identical with or similar to others' trademarks that have been used and obtained a certain influence already before its application on the same or similar goods/services.

4. Subject qualification of opponents

For absolute grounds, the opponent can be any person, including a natural person, a legal person or other organizations. For relative grounds, the opponent shall be a holder of prior rights or an interested party.

5. Examination process of opposition



(1) Formality examination

The formality examination of an opposition mainly includes the following issues:

- ① Whether there is a definite opposed trademark;
- ② Whether the opposition is filed within the statutory time limit;
- ③ Whether the opponent is qualified;
- ④ Whether the opposition application has clear opposition grounds, facts and legal basis;
- ⑤ Whether the formal requirements of opposition application documents by the legal provisions are complied with;
- ⑥ Whether the official fees are paid in full and in time.

If the opposition meets the requirements for acceptance, it shall be accepted and an official acceptance notification will be issued. CNIPA shall not accept an application for opposition which falls within the following circumstances:

- ① Not filed within the statutory time limit;
- ② The opponent is not qualified;
- ③ No clear opposition grounds, facts or legal basis;
- ④ The same opponent has already filed an opposition against the same trademark on the same grounds, facts and legal basis.

(2) Substantive examination

Substantive examination of trademark opposition mainly focuses on the opposition grounds, facts and legal basis, as well as relevant evidence documents.

Possible results of opposition examination include:

- ① If the opposition grounds are not established, CNIPA will make a decision of approval of registration, issue an electronic trademark registration certificate and make a publication thereon. Where the opponent is dis-



satisfied with the decision, he or she may request for invalidation of the trademark after it is published for registration.

② If the opposition grounds are established, CNIPA will make a decision of disapproval of registration. Where the opposed party is dissatisfied with the decision, he or she may file a review request against the decision to disapprove the registration within 15 days from the date of receipt of the decision.

③ If the opposition grounds are partially established, CNIPA will make a decision of partial disapproval of registration. Where the opposed party is dissatisfied with the decision, he or she may file a review request for opposition within 15 days from the date of receipt of the decision. Where the opponent is dissatisfied with the decision, he or she may request for invalidation of the registered trademark after it is published for registration.

(IV) Registration publication

For a preliminarily approved trademark, if no opposition is filed upon expiry of the 3-month publication period, or the opposition reasons are not supported after examination, CNIPA will approve the registration of the trademark application, issue the electronic registration certificate and publish the registration.

(V) Period of validity of a registered trademark

The period of validity of a registered trademark is 10 years from the date of approval for registration. For a trademark approved for registration after the opposition decision, the 10-year period shall start from the expiry date of 3 months after the publication of preliminary approval.



Chapter V: Disposition and Maintenance of Trademark Rights

(I) Modification

Subject to Article 41 of the Trademark Law, where the name or address of the registrant or other registration matters of the registration needs to be modified, an application for modification shall be filed. The trademark under application may also be modified. The following matters of a trademark may be modified:

- (1) Name of the trademark applicant/registrar;
- (2) Address of the trademark applicant/registrar;
- (3) Rules on the administration of use of a collective or certification trademark;
- (4) Member list of a collective trademark;
- (5) Trademark agency or domestic receiver for documents;
- (6) Deletion of item(s) of goods/services.

Subject to Article 30 of the Implementing Regulations, where the name or address of a trademark applicant/registrar is modified, the modification in respect of all the registered trademarks of the trademark registrant shall be made all together; where the modification is not made all together, CNIPA shall notify the trademark applicant/registrar to do so within a specified time limit; where the applicant/registrar fails to do as required at the expiration of the time limit, the application for modification is considered abandoned.

Where an application for modification is approved, CNIPA shall issue a modification certification to the trademark applicant/registrar and pub-

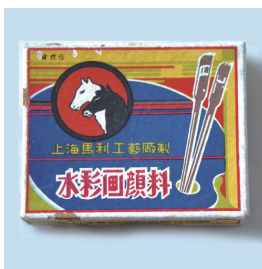


lish the same.

(II) Assignment and transfer

Both trademarks pending in application and registered can be assigned and transferred.

Subject to Article 42 of the Trademark Law and Article 31 of the Implementing Regulations, to assign a registered trademark, the assignor and the assignee shall sign an agreement of assignment and jointly file an application of assignment with CNIPA. All of the identical or similar trademarks registered in name of the assignor on the same or similar goods/services shall be assigned concurrently; where such registered trademarks are not assigned concurrently, CNIPA shall notify the assignor and the assignee to do so within a specified time limit; where the parties fail to do as required within the time limit, the application for assignment shall be considered abandoned. The assignee shall enjoy the exclusive right of the trademark from the publication date of the assignment. Subject to Article 32 of the Implementing Regulations, where a trademark is transferred for inheritance or any other reasons other than assignment, the party acquiring the trademark shall undergo the procedure for the transfer with CNIPA on the basis of the relevant certification or legal document. All identi-





cal or similar registered trademarks on the same or similar goods/services of the right holder shall be transferred concurrently; otherwise, CNIPA shall notify the applicant to do so within a prescribed time limit; and if the applicant fails to do so, the application for transfer of the registered trademark shall be considered abandoned. If an application for transfer of a registered trademark is approved, it shall be published, and the party who accepts the transfer of the exclusive right to use the registered trademark shall enjoy the exclusive right to the trademark from the publication date of the transfer.

(III) Recordal of licence

Subject to Article 43 of the Trademark Law, a trademark registrant may, by signing a trademark licence agreement, authorize other parties to use his registered trademark. The licensor shall supervise the quality of the goods/services in connection with which the licensee uses his registered trademark and the licensee shall guarantee the quality of the goods/services in respect of which the registered trademark is used. Where a party is licensed to use another party's registered trademark, the name of the licensee and the origin of the goods shall be indicated on the goods that bear the registered trademark. Where a party is licensed to use another party's registered trademark, the licensor shall record the licence with CNIPA. CNIPA shall publish the licence. A trademark licence without recordal with CNIPA cannot be used against a bona fide third party.

There are mainly the following three types of trademark licences in China:

(1) exclusive licence, wherein the trademark registrant licenses his registered trademark to only one licensee for use within the agreed period, territory and in an agreed manner, and the trademark registrant himself shall also not use the registered trademark according to the agreement;



- (2) sole licence, wherein the trademark registrant licenses his registered trademark to only one licensee for use within the agreed period, territory and in an agreed manner, but the trademark registrant himself can use the registered trademark according to the agreement; and
- (3) ordinary licence, wherein the trademark registrant licenses an unlimited number of licensees to use his registered trademark within the agreed period, territory and in an agreed manner and the trademark registrant himself can also use the registered trademark.

Once CNIPA approves the trademark licence recordal, a publication will be made. The following particulars will be published: information of the licensed trademark, name of the licensee, licence period, and licensed goods/services. The licence period shall not be longer than the term of validity of the licensed trademark.

(IV) Recordal of pledge on exclusive trademark rights

A trademark registrant, as a debtor or guarantor, can pledge his registered trademark which can be assigned as a debt guarantee. According to the law, where a registered trademark is pledged, the pledgor and the pledgee shall sign a written contract and jointly file the recordal application of the pledge with CNIPA; the trademark registrant shall pledge the identical or similar trademarks registered on the same or similar goods/services all together; and the pledge period shall not exceed the valid term of the pledged trademark.

If the documents for a pledge recordal application are complete and meet the requirements, CNIPA will accept the application. The date of acceptance is the date of recordal. CNIPA shall issue the Pledge Recordal Certificate of Exclusive Right to Use Trademark to both parties within 2 working



days from the date of recordal. The CNIPA shall make the information of the pledge recordal available to the public.

(V) Cancellation of a registered trademark

After a trademark is approved for registration, where the trademark registrant wishes to cancel the registered trademark in full or on part of the designated goods/services, an application for cancellation of the trademark should be filed with CNIPA. Where the cancellation is approved by CNIPA, the exclusive right of the registered trademark or the validity of the exclusive right of the registered trademark on goods or services on which the trademark is cancelled shall be terminated as of the date when CNIPA receives the application for cancellation.

Where an application for cancellation of a registered trademark is approved, CNIPA shall issue a Notification of Approval of cancellation and publish the cancellation; and where the cancellation only approved on part of the designated goods/services, CNIPA shall issue a new Trademark Registration Certificate.

(VI) Renewal

Where the registrant intends to continue to use the registered trademark beyond the 10-year valid term, an application to renew the registration shall be made within 12 months prior to the date of expiration. Where no application for renewal is filed within the 12-month period, a grace period of 6 months is allowed. A trademark registration may be renewed for a period of ten years each time. CNIPA shall, upon approval the renewal application of the registered trademark, issue a renewal certificate and publish the renewal. If no application for renewal is filed at the expiration of the grace period, the registered trademark shall be removed from the register.



Chapter VI: Revocation and Invalidation of a Registered Trademark

(I) Revocation of a registered trademark

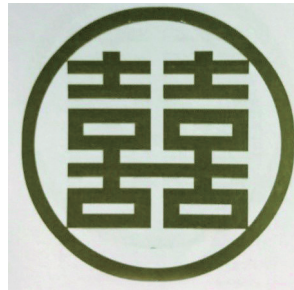
1. Grounds for revocation

(1) Grounds for ex officio revocation: if the registered trademark, the name and address of the registrant, or other registered items are modified by the registrant itself, CNIPA shall ask the registrant to make corrections within a time limit; if no correction is made within the time limit, CNIPA shall revoke the registered trademark;

(2) Grounds for revocation upon request : If a registered trademark has become a generic name of its designated goods or has not been used for 3 consecutive years after registration without justifiable reasons, any organization or individual may request CNIPA to make a decision to revoke it. After accepting the application, CNIPA will notify the trademark registrant to respond within 2 months upon receipt of the notification from CNIPA, or submit use evidence to prove the use of the trademark before the revocation application is filed, or explain the justifiable reasons for non-use. It shall be noted that this period is fixed and cannot be extended; and CNIPA shall revoke the registered trademark if the trademark registrant fails to respond or provide use evidence within the time limit or if the response is not acceptable, or if the provided evidence is invalid and there is no justifiable reasons for non-use.

2. Time limit for revocation examination

CNIPA shall make a decision within 9 months from the date of receiving a revocation application. Where it is necessary under special circumstance,



the time limit can be extended for a further 3 months upon approval.

3. Review of revocation

Any party dissatisfied with the revocation decision may file a review with CNIPA within 15 days from the date of receiving the decision.

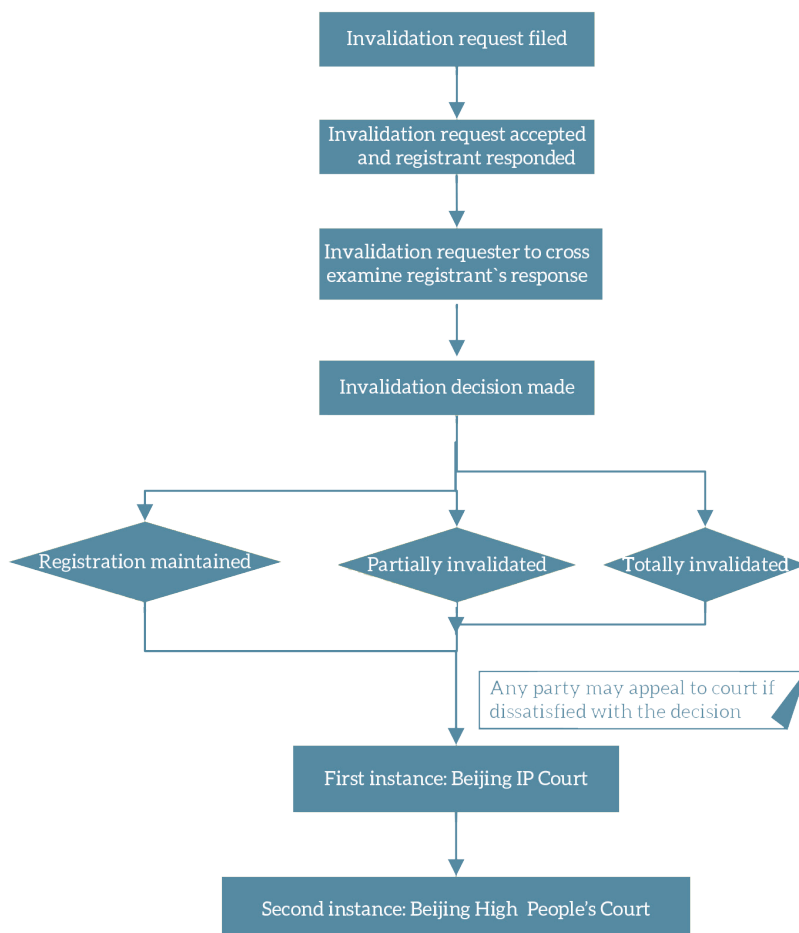
4. Legal effect of revocation

The revocation of a registered trademark shall be published by CNIPA, and the exclusive right of the registered trademark shall be terminated from the date of publication.

(II) Invalidation of a registered trademark

Invalidation of a registered trademark means that CNIPA declares a registered trademark which violates relevant provisions of the Trademark Law invalid ex officio or upon request. This procedure is a way to eliminate trademark rights. The amount of invalidation by CNIPA ex officio is relatively small, thus this part mainly introduces the invalidation procedure upon request.

Please refer to the below flowchart for the process of trademark invalidation upon request:



1. Time limit for filing an invalidation

For a registered trademark that violates absolute grounds, CNIPA or the applicant may start an invalidation action against the registered trademark at any time after the trademark is registered.

For a registered trademark that violates relative grounds, a holder of prior rights or an interested party may request CNIPA to declare invalidation of the registered trademark within 5 years from the date of trademark regis-



tration. Where the registration was obtained in bad faith, the owner of a well-known trademark shall not be bound by the 5-year limitation.

2. Time limit for invalidation examination

CNIPA shall, within 12 months from the date of receipt of the request, make a decision on the invalidation of the trademark and notify the concerned parties in writing. Where it is necessary under special circumstance, the time limit for examination can be extended for another 6 months upon approval.

3. Grounds for invalidation

The grounds for invalidation are substantially the same as those for opposition, and can be divided into absolute grounds and relative grounds.

(1) Absolute grounds include:

- ① Article 4 of the Trademark Law: a bad-faith trademark registration not filed for the purpose of use;
- ② Article 10 of the Trademark Law: signs that shall not be used as a trademark;
- ③ Article 11 of the Trademark Law: signs devoid of any distinctive character and shall not be registered as a trademark;
- ④ Article 12 of the Trademark Law: three-dimensional symbols that are functional shall not be registered as a trademark;
- ⑤ Article 19 (the 4th paragraph) of the Trademark Law: a trademark agency shall not apply for any trademark on goods/services other than agency services;
- ⑥ Article 44 of the Trademark Law: trademarks acquired by fraud or any other unfair means.

(2) Relative grounds include:

- ① Article 13 (the 2nd and 3rd paragraphs) of the Trademark Law: infringing upon others' prior well-known trademarks;



- ② Article 15 of the Trademark Law: squatting a trademark of a person for whom the applicant acts as the representative or agent or with whom the applicant has other business relationship;
- ③ Article 16 (the 1st paragraph) of the Trademark Law: infringing upon others' prior geographical indications;
- ④ Articles 30 & 31 of the Trademark Law: registering trademarks identical with or similar to others' prior trademarks on same or similar goods/services;
- ⑤ Article 32 (first part) of the Trademark Law: infringing upon existing prior rights of others' other than trademark right, such as prior trade name rights, name rights, portrait rights, copyrights, design rights, etc.;
- ⑥ Article 32 (second part) of the Trademark Law: registering a trademark identical with or similar to others' trademarks that have been used and obtained certain influence already before its application date on the same or similar goods/services.

4. Subject qualification of invalidation applicants

For absolute grounds, the invalidation applicant may be any person, including a natural person, a legal person or other organizations. For relative grounds, the invalidation applicant shall be a holder of prior rights or an interested party.

5. Examination process of invalidation

(1) Formality examination

The formality examination of invalidation mainly includes the following issues:

- ① Whether there is a definite challenged trademark;
- ② Whether it is filed within the statutory time limit for an invalidation request;



- ③ Whether the subject qualification of the invalidation applicant complies with the legal provisions;
- ④ Whether the request for invalidation has clear invalidation grounds, facts and legal basis;
- ⑤ Whether the formal requirements of invalidation documents by the legal provisions are complied with;
- ⑥ Whether the official fees are paid in full and in time.

If the invalidation meets the requirements for acceptance, it shall be accepted and an official acceptance notification will be issued. CNIPA shall not accept an application for invalidation which falls within the following circumstances:

- ① Not filed within the statutory time limit;
- ② The applicant of invalidation is not qualified;
- ③ Beyond the examine scope of trademark invalidation;
- ④ Failing to pay the official fee for invalidation request.

(2) Substantive examination

Substantive examination of invalidation mainly includes the examination on invalidation grounds, facts, legal basis and relevant evidence documents.

Possible results of invalidation examination include:

- ① In case that the grounds for invalidation are not established, CNIPA will make a decision to maintain the registration. If the applicant is dissatisfied with the decision, an administrative lawsuit may be brought to Beijing Intellectual Property Court within 30 days from the date of receiving the decision.
- ② In case that the grounds for invalidation are established, CNIPA will make a decision to invalidate the trademark. If the trademark registrant is dissatisfied with the decision, an administrative lawsuit may be brought



to Beijing Intellectual Property Court within 30 days from the date of receiving the decision.

③ In case that the grounds for invalidation are partially established, CNIPA will make a decision of partial invalidation. Any party, who is dissatisfied with the decision, may bring an administrative lawsuit to Beijing Intellectual Property Court within 30 days from the date of receiving the decision.

6. Legal effect of invalidation

The declaration of invalidation of a registered trademark shall be published by CNIPA, and the exclusive right of the registered trademark shall be considered as non-existent from the beginning.

The invalidation of a registered trademark has no retrospective effect on a) the judgments, adjudications and mediation documents of trademark infringement cases made and executed by the People's Court prior to the date of invalidation

declaration, b) the decisions of trademark infringement cases made and executed by intellectual property administrative authorities, and c) the trademark assignment or licence contracts that have been performed. However, compensation shall be paid for the damages caused to others due to the bad faith of the trademark registrant.





Chapter VII: Trademark Infringement and Remedies

(I) Infringement act

According to the Trademark Law of the People's Republic of China, the Implementing Regulations of the Trademark Law of the People's Republic of China, the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Laws in the Trial of Trademark Civil Disputes and the Annual Report of the Supreme People's Court on Intellectual Property Cases, the following acts constitute infringement of the exclusive right to use registered trademarks:

1. Using a trademark that is identical with a registered trademark on the same goods/services without permission of the trademark registrant;
2. Using a trademark that is similar to a registered trademark on the same goods/services, or using a trademark that is identical with or similar to a registered trademark on similar goods/services without permission of the trademark registrant, which easily causes confusion;
3. Selling goods infringing a registered trademark;
4. Counterfeiting, or manufacturing without permission, the representations of another person's registered trademarks, or selling such representations;
5. Without the consent of the trademark registrant, altering the registered trademark and putting the goods bearing such an altered trademark into the market;



6. Assisting another person to infringe a registered trademark and providing convenience for infringing the registered trademark. The act of providing convenience includes providing storage, transportation, postal service, printing, concealment, business site, online commodity trading platform, etc.;

7. Acts causing other damages to others' registered trademark, including:

(1) Using any sign, which is identical with or similar to a registered trademark of another person on the same or similar goods/services, as the designation or decoration of the goods/services for the purpose of misleading the public.

(2) Prominently using the words, that are identical with or similar to a registered trademark of another person, as the name of one's business entity on identical or similar goods/services so that the relevant public is likely to be misled.

(3) Reproducing, imitating or translating a registered well-known trademark of another person or the major part thereof to use on non-identical or dissimilar goods/services as a trademark for the purpose of misleading the public so that the interests of the registrant of the well-known trademark may be damaged.

(4) Registering, as a domain name, the words identical with or similar to a registered trademark of another person and using the domain name to carry out electronic commerce of relevant goods/services, which is liable to cause mis-identification among the relevant public.

(5) Re-sale of genuine goods after modification: the re-sale of goods after



they are sold through normal and legal commercial channels usually does not constitute infringement. However, where the goods are substantially changed in the re-sale process, resulting in a change in the connection between the goods and the source, and the continued use of the trademark involved on the goods without fulfilling the obligation of reasonable notification to consumers will easily lead to confusion and damage the interests of the trademark owner, it shall constitute trademark infringement.

(6) Recycling activities that can lead to confusion and mis-identification: recycling activities shall not damage the legitimate interests of another person. Where the use of recycled containers fails to take reasonable measure to avoid harming the trademark right or other legitimate rights of another person and is sufficient to cause confusion among consumers and mis-identification about the source of goods or services, it may constitute trademark infringement.

(7) Other acts that may cause damages to a registered trademark.

(II) Remedies available to trademark right holders

When encountering trademark infringement, the Trademark Law gives the trademark registrant or an interested party a variety of means to protect his rights, including both private remedies and public remedies. Private remedies include warning letters, negotiation and reconciliation, and so on. Public remedies include administrative and judicial dual-track protection mechanisms. The administrative remedies are provided by administrative authorities including the local Administration of Market Regulation and the local Customs and the judicial remedies provided by judicial authorities include civil litigation and criminal litigation.



(III) Warning letter

When an infringement act is discovered, the trademark registrant or an interested party may send a warning letter to the infringer and request him to cease the infringement immediately.

In practice, a warning letter is often a stepping stone to start negotiation, but not a compulsory procedure for trademark right protection. The trademark registrant or an interested party may directly initiate an administrative or judicial remedy procedure against the infringement act without sending any warning letter.

Warning letter is a quick and convenient self-reliance weapon for the trademark registrant or an interested party to stop infringement and safeguard his rights and interests, and can be used to prove the infringer's "knowing" intention in other subsequent enforcement proceedings.

The infringer who still continues the infringement after receiving the warning letter can be confirmed as a malicious or willful infringer once the infringement is established in other procedures, which may aggravate his tort liability to a certain extent, and can no longer claim that he or she is not aware of the goods are infringing when being sued. When the accused infringer is a seller, according to Article 64 (2) of the Trademark Law, if the seller does not know that the goods he sells are infringing a registered trademark and that the goods sold have a legal source, the seller is not liable for damage compensation as long as he provides the information of the goods supplier. If the trademark registrant or interested party can prove that a warning letter reflecting the infringement information has been sent to the seller, and the seller continues to sell infringing goods after receiving the warning letter, the court may presume that the seller



knows that the goods sold are infringing goods and order him to bear the liability of damage compensation.

The trademark registrant or interested party shall be well-prepared before sending out a warning letter. First, it is advised to make sufficient investigation, analysis and evidence collection of the infringing acts before sending out the warning letter so as to prepare himself for any counter-measures of the other party, such as launching declaratory judgment litigation. Second, in the absence of definite evidence or sufficient evaluation, the trademark registrant or interested party shall be cautious to make any public statement on trademark infringement in order to prevent being sued for abuse of rights, unfair competition, infringement of the other party's reputation rights, etc. Third, before sending a warning letter or starting other right-protection procedures, the trademark registrant or interested party shall evaluate and verify his own trademark rights' legal status, for instance, to check the use of his trademark and protection coverage of his trademark registrations, so as to prevent the other party from taking actions such as filing non-use revocation applications against the registrant's trademarks or squatting the registrant's trademarks after receiving the warning letter.

(IV) Administrative remedies

The trademark registrant or an interested party may file a complaint with and request for protection from an administrative authority when encountering trademark infringement. Such administrative authorities include both local Administration of Market Regulation and local Customs. However, the Customs can only handle cases involving imported or exported goods.

1. Protection from local Administration of Market Regulation

The trademark registrant or an interested party may lodge a complaint



with a local Administration of Market Regulation at or above county level and request for an investigation and punishment on trademark infringement. The local Administration of Market Regulation may also conduct ex officio actions to investigate and deal with trademark infringement.

The Administration of Market Regulation is only responsible for investigating and stopping trademark infringement in the market, but not for solving the compensation dispute between the parties. Where a dispute arises in connection with the amount of damages, the parties may request the Administration of Market Regulation to mediate. The agreement reached by the parties through the mediation is not as enforceable as a court decision. Where the parties fail to reach an agreement in the mediation or fail to perform the mediation agreement, they may bring a lawsuit to the court.

Where the Administration of Market Regulation is of the opinion that the infringement is established, it shall order the infringing party to immediately cease the infringing acts, and shall confiscate and destroy the infringing goods and instruments mainly used to manufacture the infringing goods or forging the registered trademark. Where the illegal business revenue is RMB 50,000 yuan or above, a fine up to five times of the illegal business revenue may be imposed thereon; where there is no illegal busi-





ness revenue or the illegal business revenue is less than RMB 50,000 yuan, a fine up to RMB 250,000 yuan may be imposed thereon. If he or she has committed trademark infringement twice or more within five years or falls under any other serious circumstances, the infringing party shall be subject to a heavier punishment.

2. Protection from local Customs

(1) Measures for Customs protection

Customs protection refers to measures taken by the Customs to investigate, stop and punish trademark infringement acts in the course of importing or exporting goods. There are two ways to start a Customs protection procedure. One is to start by the trademark registrant or an interested party. Where a trademark registrant or an interested party finds that suspected infringing goods are to be imported or exported, he may request the local Customs at the relevant port to detain such goods. The other is to initiate by the Customs. Where the local Customs finds any imported or exported goods suspected to infringe upon a registered trademark recorded at the Customs, it shall notify the right holder of the registered trademark. Customs recordal of the registered trademark is the prerequisite for the Customs to take the initiative to start protective measures.

When requesting the Customs to detain the suspected infringing goods, the trademark registrant or an interested party shall provide the following information in the application submitted to the Customs and a guarantee not exceeding the equivalent value of the goods to be detained:

- ① The name, registration place or nationality of the right holder;
- ② Information related to trademark rights, such as trademark name, trademark number, designated class, designated goods, etc.;
- ③ The names of the consignee and consignor of suspected infringing goods;



- ④ The name and specification of suspected infringing goods;
- ⑤ The port where the suspected infringing goods may be imported or exported, the time of import or export, means of transport, etc.;
- ⑥ Customs recordal number of the trademark right when involving a trademark recorded at the Customs.

Where the Customs, after investigation, determines that the suspected infringing goods under detention have infringed upon the trademark right, it shall confiscate the goods and proceed the case accordingly.

(2) Customs recordal of trademark rights

A trademark registrant may record his trademark rights related information with the General Administration of Customs of the People's Republic of China (GACC) in accordance with the Regulations of Customs Protection of Intellectual Property Rights, so that the Customs can conduct ex officio actions to protect the trademark rights in the process of surveilling imported and exported goods. Only a goods mark can be recorded. When applying for the recordal, the registrant shall present a written application. The application shall include the following particulars:

- ① The name, registration place or nationality, etc. of the right holder;
- ② Trademark name, registration number, designated class, designated goods and other relevant information related to the trademark right;
- ③ The status quo relating to licensing of trademark right, if any;
- ④ The name, origin, Customs at the port of import or export, importer or exporter, main features and prices, etc. of the goods on which the trademark is lawfully used;
- ⑤ The manufacturers, importers and exporters, Customs at the port of import or export, main features and prices, etc. of the known infringing goods, if any.



The advantages of Customs recordal are:

- ① Customs recordal is a prerequisite for the Customs to take proactive protection measures;
- ② Customs recordal is helpful for the Customs to spot infringing goods;
- ③ Customs recordal is helpful to reduce the guarantee burden of the right holder;
- ④ Customs recordal can have a deterrent effect on the infringer.

A trademark registrant may file an application for Customs recordal with GACC. GACC shall, within 30 working days from the date of receipt of all the application documents, make a decision on whether or not to allow the recordal and notify the trademark registrant in writing. The Customs recordal shall be valid from the date on which GACC allows the recordal, and the term of validity of the recordal shall be 10 years.

Where the term of validity of the recorded trademark right is less than 10 years as from the effective date of recordal, the term of validity of the recordal shall be subject to the term of validity of the trademark right. Within 6 months before the expiration of the term of validity, the trademark registrant may file a renewal application of recordal with GACC.



(V) Judicial remedies

1. Civil litigation

The trademark registrant or an interested party may bring a civil litigation action against the trademark infringement to the people's court, re-



questing to stop infringement, to eliminate the negative influence and to compensate for damages.

(1) Subjects who have the right to sue

Generally, trademark registrants, trademark licensees, trademark assignees, legal successors of registered trademark rights, etc., may bring lawsuits against trademark infringement acts.

Trademark licences are divided into three types: exclusive licences, sole licences and ordinary licences. Different type of licences leads to different litigation rights enjoyed by the licensee. The licensee of an exclusive licence may bring a lawsuit to the people's court in his own name; the licensee of a sole licence may sue jointly with the trademark registrant, or bring a lawsuit in his own name, if the trademark registrant does not sue; and the licensee of an ordinary licence can only bring a lawsuit under the authorization of the trademark registrant.

(2) Limitation of action

The trademark registrant or interested party may start civil litigation for trademark infringement within three years from the date when he knows or should have known about the infringement.

Where the trademark registrant or interested party brings a lawsuit after the 3-year term, the action may still proceed if the infringement is still ongoing at the commencement of the lawsuit but the amount of damages for infringement shall be calculated for three years only backward from the date when the lawsuit is started.

(3) Preservation measures

The types of preservation measures include: evidence preservation, act



preservation and property preservation.

① Evidence preservation

In the case that the evidence may be lost or difficult to obtain in the future, the trademark registrant or the interested party may apply to the people's court for preservation of evidence during the lawsuit, and the court may also actively take preservation measures. If the situation is urgent, the trademark registrant or the interested party may also apply to the competent people's court before bringing a lawsuit. Where the preservation of evidence may cause damages to others, the court may order the applicant to provide corresponding guarantees. If damages are caused to others due to wrong preservation, the applicant shall make a compensation. One example of the evidence to be preserved is the account books of the other party with the reason that the evidence is in the hands of the other party and may be lost. The court will decide whether or not to approve the application based on the specific circumstances.

② Act preservation

The act preservation measure is equivalent to "preliminary injunction" applied in some other jurisdictions.

The act preservation may be started at the request of the litigating party or as an ex officio action by the court where necessary.

The application for act preservation can be made before or during the litigation and the applicant shall submit necessary evidence to prove the following factors: a) the alleged infringing act is ongoing or shall soon occur; b) the likelihood of success of the plaintiff in the litigation; c) the alleged infringement will cause irreparable damages.

In addition, the applicant shall provide a corresponding guarantee. Where the people's court takes act preservation measures ex officio, it may determine whether the parties need to provide guarantees or not according to the specific circumstances. Where the preservation is wrong, the applicant shall compensate the party(ies) to which damages are caused due to



the preservation.

③ Property preservation

In order to ensure to receive sufficient damage compensation after winning the lawsuit, the trademark registrant or the interested party may request the court to conduct property preservation measures such as sealing-up, detainment and freezing the property or bank account of the alleged infringer before or during the lawsuit. A guarantee shall be provided for the application of property preservation. Where the preservation is wrong, the applicant for property preservation shall compensate the other party for the damages caused by the wrong preservation.

(4) Jurisdiction

The civil litigation of trademark infringement shall be under the jurisdiction of the court at the place of infringement or at the domicile of the defendant.

A trademark infringement litigation case normally shall start at a basic people's court authorized by the Supreme People's Court. If the amount of damage claim reaches the jurisdiction standard of an intermediate people's court, the case shall start at an intermediate people's court. Cases concerning infringement of a well-known trademark shall be under the jurisdiction of an intellectual property court or an intermediate people's court (if there is no intellectual property court).

(5) Civil liabilities

For trademark infringement, the trademark registrant or the interested party has the right to request the infringer to bear the civil liabilities of ceasing the infringement, eliminating negative influence and compensating damages. For bad-faith infringement under serious circumstances, punitive damages can be imposed.



There are four methods to calculate the amount of damages for trademark infringement:

- ① the actual loss suffered by the right holder as a result of the infringement;
- ② the profit gained by the infringer as a result of the infringement;
- ③ the reasonable multiples of the trademark licence royalties;
- ④ statutory damage compensation up to RMB 5 million yuan.

The choice of the calculation methods must follow the above sequence and only when the previous method fails, the following method may apply.

Where an infringer maliciously infringes upon another party's trademark and falls under serious circumstances, the amount of damages may be determined as no less than one time but no more than five times of the amount that is determined according to the aforesaid methods ① to ③. The amount of damages shall cover the reasonable expenses paid by the right holder for stopping the infringing act.

2. Criminal litigation

Where a crime is committed in a trademark infringement, the infringer shall, in addition to the civil liability, be subject to criminal liability in accordance with the law. Acts of infringement upon a registered goods trademark or a registered service trademark could both constitute a crime, and the infringer may be sentenced to fixed-term imprisonment of up to ten years, plus a fine.

Trademark crime cases are investigated by the public security authority, and a criminal litigation is initiated by the procuratorate to the people's court; and where the conditions for a private prosecution are satisfied, the



right holder may also bring a private prosecution to the people's court.

(1) Trademark crimes

Article 67 of the Trademark Law stipulates three kinds of criminal acts that shall be prosecuted for criminal liability.

- ① Where a person, without permission of the owner of a registered trademark, uses a trademark that is identical with the registered trademark on the same goods or services, which constitutes a crime, he shall, in addition to compensating losses caused by the infringer, bear criminal responsibility in accordance with law;
- ② Where a person sells counterfeiting goods knowingly, which constitutes a crime, he shall, in addition to compensating losses caused by the infringement, bear criminal responsibility in accordance with law;
- ③ Where a person forges or makes, without permission, the representations of another person's registered trademark or sells such representations, which constitutes a crime, he shall, in addition to compensating the losses caused by the infringer, bear criminal responsibility in accordance with law.

The above three kinds of criminal acts correspond to the following crimes prescribed in the Criminal Law of the People's Republic of China:

- ① "Crime of counterfeiting a registered trademark" under Article 213 of the Criminal Law: using, with serious circumstances, a trademark which is identical with a registered trademark on the same goods/ services without permission from the trademark registrant;





② “Crime of selling counterfeiting goods” under Article 214 of the Criminal Law: knowingly selling counterfeiting goods with relatively large or huge amount of sales or other serious circumstances;

③ “Crime of illegally manufacturing representations of a registered trademark or selling such representations” under Article 215 of the Criminal Law: forging or manufacturing, without authorization, representations of another person’s registered trademarks or selling such representations with serious circumstances.

(2) Identification of “the same goods” in the “counterfeiting crime”

Both goods with the same name and goods with different names but referring to the same thing can be identified as “the same goods” under Article 213 of the Criminal Law.

The “name” usually refers to goods name specified in the International Classification of Goods and Services for Trademark Registration. “Goods with different names but referring to the same thing” refers to goods that are the same or basically the same in functions, uses, main raw materials, consumption objects, sales channels, etc., and are generally considered by the relevant public to be the same thing.

To identify “the same goods”, a comparison shall be made between the goods approved for the registered trademark and the goods actually manufactured and sold by the alleged infringer.

(3) Identification of “identical trademark” in the “counterfeiting crime”

A trademark with any of the following circumstances can be identified as “a trademark identical with the registered trademark”:

- ① The trademark is exactly identical with the registered trademark;
- ② The font, letter case or horizontal and vertical arrangement of the reg-



istered trademark is changed, but there is basically no difference from the registered trademark;

③ The spacing between words, letters or numerals of the registered trademark is changed, but there is basically no difference from the registered trademark;

④ The color of the registered trademark is changed without affecting the distinctive characters of the registered trademark;

⑤ Just common name, model and other non-distinctive elements are added to the registered trademark and the distinctive characters of the registered trademark are not affected ;

⑥ There is basically no difference from the three-dimensional sign and plane elements of the three-dimensional registered trademark;

⑦ Trademarks in other circumstances that are basically identical with the registered trademark and will mislead the public.

(4) Jurisdiction

Investigation in a trademark criminal case is normally conducted by the public security authority at the place where the crime is committed and, when necessary, at the domicile of the criminal suspect.

If there is need to arrest the suspect or to examine and prosecute, the case shall be accepted and proceeded by the people's procuratorate and the people's court of the same level as the public security authority conducting the investigation.

(5) Criminal liabilities

Criminal liabilities for the "counterfeiting crime": if the circumstances are serious, the infringer shall be sentenced to fixed-term imprisonment of no more than 3 years and shall also, or shall only, be fined; if the circumstances are especially serious, the infringer shall be sentenced to fixed-term imprisonment of no less than 3 years but no more than 10 years and shall



also be fined.

Criminal liabilities for the “crime of selling counterfeiting goods”: if the amount of sales is relatively large or there are other serious circumstances, the infringer shall be sentenced to fixed-term imprisonment of no more than three years, and shall also, or shall only, be fined; if the amount of sales is huge or there are other especially serious circumstances, the infringer shall be sentenced to fixed-term imprisonment of no less than three years but no more than ten years and shall also be fined.

Criminal liabilities for the “crime of illegally manufacturing representations of a registered trademark or selling such representations”: if the circumstances are serious, the infringer shall be sentenced to fixed-term imprisonment of no more than 3 years and shall also, or shall only, be fined; if the circumstances are especially serious, the infringer shall be sentenced to fixed-term imprisonment of no less than 3 years but no more than 10 years and shall also be fined.

(VI) Comparison between administrative remedies and judicial remedies for trademark rights

| | Administrative Remedies | | Judicial Remedies | |
|-------------------|---|--|---|--|
| | Protection from Administration of Market Regulation | Protection from the Customs | Civil Litigation | Criminal Litigation |
| Applicable acts | Any trademark infringing acts in the Chinese market | Trademark infringing acts for importing or exporting goods | Any trademark infringing acts in the Chinese market | Any trademark infringing acts committing a crime in the Chinese market |
| Protected objects | Both goods trademarks and service trademarks | Goods trademarks only | Both goods trademarks and service trademarks | Both goods trademarks and service trademarks |



| | Administrative Remedies | | Judicial Remedies | |
|------------------------------|---|---|--|--|
| | Protection from Administration of Market Regulation | Protection from the Customs | Civil Litigation | Criminal Litigation |
| Jurisdiction | Local Administrations of Market Regulation at or above county level at the place of infringement | Local Customs at the port of import or export of the suspected infringing goods | Local basic or intermediate people's courts at the place of infringement or at the domicile of the defendant | 1. Investigation: the public security authority at the place where the crime is committed or at the domicile of the defendant, as appropriate; 2. Public prosecution and trial: the people's procuratorate and people's court of the same level as the public security authority conducting the investigation |
| Main legal liabilities | -cessation of infringing acts; -confiscation and destruction of infringing goods and manufacturing tools; payment of fines. | -cessation of infringing acts; -confiscation of infringing goods. | -cessation of infringing acts; -elimination of negative effects; payment of damages. | -fixed-term imprisonment; -payment of fines. |
| Advantages and Disadvantages | Advantages: The procedure is simple and fast, and has obvious advantages in preventing continued infringing acts. Disadvantages: An administrative decision is not final and cannot impose damages on the infringer. | Advantages: The procedure is simple and fast, and has obvious advantages in preventing continued infringing acts. Disadvantages: An administrative decision is not final and cannot impose damages on the infringer; in addition, it can only be taken against imported or exported goods. | Advantages: A judicial decision is final and can render civil damages. Disadvantages: The procedure is more complicated, and the plaintiff has to bear a heavy burden of proof. | Advantages: A judicial decision is final and effectively deters trademark crimes. Disadvantages: There are relatively high threshold to meet in order to get a criminal case accepted. |



Chapter VIII: Practical Tips for Trademark Protection in China

(I) Online trademark data search system

1. The public can search information of trademark applications and registrations, trademark publication and acceptable goods/services items through “Trademark Online Search System” of the Trademark Office of CNIPA (URL: <http://sbj.cnipa.gov.cn/sbj/sbcx/>). CNIPA makes great efforts to update the information timely but the search system's data is not for real-time update and there may be a time lag. The information provided through search is only for reference without legal effect.



2. The public can search the trademark review and adjudication decisions made by CNIPA through the “Trademark Review/Adjudication Decision Documents search System” of the Trademark Office of CNIPA (URL: <http://wsgs.sbj.cnipa.gov.cn:9080/tmpu/pingshen/getMain.html>). It should be noted that the documents provided in this column are only for reference without legal effect.



2022年06月13日 星期一

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商标评审裁定/决定文书

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注册号:

商标名称:

申请人名称:

被申请人名称:

代理机构名称:

裁定/决定时间从: 至

3. The public can search for the trademark opposition decisions made by CNIPA through the “Trademark Opposition Decision Documents Search System” of the Trademark Office of CNIPA (URL: <http://wsqs.sbj.cnipa.gov.cn:9080/tmpu/yycw/getMain.html>). It should be noted that the documents provided in this column are only for reference without legal effect.

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商标异议决定文书

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高级检索 **高级检索**

注册号:

商标名称:

异议人名称:

异议人代理机构名称:

被异议人名称:

被异议人代理机构名称:

决定作出时间从: 至



(II) Current official fee schedule for trademark matters in China

| Description | Paper filing (CNY) (per trademark per class) | Electronic filing (CNY) (per trademark per class) |
|---|---|---|
| Application for trademark registration | 300 (If the goods/service items exceed 10 in one class, CNY 30 per item is charged.) | 270 (If the goods/service items exceed 10 in one class, CNY 27 per item is charged.) |
| Re-issuance of trademark registration certificate | 500 | 450 |
| Application of trademark assignment/transfer | 500 | 450 |
| Trademark renewal | 500 | 450 |
| Trademark renewal in grace period (additional charge) | 250 | 225 |
| Modification application | 150 | Nil |
| Issuance of certified copy of registration | 50 | 45 |
| Application for collective trademark registration | 1500 | 1350 |
| Application for certification trademark registration | 1500 | 1350 |
| Opposition | 500 | 450 |
| Application for revocation of a registered trademark | 500 | 450 |
| Recordal of a trademark licence | 150 | 135 |
| Review of trademark refusal | 750 | 675 |
| Review of trademark non-approval | 750 | n/a |
| Review of invalidation (ex officio) of trademark registration | 750 | n/a |
| Invalidation of trademark registration upon request | 750 | 675 |
| Review of trademark revocation | 750 | n/a |



(III) Strategic suggestions on trademark protection in China

1. To pay attention to the actual use of the registered trademark and make supplementary registration in time

The trademark registrant shall always pay attention to whether the mark and goods in actual use are completely consistent with the trademark particulars approved for registration. If the actual use exceeds the scope of the approved goods/services of the trademark registration or modifies the trademark reproduction, a new application for trademark registration shall be filed in time to avoid the risk of infringing use or illegal use.

2. To regulate the use of registered trademarks

In order to maintain the exclusive right of registered trademarks and prevent legal risks, trademark registrants need to regulate the use of registered trademarks. Generally speaking, the registrant should pay attention to the following points:

- (1) Principle of strict consistency: In principle, the mark used as a registered trademark in commercial activities should be strictly consistent with the trademark reproduction contained in its trademark registration certificate.
- (2) Exception of slight variations: the actual use, where the mark used is of slight variation from the approved registered trademark but the distinctive character of the trademark has not changed, can be regarded as the use of the registered trademark.
- (3) Scope of the approved goods: After a trademark is approved for registration, the actual use as the registered trademark cannot exceed the scope of the approved goods/services.
- (4) Change of trademark registrant's name/address: Where trademark registrant's name and address have changed, it shall file modification application with CNIPA in time according to the law.
- (5) Appropriate use of trademark registration sign: A registered trademark can be used in commerce with the sign of “注册商标” or “®” or “ ” on the goods, packaging, instructions and other attachments. Before being ap-



proved for registration, such signs cannot be used.

(6) Prohibition of well-known publicity: No matter whether the trademark has been recognized as a well-known trademark, no one is allowed to use the wording of "well-known trademark" on goods, packaging or containers, or to use it in advertising, exhibitions and other commercial activities; otherwise, they will be ordered to make corrections and be fined RMB 100,000 yuan.

3. To generate and preserve evidence of use to avoid the risk of trademark revocation

In order to prevent the risk of trademark revocation filed by others with the reason of non-use for over three consecutive years, the trademark registrant are advised to generate and preserve evidence of trademark use in China in advance.

4. To build a trademark surveillance mechanism

An enterprise is advised to build a comprehensive trademark monitor system according to different needs, including but not limited to:

(1) Monitoring its own trademarks: The enterprise shall establish a trademark management system, keeping a complete list of trademarks, surveilling the registration and use of its trademarks, and especially watching the renewal deadlines for its registered trademarks.

(2) Monitoring others' trademarks: By monitoring others' trademarks, it can take timely actions to start procedures when needed such as trademark opposition or invalidation or three-year non-use revocation to better protect its own trademark rights. In addition, it is helpful for the enterprise to gain the latest business information of competitors in time by watching competitors' trademarks.

(3) Monitoring infringing acts in the market: There is a high incidence of trademark infringement in the field of e-commerce. The monitoring of trademark use acts on major E-commerce platforms can find infringement clues in time and eliminate hidden dangers of infringement as soon as possible.



Chapter IX: Communication with CNIPA (contacts and services)

International Cooperation Department of CNIPA

Contact address: No. 6 Xitucheng Road, Jimenqiao, Haidian District, Beijing, China

Postal Code: 100088

Phone number: +86-10-62083114

The main responsibilities of the International Cooperation Department of CNIPA:

1. To carry out the planning and coordination of foreign-related intellectual property matters and organize the participation in the negotiation of treaties and agreements on intellectual property rights.
2. To organize and coordinate relevant departments to contact with WIPO and other international (overseas) intellectual property organizations.
3. To be responsible for international cooperation and exchange activities for patents, trademarks and geographical indications, as well as foreign affairs of CNIPA.

In addition, the National Intellectual Property Public Service Network (trial version, URL: http://ggfw.cnipa.gov.cn:8010/PatentCMS_Center/) has been put into use for inquiry.

