



国家知识产权局

NATIONAL INTELLECTUAL PROPERTY ADMINISTRATION, PRC

中国商标法修改最新情况

Revisions of China's *Trademark Law*: An Update

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一、中国商标法律制度基本特点

1. Basic Characteristics of China's Trademark Legal System

- ◆ 立法宗旨：保护注册商标专用权和保护消费者利益并举
- ◆ 基本原则：申请在先、注册在先，兼顾商标使用，禁止抢注；
- ◆ 保护特色：行政执法与司法审判双轨并行
- Legislative purpose: equally protect the right to the exclusive use of registered trademarks and consumers' rights and interests.
- Basic principles: "first-to-file" while also considering trademark use. Trademark squatting prohibited.
- Unique protection: administrative law enforcement and judicial judgement combined.



- 经过改革开放40多年的努力，已经建立起体系完整，既符合中国国情又满足我国加入的相关国家条约要求、符合国际惯例的商标法律制度。
- With four decades of efforts since the launch of the reform and opening-up policy, we have established a full-fledged trademark legal system which is consistent with China's national conditions, the international treaties to which we are state parties, and common international practice.



二、中国商标法律制度发展历程

2. Development Trajectory of China's Trademark Legal System

- ◆ 现行商标法自1983年3月1日起实施，此后进行过全面三次修改
- ◆ Implemented since March 1st, 1983, the *Trademark Law* currently in effect has undergone three comprehensive revisions

第一次：1993年

First: 1993

第二次：2001年

Second: 2001

第三次：2013年

Third: 2013



二、中国商标法律制度发展历程

2. Development Trajectory of China's Trademark Legal System

- 第一次：1993年
- 将保护范围从商品商标扩大到**服务商标**
- First Revisions: 1993
- Expanded the scope of protection from trademarks for goods to cover **service marks**



二、中国商标法律制度发展历程

2. Development Trajectory of China's Trademark Legal System

- 增加不正当注册商标**撤销**规定
- 强化商标使用许可管理
- 增加商标侵权行为类型
- Added the provision on the **cancellation** of improperly registered trademarks
- Strengthened the management of trademark licensing
- Added the types of trademark infringement



二、中国商标法律制度发展历程

2. Development Trajectory of China's Trademark Legal System

- **第二次：2001年**
 - 增加**自然人**可申请注册商标规定
 - 增加**立体**商标和**颜色组合**商标规定
 - 增加集体商标和证明商标规定，将**地理标志**纳入商标保护体系
-
- **Second Revisions: 2001**
 - Added the provision that **natural persons** can register trademarks
 - Added the provision on trademarks that consist of **three-dimensional** symbols or **color combinations**
 - Added the provisions on collective and certification trademarks. Included **geographical signs** into the trademark protection system



- 明确保护驰名商标
 - 增加商标财产保全和证据保全规定
 - 将商标确权程序纳入司法审查
 - 增加工商行政管理机关查处商标侵权行为的手段，加大商标侵权行为行政处罚力度
-
- Clearly provided on the protection of well-known marks
 - Added the provisions on trademark-related asset protection and evidence preservation
 - Included the procedures for trademark determination into judicial examination
 - Added the measures for the Administrations for Industry and Commerce to investigate and handle trademark infringements. Strengthened the administrative punishments for such infringements



➤ 第三次：2013年

- 增加**诚实信用**原则
- 增加**声音**商标注册规定
- 增加有关商标代理机构的规定
- 将商标注册申请由“一标一类”改为“**一标多类**”
- 对数据电文方式申请的法律效力进行了确认

➤ Third Revisions: 2013

- Added the principle of good faith
- Added the provision on trademarks that consist of **sounds**
- Added the provisions on trademark agencies
- Changed the trademark registration from a single-class to a **multiclass system**
- Confirmed the legal effect of applications through electronic means



- 取消商标异议复审程序，对恶意异议进行规制
 - 明确规定**商标注册审理时限**
 - 区分注册商标权的撤销和无效程序
 - 增加驰名商标认定机关和程序，并增加驰名商标字样不得作为商标标识使用以及用于广告宣传等商业活动的规定
 - 提高商标侵权行为处罚力度和法定赔偿数额，将注册商标续展期由期满前6个月延长至12个月
- Abolished the review procedures for oppositions to trademark applications, with bad-faith oppositions regulated
 - Clearly provided on the **time limit of adjudications related to trademark registration**
 - Differentiated cancellation procedures from invalidation procedures for registered trademarks
 - Added the authorities and procedures for the determination of well-known marks. Also added the provision that the words “well-known mark” cannot be used as a trademark or for advertising or other commercial purposes
 - Increased the level of punishment and the amount of damages for trademark infringement. Increased the renewal period for registered trademarks from six months to twelve months prior to the date of expiration



- 配套行政法规

- 为配合《商标法》的施行，国务院制定了《商标法实施细则》（1983年发布，现已失效）、《商标法实施条例》（2002年发布，2014年修订）。此外，还制定了《特殊标志管理条例》（1996年发布）、《奥林匹克标志保护条例》（2002年发布，2018年修订）、《世界博览会标志保护条例》（2004）等行政法规。

- Supporting Administrative Regulations

- To facilitate the implementation of the *Trademark Law*, the State Council formulated the *Rules on the Implementation of the Trademark Law* (promulgated in 1983, no longer in effect) and the *Regulations on the Implementation of the Trademark Law* (promulgated in 2002, revised in 2014). In addition, a series of other administrative regulations have been formulated, including the *Regulations on the Management of Special Symbols* (promulgated in 1996), the *Regulations on the Protection of Olympic Symbols* (promulgated in 2002 and revised in 2018), and the *Regulations on the Protection of World Expo Symbols* (2004).



二、中国商标法律制度发展历程

2. Development Trajectory of China's Trademark Legal System

- 配套部门规章 Supporting Agency Rules
- 原国家工商行政管理总局单独制定或与有关部门共同制定了《商标印制管理办法》《驰名商标认定和保护规定》《集体商标、证明商标注册和管理办法》等近10部部门规章。
- The former State Administration for Industry and Commerce independently and jointly formulated with other agencies about 10 sets of agency rules, including the *Rules on the Management of Trademark Printing*, *Rules on the Determination and Protection of Well-Known Marks*, and the *Rules on the Registration and Management of Collective and Certification Trademarks*.



- 配套司法解释

- 最高人民法院发布了《关于审理商标民事纠纷案件适用法律若干问题的解释》（2002）、《关于审理注册商标、企业名称与在先权利冲突的民事纠纷案件若干问题的规定》（2008）、《关于审理涉及驰名商标保护的民事纠纷案件应用法律若干问题的解释》（2009）、《关于审理商标授权确权行政案件若干问题的规定》（2017）4部司法解释。

- **Supporting Judicial Interpretations**

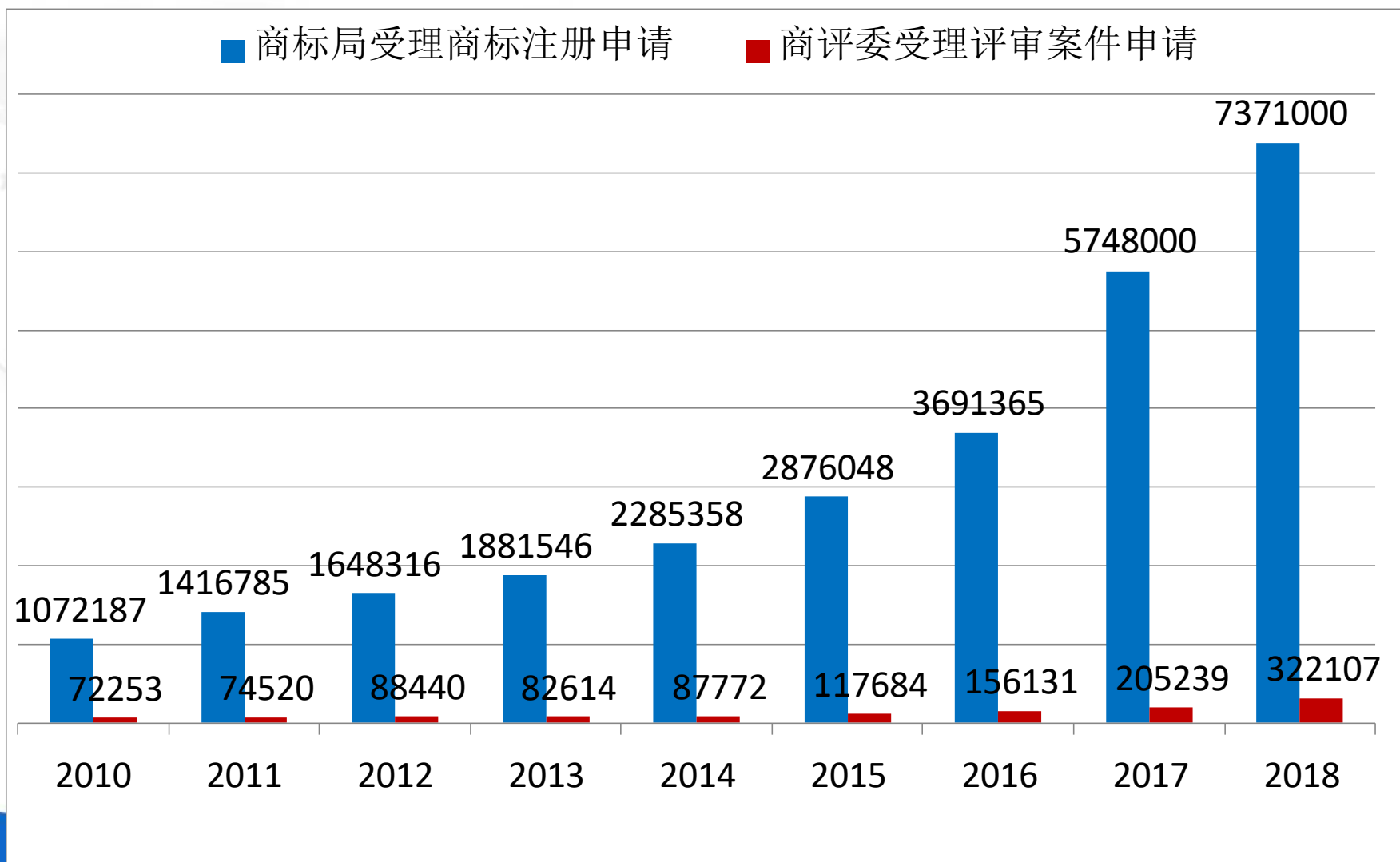
- The Supreme People's Court promulgated four judicial interpretations—*Interpretation of the Issues Relating to the Application of Law in the Trials of Civil Trademark Disputes* (2002), *Provisions on the Issues Relating to the Trials of Civil Disputes over Conflicts between Registered Trademarks or Company Names and Prior Rights* (2008), *Interpretation of the Issues Relating to the Application of Law in the Trials of Civil Disputes Involving Well-Known Trademarks* (2009), and the *Provisions on the Issues Relating to Handling Administrative Cases Involving the Granting and Determination of Trademarks*.



国家知识产权局

NATIONAL INTELLECTUAL PROPERTY ADMINISTRATION, PRC

商标注册及评审申请情况 Trademark Registration and Adjudication





三、商标法特别修改

3. Special Revisions to the *Trademark Law*

- ◆ 为了有效规制恶意申请和囤积注册行为，加强对商标专用权的保护，营造良好的营商环境，2019年4月23日，全国人大常委会审议通过了《中华人民共和国商标法修正案（草案）》，围绕**规制恶意申请、囤积注册等行为**和**加大对侵犯商标专用权行为惩罚力度**两个方面对《商标法》进行了个别条款的修改。
- ◆ 涉及修改的条款共六条，将自2019年11月1日起施行。
- ◆ To effectively regulate bad-faith applications and trademark hoarding, strengthen the protection of the right to the exclusive use of trademarks, and create a good business environment, on April 23rd, 2019, the Standing Committee of the National People's Congress, after deliberations, adopted the *Amendment to the Trademark Law of the People's Republic of China (Draft)*. The *Amendment* revises certain articles in the *Trademark Law*, centering on two aspects—regulating **bad-faith applications and trademark squatting**, and **strengthening the punishment for trademark infringements**.
- ◆ A total of six articles are revised. The revised articles will come into effect on November 1st, 2019.



三、商标法特别修改

(一) 增加规制恶意注册的内容

- ◆ 1. 增强商标使用义务。


3. Special Revisions to the *Trademark Law*

a. Added Provisions to Regulate Bad-Faith Applications

- ◆ 1. Emphasized the Obligation to Use Trademarks



以“傍名牌”为目的的恶意申请

◆  申请注册与知名商标相近似的商标

Bad-Faith applications to copy famous brands

◆  Applying for marks similar to well-known marks

KENZO

MOSCHINO
CHEAPANDCHIC



SIEMENS



◆ 以转让牟利为目的的囤积注册

◆  广州某公司申请注册9000件商标

◆ Trademark hoarding for profiteering

◆  One company in Guangzhou applied for 9000 marks



(一) 增加规制恶意注册的内容

◆ 在第四条增加:

◆ “不以使用为目的的恶意商标注册申请，应当予以驳回”

◆ 审查阶段适用



实现打击恶意注册的关口前移

a. Added Provisions to Regulate Bad-Faith Applications

◆ Added the following to Article 4:

◆ “Bad-faith applications for trademarks which are not intended for use shall be refused.”

◆ Applicable at the stage of examination



Move forward

the link at which bad-faith registrations are cracked down



(一) 增加规制恶意注册的内容

◆ 作为提出异议



适用于异议程序

◆ 和请求宣告无效的事由

和无效宣告程序中

◆ Can be used as grounds for oppositions and invalidations



Applicable to opposition adjudications

◆ And invalidation procedures



第四条

自然人、法人或者其他组织在生产经营活动中，对其商品或者服务需要取得商标专用权的，应当向商标局申请商标注册。

本法有关商品商标的规定，适用于服务商标。



第四条

自然人、法人或者其他组织在生产经营活动中，对其商品或者服务需要取得商标专用权的，应当向商标局申请商标注册。**不以使用为目的的恶意商标注册申请，应当予以驳回。**

本法有关商品商标的规定，适用于服务商标。



Article 4

Any natural person, legal person or other organization that needs to obtain the exclusive right to use a trademark for his or its goods or services during productions and business operations shall apply for trademark registration with the Trademark Office.

Provisions regarding the trademarks for goods in this *Law* shall be applicable to trademarks for services.



Article 4

Any natural person, legal person or other organization that needs to obtain the exclusive right to use a trademark for his or its goods or services during productions and business operations shall apply for trademark registration with the Trademark Office. **Bad-faith Applications for trademarks which are not intended for use shall be refused.**

Provisions regarding the trademarks for goods in this *Law* shall be applicable to trademarks for services.



◆ 2. 规范商标代理行为

◆ 商标代理机构知道或者应当知道委托人存在恶意注册行为的**不得接受委托**，一经发现，依法追究法律责任。

◆ 2. Regulating the Trademark Agencies

◆ Where a trademark agency knows or should know that the principal's registration is in bad faith, the agency **shall not act as an agent for the principal**. Incompliant agencies, once discovered, will be held accountable in accordance with the law.



第十九条第三款

商标代理机构知道或者应当知道委托人申请注册的商标属于本法第十五条和第三十二条规定情形的，不得接受其委托。



第十九条第三款

商标代理机构知道或者应当知道委托人申请注册的商标属于本法**第四条**、第十五条和第三十二条规定情形的，不得接受其委托。



Section 3, Article 19

Where a trademark agency knows or should know that the principal's trademark application violates the provisions of Article 15 and Article 32 of this *Law*, the agency shall not act as an agent for the said principal.



Section 3, Article 19

Where a trademark agency knows or should know that the principal's trademark application violates the provisions of **Article 4**, Article 15, and Article 32 of this *Law*, the agency shall not act as an agent for the said principal.



- ◆ 3.对申请人、商标代理机构的恶意申请商标注册、恶意诉讼行为规定了**处罚**措施。从而将规制恶意注册行为贯穿于整个商标申请注册和保护程序，在责任主体方面既包括**申请人和权利人**也包括**中介服务机构**。
- ◆ 3. Provided **punishments** for bad-faith trademark applications and abuse of process by applicants and trademark agencies. In this way, bad-faith applications are regulated across all the stages of trademark registration and protection. **Trademark applicants, proprietors and agencies** can all be held accountable.

第六十八条

商标代理机构有下列行为之一的，由工商行政管理部门责令限期改正，给予警告，处一万元以上十万元以下的罚款；对直接负责的主管人员和其他直接责任人员给予警告，处五千元以上五万元以下的罚款；构成犯罪的，依法追究刑事责任：

（一）办理商标事宜过程中，伪造、变造或者使用伪造、变造的法律文件、印章、签名的；

（二）以诋毁其他商标代理机构等手段招徕商标代理业务或者以其他不正当手段扰乱商标代理市场秩序的；

（三）违反本法第十九条第三款、第四款规定的。

商标代理机构有前款规定行为的，由工商行政管理部门记入信用档案；情节严重的，商标局、商标评审委员会并可以决定停止受理其办理商标代理业务，予以公告。

商标代理机构违反诚实信用原则，侵害委托人合法利益的，应当依法承担民事责任，并由商标代理行业组织按照章程规定予以惩戒。

第六十八条

商标代理机构有下列行为之一的，由工商行政管理部门责令限期改正，给予警告，处一万元以上十万元以下的罚款；对直接负责的主管人员和其他直接责任人员给予警告，处五千元以上五万元以下的罚款；构成犯罪的，依法追究刑事责任：

（一）办理商标事宜过程中，伪造、变造或者使用伪造、变造的法律文件、印章、签名的；

（二）以诋毁其他商标代理机构等手段招徕商标代理业务或者以其他不正当手段扰乱商标代理市场秩序的；

（三）违反本法**第四条**、第十九条第三款、第四款规定的。

商标代理机构有前款规定行为的，由工商行政管理部门记入信用档案；情节严重的，商标局、商标评审委员会并可以决定停止受理其办理商标代理业务，予以公告。

商标代理机构违反诚实信用原则，侵害委托人合法利益的，应当依法承担民事责任，并由商标代理行业组织按照章程规定予以惩戒。

对恶意申请商标注册的，根据情节给予警告、罚款等行政处罚；对恶意提起商标诉讼的，由人民法院依法给予处罚。

Article 68

A trademark agency that commits any of the following acts shall be ordered to make corrections within a time limit, be given a warning, and be fined not less than 10,000 RMB but not more than 100,000 RMB by the Administrations for Industry and Commerce; the persons in charge who are directly responsible and other persons directly responsible shall be given a warning and be fined not less than 5,000 RMB but not more than 50,000 RMB; where the acts constitute crimes, criminal liabilities shall be pursued in accordance with the law:

- (1) Fabricating or tampering with legal documents, seals, or signatures, or using fabricated or tempered legal documents, seals, or signatures during the handling of trademark-related matters;
- (2) Soliciting trademark agency business by defaming other trademark agencies, or disrupting the order of the trademark agency market by other unjust means; or
- (3) Violating the provisions of Section 3 and 4 of Article 19 in this Law.

Where a trademark agency commits an act prescribed in the preceding paragraphs, the Administrations for Industry and Commerce shall record such matters in the credit files; if the circumstances are serious, the Trademark Office or the Trademark Review and Adjudication Board may concurrently decide to cease the acceptance and handling of the business of the trademark agency, and shall make an announcement thereon.

The trademark agency shall bear civil liabilities in accordance with the law if it violates the principle of good faith and infringes the legitimate rights and interests of the principal, and shall be given sanctions by the associations of trademark agencies pursuant to their articles of association.

RATION,PR



Article 68

A trademark agency that commits any of the following acts shall be ordered to make corrections within a time limit, be given a warning, and be fined not less than 10,000 RMB but not more than 100,000 RMB by the Administrations for Industry and Commerce; the persons in charge who are directly responsible and other persons directly responsible shall be given a warning and be fined not less than 5,000 RMB but not more than 50,000 RMB; where the acts constitute crimes, criminal liabilities shall be pursued in accordance with the law:

- (1) Fabricating or tampering with legal documents, seals, or signatures, or using fabricated or tempered legal documents, seals, or signatures during the handling of trademark-related matters;
- (2) Soliciting trademark agency business by defaming other trademark agencies, or disrupting the order of the trademark agency market by other unjust means; or
- (3) Violating the provisions of Section 3 and 4 of Article 19 in this Law.

Where a trademark agency commits an act prescribed in the preceding paragraphs, the Administrations for Industry and Commerce shall record such matters in the credit files; if the circumstances are serious, the Trademark Office or the Trademark Review and Adjudication Board may concurrently decide to cease the acceptance and handling of the business of the trademark agency, and shall make an announcement thereon.

The trademark agency shall bear civil liabilities in accordance with the law if it violates the principle of good faith and infringes the legitimate rights and interests of the principal, and shall be given sanctions by the associations of trademark agencies pursuant to their articles of association.

Agencies which file bad-faith applications shall be given administrative punishments, including warnings and penalties, based on the circumstances; agencies which engage in the abuse of process shall be given punishments by the People's Courts in accordance with the law.



(二) 加大对侵犯商标专用权行为惩罚力度

b. Strengthened punishments for trademark infringements

◆ 恶意侵权赔偿数额计算倍数:

◆ 一倍以上三倍以下 → 一倍以上五倍以下

◆ Multipliers for the damages for malicious infringements:

◆ Not less than one and not more than three →

Not less than one and not more than five



(二) 加大对侵犯商标专用权行为惩罚力度

b. Strengthened punishments for trademark infringements

◆ 恶意侵权法定赔偿数额上限：

◆ 三百万元 → 五百万元

◆ Maximum damages for malicious infringements:

◆ Three million RMB → Five million RMB



(二) 加大对侵犯商标专用权行为惩罚力度

- ◆ 对假冒注册商标的商品以及主要用于制造假冒注册商标的商品的材料、工具加大处置力度。
- ◆ 人民法院审理商标纠纷案件，应权利人请求，对属于假冒注册商标的商品，除特殊情况外，责令销毁；对主要用于制造假冒注册商标的商品的材料、工具，责令销毁，且不予补偿；或者在特殊情况下，责令禁止前述材料、工具进入商业渠道，且不予补偿。
- ◆ 假冒注册商标的商品不得在仅去除假冒注册商标后进入商业渠道。



b. Strengthened punishments for trademark infringements

- ◆ Strengthened punishments for goods with counterfeit trademarks and the main materials and instruments for manufacturing those goods.
 - ◆ In the trials of trademark disputes, the People's Courts shall, except for special circumstances, order the destruction of the goods with counterfeit trademarks at the request of the trademark proprietors; the Courts shall also order the destruction of the main materials and instruments for manufacturing those goods without compensation, or under special circumstances, order the prohibition of the aforementioned materials and instruments from entering commercial channels without compensation.
 - ◆ Goods with counterfeit trademarks cannot enter commercial channels only by removing the said trademarks.

第六十三条

侵犯商标专用权的赔偿数额，按照权利人因被侵权所受到的实际损失确定；实际损失难以确定的，可以按照侵权人因侵权所获得的利益确定；权利人的损失或者侵权人获得的利益难以确定的，参照该商标许可使用费的倍数合理确定。对恶意侵犯商标专用权，情节严重的，可以在按照上述方法确定数额的一倍以上三倍以下确定赔偿数额。赔偿数额应当包括权利人为制止侵权行为所支付的合理开支。

人民法院为确定赔偿数额，在权利人已经尽力举证，而与侵权行为相关的账簿、资料主要由侵权人掌握的情况下，可以责令侵权人提供与侵权行为相关的账簿、资料；侵权人不提供或者提供虚假的账簿、资料的，人民法院可以参考权利人的主张和提供的证据判定赔偿数额。

权利人因被侵权所受到的实际损失、侵权人因侵权所获得的利益、注册商标许可使用费难以确定的，由人民法院根据侵权行为的情节判决给予三百万元以下的赔偿。

STRATION



第六十三条

侵犯商标专用权的赔偿数额，按照权利人因被侵权所受到的实际损失确定；实际损失难以确定的，可以按照侵权人因侵权所获得的利益确定；权利人的损失或者侵权人获得的利益难以确定的，参照该商标许可使用费的倍数合理确定。对恶意侵犯商标专用权，情节严重的，可以在按照上述方法确定数额的**一倍以上五倍以下**确定赔偿数额。赔偿数额应当包括权利人为制止侵权行为所支付的合理开支。

人民法院为确定赔偿数额，在权利人已经尽力举证，而与侵权行为相关的账簿、资料主要由侵权人掌握的情况下，可以责令侵权人提供与侵权行为相关的账簿、资料；侵权人不提供或者提供虚假的账簿、资料的，人民法院可以参考权利人的主张和提供的证据判定赔偿数额。

权利人因被侵权所受到的实际损失、侵权人因侵权所获得的利益、注册商标许可使用费难以确定的，由人民法院根据侵权行为的情节判决给予**五百万元**以下的赔偿。

人民法院审理商标纠纷案件，应权利人请求，对属于假冒注册商标的商品，除特殊情况外，责令销毁；对主要用于制造假冒注册商标的商品的材料、工具，责令销毁，且不予补偿；或者在特殊情况下，责令禁止前述材料、工具进入商业渠道，且不予补偿。

假冒注册商标的商品不得在仅去除假冒注册商标后进入商业渠道。

Article 63

The amount of damages for infringement on 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; if it is difficult to determine the actual loss, the amount of damages may be determined according to the profits gained therefrom by the infringer; if it is difficult to determine both the loss of the right holder and the profits gained by the infringer, the amount of damages may be reasonably determined in reference to the multiples of the trademark royalties. Where an infringer maliciously infringes upon another party's exclusive right to use a trademark and such infringement falls under serious circumstances, the amount of damages may be determined as not less than one time but not more than three times the amount that is determined according to the aforesaid methods. The amount of damages shall cover the reasonable expenses paid by the right holder for stopping the infringing act.

Where the right holder has exhausted its efforts in discharging the burden of proof, but the account books and materials related to the infringing acts are mainly controlled by the infringer, the People's Courts may, for the purpose of determining the amount of damages, order the infringer to submit account books and materials related to the infringing acts. Where the infringer fails to provide such account books or materials or provides false account books or materials, the People's Courts may render a judgment on the amount of damages in reference to the claims of the right holder and the evidence furnished thereby.

Where it is difficult to determine the actual loss suffered by the right holder as a result of the infringement, the profits gained by the infringer from the infringement, or the royalties of the registered trademark concerned, the People's Courts shall render a judgment awarding damages in an amount not more than three million RMB based on the circumstances of the infringing acts.



Article 63

The amount of damages for infringement on 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; if it is difficult to determine the actual loss, the amount of damages may be determined according to the profits gained therefrom by the infringer; if it is difficult to determine both the loss of the right holder and the profits gained by the infringer, the amount of damages may be reasonably determined in reference to the multiples of the trademark royalties. Where an infringer maliciously infringes upon another party's exclusive right to use a trademark and such infringement falls under serious circumstances, the amount of damages may be determined as not less than one time but not more than five times the amount that is determined according to the aforesaid methods. The amount of damages shall cover the reasonable expenses paid by the right holder for stopping the infringing act.

Where the right holder has exhausted its efforts in discharging the burden of proof, but the account books and materials related to the infringing acts are mainly controlled by the infringer, the People's Courts may, for the purpose of determining the amount of damages, order the infringer to submit account books and materials related to the infringing acts. Where the infringer fails to provide such account books or materials or provides false account books or materials, the People's Courts may render a judgment on the amount of damages in reference to the claims of the right holder and the evidence furnished thereby.

Where it is difficult to determine the actual loss suffered by the right holder as a result of the infringement, the profits gained by the infringer from the infringement, or the royalties of the registered trademark concerned, the People's Courts shall render a judgment awarding damages in an amount not more than **five million RMB** based on the circumstances of the infringing acts.

In the trials of trademark disputes, the People's Courts shall, except for special circumstances, order the destruction of the goods with counterfeit trademarks at the request of the trademark proprietors; the Courts shall also order the destruction of the main materials and instruments for manufacturing those goods without compensation, or under special circumstances, order the prohibition of the aforementioned materials and instruments from entering commercial channels without compensation.

Goods with counterfeit trademarks cannot enter commercial channels only by removing the said trademarks.



四、商标法修改后的配套举措

4. Supporting Measures after the Revisions

◆ (一) 《关于规范商标申请注册行为的若干规定》

◆ 为有效打击恶意申请和囤积注册，国家知识产权局从2018年下半年开始研究起草《关于规范商标申请注册行为的若干规定》，该规定列入市场监督管理总局2019年立法计划一档项目。

◆ a. *Rules on Standardizing Trademark Applications*

◆ To effectively crack down on bad-faith applications and trademark hoarding, since the second half of 2018, the National Intellectual Property Administration has been drafting the *Rules on Standardizing Trademark Applications*. The *Rules* are now included in the State Administration for Market Regulation's 2019 legislation plan.



四、商标法修改后的配套举措

4. Supporting Measures after the Revisions

- ◆ 配合本次《商标法》修改，该规章将对修改内容进行操作层面的细化，使《商标法》的修改内容落到实处。
- ◆ 2019年2月12日至3月14日，《关于规范商标注册行为的若干规定（征求意见稿）》面向社会公开征求意见。
- ◆ To support the revisions to the *Trademark Law*, the *Rules* will specify the details of implementing the revised provisions to ensure full implementation.
- ◆ From February 12th to March 14th, 2019, public opinions were solicited for the *Rules on Standardizing Trademark Applications (Exposure Draft)*.



(一) 《关于规范商标申请注册行为的若干规定》

- 征求意见稿主要内容
 - 明确立法目的，重申商标法确立的诚信原则和以使用意愿为前提申请商标注册的导向；
 - 以列举方式规定非正常申请商标注册的行为类型；

a. Rules on Standardizing Trademark Applications

- The *Exposure Draft* mainly
 - Defines the purposes of legislation; reiterates the principle of good faith established by the *Trademark Law* and the guiding requirement of application for use;
 - Defines the types of abnormal trademark applications by listing them;



- 明确非正常申请商标注册行为的法律后果；
 - 从信用记录、统计标准、代理管理等方面采取措施，规制非正常申请商标注册的行为，并规定当事人相应的权利；
 - 明确各级知识产权主管部门引导、规范商标申请注册和使用行为的职责，动员社会公众对非正常申请商标注册的行为予以举报、监督。
-
- Defines the types of abnormal trademark applications by listing them;
 - Regulates abnormal trademark applications through measures including credit scoring, statistical standards, and agency management; defines the respective rights of the parties involved;
 - Defines the obligations of the IP authorities at all levels in guiding and standardizing trademark applications and uses; mobilizes the public in reporting and supervising abnormal trademark applications.



(一) 《关于规范商标申请注册行为的若干规定》

- 期间，国家知识产权局条法司举办了多场座谈会，专门听取地方管理部门、法院、企业和代理机构意见。另外，社会公众、外国政府机构、企业、社会团体等也通过多种方式向提交书面意见。到截止日期共收到约10万字的公众意见。

a. Rules on Standardizing Trademark Applications

- During the solicitation of public opinions, the Department of Treaty and Law of the National Intellectual Property Administration held multiple seminars to listen to the opinions of local administrations, courts, businesses and trademark agencies. In addition, the general public, foreign governmental agencies, businesses, social groups, etc., also submitted written opinions through various means. By the end of solicitation, a total of 100,000 words of public opinions had been received.



(一) 《关于规范商标申请注册行为的若干规定》

- 本次商标法修改为《关于规范商标申请注册行为的若干规定》提供了上位法依据。
- 将根据《商标法》的最新修改和意见反馈进行完善后，按规章制度程序上报市场监管总局发布实施。
- The latest revisions to the *Trademark Law* offer a higher-level legal basis for the *Rules on Standardizing Trademark Applications*.
- After improvements based the latest revisions to the *Trademark Law* and the opinions and feedbacks, the *Rules* will be submitted to the State Administration for Market Regulation for promulgation and implementation.



(二) 商标法新一轮全面修改准备工作

b. Preparation for a New Round of Comprehensive Revisions to the *Trademark Law*

- 2018年原商标局启动商标法全面修改准备工作
- 机构改革后，国家知识产权局继续通过对《商标法》的实施情况进行评估、对社会关注重点问题开展专题论证等方式，广泛听取意见建议，继续推进《商标法》新一轮全面修改准备工作，更好地服务我国经济社会发展。
- In 2018, the former Trademark Office initiated the preparation for comprehensive revisions to the *Trademark Law*
- After the institutional reorganization, the National Intellectual Property Administration continues to evaluate the implementation of the *Law* and listens extensively to opinions and suggestions by holding dedicated hearings on key issues of social interests. The Administration is pushing forward with the preparation for the new round of comprehensive revisions, to better serve China's economic and social development.



(二) 商标法新一轮全面修改准备工作

- 商标申请注册程序优化
 - 是否取消相对理由审查
 - 商标异议程序改革
 - 商标确权中如何处理行政审理与司法审判的关系

b. Preparation for a New Round of Comprehensive Revisions to the Trademark Law

- Optimizing the Procedures for Trademark Application and Registration
 - Whether or not to remove the relative examination
 - Reform of the procedures for trademark opposition
 - How to balance the relationship between administrative hearing and judicial judgement in the determination of trademark rights



- 商标恶意申请和囤积注册规制
- 商标注册制和使用义务之间的协调
- 加强商标专用权的保护
- 欢迎社会各界针对《商标法》修改提出宝贵意见建议
- Regulating Bad-Faith Applications and Trademark Squatting
- Coordinating “First-to-File” and the Obligation to Use Trademarks
- Strengthening the Protection of the Right to Exclusive Trademark Use
- Your suggestions regarding the revisions to the *Trademark Law* are highly appreciated



国家知识产权局

NATIONAL INTELLECTUAL PROPERTY ADMINISTRATION, PRC

感谢聆听
Thank you