



# 中国商标法第四次修改 关于商标恶意注册有关条款 的修订

## Bad-faith registration in the 4<sup>th</sup> amendment to the Trademark Law

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商标法第四次修改主要内容

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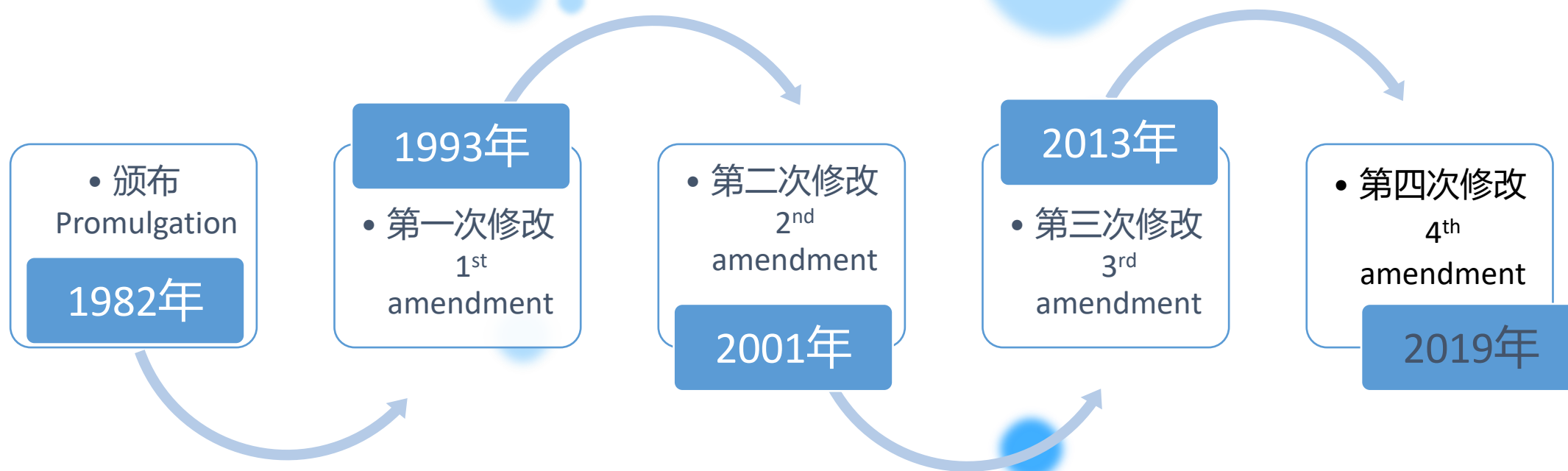
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# 中国商标法制定和修改历程

## History of the Trademark Law





## 商标法第四次修改

### The 4<sup>th</sup> Amendment to the Trademark Law

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》，围绕规制恶意申请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。自2019年11月1日起施行。

The 4<sup>th</sup> Amendment to the Trademark Law was adopted by the Standing Committee of the National People's Congress on April 23, 2019. The Amendment, effective since November 1, 2019, made revisions of several clauses on bad-faith applications and included stronger punishment for infringement of the exclusive right to use trademarks.



## 商标法第四次修正案（2019）——规制恶意申请

The 4<sup>th</sup> Amendment (2019): on bad-faith application

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。

Article 4 Any natural person, legal person, or other organizations that needs to acquire the exclusive right to use a trademark in the production and operation activities shall file an application for trademark registration with the Trademark Office. The application for trademark registration that is bad-faith and not filed for the purpose of use shall be refused.



## 商标法第四次修正案（2019）——规制恶意申请

The 4<sup>th</sup> Amendment (2019): on bad-faith application

不以使用为目的的恶意申请，**可以作为商标异议和无效的绝对理由**。 Application not filed for the purpose of use constitutes absolute grounds of opposition and invalidation.

任何人可以请求异议和无效。 Any person may file for opposition and invalidation.



## 商标法第四次修正案（2019）——规制恶意申请

### The 4<sup>th</sup> Amendment (2019): on bad-faith application

第十九条三款 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。

Article 19.3 The trademark agency knows or has already known that, where the client applies for a trademark that falls into [Article 4](#), Article 15 and Article 32 hereof, the trademark agency shall not accept the entrustment.

商标代理机构的法律责任：商标代理机构违反本法[第四条](#)、第十九条第三款和第四款规定的，由市场监督管理部门给予罚款或者警告处分。

Legal consequences: The trademark agency in violation of Article 4, Article 19.3/19.4 is subject to fines or disciplinary warnings from the administrative department for market regulation.



## 商标法第四次修正案（2019）——规制恶意申请

The 4<sup>th</sup> Amendment (2019): on bad-faith application

第六十八条四款 对恶意商标注册的，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 68.4 In the event of any bad-faith application for trademark registration, such administrative penalties as giving a warning and imposing a fine shall be given, depending on the specific circumstance; in the event of maliciously lodging a lawsuit regarding trademark, the People's Court shall impose penalties in accordance with the law.





## 商标法第四次修正案（2019）——加大惩罚力度

The 4<sup>th</sup> Amendment (2019): stronger punishment

恶意侵权赔偿数额计算倍数：

Compensation multiple for malicious infringement:

一倍以上三倍以下 1-3 times → 一倍以上**五倍**以下 1-**5** times

恶意侵权法定赔偿数额：

Statutory damages for malicious infringement:

三百万元 CNY3mln → **五百万元 CNY5mln**



## 商标法第四次修正案（2019）——加大惩罚力度

### The 4<sup>th</sup> Amendment (2019): stronger punishment

第六十三条四款 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。

Article 63.4 In hearing a case of trademark dispute, the People's Court may, at the request of the right owner, order to destroy the goods bearing counterfeit registered trademark, unless under special circumstances; order to destroy the materials and tools mainly used to manufacture the goods bearing counterfeit registered trademarks, without compensation; or, under special circumstances, order to prohibit the aforesaid materials and tools from entering any commercial channel without compensation.

第六十三条五款 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 63.5 Goods bearing counterfeit registered trademarks shall not be put into any commercial channel by merely having their counterfeit registered trademarks removed.



## 配套规章制度情况 Complementary regulation

《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） Order of the State  
Administration for Market Regulation No.17

自2019年12月1日起施行 Effective as of December 1, 2019



## 配套规章制度——规范商标申请注册行为若干规定

### Several Provisions on Regulating the Application for Registration of Trademarks

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：

（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；

（二）申请人所在行业、经营状况等；

Article 8 When judging whether an application for trademark registration is in violation of Article 4 of the Trademark Law, the trademark registration department may comprehensively consider the following factors:

1) the number of trademarks for which registration is applied by the applicant or any natural person, legal person or other organizations associated with the applicant, the designated categories of use, the trading situation of trademarks, etc.;

2) the industry which the applicant operates in, the status of operation of the applicant, etc.;



## 配套规章制定情况——规范商标申请注册行为若干规定

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（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；

（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；

3) situation of the applicant determined by an effective administrative decision or ruling or judicial judgment as having once committed acts of engaging in malicious trademark registration or infringing the exclusive right of another person to use a registered trademark;

4) situation of a trademark whose registration is being applied for being identical or similar to a well-known trademark of another person;



## 配套规章制定情况——规范商标申请注册行为若干规定

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（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；

（六）商标注册部门认为应当考虑的其他因素。

5) situation of a trademark whose registration is being applied for being identical or similar to the name of a well-known person, an enterprise's trade name, the abbreviation of an enterprise name or any other business logo, etc.; and

6) other factors that the trademark registration department considers should be taken into account.



## 配套规章制定情况——规范商标申请注册行为若干规定

### Several Provisions on Regulating the Application for Registration of Trademarks

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 For an applicant who maliciously applies for trademark registration in violation of Article 3 hereof, the administrative department for market regulation at or above the county level in the place where the applicant is located or where the violation takes place shall, in accordance with Paragraph 4 of Article 68 of the Trademark Law, issue a warning, impose a fine and mete out other administrative penalties according to the circumstances. Where there is any illegal gain, a fine which is three times the illegal gain but not more than CNY30,000 may be imposed; and if there is no illegal gain, a fine of not more than CNY10,000 may be imposed.





## 配套规章制定情况——规范商标申请注册行为若干规定

### Several Provisions on Regulating the Application for Registration of Trademarks

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 violates Article 4 hereof, the administrative department for market regulation at or above the county level in the place where the trademark agency is located or where the violation takes place shall, in accordance with Article 68 of the Trademark Law, order it to make corrections within a specified time limit, issue a warning and impose a fine of not less than CNY10,000 but not more than CNY100,000; issue a warning to the chief person directly in charge and other directly responsible persons and impose a fine of not less than CNY5,000 but not more than CNY50,000; if a crime is constituted, criminal responsibility shall be investigated according to the law. Where the circumstances are serious, the administrative department for intellectual property may decide to stop accepting trademark agency business handled by the trademark agency and make a public announcement of it.





## 配套规章制度情况——规范商标申请注册行为若干规定

Several Provisions on Regulating the Application for Registration of Trademarks

**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 Government departments which make decisions on administrative penalties shall publicize the penalty information to the public through the national enterprise credit information publicity system according to the law.

**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 The administrative department for intellectual property shall hold caution talks on rectification with the persons in charge of trademark agencies which violate Article 4 hereof.



**感谢!**

**Thank you!**