

Standards for Trademark Examination and Trial

**State Administration for Industry and
Commerce of the People's Republic of China**

Trademark
Office

Trademark
Review and
Adjudication
Board

December of 2016



IMPORTANT

The Trademark Office and the Trademark Review and Adjudication Board have revised the *Standards for Trademark Examination and Trial* on basis of widely soliciting opinions from all sources and learning from the foreign examination standards and in combination with years of trademark examination and trial practices, for the purpose of accommodating to the third amendment to the *Trademark Law* and further regulating and well completing the work concerning trademark examination and trial. This amendment added the sound trademark examination standards, the standards for application of Examination Opinions in the examination practices, the standards for application of Paragraph 4, Article 19 of the *Trademark Law*, the standards for application of Article 50 of the *Trademark Law*, the trial standards of Paragraph 2, Article 15 of the *Trademark Law*, and the standards for determination of stakeholders, and made corresponding revision to the examination standards based on the partial revision to Article 10 of the *Trademark Law*, and deleted and added some examination cases to enrich and improve the content of the standards for trademark examination and trial. The revised *Standards for Trademark Examination and Trial* has been approved by the State Administration for Industry and Commerce of the People's Republic of China and is hereby printed and distributed for the implementation in trademark examination and trial of trademark cases by all examination personnel of the Trademark Office, the Trademark Review and Adjudication Board and the Trademark Examination Cooperation Center.

Trademark Office & Trademark Review and Adjudication Board

December of 2016



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Part A

Trademark Examination Standards



Title 1: Examination of Signs That Shall not be Used as Trademark

I. Legal Basis

Article 10 of the *Trademark Law*: The following signs shall not be used as trademarks:

- (1) Those identical or similar to the State name, national flag, national emblem, national anthem, military flag, military emblem, military anthem, medals or the like of the People's Republic of China, as well as those identical to the names or emblems of central government agencies, the names of the specific sites where central government agencies are located, or the names or designs of landmark buildings;**
- (2) Those identical or similar to the State name, national flag, national emblem, military flag or the like of any foreign country, except with the consent of the government of the country concerned;**
- (3) Those identical or similar to the name, flag, emblem or the like of any international intergovernmental organization, except with the consent of the international intergovernmental organization concerned or those unlikely misleading the public;**
- (4) Those identical or similar to official signs or hallmarks indicating control or warranty, except as otherwise authorized;**
- (5) Those identical or similar to the name or sign or mark representing “Red Cross” or “Red Crescent”;**
- (6) Those with the nature of national discrimination;**
- (7) Those that are deceptive and likely to mislead the public with regard to the quality, other features or place of origin of relevant goods; and**
- (8) Those detrimental to socialist morals or customs or having other adverse effects.**

Names of administrative divisions at or above the county level and foreign geographical names well-known to the public shall not be used as trademarks, except where those geographical names have other meanings or serve as a component part of a collective or certification mark. If a trademark using a geographical name has been registered, it shall continue being valid.

This Article enumerates signs that shall not be used as trademarks and specifies the restriction on the use of geographical names as trademarks. The expression “shall not be used as trademarks” indicates that, in addition to being prohibited from registering as trademarks, such signs may not be used as trademarks. Sections II-X of this Title successively describe the understanding and application of each paragraph and item provided in Article 10 of the *Trademark Law*.

II. Those identical or similar to the State name, national flag, national emblem, national anthem, military flag, military emblem, military anthem, medals or the like of the People's Republic of China; and those identical to the



names or emblems of central government agencies, the names of the specific sites where central government agencies are located, or the names or designs of landmark buildings

The “State name” mentioned in this Article includes full name, abbreviation and acronym. In Chinese, the full State name of China is “中华人民共和国”, and the abbreviation is “中国” and “中华”, and in English, the full State name of China is “THE PEOPLE’S REPUBLIC OF CHINA”, and the abbreviation or acronym is “CHN”, “P.R.C.”, “CHINA”, “P.R.CHINA”, “PR OF CHINA”. The “national flag” of China is the Five-star Red Flag. The “national emblem” of China comprises the design of Tian’anmen in its centre under the lights of five stars and encircled by ears of grain and a cogwheel. The “national anthem” is the March of the Volunteers. The “military flag” is the “Eight-One” army flag of the People’s Liberation Army, which is red with a golden star in the upper hoist and Chinese numbers “8” and “1” next to the star. The “army emblem” (a.k.a. “Eight-One” army emblem) shows a red star with golden edges and embedded with golden Chinese numbers of “8” and “1” in the center. The “Eight-One” army emblem is also the emblem of Chinese Army, and the emblems of Chinese Navy and Air Force are based on the main design of the “Eight-One” army emblem, and the Navy emblem is navy blue with silvery grey anchor, while the Air Force emblem is sky blue with golden wings of an eagle. The “military anthem” is the March of the Chinese People’s Liberation Army. The “medals” are badges of honor awarded to persons or organizations which have made contribution to the country or the society by relevant national authority, for example, the Eight-One Medal. “The names of the specific sites where central government agencies are located, or the names or designs of landmark buildings” include “National People’s Congress”, “State Council”, “Zhongnanhai”, “Diaoyutai”, “Tian’anmen”, “Xinhuaamen”, “Ziguangge”, “Huairan Hall” and “Great Hall of the People”, etc.

(I) Those identical or similar to the State name of the People’s Republic of China

1. Where the words or letters of a trademark are identical to the State name of the People’s Republic of China (hereinafter as the “PRC”), such trademark shall be determined to be identical to the State name of the PRC.

For example:



2. Where the meaning, pronunciation or appearance of a trademark is similar to the State name of the PRC which likely misleads the public to consider it to be the State name of the PRC, such trademark shall be determined as similar to the State name of the PRC.

For example:



ZHONGGUO

Designated Service: Real Estate Leasing

CHINAR

Designated Goods: Clothing

(“CHINAR” is meaningless)

Exceptions:

(1) Where a trademark describes an objective thing which will not mislead the public

For example:



Designated Goods: Cosmetics



Designated Service: Bar

(2) Where a trademark contains any word identical or similar to the State name of the PRC, but its entirety is a name of newspaper, periodical or magazine, and consistent with the name of its applicant

For example:



Designated Goods: Newspaper

Applicant: China Consumer Journal

(3) Where a trademark contains words identical or similar to the State name of the PRC, but its entirety is a name of an enterprise or public institution (the application of this Exception requires the satisfaction of the following conditions: the Applicant shall be established with approval of the State Council or authority authorized by the State Council, and the name of the Applicant shall be legally registered with the name registration authority; the trademark applied shall be consistent with the abbreviation of the name of the applicant, and such abbreviation has been approved by the State Council or the authority it authorizes)



(4) Where the State name of the PRC as contained in a trademark of a Chinese applicant is mutually independent from other signs with distinctive features, and the



State name only plays the role of indicating the country of the Applicant

For example:



(II) Those identical or similar to the national flag, national emblem or national anthem of the People's Republic of China

1. Where the words, graphics or sounds of a trademark or the combination thereof are identical or similar to the name, patterns or sounds of the national flag, national emblem or national anthem of the PRC, which is sufficient for the public to associate them with the national flag, national emblem or national anthem of the PRC, such trademark shall be determined as identical or similar to the national flag, national emblem or national anthem of the PRC.

For example:

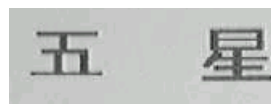


2. Where a trademark contains the words of "five stars" or "red flag" or the patterns of "five stars" or "red flag", but will not cause the public to associate it with the national flag, such trademark shall not be determined as identical or similar to the national flag of the PRC.

For example:



Designated Goods: Fertilizer



Designated Goods: Beer

(III) Those identical or similar to the military flag, military emblem, military anthem or medals of the People's Republic of China

Where the words, graphics or sounds of a trademark or the combination thereof are identical or similar to the name, patterns or sounds of the military flag, military emblem, military anthem or medals of the PRC, which is sufficient for the public to associate them with the military flag, military emblem, military anthem or medals of the PRC, such trademark shall be determined as identical or similar to the military flag, military emblem, military anthem or medals of the PRC.

For example:



(Military Flag)



(Military Emblem)





(Independence and Freedom Medal)



(Liberation Medal)



(Eight-One Medal)



(similar to the National May 1st Labor Medal)

(IV) Those identical to the names or emblems of central government agencies, the names of the specific sites where central government agencies are located, or the names or designs of landmark buildings

For example:



III. Those identical or similar to the State name, national flag, national emblem, military flag or the like of any foreign country

The “State name” mentioned in this Article includes full name, abbreviation and acronym in Chinese and foreign language; “national flag” is the flag which is officially stipulated by the country to represent itself; “national emblem” is the emblem which is officially stipulated by the country to represent itself; and “military flag” is the flag which is officially stipulated by the country to represent the army of the country.

(I) Trademarks identical or similar to the State name of any foreign country

Where the words or letter of a trademark are identical to the State name of a foreign country, such trademark shall be determined to be identical to the State name of such foreign country. Where the words of a trademark are similar to the State name of any foreign country or contains words identical or similar to the State name of any foreign country, such trademark shall be determined as similar to the State name of such foreign country.

For example:



(“FRANCE” is translated as “法国”.)

Designated Goods: Travel Bags



Designated Goods: Paint

Mei Guo

Designated Goods: Soda, Cola

拉脱维雅

Designated Goods: Clothing



(“FRANCE” is translated as “法国”.)

Except under any of the following circumstances:

1. Approved by the government of the country concerned

For the purpose of applying this Exception, an applicant shall submit a written proof of the consent of the government of the country concerned. Where the applicant has registered such trademark in the foreign country concerned for identical or similar goods or services, it shall be deemed as the consent of the government of the foreign country concerned.

2. Having other specific meaning which will not mislead the public

For example:



(Two letters different from the State name of France, “FRANCE”, but the English meaning of this trademark is “candid and sincere”, and it is also a popular English name “Frank”).

Designated Goods: Clothing, Shoes and Ties



(TURKEY is identical to the State name of Turkey, but its English meaning is “turkey (an animal)”).

Designated Goods: Clothing

3. Trademarks identical or similar to the old name of any foreign country

For example:



(Old Name of the United States) Designated Goods: Clothing

However, for particular goods, if it will likely mislead the public with regard to the place of origin of goods, the application shall be rejected in accordance with the provisions of Item (7), Paragraph 1 of Article 10 of the *Trademark Law*.

For example:



Designated Goods: Ginseng



(Old name of Thailand)

Designated Goods: Rice

4. Where the words of a trademark are the combination of two or more Chinese abbreviations of countries, which will not mislead the public with regard to the place of origin of goods

For example:



(A combination of the Chinese abbreviations of China and Thailand)

Designated Goods: Hammer



(A combination of the Chinese abbreviations of China and France)

Designated Goods: Illuminator

However, for particular goods, if it will likely mislead the public with regard to place of origin of goods, the application shall be rejected in accordance with the provisions of Item (7), Paragraph 1 of Article 10 of the *Trademark Law*.

For example:



Designated Goods: Wine

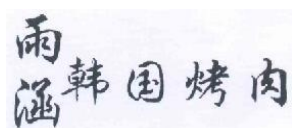
5. Where the State name contained in a trademark is independent from other signs with distinctive features, and such State name only plays the role of true indication of the country of the applicant or is only used to, together with other narrative language, truly indicate the relevant features of the designated goods or services

For example:



(“ITALIANO” is translated as “意大利”.)

Applicant: (ITALIANO) CIELOE TERRA S.P.A.



Designated Service: Restaurant

Applicant: a Chinese natural person

(II) Trademarks identical or similar to the name or pattern of the national flag, national emblem or military flag of any foreign country

Where the words or graphics of a trademark or the combination thereof are identical or similar to the name, pattern or sound of the national flag, national emblem or military flag of any foreign country, which is sufficient for the public to associate

them with the national flag, national emblem or military flag of such foreign country, such trademark shall be determined as identical or similar to the national flag, national emblem or military flag of such foreign country.

For example:



(English translation of “英国国旗”)



(similar to the national flag of the United States)



(similar to the national flag of Italy)

Exception may apply if with the consent of the government of the country concerned. For the purpose of applying this Exception, an applicant shall submit a written proof of the consent of the government of the country concerned. Where the applicant has registered such trademark in the foreign country concerned for identical or similar goods or services, it shall be deemed as the consent of the government of such foreign country.

IV. Those identical or similar to the name, flag or emblem of any international intergovernmental organization

An “intergovernmental organization” mentioned in this Article refers to the organization with certain bylaws that is established by the governments of several countries and regions for particular purpose via treaty or agreement. For example: the United Nations, the European Union, the Association of Southeast Asian Nations, the Organisation of African Unity, the World Trade Organization, the World Intellectual Property Organization, and the Asia-Pacific Economic Cooperation, etc. The name of an international organization includes its full name, abbreviation or acronym. For example: the full English name of “联合国” is the “United Nations” which is abbreviated as the “UN”, and the Chinese abbreviation of the European Union is “欧盟”, while its full English name is the “European Union” which is abbreviated as the “EU”.

Where the character composition or graphical appearance of a trademark or the combination thereof is sufficient for the public to associate it with the name, flag or emblem of an international intergovernmental organization, such trademark shall be determined as identical or similar to the name, flag or emblem of such international intergovernmental organization.

For example:



(“UN” is the English abbreviation of the United Nations.)



(WTO is the English abbreviation of the World Trade Organization.)



(APEC is the English abbreviation of the Asia-Pacific Economic Cooperation.)

Except under any of the following circumstances:

1. Approved by the international intergovernmental organization concerned. For the purpose of applying this Exception, an applicant shall submit relevant proof documents.

2. Having other specific meaning or particular expression form, which will not mislead the public.

For example:



(“UN” is identical to the English initials of the United Nations, but has special expression form on the whole.)

Designated Goods: Hydrometer

V. Those identical or similar to official signs or hallmarks indicating control or warranty

The “official signs or hallmarks” as mentioned in this Article refer to the signs or hallmarks used by official authorities to indicate their control, warranty or inspection over the quality, performance, ingredients or raw materials of the goods.

For example:



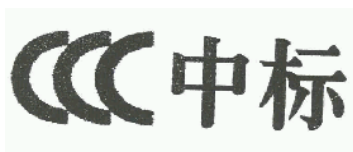
(CCC Mark)



(Uniform Identifier for Foreign Exchange)

Where the words or graphics of a trademark or the combination thereof are sufficient for the public to associate them with official signs or hallmarks indicating control or warranty, such trademark shall be determined to be identical or similar to such official signs or hallmarks indicating control or warranty.

For example:



Designated Goods: Lighting Apparatus and Installations

Except under any of the following circumstances:

1. Authorized by the official authority concerned. For the purpose of applying this Exception, an applicant shall submit the written proof document on such authorization.
2. Having other specific meaning or particular expression form, which will not mislead the public.

For example:



Designated Goods: Cell Phone Batteries and Chargers



Designated Goods: Faucets and Shower Apparatus

VI. Those identical or similar to the name or sign or mark representing “Red Cross” or “Red Crescent”

The “Red Cross” emblem (see Figure 1) as mentioned in this Article is a sign of international humanitarian protection, a special sign for the medical establishments of the armed forces and a sign exclusively used by the Red Cross Society. “Red Crescent” emblem (see Figure 2) is a sign exclusively used by Red Crescent Society in Arab countries and some Islamic countries, of the same nature and function with

the Red Cross emblem. The Red Cross emblem is a red cross against the white background, and the Red Crescent emblem is a red crescent curving to right or left.

Figure 3 shows the Red Crystal emblem (composed of a red frame in the shape of a square on edge on a white ground) is the third special sign for the battlefield rescue provided under the International Humanitarian Law, and has the same legal force and status as that of the Red Cross emblem and Red Crescent emblem.



(Figure 1)



(Figure 2)



(Figure 3)

(I) Where the character composition or graphical appearance of a trademark or the combination thereof is basically and visually the same with the name or pattern of the Red Cross, the Red Crescent or the Red Crystal, such trademark shall be determined as identical to the name or emblem of the Red Cross, the Red Crescent or the Red Crystal.

For example:



(“Red Cross” is translated as “红十字”)



(“Red Crescent” is translated as “红新月”)

(II) Where the character composition or graphical appearance of a trademark is sufficient for the public to mistake it for the name or pattern of the Red Cross, the Red Crescent or the Red Crystal, such trademark shall be determined as similar to the name or emblem of the Red Cross, the Red Crescent or the Red Crystal.

For example:



Designated Goods: Drugs for Medical Purpose

Except for trademarks which have other specific meaning or particular expression form, and will not mislead the public.

For example:



Designated Goods: Fire Extinguishing Apparatus



Designated Goods: Printing Ink and Pigment

VII. Those with the nature of national discrimination

“A nature of national discrimination” as mentioned in this Article refers to that the words, graphics or other composition elements of a trademark contain any content defaming, belittling or holding other discrimination against a particular nation. The determination of “a nature of national discrimination” shall take overall consideration of the composition of a trademark and its designated goods or services.

Where the character composition of a trademark is identical or similar to the name of a nation and defames or belittles such nation, such trademark shall be determined as with the nature of national discrimination.

For example:



Designated Goods: Flush Toilets

Except for trademarks which have other specific meaning or will not generate any national discrimination.

For example:



Designated Goods: Floral Water



Designated Goods: Layette

VIII. Those that are deceptive and likely to mislead the public with regard to the quality, other features or place of origin of relevant goods

The term “that are deceptive” as used in this Article refers to that the trademark makes representation exceeding its inherent degree or inconsistent with the facts, with regard to the quality, other features or place of origin of its designated goods or

services, which likely causes public misunderstanding on the quality, other features or place of origin of relevant goods or services.

(I) Trademarks that likely mislead the public with regard to the quality, trait, function, purpose, raw materials, content, weight, quantity, price, process, technology or other features of relevant goods or services

1. Trademarks that likely mislead the public with regard to the quality, trait or other features of relevant goods or services

For example:



Designated Goods: Sugar and Tea

国酒

Designated Goods: White Spirits



Designated Goods: Mineral Water



Designated Goods: Furniture

周大麟 24K

Designated Goods: Objects of Imitation Gold

2. Trademarks that likely mislead the public with regard to the function or purpose of relevant goods

For example:

清雪剂

Designated Goods: Medicines for Human Purposes

(Such words are of the same pronunciation of “hematocathartic” in Chinese, and will likely cause the public to mistake the designated goods to have the function of blood purification.)

肺力长

Designated Goods: Coffee-based Beverage, Tea, Honey

捷力特 奇效转阴 99

Designated Goods: Medicines for Human Purposes

代谢修复

Designated Goods: Edible Bird's Nest, Canned Fruit



Designated Goods: Dye

3. Trademarks that likely mislead the public with regard to the type, main raw materials, ingredients or other features of relevant goods

For example:



Designated Goods: Food Products Made from Fish



Designated Goods: Vitamin Preparations, Cod Liver Oil

铁观音

Designated Goods: Tobacco

绵泉黑猪

Designated Goods: Poultry (not live)

山楂

Designated Goods: Guiling Jelly, Condiments

功夫酱

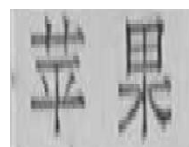
Designated Goods: Sugar, Salt

Except where there is no industry relevance between the meaning denoted by or articles indicated by signs or words applying for registration, and the goods (or services) applying for registration.

山楂果

Hawthorn

Designated Goods: Clothing



Designated Goods: Computer



4. Trademarks that likely mislead the public with regard to the weight, quantity, price, production time, process, technology or other features of relevant goods

For example:

BLUE ARROW
850ml

Designated Goods: Mineral Water

华虎 50 支

Designated Goods: Cigarettes



Designated Goods: Tapes, Optical Discs (audio-video), Glasses

明 嘉靖十八年

Designated Goods: Jewelry

倒 笃

Designated Goods: Poultry (not live), Food Products Made from Fish, etc. (“Daodu (倒笃)” is a pickling method for production of pickles.)



Designated Goods: Clothing

古海共晶

Designated Goods: Anti-freezing Solution

5. Where the names of books, games, movies, TV programs, broadcasting programs or songs that are well known to the public, are designated to use on relevant goods or services, which likely mislead the consumers with regard to the content of the designated goods or services

For example:

三国演义onweb

Designated Goods: Comic Books

俄罗斯方块

Designated Goods: Images and Sound Software for Video Games





Designated Goods: Cartoon

Where a trademark, when used on the designated goods, may directly indicate the quality, main raw materials, function, purpose, weight, quantity and other features of the designated goods, or may mislead the public with regard to such features, the provisions of Item (7), Paragraph 1 of Article 10 of the *Trademark Law* shall apply, or the provisions of Item (7), Paragraph 1 of Article 10 and Item (2), Paragraph 1 of Article 11 of the *Trademark Law* shall apply.

(II) Trademarks that likely mislead the public with regard to the place of origin or source of relevant goods or services

1. Where a trademark, composed of geographical name(s) or contains geographical name(s), the applicant of which is not from such place, when used on the designated goods, will likely mislead the public with regard to the place of origin (in case of geographical name of an administrative division of China at or above the county level without other meaning, or well-known foreign geographical name, the provisions of Paragraph 2 of Article 10 of the *Trademark Law* shall apply to reject the application.)

For example:



(“NEW YORK” is translated as “纽约”, “PARIS” is translated as “巴黎”).

Applicant: Beijing Shengshi Jiewei Clothing & Accessories Co., Ltd.



(“PARIS” is translated as “巴黎”).

Applicant: M. SERGE LOUIS ALVAREZ

Address of Applicant: 18 RUE ROBIN, BP 148 F-26905 VALENCE CEDEX 9 (FRANCE);
Valence, France



**FREDERIQUE CONSTANT
GENEVE**

(“GENEVE” is translated as “日内瓦”.)

Applicant: Frederique Constant Holding N.V.

Address of Applicant: Binnenweg 15, Curacao, Netherlands Antilles

2. Where the character composition of a trademark is different from the geographical name of an administrative division of China at or above the county level or well-known foreign geographical name, but the form or pronunciation thereof is similar thereto and sufficient to cause the public to mistake it as that geographical name, which therefore cause misunderstanding of the place of product of relevant goods

For example:



Designated Goods: Liquors



Designated Goods: Fruit Wine (alcoholic)

Applicant: Nantong Fuhao Wine Co., Ltd.



Designated Services: Café Bar, etc.

Address of Applicant: 605 Villa, Dianxi Pearl Garden, Lijiang City, Yunnan Province

3. Trademarks which are composed of other geographical names other than geographical name of an administrative division of China at or above the county level, or contain such other geographical names, and which will, when being used on their designated goods, likely mislead the public with regard to the place of origin of relevant goods

For example:



Designated Goods: Rice, Corn (ground)



Except for trademark of which the designated goods have no particular association with the place or territory it indicates, and therefore will not mislead the public with regard to the place of origin of goods.

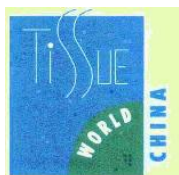
For example:



Designated Goods: Motorcycle, Bicycle, Yacht

4. Trademarks which contain the name of a country other than that of the applicant, and which will, when being used on the designated goods, likely mislead the public with regard to the place of origin of goods

For example:



Applicant: (Belgium) PAPERLOOP S. P.R. L.

5. Trademarks containing any enterprise name that is substantially different from the name of the applicant

The enterprise name mentioned in this Article includes full name, abbreviation, Chinese name, English name and the Chinese Pinyin of the name, etc.

Where the name of administrative division or territory in the enterprise name, or the trade name, industry or operation characteristics or organization form as the trademark may contain is inconsistent with the name of the applicant, such trademark shall be determined to be substantially different from the name of the applicant.

For example:



Designated Goods: Clothing

(Applicant: Weifang Tihui Garment Co., Ltd.)



Designated Goods: Meat

(The letters are Pinyin of “Beijing Maoshengyuan Meat Processing Firm”; Applicant: CHU Xiuli)



Designated Services: Hospital, Veterinary Assistance, Animal Feeding
(Applicant: ZHENG Boang)

潮创集团

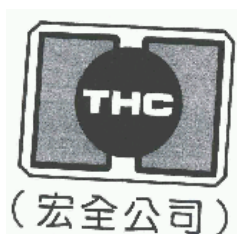
Designated Service: Real Estate Leasing, etc.
(Applicant: Guangzhou Chaochuang Real Estate Development Co., Ltd.)

汇智银行

Designated Services: Legal Research, etc.
(Applicant: Shenzhen Zhongxingda Cultural Communications Co., Ltd.)

Except that the enterprise name contained in the trademark is inconsistent with the name of the applicant but conforms to the business practices and will not mislead the public with regard to the source of goods or services.

For example:



Designated Goods: Plastic Packing Containers
(Applicant: [Taiwan] Hon Chuan Enterprise Co., Ltd.)



Designated Goods: Robots (machinery)
(Applicant: Shenyang Siasun Robot & Automation Co., Ltd.)



Designated Goods: Furniture Fittings, not of metal
(Applicant: Shanghai Yongchun Decoration Co., Ltd.)



Designated Goods: Wire Rope
(Applicant: Chengzhi Shareholding Co., Ltd.)



Designated Goods: Sausage
(Applicant: Shenyang Changxiangsi Food Limited Company; the English may be deemed as the name of the Applicant.)

6. Trademarks which are composed of name of other person and which will, without permission of owner of that name, likely mislead the public with regard to the source of goods or services (Where a trademark is composed of name of a political, religious or historical public figure and is sufficient to produce negative or adverse effect on the politics, economy, culture, religion, nations or other social public interests or public order of the PRC, the application for registration of such trademark may be rejected in accordance with Item (8), Paragraph 1 of Article 10 of the *Trademark Law*.)

Name includes the name used in the household registration, alias, pseudonym, stage name, refined appellation, nickname, etc.

For example:

顾景舟

Note: GU Jingzhou is a craft master in China.

Designated Goods: Tea Set (table ware), Porcelain
(Applicant: Yinxing Yidao Sand-fired and Ceramic Products Design Office)



葛优

Designated Goods: Medical Nutrition, Pesticides, etc.

(Applicant: SHENG Ying)

7. Other trademarks which will likely cause public misunderstanding

环渤海国际自行车赛

Designated Services: Education, Organizing Sports Events, etc.

("Tour of China Bohai" is an international sports event hosted by the General Administration of Sport of China; Applicant: QU Anjiang)

渝洽会

Designated Services: Advertisement, Organizing Commercial or Advertising Fair

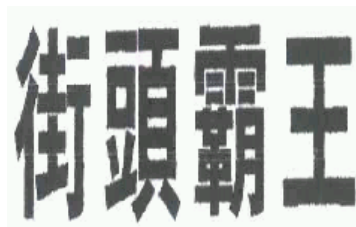
("渝洽会" is the abbreviation of "China Chongqing International Investment and Global Sourcing Fair"; Applicant: Chongqing Xisheng Enterprise Planning Co., Ltd.)

IX. Those detrimental to socialist morals or customs or having other adverse effects

When used in this Article, "socialist morals" refer to the standards and rules for people to live together and their acts in China, and the good social atmosphere and customs that are prevailing during a certain period; "other adverse effects" refer to the negative and adverse effects of the characters, graphics or other composition elements of the trademark on the politics, economy, culture, religion, nations or other social public benefits or public order of China. When determining whether a trademark will be detrimental to socialist morals or customs or have other adverse effects, it shall take into account the social background, political background, historical background, cultural tradition, national customs, religious policies and other elements, as well as the composition of trademark and its designated goods and services.

(I) Trademarks detrimental to socialist morals

For example:





裸跑弟 屌丝男士

(II) Trademarks with adverse political effects

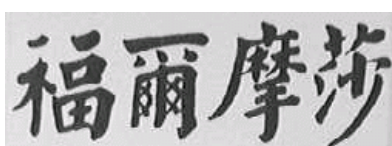
1. Trademarks identical or similar to the name of any leader of any country, region or international political organization

For example:



2. Trademarks detrimental to the sovereign, dignity or image of a State

For example:



(A name for Taiwan, China used by colonialist)



(including incomplete map of China)

3. Trademarks that are composed of numbers with political significance

For example:





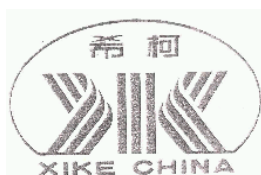
4. Trademarks identical or similar to the name of any terrorist organization, heretical organization, organized crime organization or leader of such organizations

For example:



(III) Trademarks which contain the State name of the People's Republic of China and may therefore lead to the abuse of the State name, and cause other negative and adverse effects on the social public interests or public order

For example:



Designated Goods: Toys, Beauty Ware, Leg Protector



Designated Goods: Paper, Prints



Designated Service: Advertisement



Designated Goods: Wine

(IV) Trademarks detrimental to ethnic dignity or feelings

For example:



Translated as “白鬼子 (a disparaging name used by the black against the white)”

(V) Trademarks detrimental to religious belief, religious feelings or folk belief

The “religion” mentioned in this standard includes Buddhism, Taoism, Islam, Christianity, etc., and different branches of such religion. The folk belief used in this standard mainly refers to Mazu and other folk beliefs.

1. Under any of the following circumstances, a trademark shall be determined to be detrimental to the religious belief, religious feelings or folk beliefs:

(1) Containing names or images of the idols in religion or folk belief, or the combination thereof

For example:



(An Idol of Buddhism)



(An Idol of Taoism)



(Folk Belief)

(2) Containing names or images of the site of religious activities, or the combination thereof

For example:



(MECCA means the holy land of religion, “Mecca/Mekka”).



(common name for Taoist temple)



(A monastery of Tibetan Buddhism in China)

(3) Appellations or images of the sects, scriptures, terms, rituals, customs, exclusive products and clergy of the religion

For example:



(The words of the trademark is Snowland Novice.)



(One of the branches of Taoism)

2. Under any of the following circumstances, a trademark shall not be determined to be detrimental to the religious belief, religious feelings or folk beliefs:

(1) Where, pursuant to the *Regulations on Religious Affairs* (published by the Order No.426 of the State Council in 2004 and came into force from March 1, 2005) under which social and public benefits undertaking may be legally established at the site of religious groups and activities, and without prejudice to the interests of other sites of religious activities, a religious group and the religious enterprise it authorizes applies for registration of a trademark based on the name exclusive to the site of its religious activities;

For example:



Applicant: Songshan Shaolin Temple in China



Applicant: Beijing Yonghegong Lama Temple Administration

(2) Where the words or graphics of a trademark are related to religion or folk belief, but have other meaning or their meaning as related to the religion has generalized, which will not cause the public to associate them with any particular religion or folk belief;

For example:





(Tai Chi Diagram is one of the signs of Taoism, but has already generalized.)



(There are actually mountains named “Foding Mountain” which can be found in Putuo, Zhejiang Province, Shibing County, Guizhou Province and Hengren County, Liaoning Province.)

(VI) Trademarks identical or similar to the name or emblem of any party, governmental authority, social group or other entity or organization in China

The party mentioned in this Article includes China Communist Party and the eight parties collectively referred to as democratic parties, namely, the Revolutionary Committee of the Chinese Kuomintang, the China Democratic League, the China Democratic National Construction Association, the China Association for Promoting Democracy, the Chinese Peasants’ and Workers’ Democratic Party, the China Zhi Gong Party, the Jiusan Society, and the Taiwan Democratic Self-Government League. The name mentioned in this Article includes full name, abbreviation, acronym, etc.; and the emblems mentioned in this Article include emblems, flags, etc.

For example:



(“民建” is the abbreviation of the China Democratic National Construction Association.)



(Identical to the sign of China Consumers Association)



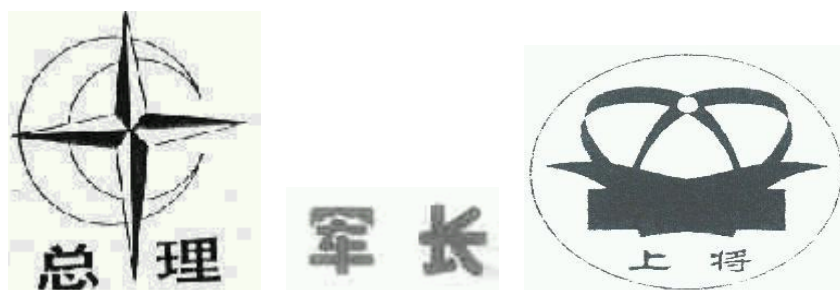
(Similar to the customs emblem of China)

(VII) Trademarks identical to any of the titles of the party or government organ of China or any of the administrative titles or military ranks of the army

Party and government organs mentioned in this Article include organs of China Communist Party, NPC organs, organs of democratic parties, CPPCC organs, administrative organs, adjudication organs and procuratorial organs. For example, the titles of administrative organs include premier, minister, director (general), division chief, section chief and clerk/officer. The administrative posts of the army include army commander, military division level commander, regimental commander, battalion commander, company commander and platoon commander, and the military ranks include generals (General, Lieutenant General and Major General), field officers (Senior Colonel, Colonel, Lieutenant Colonel and Major), and junior officers (Captain, Lieutenant and Second Lieutenant).

Where the words of a trademark are identical to any of the titles of the party or government organ of China or any of the administrative titles or military ranks of the army, such trademark shall be determined to likely produce adverse effects.

For example:



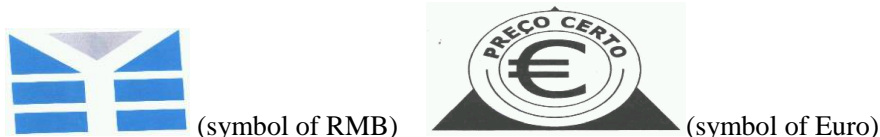
Except for trademarks which have other meaning that will not mislead the public despite containing words identical or similar to any of the titles of the party or government organ of China or any of the administrative titles or military ranks of the army.

For example:



(VIII) Trademarks identical or similar to the pattern, name or symbol of the legal tender of any country

For example:





KRONE (Danish currency is called “KRONE”.) 美金 (“美金” is “US Dollars”).

(IX) Trademarks containing nonstandard Chinese characters or non-standard use of idioms, which will likely mislead the public, especially the minor.

For example:



(The Applicant states that the words in the trademark is “厉捷”.)



(A dot/point is missing, compared with the Chinese character of “逸”.)



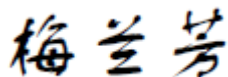
(This is a non-standard use of the idiom of “do whatever one wants (随心所欲)”.)

(X) Trademarks containing words identical or similar to the name of any political, religious, historical or public figure, which are sufficient to produce negative or adverse effects on the politics, economy, culture, religion, nations or social public benefits or public order of China

For example:



(Applicant: natural person)



(“MEI Lanfang (梅兰芳)” is a famous Beijing Opera performance artist in China.)

Designated Services: Education, Training

(Applicant: Beijing Aidan Marketing and Consulting Center)



(“Tsongkhapa (宗喀巴)” is the founder of the Gelug Sect of Tibetan Buddhism.)

(Applicant: Taizhou Huacheng Commodity Co., Ltd.)

(XI) Trademarks having other adverse effects

For example:



(“SARS(非典)” is the abbreviation of “atypical pneumonia”.)

Designated Goods: Paper, Toilet Paper, etc.



(“Ebola (埃博拉)” is a very rare virus.)

Designated Goods: Shower Water Heater, etc.



Designated Goods: Wine



Designated Goods: Fertilizer



(The graphics of this trademark are similar to the pattern of the flag of Macau SAR.)



(The words in this trademark is “anti-corruption (反贪)”.)



X. Examinations of Trademarks Containing Geographical Names

“Administrative divisions at or above the county level” mentioned in this Article include counties, autonomous counties, county-level cities and municipal districts at county level; cities, autonomous prefectures, regions and leagues at prefecture level; provinces, municipalities directly under central government and autonomous regions at provincial level; Hong Kong SAR and Macau SAR; Taiwan. The geographical name of an administrative division at or above the county level shall be subject to the *Administrative Divisions Booklet of the PRC* edited and published by the Ministry of Civil Affairs of the PRC. The geographical names of the administrative divisions at or above the county level mentioned in this Article include full name, abbreviation and the Pinyin of the name of provinces, autonomous regions, municipalities directly under central government, special administrative regions above the county level, provincial capitals, cities specifically designated in the State plan, and famous tourist cities.

“Foreign geographical names well-known to the public” as mentioned in this Article refer to the names of other countries and regions, other than China, well-known to the public in China. Geographical names include full name, abbreviation, foreign language name and common Chinese translation thereof.

“Geographical names have other meanings” as mentioned in this Article refers to that a geographical name has defined meaning as a vocabulary and such meaning is stronger than its meaning as a geographical name, and there will not mislead the public.

(I) Examination of trademarks containing geographical names of administrative divisions at or above the county level

Signs composed of geographical names of administrative divisions at or above the county level, or containing geographical names of administrative divisions at or above the county level, shall not be used as trademarks.

For example:



Except under any of the following circumstances:



1. The geographical name has any other meaning and such meaning is stronger than its meaning as a geographical name.

For example:



2. A trademark is composed of a geographical name and other characters and having other meaning in entirety that is stronger than the meaning of the geographical name

For example:



Designated Service: Drugs Retail or Wholesale Service, etc.



Designated Goods: Preserved Pickles



Designated Goods: White Spirits

3. A trademark is composed of abbreviations of the geographical names of two or more administrative divisions, which will not mislead the public with regard to the place of origin or other features of the goods

For example:



Designated Goods: Fertilizer

Except for application for registration of a trademark which likely misleads the consumers with regard to the place of origin, service content or other features of its designated goods, such application shall be rejected in accordance with the provisions of Item (7), Paragraph 1 of Article 10 of the *Trademark Law*.

For example:



Designated Service: Sightseeing Tourism

4. A trademark is composed of Pinyin of geographical names other than those of provinces, autonomous regions, municipalities directly under central government, special administrative regions, provincial capitals, cities specifically designated in the State plan, and famous tourist cities, and will not mislead the public with regard to the place of origin of the goods concerned

For example:



Designated Goods: Gearing (machinery)

(TAI XING has the same Pinyin as Taixing City, Jiangsu Province.)



XIANG HE Designated Goods: Bicycles

(“XIANG HE” has the same Pinyin as Xianghe County, Hebei Province.)

(II) Examination of trademarks containing foreign geographical names well-known to the public

Signs composed of or containing foreign geographical names well-known to the public shall not be used as trademark.

For example:



(California, United States) Designated Goods: Beer, Mineral Water



(Olympia, Greece) Designated Goods: Clothing



(Berlin, Capital of Germany) Designated Goods: Beer



(Warsaw, Capital of Poland) Designated Goods: Shoes

Except for trademarks composed of foreign geographical names well-known to the public and other words, which have other meaning in entirety and will not mislead the public with regard to the place of origin of goods when being used on the designated goods.

For example:



Designated Goods: Briefcase, Umbrella

(London fog is a kind of natural phenomenon.)

(III) Except for trademarks which contain geographical names independent from other signs with distinctive features, and for which the geographical names only play the role of truly indicating where the applicant locates.

For example:



Applicant: YANG Honglai

Address: First Avenue, Chagugang Town,
Wuqing District, Tianjin



Applicant: Phoenix Co., Ltd.

Address: No.20 Tangnan Road, Pudong New
Area, Shanghai



(“GENEVE” is translated as “日内瓦”.)

Applicant: QUINTING S.A. Address: Geneva





AMBREGRIS (“PARIS” is translated as “巴黎”.)

Applicant: SYLVIE JESSUA

Address: 11, quai de la Gironde, F-75019 PARIS

(IV) Except where geographical names serve as a component part of a collective or certification mark.

For example:



Designated Goods: Rice Wine

Applicant: Shaoxing Rice Wine Industry Association

帕尔玛火腿

Designated Goods: Ham

Applicant: Consorzio del Prosciutto di Parma



Title 2: Examination of Distinctive Features of Trademark

I. Legal Basis

Article 11 of the *Trademark Law*: The following marks shall not be registered as a trademark:

- (1) those only having the generic names, patterns or models of the goods in respect of which the trademark is used;
- (2) those only having direct reference to the quality, main raw materials, function, use, weight, quantity or other features of the goods in respect of which the trademark is used;
- (3) those that otherwise lack distinctive features.

Any of those marks mentioned in the preceding paragraphs can be registered as a trademark only after it has acquired distinctive features in practical use and become distinguishable.

II. Relevant Interpretations

Distinctive features of a trademark refer to those features which a trademark shall have and are sufficient to enable relevant public to distinguish the source of goods. When judging on whether a trademark has distinctive features or not, the following shall be considered comprehensively: meaning, appellation and appearance composition of the mark constituting the trademark, the designated goods of the trademark, the recognition habits of relevant public on the designated goods of the trademark, the situation of actual use in the industry of the designated goods of the trademark, and other factors.

What explains and states in this Title is mainly concerning the examination of distinctiveness of ordinary trademarks, and the examination of distinctiveness of the three-dimensional trademarks, sound trademarks and color combination trademarks is described in other Titles. The application of each paragraph or item in Article 11 of the *Trademark Law* in the examination will be explained below one by one.

III. Those only having the generic names, patterns or models of the goods in respect of which the trademark is used

For the purpose of this Article, “generic names, patterns or models” refer to the names, patterns or models stipulated by national or industrial standards or the conventional ones, and names include full name, abbreviation, acronym and folk name.

- (I) Marks only having generic names of designated goods

For example:



Designated Goods: Ginseng

MULLER

(“MULLER” may be translated as “研磨机”.)

Designated Goods: Grinding Tools (Hand-tools)



(II) Marks only having generic patterns of designated goods

For example:



Designated Goods: Apple



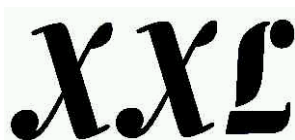
Designated Goods: Sole

(II) Marks only having generic models of designated goods

For example:



Designated Goods: Adhesives
for Industrial Purposes



Designated Goods: Clothing



(ZK : combined air conditioning
units code; T: general units
code)

Designated Goods: Air-
conditioner

IV. Those only having direct reference to the quality, main raw materials, function, use, weight, quantity or other features of the goods in respect of which the trademark is used

“Only having direct reference to” means that a trademark only consists of signs having direct illustration and description of the quality, main raw materials, function, use, weight, quantity of designated goods or the content, quality, method, purpose, object and other features of designated services, or a trademark as a whole is only a direct representation of the foregoing despite containing other components.

(I) Marks only having direct representation of the quality of designated goods

For example:



Designated Goods: Edible Oil



Designated Goods: Rice

Except for marks which do not have only direct representation of the quality of designated goods, for example:



纯净山谷

Designated Goods: Meat, Edible Oil

(II) Marks only having direct representation of the main raw materials of designated goods

For example:

彩棉

Designated Goods: Clothing

龙眼

Designated Goods: Candy

田七

Designated Goods: Medicines for Human Purposes

Except for marks which do not have only direct representation of the raw materials of designated goods, for example:

桔子红了

Designated Goods: Canned Fruit, Jam

(III) Marks only having direct representation of the function or use of designated goods

For example:



Designated Goods: Vehicle Tires

SAFETY

Designated Goods: Leakage Protector

纯净气

Designated Goods: Gas Purification Device

溶栓清脂

Designated Goods: Pharmaceutical Preparation

脑基因

Designated Goods: Medical Nutrition Drinks

(IV) Marks only having direct representation of the weight or quantity of designated goods

For example:

50kg

Designated Goods: Rice

50支

Designated Goods: Cigarettes

四菜一汤

Designated Service Item: Restaurant



(V) Marks only having direct representation of other features of designated goods

1. Marks only having direct representation of particular consumers of designated goods or services, for example:

女过四十

Designated Goods: Medical Nutrition Products

醫生

Designated Goods: Medical Surgical Groves

2. Marks only having direct representation of the price of designated goods or services, for example:

百元店

Designated Service Item: Promotion for Others

九块九

Designated Goods and Services: Fertilizer,
Promotion for Others

3. Marks only having direct representation of the content of designated goods or services, for example:

名师说课

Designated Goods: Compact Disc, Computer Software
(recorded)

炭烤鱼

Designated Service Item: Restaurant

名车快修

Designated Service Item: Auto Repair and Maintenance

Except for marks which will become a distinctive trademark when combining with other elements, for example:



Designated Goods: Restaurant

4. Marks only having direct representation of the style or taste of designated goods, for example:

中式

Designated Goods: Furniture

果味夹心

Designated Goods: Biscuit



5. Marks only having direct representation of the mode and methods of use of designated goods, for example:

自助

Designated Service Item: Education, Publication
of Books

冲泡

Designated Goods: Instant Noodles

6. Marks only having direct representation of the production process of designated goods, for example:

湘绣
XIANGXIU

Designated Goods: Clothing

腊染

Designated Goods: Cloth

7. Marks only having direct representation of the place, time, year or other features of production of designated goods, for example:

AMERICAN NATIVE

(translated as “美国土产”)

Designated Goods: Cigarettes

990418

Designated Goods: Liquors

5.5 度

Designated Goods: Aperitif

8. Marks only having direct representation of the form of designated goods or services, for example:

SOLID

(translated as “固体的”)

Designated Goods: Silicate, Glue for
Industrial Purposes

果晶

(“果晶 (fruit-taste crystal powder)” is a form of
solid drinks.)

Designated Goods: Fruit Juice Beverages (non-
alcoholic)

9. Marks only having direct representation of the period of validity, warranty period or service time of designated goods, for example:

全天

Designated Service Item: Radio Broadcasting, Cable
Television Broadcasting

24 小时

Designated Service Item: Bank

10. Marks only having direct representation of the business place of service, sales place of goods or geographical scope, for example:



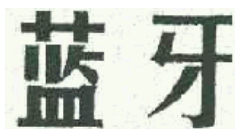


Designated Service: Restaurant



Designated Goods: White Spirits

11. Marks only having direct representation of technical features of goods, for example:



Designated Goods: Telephone



Designated Goods: Bath Fittings



Designated Goods: Alloys of Common Metals



Designated Service Item: Information Transfer

Near Field Communication (近场通讯): a short distance wireless communication technology

Eutectic (共晶) technology is applied in the metallurgical industry and the heat treatment industry. A liquid phase simultaneously crystallizes into two different crystal structures of different components under a certain temperature.

V. Those that otherwise lack distinctive features

Marks that otherwise lack distinctive features refer to marks which, per se or when being used on designated goods as a trademark, do not represent the source of goods according to the social common concept, other than those provided in Items (1) and (2), Paragraph 1 of Article 11 of the *Trademark Law*. They mainly include:

(I) Over-simple lines, general geometric figure

For example:



(II) Over-complicated words, patterns, numbers, letters or combination thereof

For example:



Designated Goods: Tea and Tea Drinks



Designated Goods: Candy



(III) One or two letters in general expression form.

For example:



Designated Goods: Clothing



Designated Goods: Watch,
Clock



Designated Goods:
Concrete Building
Elements

Except for marks which are not common words or which as a whole become distinctive due to combination of other elements. For example:



Designated Goods: Jewelry



Designated Goods: Sewing Machine Oil

(IV) Arabic numerals in common form

For example:



Designated Goods: Lipstick



Designated Goods:
Disinfectant



Designated Goods:
Shoes

Except for marks which are not in common form or which as a whole become distinctive due to combination of other elements. For example:



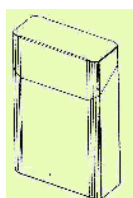
Designated Goods: Industrial Grease



Designated Goods: Water Trough

(V) Ordinary packing, containers or decorative patterns of designated goods

For example:



(Two-dimensional Mark)

Designated Goods: Cigarettes



(Two-dimensional Mark)

Designated Goods: Rice Wine



Designated Goods: Plates



Except for marks which as a whole become distinctive due to combination with other elements. For example:



Designated Goods: Mineral Water



Designated Goods: Chocolate Bar

Note: each chocolate bar is printed with Ritter sports.



Designated Goods: Glass (container)

(VI) Single Color

For example:



(VII) Phases or sentences expressing the features of goods or services, common advertising language

For example:

一旦拥有，别无所求

Designated Goods: Travel Suitcase, Bag

Note: providing guidance on the use object

让养殖业充满生机

Designated Goods: Fodder

Note: expressing the effects of the use of goods

Except for marks which as a whole become distinctive due to combination with other elements. For example:



Designated Service Item: Insurance



Designated Goods: Chinese Patent Medicine

Note: the words of the trademark is “caring” or “daughter”

L'OREAL, BECAUSE I'M WORTH IT

Designated Goods: Cosmetics

(VIII) Ordinary names of trade place, trading terms or signs of the industry or relevant industry

For example:



Designated Goods: Clothing



Designated Service Item: Promotion for Others



Designated Goods: Computer Software
(recorded)



Designated Goods: Manicure Sets

Except for marks which as a whole become distinctive due to combination with other elements.

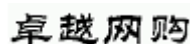
For example:



Designated Service Item: Promotion for Others



Designated Goods: Metal Floor, Hardware



Designated Services: Promotion for Others

(IX) Organization form, industry name or abbreviation of an enterprise

For example:



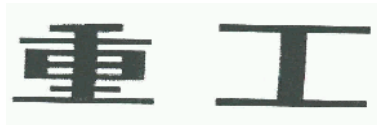
Designated Goods: Printed Publications

("INC" is translated as "公司".)



Designated Goods: Printed Publications





Designated Goods: Hoisting and Conveying Machinery

(“重工业” is an abbreviation of heavy industry in the industry.)

Except for marks which as a whole become distinctive due to having other components, for example:



Designated Goods: Audio Device (“INC” is translated as “公司”.)



Designated Goods: Excavator

(X) Marks only consisting of telephone number, address, house number or the like

For example:

95557

Applicant: Xiamen Airlines

(XI) Common Greeting Words

For example:

新年快乐

VI. Examination of trademarks containing marks without distinctive features

(I) Where a trademark consists of marks without distinctive features and other elements, and such marks without distinctive features are consistent with the features of its designated goods or services, and will not mislead relevant public according to the business practices and consumption habits, the relevant prohibitory provisions shall not apply, and only the similarity research on the distinctive part is required.

For example:

利郎商务男装

Designated Goods: Clothing, Shoes



Designated Goods: Cupboard, Office Furniture



松下电器

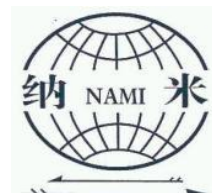
Designated Goods: Sports Apparatus

(II) Where a trademark consists of marks without distinctive features and other elements, but it is difficult for the relevant public to identify the source of goods or services through other elements or the entire trademark, it shall still be deemed as lack of distinctive features.

For example:



Designated Goods: Adhesives for Industrial Purposes

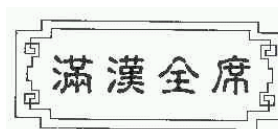


Designated Goods: Clothing



Translated as “可靠的”

Designated Goods: Metal Box



Designated Services: Restaurant

Except for trademarks which such other elements or its entirety can play the role of distinguishing the source of goods or services. For example:



SHNEGHUA 502

Designated Goods: Adhesives for Industrial Purposes



纳 米

Designated Goods: Nano Clothing



“SHOE” is translated as “鞋”.

Designated Goods: Shoes



Reliable as “可靠的”.

Designated Goods: Metal Cabinet



Translated as “纯净”

Designated Goods: Mineral Water



Designated Services: Restaurant

VII. Examination of trademarks that have acquired distinctive features through use

Marks which per se do not have distinctive features but have acquired distinctive features of the trademark through use, and are able to play the role of distinguishing the source of goods or services, may be registered as trademark.

For example:



Designated Goods: Toothpaste



Designated Goods: Yogurt



Designated Goods: Shoe Polish

Examination of trademarks that have acquired distinctive features through use shall consider the awareness of the relevant public on such trademarks, the situation of the applicant's actual use of such trademarks and other elements in the acquisition of distinctive features of such trademarks through use.



Title 3: Examination of Identicalness or Similarity of Trademarks

I. Legal Basis

Article 30 of the *Trademark Law*: Where a trademark, the registration of which has been applied for, is not in conformity with the relevant provisions of this Law, or it is identical or similar to the trademark of another person that has, in respect of the same or similar goods, been registered or, after examination, preliminarily approved, the Trademark Office shall reject the application and shall not announce the said trademark.

Article 31 of the *Trademark Law*: Where two or more applicants apply for the registration of identical or similar trademarks for the same or similar goods, the preliminary approval, after examination, and the announcement shall be made for the trademark which was first filed. Where applications are filed on the same day, the preliminary approval, after examination, and the announcement shall be made for the trademark used first, and the application of the others shall be rejected and their trademarks shall not be announced.

II. Relevant Interpretations

Identicalness of trademarks means that both trademarks are basically and visually the same and will likely confuse the relevant public with regard to the source of goods or services when being used on the same or similar goods or services.

Similarity of trademarks means that trademarks are similar in font, pronunciation or meaning, or the overall arrangement and combination method or appearance of the combination of words and graphics in case of word trademark, or similar in shape or appearance in case of three-dimensional trademarks, or similar in color or color combination in case of color trademark, or similar in auditory perception or overall music image in case of sound trademark, and will confuse the relevant public with regard to the source of goods or services when being used on the same or similar goods or services.

Identical goods or services include goods or services of the same name and of different names but referring to the same thing or content.

Similar goods refer to goods which are identical or basically identical in terms of function, purpose, production department, sales channel, consumers or other aspects.

Similar services refer to services which are identical or basically identical in terms of purpose, content, method, object or other aspects of services.

The determination of identical or similar goods or services shall refer to the *International Classification Form of Goods and Services for Trademark Registration* and the *Similar Goods and Services Distinguishing Form*.

When determining the identicalness or similarity of trademarks, one shall first determine whether the designated goods or services are the same or similar goods or services, and then judge whether the signs of such trademarks are identical or similar in terms of the font, pronunciation, meaning and overall expression of the trademark



and per the standard of the general attention of the relevant public, by adopting the method of overall observation and comparison of main parts, and take into account the distinctiveness of the trademark, the awareness of prior trademark, the likelihood of confusing the relevant public with regard to the source of goods or services due to use on the same or similar goods or services, and other elements.

III. Examination of Identicalness of Trademarks

(I) Identicalness of Word Trademarks

Identicalness of word trademarks means that both trademarks use the same language and the same character composition and arrangement order, and will likely confuse the relevant public with regard to the source of goods or services. Where both trademarks have slight difference due to the font, the capitalized or small letters, or the horizontal or vertical arrangement of words, they shall be determined as identical trademarks.

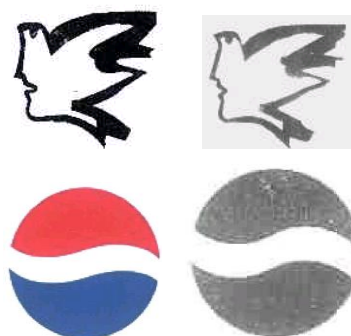
For example:



(II) Identicalness of Design Trademarks

Identicalness of design trademarks means that both trademarks have visually and basically the same design, and will likely confuse the relevant public with regard to the source of goods or services.

For example:

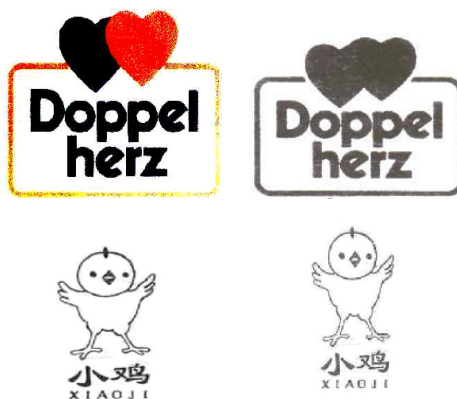


(III) Identicalness of Combination Trademark



Identicalness of combination trademarks means that both trademarks have the same character composition, graphical appearance and arrangement and combination method, and are therefore visually and basically the same in appellation and entirety, which likely confuse the relevant public with regard to the source of goods or services.

For example:



IV. Examination of Similarity of Trademarks

(I) Examination of Word Trademarks

1. Where two Chinese trademarks are composed of the same Chinese characters but are different in font, design, phonetic notation, arrangement and order, and will likely confuse the public with regard to the source of goods or services, they shall be determined as similar trademarks.

For example:



2. Where the words of both trademarks are composed of reduplicated characters or words and will likely confuse the relevant public with regard to the source of goods or services, they shall be determined as similar trademarks.

For example:



3. Where both Chinese trademarks are composed of three or more Chinese characters and only have one different Chinese character, and have no obvious distinct in meaning or are meaningless, which will likely confuse the relevant public with regard to the source of goods or services, they shall be determined as similar trademarks.

For example:



However, if the pronunciation of the first Chinese character and the font of both trademarks are obviously different, or both trademarks have different overall meaning, which cause their entirety to be obviously distinctive, and will not likely confuse the relevant public with regard to the source of goods or services, such trademarks shall not be determined as similar trademarks.

For example:



4. Where both trademarks have the same or similar pronunciation of words or similar font or overall appearance, which will likely confuse the relevant public with regard to the source of goods or services, they shall be determined as similar trademarks.

For example:





MACAO POLO

EXPO



苗方清顏

苗芳青顏

易糖

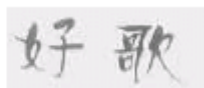
易唐



The following trademarks which have obvious different meaning, font or overall appearance and will not likely confuse the relevant public with regard to the source of goods or services shall not be determined as similar trademarks.

For example:

好哥



高太丝

高泰斯

幸运树



幸运数
容达



FUDA



5. Where both trademarks have obvious different character composition or pronunciation but are similar in font, which will likely confuse the relevant public with regard to the source of goods or services, they shall be determined as similar trademarks.

For example:

酷几

酷儿

花中玉

花中玉

思琪

恩琪

BOSS

13055

8088

乐土

乐士



6. Where both trademarks have obvious different character composition or pronunciation but are identical or similar in terms of meaning, which will likely confuse the relevant public with regard to the source of goods or services, they shall be determined as similar trademarks.

玫瑰花

红太阳

精卫

CROWN

(translated as “皇冠”)

红黑

玫瑰

太阳

精卫鸟

皇冠

ROUGE ET NOIR

(French translation of “红与黑”)

3506

Onetwothree

(translated as “123”)

B³

SK-TWO

三五零六

123

B三

SK-Π

7. Where both trademarks are composed of the same foreign language, letters or numbers but different in font or design, which will likely confuse the relevant public with regard to the source of goods or services, they shall be determined as similar trademarks.

For example:





However, two trademarks under any of the following circumstances shall not be determined as similar trademarks:

(1) Where both trademarks are composed of one or two foreign language letters in non-general font, and are meaningless and obviously different in font, which causes both trademarks to be obviously distinctive as a whole and will not likely confuse the relevant public with regard to the source of goods or services.

For example:





(2) Where both trademarks are composed of three or more foreign language letters but in different order or of obviously different pronunciation or font, and are meaningless or have different meaning, which causes both trademarks to be obviously distinctive as a whole and will not likely confuse the relevant public with regard to the source of goods or services.

For example:



ARNEGI

(Meaningless)

AIGNER

(Meaningless)

AICIB

(Meaningless)



(translated as “出租车”)



HBS 华博士

8. Where both foreign trademarks are composed of four or more letters and only have one or more different letter, and have no obvious distinct in meaning or are meaningless, which will likely confuse the relevant public with regard to the source of goods or services, they shall be determined as similar trademarks.

For example:



SOMI

(Meaningless)

SOMIS

(Meaningless)

BILLDAN

(Meaningless)

BILLDANY

(Meaningless)

SUNMIGHT

(translated as “太阳力量”)

SUNLIGHT

(translated as “阳光”)

CAROLFLEX

(Meaningless)

CARPOFLEX

(Meaningless)

McGOO

(Meaningless)

MCGOO

(Meaningless)

Yestar

(Meaningless)

ycstar

(Meaningless)

TREC

(Meaningless)

TREG

(Meaningless)

However, if the pronunciation of the first letter and the font of both trademarks are obviously different, or both trademarks have different overall meaning, which cause their entirety to be obviously distinctive, and will not likely confuse the relevant public with regard to the source of goods or services, such trademarks shall not be determined as similar trademarks.

For example:

DESIRE

(translated as “愿望”)

IESIRÉ

(Meaningless)

RELGAN

(Meaningless)

SELGAN

(Meaningless)





(translated as “马”)



(translated as “房子”)



(translated as “思索”)



(translated as “谢谢”)



(Meaningless)



(Meaningless)

9. Where both trademarks are composed of two foreign words but in different order, and there is no obvious distinction in meaning, which will likely confuse the relevant public with regard to the source of goods or services, they shall be determined as similar trademarks.

For example:



(HAWK is translated as “鹰”, and WOLF is translated as “狼”).



(Win is translated as “赢”, and tech is translated as “技术学院”).

10. Where two foreign language trademarks express basically the same meaning but are different in forms such as single and plural form, gerund, abbreviation, with or without articles, comparative or superlative and part of speech, which will likely confuse the relevant public with regard to the source of goods or services, they shall be determined as similar trademarks.

For example:



(single form)



(plural form)



(common form of verbs)



(gerund)



Saint angelo

(full spelling)

St angelo

(abbreviation)

BEGONIA

(common form of nouns)

La Bégonia

(nouns with articles)

Beautiful

(positive degree of adjectives)

More Beautiful

(comparative of adjectives)

Brave

(adjective form)

Bravery

(noun form)

PROSPER

(verb form)

Prosperity

(noun form)

i n v e n t

(verb form)

Inventor

(noun form)

11. Where a trademark is only composed of the prior trademark of others and the generic name or model of the goods concerned, which will likely confuse the relevant public with regard to the source of goods or services, it shall be determined as similar to that prior trademark.

For example:

蒙 原

(Designated Goods: Processed Meat)

蒙原肥牛

(Designated Goods: Meat)

綠 安

(Designated Goods: Working Clothes)

绿安服饰

(Designated Goods: Shirts)





(Designated Service: Bank)

通和金融

(Designated Service: Bank)



宏源藥業

HONGYUAN PHARMACEUTICAL

12. Where a trademark is only composed of the prior trademark of others and words directly representing the quality, main raw materials, function, use, weight, quantity or other features of the goods concerned, which will likely confuse the relevant public with regard to the source of goods or services, it shall be determined as similar to that prior trademark.

For example:



(Designated Goods: Plant Growth Regulator)

日新生物

(Designated Goods: Preparations for
Eliminating Noxious Animals)

碧清

(Designated Goods: Yogurt)

碧清香

(Designated Goods: Yogurt)



(Designated Goods: Alcoholic Drinks)

九月红

(Designated Goods: Liquors)

老龙潭

(Designated Goods: Mineral Water)



(Designated Goods: Mineral Water)

富力

(Designated Goods: Videophone)

富力通

(Designated Goods: Videophone)



首信

(Designated Goods: DVD Player)

首信高科

(Designated Goods: DVD Player)

ADAM

(Designated Goods: Sport Shoes)

adamSport

(Designated Goods: Shoes)

雅妮
YA NI

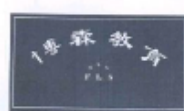
(Designated Goods: Cosmetics)

雅妮本草
YANIBENCAO

(Designated Goods: Cosmetics)

博森

(Designated Services: School Education)



(Designated Services: School Education)

13. Where a trademark is only composed of the prior trademark of others and some character compositions representing the place of production, sale or use of the goods concerned, which will likely confuse the relevant public with regard to the source of goods or services, it shall be determined as similar to that prior trademark.

For example:

丽人

(Designated Service: Beauty Salon)

丽人坊

(Designated Service: Beauty Salon)

金鼎

(Designated Service: Furniture)

金鼎轩

(Designated Service: Furniture)

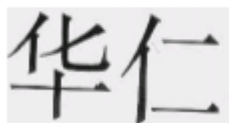
红鸟

(Designated Goods: Clothing)

红鸟屋

(Designated Goods: Clothing)





(Designated Goods: Edible Propolis)



(Designated Goods: Honey)



(Designated Goods: Ceramic Ware)



(Designated Goods: Pottery)



(Designated Service: Restaurant)



(Designated Service: Restaurant)



(Designated Goods: Medicines for Human Purposes)



(Designated Goods: Herb Teas for Medical Purposes)



(Designated Service Item: Restaurant)



(Designated Service Item: Restaurant)



(Designated Service Item: Restaurant)



(Designated Service Item: Restaurant)

14. Where a trademark is only composed of the prior trademark of others and modified adjectives or adverbs as well as other less distinctive words in the trademark, and these two trademarks have basically the same meaning, which will likely confuse the relevant public with regard to the source of goods or services, such trademark shall be determined as similar to that prior trademark.



For example:

吉澳

新吉澳

百盛

百盛世家

長裕

衣長裕

超力

超力一族

活 力

活力派

绅士

绅士风

(Designated Goods: Clothing)

(Designated Goods: Clothing)

依丝

真 依 絲

美人娇

好美人娇

吉祥鳥

东方吉祥鸟

OSTRICH

GOLD OSTRICH



(translated as “鸵鸟”)

DRAGON

(translated as “龙”)

 领袖
Lingxiu

KING

(translated as “国王”)

(translated as “金鸵鸟”)

BIG DRAGON

(translated as “大龙”)

金领袖

NEW KING

(translated as “新国王”)

Trademarks which have obvious different meanings or overall appearance and will not likely confuse the relevant public with regard to the source of goods or services shall not be determined as similar trademarks.

For example:

球

球王

太阳

蓝太阳

飞云

飞云岭

王子

聪明小王子

15. Where two trademarks or any one of them is composed of two or more relatively independent parts, and the two trademarks have similar distinctive parts, which likely confuse the relevant public with regard to the source of goods or services shall be determined as similar trademarks.

For example:

万里长城始于秦

萬里長城

精彩生活 愛麗斯

愛麗斯

Bor Jiann's
HUNTER

HUNTER



ADA

benge 奔格

benge 本格

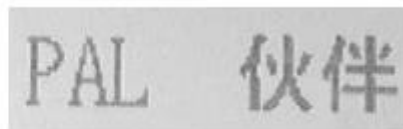
FENICIA

FELICIA
法莱亚

波霓
Bonny

Bonny
博尼





Trademarks which have obvious different overall meaning and will not likely confuse the relevant public with regard to the source of goods or services shall not be determined as similar trademarks.

For example:



22世纪

世纪

K 宝

M 宝

16. Where a trademark completely contains prior word trademark of others with certain awareness or relatively strong distinctiveness, which likely cause the relevant public to believe that they are serial trademarks and therefore confuse the relevant public with regard to the source of goods or services, such trademark shall be determined as similar to that prior word trademark.

For example:

月圆三千里

(Designated Services: Restaurant)

三千里

(Designated Services: Restaurant)

星星梦特娇

(Designated Goods: Clothing)

夢特嬌

(Designated Goods: Clothing)

欧莱雅海哲

(Designated Goods: Cosmetics)

欧莱雅

(Designated Goods: Cosmetics)

红狮三龙

(Designated Goods: Paint)

红 狮

(Designated Goods: Paint)

凯悦长城
KAIYUECHANGCHENG

(Designated Goods: Wine)

長 城

(Designated Goods: Wine)

海湾浪琴
HAWAIIAN LANCHE

(Designated Goods: Watches)

浪 琴

(Designated Goods: Watches)



臻氏哈根达斯

(Designated Goods: Ice Cream)

哈根达斯

(Designated Goods: Ice Cream)



(Designated Goods: Lubricant)



(Designated Goods: Lubricant)

17. Where a trademark containing Chinese characters and their corresponding Pinyin and a trademark only containing the same Pinyin will likely confuse the relevant public with regard to the source of goods or services, these two trademarks shall be determined as similar trademarks.



(II) Examination of Design Trademarks

1. Where the composition of design and overall appearance of two trademarks are similar, which will likely confuse the relevant public with regard to the source of goods or services, they shall be determined as similar trademarks.

For example:



2. Where a trademark completely contains prior design trademark of others with certain awareness or relatively strong distinctiveness, which likely cause the relevant public to believe that they are serial trademarks and therefore confuse the relevant public with regard to the source of goods or services, such trademark shall be determined as similar to that prior design trademark.

For example:



(Designated Goods: Clothing)



(Designated Goods: Clothing)



(III) Examination of Combination Trademarks

1. Where the Chinese characters of two trademarks are identical or similar and will likely confuse the relevant public with regard to the source of goods or services, they shall be determined as similar trademarks.

For example:





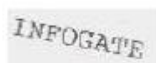
(Designated Goods: Medical Equipments and Instruments)



(Designated Goods: Medical Diagnosis Equipments)

2. Where the foreign language, letters or numbers of two trademarks are identical or similar and will likely confuse the relevant public with regard to the source of goods or services, they shall be determined as similar trademarks.

For example:



“FISHER” is translated as “渔夫”.

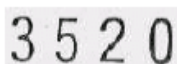
“SCIENTIFIC” is translated as “科学的”.





HERITAGE is translated as “遗产”.

CASHMERE is translated as “羊绒”.



Trademarks which have obvious different overall appellation, meaning or appearance and will not likely confuse the relevant public with regard to the source of goods or services shall not be determined as similar trademarks.

For example:





CHANGYING

3. Where the Chinese characters of a trademark have the same or basically the same main meaning as words in other language of another trademark, which will likely confuse the relevant public with regard to the source of goods or services, they shall be determined as similar trademarks.

For example:



(translated as “繁荣”)



(HOPE is translated as “希望”.)



(translated as “老板”)





企鵝紳士

(translated as “绅士企鵝”)



太阳RED



5Star

鹦鹉武鸟

Parrot
MINIDRONES
ROLLING SPIDER

(translated as “鹦鹉”)

Trademarks which have obvious different overall composition, appellation or appearance and will not likely confuse the relevant public with regard to the source of goods or services shall not be determined as similar trademarks.

For example:



(WELL & WELL is translated as “好和好”).

HAPPYTREE
开 心 树

KUAILESHU
快 乐 树

(HAPPYTREE may be translated as “快乐树、开心树、幸福树”, etc.)

miss me
蜜 思 蜜



(miss me is translated as “思念我”).



(UNIQUE is translated as “唯一的、独特的”, which has certain corresponding relationship with “不二(no second one)”.

4. Where the graphics of two trademarks are identical or similar and will likely confuse the relevant public with regard to the source of goods or services, they shall be determined as similar trademarks.

For example:





The following trademarks which will not likely confuse the relevant public with regard to the source of goods or services shall not be determined as similar trademarks because their designs are common patterns of the goods concerned or mainly play the role of decoration or background, and therefore have small contribution to the distinctiveness of the trademark, and the two trademarks have obvious different overall meaning, appellation or appearance.

For example:





5. Trademarks that have different words and designs but are basically identical in the way of arrangement and combination or in the thing described by them as a whole, and are therefore similar in overall appearance or meaning, which will likely confuse the relevant public with regard to the source of goods or services, shall be determined as similar trademarks.

For example:



Designated Goods: Anti-splash Tap Nozzles

Designated Goods: Faucets for Pipes





Title 4: Standards for Examination of Three-dimensional Trademarks

I. Legal Basis

Article 8 of the *Trademark Law*: An application for trademark registration may be filed for any symbol including word, pattern, alphabetic letter, numeral, three-dimensional mark, color combination, and sound or the like, as well as the combination of these elements, which can distinguish the goods of a natural person, legal person or other organization from those of others.

Article 12 of the *Trademark Law*: Where a trademark application is filed for the registration of a three-dimensional mark, any shape derived from the nature of the goods, or the shape of the goods that is necessary to achieve technical results, or the shape which provides the goods with substantial value, shall not be registered.

Article 13 of the *Implementing Regulations of Trademark Law*: Where an application is submitted for registering a trademark in the form of a three-dimensional mark, the applicant concerned shall make relevant declarations in the written application, explain the use methods of the trademark, and submit a trademark drawing that can be used to determine the three-dimensional shape. The trademark drawing submitted shall include at least a three-view drawing.

Article 43 of the *Implementing Regulations of Trademark Law*: Where an applicant designating China for territorial extension requests for the protection of a three-dimensional mark, color combinations or a sound mark as a trademark or requests for the protection of a collective mark or certification mark, it shall, within three months from the date of registration of the trademark in question in the International Register of the International Bureau, submit relevant materials prescribed by Article 13 herein to the Trademark Office via a duly established trademark agency. Where the applicant fails to submit relevant materials by the foregoing deadline, the Trademark Office shall dismiss its application for territorial extension.

II. Relevant Interpretations

A three-dimensional trademark refers to the trademark only composed of a three-dimensional sign or a three-dimensional sign containing other elements. A three-dimensional trademark may be the shape of the goods, the package of the goods or other three-dimensional sign.

This Title sets forth the formal examination and substantive examination of application for registration of trademarks, and the content of formal examination shall, in addition to the general formal elements for application for registration of the ordinary trademark, include special formal elements for application for registration of the three-dimensional trademark, and the substantive examination shall include examination of functionality of three-dimensional trademark, examination of distinctive features of three-dimensional trademark, examination of prohibitory provisions of three-dimensional trademark and examination of identicalness and similarity of three-dimensional trademark.



The registration of a common-shape three-dimensional trademark containing other elements of distinctiveness does not represent the registration of the common shape per se.

III. Formal Examination of Three-dimensional Trademarks

The applicant shall submit a trademark drawing or photo which can determine the three-dimensional shape, and such drawing or photo may be a three-view drawing, multi-view drawing or three-dimensional effect drawing, and shall indicate “three-dimensional trademark” on the written application for trademark registration. If necessary, the applicant may add explanation in words to the three-dimensional trademark drawing in the trademark description, and may declare in the written application to waive the exclusive use right of trademark for any part of the trademark which the applicant will not claim rights. If the drawing cannot embody the three-dimensional shape or what the drawing embodies is an unidentifiable three-dimensional shape, it shall not be deemed as three-dimensional trademark.

For example:



(Designated Goods: Biscuit)



(Designated Goods: Clothing)

IV. Substantive Examination of Three-dimensional Trademarks

Substantive examination of a three-dimensional trademark includes examination of prohibitory provisions, examination of functionality and examination of identicalness and similarity, of the three-dimensional trademark.

(I) Examination of prohibitory provisions of three-dimensional trademarks

The registration of a three-dimensional trademark shall not breach the prohibitory provisions of the *Trademark Law*, and shall be subject to the provisions of Title 1 of these Standards.

For example:



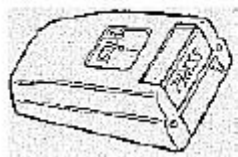
(Designated Goods: Perfume)Skull shape has bad influence.

(II) Examination of functionality of three-dimensional trademarks

A three-dimensional mark having functionality, that is, a three-dimensional mark is only composed of the shape derived from the nature of the goods, or the shape of the goods that is necessary to achieve technical results, or the shape which provides the goods with substantial value, shall not be registered.

1. Where a three-dimensional mark is only composed of the three-dimensional shape from the nature of goods per se, that is such three-dimensional shape is one necessary or commonly used for realizing the inherent purpose and use of goods, then such three-dimensional mark shall be determined to have functionality.

For example:



(Designated Goods: Safety Buckle)



(Designated Goods: Tire)



(Designated Goods: Sewing Needle)



(Designated Goods: Folding Rule)



(Designated Goods: Aircraft)



(Designated Goods: Exercise Circle)



(Designated Goods: Writing Instruments)

2. Where a three-dimensional mark is only composed of the three-dimensional shape required for obtaining certain technical effects, that is, such three-dimensional shape is one necessary for the goods to have specific function or for easier realization of the inherent function of the goods, then such three-dimensional mark shall have functionality.

For example:



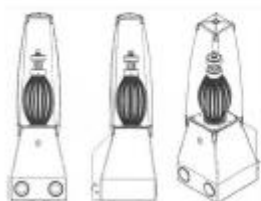
(Power Plugs)



(Container)



(Shaver Heads)



(Designated Goods: Loudspeakers)



(Designated Goods: Life Buoys)



(Designated Goods: Climbing Sticks)

3. Where a three-dimensional mark is only composed of the three-dimensional shape granting substantive value to the goods, that is such three-dimensional shape is one used for the appearance and modeling of the goods to influence the value of the goods, such three-dimensional mark shall have functionality.

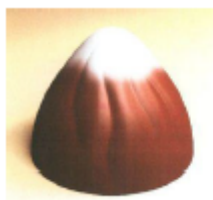
For example:



(Designated Goods: Porcelain Bottle)



(Designated Goods: Pendant)



(Designated Goods: Candy)



(Designated Goods: Perfume)

(III) Examination of distinctive features of three-dimensional trademarks

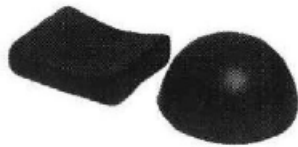
A three-dimensional trademark may not breach the examination under Article 11 of the *Trademark Law*, and shall be subject to the provisions of Title 2 of these Standards.

1. Three-dimensional shape without distinctive features

(1) A basic geometric three-dimensional shape or simple and common three-dimensional shape lacks distinctive features if it cannot distinguish the source of goods.

For example:



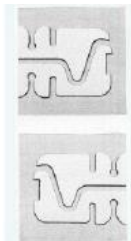


(Designated Goods: Clothing)

Except where there is sufficient evidence to prove that such basic geometric three-dimensional shape acquires distinctive features through use.

(2) A decorative three-dimensional shape lacks distinctive features if it cannot distinguish the source of goods.

For example:



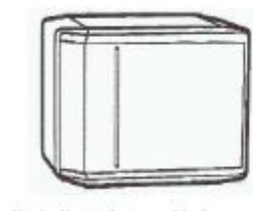
(Designated Goods: Sunglasses)

Except where there is sufficient evidence to prove that such decorative three-dimensional shape acquires distinctive features through use.

2. Three-dimensional shape of the goods per se

The three-dimensional shape of the goods per se lacks distinctive features if it is one generally or commonly used in the industry, and cannot distinguish the source of goods.

For example:



(Designated Goods:
Amplifier)



(Designated Goods:
Chocolate)



(Designated Goods: Candy)

Where the appearance three-dimensional shape of a cultural relic is applied for registering as a trademark to be used on “containers, jewelry boxes” and other goods relating to the shape of the cultural relic, if the appearance three-dimensional shape of the cultural relic represents the three-dimensional shape of the goods per se, such three-dimensional shape lacks distinctive features.

Except where there is sufficient evidence to prove that the three-dimensional shape of the goods per se acquires distinctive features through use.

3. Three-dimensional shape of package of the goods

(1) A basic geometric three-dimensional shape, or simple and common three-dimensional shape, or decorative three-dimensional shape lacks distinctive features if it cannot distinguish the source of goods.

For example:

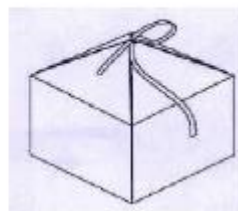


(Designated Goods: Junket) (Designated Goods: Blanket for Children) (Designated Goods: Drug)

Except where there is sufficient evidence to prove that such basic geometric three-dimensional shape, or simple and common three-dimensional shape, or decorative three-dimensional shape acquires distinctive features through use.

(2) A three-dimensional shape generally or commonly used in the industry for package lacks distinctive features if it cannot distinguish the source of goods.

For example:



(Designated Goods: Alcoholic Drinks) (Designated Goods: Jam) (Designated Goods: Cake)

Except where such three-dimensional shape is not the three-dimensional shape of the generally or commonly used package of the designated goods.

For example:



(Designated Goods: Alcoholic Drinks) (Designated Goods: Perfume)

Or except where there is sufficient evidence to prove that the three-dimensional shape generally or commonly used in the industry for package acquires distinctive features through use.

4. Combination of three-dimensional mark and other two-dimensional elements

(1) Where a trademark is the combination of a three-dimensional mark with distinctive features and other two-dimensional marks with distinctive features, such three-dimensional trademark has distinctive features.

For example:



(Designated Goods: Perfume)



(Designated Goods: Soft Drinks, Sodas)

(2) Where a trademark is the combination of a three-dimensional mark with distinctive features and other two-dimensional marks without distinctive features, such three-dimensional trademark has distinctive features.

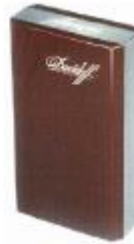
For example:



(Designated Service: Restaurant) The trademark is composed of the cartoon three-dimensional mark and the letter "A".

(2) Where a trademark is the combination of a three-dimensional mark without distinctive features and other two-dimensional marks with distinctive features, such three-dimensional trademark has distinctive features, provided that the protection scope of the exclusive right upon registration of such trademark shall be only limited to the two-dimensional part with distinctive features. And this shall be indicated on the preliminary approval announcement and the trademark registration certificate.

For example:



(Designated Goods: Beer) (Designated Goods: Chocolate) (Designated Goods: Tobacco)

5. Where, other trademark drawing submitted by the applicant, which is still difficult to confirm the shape and features of the three-dimensional mark after explanation by the applicant, shall be determined as lack of distinctive features.

For example:



(Designated Goods: Glasses and Glasses Case)



(Designated Goods: Vehicle)

Except for three-dimensional mark which has distinctive features per se.

For example:



(Designated Goods: Clothing)



(Designated Service: Restaurant)

(IV) Examination on identicalness and similarity of three-dimensional trademarks

The examination on identicalness and similarity of three-dimensional trademarks include the examination on identicalness and similarity between three-dimensional trademarks and between a three-dimensional trademark and a two-dimensional trademark.

1. Examination on identicalness and similarity between three-dimensional trademarks

(1) Where both three-dimensional trademarks contain distinctive three-dimensional marks and such three-dimensional marks are identical or similar, which will likely confuse the relevant public with regard to the source of goods or services, they shall be determined as identical or similar trademarks.

For example:



(Designated Goods: Perfume)



(Designated Goods: Perfume)

(2) Where both three-dimensional trademarks contain distinctive two-dimensional elements and such two-dimensional elements are identical or similar, which will likely confuse the relevant public with regard to the source of goods or services, they shall be determined as identical or similar trademarks.

For example:



(Designated Goods: Perfume)



(Designated Goods: Perfume)

(3) Where both trademarks are composed of a three-dimensional mark without distinctive features and other two-dimensional elements with distinctive features, and such two-dimensional elements with distinctive features are identical or similar, which will likely confuse the relevant public with regard to the source of goods or services, they shall be determined as identical or similar trademarks.

For example:



(Designated Goods: Chocolate)



(Designated Goods: Chocolate)

Except where there is obvious distinction between other two-dimensional elements, which will not likely confuse the relevant public with regard to the source of goods or services.

For example:





(Words: KURG)



(Words: LA GRAND DAME)

2. Examination on identicalness and similarity between a three-dimensional trademark and a two-dimensional trademark

(1) Where a three-dimensional trademark is composed of a three-dimensional mark without distinctive features and other two-dimensional elements with distinctive features, and such two-dimensional elements with distinctive features are identical or similar to the distinctive part of a two-dimensional trademark, which will likely confuse the relevant public with regard to the source of goods or services, such trademarks shall be determined as identical or similar trademarks.

For example:



(Designated Goods: Cosmetics)



(Designated Goods: Cosmetics)



(Designated Goods: Alcoholic Drinks)

Note: its words part is similar to the prior trademark “GUADET”.

(2) Where a three-dimensional trademark is composed of a three-dimensional mark with distinctive features and other two-dimensional elements with distinctive

features, and such other two-dimensional elements with distinctive features are identical or similar to the distinctive part of a two-dimensional trademark, which will likely confuse the relevant public with regard to the source of goods or services, such trademarks shall be determined as identical or similar trademarks.

For example:



(Words: NIVEA; BEAUTE)

(Designated Goods: Cosmetics)

(Designated Goods: Cosmetics)

(3) Where the three-dimensional mark in a three-dimensional trademark has distinctive features but is identical or similar to the distinctive part of a two-dimensional trademark in terms of visual effects, which will likely confuse the relevant public with regard to the source of goods or services, such trademarks shall be determined as identical or similar trademarks.

For example:



(Designated Goods: Clothing) The shape is similar to the prior trademark “PAJARO”.



(Designated Goods: Cleaning Preparations) The shape is similar to the “G” prior trademark.



(Designated Goods: Beverage) The bottle shape is similar to the prior trademark “幸运球 (lucky ball)”.



(Designated Goods: Alcoholic Drinks)

The bottle shape is similar to the prior trademark “威诺”.



(Designated Goods: Biscuit)

The shape is similar to the prior trademark “Merry Maker (麦利美嘉)”.



OFFENSIVE



(Designated Goods: Perfume)

Note: its words part is similar to the prior trademark “OFFENSIVE”, and its shape is similar to the prior football-shape trademark.



Title 5: Examination of Color Combination Trademarks

I. Legal Basis

Article 8 of the *Trademark Law*: An application for trademark registration may be filed for any symbol including word, pattern, alphabetic letter, numeral, three-dimensional mark, color combination, and sound or the like, as well as the combination of these elements, which can distinguish the goods of a natural person, legal person or other organization from those of others.

II. Relevant Interpretations

Color combination trademark refers to trademark consisting of two or more colors.

This Title sets forth the formal examination and substantive examination of application for registration of color combination trademark, and substantive examination includes examination of prohibitory provisions, examination of distinctive features and examination of identicalness and similarity.

III. Formal Examination of Color Combination Trademark

(I) In case of application for registration of a color combination trademark, the applicant shall state so in the written application. In case of failure to do so, even if the applicant has submitted the color drawing, such application will not be examined as application for registration of a color combination trademark.

(II) The applicant shall submit the clear color drawing. The trademark drawing shall be color blocks representing color combination method, or graph outline representing location of color. Such graph outline is not a component of trademark, and must be expressed in dashed lines instead of solid lines.

(III) The applicant shall specify the names and color numbers of the used colors in the description of trademark, and describe the specific use method of such color combination trademark in commercial activities.

1. Use color blocks to represent the color combination methods and attach with description of trademark

For example:



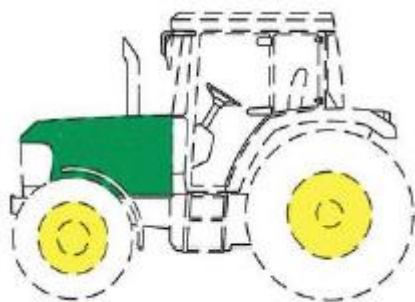
Designated Services: Vehicle Gas Station

Description of Trademark: this color combination trademark is the color combination of three colors, namely, green, anthracite and orange. Of which, green

(Pantone 368C) accounts for 60%, anthracite (Pantone 425C) accounts for 30% and orange (Pantone 021C) accounts for 10%, and three colors are arranged as showed above, and used for appearance of vehicle gas station.

2. Use graph outline in dashed lines to represent the location of colors and attach with description of trademark

For example:



Designated Goods: Skip Lorry; Tractor

Description of Trademark: this color combination trademark is the color combination of two colors, namely, green and yellow. Of which, green is Pantone 364C and yellow is Pantone 109C. Green is used on the vehicle body while yellow is used on the wheels. The parts in dashed lines represent the locations of colors on the concerned goods, and the vehicle outline and appearance are not components of the trademark.

IV. Substantive Examination of Color Combination Trademark

(I) Examination of Distinctive Features of Color Combination Trademark

Where a color combination trademark only has natural colors of the designated goods, or general or common colors for the goods per se or their packages and the service places, which are insufficient to distinguish the source of the concerned goods or services from others, the color combination trademark shall be determined as lack of distinctive features.

For example:



Designated Goods: Toothpaste Designated Goods: Laundry Detergent, Laundry Sheets



Designated Service Item: Hairdressing

Generally, a color combination trademark will only acquire distinctive features after long-term use, and the Trademark Office may issue an Examination Opinions to demand the applicant to submit use evidence and make explanation on the trademark's acquisition of distinctive features through use.

(II) Examination of Identicalness or Similarity of Color Combination Trademarks

The examination of identicalness or similarity of color combination trademarks includes the examination of identicalness or similarity between color combination trademarks and between a color combination trademark and a two-dimensional trademark or a three-dimensional trademark.

1. Examination of identicalness or similarity between color combination trademarks: where two trademarks are both color combination trademarks, and have identical or similar combined colors and arrangement method, which will likely confuse the relevant public with regard to the source of goods or services, both trademarks shall be determined as identical or similar trademarks.

For example:



However, if the colors used by two trademarks are different, or even if two trademarks use the same or similar colors but they have different arrangements, which will not confuse the relevant public with regard to the source of goods or services, they shall not be determined as identical or similar trademarks.

For example:

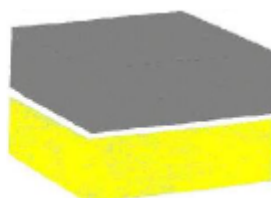




2. Examination of identicalness or similarity between a color combination trademark and a two-dimensional trademark or a three-dimensional trademark

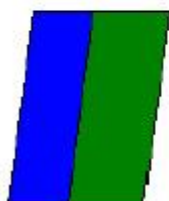
Where a color combination trademark is identical or similar to the graphics of a two-dimensional trademark or the designated colors of a three-dimensional trademark, which will likely confuse the relevant public with regard to the source of goods or services, such trademarks shall be determined as identical or similar trademarks.

For example:



However, where two trademarks have relatively large difference in overall effects despite using the same or similar colors, which will not confuse the relevant public with regard to the source of goods or services, such trademarks shall not be determined as identical or similar trademarks.

For example:



Title 6: Examination of Sound Trademarks

I. Legal Basis

Article 8 of the *Trademark Law*: An application for trademark registration may be filed for any symbol including word, pattern, alphabetic letter, numeral, three-dimensional mark, color combination, and sound or the like, as well as the combination of these elements, which can distinguish the goods of a natural person, legal person or other organization from those of others.

Article 13 of the Implementing Regulation of *Trademark Law*: Where an application is submitted for registering a trademark in the form of a sound mark, the applicant concerned shall make relevant declarations in the written application, submit sound samples that meet relevant requirements, describe the sound mark under application for registration, and explain the use methods of the trademark. When describing the sound mark, the applicant shall describe the sound under application for being used as the trademark with staff or numbered musical notation, and add explanations in words thereto. The applicant shall describe relevant sounds in words if it is unable to provide such descriptions with staff or numbered musical notation. Trademark description shall be consistent with sound samples.

II. Relevant Interpretations

A sound trademark refers to a trademark in the form of sound used for distinguishing source of goods or services. A sound trademark may be composed of musical sound, e.g. a piece of music, or unmusical sound, e.g. sound from the natural world, sound of human or animal, or may combine musical sound and unmusical sound.

This Title sets forth the formal examination and substantive examination of application for registration of a sound trademark. Substantive examination of a sound trademark includes examination of prohibitory provisions, examination of distinctive features and examination of identicalness and similarity. The registrability of a sound trademark shall be examined on the whole.

III. Formal Examination of Sound Trademarks

(I) In case of application for registration a sound trademark, the applicant shall state so in the written application.

(II) Sound Samples

The applicant shall submit sound samples meeting requirements. The sound samples shall be stored in an audio file. Where the application is submitted in paper, the audio file shall be stored in CD-ROM. Where the application is submitted by data message, the sound samples shall be uploaded correctly in accordance with relevant requirements. The format of the audio file of the sound samples shall be wav or mp3 (audio file format), and the audio file shall be less than 5MB (unit of information storage capacity), and clear and easy for identification.

(III) Description of musical sound trademark



Musical sound trademark shall be described by staff or numbered musical notations, and add explanation in words. Staff or numbered musical notations and explanation in words shall serve as the trademark drawing of the concerned sound trademark. The staff or numbered musical notations shall be clear, accurate and complete, and may include clefs, key signatures, time signatures (beat), bars, notes, rests, accidentals (sharps, flats, naturals), etc.

For example:



1.

This sound trademark is the melody of the successive music and chord consisting of five notes “D-flat major, D-flat major, G-flat major, D-flat major and A-flat major”.



2.

This sound trademark is a piece of music containing 13 notes in the order of: E, D, F-sharp, G-sharp, C-sharp, B, D, E, B, A, C-sharp, E, A.

(IV) Description of unmusical sound trademark

Unmusical sound trademark shall be described in words. Word description shall serve as the trademark drawing of such sound trademark. Word description shall be clear, accurate, complete and easy to understand. For example:

1. This sound trademark is composed of the cow hoof beat from a cow walking two steps on the paved roads and the subsequent clip, clop or moo of the cow.

2. This sound trademark starts with the sound from hands knocking on the drum edges and then twelve crescendo drum beats, followed by decrescendo vibrato of electric keyboards, and ended in combination with the golf swinging sound and the paper cutter sound.

(V) Description of sound trademarks consisting of musical and unmusical sounds

A sound trademark consisting of musical and unmusical sounds shall be described by staff or numbered musical notations for the musical part attached with explanation in words, and described by words for the unmusical part. Staff or numbered musical notations and words shall serve as the trademark drawing of the concerned sound trademark.

For example:



This sound trademark is the intro music of China Radio International programme, of 40 seconds in total length and 18 bars in total, at two-four adagio tempo, and in the tone of alternate conversion of G major and C major. The first four bars are the overture part of the whole piece of sound trademark in the tone of G major, and the middle 11 bars are the theme part of the whole piece of music and in the tone of C major, in which the 12th and 13th bars, the announcer speaks out the appellation of “China Radio International”, followed by two bars thereafter and the theme part ends. The last three bars replay the theme music in piano, and turn the tone back to G major, where the sound trademark ends.



This sound trademark voices out “Heng Yuan Xiang (恒源祥)” with one octave, a triple LA and a half-beat SO, and “Heng Yuan Xiang (恒源祥)” is dubbed by the stentorian and masculine voice of an adult male at slow speed, with short pause time among Heng (恒), Yuan (源) and Xiang (祥), and the last three words “Sheep, Sheep, Sheep (羊羊羊)” is dubbed by the childish voice at fast speed without pause.

(VI) Trademark description and sound samples

The trademark description and the sound samples shall be mutually consistent.

(VII) Use methods

The applicant shall state in which way and under which circumstance will the sound trademark be used. For example: used when opening or closing or during the use of goods; used at the start or end of or during the process of provision of services; used at place of operation or services; used on the website of the company; used in the advertisement and publicity on broadcasting, TV, Internet or outdoor billboards, etc.

IV. Substantive Examination of Sound Trademarks

(I) Examination of prohibitory provisions of sound trademarks

A sound trademark may not breach the examination on prohibitory provisions under Article 10 of the *Trademark Law*, and shall be subject to the provisions of Title 1 of Part A herein.

For example:

1. Sounds identical or similar to the melody of the national anthem, military anthem of the PRC or a foreign country or the Internationale in melody.
2. Religious music or sound indicating terrorism, violence or other adverse effect.

(II) Examination of distinctive features of sound trademarks

1. Sounds only having direct representation of the content, consumer, quality, function, use or other features of the designated goods or services lack of distinctive features.

For example:

- (1) Piano sound used on “musical instruments”;
- (2) Children’s laughing sound used on “infant formula”;
- (3) Bark or mew sound used on “Pet Raising”;
- (4) Classic music used on “Arrangement and Organization of Concerts”;
- (5) The crispy bottle opening sound “Ta (嗒)” used on “Beer”; and
- (6) The children’s yell of “the water is boiling, the water is boiling” on “Electric Kettle”.

2. Sounds that otherwise lack distinctive features

For example:

- (1) Simple and common tone or melody;
- (2) A complete or lengthy song or music;
- (3) Direct singing or shouting catchphrases or common phrases in normal tone; and
- (4) Music or sound generally used in the industry.

Generally, a sound trademark will only acquire distinctive features after long-term use, and the Trademark Office may issue an Examination Opinions to demand the applicant to submit use evidence and make explanation on the trademark’s acquisition of distinctive features through use.

(III) Examination on identicalness and similarity of sound trademarks

The examination on identicalness or similarity of sound trademarks includes the examination on identicalness or similarity between sound trademarks and between a sound trademark and a visible trademark. In principle, the examination on



identicalness or similarity of sound trademarks is conducted mainly by listening to sound samples.

1. Examination on identicalness and similarity between sound trademarks

Where two sound trademarks are identical or similar in auditory perception or overall music image, which will likely confuse and mislead the relevant public with regard to the source of goods or services, or cause the relevant public to believe there is any particular relevance between them, they shall be determined as identical or similar trademarks.

2. Examination on identicalness or similarity between a sound trademark and a visible trademark

Where the words or other elements corresponding with the voice in the sound trademark are identical or similar to the pronunciation of the words or other elements in the visible trademark, which will likely confuse and mislead the relevant public with regard to the source of goods or services, or cause the relevant public to believe there is any particular relevance between them, they shall be determined as identical or similar trademarks. For example: the sound trademark of “yahoo” and the word trademark of “yahoo” are similar trademarks.



Title 7: Examination of Collective Marks and Certification Marks

I. Legal Basis

Article 3 of the *Trademark Law*: Registered trademarks mean trademarks that have been approved and registered by the Trademark Office, including goods marks, service marks, collective marks and certification marks; the trademark registrants shall enjoy the exclusive right to use the trademarks, and be protected by law.

For the purpose of this Law the expression “collective mark” shall mean any mark registered in the name of an entity, association or other organization for being used by the members thereof in their commercial activities to indicate their membership of such organization.

For the purpose of this Law the term “certification mark” shall mean any mark controlled by an organization in charge of the supervision over certain goods or services and used by the entity or individual outside this organization in respect of its goods or service to certify the origin, raw material, manufacturing method, quality or other specific qualities of said goods or services.

Regulations for the particular matters of registration and administration of collective marks and certification marks shall be established by the administrative department for industry and commerce under the State Council.

Article 16 of the *Trademark Law*: Where a trademark has a geographical indication of the designated goods which do not originate from the place where the geographical indication indicates and is likely to mislead the public, registration of such trademark shall not be allowed and its use shall be prohibited. However, where such a trademark has been approved and registered out of goodwill, it shall continue to be valid.

The geographical indication mentioned in the preceding article refers to the specific sign indicating the origin, specific quality, prestige or other features of the designated goods and mainly decided by natural or cultural factors of the region.

Paragraph 1 of Article 4 of the *Implementing Regulations of Trademark Law*: Relevant parties may, in accordance with the *Trademark Law* and these Regulations, apply for the registration of geographical indications prescribed by Article 16 of the *Trademark Law* in the form of certification marks or collective marks.

Measures for Registration and Administration of Collective Marks and Certification Marks promulgated by the State Administration for Industry and Commerce of the People’s Republic of China (effective from June 1, 2003).

II. Relevant Interpretations



Collective marks and certification marks may be composed of signs prescribed in Article 8 of the *Trademark Law*. Sections III & IV in this Title stipulate the examination of the subject qualifications of the applicant of and the use management rules of the collective marks and certification marks.

Where a geographical indication is registered as a collective mark or certification mark, the subject qualifications of the applicant of and the use management rules of such collective mark or certification mark shall comply with the special conditions specified in the *Measures for Registration and Administration of Collective Marks and Certification Marks* and Section V of this Title stipulates the examination of such collective marks and certification marks.

The collective marks and the certification marks shall be subject to the examination provided in Paragraph 1 of Article 10, Article 11, Article 30 and Article 31 of the *Trademark Law*, and be subject to the provisions of Title 1, Title 2 and Title 3 of Part A.

III. Examination of Ordinary Collective Marks

(I) Examination of Subject Qualifications of the Applicant

1. The applicant shall submit the subject qualifications certification documents for its legal establishment. The subject qualifications certification documents include business license of the enterprise, and approval documents for the legal establishment of a public institution or social group, and the like.

2. The applicant shall submit materials to state in details the name and address of members of the collective organization concerned.

(II) Examination of the Use Management Rules of Collective Marks

The use management rules of a collective mark shall include the following main content:

1. Purpose of the use of the collective mark;
2. Quality of the goods using the collective mark concerned;
3. Formalities for the use of the collective mark concerned;
4. Rights and obligations for the use of the collective mark concerned;
5. Liabilities of members which breach their use management rules; and
6. Systems on the registrant's inspection and supervision of goods using the collective mark concerned.

IV. Examination of Ordinary Certification Marks

(I) Examination of Subject Qualifications of the Applicant

1. The applicant shall submit the subject qualifications certification documents for its legal establishment. The subject qualifications certification documents include business license of the enterprise, and approval documents for the legal establishment of a public institution or social group, and the like.

2. The applicant shall have the capacity to supervise the specific quality of goods as the certification mark concerned may certify. The applicant shall submit materials to state in details that it has corresponding professional technicians and professional inspection equipment, or the institution it engages has professional technicians and professional inspection equipment, etc.

(II) Examination of the Use Management Rules of Certification Marks

The use management rules of a certification mark shall include the following main content:

1. Purpose of the use of the certification mark;
2. Particular quality of goods as the certification mark concerned may certify;
3. Conditions on the use of the certification mark concerned;
4. Formalities for the use of the certification mark concerned;
5. Rights and obligations for the use of the certification mark concerned;
6. Liabilities of users which breach the use management rules; and
7. Systems on the registrant's inspection and supervision of goods using the certification mark concerned.

V. Examination of Geographical Indications as Collective Marks or Certification Marks

(I) Examination of Subject Qualifications of the Applicant

1. The applicant shall submit the subject qualifications certification documents for its legal establishment. The subject qualifications certification documents include approval documents for the legal establishment of a public institution or social group, and the like.

2. The applicant shall submit the approval documents issued by the people's government or competent industry department of the region as indicated by the geographical indication concerned, for the approval of application for such geographical indication. The approval documents shall be issued by the people's government at or above the county level or its superior competent industry department, and expressly state that the applicant has the capacity to supervise and administer the geographical indication concerned.

3. Where the applicant has the capacity to inspect the specific quality of goods designated by the geographical indication concerned, the qualification certificate of the applicant or the document issued by the people's government at or above the county level or its superior competent industry department approving its inspection capacity shall be submitted, together with the list of professional inspection equipment of the applicant and the list of professional technicians as well as the certificates of such technicians.

Where the applicant entrusts others to inspect, the signed contract for entrusted inspection between the applicant and the institution having inspection qualifications



as well as the qualification certificate and entity legal person certificate of the entrusted institution shall be submitted.

4. The group, association or other organization applying for registering of a geographical indication as collective mark shall consist of members coming from the region indicated by such geographical indication.

Where a foreigner or foreign enterprise applies for a geographical indication as a collective mark or certification mark, the applicant shall provide the proof that such geographical indication is protected by the laws of its originating country in its name.

(II) Examination of Use Management Rules

Examination of the use management rules of a geographical indication collective mark or certification mark shall, in addition to compliance with the corresponding provisions set forth in Sections III & IV of this Title, be conducted against the specific quality, prestige or other features of or the scope of region of production of the goods designated by such geographical indication.

1. Examination of Particular Quality of Designated Goods

Goods designated by the geographical indication collective mark or certification mark shall have specific quality, prestige or other features.

For example:



Designated Goods: Bergamot Pear

(Bergamot pear is juicy and crispy, of thin skin and small kernel. The epidermis is yellow-green when being picked, and then turns into golden upon storage and gives out unique flavor. Sugar content over 10.4%, ca. 4.4 mg Vitamin C per hundred grams, and the edible part is around 83.6%.)



Designated Goods: Chinese Onion

(Zhangqiu Chinese Onion can grow as high as 1.5 meters, with the fistular onion stalk being 0.5-0.6 meter and the stem diameter being 3-5 cm, and weigh over 1 kg, and is therefore called “King of Chinese Onion”. Zhangqiu Chinese Onion is of light spicy, fragrant, sweet and embellish, with large and crispy fistular onion stalk, and may be stored for a long time without deterioration and chewed up without dross, and is juicy and sweet in taste.)

Where the goods designated by a geographical indication collective mark or certification mark has no specific quality, prestige or other unique features, the provisions of Paragraph 2 of Article 16 of the *Trademark Law* shall be applied to reject.

2. Examination of the relationship between the specific quality, prestige or other features of the goods designated by a geographical indication collective mark or certification mark, and the natural or cultural factors of the region indicated by such geographical indication

The specific quality, prestige or other features of the goods designated by a geographical indication collective mark or certification mark shall be mainly determined by the natural or cultural factors of the region indicated by such geographical indication.

(1) Where they are mainly determined by the local natural conditions.

For example:



Designated Goods: Fresh Grapes

(The unique water, soil, light, heat and other natural resources of Turpan region in Xinjiang have determined such unique qualities of “Turpan Grapes” as thin skin, crispy, high sugar and low acid, and high dry output rate.)



Designated Goods: Tea

(“Anxi Tieguanyin” is a semi-fermented tea produced in Anxi county, Fujian Province, where is subject to subtropical oceanic monsoon climate and surrounded by mountains and covered by thick soil with high organic content. The soil, altitude, accumulated temperature, rainfall, temperature and humidity of the production area plus the unique primary processing technology have contributed to the unique qualities characterized as the tight, plump and smooth appearance of black and green color, and the rich and lasting aroma and the golden, bright, clear tea with mellow, fresh and sweet tasting upon brewing.)

(2) Where they are determined by natural and cultural factors.

For example:



Designated Goods: Rice Wine

(The specific quality of Shaoxing Rice Wine is determined by the water of Jian Lake and the unique production process. The production area has four distinct seasons and plenty of rainfalls, and is appropriate for the growth of microorganism as required for brewing. The water of Jian Lake is of high quality and abundant in microelements and minerals. Shaoxing Rice Wine takes white sticky rice as raw materials and is brewed with the water of Jian Lake, and the final product of Shaoxing Rice Wine is orange color, bright and transparent, and mellow, soft and fresh in taste.)

(3) Where they are mainly determined by cultural factors.

For example:



Designated Goods: Fabrics; Upholstery Fabrics

(Nanjing Cloud Brocade is a process and technique invested by brocade craftsmen in Nanjing in early Ming Dynasty, and is of a history of manual weaving for over 1,500 years. Its “wooden-loom and weaving” process is the only weaving process come down to us in the history of brocade weaving of China, which cannot be replaced by machine and may only be handed down in verbal form and remembered in minds.)

3. Examination of Geographical Scope of Production

The geographical scope of production of the region indicated by the geographical indication may be the geographical scope expressed in the county annals, agriculture annals, product annals, almanac or textbook, or may be determined by the proof document on geographical scope issued by the people’s government at or above the county level or its superior competent industry department at the region indicated by the geographical indication. Where the geographical scope indicated by the geographical indication is within a city or county, the proof document shall be issued by the people’s government or competent industry department of such city or county; where the geographical scope covers two or more cities or counties within the same province, the proof document shall be issued by the joint superior people’s government or competent industry department of such cities or counties. In case of trans-provincial geographical scope, this shall be resolved by the competent agriculture ministry under the Central People’s Government or the corresponding provincial people’s governments upon consultation.

The geographical scope may be inconsistent with the current name or scope of the administrative division where it locates.

The geographical scope of production may be defined by any or the combination of the following:

- (1) Administrative division;
- (2) Longitude and latitude;
- (3) Taking the mountains, rivers or other geographical features in natural environment as the boundaries;
- (4) Shown by map; and
- (5) Other methods which may expressly determine the geographical scope of production.

Title 8: Examination of Special Signs

I. Legal Basis

Regulations on Administration of Special Signs promulgated by the State Council (effective from July 13, 1996)

II. Relevant Interpretations

Special signs refer to the such signs consisting of words and graphics as names, abbreviations, emblems and mascots which are used in national and international cultural, sport, scientific research and other public welfare events and activities held under the approval of the State Council.

The period of validity of a special sign shall be four years, commencing from the date of approval of registration. Owners of special signs may file an renewal application within three months upon expiry of the period of validity, and the period of validity may generally be renewed once. Where, upon expiry of the period of validity, a special sign acquires distinctive features, the owner of such special sign may obtain protection by applying for registering such special sign as trademark (Case of the Special Sign of EURASIA EXPO).

Special signs shall be subject to formal examination, substantive examination and registration in accordance with the *Regulations on Administration of Special Signs*, and the substantive examination includes the examination on content prohibited by laws and administrative regulations or lack of distinctive features, but excluding the examination provided in Article 30 and Article 31 of the *Trademark Law*.

Where a registered special sign infringes upon any prior trademark right, patent right or copyright of others, any entity or individual may make a request to the industrial and commercial administration under the State Council for announcement of invalidity of the registration of special signs.

III. Content of Examination

(I) Formal Examination of Special Signs

The applicant of a special sign shall submit the following documents:

1. Document on the State Council's approval for holding the concerned public welfares activity or event.
2. Conditions and management rules on allowing others to use the special sign.
3. 5 copies of drawing of the special sign.
4. In case of entrusting others to act for the application, the power of attorney shall be attached and submitted.

(II) Substantive Examination of Special Signs

Special signs consisting of words or graphics containing any of the following shall not be registered:

1. Content that is detrimental to the dignity or image of the State or international organization;



2. Content that is detrimental to the good social customs or public orders;
3. Content with a national discrimination and adverse to the national unity;
4. 4. Content lack of distinctiveness and inconvenient for recognition; and
5. Other content that is prohibited by the laws and administrative regulations.

IV. Procedure for Request for Announcement of Invalidity of the Registration of a Special Sign

Where a registered special sign is under any of the following circumstances, any entity or individual may during the period from the date of announcement of the special sign by publication to the date of expiry of the period of validity of such special sign, state the reasons and provide corresponding evidence to the industrial and commercial administration under the State Council to request for announcement of invalidity of the registration of such special sign:

- (I) Identical or similar to any special sign prior applied;
- (II) Identical or similar to any trademark prior applied for registration or any registered trademark;
- (III) Identical or similar to any industrial design patent prior applied or any legally patented industrial design; and
- (IV) Infringing upon the prior copyright of others.



Title 9: Examination of Trademarks Applying for Registration by Trademark Agency

I. Legal Basis

Paragraph 4 of Article 19 of the *Trademark Law*: A trademark agency may only apply for the registration of trademarks in respect of its agency services; a trademark agency shall not apply for the registration of other trademarks.

Article 87 of the *Implementing Regulations of Trademark Law*: The Trademark Office shall not accept an application submitted by a trademark agency for registering, or accepting the transfer of, a trademark other than those covered under its agency services.

II. Relevant Interpretations

For the purpose of the *Trademark Law*, the trademark agency refers to the service agency or law firm engaging in trademark agency business and filed with the Trademark Office.

III. Examination of Trademarks Applying for Registration by Trademark Agency

In the formal examination of trademarks, the application submitted by a trademark agency for registering a trademark for goods or services other than those covered under its agency service shall not be accepted; if such application is accepted, it shall be rejected in the substantive examination. And in case of application for registering a trademark for items covered under the agency service, the examination shall be conducted per the application for registration of the ordinary trademark.

Currently, the agency service of a trademark agency temporarily covers the service items within Group 4506 set forth in the *Similar Goods and Services Distinguishing Form* (Based on Nice Classification, the 10th Edition).



Title 10: Applicable Provisions of Article 50 of the Trademark Law

I. Legal Basis

Article 50 of the *Trademark Law*: If a registered trademark is cancelled, declared invalid or is not renewed after its period of validity expires, the Trademark Office shall not approve any application for the registration of a trademark identical or similar to the said trademark within one (1) year from the day of the revocation, declaration of invalidity or cancellation.

II. Relevant Interpretations

The legislation purpose of Article 50 is that, where a registered trademark is cancelled or declared invalid, or is not renewed upon expiry of its validity period, the following may occur if new identical or similar trademark registration is approved without setting up an isolation period: before the goods or services designated by the trademark of the original registrant which is cancelled or declared invalid, or is not renewed upon expiry of its validity period exit from the market, the goods or services of the new trademark registrant have entered into the market, and there will be goods bearing identical or similar trademark produced by two enterprises on the market, which may cause confusion to the consumers. In order to avoid this, it is necessary to apply Article 50.

Registered trademarks that are cancelled because they have not been in use for three (3) consecutive years without justification shall be treated as special cases. Given that the original registrants have not used such registered trademarks for three (3) consecutive years, there occurs no goods or services bearing such registered trademarks on the market, and this has already satisfied the legislation purpose of the “one-year isolation period” set forth in Article 50; therefore, upon expiry of the review period of such cancellation, if the original registrant fails to file any review for cancellation, it is not a must to cite Article 50 for proof.

III. Application of Article 50 of the *Trademark Law*

Where, when making the decision on examination, the prior identical or similar registered trademark is cancelled (other than cancellation due to failure to use for three (3) consecutive years), declared invalid or not renewed upon expiry of its period of validity, and there is less than one year from the date of announcement of cancellation, the date of expiry of the review period for announcement of invalidity or the date of expiry of the exclusive use right of trademark, Article 50 shall apply and be cited for proof.

Where a prior identical or similar registered trademark is cancelled due to failure to use for three (3) consecutive years, Article 50 shall not apply, and upon expiry of the period of review of cancellation of registration, Article 50 shall not be cited for proof if the original registrant fails to file any request for review of cancellation of registration.

Where the original registrant files a new application for registration of such trademark, Article 50 of the *Trademark Law* shall not apply.



Title 11: Application of the Examination Opinions

I. Legal Basis

Article 29 of the *Trademark Law*: During the examination process, if the Trademark Office believes the content of a trademark registration application requires further explanation or amendment, it may request the applicant to provide further explanation or amendment. Failure of the applicant to provide such explanation or amendment will not affect the decision-making of the Trademark Office.

Article 23 of the Implementing Regulations of the *Trademark Law*: Where the Trademark Office is of the opinion that the content of a trademark registration application requires further explanation or amendment in accordance with Article 29 of the *Trademark Law*, the applicant shall make explanation or amendment within 15 days upon receipt of the notice from the Trademark Office.

II. Relevant Interpretations

Examination Opinions is a process applicable where the Trademark Office believes the trademark registration application has breached the *Trademark Law*, but there is possibility of complying with the exceptional rules or other like circumstances, and therefore demands the applicant to make explanation or amendment to the trademark registration application within the statutory period and supplement evidentiary materials for compliance with exceptional rules.

III. Application of Examination Opinions

(I) Scope of Application

1. Where there is possibility of complying with the provisos of Items (2), (3) & (4) of Paragraph 1, and Paragraph 2 of Article 10 of the *Trademark Law*, but a preliminary approval may be granted after the applicant makes explanation.
2. In case of applying for trademark containing the State name or the name of an administrative division at or above the county level to be used on such special goods as newspaper, magazines, periodicals or newsletters, the applicant is required to provide relevant evidentiary materials, for example, Periodical Publication License, etc.
3. Where there is possibility of complying with the provisions of Paragraph 2 of Article 11 of the *Trademark Law*, but a preliminary approval may be granted after the applicant makes explanation.

Where the trademark registration application is for a color combination trademark or a sound trademark and it is insufficient to determine such trademark has distinctive features based on the application documents, but a preliminary approval may be granted after the applicant supplements use evidence to state that such trademark has acquired distinctive features after long-term use.



Where the trademark registration application contains any non-distinctive part and shall therefore not be granted preliminary approval, but a preliminary approval may be granted after the applicant makes amendment.

4. Other circumstances on indeed necessary use.

(II) Use Requirements

The Examination Opinions shall be used by application form and may only be used for once.



Part B

Trial Standards for Trademarks



I. Standards for Trial of Reproduction, Imitation or Translation of Others' Well-Known Trademarks

Article 13 of the *Trademark Law*: A holder of a trademark that is well known to the relevant public may request for protection of the trademark as a well-known trademark in accordance with this Law if the holder is of the opinion that its rights have been infringed upon.

In the case of an application for registration of a trademark that is a reproduction, imitation, or translation of other's well-known trademark not registered in China on identical or similar goods, and consequentially is likely to cause confusion, such application shall be rejected and the trademark shall be prohibited from use.

In the case of an application for registration of a trademark that is a reproduction, imitation, or translation of other's well-known trademark registered in China on different or dissimilar goods, thus misleading the public and may causing damage to the interests of the registrant of the well-known trademark, the application shall be rejected and the trademark shall be prohibited from use.

Article 14 of the *Trademark Law*: Upon request by the party concerned, a well-known trademark shall be considered as a fact that needs to be determined in the handling of a trademark-related case. The following factors shall be taken into consideration in the determination of a well-known trademark:

- (1) Extent of the relevant public's awareness of the trademark;
- (2) Duration of the use of the trademark;
- (3) Duration, extent and geographical scope of any publicity carried out for the trademark;
- (4) Protection records of the trademark as a well-known trademark; and
- (5) Other factors concerning the popularity of the trademark's popularity.

Where a party concerned claims rights pursuant to Article 13 of this Law during trademark registration examination or during the process whereby an administration for industry and commerce investigates a case of trademark-related illegalities and gives punishment in connection therewith, the Trademark Office may make determination of the popularity of the relevant trademark as may be necessary for case examination and handling.

Where the party concerned claims rights pursuant to Article 13 of this Law during the handling of a trademark dispute, the Trademark Review and Adjudication Board may make determination of the popularity of the relevant trademark as may be necessary for case handling.

Where the party concerned claims rights pursuant to Article 13 of this Law during the hearing of a trademark-related civil or administrative case, the People's Court designated by the Supreme People's Court may make determination of the popularity of the relevant trademark as may be necessary for case hearing.



Manufacturers and business operators shall neither indicate the words “well-known trademark” on goods and the package or containers of goods, nor use identical for advertising, exhibition and other commercial activities.

Paragraph 1 of Article 45 of the *Trademark Law*: If a trademark that has been registered violates the provisions of Paragraph 2 or Paragraph 3 of Article 13, Article 15, Paragraph 1 of Article 16, Article 30, Article 31 or Article 32 of this Law, the prior rights holder or the interested party of the trademark may, within five (5) years from the day on which the trademark is registered, request the Trademark Review and Adjudication Board to declare that registered trademark invalid. The owner of a well-known trademark shall not be subject to the five (5) years restriction to request a declaration of invalidity based on a malicious registration.

Article 3 of the Implementing Regulations of *Trademark Law*: Where a trademark holder applies for protection of a well-known trademark pursuant to Article 13 of the *Trademark Law*, it shall submit evidence materials proving that its trademark constitutes a well-known trademark. The Trademark Office and the Trademark Review and Adjudication Board shall, pursuant to Article 14 of the *Trademark Law*, make determination of the popularity of its trademark based on the demand of case examination and handling and the evidence materials submitted by the party concerned.

1. Introduction

The abovementioned provisions embody the protection for well-known trademarks, namely they prohibit the trademark registration acts as may, by using the popularity and reputation of well-known trademarks, cause market confusion or public’s misunderstanding, and damage the interests of well-known trademark holders, so as to make up the deficiency that strict implementation of the registration principles may cause unfair consequences, with a view to protecting the interests of well-known trademark holders and maintaining fair competition and consumers’ rights and interests.

Where, in the trial of the cases of trademark objection, review of registration rejection and invalidity declaration, the problem of reproduction, imitation or translation of other’s well-known trademark is involved, and the holder considers that its right is infringed, determination shall be made with these Standards as principle on a case-by-case basis.

2. Principles for Determination of Well-known Trademarks

2.1. Case-by-case Determination. Firstly, the party concerned must not initiate the determination of a well-known trademark and form an appropriate request until it considers in a specific trademark case that, the disputed trademark constitutes the reproduction, imitation and translation of its trademark already well-known to the relevant public, will likely cause confusion or mislead the public, and thus may cause damage to the interests of the holder of this well-known trademark; secondly, in a case with appropriate request for determination of a well-known trademark, the result of a determined well-known trademark is effective solely to the case concerned. The



fact that a trademark has once been determined to be a well-known trademark may be considered as well-known trademark protection record in the case concerned.

2.2. Passive Protection. The Trademark Office and the Trademark Review and Adjudication Board may, upon the request of the party concerned in a specific trademark case, determine whether its trademark is well-known, and make a decision or ruling based on fact finding. Where the party concerned does not claim for protection for well-known trademark, the Trademark Office and the Trademark Review and Adjudication Board will not take the initiative to make determination.

2.3. Determination upon Demand. Where a disputed trademark has relatively great difference from other's trademark, or the goods or services designed by a disputed trademark have relatively great difference from the goods or services designed by other's trademark, and the application for registration of the disputed trademark won't cause confusion or mislead the public which probably damages the interests of the registrant of such well-known trademark, the Trademark Office and the Trademark Review and Adjudication Board will not need to determine whether such other's trademark is well-known.

3. Applicable Elements

3.1 The following elements shall be satisfied for the application of Paragraph 2, Article 13 of the *Trademark Law*:

- (1) Other's trademark has been well-known, but not been registered in China yet before the date of application for the disputed trademark;
- (2) The disputed trademark constitutes the reproduction, imitation or translation of other's well-known trademark;
- (3) The goods or services designated by the disputed trademark are identical or similar to the goods or services designated by other's well-known trademark;
- (4) The registration or use of the disputed trademark will likely cause confusion.

3.2 The following elements shall be satisfied for the application of Paragraph 3, Article 13 of the *Trademark Law*:

- (1) Other's trademark has been well-known and registered in China before the date of application for the disputed trademark;
- (2) The disputed trademark constitutes the reproduction, imitation or translation of other's well-known trademark;
- (3) The goods or services designated by the disputed trademark are not identical or similar to the goods or services designated by other's well-known trademark;
- (4) The registration or use of the disputed trademark misleads the public and thus causes possible damage to the interests of the registrant of such well-known trademark.

4. Determination of Well-known Trademarks

4.1 A well-known trademark refers to a trademark well-known to the relevant public in China.



The relevant public shall include but not limited to the following:

- (1) The producers or providers of the goods or services identified in the trademark;
- (2) The consumers of goods or services identified in the trademark;
- (3) The operators and relevant personnel, etc. involved in the distribution channels of the goods or services identified in the trademark.

4.2 The following factors shall be comprehensively considered according to the situation of an individual case when determining whether a trademark constitutes a well-known trademark:

- (1) Extent of the relevant public's awareness of the trademark;
- (2) Duration of the use of the trademark;
- (3) Duration, extent and geographical scope of any publicity carried out for the trademark;
- (4) Protection records of the trademark as a well-known trademark; and
- (5) Other factors concerning the popularity of the trademark's popularity.

4.3 Comprehensive judgment may be made according to the following evidence for determining a well-known trademark:

- (1) The contract, invoice, bill of lading, bank deposit receipt, import and export vouchers, etc. of the goods or services designated by such trademark;
- (2) Related materials about the sales region scope, sales outlet distribution, sales channels and methods of the goods or services designated by such trademark;
- (3) The media advertising, media comments and other propaganda activity materials via the media like radio, film, TV, newspaper, periodicals, network, outdoor, etc. which involve such trademark;
- (4) Related materials of the exhibitions and expos participated by the goods or services designated by such trademark;
- (5) Related materials about the earliest use time and continuous use of such trademark;
- (6) The certificates of registration of such trademark in China and other countries and regions;
- (7) Related legal documents whereby such trademark is determined and protected as a well-known trademark, and the information on that such trademark is infringed or counterfeited;
- (8) The statistics about the sales amount, profit tax amount and output value, as well as market share and advertising amount, etc. of the goods or services designated by such trademark, issued by a qualified accounting firm, and published by an authoritative institution with credibility;



(9) The ranking or market share in identical industry of the country of the goods or services designated by such trademark. All materials that can prove the ranking or market share in the industry may be used as evidence, such as the certificate of the competent national industry authority, the official public data of the competent national industry authority, public or semi-public data of or the certificate issued by the national industry association registered with the Ministry of Civil Affairs and the evaluation of an authoritative evaluation institution;

(10) China invention patent obtained by the goods or services designated by such trademark and the independent innovation of the applicant;

(11) The technology of the goods or services designated by such trademark has been used as national standards or industry standards.

(12) Awards obtained by such trademark; and

(13) Other materials as may prove the popularity of such trademark.

4.4 The sales and operation of the goods or services designated by such trademark shall be supported by effective evidence such as sales contract, invoice, etc.

The original or notarized hard copy of enterprise's annual report or listed company's annual listing report shall be provided to prove the applicant's economic indexes. The amount of tax payment shall be supported by the original or notarized hard copy of the certification of tax authority.

4.5 The party concerned shall submit the evidence such as advertising contract, invoice, advertising carrier, etc. of such trademark, which prove the advertising fee, form carrier, duration, coverage scope, etc. of the promotion of such trademark.

4.6 The applicant shall provide evidence such as sales contract or sales invoice, etc. to prove that the goods or services designated by such trademark have been sold or operated in several provinces (autonomous regions, and municipalities directly under the Central Government).

4.7 The abovementioned evidence principle is limited to the evidence before the date of application for the disputed trademark. Where the disputed trademark is a non-registered trademark, the materials proving its continuous use for at least five years shall be provided; where the disputed trademark is a registered trademark, the materials providing its registration for at least three years or its continuous use for at least five years shall be provided.

4.8 The extraterritorial evidence materials submitted by the party concerned shall be able to prove that such trademark is known to the relevant public of China.

Such trademark may also be determined as a well-known trademark, where the applicant requests the determination of such trademark as a well-known trademark which does not meet all the above mentioned conditions, but the documented evidence already submitted by the applicant could prove that such trademark really has relatively high prestige in the market and is sufficient to be determined as a well-known trademark.



The determination of a well-known trademark shall not take the registration or application for registration in China of such trademark, or the actual production, sale or supply in China of the goods or services designated by such trademark as precondition. The promotion activities about the goods or services designated by such trademark are also the use of such trademark, and related materials may be used as evidence for judging whether such trademark is well-known.

4.9 The evidence materials used to prove the continuous use time and situation of such trademark shall be able to, according to business practice, display the used trademark sign, goods or services, use dates and users.

4.10 Where a well-known trademark already determined by trademark administration authority or judicial authority is involved in the trial of a case, and the other party concerned does not object to the fact of the popularity of the trademark, then such well-known trademark may be determined.

5. Determination of the Reproduction, Imitation or Translation of Other's Well-known Trademark

5.1 Reproduction means that the disputed trademark is identical to other's well-known trademark.

5.2 Imitation means that the disputed trademark plagiarizes other's well-known trademark, and follows the distinctive parts or distinctive features of other's well-known trademark.

Distinctive parts or distinctive features of a well-known trademark mean the parts or features playing the main role in distinguishing the well-known trademark, including certain words or their combination method and font expression form, certain pattern composition method and expression form, certain color combination, etc.

5.3 Translation means that the disputed trademark expresses other's well-known trademark in a different language which has established corresponding relationship with other's well-known trademark, and is generally known or habitually used by the relevant public.

6. Determination of the Possibility of Confusion and Misleading

6.1 Confusion includes the following circumstances:

(1) Consumers mistake the source of goods or services, and consider that the goods or services bearing the disputed trademark are produced or provided by the owner of the well-known trademark; and

(2) Consumers are made to associate the producer or provider of the goods or services bearing the disputed trademark with the owner of the well-known trademark, such as investment relationship, license relationship or cooperation relationship between the two.

6.2 Misleading includes the following circumstances:

(1) It's sufficient to make the relevant public consider that, the disputed trademark has quite a degree of connection with other's well-known trademark and the distinctiveness of the well-known trademark is weakened;



(2) The registration and use of the disputed trademark may dispraise the market reputation of the well-known trademark;

(3) The registration and use of the disputed trademark may inappropriately make use of the market reputation of the well-known trademark.

6.3 The determination of confusion and misleading does not take actual occurrence of confusion and misleading as elements, and it's only necessary to determine that there is the likelihood of confusion and misleading.

6.4 The following factors shall be considered comprehensively in determining the likelihood of confusion and misleading:

(1) The degree of similarity between the disputed trademark and other's well-known trademark;

(2) The originality of other's well-known trademark;

(3) The popularity of other's well-known trademark;

The relevance degree of the goods or services designated respectively by the disputed trademark and other's well-known trademark;

(5) Other factors which may cause confusion and misleading.

7. Determination of the Protection Scope of a Well-known Trademark

7.1 For a well-known trademark not registered in China, the protection scope shall cover identical or similar goods or services, as provided in Paragraph 2 of Article 13 of the *Trademark Law*.

7.2 For a well-known trademark already registered in China, the protection scope shall cover the goods or services which are not identical or similar, as provided in Paragraph 3, Article 13 of the *Trademark Law*.

Enlarging the protection scope of a registered well-known trademark on the goods or services which are not identical or similar shall take "likely misleading the public and causing possible damage to the interests of the registrant of such well-known trademark" as the precondition. The specific scope of protection in an individual case shall be determined by comprehensively considering the factors listed in 6.3 of these Standards.

8. Determination of Malicious Registration

Where a trademark is applied for registration by reproducing, imitating or translating other's well-known trademark, the holder or an interested party of the well-known trademark may request the Trademark Review and Adjudication Board to declare the disputed trademark invalid within five years upon the registration of the trademark. But in case of malicious registration, the owner of the well-known trademark is not bound by the five-year restriction for requesting declaring the disputed trademark invalid.

The following factors may be considered when determining whether the applicant of the disputed trademark is malicious:

- (1) The applicant of the disputed trademark once had trade contacts or partnership with the owner of the well-known trademark;
- (2) The applicant of the disputed trademark and the owner of the well-known trademark are located in identical territory or both parties have identical sales channels and territorial scope for their goods or services;
- (3) The applicant of the disputed trademark once had other disputes with the owner of the well-known trademark, and may know such well-known trademark;
- (4) The applicant of the disputed trademark once had dealings with the owner of the well-known trademark between their internal personnel;
- (5) The applicant of the disputed trademark, aiming to make improper profits after registration, uses the reputation and influence of the well-known trademark to carry out misleading promotion, forces the owner of the well-known trademark to cooperate with it in trading, and asks for high-amount transfer fee, license fee or infringement compensation from the owner of the well-known trademark or the like;
- (6) The well-known trademark has relatively strong originality; and
- (7) Other circumstances which could be determined as being malicious.



II. Standards for Trial of Non-authorized Registration of Trademarks of Principals or Represented Persons

Paragraph 1 of Article 15 of the *Trademark Law*: Where an agent or representative registers, in its own name, a trademark of its principal or represented party without authorization, and the principal or the represented party opposes the registration, the trademark shall not be registered and shall be prohibited from use.

1. Introduction

Where an agent or representative registers the trademark of a principal or a represented person without authorization, the agent or representative shall be deemed to violate the principle of good faith and infringe upon the lawful rights and interests of the principal, represented person or interested party. The abovementioned provision aims to prohibit the malicious preemptive registration act of agents and representatives.

Where in the trial of the cases of trademark opposition, review of rejection of registration and invalidity declaration, an agent or representative's non-authorized registration of a principal or represented person's trademark is involved, determination shall be made with these Standards as principle on a case-by-case basis.

2. Applicable Elements

The following elements shall be satisfied for determining an agent or representative's act of registering the principal or represented person's trademark without authorization:

- (1) The applicant filing application for registration of the disputed trademark is the agent or representative of the trademark owner;
- (2) The disputed trademark is designated to use on the goods or services which are identical or similar to those designated by the trademark of the principal or represented party;
- (3) The disputed trademark is identical or similar to the trademark of the principal or the represented person;
- (4) The agent or representative cannot prove that it has obtained the authorization of the principal or represented person for its act of applying for registration.

In a case of declaring a registered trademark invalid, the principal, represented person or interested party shall file the application for invalidity declaration within 5 years since the registration date of the disputed trademark.

3. Determination of Agency Relationship and Representation Relationship

3.1 Agents include not only the agents provided in the *General Principles of the Civil Law of the People's Republic of China* and the *Contract Law of the People's Republic of China*, but also the dealers who may know the trademark of a principal based on a commercial business contact.



Representatives means individuals who have a certain identity subject to a represented person and may know the trademark of this represented person for duty performance act, including legal representative, director, supervisor, manager, managing partner, etc.

3.2 Where the agency or representation relationship is still at negotiation stage, the agent or representative registers after knowing the trademark of the principal or the represented person, which likely damages the interests of the principal or the represented person, this shall be the non-authorized registration act of the agent or representative as provided in Paragraph 1 of Article 15 of the *Trademark Law*.

Where after completion of agency or representation relationship, the agent or representative applies for registration of the trademark of the principal or the represented person, which probably damages the interests of the principal or the represented person, this shall fall under the non-authorized registration act of the agent or representative as provided in Paragraph 1 of Article 15 of the *Trademark Law*.

Where it is not in the name of the agent or representative that the trademark of the principal or the represented person is applied for registration, but evidence proves that, the registration applicant colludes with the agent or representative, this shall be the non-authorized registration act of the agent or representative as provided in Paragraph 1 of Article 15 of the *Trademark Law*. For preemptive registration through collusion, presumption may be made dependent on the situation according to the kinship, investment relationship or the like between the trademark registration applicant and the above agent or representative.

3.3 The following evidence may prove the existence of an agency relationship:

- (1) Agency and distribution contract;
- (2) Transaction vouchers, purchasing materials, etc. which could prove agency and distribution relationship;
- (3) Other evidence which could prove the existence of agency and distribution relationship.

The following evidence may prove the existence of representation relationship:

- (1) Enterprise registration materials;
- (2) Enterprise's payroll sheet, labor contract, appointment documents, social insurance and medical insurance materials;
- (3) Other evidence materials which could prove that one party concerned has certain identity subject to the represented person and may know the trademark of the represented person for duty performance act.

4. Trademarks of Principals and Represented Persons

4.1 Principal's trademarks include:

- (1) The principal's trademark stated in contract, authorization or entrustment document;



(2) In case of no agreement between the parties concerned, the trademark already used prior by the principal on the goods or services distributed by the agent when the agency relationship is determined shall be deemed as the trademark of the principal;

(3) In case of no agreement between the parties concerned, the trademark used by the agent on the goods or services distributed by it on commission basis is sufficient to make the relevant public mistake that such trademark is a mark distinguishing the goods or services of the principal from other's goods or services due to the use act such as advertising promotion, etc. of the agent itself, then such trademark on the goods or services of the principal shall be deemed as the trademark of the principal.

4.2 Trademarks of represented persons include:

- (1) The trademark already used prior of the represented person;
- (2) Other trademarks which belong to the represented person according to law.

5. The scope of protection for the trademark of a principal or represented person is not limited to the goods or services identical to the goods or services designated by such trademark, but also covers similar goods or services.

6. The trademarks that an agent or representative shall not apply for registration are not limited to the trademarks identical to the trademark of the principal or represented person, but also includes the trademarks similar to the trademark of the principal or represented person.

7. Determination of the authorization obtained by an agent or representative for trademark registration

7.1 The content of authorization made by a principal or represented person shall include the goods or services and the trademark sign that the agent or representative could register, and the expression of authorization intention shall be clear and definite.

7.2 The agent or representative shall submit the following evidence materials to prove the existence of authorization fact:

- (1) The written authorization document issued by a principal or represented person to an agent or representative;
- (2) Other evidence which may be used to determine that the principal or represented person has expressed its intention to grant clear and definite authorization to the agent or representative.

7.3 Where an agent or representative does not obtain the definite authorization of a principal or represented person when applying for registration, but the principal or represented person has subsequent ratification of this act of application for registration, the agent or representative shall be deemed to have obtained the authorization of the principal or represented person; there is evidence proving that the principal or represented person is aware of such act of application for registration but does not oppose within reasonable time, the agent or representative shall be deemed to have obtained the authorization of the principal or represented person.



7.4 Where an agent or representative obtains the definite authorization of a principal or represented person when applying for registration, but the principal or represented person regrets afterwards, the agent or representative shall still be deemed to have obtained the authorization of the principal or represented person.



III. Standards for Trial of Specific Related Person's Preemptive Registration of Other's Prior Trademarks

Paragraph 2 of Article 15 of the *Trademark Law*: An application for registering a trademark on identical or similar goods shall not be approved if: the trademark under application is identical or similar to an unregistered trademark already used by other person, the applicant clearly knows the existence of the trademark of such other person due to contractual, business or other relationships with the latter other than those prescribed in the preceding Paragraph; and such other person raises objections to the applicant's trademark registration application.

1. Introduction

A specific related person's act of preemptively registering a trademark under the circumstances that it knows such trademark belongs to other person for reason of contract, business dealing or other relationships is in violation of the good faith principle, and infringes upon the lawful rights and interests of the prior trademark user or interested party. The abovementioned provisions aim to prohibit the act of preemptive registration of a trademark which is clearly known belonging to other person by using specific relationship, and to maintain fair and orderly market competition.

Where in the trial of the cases of trademark opposition, review of rejection of registration and invalidity declaration, a specific related person's preemptive registration of other's prior trademark is involved, determination shall be made with these Standards as principle on a case-by-case basis.

2. Applicable Elements

The following elements shall be satisfied for determining a specific related person's preemptive registration of other's prior trademark:

- (1) Other's trademark has been used before application for the disputed trademark;
- (2) The applicant for registration of the disputed trademark has contract, business dealing or other relationship with the prior user of the trademark, and due to such specific relationship, the registration applicant is fully aware of the existence of other's trademark;
- (3) The disputed trademark is designated to use on the goods or services which are identical or similar to those designated by other's prior trademark;
- (4) The disputed trademark is identical or similar to other's prior trademark.

In a case of declaring a registered trademark invalid, the prior user or interested party of the trademark shall file the application for invalidity declaration within 5 years as of the registration date of the disputed trademark.

3. Determination of Contract, Business Dealing and Other Relationship

Contract and business dealing relationship means other business cooperation and trading contact relationship, except for representation and agency relationship,



existing between both parties; other relationship refers to the relationship other than commercial contact between both parties. The definition of contract, business dealing or other relationship shall start from the legislation purpose of maintaining good faith principle, take “protecting prior rights and restraining unfair competition” as foothold. The preemptive registration of a trademark of which one is fully aware of the prior use by other person for reason of contract, business dealing or other relationship shall be put under the regulation of this clause.

Common contract and business dealing relationships include:

- (1) Purchase and sales relationship;
- (2) Entrusted processing relationship;
- (3) Alliance relationship (trademark use license);
- (4) Investment relationship;
- (5) Sponsoring or co-hosting of an activity;
- (6) Business survey and negotiation relationship;
- (7) Advertising agency relationship;
- (8) Other business dealing relationship.

Common other relationships include:

- (1) Kinship;
- (2) Subordination relationship (for instance, other common employees except for representatives set forth in Paragraph 1 of Article 15);

That one knows the prior trademark due to other relationship except for the said relationship above shall be the other relationship as provided in this paragraph.

The following evidence may prove the existence of contract, business dealing and other relationships:

- (1) Contracts;
- (2) Correspondence letters, transaction vouchers, purchasing materials, etc. which could prove contract and business dealing;
- (3) Enterprise’s payroll sheet, labor contract, social insurance and medical insurance materials, certificate of registered permanent residence, etc.;
- (4) Other evidence proving the existence of specific relationship.

4. Determination of “Prior Use”

Prior use means that a trademark has been used in Chinese market before application for registration of the disputed trademark. Prior use includes not only the use of the trademark on actually sold goods and provided services, but also the promotion and marketing of the trademark.

The prior use mentioned in this Article shall also include the actual preparation activities made for the launching of the goods or services bearing the disputed trademark into the Chinese market.



Prior user only needs to prove that the trademark is already used, and does not need to prove that such trademark has had certain influence after use.

5. Where it's not in the name of specific related person that a trademark is applied for registration, but there is evidence proving that, the registration applicant and the specific related person collude with each other, it shall fall under the preemptive registration of specific related person, as provided in Paragraph 2 of Article 15 of the *Trademark Law*. For preemptive registration act through collusion, presumption may be made dependent on the situation according to the kinship, investment relationship or the like between the trademark registration applicant and the above specific related person.

6. The trademarks that a specific related person shall not apply for registration are not limited to the trademarks identical to other's prior trademark, but also include the trademarks similar to other's prior trademark.

7. The scope of protection for other's prior trademark is not limited to the goods or services identical to those goods or services designated by such trademark, but also covers similar goods or services.



IV. Standards for Trial of Damaging Other's Prior Rights

Article 32 of the *Trademark Law*: The application for trademark registration shall not damage other's existing prior rights ...

1. Introduction

The prior rights provided herein refers to other rights already obtained before the date of application for registration of the disputed trademark other than the trademark right, including the right to trade name, copyright, industrial design patent right, right of personal name, right to portrait, and other lawful prior rights and interests to be protected.

Where in the trial of the cases of trademark opposition, review of rejection of registration and invalidity declaration, the problem of prior right protection is involved, determination shall be made with these Standards as principle on a case-by-case basis.

For the purpose of this Article, the term “existing” shall generally take the date of application for registration of a disputed trademark as time point to ascertain whether a prior right is formed and still in legal state. However, if a prior right does not exist when a case is tried, the registration of the disputed trademark shall generally not be affected.

2. Prior Rights

2.1 Right to trade name

2.1.1 Where the application for registration as a trademark of words which are identical or similar to a prior trade name registered and used by other person and having had certain popularity will likely confuse the relevant public in China, and cause possible damage to the interests of the holder of right to a prior trade name, this act shall be determined as damage to other's right to a prior trade name, and the disputed trademark shall not be approved to register or shall be declared invalid.

2.1.2 Applicable Elements

(1) Other person has registered or used its trade name before application for registration of a disputed trademark;

(2) Such trade name has certain popularity among the relevant public in China;

(3) The registration and use of a disputed trademark will likely confuse the relevant public and probably damage the interests of the holder of prior right to the trade name.

2.1.3 The definition of right to a prior trade name

Where a right to trade name is used to defend against the disputed trademark, the date of registration or use of the trade name shall be earlier than the date of application for registration of the disputed trademark.



The fact of prior enjoyment of the right to a trade name may be proved with enterprise registration materials, transaction documents of the goods bearing such trade name, advertising promotion materials, etc.

2.1.4 Determination of the likelihood of confusion

The likelihood of confusion means that the registration and use of a disputed trademark will mislead the relevant public that the goods or services bearing such trademark are sourced from the holder of right to a trade name, or have some specific association with the holder of right to such trade name.

The following factors shall be comprehensively considered when determining that the disputed trademark will likely cause confusion with the prior trade name and probably damage the interests of holder of prior trade name:

(1) Degree of similarity between the disputed trademark and the trade name

In principle, it will be easy to arouse confusion when a disputed trademark and a prior trade name are identical or basically identical, but in individual cases, it shall be determined whether a disputed trademark and a trade name constitute similarity according to the originality and popularity of the prior trade name.

(2) The degree of relevance between the goods or services designated by a disputed trademark and the goods or services actually operated by the holder of right to trade name

The protection for right to a prior trade name shall be limited to identical or similar goods or services actually operated by the holder of right to trade name in principle, but in individual cases, the protection scope of such prior trade name shall be determined according to the originality and popularity of the prior trade name, as well as the degree of relevance of the goods or services of both parties.

2.1.5 These Standards shall apply mutatis mutandis to the abbreviation of enterprise name, as well as the name and abbreviation of public institutions, other organizations, individual partnerships, privately or individually-owned businesses.

2.2 Copyrights

2.2.1 Where a work of which the copyright is enjoyed by other person is applied for registration as a trademark without the permission of the copyright holder, such act shall be determined as damage to other's prior copyright, and the disputed trademark shall not be approved to register or shall be declared invalid.

2.2.2 Applicable Elements

(1) Other person has enjoyed prior copyright before the application for registration of the disputed trademark;

(2) The disputed trademark is identical or substantially similar to the work of which the prior copyright is enjoyed by other person;

(3) The applicant for registration of the disputed trademark has accessed or has the possibility to access to the work of which the prior copyright is enjoyed by other person;

(4) The applicant for registration of the disputed trademark does not obtain the permission of the copyright holder.

2.2.3 Definition of prior copyright

Prior enjoyment of a copyright means that other person has obtained the copyright by means of creating and completing a work or inheritance or transfer, etc. before the application date for registration of the disputed trademark.

The fact of prior enjoyment of copyright may be proved with the following evidence materials: copyright registration certificate, evidence material proving prior public publishing of such work, evidence materials proving prior creation and completion of such work, evidence materials proving the prior obtaining of copyright by means of inheritance, transfer, etc. Trademark registration certificate or the certificate of copyright registration conducted later than the date of application for registration of the disputed trademark cannot be independently used as the verdict evidence to determine that the copyright is tenable.

The fact of the prior enjoyment of copyright of the party concerned, as confirmed in an effective judgment document, may be accepted where there is no sufficient evidence to the contrary.

2.2.4 “Work” means an object protected by the *Copyright Law of the People’s Republic of China*.

2.2.5 Where the applicant for registration of a disputed trademark could prove that the disputed trademark is independently created and completed, the disputed trademark shall not constitute damages to other’s prior copyright.

2.2.6 The applicant for registration of a disputed trademark shall assume the burden of proof for the fact claimed by it that it has obtained the permission of copyright holder.

In accordance with related provisions of the *Copyright Law of the People’s Republic of China* and its *Implementation Regulations*, the applicant for registration of a disputed trademark shall produce evidence to prove that the copyright holder has made direct and definite expression of its intention to license the applicant to use its work.

2.3. Industrial design Patent Right

2.3.1 Where applying for the registration without authorization as a trademark of an industrial design of which the patent right is owned by other person will probably damage the interests of the holder of prior industrial design patent right, the first half of Article 32 of the *Trademark Law* may apply to disapprove the registration of the disputed trademark or declare it invalid.

2.3.2 Applicable Elements

(1) Other person has enjoyed the industrial design patent right before the application for registration and use of the disputed trademark;

(2) The disputed trademark and the industrial design are identical or similar.

2.3.3 Definition of other’s prior industrial design patent right



The date of public announcement of granting an industrial design patent shall be earlier than the date of application for registration and the date of use of a disputed trademark.

Where the party concerned claims prior enjoyment of the industrial design patent right, it shall submit evidence materials to prove the right, such as industrial design patent certificate, annual fee payment voucher, etc.

2.3.4 Determination of identicalness or similarity between a disputed trademark and an industrial design

The identicalness or similarity between a disputed trademark and an industrial design may be determined by comparing such disputed trademark and industrial design on the whole, or comparing the principal distinctive part of the disputed trademark and the important parts of the industrial design.

The determination about the identicalness or similarity between a disputed trademark and an industrial design shall adopt the standards for examining the identicalness or similarity of trademarks in principle. The scope of protection for the words in an industrial design patent only covers their particular expression form, and excludes their meaning.

2.3.5 The applicant for registration of a disputed trademark shall assume the burden of proof for the fact claimed by it that it has obtained the authorization of the holder of an industrial design patent right.

2.4. Right of Personal Name

2.4.1 Where applying for registration without permission as a trademark of other's name may damage other's right of personal name, the disputed trademark shall not be approved to register or shall be declared invalid.

2.4.2 Applicable Elements

(1) In the cognition of the relevant public, the words of a disputed trademark directed to the holder of the right of personal name;

(2) The registration of the disputed trademark may damage other's right of personal name.

2.4.3 Other's name includes autonym, pseudonym, stage name, byname, etc.

"Other" refers to a natural person living in the world when an application for opposition, review of rejection of registration or invalidity declaration is filed.

2.4.4 When determining whether a disputed trademark damages other's right of personal name, the precondition shall be met that, the relevant public will likely direct the goods on which the disputed trademark is registered and used to the holder of the right of personal name, or establish a corresponding connection between such goods and the holder of the right of personal name, including not only that the disputed trademark is completely identical to other's name, but also that the disputed trademark is somewhat different from other's name with regard to character composition, but reflects other's major name features, and directs to the holder of right of such personal name in the cognition of the relevant public.



Where a trademark is applied for registration by using the name of a public figure without permission, or a trademark is applied for registration knowing that such trademark is other's name but aiming to damage other's interests, it shall be determined as damage to other's right of personal name.

2.4.5 The applicant for registration of a disputed trademark shall assume the burden of proof for the fact claimed by it that it has obtained the permission of the holder of the right of personal name.

Where a holder of right of personal name withdraws permission before the date of application for registration of the disputed trademark, or a trademark is applied for registration outside the goods or services permitted by the holder of right of personal name, or a trademark is applied for registration on the goods or services not clearly permitted by the holder of right of personal name, it shall be deemed as not obtaining permission.

2.4.6 Where applying for registration of a trademark with a name will mislead the public, hinder the good public order, or produce other negative influence, it shall be examined in accordance with the provisions of Subparagraphs (7) and (8) of Paragraph 1, Article 10 of the *Trademark Law*.

2.5. Right to Portrait

2.5.1 Where applying for registration without permission as a trademark of other's portrait may damage other's right to portrait, the disputed trademark shall not be approved to register or shall be declared invalid.

2.5.2 Applicable Elements

(1) In the cognition of relevant public, the image of a disputed trademark is directed to the holder of the right to such portrait;

(2) The registration of the disputed trademark may damage other's right to portrait.

2.5.3 "Other" means a natural person living in the world when filing an application for opposition, review of rejection of registration or invalidity declaration

Portrait refers to the reappearance of other person's image through shooting, painting and other artistic means, including photo, portrait painting, video, etc.

2.5.4 When determining whether a disputed trademark damages other's right to portrait, the precondition shall be met that, the relevant public will likely direct the goods on which the disputed trademark is registered and used to the holder of the right to portrait, or establish a corresponding connection between such goods and the holder of the right to portrait.

In case of an application for registration of a disputed trademark which uses other person's portrait photo, whether such other person has public profile shall not be the precondition to protection; in case of an application for registration of a disputed trademark which uses other person's portrait painting, the protection scope shall generally be determined in individual cases by taking into consideration the popularity of such other person.



Where a trademark is applied for registration by using the portrait of a public figure without permission, or a trademark is applied for registration knowing that such trademark is other's portrait but aiming to damage other's interests, it shall be determined as damage to other's right to portrait.

2.5.5 The applicant for registration of a disputed trademark shall assume the burden of proof for the fact claimed by it that it has obtained the permission of the holder of the right to portrait.

Where a holder of right to portrait withdraws permission before the date of application for registration of the disputed trademark, or a trademark is applied for registration outside the goods or services permitted by the holder of right to portrait, or a trademark is applied for registration on the goods or services not clearly permitted by the holder of right to portrait, it shall be deemed as not obtaining permission.

2.5.6 Where the application for registration of a trademark with other's portrait misleads the public, hinders the good public order, or produces other negative influence, it shall be examined in accordance with the provisions of Subparagraphs (7) and (8) of Paragraph 1, Article 10 of the *Trademark Law*.

3. Prior Rights and Interests

3.1 Specific name, package and decoration of famous goods or services

3.1.1 Where applying for registration as a trademark of a word or pattern, etc. which is identical or similar to the specific name, package or decoration of other's famous goods or services will likely confuse the relevant public in China and probably damage the interests of such holder of lawful rights and interests, it shall be determined as damages to the specific name, package and decoration of other's famous goods or services, and the disputed trademark shall not be approved to register or shall be declared invalid.

3.1.2 Applicable Elements

(1) Other person has used the specific name, package and decoration of famous goods or services before the application for registration of the disputed trademark;

(2) The specific name, package and decoration of famous goods or services are not approved to register as trademarks;

(3) The disputed trademark is identical or similar to the specific name, package and decoration of famous goods or services;

(4) The registration and use of the disputed trademark will confuse or mislead the relevant public, and probably damage the interests of the holder of rights and interests on the specific name, package and decoration of prior famous goods or services.

3.1.3 Determination with the specific name, package and decoration of famous goods or services

A name, packing and decoration of goods with distinctive features that differentiates the origin of the goods shall be determined as the "specific name,



package and decoration”, and any of the following circumstances shall not be determined as the specific name, package and decoration of famous goods:

- (1) Generic name, pattern, symbol of goods;
- (2) Name of goods that only directly indicates the quality, main raw materials, function, weight, quantity and other features of goods;
- (3) A shape generated only by the nature of the goods itself, and the shape of goods required for obtaining technical effect and a shape that gives substantial value to goods;
- (4) Other name, packing and decoration of goods which lacks distinctive features.

Where any circumstance as provided in the above Items (1), (2) and (4) gains distinctive features through use, it may be determined as a specific name, packing and decoration.

3.1.4 Determination of likelihood of confusion

When determining whether a disputed trademark may likely be confused with a prior specific name, packing, decoration of famous goods or services and damage the interests of a prior right holder, one shall comprehensively consider the similarity between the disputed trademark and the specific name, packing, decoration of such famous goods or services and the relevance between the goods or services designated by the disputed trademark and such famous goods or services.

3.2 Other lawful prior rights and interests that should be protected



V. Standards for Trial of Preemptive Registration of Other's Trademark Already Used and Having Certain Influence

Article 32 of the *Trademark Law*: The application for trademark registration ... and it's not allowed to preemptively register by improper means a trademark which has been used and had certain influence.

1. Introduction

The abovementioned provision is to protect a trademark which has been used and had certain influence based on the principle of good faith and credibility, to restrain the act of preemptive registration by improper means, and to make up the deficiency that strict implementation of the registration principles may cause unfair consequences.

Where in the trial of the cases of trademark opposition, review of rejection of registration and invalidity declaration, the problem of preemptive registration of other's trademark already used and having certain influence is involved, determination shall be made with these Standards as principle on a case-by-case basis.

2. Applicable Elements

(1) Other's trademark has been used and had certain influence before the date of application for the disputed trademark;

(2) The disputed trademark is identical or similar to other's trademark;

(3) The goods or services designated by the disputed trademark are identical or similar to the goods or services designated by other's trademark in principle; and

(4) The applicant of the disputed trademark adopts improper means.

Where the owner or interested party of a prior trademark having been used and had certain influence requests invalidity declaration of the disputed trademark in accordance with the provisions of Article 32 of the *Trademark Law*, the request shall be brought forward within five years since the date when the disputed trademark is approved to register.

3. Determination of a trademark already used and had certain influence

3.1 A trademark having been used and had certain influence refers to a non-registered trademark which has been prior used and known to the relevant public within a certain scope in China.

The determination of the relevant public shall apply relevant provisions of the *Standard for Trial of Reproduction, Imitation or Translation of Others' Well-Known Trademark*.

3.2 In order to prove that a trademark has certain influence, the following evidence materials may be submitted:

(1) Related materials about the earliest use time and continuous use of such trademark;

(2) The contract, invoice, bill of lading, bank deposit receipt, import and export vouchers, etc. of the goods or services bearing such trademark;



(3) Related materials about the sales region scope, sales volume, sales channels and methods and market share of the goods or services bearing such trademark;

(4) Any commercial advertisement or marketing materials released by the owner of such trademark via the media like radio, film, TV, newspaper, periodicals, network, outdoor, etc. and all comments, reporting and promotion materials involving such trademark in the above media;

(5) Related materials of the exhibitions, expos, auctions and other commercial activities participated by the goods or services designated by such trademark;

(6) Goodwill materials of such trademark such as awards;

(7) Other materials which may prove that such trademark has certain influence.

The extraterritorial evidence materials provided by the party concerned which are able to prove that such trademark is known to the relevant public of China shall be admissible.

3.3 The evidence materials used to prove the use of a trademark shall be able to display the used trademark sign, goods or services, use date and user.

3.4 Whether a trademark has certain influence shall be determined based on the date of application for the disputed trademark in principle.

Where a disputed trademark has been used and had certain influence before the date of application, but it is not used continuously, then it will be necessary to determine whether the influence of such trademark lasts till the date of application for registration of the disputed trademark.

4. Determination of “improper means”

The following factors may be considered comprehensively for determining whether improper means are adopted to apply for a disputed trademark:

(1) The applicant of the disputed trademark once had trade contacts or partnership with the prior user;

(2) The applicant of the disputed trademark and the prior trademark user are located in identical territory or both parties have identical sales channels and territorial scope for their goods or services;

(3) The applicant of the disputed trademark once had other disputes with the prior user, and may know such prior user’s trademark;

(4) The applicant of the disputed trademark once had dealings with the prior user between their internal personnel;

(5) The applicant of the disputed trademark, aiming to make improper profits, uses the reputation and influence of the prior user’s trademark having had certain influence to carry out misleading promotion, forces the prior user to cooperate with it in trading, and asks for high-amount transfer fee, license fee or infringement compensation from the prior user or others;

(6) Other’s trademark has relatively strong originality, and the disputed trademark is highly similar to it; and



(7) Other circumstances which could be determined as improper means.

5. Whether any circumstance constitutes the circumstances stated in this Article shall be considered comprehensively in combination with the degree of “certain influence” and the situation of “improper means”.



VI. Standards for Trial of Trademark Registration Obtained by Deceptive or Other Improper Means

Paragraph 1, Article 44 of the *Trademark Law*: A registered trademark ... shall be declared invalid by the Trademark Office if its registration is obtained by deceptive or other improper means. Other entities or individuals may request the Trademark Review and Adjudication Board to declare such registered trademark invalid.

1. Introduction

The application for trademark registration shall abide by the principle of good faith. It is not allowed to obtain registration from administrative authority of trademark by deceptive means, or to obtain registration by other improper means such as disturbing trademark registration order, prejudicing public interests, improper occupation of public resources or other improper methods to seek improper benefits.

Where the registration of a trademark is obtained by deceptive or other improper means, determination shall be made with these Standards as principle on a case-by-case basis.

2. Applicable Elements

2.1 The act of obtaining the registration of a trademark by deceptive means.

Such circumstance means that, when applying for registration of a trademark, such disputed trademark registrant commits the act of fabricating or concealing the truth, submitting counterfeited application documents or other documentary evidence to the administrative authority of trademark in order to obtain trademark registration, including but not limited to the following circumstances:

- (1) The act of fabricating signature and seal on application documents;
- (2) The act of fabricating and altering applicant's identity certification documents, including using false identity certification documents such as ID card, business license, etc., or altering important registration items on identity registration documents such as ID card, business license, etc.;
- (3) The act of fabricating other certification documents.

2.2 The act of obtaining the registration of a trademark by other improper means.

Such circumstance means that there is sufficient evidence proving that disputed trademark registrant obtains registration by other improper means other than deceptive means, such as disturbing trademark registration order, damaging public interest, taking up public resources improperly or seeking illegitimate interests by other means, etc., and its act violates the principle of good faith and damages the public interests. The circumstance of only damaging certain civil rights and interests shall be examined and determined in accordance with Article 54 and other corresponding provisions of the *Trademark Law*.

2.2.1 The following circumstances belong to “obtaining registration by other improper means” stipulated in this Article:



(1) A disputed trademark applicant applies for registration of multiple trademarks, which are identical or similar to other's trademark with relatively strong distinctiveness;

(2) A disputed trademark applicant applies for registration of multiple trademarks, which are identical or similar to other's trade name, enterprise name, social organization and other institution name, specific name, packing and decoration of famous goods, etc.;

(3) A disputed trademark applicant applies for registration of plenty of trademarks, and is obviously lack of true intention to use;

(4) Other circumstances which may be determined as obtaining registration through improper means.

2.2.2 Upon registration of a disputed trademark, the applicant of the disputed trademark neither actually uses such trademark nor makes preparation for the use thereof, but rather, only aiming to make improper profits, actively makes a sale to others, forces others to cooperate with it in trading, or asks for high-amount transfer fee, license fee or infringement compensation from others, it may be determined that the applicant is obviously lack of true intention to use.

2.2.3 The trademarks of which the registration is obtained by a disputed trademark applicant by improper means are not limited to the trademarks applied for registration by the disputed trademark applicant itself, but also include those trademarks applied for registration by a person which colludes, or has specific identity relationship or other specific relationship with the disputed trademark applicant.



VII. Standards for Trial of Registered Trademark Cancellation Cases

Article 49 of the *Trademark Law*: A trademark registrant that changes, without authorization, the registered trademark, the name or address of the registrant or other registration items during the use of the registered trademark shall be ordered to make correction within the prescribed time period by the relevant local administration for industry and commerce, and shall have its registered trademark cancelled by the Trademark Office if it fails to make correction by the prescribed deadline.

Where a registered trademark has become the generic name of the goods for which its use is approved or has not been in use for three consecutive years without justification, any entity or individual may apply to the Trademark Office for cancellation of the registered trademark. The Trademark Office shall make a decision within nine months upon receipt of the application. Where necessary, the time period may be extended for three months under special circumstances upon approval by the administration for industry and commerce of the State Council.

Article 54 of the *Trademark Law*: A party concerned who has objection to the decision made by the Trademark Office on cancellation or non-cancellation of a registered trademark may apply for review to the Trademark Review and Adjudication Board within 15 days upon receipt of the relevant notice. The Trademark Review and Adjudication Board shall make a decision, and notify the party concerned in writing within nine months upon receipt of the application. Where necessary, the time period may be extended for three months under special circumstances upon approval by the administration for industry and commerce under the State Council. The party concerned who has objection to the decision of the Trademark Review and Adjudication Board may bring it before a people's court within 30 days upon receipt of the relevant notice.

Article 65 of the Implementing Regulations of *Trademark Law*: Where the circumstance exists that a registered trademark becomes a generic name of the goods designated by it, as provided in Article 49 of the *Trademark Law*, any entity or individual may apply to the Trademark Office for cancelling such registered trademark, and shall attach evidence materials to the application filed. After accepting the application, the Trademark Office shall notify the trademark registrant to make an open reply within 2 months as of the date of the receipt of the notification; where the trademark registrant fails to make an open reply after expiration of the said period, it will not affect the decision making of the Trademark Office.

Article 66 of the Implementing Regulations of *Trademark Law*: Where the circumstance exists that a registered trademark is not used for 3 consecutive years without justification, as provided in Article 49 of the *Trademark Law*, any entity or individual may apply to the Trademark Office for cancelling such registered trademark, and shall explain related situations when filing the application. After accepting the application, the Trademark Office shall notify the trademark registrant to submit the evidence materials proving the use of such trademark before filing of the application for cancellation or to explain the justification for not using such trademark within 2 months since the date of receipt of the notification; where the evidence materials proving the use are not provided upon expiration of the said period, or the



evidence materials are invalid and there is no justification, the Trademark Office shall cancel its registered trademark.

The evidence materials mentioned in the preceding paragraph include the evidence materials proving the trademark registrant's use of the registered trademark and the evidence materials proving that the trademark registrant licenses others to use the registered trademark.

Where a registered trademark is applied for cancellation for reason of not being used for 3 consecutive years without justification, the application shall be filed after 3 years as of the date of announcement on the registration of such registered trademark.

Article 67 of the Implementing Regulations of *Trademark Law*: The following circumstances belong to the justifications provided in Article 49 of the *Trademark Law*:

- (1) Force Majeure;
- (2) Governmental policy restrictions;
- (3) Bankruptcy liquidation;
- (4) Other justifications which cannot be attributed to the trademark registrant.

1. Introduction

A trademark registrant has the statutory obligation to use its registered trademark in a normative and continuous way and maintain the distinctiveness of such registered trademark actively. The *Trademark Law* prohibits the acts of changing a registered trademark, its registrant's name, address or other registration items, etc. arbitrarily.

2. Determination of whether the circumstance of changing a registered trademark arbitrarily exists

Changing a registered trademark arbitrarily means that, during actual use of a registered trademark, the trademark registrant or a licensed user changes the words, patterns, letters, numbers, solid shape, color combination, etc. of such trademark at random, so that the main parts and distinctive features of the original registered trademark change. Compared with the original registered trademark, the mark after change will likely be considered inconsistent.

Where any abovementioned act exists, and the trademark registrant is ordered by local administration for industry and commerce to make correction within a limited period, but it refuses to make corrections, then such trademark may be cancelled according to law.

3. Determination of whether the circumstance of changing the registrant's name, address or other registration items of a registered trademark arbitrarily exists

3.1 Changing the registrant's name of a registered trademark arbitrarily means that, the trademark registrant does not apply to the Trademark Office for alteration according to law after change of the name (name or designation), or the name of the



registrant actually using the registered trademark is inconsistent with the name of the registrant recorded in the Trademark Register.

3.2 Changing the registrant's address of a registered trademark arbitrarily means that, the trademark registrant does not apply to the Trademark Office for alteration according to law after change of address, or the actual address of the trademark registrant is inconsistent with the address recorded in the Trademark Register.

3.3 Changing other registration items of a registered trademark arbitrarily means that, the trademark registrant does not apply to the Trademark Office for alteration according to law after change of other registration items except for the name and address of trademark registrant, so that such other registration items are inconsistent with related items registered in the Trademark Register.

Where any abovementioned act exists, and the trademark registrant is ordered by local administration for industry and commerce to make correction within a limited period, but it refuses to make corrections, then such trademark may be cancelled according to law.

4. Determination of whether the circumstance exists that a registered trademark becomes the generic name of the goods designated by it

4.1 A registered trademark's becoming the generic name of the goods designated by it means that, the registered trademark originally having a trademark's distinctive features is retrograde to a generic name of the goods designated by it during the actual use in the market.

4.2 The determination of whether a disputed trademark is a generic name of goods shall apply "Those only having the generic name, pattern and model of the goods" in section 3 of the "Examination on Distinctive Features of Trademarks" in the Second Part of Trademark Examination Standards.

4.3 The time point for determining whether a registered trademark becomes a generic name of the goods designated by it shall generally be subject to the state of facts when the application for cancellation is filed, and the state of facts during trial of a case may be used as reference.

4.4. Applicable Elements

(1) A registered trademark does not constitute a general name of the goods designated by it when the application for its registration is approved;

(2) A registered trademark has become a generic name of the goods designated by it when the application for its cancellation is filed.

4.5 Where a registered trademark becomes a generic pattern or model of the goods designated, the case shall be tried according to the provisions of this clause.

5. Determination of circumstances of no use of a registered trademark for three consecutive years

5.1 No use of a registered trademark for three consecutive years means that, a registered trademark is not used within its effective period, and such status lasts for more than three consecutive years.



5.2 The time for no use of a registered trademark for three consecutive years shall be calculated from the date when an applicant applies to the Trademark Office for cancelling such registered trademark, and be reckoned forward by three years.

5.3 Determination of the use of a trademark

5.3.1 The use of a trademark refers to the commercial use of the trademark. It includes the act of applying the trademark to goods, goods package or container and goods transaction documents, or to advertising promotion, exhibitions and other commercial activities, in order to distinguish the source of goods.

5.3.2 The specific expression forms of using a trademark on designated goods include:

(1) Attaching the trademark to goods, goods packages, containers, labels, etc. by means of direct sticking, engraving, printing or weaving, etc., or using the trademark in attached labels of goods, product specifications, instruction manual, price list, etc.;

(2) Using the trademark in the transaction documents related to the sale of goods, including using the trademark in goods sales contract, invoices, bills, receipts, goods import and export inspection and quarantine certificate, customs declaration documents, etc.;

(3) Using the trademark through the media such as broadcasting, TV, etc., or publishing the trademark in public publications, advertising and propagandizing the trademark or the goods designated by the trademark by means of bill board, posting advertisement or other advertising means;

(4) Using the trademark at exhibitions and expos, including providing the printing materials and other information using such trademark at exhibitions and expos; and

(5) Other trademark use forms meeting the provisions of laws.

5.3.3 The specific expression forms of using a trademark on specified services include:

(1) Applying the trademark directly at service place, including applying it to the service instruction manual, signboard at service place, in-hall decoration, working personnel's clothes, posters, menu, price list, gift coupon, office stationary, letter paper, and other articles related to the specified services;

(2) Applying the trademark to the documents and materials related to the services, such as invoices, remittance receipts, service provision agreements, repair and maintenance certificate, etc.;

(3) Using the trademark through the media such as broadcasting, TV, etc., or publishing the trademark in public publications, advertising and propagandizing the trademark or the services designated by the trademark by means of bill board, posting advertisement or other advertising means;

(4) Using the trademark at exhibitions and expos, including providing the printing materials and other information using such trademark at exhibitions and expos;



(5) Other trademark use forms meeting the provisions of laws.

5.3.4 A trademark registrant shall assume the burden of proof to prove that a disputed trademark is under no circumstance of not being used for three consecutive years.

The evidence materials used to prove that a disputed trademark is under no circumstance of not being used for three consecutive years shall meet the following requirements:

- (1) Being able to display the sign of the disputed trademark used;
- (2) Being able to display that the disputed trademark is used on the goods or services designated by it;
- (3) Being able to display the user of the disputed trademark, including the trademark registrant itself, and the others licensed by the trademark registrant. If the disputed trademark is licensed to use by others, the existence of license relationship shall be proved;
- (4) Being able to display the use date of the disputed trademark, and being within three years reckoned forward as of the date of application for cancellation;
- (5) Being able to prove the use of the disputed trademark within the territorial scope covered by the *Trademark Law*;

The mere submission of the following evidence shall not be deemed as the use of trademark within the meaning as stipulated by the *Trademark Law*:

- (1) Goods sales contract or the agreement or contract providing services;
- (2) Written testimony;
- (3) Physical evidence, audiovisuals, website information, etc., that are difficult to differentiate whether it has been altered; and
- (4) Real object and duplicate.

5.3.5 The following circumstances shall not be deemed as the use of trademark within the meaning as stipulated by the *Trademark Law*:

- (1) The publication of trademark registration information or the statement of a trademark registrant on its exclusive use right to its registered trademark;
- (2) Use of a trademark other than in public commercial field;
- (3) Use of a trademark only as a gift;
- (4) Only involving transfer or license without actual use;
- (5) Only symbolic use for the purpose of maintaining the registration of the trademark.

5.3.6 The evidence on use submitted by a trademark registrant which alters the main parts and the distinctive features of the registered trademark shall not be determined as the use of the registered trademark.



5.3.7 A trademark registrant shall use a registered trademark on the goods designated by it. Where a trademark registrant uses a registered trademark on one of the goods designated by it, then the registration on other goods similar to the said goods shall be maintained. The trademark registrant's use of its registered trademark on similar goods other than the goods designated by such registered trademark shall not be deemed as the use of its registered trademark.



VIII. Standards for Trial of Similar Goods or Services

1. Introduction

Trademarks are registered, used, managed and protected by the type of goods or services, and similar relationship of goods or services is set up in trademark laws to establish trademark rights and protection scope. The judgment on similar goods or services is an important content of trial of trademark right determination cases.

The *Similar Goods and Services Distinguishing Form* is formulated and publicized by Chinese trademark administration authority based on the *International Classification Form of Goods and Services for Trademark Registration*, and by summarizing many years of practical experiences in the division of similar goods or services.

In order to stabilize trademark registration order, enhance trial efficiency, and unify trial standard, the Trademark Office and the Trademark Review and Adjudication Board shall, when trying a case, refer to the Similar Goods and Services Distinguishing Form in principle. However, for reason of the constant updating and development of goods and service items, the constant change of market transaction status, and differences in individual trademark cases, the determination on similar goods or services will also be adjusted accordingly.

Where in the trial of the cases about review of rejected trademark, objection, review of non-approved registration, invalidity declaration, review of invalidity declaration, cancellation, review of cancellation, the problem of determination on whether goods or services are similar is involved, determination shall be made with these Standards as principle on a case-by-case basis.

2. Determination of Similar Goods

2.1 Similar goods indicate the goods which are identical or have relatively great relevance with regard to function, purpose, main raw materials, production department, sales channel, sales place, consumer group, etc.

2.2 The following factors shall be considered comprehensively when determining similar goods, instead of taking a single factor as the only basis for considering similarity of goods:

(1) Function and use of goods

Functions and use of goods directly embody consumers' purchasing objective, and is an important basis for determining the similarity of goods. Where two goods are identical or similar with regard to function and use, and could meet consumers' similar demands, there will be a large probability for the two goods to be determined as similar goods.

Where two goods are complementary with regard to function and use, or need to be used together for meeting consumers' demand, there will be a large probability for them to be judged as similar goods.



(2) Main raw materials and ingredients of goods

Main raw materials or ingredients of goods are one of the important factors determining the functions and use of goods. Where the main raw materials or ingredients of two goods are identical or similar, or are mutually replaceable, there will be a large possibility for the two goods to be determined as similar goods.

(3) Sales channel and sales place of goods

Where two goods are identical or similar with regard to sales channel and sales place, there is a big opportunity for consumers to associate them simultaneously, then there will be a large possibility for the two goods to be determined as similar goods.

(4) Producers and consumers of goods

The larger the possibility that two goods are produced, manufactured or processed by producers of the same industry or field, the larger the possibility that the two goods will be determined as similar goods.

Where two goods take personnel engaged in the same industry as consumer group, or their consumer groups have common features, there will be a large possibility for the two goods to be determined as similar goods.

(5) Goods and parts & components

Many goods consist of each part and component, but one may not certainly consider that the goods and each part & component, or all the parts and components belong to similar goods, and still, the judgment shall be made according to consumers' common cognition with the degree of association between two factors.

Where the use of a certain part & component is to cooperate with the use function of a certain goods and lack of the certain part & component will make it impossible for the goods to realize its functions or will severely deteriorate its economic service purpose, then there will be a large possibility for them to be determined as similar goods.

(6) Consumption habit

The determination on similar goods shall also consider Chinese consumers' consumption habit formed in certain social and cultural background. Where consumers could mutually replace two goods habitually, there will be a large possibility for the two goods to be determined as similar goods.

(7) Other relevant factors affecting the determination on similar goods.

3. Determination of Similar Services

3.1 Similar services mean the services which are identical or have relatively great relevance with regard to service purpose, content, method, object, etc.

3.2 The following factors shall be considered comprehensively when determining similar services, instead of taking a single factor as the only basis for considering similarity of services:



(1) Purpose of service

The purpose of service directly embodies the consumption demand of the service receiver, and is an important basis for determination of similarity of services. Where two services have identical or similar purposes, and may satisfy the identical or similar demands of general service receivers, there will be a large possibility for them to be determined as similar services.

(2) Content and Method of Service

The content and method of service refers to the specific act, measures and means taken by the service receiver to satisfy the consumers' demands. The closer the content and method of two services are, the bigger the possibility for them to be determined as similar services will be.

(3) Service place

Where the service place of two services is the same, and there will be a relatively big opportunity for general service receivers to access to these two services simultaneously, then such service may be determined as similar services.

(4) Service provider and object

Where the providers of two services are from the same industry or field, and the receivers of two services are from identical or similar consumer groups, such services may be determined as similar services.

(4) Other relevant factors affecting the determination on similar services.

4. Determination on Whether Goods and Services are Similar

4.1 Similarity of goods and services refers to that there is a relatively great relevance between goods and services, and it's likely to confuse the relevant public that the goods and services are provided by a same market entity.

4.2 When determining whether the goods and services are similar, the degree of association between goods and services, and the consistency with regard to use, user, general effect, sales channel, sales habit, etc. shall be considered comprehensively.



IX. Standards for Trial of Trademarks Acquiring Distinctive Features through Use

Article 11 of the *Trademark Law*: The following marks shall not be registered as trademark:

- (1) those only having the generic names, patterns or models of the goods in respect of which the trademark is used;
- (2) those only having direct reference to the quality, main raw materials, function, use, weight, quantity or other features of the goods in respect of which the trademark is used;
- (3) those that otherwise lack distinctive features.

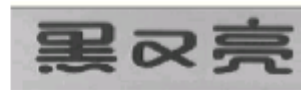
Any of those marks mentioned in the preceding paragraphs can be registered as a trademark only after it has acquired distinctive features in practical use and become distinguishable.

1. Where as stated in Paragraph 1 of Article 11 of the *Trademark Law*, a mark has been used and become a mark for the relevant public to distinguish the goods or services provided by the user, such mark shall be determined as eligible to register as a trademark in accordance with the provisions of Paragraph 2 of Article 11 of the *Trademark Law*.

Example 1: Toothpaste



Example 2: Shoe Polish



2. In accordance with the provisions of Paragraph 2 of Article 11 of the *Trademark Law*, the following factors shall be considered comprehensively when determining whether a mark which has acquired distinctive features through use:

- (1) The cognition of the relevant public with such mark;
- (2) The actual use time, use method and use in the same industry of such mark on designated goods or services;
- (3) The sales volume, sales amount and market share of the goods or services using such mark;
- (4) The advertising promotion and coverage scope of the goods or services using such mark; and
- (5) Other factors making such mark acquire distinctive features.

3. The judgment on whether a mark has acquired distinctive features through use shall be subject to the cognition of domestic the relevant public. Where the party concerned claims that such mark has acquired distinctive features through use, it shall

submit corresponding evidence materials to prove its claim. The evidence materials used to prove the use of such mark shall be able to display the used trademark sign, goods or services, use date and the user of such mark. Users of such mark include applicant of trademark and trademark licensee.

4. The mark applied for registration and having acquired distinctive features through use shall be basically consistent with the mark actually used, and shall not change the distinctive features of such mark; moreover, such mark shall be limited to actually used goods or services. Where such mark is used together with other marks, such mark shall be distinguished with the distinctive features of other marks, so as to make judgment on whether such mark has acquired distinctive features through use.

5. The determination on whether a trademark has become distinctive through use shall be subject to the state of facts during trial for the cases about review of the rejected trademark and review of non-approved registration, or shall be subject to the state of facts when a disputed trademark is applied for registration and refer to the state of facts during trial for the cases about invalidity declaration.



X. Determination of Interested Party

Article 33 of the *Trademark Law*: Within three (3) months from the date of the public announcement regarding a trademark that has undergone preliminary examination and obtained approval, where a prior rights holder or other interested party that is of the opinion that such trademark violates the provisions of Paragraphs 2 and 3 of Article 13, Article 15, Paragraph 1 of Article 16, Article 30, Article 31 or Article 32 of this Law, or if any person is of the opinion that such trademark violates the provisions of Article 10, Article 11 or Article 12 of this Law, such holder, interested party or person may file an opposition against the announced trademark with the Trademark Office. If no opposition is filed after the period of public announcement expires, registration shall be granted, a trademark registration certificate shall be issued and the trademark shall be publicly announced.

Article 45 of the *Trademark Law*: If a trademark that has been registered violates the provisions of Paragraph 2 or Paragraph 3 of Article 13, Article 15, Paragraph 1 of Article 16, Article 30, Article 31 or Article 32 of this Law, the prior rights holder or the interested party of the trademark may, within five (5) years from the day on which the trademark is registered, request the Trademark Review and Adjudication Board to declare that registered trademark invalid. The owner of a well-known trademark shall not be subject to the five (5) years restriction to request a declaration of invalidity based on a malicious registration.

1. Introduction

The “prior rights holder or interested party” as provided in Article 33 and Article 45 of the *Trademark Law* is a requirement for the subject qualification of the applicant filing case of opposition or declaration of invalidity on relative grounds. And prior right holders refer to owners of legal prior rights that should be protected by law, including trademark right, and interested party refers to any interested party to the said prior rights.

2. Interested Party

The following persons or entities may be determined as interested party to prior rights:

- (1) Licensee of prior trademark right and other prior rights;
- (2) Legal successor of prior trademark right and other prior rights;
- (3) Pledgee of prior trademark right; and
- (4) Other persons or entities where there is evidence to prove to have interested relationship in prior trademark or other prior rights.

The judgment on whether an applicant is an interested party shall in principle be subject to the time when an opposition or application for declaration of invalidity is filed. Where no interested relationship exists at the time of application but there is



interested relationship at the time of trial of the case, the applicant shall be determined as an interested party.

