

**Council for Trade-Related Aspects of
Intellectual Property Rights**

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**MAIN DEDICATED INTELLECTUAL PROPERTY LAWS AND REGULATIONS
NOTIFIED UNDER ARTICLE 63.2 OF THE AGREEMENT**

THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU

The present document reproduces the text¹ of the Trademark Law, as last amended on 7 May 1997, as notified by the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, under Article 63.2 of the Agreement (see document IP/N/1/TPKM/1).

**Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET RÉGLEMENTATIONS CONSACRÉES À LA
PROPRIÉTÉ INTELLECTUELLE NOTIFIÉES AU TITRE DE
L'ARTICLE 63:2 DE L'ACCORD**

TERRITOIRE DOUANIER DISTINCT DE TAIWAN, PENGHU, KINMEN ET MATSU

Le présent document contient le texte¹ de la Loi sur les marques de fabrique ou de commerce, modifiée en dernier lieu le 7 mai 1997, qui a été notifiée par le Territoire douanier distinct de Taiwan, Penghu, Kinmen et Matsu au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/TPKM/1).

**Consejo de los Aspectos de los Derechos de Propiedad
Intellectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA PROPIEDAD
INTELLECTUAL NOTIFICADOS EN VIRTUD DEL PÁRRAFO 2
DEL ARTÍCULO 63 DEL ACUERDO**

TERRITORIO ADUANERO DISTINTO DE TAIWÁN, PENGHU, KINMEN Y MATSU

En el presente documento se reproduce el texto¹ de la Ley de Marcas de Fábrica o de Comercio, modificado por última vez el 7 de mayo de 1997, notificado por el Territorio Aduanero Distinto de Taiwán, Penghu, Kinmen y Matsu de conformidad con lo dispuesto en el párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/TPKM/1).

¹ In English only. The text in the original language is available for consultation by interested Delegations at the WTO Secretariat./En anglais seulement. Les délégations intéressées peuvent consulter le texte, dans sa langue d'origine, au Secrétariat de l'OMC./En inglés solamente. Las delegaciones interesadas podrán consultar en la Secretaría de la OMC el texto en su idioma original.

**TRADEMARK LAW
OF THE REPUBLIC OF CHINA**

**Revised And Promulgated On 7 May 1997
(Article 4, 5, 23, 25, 34, 37 and 61 was enforced on 1 November 1998)**

Chapter I - General Provisions

Article 1

This Law is specifically enacted for the purpose of protecting the right to the exclusive use of a trademark and the interests of the consumers in order to promote the normal development of industrial and commercial enterprises.

Article 2

Any person who desires the exclusive use of a trademark to distinguish the goods under his business and has the intention of using such trademark shall apply for registration of the trademark in accordance with this Law.

Article 3

The application for trademark registration filed by a foreign national may be rejected if the foreign national's own country has not signed and maintained a treaty or agreement with the Republic of China for reciprocal protection of trademarks or does not accept, under its laws and regulations, the applications for trademark registration filed by nationals of the Republic of China.

Article 4

Priority may be claimed in connection with an application for trademark registration filed in the Republic of China if the application is filed within six months from the day following the date of the first application for registration of the same trademark in a country that has a treaty or agreement with the Republic of China for reciprocal protection of trademarks, or that actually accepts claims of priority made by applicants from the Republic of China based on the principle of reciprocity.

The claim of priority made in accordance with the preceding Paragraph must be made at the same time as the application is filed. The filing date and serial number of the basic foreign trademark application as well as the name of the foreign country accepting the basic application shall be clearly indicated in the priority claim. The applicant shall submit, within three months from the date of filing the trademark application in the Republic of China, a certified copy of the basic application as accepted by that foreign country. Failure to make the claim at the time of filing the application or to submit the certified document within the time limit shall lead to forfeiture of the priority.

Article 5

Any word, drawing, symbol, combination of colors, or combination thereof used in a trademark shall be distinctive enough to cause a general buyer of goods to recognize it as a mark for identifying the goods of a certain manufacturer or merchant and distinguishing such goods from those manufactured or sold by others.

A word, drawing, symbol, combination of colors, or combination thereof not conforming to the specification in the preceding Paragraph shall be deemed as conforming to such specification if it has been used by the applicant concerned and has become the mark identifying the goods offered by the applicant in trade.

Article 6

The use of a trademark referred to in this Law shall denote the use of a trademark on goods or the packaging, container, label, instruction literature, price list or other similar articles of such goods and possession, display or dissemination of the aforementioned goods or articles for marketing purpose.

The use of a trademark in a television or other broadcast commercial, or in a newspaper or magazine advertisement, or in participation of an exhibition for the promotion of the sale of the goods shall be deemed as use.

Article 7

The Government Office in charge of trademark matters referred to in this Law shall be the Ministry of Economic Affairs.

The trademark matters referred to in the preceding Paragraph shall be handled by a dedicated agency under the Ministry of Economic Affairs.

Article 8

An interested party referred to in this Law shall be any person whose rights or interests are affected by registration of the trademark concerned.

Article 9

A trademark agent may be appointed to file the application for registration of a trademark and to handle all matters pertaining to a trademark.

For filing an application for trademark registration or handling of matters pertaining to a trademark, an applicant who has no domicile or place of business within the territory of the Republic of China shall appoint a trademark agent to act on his behalf.

If a trademark agent has committed an act beyond his power of authority or in violation of the laws and regulations in connection with trademark matters, the Government Office in charge of trademark matters may order a change of trademark agent within a given time. Failure to effect such a change shall cause the principal to be considered as having no appointed agent.

A trademark agent shall have a domicile in the Republic of China. Professional trademark agents shall be certified trademark attorneys, unless otherwise provided by law. Qualifications and administration of trademark attorneys shall be prescribed in a separate law.

Article 10

A trademark agent may perform all necessary acts in respect of matters pertaining to trademarks, unless otherwise restricted by the contract of appointment. However, a trademark agent may not dispose of the right to the exclusive use of a trademark, unless specifically entrusted to do so.

Where there are two or more trademark agents appointed by the same principal, they may transact the appointed business severally, unless the applicant has stated to the Government Office in charge of trademark matters that the act of agency shall be carried out jointly by them.

The appointment or change of a trademark agent, or any restriction or alteration of the affairs entrusted to him or the termination of his appointment may not be set up as a defense against third parties, unless it is duly recorded with the Government Office in charge of trademark matters.

Article 11

In the case of a party to a trademark case residing abroad or in a borderland or remote district or in an area not easily accessible, the Government Office in charge of trademark matters may, on its own initiative ex officio or upon request of the party, extend the statutory period for him to complete the procedures required by the Government Office in charge of trademark matters.

Article 12

The Government Office in charge of trademark matters may, upon the request of the party to a trademark case, extend or change the period or date set by the said Office according to this Law; provided, however, that where there is an adversary or interested party involved, such extension or change may not be made, unless there is obvious reason to do so or the consent of the adversary or interested party has been obtained.

Article 13

A trademark application and other trademark procedures made beyond the statutory period or the prescribed time limit shall be rejected; provided, however, that this provision shall not apply where the delay results from force majeure or any other causes not attributable to the party concerned and such fact is proved to be true through investigation.

Under any of the circumstances referred to in the proviso of the preceding Paragraph, the applicant shall, within 30 days after extinction of the cause of delay, submit a written report, giving a full account of the facts and the dates of occurrence and extinction of such cause, to the Government Office in charge of trademark matters, and at the same time complete the delayed procedures.

Article 14

The various periods set forth in this Law shall be calculated from the day on which the documents or articles are serviced to the Government Office in charge of trademark matters. If postal service is used, such periods shall be calculated from the very day on which the documents or articles are mailed as indicated by the postal date mark.

Article 15

When service of the documents issued by the Government Office in charge of trademark matters cannot be effected, such documents shall be published in the official gazette of the Government Office in charge of trademark matters; and upon the maturity of thirty days counting from the date of publication, it shall be deemed that service has been effected.

Article 16

The government fees for applications of trademark registration and other trademark matters shall be paid at the time of filing the applications.

The amount of the government fees shall be decided by the Government Office in charge of trademark matters.

Article 17

The Government Office in charge of trademark matters shall publish and circulate an official gazette containing registered trademarks and necessary information in connection with trademarks.

Article 18

The Government Office in charge of trademark matters shall establish and maintain a register of trademarks to record therein all the trademarks approved for exclusive use and other trademark rights as well as all matters in connection therewith as may be prescribed by laws, rules and regulations.

A certificate of registration shall be issued for each trademark approved for registration.

Article 19

Any change of the approved or registered particulars of a trademark shall be filed with the Government Office in charge of trademark matters for approval. No change of the trademark design or of the goods designated shall be permitted, except for reduction of items of the designated goods.

The particulars of change approved under the preceding Paragraph shall be published in the official gazette of the Government Office in charge of trademark matters.

Article 20

The Government Office in charge of trademark matters shall not reject any application for issuance of certifying documents, copying the design, reviewing or copying the official records in respect of a trademark, except in cases where the said Office considers that such particulars should be kept confidential.

Chapter II - Right of Exclusive Use of Trademark

Article 21

The registrant of a trademark shall be granted the right to the exclusive use of the trademark as of the date of registration of the trademark.

The right to the exclusive use of a trademark shall be limited to the registered trademark and to the goods as designated for use of the registered trademark.

Article 22

The same person who designates the use of the same trademark design for similar goods or the use of a similar trademark design for the same goods or similar goods shall apply for registration of an associated trademark.

The same person who designates the use of the same trademark for goods which are not the same or similar but are of related nature may apply for registration of a defensive trademark; provided, however, that the restriction of "goods of related nature" shall not apply to a famous trademark.

In filing an application for registration of a trademark under either of the preceding two Paragraphs, the existing registered trademark or the trademark whose application was filed earlier shall be designated as the principal trademark. If the applications are filed at the same time, one of the trademarks shall be designated as the principal trademark.

The application for change of the type of a trademark may be filed for approval with the Government Office in charge of trademark matters; provided that the proposed change does not violate the provisions of the preceding three Paragraphs.

Article 23

A person who marks on his goods, with *bona fide* intent and reasonable method of use, his own personal name or title, or the name, shape, quality, function, place of origin or other descriptions of the goods, not as a trademark use, shall not be subject to the exclusive right to any trademark owned by another person.

Where, prior to the application for registration of a trademark by another person, a person has been using in good faith the same or similar trademark for the same or similar goods, such *bona fide* use of the trademark is not subject to the exclusive right to the trademark owned by such other person; however, such *bona fide* use of the trademark is only limited to those goods on which the trademark at issue was originally used. The owner of the right to the exclusive use of the said trademark may request the user to add an appropriate distinguishing mark on his goods.

Where the goods bearing a trademark are being traded on the market by the owner of the right to the exclusive use of the said trademark, or by any person authorized by him, the owner of the right to the exclusive use of the trademark shall not claim such right to the exclusive use of the trademark with respect to the said goods; except for prevention of deterioration or damage of the goods or for any other good cause.

Article 24

The term of the right to the exclusive use of a trademark shall be ten years commencing from the date of registration. The term of exclusive use of an associated trademark or a defensive trademark shall expire concurrently with that of its principal trademark.

The term of the right to the exclusive use set forth in the preceding Paragraph may be extended upon application in accordance with this Law; provided that each extension shall likewise be limited to ten years.

Article 25

An application for extending the term of the right to the exclusive use of a trademark shall be filed within six months before or after the expiration of the term. For those applications filed within six months after the expiration of the term, the application fee shall be doubled.

The renewal application referred to in the preceding Paragraph shall be approved only for the continuous use of the trademark on those goods which are designated in the trademark registration and on which the trademark has actually been put to use. A renewal application shall not be approved under any of the following circumstances:

- (1) Where there exists any of the circumstances stipulated in Items (1) through (8), Paragraph One, Article 37 of this Law.
- (2) Where the renewal application is filed before the expiration of the term of the right to the exclusive use of a trademark but the trademark is not put to use, without good cause, within a period of three years prior to the filing of the application.
- (3) Where the renewal application is filed after the expiration of the term of the right to the exclusive use of a trademark but the trademark is not put to use, without good cause, within a period of three years before the expiration of the term.

The provisions of Items 2 and 3 of the preceding Paragraph shall not be applicable to the cases where an associated trademark of the trademark concerned is used on the same goods, or the trademark concerned is used by a licensee of the trademark.

The term as approved for the extension referred to in Paragraph One of this Article shall start from the day following the date of the expiration of the term of the right to the exclusive use of the trademark.

Article 26

The owner of the right to the exclusive use of a trademark may license other persons to use his trademark on the whole or a part of the goods covered by his trademark registration.

The licensing set forth in the preceding Paragraph shall be recorded with the Government Office in charge of trademark matters. Unregistered licensing may not be set up as a defense against third parties. The same provision shall also apply where the trademark is sub-licensed to a third party by the licensed user with prior consent of the owner of the right to the exclusive use of the trademark.

The licensed user of a trademark shall indicate on his goods, the package or container thereof the licensing of the trademark.

Article 27

In the case of violation of the provisions of the third Paragraph of the preceding Article, the Government Office in charge of trademark matters shall notify the parties concerned to correct such violation within a prescribed time limit; failure to make correction within the time limit shall cause revocation of the licensing recordation.

Article 28

The assignment of the right to the exclusive use of a trademark shall be recorded with the Government Office in charge of trademark matters. An unrecorded assignment may not be set up as a defense against third parties.

In applying for recordation of assignment of the right to the exclusive use of a trademark in accordance with the provisions of the preceding Paragraph, the assignee shall also meet the requirements as prescribed under Article 2 of this Law.

Article 29

The right to the exclusive use of any associated trademark and defensive trademark which have not been assigned together with their principal trademark shall be extinguished.

Where the right to the exclusive use of an associated trademark or a defensive trademark is separately assigned, such assignment shall be invalid.

Article 30

In the case of creating a pledge on the right to the exclusive use of a trademark or making any change or causing the extinguishment of a pledge thereon, the owner of the right to the exclusive use of the trademark shall apply for recordation of the same with the Government Office in charge of trademark matters. Without prior recordation, the pledge or the change or extinguishment thereof shall not be set up as a defense against third parties.

During the continuance of a pledge, the pledgee may not make use of the trademark unless otherwise licensed by the owner of the right to the exclusive use of the trademark.

Article 31

If any of the following circumstances occurs after the registration of a trademark, the Government Office in charge of trademark matters shall, ex officio or at the request of an interested party, cancel the registration:

- (1) Where the trademark with unauthorized alteration in its device or additional notes has been used whereby the trademark is made similar to a registered trademark of another person used on the same or similar goods;
- (2) Where without good cause, the trademark has not been put into use for three years after registration, or has been continuously suspended from use for three years, except that an associated trademark has been put to use for the same goods or a licensed user has used the trademark and proof of such use has been produced;

- (3) Where the licensing of a trademark to another person has not been recorded, or the requirement for indicating the trademark licensing is violated, and such violation is not corrected within the time limit set in a notice given to the violator; or
- (4) Where the trademark has been adjudged by a final judgment to have infringed upon the copyright, the new design patent or other rights of another person.

Under the circumstances set forth in Item (2) of the preceding Paragraph, the cancellation may be effected on one or more kinds of goods as designated for use of the registered trademark.

Before rendering a decision on cancellation under the provisions of Paragraph One of this Article, the Government Office in charge of trademark matters shall notify the owner of the right to the exclusive use of the trademark or his trademark agent to submit a written defense within 30 days. However, a decision may be made without such notification if the applicant's application for cancellation contains no concrete evidence or his claims are obviously groundless.

Under the circumstances set forth in Item (2), Paragraph One of this Article, if a notice for submission of defense has been given to the owner of the right to the exclusive use of the trademark or his trademark agent, the owner of the right to the exclusive use of the trademark shall produce the proof of his actual use of the trademark. Cancellation of the right to the exclusive use of the trademark may be made when no defense is submitted within the prescribed time limit.

In the case as set forth in Item 1, Paragraph One of this Article, the owner of the right to the exclusive use of the trademark may not apply for voluntary cancellation of the trademark during the period of investigation by the Government Office in charge of trademark matters; and, upon receiving a final decision on cancellation, shall not be eligible, within a period of three years from the date of cancellation, to obtain the registration for or to acquire by assignment or to use under license of a trademark identical with or similar to the originally registered trademark for the same or similar goods. In the case as set forth in Item 4, Paragraph One of this Article, the owner of the right to the exclusive use of the trademark may not apply for registration of the same trademark design prior to the extinguishment of the cause of infringement.

Article 32

Any party dissatisfied with the decision of cancelling the right to the exclusive use of a trademark under the provision of Paragraph One of the preceding Article may file, within thirty days from the day following the date of service of the written decision of cancellation, an administrative appeal in accordance with the law.

Article 33

Where a decision cancelling the right to the exclusive use of a trademark is final, such right shall become invalid from the date when the cancellation decision is made; provided, however, that if the cancellation decision is made based on the cause set forth in Item (4), Paragraph One, Article 31 of this Law, the right to the exclusive use shall be invalid ab initio.

Article 34

The right to the exclusive use of a trademark shall naturally extinguish under any of the following circumstances:

- (1) Where no extension is made in accordance with Article 25 of this Law.
- (2) Where the owner of the right to the exclusive use of a trademark dies without an heir.

Chapter III - Registration

Article 35

In applying for registration of a trademark, an application with the class number and the denomination of the goods designated for use of the trademark indicated therein shall be filed with the Government Office in charge of trademark matters. The goods in different classes shall be covered by separate applications respectively.

The classification of goods shall be defined in the Enforcement Rules hereof.

Identification of similar goods is not subject to the restriction of the classification of goods as set forth in the preceding Paragraph.

Article 36

When two or more persons apply separately for registration of an identical or similar trademark designated for use on the same goods or similar goods, the applicant who first files an application shall be granted registration. If two or more such applications are filed on the same date and there is no way to ascertain who is the first applicant, the applicants shall come to an agreement to let one of them enjoy the exclusive use. If no agreement can be reached, it shall be determined by drawing lots.

Article 37

No application may be filed for registration of a trademark design which is:

- (1) Identical or similar to the national flag, the national emblem, the national seal, military flags, military insignia, official seals, medals of the Republic of China, or the national flag of any other nation;
- (2) Identical with the image or name of the late Dr. Sun Yat-Sen or of a Chief of State;
- (3) Identical or similar to the red cross sign, or the name, emblem, badge or mark of a domestic or international famous organization;
- (4) Identical or similar to the Chinese "Standard Quality" mark or any local or foreign mark of the same nature;
- (5) Violative of public order or good morals;
- (6) Likely to mislead the public with respect to the nature, quality, or place of origin of the goods;
- (7) Identical or similar to another person's famous mark, thus causing the public to confuse or misidentify it; provided, however, that this provision shall not apply if the trademark application is filed with the consent of the owner or of the licensee of the said famous mark;

- (8) Identical or similar to a mark that is commonly used on the same goods;
- (9) Identical or similar to a mark used by a government office of the Republic of China or by a public show in the nature of exhibition, or identical or similar to a medal awarded by such government office or public show;
- (10) Using any word, drawing, symbol, combination of colors, or a combination thereof, that signifies the shape, quality, function, generic name, or other descriptions of the goods designated for use under the trademark filed for registration, except for those that are not generic names and that conform to the requirements specified in Paragraph 2 of Article 5 of this Law.
- (11) Using the image of another person, or the name of another juristic person, organization, or nationally famous firm, or the stage name, pseudonym or alias of another person, without prior consent; provided, however, that this provision shall not apply if the goods covered by the business scope of such firm or juristic person are not the same with or similar to those designated for use of the trademark filed for registration;
- (12) Identical or similar to a trademark that is designated for use on the same goods or similar goods;
- (13) Using another person's registered trademark as a part of the applicant's own trademark proposed for use on the same or similar goods.
- (14) Identical or similar to a trademark that has been first used by another person on the same or similar goods and the applicant, due to contractual, territorial, or business connections, or any other relationship with the said person, knows of the existence of the said person's trademark; provided, however, that this provision shall not apply if prior consent from the said person has been obtained.

Article 38

Rights derived from an application for registration of a trademark may be assigned to another person.

The assignee taking over the rights referred to in the preceding Paragraph shall have no locus standi as against third parties, unless he has applied for and obtained approval for substituting his name for that of the original applicant.

Article 39

An application for trademark registration shall be examined by the examiner assigned by the Government Office in charge of trademark matters. Qualification requirements of trademark examiners shall be established by law.

Article 40

An examiner shall withdraw under one of the following circumstances:

- (1) If his spouse, former spouse, or fiancée or fiancé is the applicant of the trademark registration, or is the trademark agent of the applicant;
- (2) If he at present is a relative by blood within the fifth degree, or by marriage within the third degree, of the applicant of the trademark registration, or he was once so related to such applicant;
- (3) If he at present is or once was the statutory agent, or the head of the family or a member in the family of the applicant of the trademark registration;
- (4) If he once acted as the trademark agent of the applicant of the trademark registration;
- (5) If there is a direct relation involving the interest in property between him and the applicant of the trademark registration.

Article 41

When an application for registration of a trademark has been found (after examination by the Government Office in charge of trademark matters) to be in conformity with law, the Government Office in charge of trademark matters shall deliver its decision of approval to the applicant and his trademark agent and shall publish the case in its official gazette and effect the registration only if no opposition has been filed within three (3) months from the date of publication or if any such opposition proceedings instituted have been dismissed and such dismissal has become final. The day following the expiration of such three-month publication period shall be the registration date of the trademark.

In case an opposition proceeding instituted against the approval of a trademark application is upheld by a final decision, the original approval shall be revoked.

Article 42

Where there is any unauthorized alteration of or addition to an approved trademark design made by the owner of the trademark whereby the mark is made similar to a registered trademark of another person used on the same goods or similar goods, the Government Office in charge of trademark matters may, ex officio or upon application by an interested party, revoke the approval originally granted.

The provision of Paragraph Three of Article 31 shall apply mutatis mutandis before the Government Office in charge of trademark matters revokes its approval under the preceding Paragraph; and the provision of Paragraph Five of Article 31 shall apply mutatis mutandis where the decision on revocation has become final.

Article 43

If an application for registration of a trademark, after examination, is found not to be in conformity with the law, a decision rejecting the application shall be rendered. A written decision shall be made stating the grounds for rejection, and delivered to the applicant and his trademark agent.

Article 44

In case the applicant of a trademark registration is not satisfied with the decision rejecting his application or with the decision of revoking the approval of his trademark application under Paragraph One of Article 42, he may institute, within thirty days from the day following the date of service of the written decision, an administrative appeal in accordance with the law.

Article 45

When a trademark examiner discovers, prior to the registration of an approved trademark, the approved mark to be in violation of the law, he shall file a report requesting revocation of the approval.

The Government Office in charge of trademark matters shall, before revocation under the provisions of the preceding Paragraph, notify the applicant or his trademark agent with reasons to state his opinion within thirty days.

Article 46

Any person who considers that a trademark approved for registration is in violation of this Law may file, during the publication period, an opposition with the Government Office in charge of trademark matters.

Article 47

Any person who institutes opposition proceedings shall submit to the Government Office in charge of trademark matters a written opposition stating the facts and reasons and a duplicate copy thereof. Documents attached to the original copy of the written opposition shall also be enclosed with the duplicate copy thereof.

The Government Office in charge of trademark matters shall forward the duplicate copy together with the documents referred to in the preceding Paragraph to the applicant and his trademark agent and set a time limit for submission of a statement of defense.

Article 48

The provisions of Articles 39 and 40 shall apply mutatis mutandis in opposition proceedings.

An examiner shall withdraw if the opposition is filed against a case in which he took part in the examination of the trademark in question.

Article 49

In respect to an opposition case, the Government Office in charge of trademark matters shall render a written decision on the opposition stating the reasons and deliver such decision respectively to the applicant of the trademark registration, the opposer, and the trademark agent.

Article 50

In case the applicant of a trademark registration or the opposer is not satisfied with the decision on opposition referred to in the preceding Article, he may institute, within thirty days from the day following the date of service of the written decision, an administrative appeal in accordance with the law.

Article 51

No application may be filed by any person, based on the same fact, the same evidence and the same grounds, for review of a trademark which is registered after a final decision has been made on the dismissal of an opposition filed against the said trademark.

Chapter IV - Review

Article 52

If the registration of a trademark is in violation of any provision of Paragraph Five of Article 31, Article 36, Paragraph One of Article 37 or the aft part of Paragraph Two of Article 42, an interested party may request the Government Office in charge of trademark matters to conduct a review for invalidation of the registration.

If the registration of a trademark is in violation of any provision of Article 5, Paragraph Five of Article 31, Article 36, Item (1) through (10), (12), (13) of Paragraph One of Article 37 or the aft part of Paragraph Two of Article 42, a trademark examiner may request a review for invalidation of the registration.

If a trademark which has been registered for a period of over ten years is in violation of any provision of Item (1) on Paragraph Two of Article 25, an interested party or a trademark examiner may request a review for invalidation of the registration.

Article 53

If the registration of a trademark is in violation of any provision of Article 5, Paragraph Five of Article 31, Article 36, Item (11) of Paragraph One of Article 37 or the aft part of Paragraph Two of Article 42, no application or request for a review under invalidation proceedings shall be allowed after a lapse of two years from the date of publication of its registration.

Article 54

The owner of the right to the exclusive use of a trademark or any interested party, for the purpose of defining the scope of the right to the exclusive use of the mark, may apply to the Government Office in charge of trademark matters for a review.

Article 55

With respect to a trademark review case, the chief of the Government Office in charge of trademark matters shall designate three or more reviewers to effect the review.

The provisions of Articles 40, 47, Paragraph Two of Article 48, and Article 49 shall apply *mutatis mutandis* to review cases.

A reviewer shall withdraw if he has any of the relations specified in Article 40 with the intervener referred to in Article 57.

Article 56

Decision in a review case shall be made based on written materials. However, if deemed necessary, the parties concerned may be notified to be present on a designated date for a verbal debate.

Failure of any party to a review case to appear in the debate in or on the statutory or designated period or date shall not cause an interruption of the review process.

Article 57

Any person who has an interest in a review case may apply, before the conclusion of the review, for intervention to support one of the parties.

If the other party objects to the application for intervention referred to in the preceding Paragraph, the review panel shall decide, through discussion, whether or not such intervention shall be allowed.

If any act of the intervener is in conflict with that of the party supported by the intervener, such act of the intervener shall be null and void.

In regard to the procedures for the verbal and the intervention set forth in the preceding Article and this Article, the relevant provisions of The Code of Civil Procedure shall apply *mutatis mutandis* thereto, unless otherwise prescribed in this Law.

Article 58

In the case of dissatisfaction with the decision made in a review case, an administrative appeal may be instituted within thirty days from the day following the date of service of the written decision of review in accordance with the law.

Article 59

Once a decision rendered by the review panel in respect of a trademark case is final, no application for a further review may be filed by any person based on the same facts, the same evidence and the same grounds.

Article 60

If any civil or criminal action in connection with the right to the exclusive use of a mark is instituted during the proceedings of a review case concerning the said trademark, the proceedings of such action shall be suspended pending the final decision on the review of the right to the exclusive use of the said trademark.

Chapter V - Protection

Article 61

The owner of the right to the exclusive use of a trademark may claim for damages against the infringer of his exclusive right, and may request removal of such infringement. Where there is any likelihood of infringement, he may also request for the prevention thereof.

Commission of any act specified in Item 1 or 2 of Article 62 of this Law shall be deemed an infringement of the right to the exclusive use of the trademark.

In making requests under the preceding two Paragraphs, the owner of the right to the exclusive use of a trademark may request the destruction or other necessary disposals of the infringing goods or of the materials or equipment which have been utilized to conduct such infringing act.

Article 62

Any person who commits any of the following acts with the intent to defraud others shall be punished with imprisonment for not more than three years, detention and, in addition thereto or in lieu thereof, a fine of not more than NT\$200,000.

- (1) Using a design which is identical with or similar to another person's registered trademark on the same goods or similar goods;
- (2) Adding a design which is identical with or similar to another person's registered trademark design to the advertisements, labels, descriptive literature, price lists or other documents of the same goods or similar goods and displaying or circulating such materials.

Article 63

Any person, who knowingly sells, displays for sale, exports or imports the goods referred to in the preceding Article, shall be punished with imprisonment of not more than one year, detention, and, in addition thereto or in lieu thereof, a fine of not more than NT\$50,000.

Article 64

The goods manufactured, sold, displayed, exported or imported by a person committing any of the offenses as specified in the preceding two Articles shall be confiscated, regardless of whether such goods belong to the offender or not.

Article 65

Any person who maliciously uses the word in another person's registered trademark as the specific portion of the name of his own company or firm for conducting business in respect of the same goods or similar goods and has failed to stop such use after being requested by the interested party to do so shall be punished with imprisonment for not more than one year, detention or a fine of not more than NT\$50,000.

The provision of the preceding Paragraph shall not apply to cases where the date of application for registration of the name of the company or firm precedes the date of application for trademark registration.

Article 66

In claiming for damages under Article 61 hereof, the owner of the right to the exclusive use of a trademark may select any one of the following methods to calculate the amount of his damages:

- (1) Based on the provision of Article 216 of the Civil Code. However, in the event that the evidence cannot be presented to prove his damages, the owner of the right to the exclusive use of a trademark may take the difference, as the amount of damages, which is derived from subtracting the profit gained after such infringement by use of the registered trademark in question from the profit that would have normally been gained from the use of the registered trademark;

- (2) Based on the profit gained by the infringer of the right to the exclusive use of a trademark as a result of his infringing act, provided, however, that where the infringer is unable to produce evidence to prove his costs and necessary expenses, the total income derived from the sale of the counterfeit commodities shall be taken as his profit;
- (3) Based on an amount equal to 500 to 1,500 times the unit retail price of the seized commodities involved in the infringement of the right to the exclusive use of a trademark, provided, however, that if the quantity of commodities under seizure exceeds 1,500 pieces, the amount of compensation for damages shall be assessed based on the total selling price thereof.

Where the amount of compensation for damages to be assessed under the preceding Paragraph is apparently unreasonable, the court may, at its discretion, reduce the amount of such compensation.

The owner of the right to the exclusive use of a trademark may claim for additional compensation in a reasonable amount in case the business reputation of the said owner suffers any damages on account of such infringement.

The provision of the preceding three Paragraphs shall apply mutatis mutandis when making a claim for joint liability for damages under Article 67.

Article 67

A person who intentionally or through negligence commits any of the acts specified in Article 63 hereof shall still be liable, jointly and severally, with the infringer of the right to the exclusive use of a trademark, for the damages arising from such infringement; provided, however, that if he is able to provide the supply source of the goods in question, the amount of compensation payable by him may be reduced or the compensation may be exempted.

Article 68

The owner of the right to the exclusive use of a trademark may make a request for the publication in a newspaper, at the expense of the infringer, of the contents, in full or in part, of the judicial judgement setting forth the fact of the trademark infringement as confirmed in accordance with this Chapter.

Article 69

Where the right to the use of a trademark granted to a licensed user under Article 26 hereof is infringed, the provisions of this Chapter shall apply mutatis mutandis.

Article 70

Foreign juristic persons or entities, not limited to those recognized (by the Government of the Republic of China), may also file a complaint, initiate a private prosecution or institute a civil suit in respect of matters referred to in this Chapter.

Article 71

In handling trademark litigation, the courts may establish a special tribunal or designate a particular person to handle the case.

Chapter VI - Other Marks

Article 72

Any person who desires the exclusive use of a mark to distinguish the services provided by his business shall apply for registration of a service mark.

The use of a service mark shall denote the use of a mark on articles, documents, publicity materials or advertisements for promotion of his services; provided, however, that this shall not apply if the mark is used on goods or the container of such goods thereby causing the mistaken belief that the mark is sales promotion for such goods.

The classification of service marks shall be prescribed in the Enforcement Rules hereof.

Identification of similar services is not subject to the restriction of the classification as set forth in the preceding Paragraph.

Article 73

Any person who desires the exclusive use of a mark to certify, by providing knowledge or technology, the characteristics, quality, precision or other matters of another person's goods or services shall apply for registration of a certification mark.

Only a juristic person, an organization or a government agency capable of certifying another person's goods or services shall be eligible for applying for registration of a certification mark.

Article 74

Any business association, club or social organization, or any other group which desires the exclusive use of a mark to distinguish its organization or membership shall apply for registration of a collective mark.

Article 75

A certification mark or a collective mark may not be assigned or licensed to another person for use, nor made an object of a pledge; provided that this provision shall not apply if such assignment or license for use will not be likely to infringe upon the interests of consumers and to contravene fair competition, and has been approved by the Government Office in charge of trademark matters.

Article 76

In case the owner of the right to the exclusive use of a service mark, a certification mark or a collective mark, or the licensed user thereof inappropriately uses the mark thereby causing damages to another person or the public, the Government Office in charge of trademark matters may, ex officio or upon application by an interested party, revoke the owner's right to the exclusive use thereof.

Article 77

The provisions of this Law regarding trademarks shall be applicable mutatis mutandis to a service mark, a certification mark and a collective mark as the case may be, unless otherwise prescribed elsewhere in this Chapter.

Chapter VII - Supplemental Provisions

Article 78

The Enforcement Rules of this Law shall be prescribed by the Ministry of Economic Affairs.

Article 79

This Law shall come into force from the date of promulgation.

The Enforcement date of amended Articles 4, 5, 23, 25, 34, 37 and 61 shall be decided by the Executive Yuan.
