

High-lights of the amendments of P.R.C trademark law

The P.R.C trademark law was legislated in 1982 which was the first specialized intellectual property law in modern China. Accompanying with the high-speed economic development after reform of China, this meaningful law was successively amended in 1993 and 2001. The scope of protection extended from goods mark to services mark, certification mark, collective mark and geographical indication after those two amendments. During the past ten years, two draft amendments of P.R.C trademark law was put forward and discussed in the People's standing committee.

After taking a vote on the third draft amendments of trademark law on August 30th, 2013 that the new P.R.C trademark law will finally come into force from May 1st, 2014. As we anticipated before, the related provision of sound mark, well-known trademark etc. have been updated. We hereby extract some of the changes in the trademark law which might be useful for foreign applicants.

1. Sound mark

The available elements for a trademark stated in previous version of the trademark law are words, figures, numbers, letters, colors, 3-D symbol and the combination therefore, any visually perceptible sign, capable of distinguishing the goods and services can be used as a trademark. But in the new one, the "visually perceptible" is cancelled and adds the sound as one of the elements. For the famous sounds such as "Hello Moto" and Nokia ringing are already know by public as well as their trademark and have been registered in other countries, after the enforcement of the new trademark law, we believe a new upsurge of registration sound mark might be come in China.

2. Time limit of examination term in each procedure of Chinese trademark application

The new Chinese trademark law stipulated that the time limit for preliminary examination before publication is 9 months as well as the making decision of trademark review of the trademark rejection is also 9 months, the examination period for making decision or investigation of opposition is 12 months. Only under special circumstance and approved by official, that the examination term might be delayed no more than 6 months. That means the examination period of Chinese trademark application has a great shorten compare with before.

3. Well-defined of the qualification of opponent

In practice, there are many samples, malicious one slip through the legal loophole to oppose those trademark applications in good faith to hold off the registration and blackmail the applicant therefore. The new trademark law well defined the qualification of the opponent that only the prior obligee and interested party could start the opposition procedure. This amendment effectively ensures the opposition procedure to exert its proper function.

4. Well-know trademark

In 2001, the protection of well-known trademark was added in the Chinese trademark law. But to obtain the well-known trademark makes a big splash in the later years and sometimes missed the original intention of making

this law. The new trademark law stipulated that anybody shall not use the “WELL-KNOWN TRADEKAR” on the package and products as well as in the advertisement, exhibition and commercial activities. This is to correct the dissimulation of well-know trademarks in current practices and we expect for the new born of it.

5. Sixfold compensation of trademark rights infringements

The upper limit for compensation of trademark infringement cases in current law is 500,000, after the amendments, the upper limit is raised to 3,000,000. In addition, in the trademark infringement cases, the burden of proof is no more the only responsibility of the plaintiff that the court might request for filing evidences from the defendant.

6. Malicious registration of trademark

The malicious registration of a trademark is common both in China and other countries of the world. The most regular malicious registrations are occurred in the cooperation relationship, for example the distributor, seller, agency etc. For those circumstances, the new Chinese trademark law has new provision to prevent. First, where anyone has contract or business relationship with the prior trademark user or is fully aware about the exits of the trademark shall not register the trademark therefore. Second, where anyone used the registered trademark and unregistered well-known trademark as his company name or trade name to mislead the public would be regard as unfair competition and practice. Third, any trademark agency helps others to maliciously register the trademark would be punished by the official.

7. Multiple trademark applications in China

Under the current law, the trademark registration in China can only be accepted one by one, but after the enforcement of the Chinese new trademark law, the multiple trademark applications system would instead of the current one.

We believe the new changes of the Chinese trademark law would bring a new boom to the Chinese. There are also other amendments in the New Chinese trademark law and the complete trademark law would be published later, we would follow up and update the important information for everyone reference.