Trademark Law of the People’s Republic of China

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Chapter I — General Provisions

Article 1 — This Law is enacted for the purposes of strengthening trademark administration, protecting the exclusive rights to use trademarks, prompting producers and sellers to guarantee the quality of goods and services, safeguarding the reputation of trademarks, protecting the interests of consumers and producers and sellers, and promoting the development of the socialist market economy.

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Article 2 — The Trademark Office of the industrial and commercial administration department under the State Council shall be in charge of the national trademark registration and administration. The industrial and commercial administration department under the State Council shall establish a Trademark Review and Adjudication Board to be responsible for handling trademark disputes.

Article 3 — Registered trademarks include commodity trademarks, service trademarks, collective trademarks, and certification trademarks. For purposes of this Law, a collective trademark means a mark registered in the name of a group, association, or other organization and used by members of such organization in commercial activities to indicate their membership. A certification trademark means a mark controlled by an organization that has supervisory capacity over certain goods or services and used by entities or individuals other than such organization on their goods or services to certify the origin, raw materials, manufacturing method, quality, or other specific characteristics of such goods or services.

Article 4 — Any natural person, legal person, or other organization that needs to obtain the exclusive right to use a trademark for its goods or services in the course of its production and business operations shall apply for trademark registration with the Trademark Office. Applications for trademark registration that are made in bad faith and are not intended for use shall be rejected. The provisions of this Law regarding commodity trademarks shall apply to service trademarks.

Article 6 — The state shall require the use of registered trademarks for goods that are designated by laws and administrative regulations as requiring the use of registered trademarks. Such goods may not be marketed without the approval of trademark registration.

Article 7 — In applying for registration and using trademarks, the principle of good faith shall be followed. Users of trademarks shall be responsible for the quality of the goods on which the trademarks are used. The administrative departments for industry and commerce at all levels shall, by means of trademark administration, stop acts of deceiving consumers.

Article 8 — Any mark, including any word, design, letter, number, three-dimensional mark, color combination, sound, or any combination thereof, that is capable of distinguishing the goods of a natural person, legal person, or other organization from those of others may be applied for registration as a trademark.

Article 9 — In applying for trademark registration, the trademark shall have distinctive characteristics, be easy to identify, and shall not conflict with the prior lawful rights of others. A trademark registrant shall have the right to indicate the words "Registered Trademark" or the registration symbol.

Article 10 — The following marks may 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 decoration of the People's Republic of China, or identical with the name, flag, or emblem of a central state organ, the name of a specific location where such organ is located, or the name or design of a landmark building;

(2) those identical with or similar to the state name, national flag, national emblem, or military flag of a foreign country, except with the consent of the government of such country;

(3) those identical with or similar to the name, flag, or emblem of an international intergovernmental organization, except with the consent of such organization or where the public is unlikely to be misled;

(4) those identical with or similar to an official mark or inspection mark indicating control and guarantee, except where authorized;

(5) those identical with or similar to the name or symbol of the Red Cross or the Red Crescent;

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

(7) those having the nature of fraud, likely to mislead the public with respect to the quality, place of production, or other characteristics of the goods;

(8) those harmful to socialist morality or customs, or having other adverse influences.

Geographical names of administrative divisions at or above the county level or foreign geographical names known to the public may not be used as trademarks, except where such geographical names have other meanings or are used as part of a collective trademark or certification trademark. Existing registered trademarks using geographical names shall continue to be valid.

Article 11 — The following marks may not be registered as trademarks:

(1) those consisting only of the generic name, design, or model number of the goods;

(2) those consisting only of a direct indication of the quality, principal raw materials, function, use, weight, quantity, or other characteristics of the goods;

(3) those lacking distinctive characteristics.

Where a mark listed in the preceding paragraph has acquired distinctive characteristics through use and has become easy to identify, it may be registered as a trademark.

Article 13 — A trademark that is applied for registration for identical or similar goods, where it is a copy, imitation, or translation of another person's well-known trademark not registered in China and is likely to cause confusion, shall not be registered and shall be prohibited from use. A trademark that is applied for registration for non-identical or dissimilar goods, where it is a copy, imitation, or translation of another person's well-known trademark registered in China, which misleads the public and is likely to harm the interests of the registrant of the well-known trademark, shall not be registered and shall be prohibited from use.

Article 14 — Well-known trademarks shall be determined as needed in trademark registration, investigation, and handling of trademark violation cases. The following factors shall be taken into account in determining a well-known trademark:

(1) the degree of awareness of the trademark among the relevant public;

(2) the duration of use of the trademark;

(3) the duration, extent, and geographical scope of any publicity of the trademark;

(4) the record of protection of the trademark as a well-known trademark;

(5) other factors relating to the trademark being well-known.

Article 15 — Where an agent or representative registers, in his or her own name, the trademark of the person he or she represents or acts for without authorization, and the person represented or acted for raises an objection, such trademark shall not be registered and shall be prohibited from use. Where a trademark applied for registration for identical or similar goods is identical with or similar to an unregistered trademark of another person that was used earlier, and the applicant has a contractual, business, or other relationship with such other person other than those specified in the preceding paragraph and is clearly aware of the existence of such trademark, such trademark shall not be registered if the other person raises an objection.

Chapter II — Application for Trademark Registration

Article 22 — An applicant for trademark registration shall, according to the prescribed classification of goods, fill out the application form with the class number and designation of the goods on which the trademark is to be used. An applicant for trademark registration may apply for the registration of the same trademark for multiple classes of goods through a single application. Applications for trademark registration and other relevant documents may be filed in writing or by data messages.

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Article 25 — Where an applicant for trademark registration has filed an application for trademark registration for the same trademark for the same goods in a foreign country within six months before filing an application for trademark registration in China, he or she may enjoy the right of priority in accordance with the agreement concluded between the foreign country and China or the international treaty to which both countries are party, or on the principle of mutual recognition of the right of priority.

Article 28 — The Trademark Office shall, within nine months from the date of receipt of the application documents for trademark registration, complete the examination of the trademark applied for registration. Where the application complies with the relevant provisions of this Law, the Trademark Office shall make a preliminary examination decision and publish the application.

Chapter III — Examination and Approval of Trademark Registration

Article 30 — Where a trademark applied for registration does not comply with the relevant provisions of this Law or is identical with or similar to another person's trademark that has been registered or preliminarily approved for identical or similar goods, the Trademark Office shall reject the application and shall not publish such trademark.

Article 33 — Within three months from the date of publication, a prior right holder or an interested party may file an opposition with the Trademark Office if he or she is of the opinion that the trademark published for preliminary approval violates paragraph 2 or 3 of Article 13, Article 15, paragraph 1 of Article 16, Article 30, Article 31, or Article 32 of this Law. Any other person may file an opposition within three months from the date of publication if he or she is of the opinion that the trademark published for preliminary approval violates Articles 4, 10, 11, and 12, or paragraph 4 of Article 19 of this Law. Where no opposition is filed upon expiration of the publication period, the registration shall be approved, a trademark registration certificate shall be issued, and the registration shall be published.

Chapter IV — Renewal, Change, Transfer, and Licensing of Registered Trademarks

Article 39 — The term of validity of a registered trademark shall be ten years, counted from the date of approval of registration.

Article 40 — Where a registrant intends to continue to use a registered trademark after the expiration of its term of validity, the registrant shall undergo the renewal procedures in accordance with the provisions within 12 months before the expiration. Where the registrant fails to undergo the renewal procedures within such period, a grace period of six months may be granted. Each renewal of registration shall be valid for ten years, counted from the day following the expiration of the preceding term of validity. Where the renewal procedures have not been completed upon the expiration of the term of validity, the registered trademark shall be cancelled.

Article 42 — Where a registered trademark is transferred, the transferor and the transferee shall sign a transfer agreement and jointly file an application with the Trademark Office. The transferee shall ensure the quality of the goods on which the registered trademark is used. Where a registered trademark is transferred, the trademark registrant shall transfer all similar trademarks registered for the same goods, or identical or similar trademarks registered for similar goods, together. The Trademark Office shall not approve any transfer that is likely to cause confusion or other adverse effects. After the transfer of a registered trademark is approved, it shall be published. The transferee shall enjoy the exclusive right to use the trademark from the date of publication.

Article 43 — A trademark registrant may, by signing a trademark licensing contract, authorize another person to use his or her registered trademark. The licensor shall supervise the quality of the goods on which the licensee uses the licensor's registered trademark. The licensee shall ensure the quality of the goods on which the registered trademark is used. Where the registered trademark of another person is used under

license, the name of the licensee and the place of origin of the goods shall be indicated on the goods bearing the registered trademark. Where another person is licensed to use a registered trademark, the licensor shall file the trademark licensing contract with the Trademark Office, which shall publish the same. A trademark licensing contract shall not be asserted against a bona fide third party without filing.

Chapter V — Invalidation of Registered Trademarks

Article 44 — Where a registered trademark violates the provisions of Articles 4, 10, 11, and 12, or paragraph 4 of Article 19 of this Law, or is registered by fraudulent or other improper means, the registered trademark shall be declared invalid by the Trademark Office. Any other entity or individual may request the Trademark Review and Adjudication Board to declare such registered trademark invalid. Where a registered trademark violates Article 4, the Trademark Office may, on its own initiative, declare the registered trademark invalid.

Article 45 — Where a registered trademark violates the provisions of paragraph 2 or 3 of Article 13, Article 15, paragraph 1 of Article 16, Article 30, Article 31, or Article 32 of this Law, the prior right holder or interested party may, within five years from the date of registration of the trademark, request the Trademark Review and Adjudication Board to declare the registered trademark invalid. For a registration made in bad faith, the owner of a well-known trademark shall not be subject to the five-year time limit.

Chapter VI — Administration of Trademark Use

Article 48 — For purposes of this Law, the use of a trademark means the use of the trademark on goods, the packaging or containers of goods, or in transaction documents, or the use of the trademark in advertising, exhibitions, and other commercial activities to identify the source of goods.

Article 49 — A trademark registrant shall not change the registered trademark, the name, address, or other registration particulars of the trademark registrant on his or her own initiative during the use of the registered trademark. Where a registered trademark falls into disuse for three consecutive years without justifiable reasons, any entity or individual may apply to the Trademark Office for cancellation of the registered trademark.

Article 52 — Where an unregistered trademark is used by passing it off as a registered trademark, or where an unregistered trademark is used in violation of the provisions of Article 10 of this Law, the local administrative department for industry and commerce shall stop such use, order correction within a prescribed period, and may circulate a notice of such violation. Where illegal business revenue is generated in excess of 50,000 yuan, a fine of not more than 20% of the illegal business revenue may be imposed. Where there is no illegal business revenue or the illegal business revenue is less than 50,000 yuan, a fine of not more than 10,000 yuan may be imposed.

Chapter VII — Protection of Exclusive Rights to Use Registered Trademarks

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

Article 57 — Any of the following acts shall constitute an infringement of the exclusive right to use a registered trademark:

(1) using a trademark identical with a registered trademark on the same goods without the permission of the trademark registrant;

(2) using a trademark similar to a registered trademark on the same goods, or using a trademark that is identical with or similar to a registered trademark on similar goods, without the permission of the trademark registrant, which is likely to cause confusion;

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

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(4) counterfeiting or making without authorization representations of a registered trademark of another person, or selling representations of a registered trademark that are counterfeited or made without authorization;

(5) replacing the registered trademark of another person without the consent of the trademark registrant and marketing the goods bearing such replaced trademark;

(6) intentionally providing convenience for infringing upon another person's exclusive right to use a trademark, or assisting another person in infringing upon the exclusive right to use a trademark;

(7) causing other damage to another person's exclusive right to use a registered trademark.

Article 60 — Where a dispute arises from any of the acts of infringement of the exclusive right to use a registered trademark, the parties shall resolve the dispute through negotiation. Where the parties are unwilling to negotiate or fail to reach a settlement through negotiation, the trademark registrant or an interested party may file a lawsuit with a people's court or request the administrative department for industry and commerce to handle the matter. Where the administrative department for industry and commerce determines that the infringement is established, it shall order the infringer to immediately cease the infringing act, confiscate and destroy the infringing goods and the tools mainly used for manufacturing the infringing goods and counterfeiting the representations of the registered trademark. Where the illegal business revenue exceeds 50,000 yuan, a fine of not more than five times the illegal business revenue may be imposed. Where there is no illegal business revenue or the illegal business revenue is less than 50,000 yuan, a fine of not more than 250,000 yuan may be imposed.

Article 63 — The amount of compensation for infringement of the exclusive right to use a trademark shall be determined based on the actual losses suffered by the right holder as a result of the infringement. Where the actual losses are difficult to determine, the amount of compensation may be determined based on the benefits gained by the infringer as a result of the infringement. Where the losses suffered by the right holder or the benefits gained by the infringer are difficult to determine, the amount of compensation shall be reasonably determined by reference to the multiples of the trademark licensing fee. For intentional infringement of the exclusive right to use a trademark, if the circumstances are serious, the amount of compensation may be determined at not less than one time and not more than five times the amount determined according to the above method. Where it is difficult to determine the losses suffered by the right holder, the benefits gained by the infringer, or the trademark licensing fee, the people's court may, based on the circumstances of the infringing act, render a judgment awarding compensation of not more than 5,000,000 yuan.

Article 64 — Where the holder of the exclusive right to use a registered trademark claims compensation for infringement, and the alleged infringer asserts a defense that the registered trademark has not been used by the right holder, the people's court may require the trademark registrant to provide evidence of the actual use of the registered trademark in the preceding three years. Where the trademark registrant cannot prove the actual use of the registered trademark in the preceding three years, nor can he or she prove other losses suffered as a result of the infringement, the alleged infringer shall not be liable for compensation.

Article 65 — Where a trademark registrant or interested party has evidence to prove that another person is committing or is about to commit an act infringing upon his or her exclusive right to use a registered trademark, and failure to promptly stop such act will cause irreparable damage to his or her lawful rights and interests, he or she may, before filing a lawsuit, apply to a people's court for an order to preserve property, to order the respondent to perform a certain act, or to prohibit the respondent from performing a certain act.

Article 67 — Where, without the permission of the trademark registrant, a person uses a trademark identical with the registered trademark on the same goods, and such act constitutes a crime, criminal liability shall be pursued in accordance with the law in addition to compensation for the losses suffered by the infringed party. Where a person counterfeits or makes without authorization representations of a registered trademark of

another person, or sells representations of a registered trademark that are counterfeited or made without authorization, and such act constitutes a crime, criminal liability shall be pursued in accordance with the law in addition to compensation for the losses suffered by the infringed party. Where a person knowingly sells goods bearing a counterfeited registered trademark, and such act constitutes a crime, criminal liability shall be pursued in accordance with the law in addition to compensation for the losses suffered by the infringed party.

Chapter VIII — Supplementary Provisions

Article 68 — A trademark agency that handles trademark matters under the entrustment of a client shall cause damage to the client if it applies for the registration of a trademark that it knows or should have known is falling under the circumstances specified in Articles 4, 15, and 32 of this Law, or in violation of Article 19, paragraphs 3 and 4. The trademark agency shall bear civil liability for damages caused by malicious trademark registration applications or malicious trademark litigation. Where serious consequences are caused, in addition to the imposition of penalties and the assumption of civil liability in accordance with the law, the trademark agency shall be ordered by the trademark agency approval authority to suspend acceptance of its trademark agency business. The administrative department for industry and commerce shall impose penalties in accordance with the law.

Article 72 — Applications for trademark registration and handling of other trademark matters shall be subject to payment of fees. The specific fee standards shall be separately prescribed.

Article 73 — This Law shall come into force on March 1, 1983. The Regulations on Trademark Administration promulgated by the State Council on April 10, 1963 shall be repealed simultaneously. The registered trademarks that have been approved for registration prior to the implementation of this Law shall continue to be valid. The matters stipulated in this Law concerning the modification of the term of validity of a registered trademark, which was originally fixed at a certain number of years, shall be handled in accordance with the provisions of this Law.

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