

Provisions on the Recognition and Protection of Well-Known Trademarks of the PRC

Dan Young Business Consultancy — www.danyoungcpa.com
Unofficial English translation prepared for reference only. The official Chinese text prevails.

Contents

Table of Contents	1
Chapter I — General Provisions	1
Chapter II — Recognition of Well-Known Trademarks	2
Chapter III — Protection of Well-Known Trademarks	2
Chapter IV — Supplementary Provisions	3

Promulgated by the State Administration for Industry and Commerce of the People's Republic of China on April 17, 2003
Effective: June 1, 2003

Table of Contents

- Chapter I — General Provisions
- Chapter II — Recognition of Well-Known Trademarks
- Chapter III — Protection of Well-Known Trademarks
- Chapter IV — Supplementary Provisions

Chapter I — General Provisions

Article 1 — These Provisions are formulated in accordance with the Trademark Law of the People's Republic of China and the Regulations on the Implementation of the Trademark Law of the People's Republic of China (hereinafter referred to as the "Trademark Law" and the "Implementing Regulations" respectively) for the purposes of regulating the recognition of well-known trademarks, strengthening the protection of well-known trademarks, and promoting economic development.

Article 2 — For the purposes of these Provisions, "well-known trademark" means a trademark that is widely known to the relevant public within the territory of China and enjoys a relatively high reputation. The "relevant public" includes consumers of the types of goods or services for which the trademark is used, operators or business operators producing the aforementioned goods or providing the aforementioned services, as well as sellers and other relevant personnel involved in the distribution channel.

Article 3 — The Trademark Office of the State Administration for Industry and Commerce and the Trademark Review and Adjudication Board shall be responsible for the recognition and protection of well-known trademarks in accordance with the provisions of the Trademark Law, the Implementing Regulations, and these Provisions.

Article 4 — Where a party concerned believes that its trademark, which has been initially examined and published by the Trademark Office, is a well-known trademark, it may apply to the Trademark Office for the

recognition of a well-known trademark and provide relevant evidentiary materials. Where a party concerned believes that the registered trademark of another person violates the provisions of Article 13 of the Trademark Law, it may apply to the Trademark Review and Adjudication Board for a ruling and, at the same time, provide evidentiary materials proving that its trademark constitutes a well-known trademark.

Chapter II — Recognition of Well-Known Trademarks

Article 5 — The following materials may be used as evidentiary materials proving that a trademark is well-known: (1) materials proving the degree of knowledge of the trademark among the relevant public; (2) materials proving the duration of use of the trademark, including the history and scope of use and registration of the trademark; (3) materials proving the duration, extent, and geographical scope of any publicity and promotion of the trademark, including the methods, geographical scope, types of publicity media, and the amount of advertising input; (4) materials proving that the trademark has been recorded as a well-known trademark and has been protected as such, including the record of the trademark having been protected as a well-known trademark in China or in other countries and regions; (5) materials proving the trademark registration in other countries and regions; and (6) other evidentiary materials proving that the trademark is well-known, such as the output, sales volume, sales revenue, profits and taxes, and sales areas of the main goods using the trademark in the most recent three years.

Article 6 — When recognizing a well-known trademark, the Trademark Office and the Trademark Review and Adjudication Board shall comprehensively consider the factors provided for in Article 14 of the Trademark Law and conduct a comprehensive review based on the evidentiary materials provided by the party concerned, but shall not be limited by the requirement that all the factors listed must be satisfied. When recognizing a well-known trademark, the Trademark Office and the Trademark Review and Adjudication Board shall consider all the evidence submitted by the party concerned and determine whether the trademark possesses the constituent elements of a well-known trademark on the basis of a comprehensive judgment.

Article 7 — Where a party concerned applies for the recognition of a well-known trademark, it shall truthfully submit the relevant evidentiary materials and shall be responsible for the authenticity of the evidentiary materials submitted. Where a party concerned provides false materials or conceals the truth to fraudulently obtain recognition of a well-known trademark, the Trademark Office or the Trademark Review and Adjudication Board shall revoke the recognition of the well-known trademark.

Article 8 — The recognition of a well-known trademark by the Trademark Office or the Trademark Review and Adjudication Board shall be based on the evidentiary materials provided by the party concerned. No administrative authority or industry organization may recognize or publish a well-known trademark in any form.

Article 9 — Where, in the course of handling a trademark case, the Trademark Office or the Trademark Review and Adjudication Board determines that the trademark involved is a well-known trademark, it shall record such determination in the relevant documents and notify the party concerned of the result of the recognition.

Chapter III — Protection of Well-Known Trademarks

Article 10 — Where a trademark applied for registration by another person is a copy, imitation, or translation of a well-known trademark of another person that has not been registered in China, and is likely to cause public confusion, and the goods for which the trademark is applied for registration are identical or similar to the goods for which the well-known trademark is used, the Trademark Office shall reject the application and prohibit its use in accordance with the provisions of the Trademark Law. Where a trademark applied for registration by another person is a copy, imitation, or translation of a well-known trademark of another person that has been registered in China, and is likely to mislead the public, thereby causing possible

damage to the interests of the well-known trademark registrant, and the goods for which the trademark is applied for registration are not identical or similar to the goods for which the well-known trademark is used, the Trademark Office shall reject the application and prohibit its use in accordance with the provisions of the Trademark Law.

Article 11 — Where a trademark used by another person is a copy, imitation, or translation of a well-known trademark of another person that has not been registered in China, and the goods are identical or similar to the goods for which the well-known trademark is used, and is likely to cause public confusion, the administration for industry and commerce at or above the county level shall, in accordance with the law, handle the matter. Where a trademark used by another person is a copy, imitation, or translation of a well-known trademark that has been registered in China, and the goods for which the trademark is used are not identical or similar to the goods for which the well-known trademark is registered, and is likely to mislead the public, thereby causing possible damage to the interests of the well-known trademark registrant, the administration for industry and commerce at or above the county level shall, in accordance with the law, handle the matter.

Article 12 — Where a party concerned believes that another person has registered its well-known trademark as an enterprise name, which may deceive the public or cause public misunderstanding, it may apply to the enterprise name registration authority for cancellation of the enterprise name registration, and the enterprise name registration authority shall handle the matter in accordance with the Provisions on the Administration of Enterprise Name Registration.

Article 13 — Where a party concerned believes that another person has used a sign identical or similar to its well-known trademark as a trade name or decoration of goods, thereby misleading the public, it may apply to the administration for industry and commerce for the cessation of such act, and the administration for industry and commerce shall handle the matter in accordance with the Anti-Unfair Competition Law of the People's Republic of China.

Article 14 — Where a party concerned believes that another person has registered or used a domain name that is identical or similar to its well-known trademark, thereby misleading the public, it may apply to the relevant authority for a ruling, or may bring a lawsuit with the people's court.

Article 15 — Where a foreign well-known trademark holder requests protection for its well-known trademark in accordance with the provisions of Article 6bis of the Paris Convention for the Protection of Industrial Property, or in accordance with the provisions of the Trademark Law, the Trademark Office or the Trademark Review and Adjudication Board shall handle the matter in accordance with the provisions of these Provisions.

Article 16 — When handling a case involving a well-known trademark, the administration for industry and commerce at all levels shall protect the well-known trademark in accordance with the law and shall not require the party concerned to provide evidentiary materials proving that the trademark is well-known in addition to those already provided.

Article 17 — Where the administration for industry and commerce, in the course of law enforcement, discovers that a trademark constitutes a well-known trademark, it shall report the case to the Trademark Office or the Trademark Review and Adjudication Board for recognition. The Trademark Office or the Trademark Review and Adjudication Board shall make a determination within a reasonable period of time.

Chapter IV — Supplementary Provisions

Article 18 — The State Administration for Industry and Commerce shall be responsible for the interpretation of these Provisions.

Article 19 — These Provisions shall come into force on June 1, 2003. The Interim Provisions on the Recognition and Administration of Well-Known Trademarks promulgated by the State Administration for Industry and Commerce on August 14, 1996 shall be repealed simultaneously.

Disclaimer: This English translation is provided for reference and informational purposes only. It is not an official translation and has no legal effect. While every effort has been made to ensure accuracy, the original Chinese text promulgated by the State Administration for Industry and Commerce of the People's Republic of China shall prevail as the authoritative version. Dan Young Business Consultancy makes no warranty, express or implied, as to the accuracy, completeness, or fitness for any particular purpose of this translation. Users should consult qualified legal professionals for advice on specific legal matters. This translation does not create any attorney-client or advisory relationship.