Comments on the Draft Amendment to the Chinese Trademark Law dated 30 August 2007

Prepared by the Commission on Intellectual Property

Introduction

The International Chamber of Commerce (ICC) is pleased to present the following comments on the Draft Amendment to the Chinese Trademark Law dated October 31, 2007. The current draft Amendment is of great interest to ICC and its member companies.

ICC is encouraged by the efforts of the Chinese Government in revising China's Trademark Law and appreciates the opportunity to share its thoughts and suggestions on the draft Amendment. The draft Amendment, when implemented, will improve the Trademark Law in many ways and bring the statute a significant step closer to internationally accepted standards. The revisions will help not only to protect the intellectual property rights of businesses and the interests of consumers, but also to facilitate international business transactions and the development of China's economy. In particular, ICC is pleased with the proposed amendments to the definition of a registered trademark, the application procedure for multiple class filings, and the higher statutory damages cap.

At the same time, there remain concerns and questions with some of the proposed changes made in the draft Amendment. ICC has provided below detailed comments on a number of articles with which it has concerns and hopes to receive further clarification. In particular, it feels that several provisions (e.g. Articles 3, 82, 87, 92, and 96) could be revised to clarify and enhance the Law's protection of unregistered, well-known trademarks. It also believes that the resolution of trademark disputes under the Law would be made more efficient by providing a greater role for administrative proceedings at the agency level so that not all complaints would need to enter the court system for adjudication.

ICC hopes that these comments will assist the Chinese Government as it continues its work toward finalizing the Amendment to the Trademark Law.

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□□□ [**Existing text of the] Trademark Law**	□□□□□□ **Draft Amendment to the Trademark Law (30 August 2007)**	□□□□ **Explanation of the Amendment**	**ICC Comments**
□□□□□ **Chapter I General Provisions**	□□□ □□ **Chapter I General Provisions**		
□□□ **Article 1**	□□□[□□□□] **Article 1 [Purpose of enactment [of this law]]**		
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trademarks, encourage producers and business operators to ensure the quality of goods and services and uphold the credibility of trademarks, thereby safeguarding the interests of consumers, producers and business operators and promoting the development of the socialist market economy.	and uphold the credibility of trademarks, thereby safeguarding the interests of consumers, producers and business operators and promoting the development of the socialist market economy.	rights", because in comparison to "exclusive rights to use trademarks", the concept of "trademark rights" is more accurate and conveys more breadth of meaning, and in addition is consistent with the expressions “patent rights” and “copyright [rights].”	
□□□□□□□ **Article 3, Sections 1 and 4**	□□□**[**□□□□**]** **Article 3 [Subjects of [trademark] rights]**		
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"Registered trademarks" means trademarks approved for registration by the Trademark Office, including trademarks for goods, service marks, collective marks and certification marks. Trademark registrants enjoy trademark rights and receive protection under law. Special matters concerning the registration and administration of collective marks and certification marks shall be provided for in regulations to be formulated by the agency of the State	"Registered trademarks" mean trademarks that have been approved for registration by the Trademark Office. Trademark registrants enjoy trademark rights and receive protection under this Law. Trademark users shall have an interest in unregistered trademarks by virtue of their good faith prior use [of the unregistered trademark], and shall be protected by this Law. For the purpose of this Law, "trademark" shall include trademarks for goods, service marks, and shall also include collective marks, certification marks, geographical indicators, and special marks.		

Council for the administration of industry and commerce.			
□□□ **Article 4**	□□□[□□□□□] **Article 4 [Holders of [trademark] rights]**		
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obtain an exclusive right to use a trademark for goods which they produce, manufacture, process, select or distribute should apply to the Trademark Office for registration of a trademark for goods. Natural persons, legal persons and other organizations that need to obtain an exclusive right to use a trademark for the services they provide should apply to the Trademark Office for registration of a service mark. The provisions of this Law relating to trademarks for goods shall be applicable to service marks.	to the Trademark Office for registration of a trademark for goods. Natural persons, legal persons, and other organizations that need to obtain trademark rights for the services they provide should apply to the Trademark Office for registration of a service mark. The provisions of this Law relating to trademarks for goods shall be applicable to service marks.	operation by way of requiring the submission of certification materials such as the applicant's proof of qualifications, proof of ability or proof of intention to use [the trademark].	

□□□ **Article 5**	□□□**[**□□□□**]** **Article 5 [Joint ownership]**		
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□□□ **Article 8**	□□□**[**□□□□**]** **Article 6 [The concept of trademarks]**		
□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□	□□□□□□□□□□□ □□□□□□□□□□□□ □□□□□□□□□□□□	□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□	The broad definition of a (registered) trademark by removing the term "visually perceptible" is welcome. It differs from the

□□□□□□□□□□ □□□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ Any visually perceptible signs, including words, figures, letters, numbers, three-dimensional signs and color combinations, as well as combinations of the aforementioned elements, which are capable of distinguishing the goods of one natural person, legal person or other organization from the goods of another may all be the subject of an application for registration as a trademark.	□□□□□□□ □□□□□□□□□□□□ □□□□□□□□□□□□ □□□□□□□□□□□□□ “Trademark (brand)” means marks that are capable of distinguishing the goods or services of one natural person, legal person or other organization from the goods or services of another. Trademarks may be composed of elements such as words, figures, letters, numerals, three-dimensional signs and colors or any combination of the foregoing elements.	□□□□□“□□□”□□□□□□□ □□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□ □□□ As single colors, sounds, smells or active trademarks, including sensory trademarks which may appear in the future, can have a function of distinguishing [products or services] when they are used, this amendment has removed the term “visually perceptible” from the original text. The intention is to allow any future trademarks which serve a function of distinguishing [products or services], and can be described, all to be the subject of an application for registration as a trademark, in order to leave space for the broadening of the protection of subject things as trademarks. Agencies in charge of trademarks may, according to	EU concept (Art. 4 of the Community Trademark Regulation requires for the (registered) CTM that the sign should be capable of being represented graphically) and e.g. the German concept (only for registered trademarks do signs have to be graphically representable). The broad concept shifts the problem to the question of how, in the Trademark Register, non-conventional trademarks are shown.

		actual situations [in the future], decide on when to accept applications for the foregoing-described trademark registrations.	
□□□ **Article 9**	□□□[□□□□□□□□] **Article 7 [Principles for application and use]**		
□□□ □□□□□□□□□□□“□□□□”□□□□□□□□ Trademarks for which registration is applied should have distinctiveness and be easy to distinguish, and may not conflict with prior lawful rights obtained by any third party. The registrant of a	□□□□□□□□□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□□□□□□□□ □□□□□□□□□□“□□□□”□□□□□□□□ Trademarks for which an application for registration is made should have distinctiveness and be easy to distinguish. The application for registration and use of trademarks should follow the principle of good faith. The registrant of a trademark has the right to mark [the same	□□□□□“□□□□□□□”□□□ A “Principle of Good Faith” is added in the second paragraph. This provision can serve as a catch-all provision, to prohibit other acts of improper registration and uses that other specific provisions of this Law were not able to include.	It is unclear what trademarks should be “easy to distinguish” from. Article 6 deals with this issue unless the intention is to clarify that it must be distinctive at the date of application. This introduces secondary criteria, namely “distinctive” and “distinguishable.” It is suggested that the second criterion is unnecessary and may dilute the first.

trademark has the right to mark [the same with the phrase] "Registered Trademark" or the registration mark.	with the phrase] "Registered Trademark" or the registration mark.		
□□□ **Article 7**	□□□**[**□□□□**]** **Article 9 [Quality assurance]**		
□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ Trademark users should be responsible for the quality of the goods on which their trademark is used. The agencies for the administration of industry and commerce at all levels should, through their administration of trademarks, stop acts that deceive consumers.	□□□□□□□□□□ □□□□□□□□□□□□ □□□□□□□□□□□□ □□□□□□□□□□□□ □□□□□□□□□□□□ Trademark users should be responsible for the quality of the goods on which their trademark is used. The agencies for the administration of industry and commerce at all levels should, through their administration of trademarks, stop acts that deceive consumers.	□□□□□□ □□□□□□□□□□□□□□ □□□□□□□□□□□□□□ □□□□□□□□□□□□□□ □□□□□□□□□□□□□□ □□□□□□□□□□ **The original text of the provision is retained.** Under current circumstances, under which the government is making great exertion to strengthen the quality and safety of [Chinese] products, the obligation to ensure the quality of products that use a trademark and the responsibility for quality supervision, arising under the Trademark Law, should	The concept of quality and trade marks is difficult. What is perhaps intended is that the user guarantees the authenticity of the goods and services and their origin. This approach is consistent with the concept of deception that follows. The failure of quality is likely to result from non-authentic goods rather than holding to account the trade mark owner for producing shoddy goods or providing poor service. The link between the quality of the labelled goods and the responsibility of the trademark users is in general welcome. However, from the wording, it is not fully clear whether the responsibility of the trademark users or the trademark holders ("on which their trademark is used") is targeted. Moreover, the exact notion of "quality of the (labelled)

		be retained and kept, in order to reflect the law's intention of upholding market order and the interests of consumers.	goods" is uncertain. A quality assurance should possibly be dealt with outside the trademark provisions in the context of general product liability.
□□□ □□□□□□□ **Chapter II Applications for Trademark Registration**	□□□ □□□□□□□ **Chapter II Applications for Trademark Registration**		
□□□□□□□□□□ **Article 19, Article 13 of the Regulations**	□□□□[□□□□] **Article 13 [Application documentation]**		
□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□□□□□ In applying for trademark registration, [applicants] should fill in and submit a form for the class of goods and name of goods for the goods on which the trademark will be used in accordance with	□□□□□□□□□□□ □□□□□□□□□□□□□ □□ □□□□□□□□□□□□ □□□□□□□ □□□□□□□□□□ □□□□□□□□□□□□/ □□□□□□□/□□□□□□ □/□□□□□□□□□□□ □□□□□□□□□□□/□ □□□□□ □□□□□□□□□□	□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□ □□□□□□□□□□ The original provisions of the Law [on this point] are very general and	It would be helpful to understand whether a word submitted in Chinese characters will protect the equivalent in Arabic or other script (the transliteration issue). Where the Chinese meaning is sought, should one file the Chinese equivalent for which protection is sought as part of the same application, or are two separate applications required?

the prescribed Classification of Goods and Services.	□□□□□□□□ □□□□□□□□□□□□ □□□□□□□□□ In applying for trademark registration, [applicants] should submit to the Trademark Office trademark application documentation, including: (1) name and address of the applicant; (2) specimen of the trademark (3) classification of goods/services and name of goods/services for the trademark that is reported to be used, in accordance with the prescribed Classification of Goods and Services. In cases where the name of the goods/services is not listed in the Classification of Goods and Services, [the applicant] should attach an explanation of the goods/services	simple. The basic requirements for submissions of trademark registration applications are manifested in the regulations. Considering that these requirements are basic information that a trademark applicant should know, the amendment therefore incorporated the provisions of the regulations into the provisions of the Law and listed them out in an effort to simplify and clarify these items, and enhance the transparency of the Law. The documentation requirements for the registration of color trademarks and three-dimensional trademarks can be reflected in the detailed forms of application papers, and the Law will not attempt any provisions [as to this detail].	

	in question [with the application materials submitted for registration]. (4) other materials required under rules of the Trademark Office to be filled in or reported. Where a trademark is, or contains, foreign words, [the applicant] should explain their meaning [in Chinese].		
□□□□□□ **Article 15 of the Regulations**	□□□□[□□□□□□] **Article 15 [Requirements for application papers]**		
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	in written form, the documentation should be typewritten or printed.	procedures to launch a trademark business. Some countries have already implemented online application and online examination. This has low costs, high rate of effectiveness and is worth emulating. The objective of adding "other methods" for submitting applications [in this amendment] was to establish a basis for the pursuit of electronic business in the future. The Trademark Office and the Trademark Review and Adjudication Board may also send documents to the applicant through electronic means. (Please refer to the provisions on the date of arrival in the Supplementary Provisions of the Amendment.)	Network (Internet Copyright Regulation), many comments asked the drafter to specify whether a take-down notice in the form of an email is a written notice as the Regulations require. The drafters referred to the Electronic Signature Law and stated that an email notice was definitely a notice in written format that would squarely satisfy the Regulations' requirement, and hence deemed it unnecessary to specify this in the Regulations themselves. Therefore, to avoid conflicts between the same legal concepts used by different laws, it is recommended not to narrow the "written form" in this Law down to only "typewritten or printed".
□□□□[□□□□] **Article 20 [Single registration for one class]**	□□□□[□□□□] **Article 17 [Single registration for several classes]**		
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□□□□□□□□□□□□□□□□□□□□□□□□ If an applicant for registration of a trademark applies to register the same trademark for use on goods of different classifications, he should submit an application for registration in accordance with the Classification of Goods and Services.	□□□□□□□□□□□□□□□□ When an applicant for registration of a trademark applies to use the same trademark on goods of different classifications, [the applicant] may submit the application [in respect of all of the classifications] in one application.	□□□□□□□□□□,□□□□□□□□□□□□□□□□□□□□□□□□ The principle of single registration for one classification has been abandoned in favor of single registration for several classifications. This is consistent with the requirements of Singapore Treaty on Trademark Law. The merit [of this position] is that it provides more convenience for the applicant when applying for the registration, and relieves the trademark authorities from [an unduly heavy] workload. Currently, international registrations have adopted the principle of single application for several classifications.	international standards. The practical effects remain open, such as the change of the fees or a possible delay concerning the schedule from filing until granting. A related question in this context is whether retail services are now accepted according to the Nice Agreement.
□□□□□□ **Article 18 of the Regulations**	□□□□[□□□□] **Article 19 [Date of application]**		
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	registration of a trademark shall be the date on which the application documents are received by the Trademark Office. Where the application formalities are complete and the application documents are filled in in accordance with the rules, and fees for application of registration are paid in accordance with law, the Trademark Office shall accept the application and notify the applicant. Where the application formalities are not complete or the application documents are not filled in in accordance with the rules, or the fees for application of registration are not paid in accordance with law, the Trademark Office shall not accept the application and shall notify the applicant and	In accordance with Trademark Law treaties, when supplementing application documents, [the time limit] shall be calculated from the day on which the Trademark Office issues the notification. The period for such supplements differs as between domestic and foreign applicants, being 30 days for domestic applicants and 60 days for foreign applicants. (Article 5 of the Singapore Treaty)	

	explain the reasons therefor. Where the application formalities are basically complete or the application documents basically meet the requirements, but need to be supplemented to be made [completely] proper, the Trademark Office shall notify the applicant to provide supplementation [of the application], requesting it to supplement portions in accordance with [the Trademark Office's] designation and deliver them back to the Trademark Office within a specified period from the date on which the notification is issued. Where the supplement is made and delivered back to the Trademark Office within the mandated time limit, the application date shall be retained; where no supplement is		

	made by the expiration of the time limit or the supplement fails to comply with requirements, the application shall be considered abandoned, and the Trademark Office should notify the applicant [accordingly]. The definite time limit mentioned above means within one month from the date on which the Trademark Office issues the notification (in respect of a domestic applicant) [or] within two months [from the date on which the Trademark Office issues the notification] (in respect of a foreign applicant).		
□□ **New Addition**	□□□□□**[**□□□□□□**]** **Article 22 [Waiver [*literally* "non-enjoyment"] of exclusive rights]**		
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	□□ Where a trademark for which registration is applied contains any of the elements defined by Article 27, Section 1 of this Law (Marks] lacking distinctiveness may not be used as trademarks), the applicant should declare in the application documentation that it waives [*literally* "does non-enjoy"] the exclusive right to that portion. If such declaration is not made, the application should be refused.	□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□ □□ When a trademark is comprised of a distinctive and an indistinctive part that together make up a whole, there may exist circumstances where another person may properly use the indistinctive part. Therefore, this provision does not confer an exclusive right with respect to the indistinctive part (that is, [it requires a] waiver [*literally* "abandonment"] of trademark rights). In practice, an examiner will give advance notification of refusal to the applicant and request him to provide a declaration that he waives [*literally* "abandons"] the right of exclusivity in relevant part. The examiner will mark accordingly when such a declaration of	which it could either argue against the proposed disclaimer or enter it after a reasonable review period.

		waiver [*literally* "abandonment"] is made.	
□□□ **Article 10**	□□□□□[□□□□□□□□ □□□□□□] **Article 26 [Clause on prohibition of uses as trademarks, absolute reason for refusal]**		
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[1] Note: Because the term "cyber-squatting" is an accepted way to describe an analogous practice, the term "squatting" is used to translate this term.

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□□□□□□□□□□ □□□□□□□□□□ □□□□□□□□ The following signs may not be used as trademarks: (1) those that are the same as or similar to the State name, national flag, national emblem, military flag or medals of the People's Republic of China and those that are the same as the specific names of places where central State authorities are located or the names or images of landmarks; (2) those that are the same as or similar to the State name, national flag, national emblem or military flag of a foreign	□□□□□□□□□□□□ □□□□ □□□□□□□□□□ □□□□□□□□□□□□ □□□□□□□ □□□□□□□□□□ □□□□ □□□□□□□□□□ □□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□□□□□□ □□□□□□□□□□ □□□□□□□□□□□□ □□ □□□□□□□□□□ □□□□□□□□□ The following signs may not	in the general provisions and is moved here. On the basis of retaining the original prescriptive provisions, the following contents are revised and added in accordance with law-enforcement practices and a need to eliminate identical or similar related examinations: 1. As there is a difference between “racial discrimination” and “ethnic discrimination, a trademark prohibitive provision [against] "ethnic discrimination" has been added in Item (12); 2. The circumstance of "the same as or similar to the names of major state decisions or state policies of China" is added, in order to prohibit the registration of terms in the category of "Three Gorges Project" or "Harmonious Society" as trademarks, which may have negative social influence (Item 4); 3. Related contents for the prohibition of registrations are added to	

country, unless agreed by the government of the said country; (3) those that are the same as or similar to the name, flag or emblem of an inter-governmental international organization, unless with the agreement of the said organization or unless doing so would not be likely to confuse the public; (4) those that are the same as or similar to official signs or inspection marks indicating control or warranty, except where authorized; (5) those that are the same as or similar to the name or mark of the "Red Cross" or the "Red	be registered or used as trademarks: (1) those that are the same as or similar to the State name, national flag, national emblem, military flag or medals of the People's Republic of China and those that are the same as the **signs** of central State authorities, specific names of places where they are located or the names or images of landmarks; (2) those that are the same as or similar to the names of political organizations or the names of their leaders; (3) those that harm the national sovereignty, dignity or image; (4) those that are the same as or similar to the names of major state decisions or state policies of China;	the trademark examination standards (six items including the second, third, fifth, seventh, twelfth, and thirteenth items); Item 11 is added to provide a legal basis for the protection of marks now held by such governmental agencies and people's collectives as the Ministry of Commerce and the All China Women's Federation (such as the "Ten Thousand's Journey brand"). 4. [The phrase] "Those that publicize in an exaggerated manner and are of a deceptive nature" is very commonly used in law enforcement practice, so it is retained here. The word "and" is changed to "or", as Item (13). 5. In the second paragraph, the provision prohibiting the registration of names of administrative districts at or above the county level as trademarks is deleted. By way of [the new] Item (12), concerning the examination of the	

Crescent"; (6) those that are of a racial discriminatory nature; (7) those that publicize in an exaggerated manner and are of a deceptive nature; [or] (8) those that harm socialist morality or practices or that have other adverse effects. Names of administrative districts at or above the county level and commonly-known names of foreign countries may not be used as trademarks, except where place names have other meanings or are an integral component of a collective mark or certification mark.	(5) those that are the same as or similar to the names of titles from China's party and government agencies or military administrative positions or rank titles; (6) those that are the same as or similar to the State name, national flag, national emblem or military flag of a foreign country, unless agreed by the government of the said country; (7) those that are the same as or similar to the design, name or symbol of a legal currency of any country; (8) those that are the same as or similar to the name, flag or emblem of an inter-governmental international organization, unless with the agreement of the said organization or unless doing so would not be likely to confuse the	registration of place names as trademarks, only the registration as trademarks of place names that may cause confusion as to the place of production is prohibited. 6. Here a well-known trademark is treated as one of the absolute reasons for refusal. The main reason for this is to impose restrictions on the activity of "squatting on[1]" the registration of another person's well-known trademark, after related reasons for examination are removed. In addition, this may provide a legal basis for the Trademark Office to actively refuse such kind of malicious registration activities for the protection of well-known trademarks. 7. Item (18) is added to prohibit the registration of another person's geographical indicator as a trademark, and to strengthen the protection of geographical indicators.	

Trademarks using place names that have already been registered shall remain valid.	public; (9) those that are the same as or similar to the name or mark of the "Red Cross" or the "Red Crescent"; (10) those that are the same as or similar to official signs or inspection marks indicating control or warranty, except where authorized; (11) those that are the same as or similar to signs which represent [*literally* "indicate"] any national public groups or which represent [*literally* "indicate"] non-profit public welfare enterprises; (12) those that are likely to lead the public to have a misunderstanding of such characteristics of the goods or services as quality **or origin**; (13) those that publicize in an		

	exaggerated manner or that are of a deceptive nature; (14) those that are of a racial **or ethnic** discriminatory nature; (15) those that harm the religious belief, religious feelings, or folk beliefs; (16) those that infringe upon interests in a well-known trademark, unless agreed by the holder of the interest in the well-known trademark; (17) those that are the same as or similar to a geographical indicator [registered by] another person which create confusion as to the origin of the goods bearing such geographical indication; [or] (18) those that harm socialist morality or practices or that have other adverse effects. The list of well-known trademarks mentioned in item		

	(16) of the preceding paragraph shall be determined by the Trademark Office.		
□□ **New Addition**	□□□□□**[**□□□□□□**]** **Article 31 [Other prior rights]**		
	□□□□□□□□□□□ □□□□□□□□□□□□□□ □□□□□□□□□□□□□ □□□□□□□ If application for a trademark infringes on another person's priority in right of name, right of portrait, right of appellation, patent right, copyright or other [prior] right, registration will not be obtained.	□□□□□□□□□□□□□□ □□□□□□□□□□□□□□ □□□□□□□□□□□□□□ □□□□□□□□□□□□□□ □□□□□□□□□□□□□□ □□□□□□□□□□□□□□ □□□□□□□□□□□□□□ □□□□□□□□□□□□□□ 65 □□□□□□□“□□□□□”□ 23 □ □□□□□□□□□□□□□□ This emphasizes that applications to register a trademark should take into full consideration the interests of other holders of prior rights. However judicial agencies would first issue an effective judgment to confirm [their decision on the issue of] whether something constitutes a prior right.	The TRAB should be able to make a determination in disputes where they feel the evidence submitted establishing the existence of a right is sufficient. Under the current draft, the petitioner must go to court to seek confirmation of its rights. The proposed provision has the potential to create a more lengthy process for the petitioner, particularly when there is an opportunity for TRAB to deal with such concerns in the first instance.

		Because conflicts between trademark rights and other prior rights is within the ambit of civil disputes, [the question of] whether harm is constituted exceeds the scope of the field of specialization of the agencies principally in charge of trademarks, and after administrative ruling there remains a possibility of undergoing two reviews by judicial authorities. Giving preeminence to judicial procedures will enhance efficiency. Article 65, Section 3 of China's "Detailed Regulations for the Implementation of the Patent Law" and Article 23, Section 1, Item (17) of China's "Taiwan Trademark Law" have similar stipulations.	
□□□□□□□ 5 □□□□□□□□ **Article 13, No. 5 Order of General Administration, Judicial Interpretation**	□□□□□[□□□□□□□□□□□□□□□□] **Article 34 [Prohibiting others from registering and using well-known trademarks]**		

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yet been registered in China, and [registration] is likely to result in confusion, its registration will not be granted and its use shall be prohibited. If application is made to register a trademark in respect of goods that are not identical or similar, that constitutes a reproduction, an imitation, or a translation of the well-known trademark of another person that has already been registered in China, and [registration] is likely to mislead the general public, and would possibly cause the interests of the registrant of such well-known trademark to incur losses, its	identical or similar to the well-known trademark of another person that has not yet been registered, and [use or registration] is likely to result in confusion, its registration will not be granted and its use shall be prohibited. On the use and application [to register], a trademark which might be identical or similar to a well-known trademark that is the subject of prior [use] by another person or a principal part thereof, which may result in improper use or damage to the distinctiveness or reputation of the well-known trademark, its registration will not be granted and its use shall be prohibited. However, exceptions [may be granted where] there are proper reasons. A “well-known trademark”	provisions to protect [the use of] unregistered well-known trademarks on the same or similar goods, and to protect [the use of] registered well-known trademarks on dissimilar goods. 2. Here "reproduction, an imitation or a translation" of another person's well-known trademark is changed into "same or similar" to the well-known trademark of another person. This expression would contain "reproduction, an imitation or a translation" within its scope, and also is easy to understand or apply in practice. (The following text involves the same reasoning) 3. Corresponding to the imposition of criminal investigation and penalties for counterfeiting trademarks, here "the same goods" is changed into "the same kind of goods". 4. Second 2 adds a provision on the issue of the dilution of registered well-known trademarks. “Dilution”	To register as a well-known mark, usually one has to submit an application after filing opposition to a mark. What about marks that are not yet registered as well-known marks but are in reality well-known in the market?

registration will not be granted and its use shall be prohibited.	means a trademark which is widely known to the public concerned in China and enjoys a relatively high reputation. "The public concerned" means consumers who are relevant to a specified class of goods or services that are distinguished by the trademark in question, or other operators that have a close connection to the marketing of the aforementioned goods or services.	mainly refers to "improper use or damage to the distinctiveness or reputation of the well-known trademark", and is quoted from the provisions on the issue of dilution of a trademark in Article 8, Section 5 of the "Regulations of the European Committee" and Article 14 of the "German Trademark Law", and Article 8 of the Singapore Trademark Law. 5. The concepts of Item 3 on well-known trademarks (which originates from No. 5 Order of the General Administration) and Section 4 on Public Concerned (which originates from the Judicial Interpretation) have been added.	
□□□□ **Article 14**	□□□□□[□□□□□□] **Article 35 [Factors for a well-known trademark]**		
□□□□□□□□ □□□□□□□ □□□□□□□□ □□□□□□□□	□□□□□□□□□□□ □□□□ □□□□□□□□□□□ □□□□□□	□□□□□□ □□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□	Art 35 (5) – the given requirement is too broad and vague.

□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□ The following factors should be considered when recognizing [a trademark as] a well-known trademark: (1) the degree of awareness of such trademark among the public concerned; (2) the period of continuous use of such trademark; (3) the period of continuous [use], degree	□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□ The following factors should be considered when recognizing [a trademark as] a well-known trademark: (1) the degree of awareness of such trademark among the public concerned; (2) the period of continuous use of such trademark; (3) the period of continuous [use], degree and geographical scope of the publicity for such trademark; (4) the record of protection of	**The original provisions have been retained.** This Article's setting up of the five factors, which are based on actual law enforcement practices, has definite significance for the consideration of recognition of the degree of fame of a trademark. The amendment therefore makes no change [to this provision].	

and geographical scope of any publicity for such trademark; (4) the record of protection of such trademark as a well-known trademark; [and] (5) other factors associated with such trademark's being well known.	such trademark as a well-known trademark; [and] (5) other factors associated with such trademark's being well known.		
□□□□□□□□□□ **Article 29, Article 30**	□□□□□**[**□□□□□□□□ □□□□□□□□□**]** **Article 37 [Approval of application, publication, and the effective date of trademark rights]**		
□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□□	□□□□□□□□□□ □□□□□□□□□□□□ □□□□□□□□□□□□ □□□□□□□□□□□□ □□□□□□□□□□□□ □□□□□□□□□□□□	□□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□ □□□□□ □□□□□□□□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□□□□□□□ 6	Trademark registration certificates will no longer be issued automatically. The registrant can only obtain a certificate upon separate request. The law does not clarify how enforcement authorities may verify a complainant's trademark rights. It is critical that this point is addressed in order to ensure

□□□□□□□□□□□ □□□□□□□□□□□ □□□□□□□□□□□ □□□ □□□□□□□□□ □□□□□□□□□□□ □□□□□□□□□□□ □□□□□□□□□□□ □□□□□□□□□□□ □□□□□□□ If two or more than two applicants to register a trademark apply for registration of the same or similar trademarks for use on the same or similar classification of goods, the trademark for the application which is first filed shall be preliminarily approved and gazetted. If applications are filed on the same day, the	□□□□□□□□□□□□□ □□□ □□□□□□□□□□□ □□□□□□□□□□□□□ □□□ Where the Trademark Office believes, after examination, that a trademark which is the subject of an application is not under any of the circumstances [listed] in Article 36, such [decision] shall be published. If there is no opposition at the expiration of four months from the date of the publication of such trademark, the Trademark Office shall approve the registration and notify the applicant. If a certificate is needed the registrant may make application to the Trademark Office and request the issuance of such a certificate. The time at which the	□□□ □□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□□ □□□□□□□ 1. The number of [required] publications is changed from twice, as originally held, to once, and registration is granted where no opposition is put forward. This shortens the registration period from the legal procedures. 2. The effective date of trademark rights has been changed from the approval date, as provided by the original law, to the date of publication of the trademark. The above change may shorten the examination period to six months. 3. The procedure for oppositions [to	that trade mark owners are not burdened with onerous beauracracy. ICC suggests that registration should be retroactive to the filing date and not the gazettal date.

trademark that has been used first shall be preliminary approved and gazetted, and the application(s) of the other applicant(s) shall be rejected and shall not be gazetted. Any person may file an opposition to a preliminarily approved trademark within three months of the date of gazetting. If no opposition is filed before the expiration of the gazette period, approval of the registration shall be granted, a trademark registration certificate shall be issued and [the trademark] shall be gazetted.	trademark registration applicant obtains the trademark rights shall start from the date on which the trademark is published.	applications] is retained. The opposition period is extended to one month, to give others full time to put forward trademark oppositions. A trademark which has been opposed would remain an unregistered trademark. 4. [The practice of] issuing Trademark Registration Certificates by the Trademark Office is rescinded. Registrants may [instead] view and download trademark registration information from the official website of the authority principally in charge of trademarks. Where a registration certificate is needed, the registrant may request the Trademark Office to issue a registration certificate.	

□□□□□ **Article 35**	□□□□□[□□□□□□] **Article 38 [Time limit for examination of trademarks]**	□□□□□□□□□□□□□□□□□□□□□□□□□□□□□ There is strong opinion against the unduly long time requirements for trademark registrations, and the review and adjudication of trademarks.	
□□□□□□□□ □□□□□□□□□□ □□□□□ Applications for trademark registrations and for trademark reviews should be examined in a timely manner.	□□□□□□□□□□ □□□□□□□□□□□□□ □□□□□□□□ □□□□□□□□□□ □□□□□□□□□□□□□ □□□□□ Applications for trademark registrations and for trademark reviews should be examined by the **Trademark Office and the Trademark Review and Adjudication Board** in a timely manner. Review and adjudication of a trademark registration application should be finished no later than twelve months at the	□□□□□□□□□□□□□□□□ □□□□□□□□□□ 12 □□□□□ □□□□□□□□□□□□□□ In light of the provisions on time limits for international trademark registrations and examinations, an examination limit of 12 months has been provided for trademark registration applications. However, this does not include applications for reexamination of a trademark registration.	The draft imposes a 12-month time limit for the examination of trademark applications. The draft does not specify consequences for failure to comply with the specified time limit. Failure to complete examination of trade mark applications within the stipulated time limit shall mean that the application can proceed to publication without further delay.

	most after the date on which the application is accepted.		
	□□□ □□□□□□□ **Chapter IV Review and Adjudication of Trademark Registrations**		
□□ **New Addition**	□□□□□[□□□□□□□□□□□□] **Article 46 [Simplified procedures for review of opposition cases]**		
	□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□ □□ 30 □□□□ Where the Trademark Review and Adjudication Board	□□ Examinations on the basis of	Even if the Board believes an unsuccessful opposition is not justified, the applicant

	believes, after review, that the opposition is not justified, it may directly make a ruling. Where the Trademark Review and Adjudication Board believes, after review, that the opposition is justified on all or part of the goods on which trademark opposed is assigned and used, it should forward the response notice and copies of application materials for opposition and relative evidentiary materials to the opponent and require that he respond within 30 days after receipt of the response notice.	relevant reasons has been cancelled, so the number of trademark opposition cases is going to increase greatly. At least two abuses could arise if the examination period for these cases is too long: first, the rights and interests in a large number of trademarks that are the subject of opposition would stand in an unstable position, which would be detrimental to the protection of the interests of applicants. Second, in relation to cases arising from oppositions brought as a result of "trademark squatting," there is a detriment to the protection of the interests of genuine holders of trademark rights and the curbing of improper competition. In order to eliminate these abuses to the largest extent available, a provision has been borrowed from the Japanese Trademark Law for the establishment of simplified procedures, which would benefit the prompt handling of opposition cases, and protect the interests of the two	should also be notified as it has a vital interest in knowing who opposed its applications. A time limit for the simplified procedure should be imposed.

		parties (to the case).	
□□□ □□□□□ □□□□□□□□□□□ **Chapter V Renewal, Alteration, Assignment and Cancellation of Registered Trademark**	□□□ □□□□□□□□□□ □□□□□□□ **Chapter V Renewal, Alteration, Assignment and Cancellation of Registered Trademarks**		
□□□□□□□□□□ **Article 25, Section 2 of the Regulations**	□□□□□[□□□□□□□□ □□□□□□□□□] **Article 65 [Assignment all at once and judicial remedies in respect of decisions of the Trademark Office]**		
□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□□□…… When assigning registered trademarks, the trademark registrant should assign, all at once, all of the trademarks that	□□□□□□□□□□ □□□□□□□□□□□□ □□□□□□□□□□□□ □□ □□□□□□□□□□ □□□□□□□□□□□ □□□□□□□□□□□ □□□□□□□□□□□ □□□□□□□□□□□	□□□□□□□□□□ □□□□□□□□□□□□ □□□□□□□□□□□□□□ □□□□□□□□□□□□□□ □□□□□□□□□□□□□□ □□□□□□□□□□□□□□ □□□□□□□□□□□□□□	

are identical or similar to each other in respect of the same or similar classification of goods …	□□□□□□□□□□ 3 □ □□□□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□□□ □□□□□□□□□□□□ □□ The assignor should assign, all at once, all of its trademark applications and its registered trademarks that are identical or similar to each other in respect of the same or similar classification of goods. With respect to assignment not all at once, or applications for assignment which may produce misleading, confusing or other adverse effects, the Trademark Office shall not grant approval, and shall notify the assignors and the assignees and explain the reasons therefor; where the assignors and the assignees are	□□□□□□□□□□□□□□□□ □□□□□□□□□□□□ □□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□ □□□ □□□□□□□□□□□□□□□□ □□□□□ 2008 □ 8 □ 1 □□□□ □□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□ Here a provision of the regulations is elevated to a provision of the Law. This draft has deleted the examination for applications for similar or the same trademark. However, to ensure that trademarks [perform their] function of differentiation, for assignment applications that may be misleading or confusing as to the above issues, the Trademark Office may conduct examination to protect the interests of consumers. The provision on assignment all at	A more specific definition of “similar” is needed.

	dissatisfied with the decision of the Trademark Office not to grant approval, the assignor and the assignee may institute administrative proceedings with the intermediate People's Court at the place where the Trademark Office is located, within 3 months from the receipt of notification. Applications for assignments of trademarks resulting from merger of business operator should be examined by the Trademark Office.	once is to prevent that same or similar trademarks of one trademark owner being owned by different trademark owners after an assignment, which may easily lead to confusion among consumers as to the origin of the products. Where not assigned all at once, the remaining provision has provided that the trademark right holder should bear responsibility for confusion arising from his use, even extending to cancellation of the trademark. Section 2 clarifies the judicial review of decisions made by the Trademark Office on whether or not to approve the assignment on the basis of factors [related to] confusion. Section 3 is added. In view of the issuance of Antitrust Law, and its implementation on August 1, 2008, this revised draft borrows the provision of Article 20 of such law, and adds restrictive clauses on assignments of	It is unclear whether the State Council will grant SAIC the authority to enforce the Anti-Monopoly Law in this regard.

		trademarks [addressing cases where] the misuse of trademark rights by an operator will limit or influence fair competition.	
□□□□□□□ **Article 26 of the Regulations**	□□□□□[□□□□] **Article 67 [Transfers of trademarks]**		
□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□ □□□□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□	□□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□ □□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□□□□□□ Where an application to register a trademark or a registered trademark is transferred for reasons other than	□□□□□□□□□□□□□□ □□□□□□□□□□□□□□ □□□□□□□□□□ This elevates a provision of the regulations into the Law. It also adds provisions on the transfer of registration applications and related procedures. The reason for transfers all at once is the same as for assignments all at once.	There is a need to specify clearly what are the "reasons" other than an assignment, e.g. death, transfer of business etc?

□□□□□□ Where an exclusive right to use a registered trademark is transferred due to reasons other than assignment, the party who accepts the transfer of such registered trademark should go through the formalities for a transfer of exclusive rights to use a registered trademark with the Trademark Office on the basis of relevant evidentiary documents or legal instruments. Where the exclusive rights to use a registered trademark are transferred, the same or similar trademarks trademark of the exclusive user on the same or similar goods	an assignment agreement, the party who accepts the transfer of the registration application or the registered trademark shall, from the date on which the said reason takes place, bear rights and obligations of the relevant trademark application or the registered trademark, and on the basis of relevant evidentiary documents or legal instruments, should go through the formalities of the transfer with the Trademark Office. Where the rights to a registered trademark are transferred, the same or similar trademark applications or trademarks of the trademark rights holder on the same or similar goods should be transferred all at once.		

should be transferred all at once. Where it is not transferred all at once, the Trademark Office will notify it to rectify within a certain time limit. If it is not rectified within certain time limit, the application for transfer of such registered trademark shall be deemed to be abandoned, and the Trademark Office should notify the applicant in writing.			
□□□□□□□□□□ **Article 40, Section 1 and Section 3**	□□□□□**[**□□□□□**]** **Article 69 [Licensing and records [thereof]]**		The meaning of the phrase "licensing and records thereof" is unclear.
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submitted to the Trademark Office for the record.	Trademark Office for record, a third party in good faith shall not be opposed.		
	□□□□□[□□□□□□□□] **Article 72 [Cancellation of licensing records]**		
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	its official authority.		
	□□□ □□□□□□□ **Chapter VI Administration of the Use of Trademarks**		
	□□□□□[□□□□□] **Article 74 [Cancellation pursuant to official authority]**		The provision and explanation appear not to bear any relation to this title.
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	Article 48 (Cancellation) of this Law, it shall fall within the scope of an act of infringement on another person's exclusive right to use a trademark. If the nature of the violation is serious, a report [may be made] to the Trademark Office requesting cancellation of such registered trademark. In situations where a registered trademark is in violation of the provisions of Paragraph (2), (3), and (4) of Article 48 (Cancellation), or Article 78 (Quality of goods), the administrative authorities for industry and commerce at the place where the actor resides shall order rectification, and may impose a fine of more than 1,000 yuan RMB and less than 50,000 yuan RMB. If the nature of the	Board to cancel the registration [of such trademarks]. But the Trademark Office retains the right to cancel registered trademarks that have been found to have given rise to confusion in the market or have lost distinctiveness for improper use, which are found by the local authority for industry and commerce during the process of trademark administration. The purpose for this is to reduce and prevent registered trademarks that impede the public welfare, and effectively facilitate the bringing out of the function of trademarks to [enable consumers to] distinguish [products one from another] and to promote fair competition.	The cancellation on the basis of distinctiveness should be initiated by a private party, not the government. Consideration should be given to whether a fine of more than 1,000 yuan RMB and less than 50,000 yuan RMB is a strong enough deterrent.

	violation is serious, report [may be made] to the Trademark Office requesting cancellation of such registered trademark.		
□□ **New Addition**	□□□□**[**□□□□□□**]** **Article 80 [Administration for processing of nominated brands]**		
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	□□□□□□□□□□□□□□□ “Processing of nominated brand” means a [series of] actions in which a natural person, a legal person, or other organizations receives entrustment from a principal [*literally* “someone who produces [goods] to order”], and produce goods that bear a registered trademark owned by another person. All of the goods are delivered over to the [principal] or to a third party designated by the [principal], and the processor does not have any rights to dispose of the processed goods. When processing goods bearing another person's registered trademark, the processor should carry out	□□ 1. The entity entrusted to process a nominated brand may be a natural person, legal person, or other organization, but is not limited to enterprises. Therefore, the description of the acts of the processor takes references to Article 4 of the Trademark Law. 2. The principal may request that the processor deliver the processed goods to a third person designated by him, such as an import and export company. Therefore a third person who may receive the processed products is added here. 3. The principal may be the owner of an interest in a registered trademark, a licensee, or a processor for a nominated brand (such as subcontracted processing). 4. A prevailing problem that exists	OEM manufacturers need to conduct due diligence on trademark ownership of marks they use for OEM customers, yet this provision lacks details on the standard and procedure of the due diligence to be

	examination of the trademark right of the [principal]. Where [the processor] does not diligently observe [this] obligation and processes goods which violate the trademark rights of another person, the processor and the [principal] bear joint responsibility for the infringement of rights. The agency of the State Council for the administration of industry and commerce shall separately formulate further administrative management regulations as to nominated brand processing activities together with other relevant government departments.	in relation to the processing of nominated brands is that the processor does not conduct careful examination of the registered trademark before processing and production for the third party. This may provide opportunities among infringing parties. Thus, [this amendment] clearly provides that if the processor has not performed a duty of care, he should have joint liabilities for the infringement together with the principal, thus enhancing a self-disciplined awareness on the part of the processor, and strengthening the responsibility to conduct an investigation of the rights to the goods. In view of the complexity of the acts of processing and production, it is provided that further administrative rules may be formulated.	conducted by the manufacturers. It is not clear whether a photocopy of the relevant trademark registration certificate would suffice and be a viable defence against infringement claims. It also creates loopholes for the manufacturers to avoid infringement liability by using easily doctored evidence to verify trademark authorization.

□□□ □□□□□□ □□□□ **Chapter VII Protection of Exclusive Rights to Use Trademarks**	□□□ □□□□□□ **Chapter VII Protection of Trademark Rights**		
□□□□□ **Article 52**	□□□□□[□□□□□□] **Article 82 [Acts of trademark right infringement]**		
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□□□□□□□ □□□□□□□□□ □□□□□□□□□□ □□□ All of the following acts shall constitute an infringement on the right to exclusively use a registered trademark: (1) use of a trademark that is the same as or similar to a registered trademark on the same or similar classification of goods without the permission of the trademark registrant; (2) sale of goods that infringe the exclusive right to use a registered trademark; (3) forgery or unauthorized manufacture	□□□□□□□□□□□□□ □□□□□□□□□□□ □□□□□□□□□□□□□ □□□□□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□□ □□□□□□□□□□□□□ □□□□□□□□□□□□□ □□□□□□□□□□□□□ □□□□□□□□□□□ □□□□□□□□□□□□□ □□□□□□□□□□□□□ □□□□□□□□□□□□□ □□□□□□□□□□□ □□□□□□□□□□□□□ □□□□□□□	□□□□□ □□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□ □□□□“□□□□□□□□□□ □□□□”□□□□□□□□□□□ □□□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□□ □□□□□□□□□“□□□□”□□□ □□□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□□ Some new forms of trademark infringements are added. Among them: 1. Reverse counterfeiting cases are not very common, but are actually a form of infringement of the rights and interests of others, and is retained. 2. Similar trademark emblems is one of the sources of infringement of other	trademark law and in theory, it is not an infringement upon a “trademark right.” In addition, in a sophisticated market economy, such an act rarely happens these days. Therefore section (4) should be removed and left to Anti-Unfair Competition Law; “Intentionally” in (5) should be replaced by “knowing or having a reasonable ground to know …” because “intention” is an extremely high standard that is usually used in the Criminal Code. Certain perpetrators may in practice insist they do not “intentionally” infringe others’ trademarks, and then set up obstacles in the execution of laws. “Knowing or having a reasonable ground to know” is a more objective and applicable standard, which is commonly used in “contributory infringement” theory. This standard has been adopted by the Copyright Law (Internet Copyright Regulation) and even the Criminal Law (via 2004 Judicial Interpretation). Use “in a prominent way” in (6) should not be required if the infringed trademark was registered or became well-known before the infringer’s company name was registered. Now the public can easily obtain access to the on-line trademark gazette and anyone who wants to register a company name should be

of representations of another's registered trademark, or sale of representations of a registered trademark that were forged or manufactured without authorization; (4) substituting the trademark of a trademark registrant without his consent and putting goods bearing such substituted trademark back on the market; [or] (5) causing other harm to another's exclusive right to use a registered trademark.	All of the following acts shall constitute an infringement on the rights to a registered trademark: (1) use of a trademark that is the same as or similar to a registered trademark on the same or similar classification of goods without the permission of the trademark registrant; (2) selling goods that infringe rights to a registered trademark; (3) counterfeiting, or making without authorization, a trademark emblem that is identical with or similar to the registered trademark emblem of another person, or selling emblems that are identical with or similar to registered trademark emblems of another person and which were counterfeited, or made without authorization;	persons' trademark rights, and should be administrated more forcefully. Therefore, printing similar trademark emblems is added as constituting an infringement; 3. An infringing act provided in the regulations has been elevated into law. The problem of mistaking a product's name and packaging decoration is already addressed in the Anti-Unfair Competition Law, [so] the form of trademark infringement by way of "using a mark which is the same as or similar to the registered trademark of another person as the name or packaging of goods used on the same or similar goods, thus confusing the public" is not included in this Law. 4. Borrowing from judicial interpretations, well-known trademarks, enterprise names, and domain name infringement are added. 5. [This amendment] retains the	required to run a research into the gazette to avoid using other's registered trademarks. Well-known trademarks, registered or not, should be granted higher level protection. The protection provided for by (7) should be broadened to also cover unregistered well-known trademarks. Consideration should also be given to replacing or bolstering the "similarity" standard for infringement with a "likelihood of confusion" standard.

	(4) replacing another party's registered trademark without the agreement of the trademark registrant, and putting the goods bearing the replaced trademarks back into market again; (5) intentionally providing facilities such as storage, transport, mailing, concealment, production instruments, production technology, or places of operation etc. for the purpose of actions to infringe another person's rights to a trademark; (6) using any words which are the same as or similar to another person's registered trademark as the trade name of an enterprise used on the same or similar classification of goods in a prominent way, or used in other ways that makes the function of	provision on "Causing other damage to the trademark rights of another person". This is because this Article is [essentially] a listing out of manners in which acts infringing the trademark rights of others can appear. [But] following the development of the society and economy, there will still be new methods in the forms in which trademarks are used, and trademark objects of the future, such as trademarks that emit sounds or flavor trademarks, etc., [would] receive legal protection. There will necessarily appear new manifestations of trademark infringement forms that are not the same as today's forms of trademark infringement. The catch-all provision "other damage" is retained. This can give law enforcement agencies authority to determine the nature of the infringement, better manifests the purpose of enacting a law on trademarks, and lawfully and	

	the marks stand out, thus likely to cause misunderstanding among the public concerned; (7) without justified reasons using trademarks that are the same as or similar to another person's prior well-known registered trademarks or their main parts, which may unfairly utilize or damage the distinctiveness or reputation of the well-known trademarks; (8) registering any words which are the same as or similar to another person's registered trademark as an Internet domain name, and conducting advertising of goods or trade in goods through this domain name, with the possibility of causing misunderstanding among the public concerned; [or] (9) causing other damage	promptly curbs all manner and sort of trademark infringement activities.	

	to the trademark rights of another person.		
□□ □□□□[□□ **2002[32]** **New Addition Judicial Interpretation [Fa Shi 2002 [32]]**	**□□□□□ [□□□□□□□]** **Article 83 [Same or similar trademarks]**		
	□□□ □□	□□□ □□□□□□□□ 2002 □□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□ Issues related to same trademarks, similar trademarks, and same or similar goods or services are the basis for	In the Chinese version, the word "□" □"likely"□ should be changed to "□□" □"possibly"□□ as in English "likely" and "possibly" are closer in meaning to each other. In Chinese, however, "□" is higher standard that can be arguably interpreted as "tend to/prone to".

	“Same trademarks” means that two trademarks are the same or have no basic differences in appearance which, if they are used on the same or a similar classification of goods or services, are likely to generate misunderstanding among the public concerned as to the source of the goods or services. “Similar trademarks” means that the shapes, pronunciations, or meanings of the lettering, [of two trademarks], or the compositions, coloring or outward appearances of the figures of two trademarks, are similar; or upon combining lettering and figures the overall combined layouts or outward appearances of the two trademarks are similar; or the shapes and outward appearances	determining the scope of trademark rights, and for determining whether acts of unauthorized use by others constitute acts in infringement of trademark rights. Therefore, the basic principles for the determination of the above issues are provided for in the Trademark Law, to make the scope of trademark right protections more accurate and the standards for law enforcement more uniform. This expression has incorporated the content of related judicial interpretations of matters concerning the judgment of issues related to trademark civil dispute cases by the Supreme Peoples' Court in 2002. This draft has deleted the examinations on related reasons, and that standard of determination is provided for the applicant’s reference and determination in the trademark registration application.	

	of the three-dimensional signs of the two trademarks are similar; or the colors or combinations of colors of the two trademarks are similar, and that if they are used on the same or a similar classification of goods or services, it is likely to generate misunderstanding among the public concerned as to the source of the goods or services.		
□□□□□□□□□□ **Article 54 of the Regulations, amended**	□□□□□[□□□□□□□□□] **Article 84 [Right to continue use of a prior trademark]**		
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	□□□□□□□□□□□□□□□□ Where a trademark that is the same as or similar to a registered trademark has been continuously used in good faith on goods or services on which the registered trademark has been approved and designated, or on a similar classification of goods or services, before the application date for the registered trademark, the user of such trademark shall have the right to continue to use such trademark on the original goods or services. But the owner of the registered trademark may request the trademark user to supplementarily affix appropriate distinguishing marks.	provision of law. It has been more than 15 years since the acceptance of service trademark registrations on July 1, 1993. As for different owners who have the right to continue use of the same or similar service marks, [they] should exert efforts to emphasize differentiated uses.	
□□□□□□□□□□□ **Article 5 of the**	□□□□□**[**□□□□□□□□□□□□**]**		

Regulations, No. 5 Order of the State Administration	**Article 86 [Recognition of a well-known trademark among administrative and judicial [authorities]]**		
[illegible] (8) reproducing, imitating or translating a well-known trademark which is registered by another person or the main part of a well-known trademark as a trademark on non-identical or dissimilar goods, thus misleading the public and the interests of the	[illegible] Where the holder of rights to	[illegible]	First, the law should make it clear that both the TMO and the courts have the authority to recognize that a trademark in dispute is a well-known trademark. The current text does not specify the courts' authority in this regard, though the title of this provision seems to have admitted such authority of the judiciary. Second, the local "famous trademark" system should not be allowed to co-exist with the well-known trademark system to avoid conflict and local protectionism. For instance, if a local "famous brand" had in fact infringed upon another' registered trademark or even well-known trademark, and the case was filed in the province where such infringing "famous trademark" was recognized by the local authorities, it is likely that the infringer may use its local "famous trademark" title as a defence if permitted by the local law and the local authorities may give favorable treatment to such infringers. Therefore, consistency in protection throughout the country is

registrant of such well-known trademark being likely to be damaged by such use; (Judicial Interpretation)	a trademark believes that his trademark is a well-known trademark and requests that the local agency for the administration of industry and commerce to protect his trademark rights, he may apply for recognition as a well-known trademark. Applications for recognition as a well-known trademark should [include] submission of relevant evidentiary materials proving that his trademark constitutes a well-known trademark. The local agency for the administration of industry and commerce should submit relevant documents from the applicant to the Trademark Office. The Trademark Office shall [undertake the] recognition. Where the party concerned	1. [This provision] clarifies that well-known trademarks may be recognized for the same or similar goods in trademark management. The recognition procedures are provided in order to enhance the degree of transparency of the recognition work. 2. In connection with the work of recognizing and protecting famous trademarks, that is being pursued by the agencies for industry and commerce in all places in their jurisdictional areas, this commonly reflects that this kind of work is an administrative measure adopted by the local government. The concept of "famous trademarks" is not a legal concept, and it is not a well-known trademark of a lower tier. Also, there are differences among the recognition and protection standards of each locality. This may therefore be regulated by local regulations. But considering that the recognition of famous trademarks is now	particularly important in China and is what the Chinese legal/political system mandates.

	requests protection for well-known trademarks that have already been recognized, and another party holds no opposition to the trademark's [status as being] well-known, the Trademark Office shall no longer examine [the trademark]. **The agencies for the administration of industry and commerce at the provincial level throughout the nation may carry out the work of recognition and protection of famous trademarks within their own jurisdictions pursuant to regulations formulated by the People's Congress of their [respective] home province, or its Standing Committee.**	commonplace, and that such work has functioned to actively promote local economic development, this draft has included the issue of famous trademarks in the Law, but has only made in-principle provisions. Detailed rules for the recognition and management [of famous trademarks] will be regulated by way of local lawmaking. 3. There are proposals to emphasize in the Law that the results of a recognition of a well-known trademark should only be effective in an individual case, and should not be publicized. Because the recognition result is an objective fact, and a right to publicize it belongs in the category of civil rights and interests [of which the holder] cannot be forcibly deprived, this draft has not included such proposal.	
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Article 53 (first sentence), Article 54	**Article 87 [Methods for the settlement of infringement disputes]**		
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leads to a dispute, the parties shall resolve such dispute through consultations. If a party is not willing to hold consultations or if the consultations are unsuccessful, the trademark registrant or a closely interested person may institute proceedings in a People's Court. Alternatively, such party also may request an agency for the administration of industry and commerce to handle the matter. Agencies for the administration of industry and commerce have the authority to investigate and handle actions infringing the exclusive right to use a	trademark registrant or a closely interested person can lodge a complaint with the agencies for administration of industry and commerce, and may also institute proceedings in a People's Court. In relation to actions which infringe rights in a registered trademark, any person may report the case to the agency for administration of industry and commerce. Owners of well-known trademarks that have not been registered may lodge a complaint with the agency for administration of industry and commerce to prohibit its use by others. Agencies for the administration of industry and commerce have the authority to investigate and handle actions infringing rights in registered trademarks. If they	the parties. The General Provisions of the Civil Law already has provisions on this, so this Law does not need to repeat those provisions; 2. If a provision is included on consultations of their own accord in advance of lodging complaints with law enforcement agencies, this is likely to create misunderstandings that such consultation proceedings must have been conducted first, which would impede the normal law enforcement work carried out by administrative agencies; 3. For cases in which administrative agencies have already accepted a case, if the parties request consultations in the middle of the process of handling [the case], it will interfere with the administrative investigation and handling work, lower the authoritativeness of law enforcement, and impede the protection of the public interest.	transferred for criminal investigation/ prosecution in a timely fashion. Though the current criminal code denies criminal liability for such infringement, the criminal code itself should be updated to provide broader and stronger protection over well-known trademarks, registered or not.

registered trademark in accordance with the law. If they suspect that a criminal offence has been committed, they should promptly transfer [the case] to the judicial authorities for handling in accordance with the law.	suspect that a criminal offence is involved, they should promptly transfer [the case] to judicial authorities for handling in accordance with the law.		
□□ **New Addition**	□□□□□[□□□□] **Article 88 [Infringement complaints]**		
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	If a holder of the trademark rights or a closely interested person lodges a complaint with the agency for the administration of industry and commerce, it should attach the following materials: 1. proof of the trademark rights; 2. details of items requested. 3. name and address of the person suspected of infringing trademark rights; [and] 4. evidence of actions suspected of infringement of trademark rights and other relevant evidence. Where an opposed trademark is an unregistered trademark, during the opposition period, the agency for the administration of industry and commerce shall not accept any	the awareness of self-protection among closely interested persons and active, dynamic nature of attacking infringements of [trademark] rights. 2. Because it [can be] too simple to establish an infringement case, this leads to lodging of ineffective complaints, and sometimes the lodging of reports in bad faith. One telephone call or one report letter can cause law enforcement agencies to be run ragged, wasting law enforcement resources, and lowering the efficiency of law enforcement. 3. Some parties to trademarks (especially foreign enterprises) take advantage of the Chinese government's resolve to protect intellectual property, do not observe the provisions of the country's laws on relevant procedures, and do not perform their obligations as rights holders as much as they can, even to the extent of making unreasonable	instance, in one Judicial Opinion (<□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□>), the Supreme People's Court clearly states that in principle the public publications in other jurisdictions, if to be used as evidence in Chinese courts, need not be notarized and legalized unless the opposite party can present convincing evidence to challenge its validity.

	complaint or report of infringement in respect of the trademark under opposition. Where an agent is entrusted to handle the matter, a power of attorney should be attached. Any photocopies of the entrustment materials should be notarized. If evidentiary materials are obtained outside the PRC, they should be authenticated.	demands. The provision on items that are required when a complaint is lodged for a case is added. This could bind up some of the foregoing actions. 4. Paragraph 3 is added, which clearly provides that infringement complaints will not be accepted in relation to trademarks that have been opposed.	
□□□□□□□□□□□□□□□ **Article 53, Sentence 2, Article 52 of the Regulations**	□□□□**[**□□□□**]** **Article 90 [Administrative liabilities]**		
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□□□□□□□□□□□□ If the matter is handled by an agency for the administration of industry and commerce and such department determines that there has been an act of infringement, it shall order an immediate cessation to the infringing conduct and the confiscation and destruction of the infringing goods and the tools specifically used to manufacture the infringing goods and forge the emblems of the registered trademark and may additionally impose a fine.	□□□□□□□□□□□□□□□□□□□□□ 1 □□□□5 □□□□□□□□□□□□□□□□□□□ 1 □□□□□10□□□□□□□□□ When an agency for the administration of industry and commerce handles a trademark infringement dispute case and determines that there has been an act of infringement, it may order the infringer to immediately stop the infringing act, confiscate and destroy the infringing marks, and may confiscate and destroy the infringing goods and any instruments specifically used to manufacture the infringing goods and counterfeit marks of the registered trademarks, and may impose a fine of more than one time but less than five times the volume of the illegal business; if	□□□“□□□□□□□□□□”□□“□□”□□ 1. Provisions from the regulations providing for administrative fines are elevated into law, making the administrative liability of infringing persons even clearer. 2. Establishes a minimum amount for the fines, and raises the maximum limit for the fines, augmenting the forcefulness of administrative punishment against infringing conduct. 3. Adds “confiscate and destroy the infringing marks,” and adds “may” in front of “confiscate and destroy the infringing goods” in order to give the law enforcement agencies [opportunites to pursue only] an objective of stopping the use [of a trademark] for infringing actions	be confiscated and destroyed, because in reality it will not be difficult for the infringer to fabricate evidence to prove that he or she also uses such instruments to produce some legitimate products, no matter how minimal an amount. Comparative reference: the “primarily” approach is used in copyright regulations and enforcement; (3) Experience has proved the current “illegal business volume” standard is the second worst method to assess damages or determine punishment, the worst one being “illegal profit”; “Normal market value or retail price” should be introduced as the standard instead to calculate the “volume of illegal business” Moreover, to guarantee the effectiveness of the minimal fine approach, it should also be specified that the minimum RMB 10,000 fine shall be levied if the “volume of illegal business” that can be found out via the investigation is lower than RMB 10,000. Comparative Reference: this minimal fine approach was also adopted by the MOC Measures on the Administration of Whole-Sale, Retail and

	it is impossible to calculate the volume of the illegal business, it may impose a fine of more than 10,000 yuan RMB but less than 1,000,000 yuan RMB.	[in cases where] the sequence of events has been lighter and does not carry much danger of harmful consequences to society, and [in cases where] it is not necessary to confiscate and destroy all of such [infringing] goods, [which could] cause waste of resources and increase the costs of law enforcement.	Rental of Audio-Visual Products.
□□ **New Addition**	□□□□□[□□□□□□□□□] **Article 91 [Volume of illegal business and its calculation]**		
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	total illegal goods that operators produce, manufacture, process, select or distribute. Where the goods produced or processed [by the operator] infringe on the trademark rights of another party, goods already sold, goods yet to be sold and half made goods which bear the trademark should all be included in the calculation of volume of illegal business. The value of illegal goods which have been sold shall be calculated based on their actual sales price. The value of illegal goods that have not been sold shall be calculated based on its quoted price [*literally* "marked price"] or the average actual sales price of illegal goods that has been verified clearly. The "volume of the illegal business for service marks	implementation practices of agencies for the administrations for industry and commerce, and have made this provision differentiating as among differing situations. Among them, the first paragraph has absorbed relevant provisions in relation to the calculation of the amount of illegal operations from the interpretations of the Supreme People's Court and the Supreme People's Procuratorate. However, among these, because the problem of "market intermediaries" is not easy to understand or put into [actual] operation, the text of this Article has not taken it on.	

	infringement" means the volume of operation which resulted from infringing acts of the infringer during the period of infringement. Where only advertising activities are involved, and no business for goods has been carried out or no service has been provided, the volume of the illegal business shall be calculated based on advertisement expenses. Where there is only an invoice for the infringing goods or an invoice for the provision of services, and no evidence of corresponding goods or performance of services is found, the volume of the illegal business shall be calculated according to the amount of the invoice(s). The limitation period for actions for infringement of the		

	trademark rights of another person is two years. Where the infringer has conducted infringement many times but has not been handled administratively, the volume of his illegal business shall be accumulated [for purposes of] calculation. Where there is no quoted price [*literally* "marked price"] of the infringing goods or it is impossible to verify its actual marketing price, in the case of infringement of another person's exclusive right to use a registered trademark, it will be [considered as] a situation in which it is impossible to calculate the volume of the illegal business, as referred to in this Law.		
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Article 45 of the Regulations, Judicial Interpretation	**Article 92 [Prohibition against using another person's well-known trademark]**		
	□□ 5000 □□□ 5 □□□ Where the use of a trademark violates the provisions of Article 34, Section 1 (Unregistered well-known trademarks) of this Law, the agency for the administration of industry and commerce shall order the actor to stop such use, confiscate and destroy his trademark emblems, and impose	□□ □□ 1. Seeing that unregistered trademarks do not enjoy trademark rights, the protection thereof is therefore limited to the same or similar classifications of goods, and to the prohibition of their use. 2. In reference to the provisions on the handling of trademark violations, details are undertaken in relation to the prohibition of the use of the unregistered well-known trademarks of other persons, which has established the administrative liabilities which the actor should	As commented above, the definition of “trademark rights” should be broadened to also cover the rights in protectable unregistered trademarks like unregistered well-known trademarks; otherwise, the owners of such trademarks will not have legal grounds to seek more serious administrative protection and civil remedies under the Trademark Law. If the authorities want to keep the narrow definition of “trademark rights,” it should leave the protection of unregistered trademarks entirely (except in the registration/examination/opposition/validation procedures) to the Anti-Unfair Competition Law.

	a fine of more than 5,000 yuan RMB but less than 50,000 yuan RMB. Where it is impossible to separate the trademark emblems from the goods [involved], both of them shall be seized and destroyed. Where the actor causes loss to the owner of the well-known trademark, he should compensate [the owner for it].	undertake (lighter than the liabilities in the case of violations). It has also provided for liability for civil compensation (civil compensation that is awarded after adjudication by a court of law).	
□□□□□ **Article 55**	□□□□□[□□□□] **Article 93 [Administrative functions and official authorities]**		
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□□□□□□□□□ □□□□□□□□□□□ □□□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□□ □□□□□□ □□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□□□ □□□□□□□□□ □□□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□□ □□□□□□ □□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□□ □□□□□□□□□□ □□ Agencies for the administration of industry	□□ □□□□□□□□□□□□□ □□□□□□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□□ □□□□□□□□□□□□□ □□□□□□ □□□□□□□□□□□ □□□□□□□□□□□□□ □□□□□□□□□□□□□ □□ □□□□□□□□□□□ □□□□□□□□□□□□□ □□□□□□□□□□□□□□□ □□□□□□□□□□□□□ □□□□□□□□□□ 5000 □ □□□5 □□□□□□□ When agencies for the administration for industry and commerce at or above the county level investigate and handle activities suspected of having infringed upon another person's	□□□□□□□□□"□□□□□□ □□"□□"□□□□"□□□□□□□ □□□□□□□□□□□□□□□□□□ □□□□□□□"□□"□□"□□"□ □□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□□ □□□□□□□□□□□□□□□□□ □□□□□□□□□□□□□ 1. When an agency for the administration of industry and commerce carries out investigation and handling of infringement cases, it is always pre-conditioned on "[being] on the basis of evidence or a report which they have already obtained on a suspected violation of the law." It is not necessary to say so much in this place, so this is deleted. 2. Here a statement on actions which infringe geographical indicators and special marks is added. This complements and clarifies the related content of Chapter IX and Chapter X. 3. Here "it has evidence proving their	Order Law □□□□□□□□> which provides that "serious inteference" with law enforcement is subject to administrative detention by the PSB. Therefore, this provision needs to be examined carefully to coordinate with the rules in other laws and find the most effective way to address such interference or resistance to inspections and investigation.

and commerce at or above the county level may exercise the official authorities set forth below when they are investigating and handling cases of suspected acts of infringement of a third party's exclusive right to use a registered trademark on the basis of evidence or a report which they have already obtained on a suspected violation of the law: (1) questioning relevant concerned parties and investigating circumstances connected with the infringement of the third party's exclusive right to use a registered trademark;	trademark rights, or suspected of having infringed the geographic indicator or special marks of another person, they may exercise the official authorities set forth below: (1) questioning relevant concerned parties, and investigating circumstances related to the infringement upon another person's trademark rights; (2) consulting and copying the concerned party's contracts, invoices, account books and other materials connected with the infringing activities; (3) conducting on-site inspections of the site where a concerned party is suspected of engaging in activities infringing upon the third party's trademark rights; [and]	infringement" in item (4) is changed to "suspected of infringement" to be consistent with the expressions of other laws and regulations that are related to administrative law enforcement; and "article" that could be seized and taken into impoundment is changed into "property." 4. Liability for unlawful rejection or obstruction of the performance of public duties by an agency for the administration of industry and commerce, which originates from relevant provisions in the Product Quality Law, is added to provide legal safeguards for actions taken in performance of public duties in accordance with law.	

(2) consulting and copying the concerned party''s contracts, invoices, account books and other relevant materials connected with the infringing activities; (3) conducting on-site inspections of the site where a concerned party is suspected of engaging in activities infringing upon the third party's exclusive right to use a registered trademark; [and] (4) inspecting articles connected with the infringing activities; [agencies for the administration of industry and commerce] may seal up or impound those **articles** for which it has	(4) inspecting articles connected with the infringing activities; [agencies for the administration of industry and commerce] may seal up or impound those **properties** suspected of infringement upon the third party's trademark rights. When an agency for the administration of industry and commerce exercises the official authorities provided for in the preceding paragraph in accordance with the law, the party concerned should provide assistance and cooperation. [If the party concerned] refuses [to assist or cooperate] or interferes with the agency for administration of industry and commerce's carrying out of its public duties, a report thereon shall be made, and [the agency] may impose a fine of more		

evidence proving their infringement upon the third party's exclusive right to use a registered trademark. When an agency for the administration of industry and commerce exercises the official authorities provided for in the preceding paragraph in accordance with the law, the party concerned should provide assistance and cooperation and may not refuse [to assist or cooperate therewith] or interfere [therewith].	than RMB 5,000 yuan and less than RMB 50,000 yuan.		
□□□□□ **Article 56**	□□□□□[□□□□] **Article 95 [Civil compensation]**		
□□□□□□□□ □□□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□	□□□□□□□□□□□ □□□□□□□□□□□□□□ □□□□□□□□□□□□□ □□□□□□□□□□□□□ □□□□□□□□□□□□□	□□□□□□□□□□□□□□ □□□□□□□□ 50 □□□□□ 100 □□□ □□□□□□□□□□□□□□ □□□□□□□□□□□□□□	It would be more reasonable if the principal method to calculate compensation can be changed to damages suffered by the right owners PLUS the profit that the infringer has obtained during the period of the infringement. The current one-or-the-other

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infringement, or the losses suffered by the party whose rights were infringed during the period of infringement as a result of the infringement, including the reasonable expenses incurred by the party whose rights were infringed in stopping the infringing actions. If the benefits gained by the infringer because of the infringement or the losses suffered by the party whose rights were infringed as a result of the infringement, mentioned in the preceding paragraph, are difficult to establish, a People's Court shall, depending on the circumstances of the	should pay compensation [to the infringed party]. The amount of damages shall be the profit that the infringer has obtained during the period of the infringement because of the infringement, or the losses that the infringed party has suffered during the period of the infringement because of the infringement, including any reasonable expenses which the infringed party has incurred in his or its efforts to stop the infringing conduct. Where the profit earned by the infringer because of the infringement or losses suffered by the infringed party because of the infringement, as mentioned in the preceding paragraph, are difficult to establish, a People's Court shall render a judgment awarding damages of less than	bears administrative liability, and does not bear civil liability for compensation.	these "defensive trademarks" may have not been used, it does not mean that they have no market value to trademark owners and infringement may also cause confusion or dilution of the well-known trademarks. Therefore ICC suggests that the Law should grant well-known trademarks an exception to the "no-use-no-compensation" rule set forth in the last two sentences of para.4.

infringing conduct, render a judgment awarding damages of less than Rmb500,000. If [a person who] sold goods that he did not know to be infringing upon the exclusive right to use a registered trademark is able to prove that he obtained such goods lawfully and explains [who] the supplier [is], he shall not bear liability for damages.	RMB 1,000,000 yuan, depending on the circumstances of the infringing acts. Where [a person] unknowingly sells goods that infringe upon another party's rights in a registered trademark, but is able to prove that he obtained the goods lawfully and is able to explain [who] the supplier [is], he shall not bear liability for damages. The infringer should bear responsibility for compensation where he infringes another person’s trademark rights intentionally or by fault. Where intention or fault is not found, the infringer shall not bear responsibility for compensation. Where [a person] infringes another party’s right to use a registered trademark that has not		

	been in use for three consecutive years, he shall not bear liability for damages. Where [a person] infringes another party's right in a trademark that has never been used but has been registered for less than three years, he [will] compensate the infringed party for any reasonable expenses incurred in stopping the infringement.		
□□ **New Addition**	**□□□□□[□□□□□□□□□]** **Article 96 [Compensation for unregistered trademarks]**		
	□□ Where a trademark, which is the same as or similar to a trademark of another person that	□□□ A general provision, concerning liability for damages in respect of infringements of unregistered trademarks, is added here to put into actual practice a protection of the basic interests of owners	This can be resolved in an easier way by expanding the definition of "trademark rights" to cover the rights in such prior-use unregistered trademarks. It is acceptable to attach less protection over unregistered marks, but denying the owners' "trademark rights" in such trademarks will leave the remedies provided for in this Law for such trademarks with no solid legal grounds.

	is in prior use and is unregistered, is intentionally used on the same kind or similar classification of goods and causes loss to the prior user of the trademark, the user of such trademark should bear liability for compensation.	of unregistered trademarks that are in prior use.	In addition, “intentionally” should be replaced by “knowing or having reasonable grounds to know …”.
□□□□ **Judicial Interpretation**	**□□□□□[□□□□]** **Article 97 [Reasonable expenses]**		
	□□□ Reasonable expenses incurred to stop an infringement include reasonable expenses that the owner or an entrusted agent has incurred in his effort to investigate and acquire evidence about the infringement.	□□□□“□□□□□□□□□□”□□□□“□□□”□□□ There are proposals that detailed items such as "attorneys’ fees " should be listed in the "reasonable expenses incurred to stop an infringement", but such questions may involve a large range of matters and cannot be totally listed out. Therefore a summary provision is	In practice, the major problem in this regard is that there is no clear, uniform standard or guidance on how attorney fees and investigation costs should be calculated and consequently the judges are granted too much discretion to decide on such fees and costs.

		set forth here, and detailed content may be listed in the regulations.	
□□□□□□□□ **Article 53 of the Regulations**	□□□□□[□□□□□□□□] **Article 98 [Trademarks and enterprise names]**		
	□□□ If a trademark owner believes that the registration of his well-known trademark as an enterprise name by another person is likely to deceive the general public or cause misunderstanding among the general public, constituting a	□□ □□ Provisions from the regulations are elevated to provisions of law. Prominent use of a tradename as an enterprise name constitutes infringement, and shall be handled according to the [circumstances] of infringement acts. In relation to the need to change the	It should be clarified that owners of well-known trademark are also entitled to complain to a court directly, and if the court decides that the registered company name is improper and should be revoked, the local AIC where such company was registered is obliged to enforce the court's decision directly. It is unnecessary to mandate that all such complaints have to go to the courts first as in many cases, administrative proceedings are more efficient and can save limited judicial resources. However, the legal avenue of direct complaint to a court shall be retained to reduce the risk of local protectionism.

	company name that is not proper for registration, the trademark owner may apply to the registration authorities with principal responsibility for enterprise names for the cancellation of the registration of the enterprise name. The registration authorities with principal responsibility for enterprise names should handle the case in accordance with the Provisions on Administration of Enterprise Name Registration.	registration of a name, this Article has added the nature of the act of registering the enterprise name, in order to facilitate the interplay between [this Article and] relevant provisions [of the agencies for theadministration of industry and commerce] on the management of registration of enterprise names. ***There is a proposal that this Article should be deleted, and that the matter should be handled [literally "adjusted"] under the Anti-Unfair Competition Law. Or that in this provision, priority should be given to effective judgments rendered by a court of law, with enforcement by the registration authorities. (Priority of Judicial Judgment)***	
□□□□□ **Article 58**	□□□□[□□□□] **Article 100 [Preservation of evidence]**		
□□□□□□□□□ □□□□□□□□□□ □□□□□□□□□□	□□□□□□□□□□ □□□□□□□□□□□□ □□□□□□□□□□□□	□□□□□□ **This retains the original provision.**	In many cases, the courts has simply refused to "accept" the application for such preservation of evidence.

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prior to the institution of proceedings, under circumstances where such evidence might be destroyed, lost or difficult to obtain later. The People's Court must render a ruling within 48 hours of receipt of the application. The implementation of a ruling adopting preservation measures should commence promptly after it is rendered. The People's Court may order the applicant to provide security. If the applicant fails to provide security, his application shall be rejected. If the applicant fails to institute proceedings	receipt of the application. The implementation of a ruling adopting preservation measures should commence promptly after it is rendered. The People's Court may order the applicant to provide security. If the applicant fails to provide security, his application shall be rejected. If the applicant fails to institute proceedings within 15 days after the People's Court takes preservation measures, the People's Court should terminate such preservation measures.		

within 15 days after the People's Court takes preservation measures, the People's Court should terminate such preservation measures.			
□□□□□ **Article 59**	□□□□□□[□□□□] **Article 101 [Criminal offences]**		
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□□□□□□□□□□□ □□□□□□□□□□ □□ If a trademark identical to a registered trademark is used on the same kind of goods without the consent of the registrant of the registered trademark and such act constitutes a criminal offence, [the infringer shall], in addition to compensating for the damages suffered by the party whose rights have been infringed, be prosecuted [*literally* “criminal liability shall be investigated”] according to law. Where the forgery or unauthorized manufacture of the emblems of another	If a trademark identical to a registered trademark is used on the same kind of goods without the consent of the registrant of the registered trademark and such act constitutes a criminal offence, [the infringer shall], in addition to compensating for the damages suffered by the party whose rights have been infringed, be prosecuted [*literally* “criminal liability shall be investigated”] according to law. Where the forgery or unauthorized manufacture of the emblems of another person's registered trademark, or the sale of trademark emblems that were forged or manufactured without authorization, constitutes a criminal offence, [the infringer shall,] in addition to compensating for the damages		

person's registered trademark, or the sale of trademark emblems that were forged or manufactured without authorization, constitutes a criminal offence, [the infringer shall,] in addition to compensating for the damages suffered by the party whose rights have been infringed, be prosecuted [*literally* "criminal liability shall be investigated"] according to law. Where the sale of goods that one is fully aware of being goods bearing counterfeits of a registered trademark constitutes a criminal offence, [the infringer	suffered by the party whose rights have been infringed, be prosecuted [*literally* "criminal liability shall be investigated"] according to law. Where the sale of goods that one is fully aware of being goods bearing counterfeits of a registered trademark constitutes a criminal offence, [the infringer shall,] in addition to compensating for the damages suffered by the party whose rights have been infringed, be prosecuted [*literally* "criminal liability shall be investigated"] according to law.		

shall,] in addition to compensating for the damages suffered by the party whose rights have been infringed, be prosecuted [*literally* "criminal liability shall be investigated"] according to law.			
	□□□ □□□□ **Chapter IX Geographical Indicators**		
□□□□□□□ **Article 16, Section 2**	□□□□□□□[□□□□□□] **Article 113 [The concept of "geographical indicators"]**		Overall, these proposals appear sound. A few comments in detail below.
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□□□□□□□□□□□□□□□ For the purposes of the preceding paragraph, the term "geographic indicator" means an indicator that identifies a particular good as originating from a particular region, where a given quality, reputation or other characteristic of the good is determined by the natural or cultural factors of the said region.	□□ “Geographic indicator" means an indicator that identifies a particular good as originating from a particular region, where a given quality, reputation or other characteristic of the good is determined by the natural and cultural factors of the said region. A geographic indicator may be the name of the region indicated by such geographic indicator, or may be some other visible mark that sufficiently indicates that the particular goods originated from such region.	3□□□□“□□□□□□□□□□□□□□”□[2]□“□□□□□□□□□□□□□”□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□ The purpose of this Article is to clarify the following matters [*literally* “content”]: 1. Place name trademarks that do not convey [*literally* “have”] the special features of goods are not geographical indicators. 2. Geographical indicators may be other visible marks that indicate a geographical origin. 3. The original provision "determined by natural *or* cultural factors" is changed to "determined by natural *and* cultural factors". That is, [this Article] requires that a geographical indicator should be a combination of natural and cultural factors. (method in	

[2] Note: Perhaps this should be □.

	The territory of the region indicated by a geographic indicator may be different from the present administrative name and territory of such region.	actual practice)	
□□□□□□□ **Article 16, Section 1**	□□□□□□□[□□□□] **Article 114 [General Principles]**		
□□ If a trademark contains a geographical indicator of the goods and such goods do not originate from the region indicated by such indicator, [thereby] confusing the general public, registration will not	□□□□□□□□□□□□□□□□□□□□□□□□ □□□ Where a geographical indicator is intended to be protected by this Law, it shall be registered. If a trademark contains a mark which is the same as or similar to a geographical	□□□□□□□□□□□□□□□□□□□□□□□□□□□□ □□□□“□□□□□□□□□□□□□”□□“□□□□”□□□□□□□“□□□□”□□□□□□□□□□□□□□□□□□□□□□□□□□□□“□□□□”□□“□□”□□□“□□□”□□□ □□ 1. Here paragraph 1 is added to emphasize that only registered geographical indicators may be protected. 2. The meaning of "geographical	Article 114, prohibits the use of a trademark which contains a mark which is the same as, or similar to, a geographical indicator on goods which do not originate from the regions indicated by such geographic indicator, <u>thereby confusing the public</u>. This reflects Article 22.3 of TRIPS. However, Article 23 of TRIPS provides additional protection for wine and spirit GI's. In particular Article 23.2 states that:- “*The registration of a trade mark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated,*

be granted and its use will be prohibited. However, those for which registration has already been obtained in good faith shall remain in effect.	indicator and the goods on which it is designated to be used do not originate from the region indicated by such geographic indicator, thereby confusing the public, registration will not be granted and its use will be prohibited. However, those for which registration has already been obtained in good faith shall remain in effect.	indicator" in "trademark contains a geographical indicator" in the original Law is different from the meaning of "geographical indicator" in this Law. Different interpretations may arise if the same name is used. Therefore the "geographical indicator" in the first paragraph of the original Law is changed to "place name", and "of the goods" is deleted. 3. In actual practice, there exist circumstances in which marks similar to geographical indicators are used in trademarks, but [the goods] do not originate from that area, and this may mislead the general public. As a result, provisions on the prohibition of the registration and use of marks similar to geographical indicators is added.	*ex officio if a member's legislation so permits, or at the request of an interested party, with respect to such wines or spirits not having this origin.*" The key difference is that the protection given in Article 23.2 is not dependant on consumer confusion. A similar provision specific to wine and spirits will require to be inserted into the Trademark Law to make it TRIPS compliant.
□□□□□□□**[2007]15**□ **New addition:** **Gongshangbiao Zi [2007]**	□□□□□□□**[**□□□□□□□□□**]** **Article 122 [Special marks and the management of their use]**		

No. 15			
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	Special marks should be used together with geographical indicators. Registrants of geographical indicators should carry out supervision of the activities of the users of special marks in their use [of the special marks]. For the use of special marks on non-geographically indicated products, or use of marks similar to the special marks, authorities for the administration of industry and commerce at all levels shall in accordance with the provisions of Article 136 (Protection of special marks) of this Law investigate the legal liabilities of the users.	The marks are mainly to be managed, printed and used by the registrants of geographical indicators and legal users themselves. Use of marks which are the same as or similar to the special marks of geographical indicators on non-geographically indicated products are acts of counterfeiting official marks, and shall be handled according to relevant provisions on special marks.	penalties for infringing special marks as set out in Article 136 of the Regulations are less severe than those imposed for the infringement of a GI itself.

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