

规范商标申请注册行为若干规定

Several Provisions on Regulating the Application for Registration of Trademarks

国家市场监督管理总局令（第 17 号）

State Administration for Market Regulation (SAMR) Order No. 17

第一条. 为了规范商标申请注册行为，规制恶意商标申请，维护商标注册管理秩序，保护社会公共利益，根据《中华人民共和国商标法》（以下简称商标法）和《中华人民共和国商标法实施条例》（以下简称商标法实施条例），制定本规定。

These Provisions are formulated in accordance with the Trademark Law of the People's Republic of China (the “Trademark Law”) and the Implementing Regulations of the Trademark Law of the People's Republic of China (the “Implementing Regulations”), to regulate applications for trademark registration, contain acts of malicious trademark application, maintain the order of trademark registration, and protect the public interest.

第二条. 申请商标注册，应当遵守法律、行政法规和部门规章的规定，具有取得商标专用权的实际需要。

Article 2. Applications for trademark registration shall be conducted in conformity to the provisions of laws, administrative regulations and departmental rules, and in light of the actual need of acquiring the exclusive right to use the trademark.

第三条. 申请商标注册应当遵循诚实信用原则。不得有下列行为：

Article 3. Applications for trademark registration shall follow the principle of good faith. None of the following acts may be conducted:

（一）属于商标法第四条规定的不以使用为目的恶意申请商标注册的；

(1) where under Article 4 of the Trademark Law, an application for trademark registration is made in bad faith for purpose other than use;

(二) 属于商标法第十三条规定，复制、摹仿或者翻译他人驰名商标的；

(2) where under Article 13 of the Trademark Law, a well-known trademark of a third party is copied, imitated or translated;

(三) 属于商标法第十五条规定，代理人、代表人未经授权申请注册被代理人或者被代表人商标的；基于合同、业务往来关系或者其他关系明知他人先使用的商标存在而申请注册该商标的；

(3) where under Article 15 of the Trademark Law, an agent or a representative applies for registration of a trademark of the client or the represented party without authorization; or an applicant applies for registration of a trademark, on the basis of contractual, business or any other relationship, in the knowledge that the trademark has been used by a third party;

(四) 属于商标法第三十二条规定，损害他人现有的在先权利或者以不正当手段抢先注册他人已经使用并有一定影响的商标的；

(4) where under Article 32 of the Trademark Law, an applicant infringes upon the existing prior rights of a third party, or an applicant registers, by improper means, a trademark which is already in use by a third party and enjoys substantial influence;

(五) 以欺骗或者其他不正当手段申请商标注册的；

(5) where an applicant applies for registration of a trademark by fraud or any other illegal means; and

(六) 其他违反诚实信用原则，违背公序良俗，或者有其他不良影响的。

(6) where there is any other act which compromises the principle of good faith, violates the public order and good customs, or has other ill effects.

第四条. 商标代理机构应当遵循诚实信用原则。知道或者应当知道委托人申请商标注册属于下列情形之一的，不得接受其委托：

Article 4. A trademark agency shall follow the principle of good faith. An agency may not accept a client's entrustment to apply for trademark registration where it knows or should have known that the entrustment falls under any of the following circumstances:

(一) 属于商标法第四条规定的不以使用为目的恶意申请商标注册的;

(1) the circumstance where trademark registration is applied in bad faith for a purpose other than use under Article 4 of the Trademark Law;

(二) 属于商标法第十五条规定的;

(2) the circumstance under Article 15 of the Trademark Law; or

(三) 属于商标法第三十二条规定的。

(3) the circumstance under Article 32 of the Trademark Law.

商标代理机构除对其代理服务申请商标注册外，不得申请注册其他商标，不得以不正当手段扰乱商标代理市场秩序。

A trademark agency may neither apply for registration of trademarks except those of its agency business, nor disturb the order of trademark agency market by other illicit means.

第五条. 对申请注册的商标，商标注册部门发现属于违反商标法第四条规定的不以使用为目的的恶意商标注册申请，应当依法驳回，不予公告。

Article 5. Where a trademark registration department finds a bad-faith application for trademark registration for purpose other than use under Article 4 of the Trademark Law, the application shall be rejected without publication according to the law.

具体审查规程由商标注册部门根据商标法和商标法实施条例另行制定。

The specific examination procedure shall be developed separately by the trademark registration department in accordance with the Trademark Law and the Implementing Regulations.

第六条. 对初步审定公告的商标，在公告期内，因违反本规定的理由被提出异议的，商标注册部门经审查认为异议理由成立，应当依法作出不予注册决定。

Article 6. Where an opposition is filed during the publication period, due to any violation of these Provisions, against a trademark which has been initially approved and published, and where the trademark registration department, upon examination, deems the grounds for the opposition valid, the trademark shall be denied registration according to the law.

对申请驳回复审和不予注册复审的商标，商标注册部门经审理认为属于违反本规定情形的，应当依法作出驳回或者不予注册的决定。

Where a review application is filed against a decision to refuse or deny trademark registration, and where the trademark registration department, upon examination, deems the case in violation against these Provisions, the trademark shall be refused or denied registration according to the law.

第七条. 对已注册的商标，因违反本规定的理由，在法定期限内被提出宣告注册商标无效申请的，商标注册部门经审理认为宣告无效理由成立，应当依法作出宣告注册商标无效的裁定。

Article 7. Where an application is filed, during the statutory period, for declaring a registered trademark invalid due to any violation of these Provisions, and where the trademark registration department, upon examination, deems the grounds for the application valid, the trademark shall be declared invalid according to the law.

对已注册的商标，商标注册部门发现属于违反本规定情形的，应当依据商标法第四十四条规定，宣告该注册商标无效。

Where the trademark registration department finds a registered trademark in violation of these Provisions, the trademark shall be declared invalid according to Article 44 of the Trademark Law.

第八条. 商标注册部门在判断商标注册申请是否属于违反商标法第四条规定时，可以综合考虑以下因素：

Article 8. The trademark registration department, in judging whether a trademark registration application is in violation of Article 4 of the Trademark Law, may collectively consider the following factors:

（一）申请人或者与其存在关联关系的自然人、法人、其他组织申请注册商标数量、指定使用的类别、商标交易情况等；

(1) the quantity, goods specified for use, transaction history, among others, of the trademarks registered by an applicant or any natural person, legal person or other organization affiliated with the applicant;

（二）申请人所在行业、经营状况等；

(2) the industry, state of business operation, among others, of the applicant;

（三）申请人被已生效的行政决定或者裁定、司法判决认定曾从事商标恶意注册行为、侵犯他人注册商标专用权行为的情况；

(3) where the applicant is found, by any administrative decision, adjudication, or judicial decision which has come into force, to have engaged in bad-faith trademark registration or infringement of a third party's exclusive right to a registered trademark;

（四）申请注册的商标与他人有一定知名度的商标相同或者近似的情况；

(4) where the trademark applied for registration is identical with or similar to a trademark with certain degree of fame of a third party;

（五）申请注册的商标与知名人物姓名、企业字号、企业名称简称或者其他商业标识等相同或者近似的情况；

(5) where the trademark applied for registration is identical with or similar to the name of a famous person, the trade name of a company, the abbreviation of a company name, or other business marks; and

（六）商标注册部门认为应当考虑的其他因素。

(6) other factors that the trademark registration department deems necessary for consideration.

第九条. 商标转让情况不影响商标注册部门对违反本规定第三条情形的认定。

Article 9. The circumstance of trademark assignment does not affect the trademark registration department's determination of a violation under Article 3 of these Provisions.

第十条. 注册商标没有正当理由连续三年不使用的，任何单位或者个人可以向商标注册部门申请撤销该注册商标。商标注册部门受理后应当通知商标注册人，限其自收到通知之日起两个月内提交该商标在撤销申请提出前使用的证据材料或者说明不使用的正当理由；期满未提供使用的证据材料或者证据材料无效并没有正当理由的，由商标注册部门撤销其注册商标。

Article 10. Where a registered trademark has not been in use for three consecutive years without justification, any entity or individual may apply to the trademark registration department for cancellation of the trademark. The trademark registration department, upon receipt, shall issue a notice to the registrant of the trademark to submit, within two months from receiving the notice, proofs on use of the trademark prior to the cancellation application, or provide justification for the non-use. Where the registrant fails to submit proofs on use of the trademark within the time limit, or where the submitted proofs are invalid without justification, the registered trademark shall be canceled by the trademark registration department.

第十一条. 商标注册部门作出本规定第五条、第六条、第七条所述决定或者裁定后，予以公布。

Article 11. The trademark registration department shall, upon making a decision or ruling under in Article 5, 6 or 7 of these Provisions, publish the decision or ruling.

第十二条. 对违反本规定第三条恶意申请商标注册的申请人，依据商标法第六十八条第四款的规定，由申请人所在地或者违法行为发生地县级以上市场监督管理部门根据情节给予警告、罚款等行政处罚。有违法所得的，可以处违法所得三倍最高不超过三万元的罚款；没有违法所得的，可以处一万元以下的罚款。

Article 12. Where an applicant makes a bad-faith application for trademark registration in violation of Article 3 of these Provisions, the applicant shall be given administrative punishment

such as warnings and fines based on the circumstances, in accordance with Article 68 of the Trademark Law, by the market regulatory department at or above the county level at the place where the applicant is located or where the violation occurs. Where any illegal gains are obtained, a fine of three times the illegal gains but not more than 30,000 RMB may be imposed; and where no illegal gains are obtained, a fine of less than 10,000 RMB may be imposed.

第十三条. 对违反本规定第四条的商标代理机构，依据商标法第六十八条的规定，由行为人所在地或者违法行为发生地县级以上市场监督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。情节严重的，知识产权管理部门可以决定停止受理该商标代理机构办理商标代理业务，予以公告。

Article 13. Where a trademark agency acts in violation of Article 4 of these Provisions, it shall be ordered to take corrective action within a time limit, and given a warning and a fine of more than 10,000 RMB and less than 100,000 RMB, in accordance with Article 68 of the Trademark Law, by the market regulatory department at or above the county level at the place where the actor is located or where the violation occurs. The directly responsible person in charge and other directly liable persons shall be warned, and given fines of more than 5,000 RMB and less than 50,000 RMB. Where the violation constitutes a crime, the violator shall be held criminally liable according to the law. Where there are serious circumstances, the intellectual property administrative department may decide to suspend accepting cases from the agency, and publish the decision.

第十四条. 作出行政处罚决定的政府部门应当依法将处罚信息通过国家企业信用信息公示系统向社会公示。

Article 14. The government department which makes a decision of administrative punishment shall publish, according to the law, the content of the decision through the National Enterprise Credit Information Publicity System.

第十五条. 对违反本规定第四条的商标代理机构，由知识产权管理部门对其负责人进行整改约谈。

Article 15. Where a trademark agency violates Article 4 of these Provisions, the intellectual property administrative department shall hold a rectification interview with the person in charge.

第十六条. 知识产权管理部门、市场监督管理部门应当积极引导申请人依法申请商标注册、商标代理机构依法从事商标代理业务，规范生产经营活动中使用注册商标的行为。

Article 16. The intellectual property administrative department and market regulatory department shall actively guide applicants to abide by the law in their application for trademark registration, direct trademark agencies to follow legal provisions in their agency business, and regulate the use of registered trademarks in business activities.

知识产权管理部门应当进一步畅通商标申请渠道、优化商标注册流程，提升商标公共服务水平，为申请人直接申请注册商标提供便利化服务。

The intellectual property administrative department shall make trademark application more accessible, streamline trademark registration procedures, improve trademark-related public services, and facilitate direct application for trademark registration by applicants.

第十七条. 知识产权管理部门应当健全内部监督制度，对从事商标注册工作的国家机关工作人员执行法律、行政法规和遵守纪律的情况加强监督检查。

Article 17. The intellectual property administrative department shall improve its internal regulatory system, and strengthen supervisory inspection of civil servants undertaking trademark registration in respect to their administration of laws, rules and regulations, and their compliance with disciplines.

从事商标注册工作的国家机关工作人员玩忽职守、滥用职权、徇私舞弊，违法办理商标注册事项，收受当事人财物，牟取不正当利益的，应当依法给予处分；构成犯罪的，依法追究刑事责任。

Disciplinary action according to the law shall be taken against any civil servant undertaking trademark registration who neglects duty, abuses power, practices favoritism, engages in malpractice, commits malfeasance in registration, accepts property of any interested party, or

seeks illegitimate gains. Where the act constitutes a crime, he or she shall be held criminally liable.

第十八条. 商标代理行业组织应当完善行业自律规范，加强行业自律，对违反行业自律规范的会员实行惩戒，并及时向社会公布。

Article 18. Trademark agency associations shall strengthen industry self-regulation and self-discipline, take disciplinary actions against violating members, and make information available to the public in a timely manner.

第十九条. 本规定自 2019 年 12 月 1 日起施行。

Article 19. These Provisions shall come into force on December 1, 2019.