

English Translation¹ of Amendments (Draft) to the Trademark Law of the People's Republic of China (Draft for Comments)

Chapter I General Provisions

Article 1 [Legislative Purpose] This Law is formulated for the purposes of protecting the legitimate rights and interests of trademark owners, safeguarding the rights and interests of consumers and the public interest, protecting the interests of producers and dealers, urging producers and dealers to guarantee the quality of goods and services, maintaining the reputation of trademarks, strengthening trademark administration, and promoting the high-quality development of the socialist market economy.

Article 2 [CPC's Leadership] The trademark work shall adhere to the leadership of the Communist Party of China.

The country promotes the construction of a country strong in intellectual property rights, comprehensively improves the creation, use, protection, administration and service of intellectual property rights, gives full play to the important role of the trademark system to optimize the business

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environment, and promotes the transformation of Chinese products into Chinese brands.

Article 3 [Authority] The administrative department of intellectual property under the State Council shall take charge of trademark registration, administration, and trademark branding work across the country, and shall be responsible for handling trademark disputes.

Intellectual property administration departments above the county level shall be responsible for trademark administration within the region.

Article 4 [Trademark] The trademark referred to in this Law, including goods trademarks and service marks, refers to mark that can be used to identify and distinguish the source of goods or services, including but not limited to word, design, letter, numeral, three-dimensional symbol, combination of colors, sound or other elements, as well as a combination of the above, which may serve as a trademark for registration application.

The provisions of this Law regarding goods trademarks are applicable to service trademarks, unless otherwise specified.

Article 5 [Application for Trademark Registration] Any natural person, legal person or unincorporated organization needing to acquire the right to exclusively use a trademark used or committed to be used on the goods or services thereof in the course of business operations shall apply to the administrative department of intellectual property under the State Council for trademark registration.

A registered trademark is one that has been approved by the administrative department of intellectual property under the State Council. The trademark registrant shall have the right to exclusively use the registered trademark, which is protected by law.

Article 6 [Collective Mark and Certification Mark] "Collective mark" means a mark registered in the name of a trade association or other social group, unincorporated organization for the members of such organization

to use in commercial activities to indicate their memberships in the organization.

“Certification mark” means a mark controlled by an organization with supervising power over certain kind of goods or services but used by entities or individuals other than the organization on their goods or services to certificate the origins, raw materials, manufacturing methods, quality, or other specific characteristics of the goods or services.

Geographic indications can be registered as certification marks or collective marks.

Article 7 [Joint Application] Two or more natural persons, legal persons, or unincorporated organizations may jointly apply to the administrative department of intellectual property under the State Council for the registration of the same trademark, and jointly own and exercise the right to exclusively use the registered trademark.

Article 8 [Mandatory Registration] Where a registered trademark must be used on the goods prescribed by any law or administrative regulation, trademark registration must be applied for, and such goods may not be marketed without approval of trademark registration.

Article 9 [Principle of Good Faith and Prohibition of Abuse of Rights] In the application for registration or and the exercise of trademark rights, the principle of good faith shall be followed.

The trademark owner shall not abuse trademark rights to the detriment of national interests, the public interest or the legitimate rights and interests of others.

The user of a trademark shall be responsible for the quality of the goods or services on which the trademark is used. The administrative departments of intellectual property at all levels shall, through trademark administration, interdict consumer frauds.

Article 10 [Well-known Trademark and Its Protective Principle] The holder of a trademark well known by the relevant public may file a request for well-known trademark protection under this Law if believing that there is any infringement upon its rights.

The protection of well-known trademarks follows the principles of case-by-case confirmation, passive protection and confirmation on demand.

The scope and intensity of protection of well-known trademarks shall be appropriate to their distinctive features and popularity.

Whether a trademark is a well-known trademark shall be determined upon request of a party as a fact to be found in the handling of a trademark case. The following factors shall be taken into account in the determination of whether or not a trademark is well-known:

- (1) Reputation of the trademark to the relevant public.
- (2) Duration, manner and geographical scope of the use of the trademark.
- (3) Duration, extent, and geographical area of any publicity of the trademark.
- (4) Domestic and foreign applications and registrations of the trademark.
- (5) Records of protection of the trademark, in particular, as a well-known trademark.
- (6) Value of the trademark.
- (7) Other factors relevant to the determination of a well-known trademark.

Article 11 [Principle of Reciprocity] Where a foreign national or a foreign enterprise applies for trademark registration in China, it shall be handled in accordance with an agreement concluded between the applicant's country and the People's Republic of China or an international treaty acceded to by both countries or according to the principle of reciprocity.

Article 12 [Authorized Agent] An applicant may apply for trademark registration and handle other trademark-related matters by itself or through a legally formed trademark agency authorized by it.

Foreign natural persons, legal persons or unincorporated organizations that do not have usual residence or place of business in China and intend to apply for trademark registration and handle other trademark-related matters in China shall authorize a legally formed trademark agency to do so.

Article 13 [International Registration] International registration of trademarks shall comply with the rules established by the relevant international treaties concluded or acceded to by the People's Republic of China, and the specific measures shall be developed by the State Council.

Chapter II Conditions for Trademark Registration

Article 14 [Conditions for Registration] The trademark for registration shall be distinctive for easy identification, may not violate public order and morality, nor be in conflict with any prior legal rights or interests acquired by others.

Except as otherwise provided, the same applicant shall register only one identical trademark for the same goods or services.

Article 15 [Prohibited Signs] The following signs may not be used as trademarks:

(1) A sign identical with or similar to the name, national flag, national emblem, national anthem, military flag, military emblem, military anthem, or decorations, among others, of the People's Republic of China or identical with the name or symbol of a central state organ, the name of specific place where it is located, or the name or design of its landmark building.

(2) A sign identical with or similar to the name, national flag, national emblem, or military flag, among others, of a foreign country, except as permitted by the government of the foreign country.

(3) A sign identical with or similar to the name, flag, or emblem of an international intergovernmental organization, except as permitted by the organization or except that it will usually not mislead the public.

(4) A sign identical with or similar to an official sign or an inspection mark which indicates control or provides guarantee, except as authorized.

(5) A sign identical with or similar to the name and logo of an important traditional cultural symbol, unless authorized.

(6) A sign identical with or similar to the name or sign of the Red Cross or the Red Crescent.

(7) A sign bearing ethnic discrimination.

(8) A sign which is deceptive and easily misleads the public regarding the quality or origin of goods.

(9) Signs contrary to the core socialist values, detrimental to socialist morality or mores or the excellent traditional Chinese culture, or having any other adverse effect.

The name of any administrative division at or above the county level or the name of any domestic or foreign place known by the public may not be used as a trademark, except that the place name has other meanings or is used as a part of a collective mark or certification mark. Existing registered trademarks using place names shall continue to be valid.

Article 16 [Distinctiveness] The following signs may not be registered as trademarks:

(1) A sign only bearing the generic name, design, model, or technical terms of the goods.

(2) A sign only directly indicating the quality, main raw materials, functions, uses, weight, quantity, or other features of goods.

(3) Other signs lacking distinctiveness.

If a sign listed in the second and third items of the preceding paragraph has obtained distinctiveness through use and can be easily identified, it may be registered as a trademark.

Article 17 [Non-functionality of Three-Dimensional Mark] Where the registration of a three-dimensional trademark is applied for, it shall not be registered if it is only a shape resulting from the nature of the goods, a shape of the goods necessary for achieving a technical effect, or a shape to add a substantive value to the goods.

Article 18 [Protection of Well-Known Trademark] Where a trademark used or applied for registration on identical or similar goods is a copy, imitation, or translation of a well-known trademark of another party which has not been registered in China and may easily cause confusion, it shall be prohibited from use and shall not be registered.

Where a trademark used or applied for registration on dissimilar goods is a copy, imitation, or translation of a well-known trademark of another party, misleads the public, and may cause damage to the interests of the holder of the well-known trademark, it shall be prohibited from use and shall not be registered.

Where a trademark used or applied for registration is a copy, imitation, or translation of another well-known trademark known to the general public, sufficient to make the relevant public think that the trademark has a considerable degree of connection with the well-known trademark, and diminish the distinctiveness of the well-known trademark, damage the market reputation of the well-known trademark, or improperly use the market reputation of the well-known trademark, it shall be prohibited from use and shall not be registered.

Article 19 [Squatting by Agent, Representative, or Interested Party]
Where an agent or a representative applies for registration of a trademark

of the principal or the represented party in the agent's or the representative's own name without authorization, the trademark shall not be registered and shall be prohibited from use upon opposition from the principal or the represented party.

Where an applicant for registration of a trademark identical with or similar to an unregistered trademark in prior use by another party on identical or similar goods has any contractual, business or other relationship except the relationship described in the preceding paragraph with the other party and knows the existence of the unregistered trademark, the trademark shall not be registered upon opposition from the other party.

Article 20 [Protection of Geographic Indication] Where a trademark contains a geographic indication of the goods, but the goods do not originate from the region indicated thereon, thus misleading the public, the trademark shall not be registered and shall be prohibited from use; however, those that have been registered in good faith shall continue to be valid.

The geographic indication as mentioned in the preceding paragraph means a sign that indicates the region where the goods originate and the natural or human dimensions of which primarily decide the specific quality, reputation, or other features of the goods.

Article 21 [Prohibition of Duplicate Registration] A trademark applied for registration shall not be identical with any prior trademark of the registrant previously applied, registered or cancelled by publication, revoked, or declared invalid for the same goods within one (1) year of application date, except for the following circumstances or when the applicant agrees to cancel the original registered trademark:

(1) Due to the needs of production and operation, minor improvements are made based on the prior trademark actually used, and the applicant can explain the difference.

(2) Reasons that cannot be attributed to the applicant have caused the failure in the renewal of the prior trademark.

(3) Failure to submit a timely statement of trademark use has caused the cancellation of the prior trademark. However, the prior trademark is actually in use.

(4) Reasons not attributable to the applicant have caused the prior trademark to be cancelled due to failure in providing evidence of use in the procedure of non-use cancellation for three consecutive years. However, the prior trademark is actually in use.

(5) The prior trademark is declared invalid for being in conflict with the prior rights or interests of others. However, the prior rights or interests have ceased to exist.

(6) There exist other legitimate reasons for repeated or re-application for trademark registration.

Article 22 [Bad-faith Application for Trademark Registration] No applicant shall apply for trademark registration in bad faith, including:

(1) Filing a large number of applications for trademark registration not for the purpose of use, disrupting the order of trademark registration.

(2) Applying for trademark registration by deception or other improper means.

(3) The application for registration of trademarks that are detrimental to the national interest, the public interest or have other significant adverse effects.

(4) Violation of Article 18, Article 19, Article 23 of this Law, the intentional damage of the legitimate rights or interests of others, or the act of seeking improper benefits.

(5) Other bad-faith act of trademark registration application.

Article 23 [Protection of Prior Rights] No application for trademark registration may infringe upon the existing prior rights or interests of

others, and bad-faith registration by illicit means of a trademark with a certain reputation already used by another party shall be prohibited.

The name of an enterprise (including abbreviation, trade name, group name and so forth) or the name of a social organization which others have registered to use and have a certain degree of influence constitutes the existing prior rights or interests of others referred to in the preceding paragraph.

Article 24 [First Registration] The trademark for registration shall not be identical with or similar to another party's trademark which has been registered or preliminarily approved for use on identical or similar goods.

Article 25 [First Application] Where two or more trademark registration applicants apply for registration of identical or similar trademarks to be used on identical or similar goods, the trademark, the registration of which is applied for first, shall be preliminarily approved and published; or if the applications are filed on the same day and the time order of the applications is indeterminable, the trademark which is used first shall be preliminarily approved and published, while the applications of the others shall be rejected without publication.

Article 26 [Restrictions on Agency Trademark Application] Trademark agencies may not apply for registration of trademarks other than those applied for in acting for clients, nor otherwise engage in the above-mentioned behavior in disguise.

Chapter III Application for Trademark Registration

Article 27 [Application Requirements] A trademark registration applicant shall, according to the prescribed classification of goods, enter the class and designation of goods on which the trademark is to be used, and file an application for registration.

A trademark registration applicant may, in a single application, apply for registration of the same trademark on goods of different classes.

If the trademark registration application is unpaid, the trademark registration application is deemed not submitted.

Trademark registration applications and other relevant documents should be filed in written or data message form.

If the trademark registration application procedures are complete, and the application documents are filled out in accordance with the provisions, administrative department of intellectual property under the State Council shall accept such application and notify the applicant. Where the administrative department of intellectual property under the State Council finds that the trademark applied for registration obviously has a significant adverse impact, such application shall be rejected.

Article 28 [Separate Application] Where a registered trademark needs to be exclusively used on any goods beyond the approved scope of use, a separate application for registration shall be filed.

Article 29 [New Application] Where any sign of a registered trademark needs to be modified, a new application for registration shall be filed.

Article 30 [Right of Priority] Where, within six months from the day when a trademark registration applicant firstly filed an application for registration of a trademark in a foreign country, it applies for registration in China of the same trademark to be used on identical goods, it may enjoy priority according to an agreement concluded between the foreign country and the People's Republic of China or an international treaty acceded to by both countries, or on the principle of mutual acknowledgement of the right of priority.

To claim priority under the preceding paragraph, the applicant shall file a written declaration when filing an application for trademark registration and, within three months, submit a duplicate of the application

documentation firstly filed; an applicant failing to file the written declaration or failing to submit the duplicate of application documentation within the prescribed time limit shall be deemed to have not claimed priority.

Article 31 [Exhibition Priority] Where a trademark is used for the first time on the goods displayed at an international exhibition sponsored or acknowledged by the Chinese Government, the user as an applicant for registration of the trademark may enjoy priority within six months from the date of display of the goods.

To claim priority under the preceding paragraph, the applicant shall file a written declaration when filing the application for trademark registration and, within three months, submit certification documents on the name of the exhibition in which the goods were displayed, the evidence of using the trademark on the displayed goods, and the date of exhibition, among others; an applicant failing to file the written declaration or failing to submit the certification documents within the prescribed time limit shall be deemed to have not claimed priority.

Article 32 [Material Requirements] Matters declared and materials provided for an application for trademark registration or for the handling of other trademark matters shall be authentic, accurate, and complete.

Where a party violates the provisions of the preceding paragraph, forges, conceals important facts or deliberately submits false material, such party shall bear the adverse consequences in the corresponding procedures. The department in charge of trademark enforcement may give a warning and impose a fine of less than 100,000 yuan according to the circumstances. Any other party incurring damage shall be compensated.

Chapter IV Trademark Registration Examination and Approval

Article 33 [Examination Period] For a trademark registration application, the administrative department of intellectual property under the State Council shall complete examination within nine months after receiving the application documents and, if the application complies with the relevant provisions of this Law, preliminarily approve and publish it.

Article 34 [Office Action] Where, in the course of examination, the administrative department of intellectual property under the State Council deems it necessary to require an explanation or amendment of a trademark registration application, it may send written office action and require the applicant to provide an explanation or amendment. The applicant's failure to provide such an explanation or amendment shall not affect the decision of the administrative department of intellectual property under the State Council upon examination.

Article 35 [Rejected Application] Where a trademark applied for registration does not meet the relevant provisions of this Law or the examination found that the accepted trademark registration application does not meet the conditions of acceptance, the administrative department of intellectual property under the State Council shall reject the application without publication.

Article 36 [Opposition against Trademark] For a preliminarily approved and published trademark, within two months from the date of publication, a prior rights holder or an interested party which believes that Article 18, Article 19, paragraph 1 of Article 20, Article 23, Article 24, or Article 25 of this Law is violated or any person that believes that Article 15, Article 16, Article 17, Article 21, paragraph 1 and paragraph 2 of Article 22, or Article 26 of this Law is violated may file an opposition with the administrative department of intellectual property under the State Council. If no opposition has been filed upon expiry of the publication period, the

registration shall be approved, a certificate of trademark registration shall be issued, and a publication shall be made.

Article 37 [Revocation of the Preliminary Examination Publication]

Where, before the approval of trademark registration, the administrative department of intellectual property under the State Council rights has found that the trademark registration application for which the preliminary examination has already been published is in violation of the provisions of Article 15 of this Law, the publication may be revoked, and re-examination may be conducted.

Article 38 [Review on Refusal] Where a trademark registration application is rejected or publication is denied, the administrative department of intellectual property under the State Council shall notify the applicant in written form. The applicant may apply to the administrative department of intellectual property under the State Council for a review within 15 days after receiving the notice. The administrative department of intellectual property under the State Council shall make a decision within nine months after receiving the application and notify the applicant of its decision in written form. Under special circumstances, the time limit may be extended by three months with approval. Against the decision of the review on refusal, the party concerned may institute an action in a people's court within 30 days after receiving the notice.

Article 39 [Opposition Examination] Where an opposition is filed against a trademark which has been preliminarily approved and published, the administrative department of intellectual property under the State Council shall hear the facts and reasons from both the opponent and the applicant, investigate and verify them, make a decision to approve or disapprove the registration within 12 months upon expiry of the publication period, and notify the opponent and the applicant of its decision in written

form. Under special circumstances, the time limit may be extended by six months upon approval.

In the case of approval of registration, the administrative department of intellectual property under the State Council shall issue a certificate of trademark registration and publish the registered trademark. The opponent may, under Article 44 and 45 of this Law, request the administrative department of intellectual property under the State Council to declare the trademark registration to be invalid.

In the case of disapproval of registration by the administrative department of intellectual property under the State Council, the applicant may institute an action in a people's court within 30 days after receiving the notice. The people's court shall notify the opponent to participate in the action as a third party.

Article 40 [Effect of Decision] Where, upon expiry of the statutory time limit, the party concerned fails to apply for a review of a decision of the administrative department of intellectual property under the State Council to reject a trademark registration application or fails to institute an action in a people's court against a decision of denying the registration or review on refusal, the decision to reject a trademark registration application or the decision to deny registration or review on refusal shall take effect.

Where trademark registration is approved after all oppositions are determined as unfounded upon examination, the time of the applicant obtaining the right to exclusively use the trademark commences from the date of expiry of the two-month preliminary approval publication period. The right to exclusively use the trademark is not retrospective to another party's use of a mark identical with or similar to the trademark on identical or similar goods during the period from the date of expiry of the publication period to the date of decision to approve registration; however,

such other party shall compensate the trademark registrant for any losses caused by its use in bad faith.

Article 41 [Timely Examination and Withdrawal of Application] An application for trademark registration, an application for trademark review, or other trademark matters applied for by the party concerned shall be examined and handled by the administrative department of intellectual property under the State Council in a timely manner.

The party concerned may apply for withdrawal of the matters specified in the preceding paragraph. The administrative department of intellectual property under the State Council may terminate the process after deciding that it can be withdrawn upon examination.

Article 42 [Suspension of Process] Where, in an examination or trial conducted according to the preceding paragraph, the administrative department of intellectual property under the State Council must determine the involved prior rights based on the results of another case being tried by a people's court or handled by an administrative agency, it may suspend the examination or trial. After the cause of suspension is eliminated, the examination or trial process shall be timely resumed.

In the trial of the decision of review on refusal, decision of denying registration or ruling of invalidation made by the administrative department of intellectual property under the State Council in accordance with Article 24 and Article 25 of this Law, the people's court shall rely on the factual state at the time when the decision or ruling being appealed is made. If the status of the trademark has changed since the decision or ruling is made, it shall not affect the trial of the decision or ruling by the people's court, except for the obvious violation of the principle of fairness.

Article 43 [Correction of Evident Error] A trademark registration applicant or a trademark registrant which discovers that there is any evident error in the trademark application documents or registration documents

may apply for correction. The administrative department of intellectual property under the State Council shall make correction within its functions according to the law, and notify the party concerned.

The correction of errors as mentioned in the preceding paragraph shall not involve any substantive content of the trademark application documents or registration documents.

Chapter V Declaration of Invalidation and Cancellation of Registered Trademarks

Article 44 [Declaring Invalidation on Absolute Grounds] Where a registered trademark violates Article 15, Article 16, Article 17, Article 21, paragraph 1 and paragraph 2 of Article 22, or Article 26 of this Law, the administrative department of intellectual property under the State Council shall declare invalidation of the registered trademark.

The administrative department of intellectual property under the State Council shall notify the party concerned in written form of its decision to declare invalidation of the registered trademark. Against the decision, the party concerned may apply for a review within 15 days after receiving the notice. The administrative department of intellectual property under the State Council shall make a decision within nine months after receiving the review application, and notify the party concerned of its decision in written form. Under special circumstances, the time limit may be extended by three months upon. Against the decision of the review, the party concerned may institute an action in a people's court within 30 days after receiving the notice.

With the circumstances listed in the first paragraph of this article, any other natural person, legal person or unincorporated organization may petition the administrative department of intellectual property under the State Council to declare invalidation of a registered trademark. The administrative department of intellectual property under the State Council

shall, after receiving the application, notify the party concerned in written form, and specify a time limit for submission of defense. The administrative department of intellectual property under the State Council shall make a ruling to sustain the registered trademark or declare invalidation of the registered trademark within nine months after receiving the application, and notify the party concerned of its decision in written form. Under special circumstances, the time limit may be extended by three months upon approval. Against the ruling of the administrative department of intellectual property under the State Council, the party concerned may institute an action in a people's court within 30 days after receiving the notice. The people's court shall notify the opposite party in the trademark ruling proceedings to participate in the action as a third party.

Article 45 [Declaring Invalidation of Relative Grounds and Transfer of Trademark] Where a registered trademark violates Article 18, Article 19, paragraph 1 of Article 20, Article 23, Article 24, or Article 25 of this Law, a prior rights holder or an interested party may petition the administrative department of intellectual property under the State Council for declaration of invalidation of the registered trademark within five years from the date of trademark registration. In the case of violation of the provisions of Articles 18 and 19 of this Law, or violation of the provisions of Article 23 of this Law to improperly preempt the registration of others have been used and have a certain influence, the prior right holder may request the transfer of the registered trademark to their own name. If the registration is acquired in bad faith, a well-known trademark holder shall not be subject to the five-year time limit.

After receiving a petition for declaring invalidation or transferring of a registered trademark, the administrative department of intellectual property under the State Council shall notify the party concerned in written form, and specify a time limit for submission of defense. The administrative

department of intellectual property under the State Council shall make a ruling to sustain the registered trademark, transfer the registered trademark, or declare invalidation of the registered trademark within 12 months after receiving the petition, and notify the party concerned of its decision in written form. Under special circumstances, the time limit may be extended by six months upon approval. Against the ruling of the administrative department of intellectual property under the State Council, the party concerned may institute an action in a people's court within 30 days after receiving the notice. The people's court shall notify the opposite party in the trademark ruling proceedings to participate in the action as a third party.

Article 46 [Handling of Trademark Transfer] The administrative department of intellectual property under the State Council shall, after hearing the case, rule for the transfer of the registered trademark, if it considers that the reasons for the transfer of the registered trademark are valid, that there exist no other reasons for declaring invalidation of the registered trademark, and that the transfer is not likely to cause confusion or other undesirable effects. It shall rule for the declaration of invalidation of the registered trademark, if it considers that there exist other reasons for invalidating the registered trademark, or that the transfer of the registered trademark is likely to cause confusion or other undesirable effects, although the reasons for the transfer of the registered trademark are valid.

After the ruling on the transfer of a registered trademark is made and before it takes effect, the trademark registrant shall not dispose of the trademark, except for the disposition made to maintain the validity of the registered trademark.

Article 47 [Decision/Ruling of Invalidation Taking Effect] Where, upon expiry of the statutory time limit, the party concerned fails to apply for a review of a decision of the administrative department of intellectual

property under the State Council to declare invalidation of a registered trademark or fails to institute an action in a people's court against the decisions of review or ruling to sustain a registered trademark, transfer of a registered trademark, or declaring invalidation of a registered trademark, the decision or ruling of the administrative department of intellectual property under the State Council shall take effect.

After the ruling on the transfer of the registered trademark takes effect, it shall be published. The applicant shall enjoy the right to exclusively use the trademark from the date of publication.

Article 48 [Effect of Declaration of Invalidity] The administrative department of intellectual property under the State Council shall publish the registered trademarks declared to be invalid under Article 44 or 45 of this Law, and the right to exclusively use such a registered trademark shall be deemed void at the inception.

A decision or ruling to declare invalidation of a registered trademark is not retrospective to a judgment, ruling, or consent judgment made and enforced by a people's court, a trademark infringement case decision made and enforced by the department in charge of trademark enforcement, or a trademark assignment contract or license contract executed before the trademark is declared to be invalid. However, the trademark registrant shall compensate others for losses caused by its bad faith.

If, after the approval of the registration of the trademark, before being declared invalid, the use of the trademark infringes the exclusive right of others to register the trademark, and the trademark registrant or licensee is found in bad faith, it shall be handled in accordance with the provisions of paragraph 2 of Article 74 of this Law.

Trademark infringement damages, trademark assignment fees, and trademark royalties which are not returned under paragraph 2 of this Article

shall be all or partially returned if the principle of fairness is evidently violated otherwise.

Article 49 [Cancellation of Registered Trademark] Any natural person, legal person or unincorporated organization may apply to the administrative department of intellectual property under the State Council for cancellation of the registered trademark if one of the following circumstances exists, provided that the legitimate rights and interests of the trademark registrant shall not be harmed, or the order of trademark registration shall not be disturbed:

(1) A registered trademark becomes a common name of goods on which it is approved to be used

(2) The use of a registered trademark has ceased for three consecutive years without good reasons.

(3) The use of a registered trademark leads to misidentification of the quality and other characteristics of the goods or origin by the relevant public.

(4) The registrant of collective mark or certification mark violates the provisions of Article 63 of this Law, with particularly serious circumstances.

(5) The use of a registered trademark or the exercise of the right to exclusively use a registered trademark seriously damages the public interest, resulting in significant adverse effects.

Where a registered trademark has the circumstances listed in the preceding paragraph 4 or 5, the administrative department of intellectual property under the State Council may revoke the registered trademark ex officio.

The administrative department of intellectual property under the State Council shall make a decision within nine months after receiving the application for cancellation. Under special circumstances, the time limit may be extended by three months with approval.

Article 50 [Isolation Period for Trademark Registration] Where, due to the circumstances listed in items (3) to (5) of paragraph 1 of Article 49 of this Law or due to a violation of the provisions of Article 64 of this Law, a registered trademark is cancelled, or cancelled or expired due to violation of the provisions of Article 61 of this Law, or not renewed upon expiry, the administrative department of intellectual property under the State Council shall, during one year from the date of cancellation or expiration, approve no application for registration of a trademark identical with or similar to the trademark.

Article 51 [Review of Cancellation] Against a decision of the administrative department of intellectual property under the State Council to cancel or not to cancel a registered trademark, the party concerned may, within 15 days after receiving a notice of the decision, apply to the administrative department of intellectual property under the State Council for a review. The administrative department of intellectual property under the State Council shall make a decision within nine months after receiving the application, and notify the party concerned of the decision in written form. Under special circumstances, the time limit may be extended by three months with approval. Against the decision upon review, the party concerned may institute an action in a people's court within 30 days after receiving the notice.

Article 52 [Effect of Cancellation] Where, upon expiry of the statutory time limit, the party concerned fails to apply for a review of a decision of the administrative department of intellectual property under the State Council to cancel a registered trademark or fails to institute an action in a people's court against a decision upon review, the decision to cancel the registered trademark or the decision upon review shall take effect.

The administrative department of intellectual property under the State Council shall publish the registered trademark to be cancelled, and the

right to exclusively use such a registered trademark shall be terminated from the date of publication.

Chapter IV Renewal, Modification, Assignment and Cancellation of Registered Trademarks

Article 53 [Period of Validity of Registered Trademark] The period of validity of a registered trademark shall be ten years, commencing from the date of approval of registration.

Article 54 [Renewal of Registered Trademark] A trademark registrant intending to continue to use the registered trademark upon expiry of the period of validity shall undergo the renewal formalities within 12 months before expiry according to the relevant provisions. If failing to do so, the trademark registrant may be granted a six-month grace period. The period of validity of each renewal is ten years, commencing from the day after the expiry date of the last period of validity. If the renewal formalities are not undergone within the grace period, the registration of the trademark shall be cancelled.

The administrative department of intellectual property under the State Council shall publish renewed registered trademarks.

Article 55 [Modified Matters] Where the name or address of registrant or any other registered matter of a registered trademark needs to be modified, an application for modification shall be filed.

Article 56 [Trademark Assignment] Where a registered trademark is assigned, the assignor and the assignee shall enter into an assignment agreement, and jointly file an application with administrative department of intellectual property under the State Council. The assignee shall guarantee the quality of goods on which the registered trademark is used.

A trademark registrant intending to assign the registered trademark shall concurrently assign all its similar registered trademarks on identical goods or all its identical or similar registered trademarks on similar goods.

Where any assignment may easily cause confusion or have any other adverse effect, the administrative department of intellectual property under the State Council shall disapprove it and notify the applicant of disapproval in written form with an explanation of reasons.

After the assignment of a registered trademark has been approved, it shall be published. The assignee shall have the right to exclusively use the registered trademark from the date of publication.

Article 57 [Restrictions on Transfer of Collective Mark and Certification Mark] To apply for the transfer of a collective mark or certification mark, or the transfer of a collective mark or certification mark occurs, the transferee or the successor of the right shall have the appropriate subject qualifications and supervisory capacity.

Article 58 [Trademark Cancellation] Where a trademark registrant applies for cancellation of its registered trademark or cancellation of its trademark registration on part of the designated goods, and such cancellation is approved by the administrative department of intellectual property under the State Council, it shall be published. The right to exclusively use the registered trademark or the right to exclusively use the registered trademark on the part of the designated goods shall be terminated from the date of publication.

Chapter VII Administration and Use of Trademarks

Article 59 [Use of Trademark] For the purposes of this Law, "use of a trademark" means using a trademark on goods, on the packages or containers of goods, in the trade documents of goods, using a trademark in

the service place or on a service-related carrier, or for advertisements, exhibitions, and other commercial activities for the purpose of identifying the origin of goods or services.

The acts listed in the preceding paragraph includes those committed through the Internet and other information networks

Article 60 [Use and Licensed Use of Trademark] A trademark registrant may use the trademark, or license other parties to use its registered trademark by entering into a trademark license contract. The licensor shall supervise the quality of the goods on which the licensee uses the licensor's registered trademark. The licensee shall guarantee the quality of the goods on which the registered trademark is used.

In the licensed use of another party's registered trademark, the name of licensee and the origin of goods must be indicated on the goods on which the registered trademark is used.

Where another party is licensed to use a registered trademark, the licensor shall report the license to the administrative department of intellectual property under the State Council for recordation, and the administrative department of intellectual property under the State Council shall publish it. An unrecorded license may not be used as a defense against a third party in good faith.

Where a licensor or licensee violates the provisions of paragraph 1 of this Article, causing damage to consumers, the department in charge of trademark enforcement shall order correction within a prescribed time limit. If the amount of illegal business revenues is more than 50,000 yuan, a fine of less than twenty percent of the illegal business revenues may be imposed. If there is no illegal business revenue or the amount of illegal business revenues is less than 50,000 yuan, a fine of less than 10,000 yuan may be imposed.

Article 61 [Description of Trademark Use] The trademark registrant shall, within twelve months after every five years from the date of approval of the registration of the trademark, explain to the administrative department of intellectual property under the State Council the use of the trademark on the approved goods or justifiable reasons for non-use. The trademark registrant may make a statement concerning the use of multiple trademarks within the above-mentioned period.

If no statement is made at the end of the period, the administrative department of intellectual property under the State Council shall notify the trademark registrant. If the trademark registrant fails to make a statement within six months from the date of receipt of the notification, the registered trademark shall be deemed abandoned and the registered trademark shall be cancelled by the administrative department of intellectual property under the State Council.

The administrative department of intellectual property under the State Council shall conduct random inspections of the authenticity of the statements, and if necessary, may require the trademark registrant to add relevant evidence or commission the local administrative department of intellectual property to verify. If, upon random inspection, the statement is found to be not true, the administrative department of intellectual property under the State Council shall revoke the registered trademark.

Article 62 [No Right to Prohibit] The holder of the right to exclusively use a registered trademark shall have no right to preclude others from performing the following acts in accordance with commercial practice:

- (1) Using one's first name and last name, name, and address in good faith
- (2) Using the name of the place, generic name, graphic, model number, technical term contained in the registered trademark or other marks related to the description in order to describe the type, nature, quality, function, use, weight, quantity, value, geographical origin and other characteristics.

(3) Using the registered trademark for the sole purpose of indicating the use, object of application or application scenario of the goods, except for those that mislead the public.

Where a three-dimensional registered trademark comprises a shape resulting from the nature of the goods, a shape of the goods necessary for achieving a technical effect, or a shape to add substantive value to the goods, the holder of the right to exclusively use the registered trademark shall have no right to preclude others from legitimately using such a shape.

Where, before a trademark registrant applies for trademark registration, another party has used an identical or similar trademark with a certain reputation on identical or similar goods prior to the trademark registrant, the holder of the right to exclusively use the registered trademark shall have no right to preclude such other party from continuing to use the trademark for original purposes but may require such other party to add a distinctive mark.

Article 63 [Obligations of Registrant of Collective Mark and Certification Mark] If the registrant of a collective mark or certification mark commits any of the following acts, the department in charge of trademark enforcement shall order correction within a prescribed time limit. If there is any illegal income, the illegal income shall be confiscated. If the party concerned refuses to make correction, a fine of not more than 100,000 yuan shall be imposed. If there is no illegal income, a fine of not more than 100,000 yuan shall be imposed. If the circumstances are particularly serious, the administrative department of intellectual property under the State Council may revoke the trademark in accordance with the provisions of Article 49 of this Law.

(1) Neglecting to exercise trademark management duties, resulting in the failure of the goods on which the trademark is used to meet the

requirements of the administrative rules of use, causing damage to consumers.

(2) Preventing others from legitimately using the name of the place, product name or type contained in the trademark in bad faith, disrupting the order of trademark administration.

(3) Other adverse effects on society.

Article 64 [Legal Liability for Changing Registered Trademark without Approval] Where, in using a registered trademark, the trademark registrant changes the registered trademark, the name or address of the registrant, or any other registered matter without approval, the department in charge of trademark enforcement shall order the registrant to make correction within a prescribed time limit, and may impose a fine of not more than 100,000 yuan; and if the registrant fails to do so within the time limit, the administrative department of intellectual property under the State Council shall cancel the registered trademark.

A trademark registrant who violates the provisions of the preceding paragraph and infringes upon other party's right to exclusively use a registered trademark shall be handled in accordance with paragraph 2 of Article 74 and paragraph 1 of Article 85 of this Law.

Article 65 [Legal Liability for Counterfeiting Registered Trademarks, Violating the Prohibition, and Using Trademarks Containing Geographical Indications to Mislead the Public] Where any party intentionally uses an unregistered trademark as a registered one or uses an unregistered trademark in violation of Article 15 or paragraph 1 of Article 21 of this Law, the department in charge of trademark enforcement shall order the party to make correction within a prescribed time limit, and may impose a fine of not more than 20% of the illegal business revenues if the amount of illegal business revenues reaches 50,000 yuan or impose a fine

of not more than 10,000 yuan if there is no illegal business revenue or the amount of illegal business revenues is less than 50,000 yuan.

The acts of selling goods knowingly in violation of Article 15, paragraph 1 of Article 20 of this Law, or intentionally providing storage, transportation, mailing, printing, concealment, business premises, network commodity trading platform and other facilities for the acts in violation of Article 15, paragraph 1 of Article 20 of this Law shall be handled in accordance with the provisions of the preceding paragraph.

Article 66 [Legal Liability for Illegal Use of the Words “Well-known Trademark”] Producers and dealers may not use the words “well-known trademark” on their goods and the packages or containers of their goods or for advertisements, exhibitions, and other commercial activities.

Any party violating the preceding paragraph shall be ordered to make correction and subjected to a fine of not more than 100,000 yuan by the department in charge of trademark enforcement.

Article 67 [Penalty for Bad-Faith Application for Trademark Registration] An applicant who violates the provisions of Article 22 of this Law, applying for trademark registration in bad faith shall be given a warning or a fine of not more than 50,000 yuan by the department in charge of trademark enforcement; in serious cases, a fine of more than 50,000 yuan up to a maximum of 250,000 yuan may be imposed. If there is illegal revenue, it shall be confiscated.

Article 68 [Trademark Agency] A trademark agency is a company or partnership registered by the registration authorities of market entities in accordance with law to engage in trademark agency business, of which more than two-thirds of shareholders or partners shall be trademark agency practitioners with more than three years of experience, or have a legal professional qualification, a patent agent professional qualification or an intermediate or higher title of intellectual property practitioner, and

should be filed with the administrative department of intellectual property under the State Council for recording. If the trademark agency is a law firm, it shall file with the administrative department of intellectual property rights under the State Council for recording.

A trademark agency in violation of the preceding paragraph shall be ordered by the administrative department of intellectual property under the State Council to make corrections. If such agency refuses to make corrections, and the circumstances are serious, the department in charge of trademark enforcement shall issue a warning and impose a fine of more than 10,000 yuan to 50,000 yuan. The administrative department of intellectual property under the State Council may decide to stop accepting its trademark agency business and shall publish the decision.

Article 69 [Trademark Agency's Obligations] Trademark agencies shall follow the principle of good faith, abide by laws and administrative regulations, handle trademark registration applications and other trademark-related matters as authorized by clients, and maintain confidential clients' trade secrets known in acting for clients.

Where the trademark registration applied for by a client may be denied for any circumstances as described in this Law, a trademark agency shall clearly notify the client thereof.

Where a trademark agency knows or should have known that a client's trademark registration application falls under any circumstances as described in Articles 22 of this Law, it may not accept the client's authorization.

Trademark agency practitioners shall comply with the law, have a good credit standing, good character, be familiar with trademark laws and regulations, and have the ability to engage in trademark agency business in accordance with the law. Trademark agency practitioners shall not engage

in trademark agency business in more than two trademark agencies at the same time.

Article 70 [Trademark Agency Association] The trademark agency association is a self-regulatory organization of the trademark agency industry.

A trademark agency association shall, according to its bylaws, strictly implement the membership conditions, strengthen industry self-regulation, develop industry self-regulation norms and disciplinary rules, enhance business training, professional ethics, and professional discipline education, organize and guide trademark agencies and trademark agency practitioners to regulate the business of trademark agency in accordance with the law, continuously improve the level of services in the industry, and take disciplinary actions against trademark agencies and trademark agency practitioners violating the self-regulatory rules of the sector. A trademark agency association shall disclose information on its new members and the disciplinary actions to the public in a timely manner.

Chapter VIII Protection of the Right to Exclusively Use a Registered Trademark

Article 71 [Right to Exclusively Use a Registered Trademark] The right to exclusively use a registered trademark shall be limited to the trademark approved for registration and the goods on which the trademark is approved to be used.

A trademark registrant shall have the right to use the words “registered trademark” or the registration signs (注 and ®) in the upper right corner or lower right corner of the trademark.

Article 72 [Infringement upon Right to Exclusively Use a Registered Trademark] Any of the following conduct shall be an infringement upon the right to exclusively use a registered trademark:

(1) Using a trademark identical with a registered trademark on identical goods without being licensed by the trademark registrant.

(2) Using a trademark similar to a registered trademark on identical goods or using a trademark identical with or similar to a registered trademark on similar goods, without being licensed by the trademark registrant, which may easily cause confusion.

(3) Using, without the permission of the trademark registrant, marks identical with or similar to other registered trademarks in the e-commerce related to identical goods or similar goods, misleading the public.

(4) Selling goods which infringe upon the right to exclusively use a registered trademark.

(5) Forging or manufacturing without authorization the labels of a registered trademark of another party or selling the labels of a registered trademark forged or manufactured without authorization.

(6) Replacing a registered trademark without the consent of the trademark registrant and putting the goods with a substituted trademark into the market.

(7) Intentionally providing facilitation for infringement upon others' right to exclusively use a registered trademark or aiding others in committing infringement upon the right to exclusively use a registered trademark.

(8) Otherwise causing damage to the right to exclusively use a registered trademark of others.

Article 73 [Unfair Competition] Where any entity uses a registered trademark or an unregistered well-known trademark of others as a trade name in its enterprise name to mislead the public, if any unfair competition

is constituted, it shall be handled in accordance with the Anti-Unfair Competition Law of the People's Republic of China.

Article 74 [Handling of Trademark Infringement Disputes] Where any dispute arises from any of infringements upon the right to exclusively use a registered trademark as set out in Article 72 of this Law, the parties concerned shall resolve the dispute through negotiation, or may apply for arbitration to an arbitration institution according to the written arbitration agreement reached by the parties; and if they are reluctant to resolve the dispute through negotiation or the negotiation fails or there is no written arbitration agreement, the trademark registrant or an interested party may institute an action in a people's court or request the department in charge of trademark enforcement to handle the dispute.

If the department in charge of trademark enforcement handling the dispute determines that an infringement is constituted, it shall order immediate cessation of infringement, confiscate and destroy the infringing goods and the tools mainly used for manufacturing the infringing goods and counterfeiting the labels of the registered trademark, and confiscate the illegal gain, and may impose a fine of not more than five times the illegal business revenues if the amount of illegal business revenues reaches 50,000 yuan or a fine of not more than 250,000 yuan if there is no illegal business revenue or the amount of illegal business revenues is less than 50,000 yuan. If goods infringing the right to exclusively use a registered trademark are sold without knowledge of such infringement, and the seller is able to prove that the goods are legally acquired and provide the supplier, the department in charge of trademark enforcement shall order cessation of sale, confiscate the infringing goods, and may refer the case to the department in charge of trademark enforcement at the location of the provider of infringing goods.

If trademark infringement has been committed twice or more within five years or there are other trademark violations, refusal or obstruction of law enforcement, or other serious circumstances, a heavier punishment shall be imposed by the department in charge of trademark enforcement.

Where any dispute arises regarding the implementation of infringement or the amount of damages for infringement upon the right to exclusively use a registered trademark, the parties concerned may request the administrative department of intellectual property to conduct administrative adjudication or mediation, or institute an action in a people's court in accordance with the Civil Procedure Law of the People's Republic of China. If, upon mediation by the administrative department of intellectual property, an agreement is reached, judicial confirmation may be made by the people's court; if no agreement is reached, the administrative department of intellectual property may make an administrative ruling on whether the infringement is found. Against the administrative ruling, the parties concerned may institute an action in the people's court in accordance with the Administrative Procedure Law of the People's Republic of China.

If a dispute arises between the relevant party and the trademark registrant or interested party over the right to exclusively use the registered trademark, the party may institute an action in the people's court and request a judgment on whether its act infringes the right to exclusively use the registered trademark.

Article 75 [Investigation and Punishment of Trademark Violations]

The department in charge of trademark enforcement shall have the authority to investigate and punish any trademark violations according to the law. Any infringement upon the right to exclusively use a registered trademark which is suspected of a crime shall be transferred to the judicial authority in a timely manner according to the law.

If, according to law, it is not subject to criminal liability or exempt from criminal punishment, but shall be subject to administrative penalties, the judicial organs shall promptly transfer the case to the department in charge of trademark enforcement according to law.

Article 76 [Trademark Enforcement Measures] The department in charge of trademark enforcement may exercise the following powers based on evidence of suspected illegal acts or any reports or complaints when investigating suspected trademark violations:

(1) Questioning the parties concerned and demanding that they explain the situation or provide relevant information related to the act under investigation.

(2) Consulting and copying the contracts, invoices, account books, bills, documents, records, business correspondence, audio-visual materials, electronic data, and other materials relating to trademark violations.

(3) Conducting on-site inspection of the place where the party concerned is suspected of engaging in trademark violation activities.

(4) Examining items relating to trademark violations.

(5) If the evidence may be lost or later difficult to obtain, it may be registered and retained in advance.

(6) The items of which trademark violations have been proved by evidence may be seized or impounded.

(7) Investigating the bank account of the party suspected of trademark violations.

The implementation of the measures specified in the preceding paragraphs 5 to 7 shall be approved by the head of the department in charge of trademark enforcement.

The party concerned shall assist and cooperate with the department in charge of trademark enforcement exercising the powers prescribed in

paragraph 1 of this Article, and may not refuse assistance or cooperation or impede the exercise of such powers.

Where, in investigating a trademark infringement case, there is any dispute over the ownership of the trademark or a right holder institutes a trademark infringement action in a people's court, the department in charge of trademark enforcement may suspend the investigation. After the cause of suspension is eliminated, it shall resume or terminate the investigation procedure.

Article 77 [Civil Liability for Trademark Infringement] The amount of damages for infringement upon the right to exclusively use a registered trademark shall be determined according to the actual losses suffered by the right holder from the infringement or the benefits acquired by the infringer from the infringement; where it is difficult to determine the right holder's losses or the benefits acquired by the infringer, the amount of damages may be a reasonable multiple of the royalties. If the infringement is committed intentionally with serious circumstances, the damages shall be more than the amount, but not more than five times the amount, determined in the aforesaid method. The damages shall include reasonable expenses of the right holder for stopping the infringement.

Where the right holder has made its best efforts to adduce evidence but the account books and materials related to infringement are mainly in the possession of the infringer, in order to determine the amount of damages, a people's court may order the infringer to provide such account books and materials; and if the infringer refuses to provide the same or provide any false ones, the people's court may determine the amount of damages by reference to the claims of and the evidence provided by the right holder.

Where it is difficult to determine the actual losses suffered by the right holder from the infringement, the profits acquired by the infringer from the infringement, or the royalties of the registered trademark, a people's court

may award damages of not more than five million yuan according to the circumstances of the infringement.

The damages shall also include the right holder's reasonable expenses to counteract the infringement.

The people's court that tries a trademark dispute case shall, at the request of the right holder, order destruction of goods on which a registered trademark is falsely used, except under special circumstances; order destruction of materials and tools primarily used for the manufacture of such goods without compensation; or under special circumstances, order prohibition of the said materials and tools from entering commercial channels without compensation.

Goods on which a registered trademark is falsely used may not enter commercial channels even if the registered trademark so used is removed only.

Article 78 [Public Interest Litigation for Trademark Infringement]

Where infringement of the right to exclusively use a registered trademark harms national interests or the public interests, whereas the holder of the right to exclusively use the registered trademark or the interested party does not institute legal proceedings, and the department in charge of trademark enforcement has not dealt with it, the procuratorial organ may institute an action in the people's court for infringement of the right to exclusively use the registered trademark in accordance with law.

Article 79 [Confirmation of Well-Known Trademark] Where a party files a claim under Article 18 of this Law in the process of trademark registration examination, resolution of a trademark dispute, or investigation of a trademark violation case, the administrative department of intellectual property under the State Council may confirm whether the trademark is a well-known trademark if it is necessary for examination or handling the case.

Where a party files a claim under Article 18 of this Law in the trial of a civil or administrative case involving trademark, the people's court designated by the Supreme People's Court may confirm whether the trademark is a well-known trademark if it is necessary for trying the case.

Article 80 [Exemption Defense] Where the holder of a right to exclusively use a registered trademark claims damages, and the alleged infringer argues that the right holder has never used the registered trademark, a people's court may require the holder of the right to exclusively use a registered trademark to provide evidence of its actual use of the registered trademark in the last three years. If the holder of the right to exclusively use a registered trademark is neither able to prove its actual use of the registered trademark in the last three years nor able to prove that it has suffered other losses from the infringement, the alleged infringer shall not be liable for damages.

Where any goods infringing a right to exclusively use a registered trademark are sold without knowledge of such infringement, and the seller is able to prove that the goods are legally acquired and provide the supplier, the seller shall not be liable for damages.

Article 81 [Pre-Litigation Provisional Measures] Where a trademark registrant or an interested party has evidence that another party is committing or will commit an infringement upon the right to exclusively use the registered trademark, and irreparable damage will be caused to its lawful rights and interests if the infringement is not stopped in a timely manner, it may apply to a people's court for an order of cessation of relevant acts and property preservation before instituting an action in the people's court.

Article 82 [Pre-Litigation Evidence Preservation] In order to stop infringement, a trademark registrant or an interested party may apply to a

people's court for preservation of evidence before instituting an action if any evidence may be destroyed or lost or difficult to obtain at a later time.

Article 83 [Civil Compensation for Bad-Faith Squatting] In the event of any bad-faith application for trademark registration, causing damage to another party in violation of the provisions of paragraph 4 of Article 22 of this Law, the other party may institute an action in the people's court for damages. The damages shall at least include the reasonable expenses paid by the other party to counteract the bad-faith application for trademark registration.

In the event of any bad-faith application for trademark registration in violation of the provisions of paragraph 3 of Article 22 of this Law, harming national interests, social public interests or causing significant adverse impact, the procuratorial organ shall institute an action in the people's court against the act of bad-faith application for trademark registration.

Article 84 [Counter-Compensation against Bad-Faith Litigation] For bad-faith litigation of trademarks, the people's court shall impose punishment in accordance with law. If any damage is caused to the other party, compensation shall be paid. The amount of compensation shall include the reasonable expenses paid by the other party to counteract bad-faith trademark litigation.

Article 85 [Criminal Liability] Where, without being licensed by the trademark registrant, a party uses a trademark identical with the registered trademark on identical goods, if any crime is constituted, the party shall be subject to criminal liability according to the law in addition to compensating the victim for losses.

Where a party forges or manufactures without authorization the labels of a registered trademark of another party or sells the labels of a registered trademark forged or manufactured without authorization, if any crime is

constituted, the party shall be subject to criminal liability according to the law in addition to compensating the victim for losses.

Where a party knowingly sells goods on which a registered trademark is falsely used, if any crime is constituted, the party shall be subject to criminal liability according to the law in addition to compensating the victim for losses.

Article 86 [Violations and Legal Liability of Trademark Agency] Where a trademark agency commits any of the following conduct, the department in charge of trademark enforcement shall order it to make correction within a prescribed time limit and impose a warning and a fine of but not less than 10,000 yuan but not more than 100,000 yuan on it; its directly liable person in charge and other directly liable personnel shall be fined not less than 5,000 yuan but not more than 50,000 yuan; and if any crime is constituted, criminal liability shall be investigated:

(1) Forging or altering any legal document, seal, or signature or using any forged or altered legal document, seal, or signature in handling trademark-related matters.

(2) Acquiring trademark agency business by defaming other trademark agencies or disturbing the trademark agency market order by other illicit means.

(3) Violating paragraph 1 of Article 22, Article 26, paragraph 3 of Article 69 of this Law.

Where a trademark agency commits any conduct mentioned in the preceding paragraph, the administrative department of intellectual property under the State Council shall record it into its credit file; and if the circumstances are serious, the administrative department of intellectual property under the State Council may also decide to stop accepting its trademark agency business and publish it.

Any trademark agency that violates the principle of good faith and infringes on the legitimate interests of the client shall bear civil liability in accordance with law, and shall be disciplined by the trademark agency association in accordance with the provisions of the bylaws.

Any trademark agency that violates the principle of good faith and infringes on the legitimate interests of the client shall bear civil liability in accordance with law, and shall be disciplined by the trademark agency association in accordance with the provisions of the bylaws.

Where a trademark agency is suspended from accepting trademark agency business, during the period of suspension of business acceptance, or before properly handling the outstanding trademark agency business, the person in charge of the trademark agency, directly responsible personnel and shareholder or partner with management responsibilities shall not be newly appointed to the head, shareholder or partner of any trademark agency.

Article 87 [Credit Regulation] For violations of the provisions of this Law that have been subject to administrative penalties, the department making the penalties shall record such penalties in the credit record, and publish in accordance with the provisions of relevant laws and administrative regulations.

Article 88 [Conduct Requirements for Relevant Staff] The public officials and relevant staff members who engage in trademark registration, administration, review and trial must enforce laws impartially, have integrity and self-discipline, be devoted to their duties, and provide services with manners.

The administrative department of intellectual property under the State Council, judicial authorities, and public officials and relevant staff members who engage in trademark registration, administration, review and trial may

not engage in trademark agency and goods production and trading activities.

Article 89 [Internal Supervision and Inspection] The administrative department of intellectual property under the State Council, and judicial authorities shall establish and improve their internal supervision rules, and conduct supervisory inspections on the enforcement of laws and administrative regulations and compliance with disciplines by the public officials and relevant staff members who engage in trademark registration, administration, review and trial.

Article 90 [Legal Responsibility of Relevant Staff] Where any public officials and relevant staff members who engage in trademark registration, administration, review and trial neglect duties, abuse powers, practice favoritism, make falsehood, illegally handle any trademark registration, administration, review or examination matters, or bend the rules in favor of a certain judgement, accept any property from the parties concerned, or seek any improper benefits, if any crime is constituted, they shall be subject to criminal liability according to the law; or if no crime is constituted, disciplinary actions shall be taken against them according to the law.

Chapter IX Promoting Trademark Use, Services and Trademarks Brand Building

Article 91 [Brand Strategy and Public Service] The state implements trademark brand strategy, promotes trademark brand building, boosts the cultivation of well-known trademark brands, and facilitates the development of brand economy.

The state strengthens the development of trademark public service system, boosts the dissemination and utilization of trademark information, and continuously improves the public service capacity for trademark.

Article 92 [Government Responsibility] People's governments at or above the county level shall incorporate trademark branding work into relevant plans for national economy and social development, formulate scientific and reasonable policies and measures to actively guide the cultivation, protection, and use of trademark brand, and provide necessary protection.

Article 93 [Measures to Build Trademark Brands] The state encourages all trademark branding entities to implement the following measures to promote trademark brand building:

- (1) Enhancing the public's awareness of trademark brand and strengthening the orientation of trademark use.
- (2) Enhancing administrative capacity of trademark brands and promoting the realization of trademark brand value.
- (3) Exploring the cultural connotation of trademark brands and promoting and displaying excellent trademark brands.
- (4) Strengthening the training of trademark brand talents and improving the professional ability of brand service institutions and practitioners.
- (5) Strengthening the research, evaluation, and monitoring of trademark brands, and establishing a scientific trademark brand evaluation system.
- (6) Organizing and implementing other measures to promote trademark brand building.

Article 94 [Regional Brand] The state encourages the promotion of regional brand building to bring into play the role of collective and certification mark systems, to create distinctive, competitive and well-reputed regional brands, and to promote regional and industrial economic development.

Article 95 [Strengthening Intelligent Infrastructure and Trademark Information Sharing] The administrative department of intellectual property under the State Council shall strengthen the development of

information technology and intelligent infrastructure, promote the sharing of trademark information, improve the rules related to electronic applications, electronic delivery, electronic evidence, electronic certificates of registration, electronic documents, electronic files (electronic registry), and make the trademark business processing more electronic and convenient.

Article 96 [Obligation to Disclose Information] The administrative department of intellectual property under the State Council shall strengthen the development of public service platform for trademarks, publish trademark information in a complete, accurate and timely manner, provide basic trademark data, guide and promote the effective use of trademark information.

Article 97 [Trademark File] The administrative department of intellectual property under the State Council shall strengthen the work of trademark registration files, and constantly improve the standardization of trademark registration file management.

Chapter X Supplementary Provisions

Article 98 [Payment] Fees shall be charged for a trademark registration application and the handling of other trademark matters, and the specific fee rates shall be prescribed separately.

Article 99 [Recordal of Official Mark] The following marks used by the central state organs, armed forces, political parties, national people's organizations, etc., may be recorded with the administrative department of intellectual property under the State Council as official mark. Where a trademark applied for registration is identical with or similar to an official mark that has been recorded, it shall be rejected and prohibited in accordance with the provisions of Article 15 of this Law.

(1) An organization's name, logo, name of a specific location or the name or figure of a landmark, etc.

(2) Official marks, inspection marks, etc., indicating the implementation of control or guarantee. The administrative department of intellectual property under the State Council shall follow the relevant international treaties concluded or participated by the People's Republic of China in handling the international protection of official marks.

Article 100 [Formulation of Examination and Trial Guidelines] The administrative department of intellectual property under the State Council shall formulate guidelines for the examination and trial of trademark in accordance with this Law and the Implementation Regulations of the Trademark Law.

Article 101 [Enforcement and Effectiveness] This Law shall come into force on March 1, 1983. The Regulation on Trademark Administration issued by the State Council on April 10, 1963, shall be repealed concurrently; and any other provisions on trademark administration in conflict with this Law shall expire concurrently.

Trademarks registered before this Law comes into force shall continue to be valid.