

China Intellectual Property Law Reference Service

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[20-810] Legislative background

Last Reviewed: 05 08 2019

Trademark is not a new concept in Chinese law. The first law to protect and regulate trademarks after the founding of the People's Republic of China in 1949 was the *Interim Regulations on Registration of Trademarks* ("Interim Regulations"), promulgated on 28 August 1950 by the Government Administrative Council, the predecessor to the State Council. The *Interim Regulations* provided for the voluntary registration of a trademark for general industrial and commercial use and the right to exclusive use. The *Interim Regulations* were supplanted by the *Regulations on the Administration of Trademarks* promulgated by the State Council on 10 April 1963. These were, in turn, repealed when the *Trademark Law of the PRC* ("Trademark Law") was promulgated on 23 August 1982 with effect from 1 March 1983. On 10 March 1983, the *Detailed Rules for the Implementation of the Trademark Law of the PRC* ("Trademark Rules") were promulgated.

Trademark Law

The *Trademark Law*, a very important part of China's IP law, has been amended three times. The first amendment was adopted by the 30th session of the Standing Committee of the Seventh National People's Congress on 23 February 1993. The second amendment was adopted by the 24th session of the Standing Committee of the 9th National People's Congress on 27 October 2001. The second amendment was formally implemented on 1 December 2001, immediately after China's formal accession to the WTO and was intended to fulfil China's WTO commitments ("2001 Amendment").

The third amendment was on the agenda since 2006, and after 7 years' work, it was finally adopted by the 4th session of the Standing Committee of the Thirteenth National People's Congress on 30 August 2013

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[20-943] Application documents

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The revised Law expands the scope of persons qualified to apply for registration of a trademark. Instead of defining only enterprises, institutions, and individual producers or traders as being qualified to apply, the revised Law now allows all natural persons, legal persons and all other organisations to apply for registration of a trademark.

Applications for trademark registration must be made to the Trademark Bureau. The Trademark Bureau will accept applications from foreign nationals and foreign enterprises in accordance with agreements signed between the foreigner's home country and China, or treaties to which both countries have acceded, or on the basis of reciprocity (Art 17, the *Trademark Law*).

According to the *Trademark Law*, foreigners or foreign enterprises (with no regular residential address or business office in China) applying to register a trademark in China or dealing with any other matters relating to trademarks should commission an agent to act on their behalf. The appointment of the trademark agent must be made in writing and must clearly state the limits of the agent's authority. It must also state the nationality of the appointee. All application materials and materials relating to trademarks must be in the Chinese language (Art 18, the *Trademark Law*, Art 5 and 6, the *Implementing Rules*). Always choose a qualified trademark agent who is recognised by the government.

Bear in mind that when applying to register the same trademark for use on a range of different categories of products, the application should be made in accordance with the product category table; applicants for trademark registration may apply for registration of the same trademark through one application for products of various categories: if the symbol of a registered trademark, or the name, address or other

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[20-947] Trademark review cooperation centers

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In 2017, three new trademark review cooperation centers were established in Guangzhou, Shanghai and Chongqing respectively, and 105 local trademark acceptance windows and 49 trademark rights pledge registration points were set up.

From 1 November 2018 onwards, applicants can submit the following applications via 36 appointed trademark review cooperation centers and local trademark acceptance windows:

- (1) Application for trademark registration,
- (2) Withdrawal of trademark registration application,
- (3) Application for certificate of priority,
- (4) Trademark renewal registration application,
- (5) Withdrawal of trademark renewal registration application,
- (6) Change the name/address of the trademark applicant/registrant, and change the collective trademark/certification trademark management rules or the name list of collective group member,
- (7) Withdrawal of item (6),

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[21-160] Recognition

Last Reviewed: 12 02 2019

For the first time, protection of well-known trademarks (驰名商标) has been written into the *Trademark Law*. Previously this issue was only addressed by the *Interim Regulations* issued by the SAIC in 1996. This change demonstrates China's commitment to bring its law in line with the international convention. The 2002 *Trademark Law* addresses not only malicious copies or reproduction but also innocent copying of well-known trademark, whether or not registered in China. After the 2001 *Amendment*, the interim regulations were repealed by the *Regulations on Verification and Protection of Famous Trademarks (Well-Known Trademark Implementing Regulations)*, issued by the SAIC to bring the administration of well-known trademarks into line with the 2001 *Amendment*.

The CTO and TRAB are given the power to recognise well-known trademarks in China by the *Trademark Implementing Regulations* and the *Well-Known Trademark Regulations* (Art 10, *Well-Known Trademark Regulations*). Other organisations and individuals were given no direct or indirect role in the process. The promulgation of the *Trademark Implementing Regulations* added CTRAB as the reviewer of CTO decision and the *Well-Known Trademark Regulations* confirm this power. The *Trademark Implementing Regulations* also provide that in a dispute over trademark registration or the review of a trademark and the issue is whether it is a well-known trademark, the relevant party may apply to CTO or CTRAB for recognition of their mark as a well-known trademark (Art 3 of the 2014 *Trademark Implementing Regulations*).

The 2014 *Trademark Law* has specifically confirmed the effect of the recognition by stating that in all trademark cases, recognition of a well-known mark is only relevant to that particular case and does not have any binding effect on any future cases. Article 14 provides that production operators should not use

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[21-240] Famous trademarks

Last Reviewed: 12 02 2019

In the legal sense, the *Trademark Law* only stipulates the concept of “well-known trademarks” (驰名商标), that is, trademarks that are widely known and enjoy high reputation in China. However, various provinces and municipalities, including Hebei, Dalian, Liaoning, Heilongjiang, Jiangsu, Nanjing, Zhejiang, Anhui, Hubei, Jilin, Gansu, Sichuan, Henan, Ningxia, Guangdong, Wuhan, Jiangxi, Fujian, Tianjin, Shandong, Inner Mongolia, Xiamen, Hunan, Guangxi, Hainan, Chengdu, Chongqing, Yunnan, Tibet and Xinjiang have promulgated local regulations for recognition and protection of local “famous trademarks” (著名商标) which apply within their respective jurisdictions. These two type of trademarks differ in that:

- well-known trademarks are recognised by CTO, TRAB and in certain cases, the court, while “famous trademarks” are awarded by AICs at the provincial level;
- well-known trademarks are recognised within the whole country, but “famous trademarks” are recognised within the particular province or municipality only; and
- The recognition criteria of a “famous trademark” are lower than those for a well-known trademark.

Initially, the famous trademark system, being an imitation of the well-known trademark system in term of setting and operation, played a positive role in encouraging enterprises to enhance brand awareness, improve product quality, and promote local economic development. Nevertheless in recent years, local famous trademark operation has somehow become an awkward existence which runs in contradiction with the free economy. Merchants can obtain the recognition of a well-known trademark only by