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## CHINA IP LEGAL WATCH

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### CHINA REVISED ITS TRADEMARK LAW TO FACILITATE TRADEMARK REGISTRATION, STRENGTHEN TRADEMARK PROTECTION AND PROMOTE A FAIRLY COMPETITIVE MARKET ORDER

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*On August 30, 2013, the China's highest legislative authority – the Standing Committee of the National People's Congress revised the current Trademark Law of the People's Republic of China ("Trademark Law"). The revised Chinese Trademark Law ("Revised Trademark Law"), which will take into effect on May 1, 2014, has dramatically perfected the current Chinese trademark regime by facilitating trademark registration and review, strengthening trademark protection and promoting a fairly competitive market order through reform of its former trademark systems and designing new ones so as to catch up with international practice. This is a great development and reform of the Chinese trademark regime. Foreign enterprises and individuals intending to obtain and enforce trademarks in China shall keep close eyes on and acquaint themselves with these new changes.*

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#### INTRODUCTION

The China's Trademark Law was firstly adopted in 1982 and revised twice in 1993 and 2001, respectively. According to the State Administration for Industry and Commerce ("SAIC") which is the competent governing authority for the China Trademark Office ("CTO") and Trademark Review and Adjudication Board ("TRAB"), the current Trademark Law has played a decisive role in promoting development of the China's intellectual property system and protecting trademark registrants' rights. By the end of 2012, the Chinese accumulated trademark application and registration have already amounted to more than 11 million (11,360,000) and seven million (7,656,000), respectively, and the current effectively registered trademarks have amounted to more than six million (6,400,000)<sup>1</sup>. These application and registration numbers have topped No. 1 in the world. Considering the huge Chinese consumers with strong consumption capabilities, most international enterprises have already applied or registered trademarks in China. However, the current Chinese Trademark Law is weak in protecting registrant's rights and trademark processes are so long that it seriously impairs the applicant/registrant's rights. In practice, a straight-forwarding trademark application with CTO likely lasts two years and an appealing procedure with TRAB likely lasts at least two or three years, and sometimes even longer. Many complaints



and criticism come from applicant/registrant as well as international trademark communities. Under such situation, it is quite necessary to revise the current Trademark Law. So, entrusted by the State Council, SAIC began to prepare for the third revision to the current Trademark Law in 2003. After intensive investigation and hearing public opinions, SAIC submitted their revision draft to the State Council for review in November, 2009 and the State Council discussed and reviewed this revision draft in October, 2012, and then further submitted the same to the Standing Committee of the Chinese National People's Congress<sup>2</sup> ("NPC") for further review. The NPC Standing Committee discussed and reviewed this draft for three times and finally promulgated the thirdly revised Trademark Law during its fourth sessions on August 30, 2013. Compared with its former versions, so many fundamental changes and improvements have been made to the revised Trademark Law which foreign enterprises shall pay special attention to when applying and enforcing their trademarks in China. This article tries to address all these changes and improvements and gives some advice on how to effectively applying and enforcing trademarks in China.

## **FACILITATING TRADEMARK REGISTRATION AND REVIEW**

### **1. MORE CONVENIENCE FOR APPLICANT AND REGISTRANT**

Compared with its former versions, the revised Trademark Law has broadened trademark protection scope and has also provided more convenience to the applicant for trademark registration. For instance, voice is now allowed to be registered as trademark<sup>3</sup>. Though trademark e-filing and multi-class application are popular in most western countries, however, they are not allowed under the former version of the Trademark Law. This is not in line with international practice and will surely increase the applicant's costs, so many criticism come from applicant and international community. Under such situation, the revised Trademark Law now allows multi-class application and e-filing<sup>4</sup>. This is a great improvement which is also revolutionary to CTO. Even as such, however, we believe that multi-class application will only be allowed after May 1, 2014 when the revised Trademark Law takes into effect. In trademark practice, when multi-class application is allowed, the official fee for each additional class after the first class will be half-reduced. How CTO will act on this is still uncertain at the moment. We hope CTO will follow international practice. It was reported that the official fee for filing one trademark application in one class will be reduced from RMB1,000 (US\$165) to RMB800 (US\$135) from October 1, 2013. However, this reduction has no relevance to the additional class under the multi-class application. In order to give registrant more time to consider renewing a trademark or a remedy when they forget renewal, the revised Trademark Law has further extended the time window for registrant to renew a registered trademark from six months to 12 months before its expiry and has further given another six-month grace period if the renewal is not requested before the aforesaid 12 months<sup>5</sup>. This is greatly welcomed by trademark registrants because they will have more time to make decisions. Obviously,



all these changes are purported to give more convenience to trademark applicant and registrant.

## 2. NEW REASONABLE TRADEMARK OPPOSITION SYSTEM

Under the former version of the Trademark Law, any third parties, no matter they have any interests to the trademark or not, may file an opposition to CTO based on any grounds against any pending trademark within three months after it is preliminarily published by CTO and the CTO opposition procedure takes two years and even longer. After CTO has made opposition decision, then either the applicant or the opposer may further appeal to TRAB and such TRAB opposition appealing procedure takes at least two or three years. Under such opposition system, the applicant's rights are heavily impaired when it takes so many years to finally obtain the trademark if their competitor purportedly delays the registration process by using such opposition system. In order to protect the applicant's interests and facilitate trademark registration, the revised Trademark Law has changed the current opposition system.

Under the revised Trademark Law, only the owner of prior rights or concerned interesting party may oppose to CTO against a published trademark on excuses of infringement to well-known trademark, prior trademark and other prior rights, bad-faith application by agent or abusing geographical indication<sup>6</sup>. So, firstly, the revised Trademark Law has narrowed the opposer from any third parties to the owner of prior rights or concerned interesting party. However, it is worth noting that any third parties may oppose only and when the applied trademarks contain or are just the same as those elements which are absolutely prohibited by law for registration as trademark, such as the names of a foreign country or international organization, red-cross, the general common commodity names, etc<sup>7</sup>. In addition, the revised Trademark Law has secondly narrowed down the opposer's rights to further appeal to TRAB. In other words, when CTO rejects the opposer's opposition, CTO will directly grant registration to the trademark which has been opposed and issue trademark registration certificate to the applicant<sup>8</sup>. Under the former version of the Trademark Law, the opposer may further appeal to TRAB when he receives an opposition refusal decision from CTO. When the opposer further appeals to TRAB, CTO could not issue trademark registration certificate to the applicant until TRAB has further rejected the opposer's opposition appealing. So the application takes so many years and the applicant's rights are seriously impaired. Though the opposer cannot appeal to TRAB after receiving an opposition rejection decision from CTO, to balance the interests, the revised Trademark Law provides another remedy to the opposer who can then, within five years after registration of the trademark, file another application with TRAB to request TRAB to cancel the registration of trademark he once opposed<sup>9</sup>. However, filing such request with TRAB does not affect CTO issuing registration certificate to the applicant. Though the opposer is not allowed to further appeal, the law does not prohibits the applicant from appealing to TRAB if CTO supports the opposer's opposition and



refuses the applicant's trademark. In other words, only applicant can file opposition appealing, but opposer could not. Obviously, such new opposition system is designed to facilitate trademark registration and prevent those intentional delays by competitor.

### 3. STRICT TIME WINDOWS ADOPTED FOR CTO AND TRAB

The former version of the Trademark Law does not stipulate any procedural time windows at all for CTO or TRAB to hear any trademark matters. Because of their heavy workloads, CTO and TRAB has stacked so many trademark cases, so, procedurally, they are very slow in attending to these matters. Under such situation, it is not strange that it takes several years to register a trademark or receive TRAB's appealing decision. In some worse cases, CTO or TRAB might even issue a one-page filing acceptance notice (just advising that they have received the application) six or seven months late after applications being filed. This has seriously impaired the applicant's interests and affected CTO and TRAB's good image in terms of their efficiency and, of course, it has been frequently criticized and complained by trademark international communities. So the revised Trademark Law has changed this situation and stipulates strict time limit for CTO and TRAB to hear the cases. Such improvement is mostly fundamental, revolutionary and warmly welcomed by applicant and international communities.

Generally speaking, CTO is the competent authority mainly receiving and examining applications for trademark (i) application; (ii) opposition; and (iii) cancelation on the basis of none-use for continuous three years or the trademark having become the common commodity name. CTO can also initiatively declare a registered trademark to be invalid if the registered trademark contains any elements which are absolutely prohibited by the Trademark Law. According to different business nature, CTO might make different decisions to (i) refuse a trademark application; (ii) cancel a registered trademark; or (iii) declare a registered trademark to be invalid upon its initiative examination or request by any parties when the registered trademarks contain any elements absolutely prohibited by law. When receiving CTO's such decisions, the concerned parties can appeal CTO's (i) application refusal decision; (ii) cancellation decision; (iii) invalidation decision to TRAB for review. Of course, the owners of prior rights and the concerned interesting party may also request TRAB to declare a registered trademark to be invalid when the registered trademark has infringed well-known trademark, prior trademark and other prior rights, or they are registered in bad-faith by agent or abuse geographical indication.

Based on CTO and TRAB's powers and responsibilities, the revised Trademark Law has stipulated several procedural time windows which are summarized as follows:



TRADEMARK MATTERS	AUTHORITY	TIME WINDOWS	NOTE
New Application	CTO	9 months <sup>10</sup>	Silent on extendable
Opposition		12 months <sup>11</sup>	Extendable for 6 months upon SAIC approval
Cancellation for none-use or TM becoming common goods names		9 months <sup>12</sup>	Extendable for 3 months upon SAIC approval
Review against CTO's new application refusal	TRAB	9 months <sup>13</sup>	Extendable for 3 months upon SAIC approval
Review by trademark applicant against CTO's unfavorable opposition decision		12 months <sup>14</sup>	Extendable for 6 months upon SAIC approval
Review against CTO's cancellation decision for none-use		9 months <sup>15</sup>	Extendable for 3 months upon SAIC approval
Review by registrant against CTO's invalidation decision or invalidation request by any parties by excuse that registered trademark contain elements absolutely prohibited by laws <sup>16</sup>		9 months <sup>17</sup>	Extendable for 3 months upon SAIC approval
Invalidation request by owner of prior rights or concerned interesting parties on excuse of infringing well-known trademark, prior trademark and other prior rights, bad-faith application by agent or abusing geographical indication		12 months <sup>18</sup>	Extendable for 6 months upon SAIC approval

## STRENGTHENING TRADEMARK PROTECTION

### 1. INFRINGEMENT CLARIFIED AND INFRINGEMENT ASSISTANCE SCOPE BROADENED

The former version of the Trademark Law adopted a unified standard in terms of trademark infringement according to which the uses of the same or similar marks on the same or similar goods are all infringement acts. However, sometimes, the use of similar marks on the same goods or the use of same marks on similar goods will not definitively disturb market orders or confuse the consumers. This system has prevented more registration and use of certain useful trademarks. So the revised Trademark Law has changed this situation since it has adopted the “likely causing confusing” concept for evaluating trademark infringement. One of the most important preconditions for



establishment of infringement to a registered trademark when using similar marks on the same goods or using same or similar marks on similar goods is that such use must likely cause confusing<sup>19</sup>. In other words, if the aforesaid use does not likely cause confusion, then such use of similar marks on the same goods or use of the same or similar marks on similar goods does not constitute an infringement to the registered trademark. Though the adoption of the “likely causing confusion” concept is more reasonable, however, this might get litigation to be more unpredictable since the “likely causing confusion” standard is very subjective but not objective, leaving much space to judges. So engagement of experienced trademark attorney is essential in such infringement litigation.

The assistance to trademark infringement has been prohibited by Trademark Law. The former version of the Trademark Law mainly prohibits assistance for storage, transportation, post service and concealment for trademark infringement. However, in practice, providing assistance for trademark infringement has so far exceeded those four activities – storage, transportation, post service and concealment. To effectively prevent trademark infringement, the revised Trademark Law adopts a broader standard in terms of assistance to trademark infringement, under which any acts intentionally providing others with facilities in their trademark infringement or assisting others in performing trademark infringement will constitute trademark infringement<sup>20</sup>, no matter how and what assistance they provide. This will effectively prevent assistance to trademark infringement.

## 2. ADMINISTRATIVE PUNISHMENT IMPROVED AND PUNITIVE DAMAGES ADOPTED

The Chinese administrative authorities can make administrative punishment, including fines on the infringer when the infringement is evidently found. According to the former version of the Trademark Law, the administrative authorities may make a fine no more than three times of the value of the infringing products, or no more than RMB 100,000 (around US\$16,400) when it is impossible to calculate the value of the infringing products. To effectively prevent trademark infringement, the revised Trademark Law has improved the aforesaid fine cap. Now the Chinese administrative authorities may make a fine no more than five times of the value of the infringing products when the value of the infringing products have exceed RMB50,000 (around US\$8,200) or no more than RMB250,000 (around US\$41,000) when the value of the infringing products does not exceed RMB50,000 (around US\$8,200) or it is impossible to calculate such infringement value. Apart from improving this cap, the revised Trademark Law requests the administrative authorities to legally give the infringer “severer penalties” if s/he has conducted trademark infringement for more than twice within five years<sup>21</sup>. Obviously, this is purported to effectively prevent trademark infringement.

## 3. NEW COMPENSATION SYSTEM, SEVERER PUNITIVE COMPENSATION AND NEW CAP



Under the former version of the Trademark Law, the actual losses of the trademark owner or the profits of the infringer has illegally obtained from the infringement will be referred when calculating the compensation amount for trademark infringement. The compensation will be legally capped to RMB500,000 (around US\$82,000) when it is impossible to calculate the actual losses or profits. It is often really difficult to calculate the actual losses or the infringer's profits and in such situation, the maximum compensation is capped so less. Sometimes, the awarded compensation amount cannot cover the attorney fee when litigating in China for trademark infringement. This has greatly impaired the trademark owner's rights. To change this situation, the revised Trademark Law, when still maintaining the actual losses and infringer's profits as the basis for calculating compensation, has added trademark license royalties as the reference for calculating compensation. When it is impossible to calculate the actual losses, infringer's profits or trademark license royalties, then the compensation can be high to the cap of RMB3,000,000 (around US\$492,000), which is six times of its former cap and is also three times of the similar cap for patent infringement. Such sharply increased cap can effectively protect trademark owner's rights. It is worth noting that the actual compensation can be higher than this cap if the trademark owner can prove that his actual loss or the infringer's profits or the trademark license royalties is higher. Only when these three numbers cannot be calculated, then the compensation will be capped by RMB3,000,000 (around US\$492,000). In addition, in the serious malicious trademark infringement, the compensation amount can be punitively more than one time but less than three times of the actual losses or license royalties of the trademark owners or the illegal profits of the infringer<sup>22</sup>. Such punitive compensation and improved cap are warmly welcome by registrant and international community.

#### 4. BALANCE OF BURDEN OF PROOF BETWEEN TRADEMARK OWNER AND INFRINGER

Under the Chinese Civil Procedural Law, the party must bear the burden of proof for his claims, otherwise, he will take the risk of lose the litigation. According to this principle, the trademark owner must prove either how much loss he has suffered or how much the infringer has illegally obtained from infringement. However, generally speaking, the infringer will always try to hide those evidences which are unfavorable to him so it is quite difficult or impossible for the trademark owner to find such evidence. To protect the trademark owner's interests, the revised Trademark Law has already made a balance between the trademark owner and infringer on the burden of proof for evidence. When the trademark owner has endeavored to produce evidence, however, the financial books and records in relation to the infringement are kept by the infringer, the Chinese court may order the infringer to submit those books and records in relation to the infringement. If the infringer refuses to submit those evidences or produce false evidence, then the Chinese court can grant compensation by mainly referring to the trademark owner's claims and evidence<sup>23</sup>. Such balance of burden of proof will greatly protect trademark owner's rights.



## PROMOTING A FAIRLY COMPETITIVE MARKET ORDER

### 1. REASONABLE WELL-KNOWN TRADEMARK PROTECTION

Though China provides an overall protection to well-known trademarks, however, the former version of the Trademark Law keep silent on how to and who can initiate well-known trademark identification though, in practice, CTO, TRAB and Chinese courts have identified many well-known trademarks. To confirm well-known trademark protection, the revised Trademark Law stipulates that CTO, TRAB and Chinese courts may identify well-known trademark only upon the request of its owner and only when it is necessary to ascertain the well-known factor of the trademark when hearing trademark related cases. In other words, CTO, TRAB or Chinese courts cannot initiatively identify well-known trademark or they must identify well-known trademark even upon the request of the trademark owner since such identification depends on the necessity of ascertaining this well-known factor<sup>24</sup>. Obviously, it is clear that China protects well-known trademark but is cautious in identifying well-known trademark.

Since some enterprises have made full use of their well-known trademark to make commercial advertisement and this will actually impair the interests of the other operators in the same industry and even deceive consumers to make wrong decision. To maintain a faire competitive market order, the revised Trademark Law prohibits the owner of well-known trademark from labeling “well-known trademark” on their products, product packages or containers or in advertisement, exhibition and other commercial activities, otherwise, the local administrative authorities may make a fine of RMB100,000 (around US\$16,400)<sup>25</sup> on its owner. Obviously, this is purported to maintain a fairly competitive market order and protect consumer’s rights.

### 2. BAD-FAITH REGISTRATION SCOPE BROADENED

The revised Trademark Law requests that the application and use of trademark must be based on good faith<sup>26</sup>, so bad-faith registration is prohibited. In practice, the true owner’s trademarks are often filed and registered by their agent, representative, distributor or attorney in bad faith, so the former version of the Trademark Law mainly prohibits the trademark owner’s agent, representative, distributor or attorney from registering his trademarks. However, in practice, it is quite often that the trademark owner’s business partners have registered his trademark in bad faith through the business cooperation and contracts. To prevent this happening again, the revised Trademark Law has extended the bad-faith registrants from the trademark owner’s agent, representative, distributor or attorney to any parties who have known the true owner’s trademark through signing contracts, conducting business or maintaining other commercial relationship with the true owner of the trademark which has been prior used but not yet registered by the true owner<sup>27</sup>. This change has substantively protected the true trademark owner’s rights. It is worth noting for the true trademark owner to



necessarily keep the contracts signed and any other documents proving business relationship with their business partner so as to prevent their registration in bad faith.

### 3. COUNTERPLEAD RIGHTS FOR PRIOR USE AND THREE -YEAR NONE-USE CONFIRMED

Unlike most west countries, China adopts the first-to-file system and has no use (either actual or intentional) requirement for trademark application. When a trademark is registered, the registrant can prevent any other parties from using his registered trademark even when the third parties have reasonably used this trademark before the registrant's application and registration and the registrant has not actually used his trademark at all after registration. Actually, this is a great waste of social resources and has resulted protection to many inactively registered trademarks. This is unfair to the actual good-faith user and also unreasonable for the registrant to obtain benefits by just registration but with no actual use at all. To change this situation, the revised Trademark Law firstly confirms the counterplead rights by the third parties on the basis of their prior use or none-use by registrant for three years. Now, the registrant of a registered trademark could not prevent those who have already used the same or similar mark on the same or similar goods before the application date of the registered trademark and thereby obtained certain reputation from continuously using such marks in the original use scope. This is a typical reasonable use system which is also adopted by the Chinese Copyright Law. In such case, the registrant of the registered trademark cannot prevent the prior user's continuous use within the original use scope, but can request the prior user to add a proper distinguishable indication to their prior used mark<sup>28</sup>. In addition, when the registrant of registered trademark requests compensation in litigation, the accused party can claim that the registered trademark is not actually used so as to avoid compensation. In such case, the court will order the registrant to produce evidence that he has used the registered trademark within the latest three years. If the registrant cannot prove that he has used this registered trademark within the latest three years or he has suffered any losses because of trademark infringement, then the registrant of the registered trademark can be compensated with nothing<sup>29</sup>. This system reminds the registrant of using the trademark after registration and the accused party of using it to avoid compensation since, in practice; many individual registrants do not use their trademark at all after registration. These two systems are purported to maintain a fairly competitive market order and avoid waste of social resources.

### 4. UNFAIR COMPETITION AND TRADEMARK AGENT'S IMPROPER ACTS PREVENTED

When a trademark is registered, no similar or same trademark can be registered on the similar or same goods. So, in practice, some enterprises use registered trademark as their domain name so as to run away from trademark infringement attack. To prevent this situation, the revised Trademark Law expressively prevents any enterprises from using registered trademark or unregistered well-known trademark as their domain names to mislead consumers since such act is clearly defined as unfair competition by



the revised Trademark Law<sup>30</sup>. In practice, some trademark agents impair their clients' interests or lack diligence. So the revised Trademark Law has strengthened trademark agent' responsibilities and prevented improper acts. For instance, trademark agent must keep their client's trade secret advised during the representation confidential and could not apply for other trademarks than those instructed by the clients. In addition, trademark agent shall also advise the clients when the trademarks instructed for application contain those elements prohibited by laws or refuse the instruction when he has already known or shall know that the trademark instructed for application is a bad-faith registration<sup>31</sup>. All these preventions are obviously purported to maintain a fairly competitive market order.

## **FURTHER CONCERNS AFTER THIS REVISION**

### **1. NO PIGGING CLAUSE FOR APPLICATION BEFORE EFFECTIVENESS OF REVISED LAW**

China has topped No. 1 in the world in terms of trademark application and registration. CTO and TRAB have already stacked so many cases at the moment. Theoretically speaking, all the newly adopted statutory time windows are applicable to the applications received by CTO and TRAB after the revised Trademark Law takes into effect on May 1, 2014. We believe CTO and TRAB will try their best to speed up clearing their stacks before next May, however, when clearing their stacks; they will also receive many new applications. After next May, we believe that CTO and TRAB will take priority to attend the new applications so as to satisfy the respective time windows. If the examination to some former applications is not finished before next May, the worry and concern do exist that it might take even longer to receive decisions from CTO and TRAB for those applications filed before next May. This might be even worse when considering CTO and TRAB were slow in their former practice. This is really a challenge job for CTO and TRAB to speed up their examination process, especially for those applications filed before the revised Trademark Law taking into effect. Another concern is that the revised Trademark Law does not stipulate any time windows how soon CTO and TRAB must issue their official filing receipt notices after receiving applications. Some applicants might need the official filing receipt notices soon in some business negotiation and transactions. So timely issuance of the official filing receipt notice by CTO and TRAB is sometimes quite important, unfortunately, the revised Trademark Law keeps silent on this.

### **2. CHINA'S OWN GOODS CLASSIFICATION**

The revised Trademark Law stipulates that trademark application shall be filed in accordance with a prescribed classification of goods<sup>32</sup>. China has its own *Classification Table of Similar Goods and Services* ("Goods Classification") which is similar to the Nice Classification. More importantly, CTO strictly follows such Goods Classification and would like to accept those standard terms covered by the Goods Classification. Though the Goods Classification and the Nice Classification have tried to absorb all



the daily life goods and services, however, it is impossible to absorb all the daily developing goods and services into the Classification. When the newly developed wordings for the goods or services are filed which are not found in the Goods Classification, it is most likely CTO will issue a correction notice just advising they are not standard terms and shall be amended to standard terms. Normally, CTO does not give any advice on how to amend and the correction notice will be issued repeatedly until they are amended into standard terms covered by the Goods Classification. It is not accusatory that a country adopts its own Classification; however, the problem might come up when priority is involved. When priority is claimed, CTO requests all the information specified in the filed application form, including the trademark specimen and list of goods/services must be exactly the same as shown in the certified priority document. If any filed information does not comply with the certified priority document, in practice, CTO will not issue its official filing receipt notice until the filed application forms are amended to be exactly same as the certified priority document. However, some countries do not strictly follow the Nice Classification; therefore, the goods/services filed overseas might not correspond to the standard terms in the Goods Classification. The interesting thing is that the applicant might be requested to amend the filed application form (mainly the filed goods/services) to be exactly the same as the priority document in exchange of obtaining CTO's official filing receipt notice if the applicant has already amended the goods according to the Goods Classification when filing the application. So the first step is to re-amend the standard terms of goods back to unstandard terms filed in the priority country which it does not follow the Nice Classification. However, during the substantive examination, CTO might request the applicant to amend the unstandard term of the goods back into standard terms which are filed at the very beginning. So the applicant might have to amend the goods for the second time during the substantive examination. Actually, this is self-contradictory since CTO shall not request the applicant to amend the goods which are not standard terms if it requests the filed information must be exactly same as shown in the priority document when the foreign country does not follow up the Nice Classification. Unfortunately, the revised law keeps silent on how to avoiding this. We hope the implementation rules of the revised Trademark Law will address this in the future.

## CONCLUSION

To confront with complaints and criticism from applicant/registrant and trademark international community, the NPC Standing Committee has revised the Trademark Law. In order to comply with international practice, the revised Trademark Law has facilitated trademark registration and review by providing more convenience for trademark applicant and registrant, establishing a more reasonable opposition system and adopting strict procedural time windows for CTO and TRAB to hear various cases. In addition, the revised Trademark Law has also strengthened trademark protection by clarifying and broadening infringement acts, improving administrative punishment and imposing punitive damages and compensation on infringer, and also heavily improving



the statutory and punitive compensation cap as well as balancing burden of proof between trademark owner and infringer. The revised Trademark Law is purported to maintain a fairly competitive market order by providing reasonable well-known trademark protection system, broadening bad-faith registration scopes, allowing prior use and three-year none-use defense against trademark infringement claims and further imposing stringent responsibilities and acts of conduct on trademark agents. When applauding for the great improvements made on the Trademark Law, however, some further worries reasonably do exist on the smooth procedural transition for applications filed before the Trademark Law takes into effect and the possible self-contrary arising from China's own Goods Classification.

All these new developments are beneficial to and welcomed by applicants and registrants. To reflect and address these new changes, the current *Implementation Rules of the Trademark Law* will expect to be revised respectively soon. We will closely track its development.

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- <sup>1</sup> These numbers come from CTO website [http://sbj.saic.gov.cn/sbyw/201309/t20130902\\_137782.html](http://sbj.saic.gov.cn/sbyw/201309/t20130902_137782.html).
  - <sup>2</sup> The National People's Congress is the Chinese legislation authority who makes the most important laws, such as Constitution Law, Civil Law, etc. However, the National People's Congress is held once each year, so the Standing Committee is its permanent body who is empowered to legislate those laws other than the fundamental laws. So the Trademark Law was reviewed and revised by the Standing Committee of the National People's Congress.
  - <sup>3</sup> Article 8 of the Trademark Law.
  - <sup>4</sup> Article 22 of the Trademark Law.
  - <sup>5</sup> Article 40 of the Trademark Law.
  - <sup>6</sup> Articles 33, 13, 15, 16, 30, 31 and 32 of the Trademark Law.
  - <sup>7</sup> Articles 10, 11 and 12 of the Trademark Law.
  - <sup>8</sup> Article 35 of the Trademark Law.
  - <sup>9</sup> Articles 35 and 45 of the Trademark Law.
  - <sup>10</sup> Article 28 of the Trademark Law.
  - <sup>11</sup> Article 35 of the Trademark Law.
  - <sup>12</sup> Article 49 of the Trademark Law.
  - <sup>13</sup> Article 34 of the Trademark Law.
  - <sup>14</sup> Article 35 of the Trademark Law.
  - <sup>15</sup> Article 54 of the Trademark Law.
  - <sup>16</sup> Articles 10, 11 and 12 of the Trademark Law.
  - <sup>17</sup> Article 44 of the Trademark Law.
  - <sup>18</sup> Article 45 of the Trademark Law.
  - <sup>19</sup> Article 57 of the Trademark Law.
  - <sup>20</sup> Article 57 of the Trademark Law.
  - <sup>21</sup> Article 60 of the Trademark Law.
  - <sup>22</sup> Article 63 of the Trademark Law.
  - <sup>23</sup> Article 63 of the Trademark Law.
  - <sup>24</sup> Articles 13 and 14 of the Trademark Law.
  - <sup>25</sup> Articles 14 and 53 of the Trademark Law.
  - <sup>26</sup> Article 7 of the Trademark Law.
  - <sup>27</sup> Article 15 of the Trademark Law.
  - <sup>28</sup> Article 59 of the Trademark Law.
  - <sup>29</sup> Article 64 of the Trademark Law.
  - <sup>30</sup> Article 58 of the Trademark Law.
  - <sup>31</sup> Article 19 of the Trademark Law.
  - <sup>32</sup> Article 22 of the Trademark Law.