

Trademark Law of the PRC

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Chapter I — General Provisions

Article 1 — This Law is enacted for the purposes of strengthening trademark administration, protecting the exclusive right to use a trademark, encouraging producers and operators to ensure the quality of their goods and services, safeguarding the reputation of their trademarks, protecting the interests of consumers and producers and operators, and promoting the development of the socialist market economy.

Article 2 — The Trademark Office of the intellectual property administrative department under the State Council shall be responsible for the trademark registration and administration throughout the country. The intellectual property administrative department under the State Council shall establish a Trademark Review and Adjudication Board to handle trademark disputes.

Article 3 — Trademarks approved and registered by the Trademark Office are registered trademarks, including goods trademarks, service trademarks, collective trademarks, and certification trademarks. The trademark registrant shall enjoy the exclusive right to use the registered trademark, which shall be protected by law. For the purposes of this Law, "collective trademark" means a mark registered in the name of a group, association, or other organization and used by members of the organization in their commercial activities to indicate their membership in the organization. For the purposes of this Law, "certification trademark" means a mark that is controlled by an organization capable of supervising certain goods or services and used by entities or individuals other than the organization in respect of goods or services to certify the origin, raw materials, manufacturing method, quality, or other specific characteristics of such goods or services. Special matters concerning the registration and administration of collective trademarks and certification trademarks shall be provided for by the intellectual property administrative department under the State Council.

Article 4 — Any natural person, legal person, or other organization that needs to acquire the exclusive right to use a trademark for the goods it produces, manufactures, processes, selects, or markets, or for the services it provides in the course of its business operations, shall apply for trademark registration with the Trademark Office. Applications for trademark registration for use on goods or services that are not intended for use in the course of business operations shall be refused.

Article 5 — Two or more natural persons, legal persons, or other organizations may jointly apply to the Trademark Office for registration of the same trademark and jointly enjoy and exercise the exclusive right to use the registered trademark.

Article 6 — Where laws or administrative regulations require the use of a registered trademark for goods, such goods must use a registered trademark before they may be marketed. Where a registered trademark is not used, the goods may not be marketed.

Article 7 — In applying for registration and using a trademark, the principle of good faith shall be followed. The user of a trademark shall be responsible for the quality of the goods on which the trademark is used. Administrative departments for industry and commerce at all levels shall, through trademark administration, stop any deceptive practices in respect of the quality of goods and shall suppress any conduct that infringes upon the exclusive right to use a registered trademark.

Article 8 — Any mark capable of distinguishing the goods of one natural person, legal person, or other organization from those of others, including any word, design, letter, numeral, three-dimensional mark, combination of colors, sound, or any combination of the foregoing, may be registered as a trademark.

Article 9 — A trademark for which registration is applied shall have distinctive characteristics, be readily distinguishable, and shall not conflict with the prior lawful rights of others obtained by lawful means. The trademark registrant shall have the right to mark the words "Registered Trademark" or the registered mark.

Article 10 — The following marks 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, medal, or decorations of the People's Republic of China, or those identical with the names, symbols, or marks of central state organs, the names of specific places where such organs are located, or the names or designs of landmark buildings; (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 that country; (3) those identical with or similar to the name, flag, or emblem of an international intergovernmental organization, except with the consent of that organization or where such mark is unlikely to mislead the public; (4) those identical with or similar to an official mark or inspection mark indicating control or warranty, except where authorized; (5) those identical with or similar to the name or symbol of the Red Cross or the Red Crescent; (6) those of a nature of discrimination against any nationality; (7) those deceptive, likely to mislead the public as to the quality or other characteristics or place of origin of the goods; (8) those detrimental to socialist morality or customs, or having other harmful influences. Geographical names of

administrative divisions at or above the county level and foreign geographical names well known to the public shall not be used as trademarks, except where such geographical names have other meanings or form part of a collective trademark or certification trademark. Registered trademarks using geographical names shall remain valid.

Article 11 — The following marks shall not be registered as trademarks: (1) those consisting solely of the generic name, design, or model number of the goods; (2) those consisting solely of a direct indication of the quality, main raw materials, function, use, weight, quantity, or other characteristics of the goods; (3) those otherwise lacking distinctive characteristics. Marks listed in the preceding paragraph may be registered as trademarks if they have acquired distinctive characteristics through use and are readily distinguishable.

Article 12 — Where a three-dimensional mark is applied for registration, the registration shall not be granted if the shape results exclusively from the nature of the goods themselves, the shape of the goods is necessary to obtain a technical result, or the shape gives substantial value to the goods.

Article 13 — Where the trademark of an identical or similar kind of goods applied for registration is a reproduction, 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, it shall not be registered and shall be prohibited from use. Where the trademark of a non-identical or non-similar kind of goods applied for registration is a reproduction, imitation, or translation of a well-known trademark of another person that has been registered in China, which may mislead the public and damage the interests of the registrant of the well-known trademark, it shall not be registered and shall be prohibited from use.

Article 14 — Well-known trademarks shall be determined upon request by the parties involved in the handling of a trademark case that such determination is necessary. The determination of a well-known trademark shall take into account the following factors: (1) the degree of public recognition of the trademark; (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 for which the trademark is well known. In trademark registration examination and in the investigation and handling of trademark violation cases by the administrative department for industry and commerce, where a party claims rights in accordance with Article 13 of this Law, the Trademark Office may determine well-known status based on the circumstances of examination and handling of the case upon the request of the party. In the handling of trademark disputes, where a party claims rights in accordance with Article 13 of this Law, the Trademark Review and Adjudication Board may determine well-known status based on the circumstances of the case handling upon the request of the party. In the trial of trademark civil or administrative cases, where a party claims rights in accordance with Article 13 of this Law, the people's court designated by the Supreme People's Court may determine well-known status based on the circumstances of the case trial upon the request of the party. Producers and operators shall not use the words "Well-Known Trademark" on their goods, packaging, or containers, or in advertising, exhibitions, or other commercial activities.

Article 15 — Where an agent or representative applies for registration of the trademark of the principal or represented person in its own name without authorization, and the principal or represented person raises an objection, the trademark shall not be registered and shall be prohibited from use. Where an applicant for registration of a trademark that is identical with or similar to a trademark used earlier by another person on the same or similar kind of goods, and the applicant has a contractual, business, or other relationship with that other person other than those specified in the preceding paragraph, and the applicant clearly knows of the existence of the trademark of that other person, and that other person raises an objection, such trademark shall not be registered.

Article 16 — Where a trademark contains a geographical indication of goods, and the goods do not originate from the region indicated, which may mislead the public, the trademark shall not be registered and shall be prohibited from use; however, a trademark that has been registered in good faith shall remain valid. For the

purposes of the preceding paragraph, "geographical indication" means a sign that indicates the region of origin of particular goods, the specific quality, reputation, or other characteristics of which are determined primarily by the natural or human factors of the region.

Article 17 — Where a foreigner or foreign enterprise applies for trademark registration in China, such application shall be handled in accordance with the agreement concluded between the country to which the applicant belongs and the People's Republic of China, or in accordance with the international treaty to which both countries are parties, or in accordance with the principle of reciprocity.

Article 18 — Where a foreigner or foreign enterprise applies for trademark registration or handles other trademark matters in China, it shall entrust a trademark agency established in accordance with the law to act on its behalf.

Article 19 — A trademark agency shall abide by the principles of good faith, observe professional ethics, and keep confidential the trade secrets of its principals that it comes to know in the course of acting as an agent. Where a trademark agency knows or should know that the trademark applied for registration by its principal falls under any of the circumstances specified in Articles 4, 15, and 32 of this Law, it shall not accept the entrustment. In addition to acting as an agent for trademark registration applications, a trademark agency may also provide such services as trademark legal consultation, trademark search, and trademark monitoring.

Article 20 — Trademark agency industry organizations shall, in accordance with their articles of association, strictly enforce the conditions for admitting members, and impose disciplinary sanctions on members that violate industry self-discipline norms. Trademark agency industry organizations shall promptly publicize the disciplinary sanctions imposed on their members to the public.

Article 21 — The Trademark Office shall make a decision on an international trademark registration application that has been extended to China in accordance with the provisions of relevant treaties concluded or acceded to by the People's Republic of China.

Chapter II — Application, Examination and Approval of Trademark Registration

Article 22 — An applicant for trademark registration shall, in accordance with the prescribed classification of goods, indicate the class of goods and the designation of the goods on which the trademark is to be used, and file an application for registration. An applicant for trademark registration may apply to register the same trademark for multiple classes of goods in one application. Applications for trademark registration and other relevant documents may be filed in written form or in the form of data messages.

Article 23 — Where a registered trademark needs to be used on other goods of the same class, a new application for registration shall be filed.

Article 24 — Where the sign of a registered trademark needs to be changed, a new application for registration shall be filed.

Article 25 — Where an applicant for trademark registration has filed its first trademark registration application for the same trademark in respect of the same goods in a foreign country within six months, it 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 parties, or in accordance with the principle of mutual recognition of the right of priority. An applicant claiming the right of priority in accordance with the preceding paragraph shall make a written declaration at the time of filing the trademark registration application and shall submit a copy of the first trademark registration application document within three months; an applicant that fails to make a written declaration or fails to submit the copy of the trademark registration application document within the time limit shall be deemed not to have claimed the right of priority.

Article 26 — Where a trademark is first used on goods exhibited at an international exhibition sponsored or recognized by the Chinese Government, the applicant for registration of the trademark may enjoy the right of priority within six months from the date on which the goods are exhibited. An applicant claiming the right of priority in accordance with the preceding paragraph shall make a written declaration at the time of filing the trademark registration application and shall submit, within three months, the name of the exhibition where the goods are exhibited, documentary evidence confirming the use of the trademark on the exhibited goods, and the date of the exhibition, among other supporting documents; an applicant that fails to make a written declaration or fails to submit the supporting documents within the time limit shall be deemed not to have claimed the right of priority.

Article 27 — Matters declared and materials provided by the applicant for trademark registration shall be true, accurate, and complete.

Article 28 — The Trademark Office shall, within nine months from receipt of the trademark registration application documents, complete the examination of the trademark; if the application complies with the relevant provisions of this Law, the Trademark Office shall preliminarily examine and approve the trademark and publish the same. Where the application 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 examined and approved for use on the same or similar kind of goods, the Trademark Office shall refuse the application and shall not publish it.

Article 29 — During the examination process, where the Trademark Office considers that the content of the trademark registration application needs explanation or amendment, it may require the applicant to make an explanation or amendment. Where the applicant fails to make an explanation or amendment, the examination decision of the Trademark Office shall not be affected.

Article 30 — — Where a trademark for which registration is applied 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 examined and approved for use on the same or similar kind of goods, the Trademark Office shall refuse the application and shall not publish it.

Article 31 — Where two or more applicants apply for registration of identical or similar trademarks in respect of the same or similar goods, the Trademark Office shall preliminarily examine and approve and publish the trademark whose application was filed first; where applications are filed on the same day, the Trademark Office shall preliminarily examine and approve and publish the trademark that was used first, and shall refuse the applications of the others without publication. Where the application documents are filed in written form, the filing date shall be the date on which the Trademark Office receives the application documents; where the application documents are filed in the form of data messages, the filing date shall be the date on which the data messages enter the electronic system of the Trademark Office.

Article 32 — In applying for trademark registration, an applicant shall not damage the existing prior rights of others, nor shall it preemptively register, by illicit means, a trademark that has been used by another person and has a certain degree of influence.

Article 33 — Within three months from the date of publication of a preliminarily examined and approved trademark, the prior right holder or an interested party who believes that the trademark violates paragraphs 2 and 3 of Article 13, Article 15, paragraph 1 of Article 16, Article 30, Article 31, or Article 32 of this Law, or any person who believes that the trademark violates Articles 4, 10, 11, 12, or paragraph 4 of Article 19 of this Law, may file an objection with the Trademark Office. Where no objection is filed upon expiration of the publication period, the Trademark Office shall approve the registration, issue a trademark registration certificate, and publish the same.

Article 34 — The Trademark Office shall hear the statements of the facts and grounds from both the objector and the objected party, and shall, after investigation and verification, make a decision within 12 months from

the expiration of the publication period, notify the objector and the objected party in writing and publish the same. Under special circumstances, the said period may be extended for six months with the approval of the intellectual property administrative department under the State Council. Where a party is dissatisfied with the decision of the Trademark Office, it may, within 15 days from receipt of the notification, apply to the Trademark Review and Adjudication Board for a review. The Trademark Review and Adjudication Board shall make a review decision within 12 months from the date of receipt of the application and notify the objector and the objected party in writing. Under special circumstances, the said period may be extended for six months with the approval of the intellectual property administrative department under the State Council. Where a party is dissatisfied with the review decision of the Trademark Review and Adjudication Board, it may, within 30 days from receipt of the notification, bring a lawsuit with the people's court. The people's court shall notify the opposite party to participate in the proceedings as a third party. Where, during the review conducted in accordance with the preceding paragraph, the determination of the prior rights involved must be based on the outcome of another case being tried by the people's court or being handled by an administrative organ, the Trademark Review and Adjudication Board may suspend the review. Upon removal of the cause for suspension, the review procedure shall be resumed.

Article 35 — Where an objection is filed against a trademark that has been published after preliminary examination and approval, and the Trademark Office makes a decision not to register the trademark, and the objected party is dissatisfied with the decision, it may, within 15 days from receipt of the notification, apply to the Trademark Review and Adjudication Board for a review. The Trademark Review and Adjudication Board shall make a review decision within 12 months from the date of receipt of the application and notify the objector and the objected party in writing. Where an extension is necessary under special circumstances, the said period may be extended for six months with the approval of the intellectual property administrative department under the State Council. Where the objected party is dissatisfied with the review decision of the Trademark Review and Adjudication Board, it may, within 30 days from receipt of the notification, bring a lawsuit with the people's court. The people's court shall notify the objector to participate in the proceedings as a third party. Where, during the review conducted in accordance with the provisions of this Law, the determination of the prior rights involved must be based on the outcome of another case, the Trademark Review and Adjudication Board may suspend the review. Upon removal of the cause for suspension, the review procedure shall be resumed.

Article 36 — Where, after the statutory period expires, a party fails to apply to the Trademark Review and Adjudication Board for a review of the Trademark Office's decision to refuse registration or not to register, or fails to bring a lawsuit with the people's court against the review decision of the Trademark Review and Adjudication Board, the decision to refuse registration or not to register, or the review decision, shall become effective. Where it is determined upon examination that the grounds for objection are not tenable and registration is approved, the time when the trademark registrant acquires the exclusive right to use the trademark shall commence from the date of expiration of the three-month preliminary examination and approval publication period. The exclusive right to use a trademark shall have no retroactive effect as of the date of expiration of the publication period. Where the trademark registration and use after the expiration of the publication period cause damage to another person due to the bad faith of the trademark registrant, such damage shall be compensated.

Article 37 — Where the Trademark Office makes a decision to refuse a trademark registration application or not to register a trademark, it shall notify the applicant in writing and state the grounds. Where the applicant is dissatisfied with the decision, it shall, within 15 days from receipt of the notification, apply to the Trademark Review and Adjudication Board for a review. The Trademark Review and Adjudication Board shall make a decision within nine months from the date of receipt of the application and notify the applicant in writing. Under special circumstances, the said period may be extended for three months with the approval of the intellectual property administrative department under the State Council. Where the applicant is dissatisfied with the review decision of the Trademark Review and Adjudication Board, it may, within 30 days from

receipt of the notification, bring a lawsuit with the people's court.

Article 38 — An applicant for trademark registration or a registrant that discovers obvious errors in the trademark application documents or registration documents may apply for correction. The Trademark Office shall make the correction *ex officio* within the scope of its functions and powers and notify the party concerned. The correction of errors referred to in the preceding paragraph shall not involve the substantive content of the trademark application documents or registration documents.

Chapter III — Extension, Change, Assignment and Licensing of Registered Trademarks

Article 39 — The term of validity of a registered trademark shall be 10 years, calculated from the date of approval of registration.

Article 40 — Where a registrant intends to continue to use the registered trademark upon expiration of the term of validity, the registrant shall go through the renewal formalities in accordance with the provisions within 12 months before the expiration. Where the registrant fails to do so, a grace period of six months may be granted. Each renewal of registration shall be valid for 10 years, calculated from the day following the expiration of the preceding term of validity. Upon expiration of the renewal period, where renewal formalities have not been completed, the registered trademark shall be cancelled. The Trademark Office shall publish the renewed registered trademark.

Article 41 — Where a registered trademark needs to be changed in respect of the name, address, or other registered matters of the registrant, an application for change shall be filed.

Article 42 — Where a registered trademark is assigned, the assignor and the assignee shall conclude an assignment agreement and jointly file an application with the Trademark Office. The assignee shall guarantee the quality of the goods on which the registered trademark is used. Upon approval of the assignment of a registered trademark, the assignment shall be published. The assignee shall enjoy the exclusive right to use the trademark as of the date of publication. The assignor shall not assign its identical or similar trademarks registered in respect of the same goods, or identical or similar trademarks registered in respect of similar goods. Where the assignment of a registered trademark is likely to cause public confusion or otherwise have an adverse effect, the Trademark Office shall not approve the assignment and shall notify the applicant in writing and state the grounds.

Article 43 — A trademark registrant may, by concluding a trademark licensing contract, authorize another person to use its registered trademark. The licensor shall supervise the quality of the goods on which the licensee uses the registered trademark of the licensor. The licensee shall guarantee the quality of the goods on which the registered trademark is used. Where a registered trademark of another person is used under license, the name of the licensee and the place of origin of the goods must be indicated on the goods bearing the registered trademark. Where another person is licensed to use a registered trademark, the licensor shall, within the term of the license contract, file the trademark license with the Trademark Office for record, which shall publish the same. A trademark license shall not be used against a third party acting in good faith without recordation.

Chapter IV — Invalidation of Registered Trademarks

Article 44 — Where a registered trademark falls under any of the following circumstances, the Trademark Office shall declare the registered trademark invalid; or any other entity or individual may request the Trademark Review and Adjudication Board to declare the registered trademark invalid: (1) the trademark uses a sign prohibited from use as a trademark under Article 10 of this Law; (2) the trademark uses a sign prohibited from registration as a trademark under Article 11 of this Law; (3) the trademark uses a three-dimensional mark prohibited from registration as a trademark under Article 12 of this Law; (4) the

trademark was obtained by fraudulent or other illicit means. Where a party is dissatisfied with the Trademark Office's decision to declare a registered trademark invalid, it may, within 15 days from receipt of the notification, apply to the Trademark Review and Adjudication Board for a review. The Trademark Review and Adjudication Board shall make a decision within nine months from receipt of the application and notify the party in writing. Where an extension is necessary under special circumstances, the said period may be extended for three months with the approval of the intellectual property administrative department under the State Council. Where the party is dissatisfied with the review decision of the Trademark Review and Adjudication Board, it may, within 30 days from receipt of the notification, bring a lawsuit with the people's court. Where any other entity or individual requests the Trademark Review and Adjudication Board to declare a registered trademark invalid, the Trademark Review and Adjudication Board shall, after receipt of the application, notify the parties concerned in writing and require them to file their responses within a specified time limit. The Trademark Review and Adjudication Board shall make a ruling maintaining the registered trademark or declaring the registered trademark invalid within nine months from receipt of the application and notify the parties in writing. Under special circumstances, the said period may be extended for three months with the approval of the intellectual property administrative department under the State Council. Where a party is dissatisfied with the ruling of the Trademark Review and Adjudication Board, it may, within 30 days from receipt of the notification, bring a lawsuit with the people's court. The people's court shall notify the opposite party in the trademark adjudication proceeding to participate in the proceedings as a third party.

Article 45 — Where a registered trademark falls under any of the circumstances specified in paragraphs 2 and 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 an interested party may, within five years from the date of trademark registration, request the Trademark Review and Adjudication Board to declare the registered trademark invalid. For a registration obtained in bad faith, the owner of the well-known trademark shall not be subject to the five-year time limit. After receipt of the application for declaring a registered trademark invalid, the Trademark Review and Adjudication Board shall notify the parties in writing and require them to file their responses within a specified time limit. The Trademark Review and Adjudication Board shall make a ruling maintaining the registered trademark or declaring the registered trademark invalid within 12 months from the date of receipt of the application and notify the parties in writing. Under special circumstances, the said period may be extended for six months with the approval of the intellectual property administrative department under the State Council. Where a party is dissatisfied with the ruling of the Trademark Review and Adjudication Board, it may, within 30 days from receipt of the notification, bring a lawsuit with the people's court. The people's court shall notify the opposite party in the trademark adjudication proceeding to participate in the proceedings as a third party. Where, during the review conducted in accordance with the preceding paragraph, the determination of the prior rights involved must be based on the outcome of another case being tried by the people's court or being handled by an administrative organ, the Trademark Review and Adjudication Board may suspend the review. Upon removal of the cause for suspension, the review procedure shall be resumed.

Article 46 — Where, after the statutory period expires, a party fails to apply to the Trademark Review and Adjudication Board for a review, or fails to bring a lawsuit with the people's court against the ruling of the Trademark Review and Adjudication Board, the ruling to declare the registered trademark invalid or the review decision shall become effective. A registered trademark that has been declared invalid shall be published by the Trademark Office, and the exclusive right to use the registered trademark shall be deemed to have never existed from the beginning.

Article 47 — The decision or ruling to declare a registered trademark invalid shall have no retroactive effect on the judgments or rulings of trademark infringement cases made and enforced by the people's court prior to the invalidation, the decisions on trademark infringement cases made and enforced by the administrative departments for industry and commerce, and the trademark assignment or license contracts already performed. However, where the trademark registrant has caused damage to another person due to bad faith,

compensation shall be made. Where the non-refund of trademark infringement compensation, trademark assignment fees, or trademark royalties under the preceding paragraph is manifestly contrary to the principle of fairness, full or partial refund shall be made.

Chapter V — Administration of the Use of Trademarks

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

Article 49 — Where a trademark registrant, in the course of using its registered trademark, alters the registered trademark, the name or address of the registrant, or other registered matters on its own initiative, the local administrative department for industry and commerce shall order it to make rectification within a time limit; if it fails to make rectification within the time limit, the Trademark Office shall cancel the registered trademark. Where a registered trademark has become the generic name of the goods on which it is designated for use, or has not been used for three consecutive years without justification, any entity or individual may apply to the Trademark Office for cancellation of the registered trademark. The Trademark Office shall make a decision within nine months from receipt of the application. Under special circumstances, the said period may be extended for three months with the approval of the intellectual property administrative department under the State Council.

Article 50 — Within one year after a registered trademark has been cancelled, or declared invalid, or where renewal has not been applied for upon expiration, the Trademark Office shall not approve any application for trademark registration that is identical with or similar to the cancelled trademark in respect of the same or similar goods.

Article 51 — Where any provision of Article 6 of this Law is violated, the local administrative department for industry and commerce shall order the violator to apply for registration within a specified time limit and may impose a fine. Where the violation is not rectified within the time limit, the goods may be prohibited from being marketed.

Article 52 — Where a party uses an unregistered trademark and passes it off as a registered trademark, or uses an unregistered trademark in violation of Article 10 of this Law, the local administrative department for industry and commerce shall stop the act, order rectification within a specified time limit, and may circulate a notice of criticism; where the violation is serious, a fine shall be imposed.

Article 53 — Where any provision of paragraph 5 of Article 14 of this Law is violated, the local administrative department for industry and commerce shall order rectification and impose a fine of RMB 100,000.

Article 54 — Where a party is dissatisfied with the Trademark Office's decision to cancel or not to cancel a registered trademark, it may, within 15 days from receipt of the notification, apply to the Trademark Review and Adjudication Board for a review. The Trademark Review and Adjudication Board shall make a decision within nine months from receipt of the application and notify the party in writing. Under special circumstances, the said period may be extended for three months with the approval of the intellectual property administrative department under the State Council. Where the party is dissatisfied with the review decision of the Trademark Review and Adjudication Board, it may, within 30 days from receipt of the notification, bring a lawsuit with the people's court.

Article 55 — After a decision to cancel a registered trademark or a decision not to register a trademark upon expiration of the publication period takes effect, the Trademark Office shall publish the same. The exclusive right to use the registered trademark shall be deemed to have never existed from the beginning upon the effective date of the decision.

Chapter VI — Protection of the Exclusive Right to Use a Registered Trademark

Article 56 — The exclusive right to use a registered trademark shall be limited to the trademark approved for registration and the goods in respect of which the use of the trademark is approved.

Article 57 — Any of the following acts shall constitute infringement of the exclusive right to use a registered trademark: (1) using a trademark identical with a registered trademark on the same kind of goods without permission of the registrant; (2) using a trademark similar to a registered trademark on the same kind of goods, or using a trademark identical with or similar to a registered trademark on similar goods, without permission of the registrant, where such use is likely to cause confusion; (3) selling goods that infringe upon the exclusive right to use a registered trademark; (4) counterfeiting or making without authorization the mark of a registered trademark of another person, or selling such counterfeited or unauthorized marks; (5) replacing a registered trademark on goods without the consent of the trademark registrant, and selling the goods bearing the replaced trademark on the market; (6) intentionally providing facilities to facilitate another person's infringement of the exclusive right to use a registered trademark, or assisting another person to infringe upon the exclusive right to use a registered trademark; (7) causing other damage to another person's exclusive right to use a registered trademark.

Article 58 — Where another person's registered trademark or unregistered well-known trademark is used as a trade name in an enterprise name, thereby misleading the public and constituting unfair competition, the matter shall be handled in accordance with the Anti-Unfair Competition Law of the PRC.

Article 59 — Where a registered trademark contains the generic name, design, or model number of the goods, or directly indicates the quality, main raw materials, function, use, weight, quantity, or other characteristics of the goods, or contains a geographical name, the holder of the exclusive right to use the registered trademark shall have no right to prohibit another person from using such elements in good faith. Where a three-dimensional registered trademark contains a shape that results from the nature of the goods themselves, is necessary to obtain a technical result, or gives substantial value to the goods, the holder of the exclusive right to use the registered trademark shall have no right to prohibit another person from using such shape in good faith. Where, prior to the trademark registrant's application for trademark registration, another person has already used a trademark identical with or similar to the registered trademark on the same or similar kind of goods and the trademark has a certain degree of influence, the holder of the exclusive right to use the registered trademark shall have no right to prohibit such person from continuing to use the trademark within the original scope of use, but may require the person to add an appropriate distinguishing mark. Where a registered trademark contains a geographical indication of goods and the trademark holder has no right to prohibit another person from using the geographical indication in good faith, the provisions of paragraph 1 of this Article shall apply.

Article 60 — Where a dispute arises from any of the acts of infringement of the exclusive right to use a registered trademark listed in Article 57 of this Law, the parties shall resolve the dispute through negotiation. Where the parties are unwilling to negotiate or the negotiation fails, the trademark registrant or an interested party may bring a lawsuit with the people's court, and may also request the administrative department for industry and commerce to handle the matter. Where, in the course of handling the matter, the administrative department for industry and commerce determines that the infringement is constituted, 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 registered trademark mark. Where the infringement is serious, a fine may be imposed. Where the party is dissatisfied with the decision, it may, within 15 days from receipt of the notification of the decision, bring a lawsuit with the people's court in accordance with the Administrative Procedure Law of the PRC. Where the infringer fails to bring a lawsuit and fails to perform upon expiration of the time limit, the administrative department for industry and commerce may apply to the people's court for compulsory enforcement. With respect to a request for handling, the administrative department for industry and commerce that handles the matter may mediate on the amount of compensation for the infringement at the request of the parties. Where mediation fails, the

parties may bring a lawsuit with the people's court in accordance with the Civil Procedure Law of the PRC.

Article 61 — The administrative department for industry and commerce shall have the right to investigate and handle acts suspected of infringing upon another person's exclusive right to use a registered trademark in accordance with the law. Where a crime is suspected, the case shall be promptly transferred to the judicial organ for handling in accordance with the law.

Article 62 — The administrative department for industry and commerce at the county level or above may, based on the suspected evidence of violation of the law or reports it has obtained, exercise the following functions and powers in investigating and handling acts suspected of infringing upon another's exclusive right to use a registered trademark: (1) questioning the parties concerned and investigating the circumstances relating to the infringement upon the exclusive right to use another's registered trademark; (2) consulting and copying the contracts, invoices, account books, and other relevant materials of the parties concerned relating to the infringing activities; (3) conducting on-site inspection of the premises where the parties concerned are suspected of engaging in the infringement upon another person's exclusive right to use a registered trademark; (4) inspecting the articles relating to the infringing activities; and sealing up or seizing the articles for which evidence shows infringement upon another person's exclusive right to use a registered trademark. When exercising the functions and powers specified in the preceding paragraph, the administrative department for industry and commerce shall produce its credentials, and the parties shall cooperate and provide assistance. Where the parties refuse to cooperate or provide assistance, the administrative department for industry and commerce may handle the matter with the cooperation of the public security organ.

Article 63 — The amount of compensation for infringement of the exclusive right to use a trademark shall be determined on the basis of the actual losses suffered by the right holder as a result of the infringement; where it is difficult to determine the actual losses, the amount of compensation may be determined on the basis of the profits earned by the infringer from the infringement; where it is difficult to determine the losses of the right holder or the profits of the infringer, the amount of compensation may be determined by reference to a reasonable multiple of the trademark license fee. For willful infringement of the exclusive right to use a trademark where 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 in accordance with the above method. The amount of compensation shall include the reasonable expenses paid by the right holder to stop the infringing act. The people's court may, for the purpose of determining the amount of compensation, order the infringer to provide the account books and materials relating to the infringing act where the right holder has made its best effort to provide evidence and the account books and materials relating to the infringing act are mainly in the possession of the infringer. Where the infringer refuses to provide or provides false account books and materials, the people's court may determine the amount of compensation by reference to the right holder's claims and the evidence provided. Where it is difficult to determine the actual losses suffered by the right holder, the profits earned by the infringer, or the trademark license fee, the people's court shall, based on the circumstances of the infringing act, award compensation of not more than RMB 5,000,000. When hearing trademark dispute cases, the people's court shall, at the request of the right holder, order the destruction of the goods bearing the counterfeited registered trademark, except under special circumstances; order the destruction of the materials and tools mainly used for manufacturing the goods bearing the counterfeited registered trademark without compensation; or, under special circumstances, order the prohibition of the entry of the foregoing materials and tools into commercial channels without compensation. Goods bearing a counterfeited registered trademark shall not enter commercial channels after simply removing the counterfeited registered trademark.

Article 64 — Where the holder of the exclusive right to use a registered trademark requests compensation, and the alleged infringer defends on the ground that the holder has not used the registered trademark, the people's court may require the holder of the exclusive right to use the registered trademark to provide

evidence of actual use of the registered trademark in the preceding three years. Where the holder of the exclusive right to use a registered trademark cannot prove actual use of the registered trademark in the preceding three years and cannot prove other losses suffered as a result of the infringement, the alleged infringer shall not be liable for compensation. Where a person, without knowledge, sells goods that infringe upon the exclusive right to use a registered trademark and can prove that the goods were lawfully obtained by the person and state the supplier of the goods, the person shall not be liable for compensation.

Article 65 — Where a trademark registrant or an interested party has evidence proving that another person is committing or will commit an act infringing upon its exclusive right to use a registered trademark, and failure to promptly stop the act will cause irreparable harm to its lawful rights and interests, it may, before bringing a lawsuit, apply to the people's court for an order to stop the relevant act and for property preservation in accordance with the law.

Article 66 — To stop an infringing act, a trademark registrant or an interested party may, before bringing a lawsuit, apply to the people's court for preservation of evidence where the evidence may be destroyed or lost or become difficult to obtain later. Upon granting the application for preservation of evidence, the people's court shall make a ruling within 48 hours; where property preservation is granted, enforcement shall begin immediately. The applicant shall be ordered to provide security. Where the applicant fails to provide security, the application shall be rejected. Where the applicant fails to bring a lawsuit within 15 days after the people's court has adopted the preservation measures, the people's court shall lift the preservation measures.

Article 67 — Where a person, without permission of the trademark registrant, uses a trademark identical with the registered trademark on the same kind of goods, and the case constitutes a crime, in addition to compensating the losses of the infringed party, criminal liability shall be pursued in accordance with the law. Where a person counterfeits or makes without authorization the mark of a registered trademark of another person, or sells such counterfeited or unauthorized marks, and the case constitutes a crime, in addition to compensating the losses of the infringed party, criminal liability shall be pursued in accordance with the law. Where a person knowingly sells goods bearing a counterfeited registered trademark, and the case constitutes a crime, in addition to compensating the losses of the infringed party, criminal liability shall be pursued in accordance with the law.

Chapter VII — Supplementary Provisions

Article 68 — Where a trademark agency commits any of the following acts, the administrative department for industry and commerce shall order it to make rectification within a designated time limit and impose a warning and a fine of not less than RMB 10,000 but not more than RMB 100,000; the directly responsible person in charge and other directly responsible persons shall be given a warning and a fine of not less than RMB 5,000 but not more than RMB 50,000; where a crime is constituted, criminal liability shall be pursued in accordance with the law: (1) fabricating or altering legal instruments, seals, or signatures in the course of handling trademark matters, or using fabricated or altered legal instruments, seals, or signatures; (2) soliciting trademark agency business by offering bribes or by other illicit means; (3) accepting entrustment knowing or should have known that the trademark matter for which the principal entrusts it violates the provisions of Articles 4, 15, and 32 of this Law; (4) divulging trade secrets of the principal that it comes to know in the course of acting as an agent. Where a trademark agency is subject to administrative punishment or its trademark agency business is suspended or its business license revoked for any of the illegal acts described in the preceding paragraph, the administrative department for industry and commerce shall record the same in the credit archives; where the circumstances are serious, the Trademark Office and the Trademark Review and Adjudication Board may decide to suspend accepting the trademark agency business handled by the trademark agency, and shall publish the same. Where a trademark agency violates the principle of good faith and infringes upon the lawful interests of its principal, it shall bear civil liability in accordance with the law, and shall be subject to disciplinary sanctions by the trademark agency industry organization in accordance with its articles of association.

Article 69 — Staff of state organs engaged in trademark registration, administration, and review shall handle trademark matters impartially, honestly and self-disciplined, be devoted to their duties, and provide services in a civilized manner. Staff of the Trademark Office and the Trademark Review and Adjudication Board and personnel engaged in trademark registration, administration, and review shall not engage in trademark agency business or commodity production and business activities.

Article 70 — Where any staff member of a state organ engaged in trademark registration, administration, or review neglects his duty, abuses his power, engages in fraudulent practices for personal gain, or handles trademark registration, administration, or review matters in violation of the law, accepts money or property from a party, or seeks illegitimate gains, the relevant authority shall impose administrative sanctions in accordance with the law; where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 71 — The fees for applying for trademark registration and handling other trademark matters shall be prescribed separately. The schedule of fees shall be published.

Article 72 — The implementing regulations of this Law shall be formulated by the intellectual property administrative department under the State Council and shall be implemented upon approval by the State Council.

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. Special procedures for matters pending on the date of implementation of this Law shall be separately provided for by the intellectual property administrative department under the State Council.

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