

Trademark Law of the People's Republic of China

(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 of 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.)

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Chapter 1 General Provisions ([go top](#))

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.

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.

The Trademark Review and Adjudication Board, established under the administrative authority for industry and commerce under the State Council, shall be responsible for handling 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 jointly enjoy and exercise the exclusive right to use the trademark.

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.

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.

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.

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.

A trademark registrant has the right to use the words of "registered trademark" or a symbol to indicate that his trademark is registered.

Article 10 The following signs shall not be used as trademarks:

(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;

(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;

(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;

(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;

(5) those identical with or similar to the symbols, or names, of the Red Cross or the Red Crescent;

(6) those having the nature of discrimination against any nationality;

(7) those having the nature of exaggeration and fraud in advertising goods; and

(8) those detrimental to socialist morals or customs, or having other unhealthy influences.

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.

Article 11 The following signs shall not be registered as trademarks:

(1) those only comprising generic names, designs or models of the goods in respect of which the trademarks are used; -

(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

(3) those lacking distinctive features.

The signs under the preceding paragraphs may be registered as trademarks where they have acquired the distinctive features through use and become readily identifiable.

Article 12 Where an application is filed for 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.

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.

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.

Article 14 Account shall be taken of the following factors in establishment of a well-known mark:

- (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.

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.

Article 16 Where a trademark contains a geographic indication of the goods in respect of which the trademark is used, the goods is not 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.

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.

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.

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.

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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.

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.

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 filed.

Article 22 Where the sign of a registered trademark is to be altered, a new registration shall be applied for.

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.

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.

Article 25 Where a trademark is first used for goods in an international exhibition on sponsored or recognized by the 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.

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, 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.

Article 26 The matters reported and materials submitted in the application for trademark registration shall be true, accurate and complete.

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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.

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.

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.

Article 30 Any person may, within three months from the date of the publication, file an opposition against the trademark that has, after 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.

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.

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.

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.

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.

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 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.

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 ad judication by the Trademark Review and Ad judication Board, the adjudication takes effect.

Where the opposition cannot be established upon ad judication, 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.

Where the opposition cannot be established upon ad judication, 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.

Article 35 Any application for trademark registration and trademark reexamination shall be examined in due course.

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.

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Article 37 The period of validity of a registered trademark shall be ten years, counted from the date of approval of the registration.

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.

The period of validity of each renewal of registration shall be ten years.

Any renewal of registration shall be published after it as been approved.

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.

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.

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.

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.

The trademark license contract shall be submitted to the Trademark Office for record.

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Article 41 Where a registered trademark stands in violation of the provisions of Articles 10, 11 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.

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.

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.

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.

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.

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.

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 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.

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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:

- (1) where a registered trademark is altered unilaterally (that is, without the required registration);
- (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),
- (3) where the registered trademark is assigned unilaterally (that is, without the required approval); or
- (4) where the use of the registered trademark has ceased for three consecutive years.

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.

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.

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.

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:

- (1) where the trademark is falsely represented as registered;
- (2) where any provision of Article 10 of this Law is violated; or
- (3) where the manufacture is of rough or poor quality, or where superior quality is replaced by inferior quality, so that consumers are deceived.

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.

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.

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 request the People's Court for compulsory execution thereof.

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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.

Article 52 Any of the following acts shall be an infringement of the exclusive right to use a registered trademark:

- (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;
- (2) to sell goods that he knows bear a counterfeited registered trademark;
- (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;

- (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

- (5) to cause, in other respects, prejudice to the exclusive right of another person to use a registered trademark.

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 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 medication 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 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 infringe 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 infringer 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 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 crime, he shall be prosecuted, according to law, for his criminal liabilities in addition to his compensation for the damages suffered by the infringer.

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.

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.

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.

The State functionaries of the Trademark Office and the Trademark Review and Adjudication Board and those working for the registration, administration and reexamination of trademarks shall not practice as trademark agent and engage in any activity to manufacture and market goods.

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.

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 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 ([go top](#))

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.