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 trademarks, urging producers and dealers to guarantee the quality of their goods and services, maintaining the reputation of trademarks, protecting the interests of consumers and producers and dealers, and promoting the development of the socialist market economy.

Article 2 — The trademark office of the administration department for industry and commerce under the State Council shall be responsible for the registration and administration of trademarks throughout the country. The administration department for industry and commerce under the State Council shall establish a trademark review and adjudication board responsible for handling trademark disputes.

Article 3 — Registered trademarks shall include trademarks for goods, service marks, collective marks, and certification marks. “Collective marks” as used in this Law shall refer to marks registered in the name of a group, association, or other organization and used by the members of such organization in their commercial activities to indicate their membership. “Certification marks” as used in this Law shall refer to marks controlled by an organization capable of supervising 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 the 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 or business operations shall apply for trademark registration with the trademark office. Applications for trademark registration filed in bad faith and not for the purpose of use shall be rejected. The provisions of this Law relating to trademarks for goods shall apply to service marks.

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

Article 6 — Where a trademark for which registered use is required by laws or administrative regulations must be used on goods, the trademark must be registered before the goods may be marketed.

Article 7 — The application for registration and use of a trademark shall be made in good faith. Users of trademarks shall be responsible for the quality of the goods on which the trademarks are used. Administrative departments for industry and commerce at all levels shall, through trademark administration, stop any practices that deceive consumers.

Article 8 — Any sign capable of distinguishing the goods of one natural person, legal person, or other organization from those of others, including words, devices, letters, numerals, three-dimensional signs, combinations of colors, sounds, and combinations thereof, may be applied for registration as a trademark.

Article 9 — A trademark for which an application for registration is filed shall have distinctive characteristics, be easy to identify, and shall not conflict with the lawful rights previously acquired by others. A trademark registrant shall have the right to mark the words “Registered Trademark” or the registration symbol.

Article 10 — 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, decorations, etc., of the People’s Republic of China, and those identical with the name or symbol of central state organs, the name of a specific location where such organs are located, or the name or design of a landmark building;

(2) Those identical with the State name, national flag, national emblem, military flag, etc., of a foreign country, unless consent has been given by the government of the country;

(3) Those identical with the name, flag, emblem, etc., of an international intergovernmental organization, unless consent has been given by the organization or the public is not likely to be misled;

(4) Those identical with or similar to an official mark or inspection mark indicating control or warranty, unless authorized;

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

(6) Those of ethnic discrimination;

(7) Those that are deceptive and likely to cause confusion among the public regarding the quality or other characteristics or place of origin of the goods;

(8) Those detrimental to socialist morality or customs, or having other adverse effects.

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

Article 11 — The following signs shall not be registered as trademarks:

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

(2) Those that consist exclusively of a direct indication of the quality, principal raw materials, function, use, weight, quantity, or other characteristics of the goods;

(3) Other signs that lack distinctive characteristics.

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

Article 12 — Where a three-dimensional sign is applied for registration as a trademark, it shall not be registered if its shape results exclusively from the nature of the goods, is necessary to achieve a technical result, or gives the goods substantive value.

Article 13 — Where a trademark for which an application for registration is filed for identical or similar goods is a reproduction, imitation, or translation of a well-known trademark of another person not registered in China, and is likely to cause confusion, it shall not be registered and shall be prohibited from use. Where a trademark for which an application for registration is filed for goods that are not identical or similar is a reproduction, imitation, or translation of a well-known trademark of another person registered in China, and is likely to mislead the public and cause damage to 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 the request of the parties involved in a trademark case as facts that need to be determined in handling the case. The following factors shall be taken into consideration in determining a well-known trademark:

(1) The knowledge of the relevant public 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 records of protection of the trademark as a well-known trademark;

(5) Other factors that make the trademark well known.

Article 15 — Where an agent or representative registers in its own name the trademark of the principal or the person represented without authorization, and the principal or the person represented objects, the 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 used earlier by another person, and the applicant, due to contractual, business, geographic, or other relations with the other person, clearly knows of the existence of the other person’s trademark, and the other person objects, the 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, misleading the public, the trademark shall not be registered and shall be prohibited from use. However, those registered in good faith shall remain valid. “Geographical indication” as used in the preceding paragraph shall refer to a sign indicating that certain goods originate from a particular region, and the specific quality, reputation, or other characteristics of the goods are primarily determined by the natural or cultural factors of the region.

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Article 17 — Where a foreigner or foreign enterprise applies for trademark registration in China, the matter shall be handled in accordance with the agreement concluded between the country to which the applicant belongs and the People's Republic of China, an international treaty to which both countries are parties, or 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 principle of good faith, abide by laws and administrative regulations, and handle trademark applications and other trademark matters on behalf of its principals in accordance with the entrustment. Where a trademark agency knows or should know that the trademark applied for registration by its principal falls under the circumstances specified in Articles 4, 15, and 32 of this Law, it shall not accept the entrustment. In addition to handling trademark applications and other trademark matters on behalf of its principals, a trademark agency shall not apply for registration of other trademarks for itself.

Chapter II — Application for Trademark Registration

Article 20 — An application for trademark registration shall specify the class of goods and the designation of the goods on which the trademark is to be used in accordance with the prescribed classification of goods.

Article 21 — Where an applicant for trademark registration intends to use the same trademark on goods in different classes, the applicant shall file separate applications for registration in accordance with the classification of goods.

Article 22 — Where a registered trademark needs to be used on other goods of the same class, a new application for registration shall be filed.

Article 23 — Where the sign of a registered trademark needs to be changed, a new application for registration shall be filed.

Article 24 — Where a change in the name, address, or other registered matters of a trademark registrant is involved, an application for change shall be filed.

Article 25 — An applicant for trademark registration may claim priority where the applicant files an application for registration of the same trademark for the same goods in China within six months from the date on which the trademark was first filed for registration in a foreign country, in accordance with an agreement concluded between the foreign country and China, an international treaty to which both countries are parties, or the principle of mutual recognition of priority. An applicant claiming priority shall make a written declaration at the time of filing the application for trademark registration and submit a copy of the application documents for the first trademark registration within three months. Failure to make a written declaration or to submit a copy of the application documents for trademark registration within the time limit shall be deemed that priority has not been claimed.

Article 26 — Where a trademark is used for the first time on goods exhibited at an international exhibition sponsored or recognized by the Chinese Government, the applicant for registration of the trademark may claim priority within six months from the date of exhibition of the goods. An applicant claiming priority shall make a written declaration at the time of filing the application for trademark registration and submit the name of the exhibition in which the goods were exhibited, proof of the use of the trademark on the exhibited goods, proof of the date of exhibition, and other supporting documents within three months. Failure to make a written declaration or to submit the supporting documents within the time limit shall be deemed that priority has not been claimed.

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Article 27 — The matters declared and the materials provided for an application for trademark registration shall be true, accurate, and complete.

Chapter III — Examination and Approval of Trademark Registration

Article 28 — Upon preliminary examination of a trademark for which an application for registration has been filed, if the trademark conforms to the relevant provisions of this Law, the trademark office shall publish the trademark. If the trademark office rejects the application, it shall notify the applicant in writing and state the reasons.

Article 29 — Where the trademark office considers that the contents of an application for trademark registration may be amended, it shall issue a notice of examination opinions and require the applicant to make amendments within 15 days from the date of receipt of the notice.

Article 30 — An applicant who is dissatisfied with the decision of the trademark office to reject an application may, within 15 days from the date of receipt of the notification, apply to the trademark review and adjudication board for reexamination. 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.

Article 31 — A trademark for which an application for registration has been filed that conforms to the relevant provisions of this Law shall, after preliminary examination and approval, be published by the trademark office. Within three months from the date of publication, any prior right holder or interested party who considers that the trademark violates the relevant provisions of this Law, or any person who considers that the trademark violates the provisions of Articles 4, 10, 11, 12, or 19(4) of this Law, may file an opposition with the trademark office. Where no opposition is filed upon expiration of the publication period, the trademark office shall approve the registration, issue the trademark registration certificate, and publish the registration.

Article 32 — An application for trademark registration shall not prejudice the existing prior rights of others, nor shall it be used to preemptively register, by improper means, a trademark that has been used by another person and has a certain influence.

Article 33 — Where two or more applicants apply for registration of identical or similar trademarks for the same or similar goods, the trademark office shall first conduct a preliminary examination and approval and publish the trademark whose application was filed first. Where applications are filed on the same day, the trademark office shall first conduct a preliminary examination and approval and publish the trademark that was used first, and shall reject the applications of the others without publication.

Article 34 — Where an opposition is filed against a trademark that has been preliminarily approved and published by the trademark office, the trademark office shall hear the statements of facts and reasons of both the opponent and the party being opposed and, after investigation and verification, make a decision within 12 months from the expiration of the publication period on whether to approve the registration. Where the trademark office decides to approve the registration, it shall issue the trademark registration certificate and publish the registration.

Article 35 — Where any party involved in trademark opposition proceedings is dissatisfied with the decision of the trademark office, the party may, within 15 days from the date of receipt of the notification, apply to the trademark review and adjudication board for reexamination. The trademark review and adjudication board shall make a reexamination decision within 12 months from the date of receipt of the application and notify the opponent and the party being opposed in writing.

Article 36 — Where, after a decision to approve registration of a trademark is made by the trademark office in accordance with the provisions of this Law, the original opponent may no longer file an opposition based on the same facts and reasons. A decision of the trademark review and adjudication board to uphold the decision to approve or reject registration shall be subject to judicial review.

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Chapter IV — Renewal, Modification, Assignment and Licensing of Registered Trademarks

Article 37 — The term of validity of a registered trademark shall be 10 years, commencing from the date of approval of registration.

Article 38 — 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 within 12 months before the expiration in accordance with the provisions. Where the registrant fails to do so within this period, a grace period of six months may be granted. The term of validity of each renewal of registration shall be 10 years, commencing from the day following the expiration of the immediately preceding term of validity. Where renewal formalities are not completed upon expiration of the grace period, the registered trademark shall be canceled.

Article 39 — Where the name, address, or other registered matters of a trademark registrant change, an application for change shall be filed.

Article 40 — 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 exclusive right to use a registered trademark shall be transferred from the date of publication of the assignment. The assignee shall be entitled to the exclusive right to use the trademark from the date of publication.

Article 41 — Where a registered trademark is assigned, the trademark registrant shall assign in a lump sum all identical or similar trademarks registered for the same goods or similar goods. Where the trademark office refuses to approve an application for assignment of a registered trademark that is likely to cause confusion or otherwise have adverse effects, it shall notify the applicant in writing and state the reasons.

Article 42 — A trademark registrant may license another person to use its registered trademark by concluding a trademark license contract. The licensor shall supervise the quality of the goods on which the licensee uses the registered trademark, and 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 the licensor licenses another person to use its registered trademark, the licensor shall file the trademark license with the trademark office for record, and the trademark office shall publish the record. The trademark license shall not be used against a third party acting in good faith unless it has been filed with the trademark office for record.

Chapter V — Invalidation of Registered Trademarks

Article 43 — Where a registered trademark violates the provisions of Articles 4, 10, 11, 12, or 19(4) of this Law, or the registration is obtained by fraudulent or other improper means, the trademark office shall invalidate the registered trademark. Any other entity or individual may request the trademark review and adjudication board to invalidate such a registered trademark.

Article 44 — Where a registered trademark violates the provisions of Articles 13(2) and (3), 15, 16(1), 30, 31, or 32 of this Law, the prior right holder or interested party may, within five years from the date of trademark registration, request the trademark review and adjudication board to invalidate the registered trademark. For registrations made in bad faith, the owner of a well-known trademark shall not be subject to the five-year time limit.

Article 45 — After the trademark review and adjudication board receives an application for invalidation of a registered trademark, it shall notify the relevant parties in writing and require them to submit a defense within a specified time limit. The trademark review and adjudication board shall make a decision to uphold the

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registration or to invalidate the registered trademark within 12 months from the date of receipt of the application and notify the parties in writing.

Article 46 — A registered trademark that has been invalidated shall be published by the trademark office. The exclusive right to use the registered trademark shall be deemed to have never existed from the beginning. A decision to invalidate a registered trademark shall have no retroactive effect on the judgments or rulings of the people's courts or the mediation statements, decisions, or rulings of the administrative departments for industry and commerce on trademark infringement that have been made and executed, or the trademark assignment or license contracts that have been performed, prior to the invalidation. However, compensation shall be made for any loss caused to another person due to the bad faith of the trademark registrant.

Chapter VI — Administration of the Use of Trademarks

Article 47 — Where a registered trademark is used in any of the following ways, the trademark office shall order the trademark registrant to make corrections within a specified time limit or revoke the registered trademark:

(1) Unilaterally changing the registered trademark, the name, address, or other registered matters of the registrant;

(2) Unilaterally assigning the registered trademark;

(3) Ceasing to use the registered trademark for three consecutive years without justifiable reasons;

(4) Where the trademark has become the generic name of the goods for which it is approved for use, or the use of the trademark is otherwise deceptive or likely to cause confusion;

(5) Other circumstances provided for by laws and administrative regulations.

Article 48 — Where a registered trademark is revoked, the trademark office shall publish the revocation. The exclusive right to use the registered trademark shall be terminated from the date of announcement of the revocation.

Article 49 — A party dissatisfied with the decision of the trademark office to revoke a registered trademark may, within 15 days from the date of receipt of the notification, apply to the trademark review and adjudication board for reexamination. The trademark review and adjudication board shall make a decision within nine months from the date of receipt of the application and notify the party in writing.

Article 50 — Where an unregistered trademark is passed off as a registered trademark, or 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 the use, order the violator to make corrections within a specified time limit, and may circulate a notice and impose a fine.

Article 51 — Where a dispute arises regarding the use of a trademark, the parties may resolve the dispute through negotiation. Where the parties are unwilling to negotiate or negotiation fails, the parties may file a lawsuit with the people's court or request the administrative department for industry and commerce to handle the matter.

Chapter VII — Protection of Exclusive Rights to Use Registered Trademarks

Article 52 — The exclusive right to use a registered trademark shall be limited to the trademark approved for registration and the goods approved for use.

Article 53 — Any of the following acts shall constitute infringement of the exclusive right to use a registered trademark:

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(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 identical with or similar to a registered trademark on similar goods, without the permission of the trademark registrant, and the use is likely to cause confusion;

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

(4) Counterfeiting or manufacturing without authorization representations of another person's registered trademark, or selling representations of another person's registered trademark that have been counterfeited or manufactured without authorization;

(5) Replacing the registered trademark of the trademark registrant without consent and placing the goods bearing the replaced trademark on the market;

(6) Intentionally providing facilities for infringing upon another person's exclusive right to use a registered trademark, or assisting another person in infringing 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 54 — Where a dispute arises as a result of an act specified in Article 53 of this Law, the parties shall resolve the dispute through negotiation. Where the parties are unwilling to negotiate or negotiation fails, the trademark registrant or an interested party may file a lawsuit with the people's court or request the administrative department for industry and commerce to handle the matter.

Article 55 — Where the administrative department for industry and commerce handling the matter determines that an infringement is established, it shall order the infringer to immediately stop the infringing act, confiscate and destroy the infringing goods and the tools mainly used for manufacturing the infringing goods or counterfeiting the representations of the registered trademark. Where the case is serious, the administrative department for industry and commerce may order the infringer to stop the infringing act. The amount of a fine imposed for trademark infringement involving illegal turnover of RMB 50,000 or more may be up to five times the illegal turnover. Where there is no illegal turnover or the illegal turnover is less than RMB 50,000, a fine of not more than RMB 250,000 may be imposed. Where a trademark is infringed more than twice within five years or there are other serious circumstances, the fine shall be imposed heavily.

Article 56 — The amount of compensation for damage caused by infringement of the exclusive right to use a trademark shall be determined based on the actual loss suffered by the right holder as a result of the infringement. Where it is difficult to determine the actual loss, the amount may be determined based on the profits derived by the infringer from the infringement. Where it is difficult to determine the loss suffered by the right holder or the profits derived by the infringer, the amount shall be reasonably determined by reference to the multiple of the royalty for the trademark license. For intentional infringement of the exclusive right to use a trademark with serious circumstances, the amount of compensation may be determined at one to five times the amount determined in accordance with the aforesaid method. Where it is difficult to determine the loss suffered by the right holder, the profits derived by the infringer, or the royalty for the trademark license, the people's court may, based on the circumstances of the infringement, award compensation of not more than RMB 5 million.

Article 57 — The people's court may, in order to stop the infringing act, order the destruction of the infringing goods and the materials, tools, and equipment mainly used for manufacturing the infringing goods or counterfeiting the representations of the registered trademark at the request of the right holder, unless special circumstances apply. The infringing goods shall not be allowed to enter commercial channels after merely removing the counterfeit registered trademark representations, unless special circumstances apply.

Article 58 — Where a trademark registrant or an interested party has evidence to prove that another person is committing or is about to commit an act that infringes upon the exclusive right to use its registered

trademark, and failure to stop the act in a timely manner will cause irreparable damage to its lawful rights and interests, the registrant or interested party may, before filing a lawsuit, apply to the people's court for measures to preserve property, order the performance of or prohibit certain acts, or preserve evidence.

Article 59 — For the purpose of stopping the infringing act, the trademark registrant or an interested party may, before filing a lawsuit, apply to the people's court for the preservation of evidence where the evidence may be lost or become difficult to obtain afterwards.

Article 60 — A trademark registrant applying for measures to preserve property in accordance with the provisions of Article 58 of this Law shall provide a guarantee. Where the applicant fails to provide a guarantee, the application shall be rejected.

Article 61 — Where a trademark registrant or interested party applies for measures to preserve property, order the performance of or prohibit certain acts, or preserve evidence in accordance with the provisions of Articles 58 and 59 of this Law, the people's court shall make a ruling within 48 hours. Where a ruling is made to adopt preservative measures, enforcement shall be carried out immediately.

Article 62 — To stop infringing acts, the administrative department for industry and commerce may exercise the following powers based on the evidence or information of a suspected illegal act already obtained:

(1) Question the relevant parties and investigate the circumstances relating to the infringement of another person's exclusive right to use a registered trademark;

(2) Consult and copy the contracts, invoices, account books, and other materials relating to the infringing act of the parties;

(3) Inspect the premises where the parties are suspected of engaging in the infringing act;

(4) Inspect the articles relating to the infringing act, and seal or seize the articles for which there is evidence proving that they infringe upon another person's exclusive right to use a registered trademark.

Article 63 — Where a trademark infringer fails to file a lawsuit against the decision of the administrative department for industry and commerce and fails to perform the decision upon expiration of the time limit, the administrative department for industry and commerce may apply to the people's court for compulsory enforcement.

Chapter VIII — Supplementary Provisions

Article 64 — The provisions of this Law relating to trademarks for goods shall apply to service marks.

Article 65 — Where a trademark agency violates the provisions of this Law, the administrative department for industry and commerce shall order the agency to make corrections within a specified time limit, issue a warning, and impose a fine of not less than RMB 10,000 and not more than RMB 100,000. The directly responsible person in charge and other directly responsible personnel shall be issued a warning and imposed a fine of not less than RMB 5,000 and not more than RMB 50,000. Where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 66 — Where a party applies for registration or handles other trademark matters by providing false materials or by other fraudulent means and the case is serious, the trademark office or trademark review and adjudication board may, in addition to rejecting the application, decide not to accept trademark applications of the party within a certain period, and make an announcement.

Article 67 — The Rules for the Implementation of this Law shall be formulated by the administration department for industry and commerce under the State Council and shall come into effect after approval by the State Council.

Article 68 — This Law shall come into effect on March 1, 1983. The Trademark Law of the People's Republic of China promulgated on August 23, 1982 shall be repealed simultaneously. The registrations of trademarks filed before the implementation of this Law shall remain valid.

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