

<p>Trademark Law of the People's Republic of China</p> <p>(Adopted at the 24th Session of the Standing Committee of the Fifth National People's Congress on 23 August 1982, revised for the first time according to the Decision on the Amendment of the Trademark Law of the People's Republic of China adopted at the 30th Session of the Standing Committee the Seventh National People's Congress, on 22 February 1993, and revised for the second time according to the Decision on the Amendment of the Trademark Law of the People's Republic of China adopted at the 24th Session of the Standing Committee of the Ninth National People's Congress on 27 October 2001.)</p>	<p>中华人民共和国商标法(最新)</p> <p>（1982年8月23日第五届全国人民代表大会常务委员会第二十四次会议通过 根据1993年2月22日第七届全国人民代表大会常务委员会第三十次会议《关于修改〈中华人民共和国商标法〉的决定》第一次修正 根据2001年10月27日第九届全国人民代表大会常务委员会第二十四次会议《关于修改〈中华人民共和国商标法〉的决定》第二次修正）</p> <p>目 录</p> <p>第一章 总 则</p> <p>第二章 商标注册的申请</p> <p>第三章 商标注册的审查和核准</p> <p>第四章 注册商标的续展、转让和使用许可</p> <p>第五章 注册商标争议的裁定</p> <p>第六章 商标使用的管理</p> <p>第七章 注册商标专用权的保护</p> <p>第八章 附 则</p>
<p>Chapter I General Provisions</p> <p>Article 1 This Law is enacted for the purposes of improving the administration of trademarks, protecting the exclusive right to use trademarks, and of encouraging producers and operators to guarantee the quality of their goods and services and maintaining the reputation of their trademarks, with a view to protecting the interests of consumers, producers and operators and to promoting the development of the socialist market economy.</p> <p>Article 2 The Trademark Office of the administrative authority for industry and commerce under the State Council shall be responsible for the registration and administration of trademarks throughout the country.</p> <p>The Trademark Review and Adjudication Board, established under the administrative authority for industry and commerce under the State Council, shall be responsible for handling</p>	<p>第一章 总 则</p> <p>第一条 为了加强商标管理,保护商标专用权,促使生产、经营者保证商品和服务质量,维护商标信誉,以保障消费者和生产、经营者的利益,促进社会主义市场经济的发展,特制定本法。</p> <p>第二条 国务院工商行政管理部门商标局主管全国商标注册和管理的工作。国务院工商行政管理部门设立商标评审委员会,负责处理商标争议事宜。</p>

matters of trademark disputes.

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

Said collective marks mean signs which are registered in the name of bodies, associations or other organizations to be used by the members thereof in their commercial activities to indicate their membership of the organizations.

Said certification marks mean signs which are controlled by organizations capable of supervising some goods or services and used by entities or individual persons outside the organization for their goods or services to certify the origin, material, mode of manufacture, quality or other characteristics of the goods or services.

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

Article 4 Any natural person, legal entity or other organization intending to acquire the exclusive right to use a trademark for the goods produced, manufactured, processed, selected or marketed by it or him, shall file an application for the registration of the trademark with the Trademark Office. Any natural person, legal entity or other organization intending to acquire the exclusive right to use a service mark for the service provided by it or him, shall file an application for the registration of the service mark with the Trademark Office.

The provisions set forth in this Law concerning trademarks shall apply to service marks.

Article 5 Two or more natural persons, legal entities or other organizations may jointly file an application for the registration for the same trademark with the Trademark Office, and

第三条 经商标局核准注册的商标为注册商标，包括商品商标、服务商标和集体商标、证明商标；商标注册人享有商标专用权，受法律保护。

本法所称集体商标，是指以团体、协会或者其他组织名义注册，供该组织成员在商事活动中使用，以表明使用者在该组织中的成员资格的标志。

本法所称证明商标，是指由对某种商品或者服务具有监督能力的组织所控制，而由该组织以外的单位或者个人使用于其商品或者服务，用以证明该商品或者服务的原产地、原料、制造方法、质量或者其他特定品质的标志。

集体商标、证明商标注册和管理的特殊事项，由国务院工商行政管理部门规定。

第四条 自然人、法人或者其他组织对其生产、制造、加工、拣选或者经销的商品，需要取得商标专用权的，应当向商标局申请商品商标注册。

自然人、法人或者其他组织对其提供的服务项目，需要取得商标专用权的，应当向商标局申请服务商标注册。

本法有关商品商标的规定，适用于服务商标。

第五条 两个以上的自然人、法人或者其他组织可以共同向商标局申请注册同一商标，共同享有和行使该商标专用权。

<p>jointly enjoy and exercise the exclusive right to use the trademark.</p> <p>Article 6 As for any of such goods, as prescribed by the State, that must bear a registered trademark, a trademark registration must be applied for. Where no trademark registration has been granted, such goods cannot be marketed.</p> <p>Article 7 Any user of a trademark shall be responsible for the quality of the goods in respect of which the trademark is used. The administrative authorities for industry and commerce at different levels shall, through the administration of trademarks, stop any practice that deceives consumers.</p> <p>Article 8 In respect of any visual sign capable of distinguishing the goods or service of one natural person, legal entity or any other organization from that of others, including any word, design, letters of an alphabet, numerals, three-dimensional symbol, combinations of Colours, and their combination, an application may be filed for registration.</p> <p>Article 9 Any trademark in respect of which an application for registration is filed shall be so distinctive as to be distinguishable, and shall not conflict with any prior right acquired by another person.</p> <p>A trademark registrant has the right to use the words of "registered trademark" or a symbol to indicate that his trademark is registered.</p> <p>Article 10 The following signs shall not be used as trademarks:</p> <p>(1) those identical with or similar to the State name, national flag, national emblem, military flag, or decorations, of the People's Republic of China, with names of the places where the Central and State organs are located, or with the names and designs of landmark buildings;</p> <p>(2) those identical with or similar to the State names, national flags, national emblems or military flags of foreign countries, except that the foreign state government agrees otherwise on the use;</p>	<p>第六条 国家规定必须使用注册商标的商品，必须申请商标注册，未经核准注册的，不得在市场销售。</p> <p>第七条 商标使用人应当对其使用商标的商品质量负责。各级工商行政管理部门应当通过商标管理，制止欺骗消费者的行为。</p> <p>第八条 任何能够将自然人、法人或者其他组织的商品与他人的商品区别开的可视性标志，包括文字、图形、字母、数字、三维标志和颜色组合，以及上述要素的组合，均可以作为商标申请注册。</p> <p>第九条 申请注册的商标，应当有显著特征，便于识别，并不得与他人在先取得的合法权利相冲突。</p> <p>商标注册人有权标明“注册商标”或者注册标记。</p> <p>第十条 下列标志不得作为商标使用：</p> <p>（一）同中华人民共和国的国家名称、国旗、国徽、军旗、勋章相同或者近似的，以及同中央国家机关所在地特定地点的名称或者标志性建筑物的名称、图形相同的；</p> <p>（二）同外国的国家名称、国旗、国徽、军旗相同或者近似的，但该国政府同意的除外；</p> <p>（三）同政府间国际组织的名称、旗帜、徽记相同或者近似的，但经该组织同意或者不易误导公众的除外；</p> <p>（四）与表明实施控制、予以保证的官方标志、检验印记相同或者近似的，但经授权的除外；</p>
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<p>(3) those identical with or similar to the names, flags or emblems or names, of international intergovernmental organizations, except that the organizations agree otherwise on the use or that it is not easy for the use to mislead the public;</p> <p>(4) those identical with or similar to official signs and hallmarks, showing official control or warranty by them, except that the use thereof is otherwise authorized;</p> <p>(5) those identical with or similar to the symbols, or names, of the Red Cross or the Red Crescent;</p> <p>(6) those having the nature of discrimination against any nationality;</p> <p>(7) those having the nature of exaggeration and fraud in advertising goods; and</p> <p>(8) those detrimental to socialist morals or customs, or having other unhealthy influences.</p> <p>The geographical names as the administrative divisions at or above the county level and the foreign geographical names well known to the public shall not be used as trademarks, but such geographical terms as have otherwise meanings or are a part of collective marks/or a certification marks shall be exclusive. Where a trademark using any of the above-mentioned geographical names has been approved and registered, it shall continue to be valid.</p> <p>Article 11 The following signs shall not be registered as trademarks:</p> <p>(1) those only comprising generic names, designs or models of the goods in respect of which the trademarks are used; -</p> <p>(2) those having direct reference to the quality, main raw materials, function, use, weight, quantity or other features of the goods in respect of which the trademarks are used; and</p> <p>(3) those lacking distinctive features.</p> <p>The signs under the preceding paragraphs may be registered as trademarks where they have acquired the distinctive features through use and become readily identifiable.</p> <p>Article 12 Where an application is filed for</p>	<p>(五) 同“红十字”、“红新月”的名称、标志相同或者近似的;</p> <p>(六) 带有民族歧视性的;</p> <p>(七) 夸大宣传并带有欺骗性的;</p> <p>(八) 有害于社会主义道德风尚或者有其他不良影响的。</p> <p>县级以上行政区划的地名或者公众知晓的外国地名, 不得作为商标。但是, 地名具有其他含义或者作为集体商标、证明商标组成部分的除外; 已经注册的使用地名的商标继续有效。</p> <p>第十一条 下列标志不得作为商标注册:</p> <p>(一) 仅有本商品的通用名称、图形、型号的;</p> <p>(二) 仅仅直接表示商品的质量、主要原料、功能、用途、重量、数量及其他特点的;</p> <p>(三) 缺乏显著特征的。</p> <p>前款所列标志经过使用取得显著特征, 并便于识别的, 可以作为商标注册。</p> <p>第十二条 以三维标志申请注册商标的, 仅由</p>
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<p>registration of a three-dimensional sign as a trademark, any shape derived from the goods itself, required for obtaining the technical effect, or giving the goods substantive value, shall not be registered.</p> <p>Article 13 Where a trademark in respect of which the application for registration is filed for use for identical or similar goods is a reproduction, imitation or translation of another person's trademark not registered in China and likely to cause confusion, it shall be rejected for registration and prohibited from use.</p> <p>Where a trademark in respect of which the application for registration is filed for use for non-identical or dissimilar goods is a reproduction, imitation or translation of the well-known mark of another person that has been registered in China, misleads the public and is likely to create prejudice to the interests of the well-known mark registrant, it shall be rejected for registration and prohibited from use.</p> <p>Article 14 Account shall be taken of the following factors in establishment of a well-known mark:</p> <ol style="list-style-type: none"> (1) reputation of the mark to the relevant public; (2) time for continued use of the mark; (3) consecutive time, extent and geographical area of advertisement of the mark; (4) records of protection of the mark as a well-known mark; and (5) any other factors relevant to the reputation of the mark. <p>Article 15 Where any agent or representative registers, in its or his own name, the trademark of a person for whom it or he acts as the agent or representative without authorization therefrom, and the latter raises opposition, the trademark shall be rejected for registration and prohibited from use.</p> <p>Article 16 Where a trademark contains a geographic indication of the goods in respect of which the trademark is used, the goods is not</p>	<p>商品自身的性质产生的形状、为获得技术效果而需有的商品形状或者使商品具有实质性价值的形状，不得注册。</p> <p>第十三条 就相同或者类似商品申请注册的商标是复制、摹仿或者翻译他人未在中国注册的驰名商标，容易导致混淆的，不予注册并禁止使用。</p> <p>就不相同或者不相类似商品申请注册的商标是复制、摹仿或者翻译他人已经在中国注册的驰名商标，误导公众，致使该驰名商标注册人的利益可能受到损害的，不予注册并禁止使用。</p> <p>第十四条 认定驰名商标应当考虑下列因素：</p> <ol style="list-style-type: none"> （一）相关公众对该商标的知晓程度； （二）该商标使用的持续时间； （三）该商标的任何宣传工作的持续时间、程度和地理范围； （四）该商标作为驰名商标受保护的记录； （五）该商标驰名的其他因素。 <p>第十五条 未经授权，代理人或者代表人以自己的名义将被代理人或者被代表人的商标进行注册，被代理人或者被代表人提出异议的，不予注册并禁止使用。</p> <p>第十六条 商标中有商品的地理标志，而该商品并非来源于该标志所标示的地区，误导公众的，不予注册并禁止使用；但是，已经善</p>
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<p>from the region indicated therein and it misleads the public, it shall be rejected for registration and prohibited from use; however, any trademark that has been registered in good faith shall remain valid.</p> <p>The geographic indications mentioned in the preceding paragraph refer to the signs that signify the place of origin of the goods in respect of which the signs are used, their specific quality, reputation or other features as mainly decided by the natural or cultural factors of the regions.</p> <p>Article 17 Any foreign person or foreign enterprise intending to apply for the registration of a trademark in China shall file an application in accordance with any agreement concluded between the People's Republic of China and the country to which the applicant belongs, or according to the international treaty to which both countries are parties, or on the basis of the principles of reciprocity.</p> <p>Article 18 Any foreign person or foreign enterprise intending to apply for the registration of a trademark or for any other matters concerning a trademark in China shall appoint any of such organizations as designated by the State to act as its or his agent.</p> <p>Chapter II Application for Trademark Registration</p> <p>Article 19 An applicant for the registration of a trademark shall, in a form, indicate, in accordance with the prescribed classification of goods, the class of the goods and the designation of the goods in respect of which the trademark is to be used.</p> <p>Article 20 Where any applicant for registration of a trademark intends to use the same trademark for goods in different classes, an application for registration shall be filed in respect of each class of the prescribed classification of goods.</p> <p>Article 21 Where a registered trademark is to be used in respect of other goods of the same class, a new application for registration shall be</p>	<p>意取得注册的继续有效。</p> <p>前款所称地理标志，是指标示某商品来源于某地区，该商品的特定质量、信誉或者其他特征，主要由该地区的自然因素或者人文因素所决定的标志。</p> <p>第十七条 外国人或者外国企业在中国申请商标注册的，应当按其所属国和中华人民共和国签订的协议或者共同参加的国际条约办理，或者按对等原则办理。</p> <p>第十八条 外国人或者外国企业在中国申请商标注册和办理其他商标事宜的，应当委托国家认可的具有商标代理资格的组织代理。</p> <p>第二章 商标注册的申请</p> <p>第十九条 申请商标注册的，应当按规定的商品分类表填报使用商标的商品类别和商品名称。</p> <p>第二十条 商标注册申请人在不同类别的商品上申请注册同一商标的，应当按商品分类表提出注册申请。</p> <p>第二十一条 注册商标需要在同一类的其他商品上使用的，应当另行提出注册申请。</p>
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<p>filed.</p> <p>Article 22 Where the sign of a registered trademark is to be altered, a new registration shall be applied for.</p> <p>Article 23 Where, after the registration of a trademark, the name, address or other registered matters concerning the registrant change, an application regarding the change shall be filed.</p> <p>Article 24 Any aPplicant for the registration of a trademark who files an application for registration of the same trademark for identical goods in China within six months from the date of filing the first application for the trademark registration overseas may enjoy the right of priority in accordance with any agreement concluded between the People's Republic of China and the country to which the applicant belongs, or according to the international treaty to which both countries are parties, or on the basis of the principle whereby each acknowledges the right of priority of the other. Anyone claiming the right of priority according to the preceding paragraph shall make a statement in writing when it or he files the application for the trademark registration, and submit, within three months, a copy of the application documents it or he first filed for the registration of the trademark; where the applicant fails to make the claim in writing or submit the copy of the application documents within the time limit, the claim shall be deemed not to have been made for the right of priority.</p> <p>Article 25 Where a trademark is first used for goods in an international exhibition on sponsored or recognized by me Chinese Government, the applicant for the registration of the trademark may enjoy the right of priority within six months from the date of exhibition of the goods.</p> <p>Anyone claiming the right of priority according to the preceding paragraph shall make a claim in writing when it or he files the application for the registration of the trademark, and submit,</p>	<p>第二十二条 注册商标需要改变其标志的,应当重新提出注册申请。</p> <p>第二十三条 注册商标需要变更注册人的名义、地址或者其他注册事项的,应当提出变更申请。</p> <p>第二十四条 商标注册申请人自其商标在外国第一次提出商标注册申请之日起六个月内,又在中国就相同商品以同一商标提出商标注册申请的,依照该外国同中国签订的协议或者共同参加的国际条约,或者按照相互承认优先权的原则,可以享有优先权。依照前款要求优先权的,应当在提出商标注册申请的时候提出书面声明,并且在三个月内提交第一次提出的商标注册申请文件的副本;未提出书面声明或者逾期未提交商标注册申请文件副本的,视为未要求优先权。</p> <p>第二十五条 商标在中国政府主办的或者承认的国际展览会展出的商品上首次使用的,自该商品展出之日起六个月内,该商标的注册申请人可以享有优先权。依照前款要求优先权的,应当在提出商标注册申请的时候提出书面声明,并且在三个月内提交展出其商品的展览会名称、在展出商品上使用该商标的证据、展出日期等证明文件;未提出书面声明或者逾期未提交证明文件的,视为未要求优先权。</p>
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<p>within three months, documents showing the title of the exhibition in which its or his goods was displayed, proof that the trademark was used for the goods exhibited, and the date of exhibition; where the claim is not made in writing, or the proof documents not submitted within the time limit, the claim shall be deemed not to have been made for the right of priority.</p> <p>Article 26 The matters reported and materials submitted in the application for trademark registration shall be true, accurate and complete.</p> <p>Chapter III Examination for and Approval of Trademark Registration</p> <p>Article 27 Where a trademark the registration of which has been applied for is in conformity with the relevant provisions of this Law, the Trademark Office shall, after examination, preliminarily approve the trademark and publish it.</p> <p>Article 28 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 with 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 refuse the application and shall not publish the said trademark.</p> <p>Article 29 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 publication 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 publication shall be made for the trademark which was the earliest used, and the applications of the others shall be refused and their trademarks shall not be published.</p> <p>Article 30 Any person may, within three months from the date of the publication, file an opposition against the trademark that has, after</p>	<p>第二十六条 为申请商标注册所申报的事项和所提供的材料应当真实、准确、完整。</p> <p>第三章 商标注册的审查和核准</p> <p>第二十七条 申请注册的商标，凡符合本法有关规定的，由商标局初步审定，予以公告。</p> <p>第二十八条 申请注册的商标，凡不符合本法有关规定或者同他人在同一种商品或者类似商品上已经注册的或者初步审定的商标相同或者近似的，由商标局驳回申请，不予公告。</p> <p>第二十九条 两个或者两个以上的商标注册申请人，在同一种商品或者类似商品上，以相同或者近似的商标申请注册的，初步审定并公告申请在先的商标；同一天申请的，初步审定并公告使用在先的商标，驳回其他人的申请，不予公告。</p> <p>第三十条 对初步审定的商标，自公告之日起三个月内，任何人均可以提出异议。公告期满无异议的，予以核准注册，发给商标注册</p>
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<p>examination, been preliminarily approved. If no opposition has been filed after the expiration of the time limit from the publication, the registration shall be approved, a certificate of trademark registration shall be issued and the trademark shall be published.</p> <p>Article 31 An application for the registration of a trademark shall not create any prejudice to the prior right of another person, nor unfair means be used to pre-emptively register the trademark of some reputation another person has used.</p> <p>Article 32 Where the application for registration of a trademark is refused and no publication of the trademark is made, the Trademark Office shall notify the applicant of the same in writing. Where the applicant is dissatisfied, he may, within fifteen days from receipt of the notice, file an application with the Trademark Review and Adjudication Board for a review. The Trademark Review and Adjudication Board shall make a decision and notify the applicant in writing.</p> <p>Any interested party who is not satisfied with the decision made by the Trademark Review and Adjudication Board may, within thirty days from receipt of the notice, institute legal proceedings in the People's Court.</p> <p>Article 33 Where an opposition is filed against the trademark that has, after examination, been preliminarily approved and published, the Trademark Office shall hear both the opponent and applicant state facts and grounds, and shall, after investigation and verification, make a decision. Where any party is dissatisfied, it or he may within fifteen days from receipt of the notification, apply for a reexamination, and the Trademark Review and Adjudication Board shall make a decision and notify both the opponent and applicant in writing.</p> <p>Any interested party who is not satisfied with the decision made by the Trademark Review and Adjudication Board within thirty days from the date of receipt of the notice, may institute</p>	<p>证，并予公告。</p> <p>第三十一条 申请商标注册不得损害他人现有的在先权利，也不得以不正当手段抢先注册他人已经使用并有一定影响的商标。</p> <p>第三十二条 对驳回申请、不予公告的商标，商标局应当书面通知商标注册申请人。商标注册申请人不服的，可以自收到通知之日起十五日内向商标评审委员会申请复审，由商标评审委员会做出决定，并书面通知申请人。当事人对商标评审委员会的决定不服的，可以自收到通知之日起三十日内向人民法院起诉。</p> <p>第三十三条 对初步审定、予以公告的商标提出异议的，商标局应当听取异议人和被异议人陈述事实和理由，经调查核实后，做出裁定。当事人不服的，可以自收到通知之日起十五日内向商标评审委员会申请复审，由商标评审委员会做出裁定，并书面通知异议人和被异议人。</p> <p>当事人对商标评审委员会的裁定不服的，可以自收到通知之日起三十日内向人民法院起诉。人民法院应当通知商标复审程序的对方当事人作为第三人参加诉讼。</p>
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<p>legal proceedings in the People's Court. The People's Court shall notify the other party to the trademark reexamination proceeding to be a third party to the litigation.</p> <p>Article 34 Where the interested party does not, within the statutory time limit, apply for the reexamination of the adjudication by the Trademark Office or does not institute legal proceedings in respect of the adjudication by the Trademark Review and Adjudication Board, the adjudication takes effect.</p> <p>Where the opposition cannot be established upon adjudication, the registration shall be approved, a certificate of trademark registration shall be issued and the trademark shall be published; where the opposition is established upon adjudication, the registration shall not be approved.</p> <p>Where the opposition cannot be established upon adjudication, but the registration is approved, the time of the exclusive right the trademark registration applicant has obtained to use the trademark is counted from the date on which the three months expires from the publication of the preliminary examination.</p> <p>Article 35 Any application for trademark registration and trademark reexamination shall be examined in due course.</p> <p>Article 36 Where any trademark registration applicant or registrant finds any obvious errors in the trademark registration documents or application documents, it or he may apply for correction thereof. The Trademark Office shall ex officio make the correction according to law and notify the interested party of the correction. The error correction mentioned in the preceding paragraph shall not relate to the substance of the trademark registration documents or application documents.</p> <p>Chapter IV Renewal, Assignment and Licensing of Registered Trademarks</p> <p>Article 37 The period of validity of a registered trademark shall be ten years, counted from the date of approval of the registration.</p>	<p>第三十四条 当事人在法定期限内对商标局做出的裁定不申请复审或者对商标评审委员会做出的裁定不向人民法院起诉的，裁定生效。</p> <p>经裁定异议不能成立的，予以核准注册，发给商标注册证，并予公告；经裁定异议成立的，不予核准注册。</p> <p>经裁定异议不能成立而核准注册的，商标注册申请人取得商标专用权的时间自初审公告三个月期满之日起计算。</p> <p>第三十五条 对商标注册申请和商标复审申请应当及时进行审查。</p> <p>第三十六条 商标注册申请人或者注册人发现商标申请文件或者注册文件有明显错误的，可以申请更正。商标局依法在其职权范围内作出更正，并通知当事人。</p> <p>前款所称更正错误不涉及商标申请文件或者注册文件的实质性内容。</p> <p>第四章 注册商标的续展、转让和使用许可</p> <p>第三十七条 注册商标的有效期为十年，自核准注册之日起计算。</p>
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<p>Article 38 Where the registrant intends to continue to use the registered trademark beyond the expiration of the period of validity, an application for renewal of the registration shall be made within six months before the said expiration. Where no application therefore has been filed within the said period, a grace period of six months may be allowed. If no application has been filed at the expiration the grace period, the registered trademark shall be cancelled.</p> <p>The period of validity of each renewal of registration shall be ten years.</p> <p>Any renewal of registration shall be published after it as been approved.</p> <p>Article 39 Where a registered trademark is assigned, the assignor and assignee shall conclude a contract for the assignment, and jointly file an application with the trademark Office. The assignee shall guarantee the quality of the goods in respect of which the registered trademark is used.</p> <p>The assignment of a registered trademark shall be published after it has been approved, and the assignee enjoys the exclusive right to use the trademark from the date of publication.</p> <p>Article 40 Any trademark registrant may, by signing a trademark license contract, authorize other persons to use his registered trademark. The licensor shall supervise the quality of the goods in respect of which the licensee uses his registered trademark, and the licensee shall guarantee the quality of the goods in respect of which the registered Trademark is used.</p> <p>Where any party is authorized to use a registered trademark of another person, the name of the licensee and the origin of the goods must be indicated on the goods that bear the registered trademark.</p> <p>The trademark license contract shall be submitted to the Trademark Office for record.</p> <p>Chapter V Adjudication of Disputes Concerning Registered Trademarks</p> <p>Article 41 Where a registered trademark stands in violation of the provisions of Articles 10, 11</p>	<p>第三十八条 注册商标有效期满, 需要继续使用的, 应当在期满前六个月内申请续展注册; 在此期间未能提出申请的, 可以给予六个月的宽展期。宽展期满仍未提出申请的, 注销其注册商标。</p> <p>每次续展注册的有效期为十年。</p> <p>续展注册经核准后, 予以公告。</p> <p>第三十九条 转让注册商标的, 转让人和受让人应当签订转让协议, 并共同向商标局提出申请。受让人应当保证使用该注册商标的商品质量。</p> <p>转让注册商标经核准后, 予以公告。受让人自公告之日起享有商标专用权。</p> <p>第四十条 商标注册人可以通过签订商标使用许可合同, 许可他人使用其注册商标。许可人应当监督被许可人使用其注册商标的商品质量。被许可人应当保证使用该注册商标的商品质量。</p> <p>经许可使用他人注册商标的, 必须在使用该注册商标的商品上标明被许可人的名称和商品产地。</p> <p>商标使用许可合同应当报商标局备案。</p> <p>第五章 注册商标争议的裁定</p> <p>第四十一条 已经注册的商标, 违反本法第十条、第十一条、第十二条规定的, 或者是以欺骗手段或者其他不正当手段取得注册的,</p>
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<p>and 12 of this Law, or the registration of a trademark was acquired by fraud or any other unfair means, the Trademark Office shall cancel the registered trademark in question; and any other organization or individual may request the Trademark Review and Adjudication Board to make an adjudication to cancel such a registered trademark.</p> <p>Where a registered trademark stands in violation of the provisions of Articles 13, 15, 16 and 31 of this Law, any other trademark owner concerned or interested party may, within five years from the date of the registration of the trademark, file a request with the Trademark Review and Adjudication Board for adjudication to cancel the registered trademark. Where a well-known mark is registered in bad faith, the genuine owner thereof shall not be restricted by the five-year limitation.</p> <p>In addition to those cases as provided for in the preceding two paragraphs, any person disputing a registered trademark may, within five years from the date of approval of the trademark registration, apply to the Trademark Review and Adjudication Board for adjudication.</p> <p>The Trademark Review and Adjudication Board shall, after receipt of the application for adjudication, notify the interested parties and request them to respond with arguments within a specified period.</p> <p>Article 42 Where a trademark, before its being approved for registration, has been the object of opposition and decision, no application for adjudication may be filed based on the same facts and grounds.</p> <p>Article 43 After the Trademark Review and Adjudication Board has made an adjudication either to maintain or to cancel a registered trademark, it shall notify the interested parties of the same in writing.</p> <p>Any interested party who is dissatisfied with the adjudication made by the Trademark Review and Adjudication Board may, within thirty days from the date of receipt of the</p>	<p>由商标局撤销该注册商标；其他单位或者个人可以请求商标评审委员会裁定撤销该注册商标。</p> <p>已经注册的商标，违反本法第十三条、第十五条、第十六条、第三十一条规定的，自商标注册之日起五年内，商标所有人或者利害关系人可以请求商标评审委员会裁定撤销该注册商标。对恶意注册的，驰名商标所有人不受五年的时间限制。</p> <p>除前两款规定的情形外，对已经注册的商标有争议的，可以自该商标经核准注册之日起五年内，向商标评审委员会申请裁定。</p> <p>商标评审委员会收到裁定申请后，应当通知有关当事人，并限期提出答辩。</p> <p>第四十二条 对核准注册前已经提出异议并经裁定的商标，不得再以相同的事实和理由申请裁定。</p> <p>第四十三条 商标评审委员会做出维持或者撤销注册商标的裁定后，应当书面通知有关当事人。</p> <p>当事人对商标评审委员会的裁定不服的，可以自收到通知之日起三十日内向人民法院起诉。人民法院应当通知商标裁定程序的对方当事人作为第三人参加诉讼。</p>
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<p>notice, institute legal proceedings in the People's Court. The People's Court shall notify the other party of the trademark adjudication proceeding to be a third party to the legal proceedings.</p> <p>Chapter VI Administration of the Use of Trademarks</p> <p>Article 44 Where any person who uses a registered trademark has committed any of the following, the Trademark Office shall order him to rectify the situation within a specified period or even cancel the registered trademark:</p> <p>(1) where a registered trademark is altered unilaterally (that is, without the required registration);</p> <p>(2) where the name, address or other registered matters concerning the registrant of a registered trademark are changed unilaterally (that is, without the required application),</p> <p>(3) where the registered trademark is assigned unilaterally (that is, without the required approval); or</p> <p>(4) where the use of the registered trademark has ceased for three consecutive years.</p> <p>Article 45 Where a registered trademark is used in respect of the goods that have been roughly or poorly manufactured, or whose superior quality has been replaced by inferior quality, so that consumers are deceived, the administrative authorities for industry and commerce at different levels shall, according to the circumstances, order rectification of the situation within a specified period, and may, in addition, circulate a notice of criticism or impose a fine, and the Trademark Office may even cancel the registered trademark.</p> <p>Article 46 Where a registered trademark has been cancelled or has not been renewed at the expiration, the Trademark Office shall, during one year from the date of the cancellation or removal thereof, approve no application for the registration of a trademark that is identical with or similar to the said trademark.</p>	<p>第六章 商标使用的管理</p> <p>第四十四条 使用注册商标，有下列行为之一的，由商标局责令限期改正或者撤销其注册商标：</p> <p>（一）自行改变注册商标的；</p> <p>（二）自行改变注册商标的注册人名义、地址或者其他注册事项的；</p> <p>（三）自行转让注册商标的；</p> <p>（四）连续三年停止使用的。</p> <p>第四十五条 使用注册商标，其商品粗制滥造，以次充好，欺骗消费者的，由各级工商行政管理部门分别不同情况，责令限期改正，并可以予以通报或者处以罚款，或者由商标局撤销其注册商标。</p> <p>第四十六条 注册商标被撤销的或者期满不再续展的，自撤销或者注销之日起一年内，商标局对与该商标相同或者近似的商标注册申请，不予核准。</p>
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<p>Article 47 Where any person violates the provisions of Article 6 of this Law, the local administrative authority for industry and commerce shall order him to file an application for the registration within a specified period, and may, in addition, impose a fine.</p> <p>Article 48 Where any person who uses an unregistered trademark has committed any of the following, the local administrative authority for industry and commerce shall stop the use of the trademark, order him to rectify the situation within a specified period, and may, in addition, circulate a notice of criticism or impose a fine:</p> <p>(1) where the trademark is falsely represented as registered;</p> <p>(2) where any provision of Article 10 of this Law is violated; or</p> <p>(3) where the manufacture is of rough or poor quality, or where superior quality is replaced by inferior quality, so that 'consumers are deceived.</p> <p>Article 49 Any party dissatisfied with the decision of the Trademark Office to cancel a registered trademark may, within fifteen days from receipt of the corresponding notice, apply for a review. The Trademark Review and Adjudication Board shall make a decision and notify the applicant in writing.</p> <p>Any interested party dissatisfied with the decision by the Trademark Review and Adjudication Board may, within thirty days from the date of receipt of the notice, institute legal proceedings in the People's Court.</p> <p>Article 50 Any party dissatisfied with the decision of the administrative authority for industry and commerce to impose a fine under the provisions of Article 45, Article 47 or Article 48 may, within fifteen days from receipt of the corresponding notice, institute legal proceedings with the People's Court. If there have been instituted no legal proceedings or made no performance of the decision at the expiration of the said period, the administrative authority for industry and commerce may</p>	<p>第四十七条 违反本法第六条规定的,由地方工商行政管理部门责令限期申请注册,可以并处罚款。</p> <p>第四十八条 使用未注册商标,有下列行为之一的,由地方工商行政管理部门予以制止,限期改正,并可以予以通报或者处以罚款:</p> <p>(一)冒充注册商标的;</p> <p>(二)违反本法第十条规定的;</p> <p>(三)粗制滥造,以次充好,欺骗消费者的。</p> <p>第四十九条 对商标局撤销注册商标的决定,当事人不服的,可以自收到通知之日起十五日内向商标评审委员会申请复审,由商标评审委员会做出决定,并书面通知申请人。</p> <p>当事人对商标评审委员会的决定不服的,可以自收到通知之日起三十日内向人民法院起诉。</p> <p>第五十条 对工商行政管理部门根据本法第四十五条、第四十七条、第四十八条的规定做出的罚款决定,当事人不服的,可以自收到通知之日起十五日内,向人民法院起诉;期满不起诉又不履行的,由有关工商行政管理部门申请人民法院强制执行。</p>
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<p>request the People's Court for compulsory execution thereof.</p> <p>Chapter VII Protection of the Exclusive Rights to Use Registered Trademarks</p> <p>Article 51 The exclusive right to use a registered trademark is limited to the trademark which has been approved for registration and to the goods in respect of which the use of the trademark has been approved.</p> <p>Article 52 Any of the following acts shall be an infringement of the exclusive right to use a registered trademark:</p> <p>(1) to use a trademark that is identical with or similar to a registered trademark in respect of the identical or similar goods without the authorization from the trademark registrant;</p> <p>(2) to sell goods that he knows bear a counterfeited registered trademark;</p> <p>(3) to counterfeit, or to make, without authorization, representations of a registered trademark of another person, or to sell such representations of a registered trademark as were counterfeited, or made without authorization;</p> <p>(4) to replace, without the consent of the trademark registrant, its or his registered trademark and market again the goods bearing the replaced trademark; or</p> <p>(5) to cause, in other respects, prejudice to the exclusive right of another person to use a registered trademark.</p> <p>Article 53 Where any party has committed any of such acts to infringe the exclusive right to use a registered trademark as provided for in Article 52 of this Law and has caused a dispute, the interested parties shall resolve the dispute through consultation; where they are reluctant to resolve the matter through consultation or the consultation fails, the trademark registrant or interested party may institute legal proceedings in the People's Court or request the administrative authority for industry and commerce for actions. Where it is established that the infringing act is constituted in its</p>	<p>第七章 注册商标专用权的保护</p> <p>第五十一条 注册商标的专用权，以核准注册的商标和核定使用的商品为限。</p> <p>第五十二条 有下列行为之一的，均属侵犯注册商标专用权：</p> <p>（一）未经商标注册人的许可，在同一种商品或者类似商品上使用与其注册商标相同或者近似的商标的；</p> <p>（二）销售侵犯注册商标专用权的商品的；</p> <p>（三）伪造、擅自制造他人注册商标标识或者销售伪造、擅自制造的注册商标标识的；</p> <p>（四）未经商标注册人同意，更换其注册商标并将该更换商标的商品又投入市场的；</p> <p>（五）给他人的注册商标专用权造成其他损害的。</p> <p>第五十三条 有本法第五十二条所列侵犯注册商标专用权行为之一，引起纠纷的，由当事人协商解决；不愿协商或者协商不成的，商标注册人或者利害关系人可以向人民法院起诉，也可以请求工商行政管理部门处理。工商行政管理部门处理时，认定侵权行为成立的，责令立即停止侵权行为，没收、销毁侵权商品和专门用于制造侵权商品、伪造注册商标标识的工具，并可处以罚款。当事人对处理决定不服的，可以自收到处理通知之日起十五日内依照《中华人民共和国行政诉讼法》向人民法院起诉；侵权人期满不起诉又不履行的，工商行政管理部门可以申请人</p>
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handling the matter, the administrative authority for industry and commerce handling the matter shall order the infringer to immediately stop the infringing act, confiscate and destroy the infringing goods and tools specially used for the manufacture of the infringing goods and for counterfeiting the representations of the registered trademark, and impose a fine. Where any interested party is dissatisfied with decision on handling the matter, it or he may, within fifteen days from the date of receipt of the notice, institute legal proceedings in the People's Court according to the Administrative Procedure Law of the People's Republic of China. If there have been instituted no legal proceedings or made on performance of the decision at the expiration of the said period, the administrative authority for industry and commerce shall request the People's Court for compulsory execution thereof. The administrative authority for industry and commerce handling the matter may, upon the request of the interested party, mediate on the amount of compensation for the infringement of the exclusive right to use the trademark; where the mediation fails, the interested party may institute legal proceedings in the People's Court according to the Civil Procedure Law of the People's Republic of China.

Article 54 The administrative authority for industry and commerce has the power to investigate and handle any act of infringement of the exclusive right to use a registered trademark according to law; where the case is so serious as to constitute a crime, it shall be transferred to the judicial authority for handling.

Article 55 When investigating and handling an act suspected of infringement of a registered trademark, the administrative authority for industry and commerce at or above the county level may, according to the obtained evidence of the suspected violation of law or informed

民法院强制执行。进行处理的工商行政管理部门根据当事人的请求，可以就侵犯商标专用权的赔偿数额进行调解；调解不成的，当事人可以依照《中华人民共和国民事诉讼法》向人民法院起诉。

第五十四条 对侵犯注册商标专用权的行为，工商行政管理部门有权依法查处；涉嫌犯罪的，应当及时移送司法机关依法处理。

第五十五条 县级以上工商行政管理部门根据已经取得的违法嫌疑证据或者举报，对涉嫌侵犯他人注册商标专用权的行为进行查处时，可以行使下列职权：

（一）询问有关当事人，调查与侵犯他人注册商标专用权有关的情况；

offence, exercise the following functions and authorities:

(1) to inquire of the interested parties involved, and to investigate the relevant events of the infringement of the exclusive right to use the trademark;

(2) to read and make copy of the contract, receipts, account books and other relevant materials of the interested parties relating to the infringement;

(3) to inspect the site where the interested party committed the alleged infringement of the exclusive right to use the trademark; and

(4) to inspect any articles relevant to the infringement; any articles that prove to have been used for the infringement of another person's exclusive right to use the trademark may be sealed up or seized.

When the administrative authority for industry and commerce exercises the preceding functions and authorities, the interested party shall cooperate and help, and shall not refuse to do so or stand in the way.

Article 56 The amount of damages shall be the profit that the infringer has earned because of the infringement in the period of the infringement or the injury that the infringer has suffered from the infringement in the period of the infringement, including the appropriate expenses of the infringer for stopping the infringement.

Where it is difficult to determine the profit that the infringer has earned because of the infringement in the period of the infringement or the injury that the infringegee has suffered from the infringement in the period of the infringement, the People's Court shall impose an amount of damages of no more than RMB 500, 000 yuan according to the circumstances of the infringement.

Anyone who sells a goods that it or he does not know has infringed the exclusive right to use a registered trademark, and is able to prove that it or he has obtained the goods legitimately and

(二) 查阅、复制当事人与侵权活动有关的合同、发票、帐簿以及其他有关资料;

（三）对当事人涉嫌从事侵犯他人注册商标专用权活动的场所实施现场检查；

（四）检查与侵权活动有关的物品；对有证据证明是侵犯他人注册商标专用权的物品，可以查封或者扣押。

工商行政管理部门依法行使前款规定的职权时，当事人应当予以协助、配合，不得拒绝、阻挠。

第五十六条 侵犯商标专用权的赔偿数额，为侵权人在侵权期间因侵权所获得的利益，或者被侵权人在被侵权期间因被侵权所受到的损失，包括被侵权人为制止侵权行为所支付的合理开支。

前款所称侵权人因侵权所得利益，或者被侵权人因被侵权所受损失难以确定的，由人民法院根据侵权行为的情节判决给予五十万元以下的赔偿。

销售不知道是侵犯注册商标专用权的商品，能证明该商品是自己合法取得的并说明提供者的，不承担赔偿责任。

indicates the supplier thereof shall not bear the liability for damages.

Article 57 Where a trademark registrant or interested party who has evidence to show that another person is committing or will commit an infringement of the right to use its or his registered trademark, and that failure to promptly stop the infringement will cause irreparable damages to its or his legitimate rights and interests, it or he may file an application with the People's Court to order cessation of the relevant act and to take measures for property preservation before instituting legal proceedings in the People's Court.

The People's Court handling the application under the preceding paragraph shall apply the provisions of Articles 93 to 96 and 99 of the Civil Procedure Law of the People's Republic of China.

Article 58 In order to stop an infringing act, any trademark registrant or interested party may file an application with the People's Court for preservation of the evidence before instituting legal proceedings in the People's Court where the evidence will possibly be destroyed or lost or difficult to be obtained again in the future. The People's Court must make adjudication within forty-eight hours after receipt of the application; where it is decided to take the preservative measures, the measures shall be executed immediately. The People's Court may order the applicant to place guaranty; where the applicant fails to place the guaranty, the application shall be rejected.

Where the applicant institutes no legal proceedings within fifteen days after the People's Court takes the preservative measures, the People's Court shall release the measures taken for the preservation.

Article 59 Where any party uses, without the authorization from the trademark registrant, a trademark identical with a registered trademark, and the case is so serious as to constitute a

第五十七条 商标注册人或者利害关系人有证据证明他人正在实施或者即将实施侵犯其注册商标专用权的行为，如不及时制止，将会使其合法权益受到难以弥补的损害的，可以在起诉前向人民法院申请采取责令停止有关行为和财产保全的措施。

人民法院处理前款申请，适用《中华人民共和国民事诉讼法》第九十三条至第九十六条和第九十九条的规定。

第五十八条 为制止侵权行为，在证据可能灭失或者以后难以取得的情况下，商标注册人或者利害关系人可以在起诉前向人民法院申请保全证据。

人民法院接受申请后，必须在四十八小时内做出裁定；裁定采取保全措施的，应当立即开始执行。

人民法院可以责令申请人提供担保，申请人不提供担保的，驳回申请。

申请人在人民法院采取保全措施后十五日内不起诉的，人民法院应当解除保全措施。

第五十九条 未经商标注册人许可，在同一种商品上使用与其注册商标相同的商标，构成犯罪的，除赔偿被侵权人的损失外，依法追究刑事责任。

<p>crime, he shall be prosecuted, according to law, for his criminal liabilities in addition to his compensation for the damages suffered by the infringer.</p> <p>Where any party counterfeits, or makes, without authorization, representations of a registered trademark of another person, or sells such representations of a registered trademark as were counterfeited, or made without authorization, and the case is so serious as to constitute a crime, he shall be prosecuted, according to law, for his criminal liabilities in addition to his compensation for the damages suffered by the infringer.</p> <p>Where any party sells goods that he knows bear a counterfeited registered trademark, and the case is so serious as to constitute a crime, he shall be prosecuted, according to law, for his criminal liabilities in addition to his compensation for the damages suffered by the infringer.</p> <p>Article 60 The State functionaries for the registration, administration and reexamination of trademarks must handle cases according to law, be incorruptible and disciplined, devoted to their duties and courteous and honest in their provision of service.</p> <p>Article 61 The administrative authority for industry and commerce shall establish and amplify its internal supervision system to supervise and inspect the State functionaries for the registration, administration and reexamination of trademarks in their implementation of the laws and administrative regulations and in their observation of the discipline.</p> <p>Article 62 Where any State functionary for the registration, administration and reexamination of trademarks neglects his duty, abuses his power, engages in malpractice for personal gain, handles the registration, administration and reexamination of trademarks in violation of law, accepts money or material wealth from any</p>	<p>伪造、擅自制造他人注册商标标识或者销售伪造、擅自制造的注册商标标识，构成犯罪的，除赔偿被侵权人的损失外，依法追究刑事责任。</p> <p>销售明知是假冒注册商标的商品，构成犯罪的，除赔偿被侵权人的损失外，依法追究刑事责任。</p> <p>第六十条 从事商标注册、管理和复审工作的国家机关工作人员必须秉公执法，廉洁自律，忠于职守，文明服务。</p> <p>商标局、商标评审委员会以及从事商标注册、管理和复审工作的国家机关工作人员不得从事商标代理业务和商品生产经营活动。</p> <p>第六十一条 工商行政管理部门应当建立健全内部监督制度，对负责商标注册、管理和复审工作的国家机关工作人员执行法律、行政法规和遵守纪律的情况，进行监督检查。</p> <p>第六十二条 从事商标注册、管理和复审工作的国家机关工作人员玩忽职守、滥用职权、徇私舞弊，违法办理商标注册、管理和复审事项，收受当事人财物，牟取不正当利益，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予行政处分。</p>
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interested party or seeks illicit interest, which constitutes a crime, he or she shall be prosecuted for his or her criminal liability. If the case is not serious enough to constitute a crime, he or she shall be given disciplinary sanction according to law.

Chapter VIII Supplementary Provisions

Article 63 Any application for a trademark registration and for other matters concerning a trademark shall be subject to payment of the fees as prescribed. The schedule of fees shall be prescribed separately.

Article 64 This Law shall enter into force on March 1, 1983. The "Regulations Governing Trademarks" promulgated by the State Council on April 10, 1963 shall be abrogated on the same date, and any other provisions concerning trademarks contrary to this Law shall cease to be effective at the same time.

Trademarks registered before this Law enters into force shall continue to be valid.

第八章 附 则

第六十三条 申请商标注册和办理其他商标事宜的，应当缴纳费用，具体收费标准另定。

第六十四条 本法自1983年3月1日起施行。1963年4月10日国务院公布的《商标管理条例》同时废止；其他有关商标管理的规定，凡与本法抵触的，同时失效。本法施行前已经注册的商标继续有效。