

TRADEMARK PRACTICE & FORMS

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CHINA

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CHINA

OVERVIEW

◆ THE BASICS ◆

COUNTRY FACTS

Location

Eastern Asia, bordered by India, Mongolia, and the East and South China Seas

Major Cities

Beijing (capital), Guangzhou, Hangzhou, Shanghai, Tianjin

Government

Communist

Legal System

Mix of Civil law and communist ideology

Language

Chinese

Currency

Renminbi (RMB)

Est. GDP

\$3.251 trillion (2007 est.)

Economic Sectors

agriculture: 11.3%

industry: 48.6%

services: 40.1% (2007 est.)

INTERNATIONAL IP AGREEMENTS

- WTO/GATT
- Paris Convention
- Madrid Agreement

See Trademark Practice & Forms, International Trademark Protection.

APPLICABLE CLASSIFICATION

- International Classification (Nice)
- Single-class registration

See Trademark Practice & Forms, International Trademark Protection, Nice Agreement.

HOME REGISTRATION

Not required, provided reciprocity is extended

RIGHT TO TRADEMARK

First to file, modified

See Trademark Law, Art. 29.

(continued)

Policies and Trends

Trade and Regulatory Climate

China's economy has flourished since 1980, when the government shifted its focus from austerity measures to restructuring its massive, unprofitable, state-owned enterprises. Foreign investment has soared. Although China has traditionally favored a policy of self-reliance—through restrictions and import-substitutions to avoid dependence on any one foreign country—the current leadership has taken noticeable steps to integrate the country into the world trading system. Its policies on foreign trade, however, continue to be arbitrary and restrictive. Centralization remains the norm, and inadequate legal and regulatory systems affect the ability of foreign investors to do business in the country. All businesses must be registered and approved before commencing commercial operations. The judicial system is not a reliable mechanism for resolving commercial disputes.

Why Register Locally?

Although trademarks may be used in China without registration, the user cannot enjoy the exclusive status granted to registered marks and cannot prevent others from using the mark. In addition, the nonregistered user faces a difficult burden of proving “prior use” should another person

◆ THE BASICS (cont'd) ◆
DURATION OF PROTECTION
Initial Period 10 years from date of the application
Renewal Period 10 years from date when latest registration expires
<i>See Trademark Law, Arts. 37 and 38.</i>
REGISTRATION PRIORITY
Priority registration available
<i>See Trademark Law, Arts. 24 and 25.</i>

subsequently apply for registration, and may even face infringement actions after the mark is registered by someone else. Although the injured party must initiate actions against infringers, a registered trademark will be protected by the Trademark Office and Intellectual Property Courts, while the user of an unregistered trademark is limited to seeking protection from the far less effective people's courts.

Note: We express our gratitude to Ms. Janet H. M. Yong, who has contributed very much to the editing and revision of this chapter.

Trademarks used in relation to commercial activities regarding tobacco products and pharmaceutical products for human use must be registered. Failure to register such marks will result in fines and sanctions, including loss of the right to use the mark.¹

The Future

China has made significant progress lately in the enactment of laws and regulations to protect intellectual property, although the enforcement of these rights remains a problem and has been the subject of domestic and international attention over the past few years. In response, China has established special intellectual property courts, staffed by officers who specialize in intellectual property laws. Under the court rules—but not yet in practice—cases should be concluded within six months of initiation. As the public becomes increasingly educated on the value and importance of protecting intellectual property—a concept hitherto foreign to the vast majority of Chinese—enforcement of the laws should meet international standards.

The Amendment

On October 27, 2001, the final amendments to the Trademark Law were approved by the Standing Committee of the National People's Congress of the People's Republic of China, and became effective as of December 1, 2001. This amended version, in the spirit of abiding by WTO rules, adopted many provisions from the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement. It is intended that this amended version would make great strides in improving intellectual property protection in China.

¹ Trademark Law, Arts. 4, 6, and the Implementing Rules of The Trademark Law, Art. 7.

LAWS ♦ RULES ♦ REGULATIONS

Trademark Law of the People's Republic of China²

Regulations for Implementation of the Trademark Law of the People's Republic of China³

Measures for the Registration and Administration of Collective Trademarks and Certification Trademarks, effective June 1, 2003.

Available from: Trademark Office, State Administration for Industry and Commerce, People's Republic of China (in Chinese and English). Tel: (86 10) 8531133.

2 Trademark Law, adopted Aug. 23, 1982; amended Feb. 22, 1993, second amended Oct. 27, 2001, effective Dec. 1, 2001.

3 Regulations, adopted Aug. 3, 2002, effective Sept. 15, 2002.



REGISTRATION REQUIREMENTS

What Is a Mark?

A mark is a word, device, letter, numeral, three-dimension symbol, combination of colors or combination of the aforesaid elements.⁴

Which Marks May Be Registered?

Trademark for Goods

Any visible signs capable of distinguishing the goods of a natural person, legal person or other organization from those of others, including words, graphs, letters, numerals, three-dimension symbols and combination of colors as well as combination of the foregoing elements, may be used as trademarks.⁵ However, sound marks and flavor marks are still not recognized as trademarks by the newly amended Trademark Law.

Trademark for Services

Any visible signs capable of distinguishing the services provided by a natural person, legal person or other organization from those by others, including words, graphs, letters, numerals, three-dimension signs and combination of colors as well as combination of foregoing elements, may be used as service trademarks.⁶

Collective Trademark

A collective mark means a mark registered in the name of a society, association or other organization for use in commercial activities by its members and for indication of the membership of users.⁷ Collective marks are owned by the organization and applied by members of the same. When applying for collective trademarks, rules for control over the use of the mark must be submitted.⁸

Certification Trademark

A mark used on the same class of products or services as evidence or origin, material, manufacturing process, quality, accuracy or of other specific qualities, which are controlled by a separate organization with the ability to supervise, inspect, monitor and appraise such goods or services.⁹ When registering a certification trademark, an explanation must be issued confirming the abilities of the applicant

4 Trademark Law, Art. 8.

5 Trademark Law, Arts. 4 and 8.

6 Trademark Law, Arts. 4 and 8.

7 Trademark Law, Art 3.

8 Measures for the Registration and Administration of Collective and Certification Marks.

9 Trademark Law, Art. 3.

to supervise, inspect, monitor and appraise the relevant goods and services. Rules for control over the use of certification marks must also be submitted, and a certification trademark owner may not refuse use of its mark to any party whose goods or services meet the requirements under its rules for use. An owner may not use its own certification marks on its own products or services.¹⁰

Color Combination Trademark

A trademark purely consists of different colors, which is capable of distinguishing the owner's goods or service from that of others.¹¹

Trademark in Color/Trademark with Color Claimed

A trademark entirely or partially limited to one or more specified colors. There is no specific legal provision that forbids the use in other colors of a trademark registered in black and white, but only the colors specifically registered will be protected.¹²

✓ **Comment: The introduction of three-dimensional marks and color combination marks is one of the most important changes in the new Trademark Law.**

What Cannot Be Registered?

The following words or devices may not be used as a trademark:

Deceptive Marks

A mark will be refused registration if it constitutes an exaggeration or fraud in advertising the goods or services to which it is applied.¹³

Marks with Prohibited Matters

Registration of a mark is prohibited if the mark contents violate socialist morals or customs, have a discriminatory nature against any nationality, or have other unhealthy influences.¹⁴

✓ **Comment: The Trademark Law fails to provide for the use of surnames as trademarks. In practice, Chinese surnames are rejected because of lack of distinctiveness but foreign surnames that are not commonly recognized are sometimes allowed.**

10 Measures for the Registration and Administration of Collective Trademarks and Certification Trademarks.

11 Trademark Law, Art. 8.

12 Regulations, Rule 13.

13 Trademark Law, Art. 10.

14 Trademark Law, Art. 10.

Marks with Prohibited Words or Representations

Any of the following marks will be refused registration:¹⁵

- A mark which is identical with or similar to the country name, national flag, national emblem, military flag or decoration of the People's Republic of China, or is identical with the name of the particular site where a central or state organ is located or the name or shape of a building with symbolic significance;
- A mark which is identical with, or similar to, the national name, national flag, national emblem or military flag of a foreign country, unless the consent of the foreign government to its use has been given;
- A mark which is identical with, or similar to, the name, flag or emblem of an intergovernmental international organization, unless the consent of the said organization to its use has been given or public confusion won't be caused by such use;
- A mark which is identical with, or similar to, the official symbol or inspection seal for showing control or guarantee, unless the authorization to its use has been given;
- A mark which is identical with, or similar to, the name or symbol of the Red Cross or the Red Crescent.

Marks Lacking Distinctiveness

A mark cannot be registered if it lacks distinctiveness, which includes the following situation¹⁶:

- A mark which only relates to the generic name or design of the goods for which it is used or has direct reference to the quality, major raw materials, function, use, weight, quantity, or other features of the goods in respect of which the trademark is used;
- Other situations which will be deemed as lacking distinctiveness.

However, the above-mentioned mark may be registered as a trademark if it has acquired a distinctive character by use and is therefore easily recognized.

Three Dimensional Marks Lacking Distinctiveness

A three dimensional symbol, whose shape is derived from the nature of the relevant product or has the purpose of solely acquiring an effect of high technology or substantial value, can not be registered as trademark:¹⁷

✓ **Comment:** This provision follows the language used in Article 3(e) of the European Union's *First Council Directive to Approximate the*

15 Trademark Law, Art. 10.

16 Trademark Law, Art. 11.

17 Trademark Law, Art. 12.

Laws of the Members States Relating to Trademarks. However, it will be interesting to see how Chinese Examiners and judges will address this issue in future implementation as in other jurisdiction, the standard to judge the non-functionality and distinctiveness of the shape of goods or packages of goods has always been an issue in dispute.

Who Can Register?

Proprietor or User

Any enterprise, institution, or individual producer or trader, intending to acquire the exclusive right to use a trademark for the goods or services in question must register the trademark. Commercial enterprises, institutions, social organizations, individual households or legally established partnerships may apply for registration.¹⁸

✓ ***Comment:*** Two or more individuals or legal persons or other organizations are now allowed to jointly apply for registration of the same trademark with the Trademark Office and enjoy and implement the exclusive right of use of such trademark.

Priority Registrant

Convention Priority: An applicant who has filed for registration of a mark in another foreign country may claim a priority date for registration in China according to the agreement sign between that foreign country and China or the international convention to which both the foreign country and China are members or the principle of mutual recognition of priority, provided the applicant's first filing in the country was within six months of the Chinese filing. The Chinese registration date will be the same as the application date in the other Convention country.¹⁹

Exhibition Priority: An applicant who has used a trademark on products shown at any international exhibition held by or permitted by the Chinese government, can claim a priority date for registration in China, provided the application is filed within 6 months from the date the goods were exposed.²⁰

Authorized Agent

Trademark applications involving foreigners must be handled through officially authorized agents. Trademark agents must pass a formal examination and hold a "trademark agent qualification certificate". Trademark agents provide all services with respect to applications for trademark registration, including legal consulting and advice relating to trademarks. A Power of Attorney must be submitted together with each application.²¹

See Registration Forms, Authorization of Agent Form TM-7.

18 Trademark Law, Arts. 4, 5.

19 Trademark Law, Art. 24

20 Trademark Law, Art. 25.

21 Trademark Law, Art. 18; Regulation, Rule 7.

TRADEMARK REGISTER

Where Is the Trademark Registered?

Trademarks Register

To register a trademark in China, an applicant files a written application for initial registration with the Trademark Office of the State Administration for Industry and Commerce (The Trademark Office).²²

✓ ***Comment:*** The law specifies that foreigners must file registration applications in accordance with any agreement concluded between the People's Republic of China and the applicant's country, or according to the international treaty to which both countries are parties, although in practice the nationality of applicants is rarely considered.²³

Requirement of Distinctiveness

To qualify for registration, a mark must be clearly distinctive so that it is easily distinguishable from the marks of others. Some marks that are automatically deemed non-distinctive are:

- Generic names, designs or types, although the name, design or type may be considered for registration if it has acquired distinctive character by use and is thus easily distinguished.
- Marks that are directly descriptive of the quality, ingredients, functions or other characteristics of the products for which the mark is to be used, although the marks will be considered for registration if they have acquired distinctive character by use and thus easily distinguished.
- Frequently used surnames of common style and in use with daily necessities or services.
- Geographic names, although geographic names with secondary meanings that are publicly accepted or acknowledged, or are part of certification marks or collective marks will be considered for registration on an individual basis.
- Simple depictions of letters of the alphabet and numerals, although some applicants have succeeded in obtaining registration based on evidence that the mark has achieved secondary meaning through a long period of use.²⁴

22 Trademark Law, Art. 2.

23 Trademark Law, Art. 17.

24 Trademark Law, Arts. 9, 10, 11, 12.

International Registrations

An international registration under the Madrid Agreement can be effected by notifying the Madrid Union Office to add China to the list of registration countries for a particular mark. The Madrid Agreement gives China the right to reject trademarks not conforming with its legislation.

Exclusive Use Rights

Registration gives the owner exclusive rights to use the trademark, subject to exceptions for another person's prior vested rights or good faith use of a name, address, or description of goods. Where the exclusive right to use a registered trademark has been infringed, the owner may request the administrative authority for industry and commerce to take action, or may institute legal proceedings directly with the people's court.²⁵

Quality Assurance

Any user of a trademark is responsible for the quality of the goods or services for which the trademark is used. Where a registered trademark is used in relation to goods which have been roughly or poorly manufactured, or whose superior quality has been replaced by inferior quality, so that consumers are deceived, the administrative authority for industry and commerce will order rectification and/or may circulate a notice of criticism or impose a fine. The Trademark Office may even cancel the registered trademark.²⁶

Enforcement

When the exclusive rights to a registered trademark are being infringed, the administrative authority for industry and commerce, upon request of the trademark owner, may order the infringer to immediately stop the infringing act, seize and destroy the infringing goods and tools used in infringement and impose a fine. The administrative authority may mediate the compensation for damages (in the amount of profit the infringer has earned through the infringement), upon the request by the trademark owner. If the mediation is unsuccessful, the party concerned may bring an action before the people's court. The owner may instead choose to institute legal proceedings directly with the people's court.²⁷

25 Trademark Law, Arts. 51, 53; Regulations, Rule 51.

26 Trademark Law, Arts. 7 and 45.

27 Trademark Law, Art. 53.

INITIAL REGISTRATION

Procedural Timeline

SEARCH AND ADVICE

The Trademark Office will perform trademark searches, covering both registered trademarks and pending applications that have been reviewed by an examiner. Search requests from foreigners must be submitted through an authorized agent. Official search reports provide basic information on identical or similar marks in a given class. No evaluative comments are provided and the search reports are of no legal validity.

✓ **Comment:** Although search reports do not provide legal protection, this procedure is generally recommended, particularly if a mark could be considered descriptive or lacks other elements of distinctiveness.

APPLICATION

Applicant files registration forms, attachments, and fees. If the applicant is a foreigner, these must be filed through an authorized agent. All application materials shall be typewritten or printed, and the writing must be clear and neat.²⁸

See Registration Forms, Authorization of Agent Form TM-7.

as of application date

Agent

By the time the application is filed, the applicant must have appointed an authorized local agent and executed a Power of Attorney.²⁹

EXAMINATION

The Registrar reviews the application for compliance with the laws and rules and searches the Register and the pending applications for identical and similar marks related to the same goods.³⁰

no time limit

Action by Registrar—Preliminary Matters

The Registrar examines the application documents for completeness and an official notice in writing will be issued to:—

- Accept the the application where the application formalities are complete and the application documents are filled in as required;

²⁸ Trademark Law, Arts. 4, 18. Regulations, Rule 15.

²⁹ Trademark Law, Art. 18.

³⁰ Trademark Law, Art. 27;

Procedural Timeline

- Reject the application where the application formalities are not complete and the application documents are not filled in as required;
- Notify the applicant to make supplements or amendments to the specified parts and deliver them back to the Trademark Office within 30 days, where the application formalities are basically complete or the application documents are basically in compliance with the requirements, but there is a need for supplements or amendments.

within 30 days of notice

Compliance

If the Trademark Office requires supplements or amendments, the applicant must resubmit the supplemented or corrected application within thirty days. If it is supplemented or amended within the time limit, the filing date will be retained

no time limit

Action by Registrar—Substantive Matters

The Registrar shall examine the applications it has accepted and may take one of the following actions with regard to the application:

- Grant Preliminary approval to those that are in compliance with the rules;
- Accept it totally, grant preliminary approval and publish it in the Trademark Gazette.
- Reject the application totally or partially and return it to the applicant by a written “Notification of Refusal” or “Notification of Partial Refusal” with reasons thereof.

If another application has been filed on the same day for an identical or similar mark, notify each of the applicants to furnish proof of the date of first use of the trademark.³¹

within 30 days of notice

Compliance

If the Trademark Office requires supplements or corrections, the applicant must resubmit the supplemented or corrected application within thirty days. If

³¹ Trademark Law, Art. 29; Regulations, Rule 19.

Procedural Timeline

	it is supplemented or corrected within the time limit, the filing date will be retained. ³²
<i>within 15 days of notice</i>	<p>Review</p> <p>If the application has been rejected, the applicant may submit an “Application for Review of the Refused Trademark” to the Trademark Review and Adjudication Board. The application must be accompanied by the original Application and the “Notification of Refusal”.³³</p>
<i>within 30 days of notice</i>	<p>Proof of Use</p> <p>Each applicant for a conflicting mark, when requested to do so, must provide proof of first use of the trademark in China. If the marks have not been in use, all the applicants involved must agree as to who will proceed to register the trademark. If no agreement is reached, the Trademark Office will adjudicate the issue.³⁴</p>
<i>no time limit</i>	<p>Decision on Application</p> <p>The Trademark Review and Adjudication Board will review the materials, make a decision, and notify the applicant in writing.³⁵</p>
<i>within 30 days of notice</i>	<p>Judicial Review</p> <p>If the applicant is not satisfied with the decision made by the Trademark Review and Adjudication Board, the applicant may bring a legal action before the people’s court.³⁶</p>
<hr/>	
REGISTRATION	When the Registrar has accepted an application as registrable, the second half of the process commences: publication, opposition, and entry. ³⁷
<i>three months</i>	<p>Publication</p> <p>After a trademark has been preliminarily approved by the Trademark Office it will be published in the Trademark Gazette for the three-month opposition period.³⁸</p>

32 Regulations, Rule 18.

33 Trademark Law, Art. 32.

34 Regulations, Rule 19.

35 Trademark Law, Art. 32.

36 Trademark Law, Art. 32.

37 Trademark Law, Art. 30.

38 Trademark Law, Art. 30; Regulations, Rule 21.

Procedural Timeline

*during 3 month
publication*

Opposition

Any person may file notice of an opposition.³⁹

*within 30 days of
opposition*

Response

The applicant must respond, stating the facts and grounds in support thereof. If the opposed party failed to make a response, it shall not affect the Trademark Office's ruling of the opposition.⁴⁰

no time limit

Decision

The Trademark Office will review and investigate both the opponent's and the applicant's facts and grounds, and will render a decision. If no response has been made at the expiration of the specified period, the decision will be based on the facts and grounds submitted by the opponent.⁴¹

*within 15 days of
decision*

Appeal

Any interested party may appeal the Trademark Office's decision to the Trademark Review and Adjudication Board, which will make an adjudication and notify the interested parties thereof.⁴²

*within 30 days of
notice*

Judicial Review

If the applicant is not satisfied with the decision made by the Trademark Review and Adjudication Board, the applicant may bring a legal action before the people's court.⁴³

no time limit

Entry and Issuance of Certificate

The Trademark Office will enter the trademark in the Register if the time for opposition has expired without the filing of any notice of opposition, or if a notice of opposition was filed, the opposition has been determined favorably for the applicant. A Certificate of Registration will then be issued to the applicant.

39 Trademark Law, Art. 30.

40 Regulations, Rule 22.

41 Trademark Law, Art. 33; Regulations, Rule 22.

42 Trademark Law, Art. 33.

43 Trademark Law, Art. 33.

AVERAGE COMPLETION TIMES		TRADEMARK GOVERNMENT OFFICIAL FEE SCHEDULE (RMB)	
Registration		Preliminary Search (regular)	100
Application to publication	18–24 months	Preliminary Search (urgent)	200
Each official action	3–5 months	Application for Mark (one class)	1000
publication	3 months	Application for Review on refusal	1500
Issuance of certificate	within 3 months from publication	Filing opposition	1000
Opposition	2–3 years	Application for Renewal before expiration	2000
		Fees are often changed; contact the Registry to determine the most current fees.	



REGISTRATION FORMS

Information Checklist

The Applicant

- Full name, business address, telephone numbers, and nationality of applicant.
- For a partnership, full names of all partners and business name of partnership.
- For a corporation, name of entity, type of corporation, and country of incorporation.
- For an association, name and type of association, and country where it was formed.

The Mark

- Representation of the mark to be registered.
- Description of goods.

✓ ***Comment: The goods must be listed in the application according to the International Classification. If any goods are not included in the International Classification, a clear and concise description of the goods should be attached to the application.***⁴⁴

See Trademark Practice & Forms, International Trademark Protection, Nice Agreement.

Agents and Service

- Name, address, and telephone numbers of authorized agent.
- China address for applicant, if any.
- Specific authority granted to agent.

Common Form Requirements

Service on Registry

Any document of the Trademark Office or the Trademark Review and Adjudication Board may be served by post, by personal delivery or by other means. Where an interested party entrusts a trademark agency, delivery of the document to the trademark agency shall be deemed delivery thereof to the interested party. Where any document is sent to an interested party by the Trademark Office or the Trademark Review and Adjudication Board, the date of receipt shall be the date of receipt indicated by the postmark on which the interested party receives it if it is sent by post; where the date of posting indicated by the postmark is illegible, or where

44 Regulations, Rule 15.

there is no postmark, the document shall be deemed to have been delivered to the interested party on the fifteenth day from the date of posting the document; the date of receipt shall be the date of delivery if it is delivered personally. Where any document cannot be sent by post or by personal delivery, the document may be served by making an announcement. At the expiration of the thirtieth day from the date of the announcement, the document shall be deemed to have been served.⁴⁵

⁴⁵ Regulations, Rule 11.

INITIAL REGISTRATION DOCUMENTS

Form No.	Matter or Proceeding
TM-8	Power of Attorney
TM-3	Application for Trademark Registration

Authorization of Agent (Power of Attorney)
Form TM-8

Use of Form

This form is submitted at the time of filing the application, and authorizes the Chinese agent to perform all duties and services which are checked. One power of attorney is submitted for each trademark. Notarization or other authentication is not required.

Information Required

- Full name, type, nationality, and address of applicant.
 - ✓ ***Comment: If the applicant is an individual, describe as “an individual”. For a partnership, give all of the names of the partners in full. For a corporate entity, indicate the type of entity and the country of incorporation. For an association, indicate the type of entity and state and country of formation.***
- Name and address of agent.
- Authority given to agent.
- Name of mark.

商标代理委托书 POWER OF ATTORNEY

我/我厂_____是_____国国籍、依_____国法律组成，现委托_____代理_____商标的如下“√”事宜。

I _____ a citizen of _____
We _____ a Limited Liability Company organized and existing under the laws of _____ hereby entrust _____ to act on behalf of me/us to apply in the People's Republic of China, in relation to my/our trademark _____ for the following matters (please tick).

- | | |
|--|--|
| <input type="checkbox"/> 商标注册申请 | <input type="checkbox"/> registration |
| <input type="checkbox"/> 商标异议申请 | <input type="checkbox"/> raising an opposition |
| <input type="checkbox"/> 变更商标申请人/注册人名义/地址申请 | <input type="checkbox"/> modification of name/address of applicant/registrant |
| <input type="checkbox"/> 删减商品/服务项目申请 | <input type="checkbox"/> addition or deletion of goods/services |
| <input type="checkbox"/> 变更商标代理人申请 | <input type="checkbox"/> change of trademark agency |
| <input type="checkbox"/> 更正商标申请/注册事项申请 | <input type="checkbox"/> amendment of application/registration items |
| <input type="checkbox"/> 转让申请/注册商标申请 | <input type="checkbox"/> assignment of application / registration |
| <input type="checkbox"/> 商标续展注册申请 | <input type="checkbox"/> renewal of registration |
| <input type="checkbox"/> 撤销连续三年停止使用注册商标申请 | <input type="checkbox"/> cancellation of registration for consecutive three years' non-use |
| <input type="checkbox"/> 商标注销申请 | <input type="checkbox"/> removal a trademark from the registry |
| <input type="checkbox"/> 注册人死亡/终止注销商标申请 | <input type="checkbox"/> removal a trademark from the registry because the registrant has died or been terminated. |
| <input type="checkbox"/> 补发变更/转让/续展证明申请 | <input type="checkbox"/> re-issuance of modification / assignment / renewal certificate |
| <input type="checkbox"/> 补发商标注册证申请 | <input type="checkbox"/> re-issuance of registration certificate |
| <input type="checkbox"/> 提供商标注册证明申请 | <input type="checkbox"/> applying for a certified document regarding registration |
| <input type="checkbox"/> 提供优先权证明文件申请 | <input type="checkbox"/> applying for priority document |
| <input type="checkbox"/> 商标使用许可合同备案申请 | <input type="checkbox"/> recording a license agreement |
| <input type="checkbox"/> 商标使用许可合同备案变更/提前终止申请 | <input type="checkbox"/> recording the amendment / termination before the expiry date of the license agreement |
| <input type="checkbox"/> 商标专用权质押登记申请 | <input type="checkbox"/> recording the pledge of a trademark registration |
| <input type="checkbox"/> 撤回商标注册申请申请 | <input type="checkbox"/> applying for withdrawal of pending application |
| <input type="checkbox"/> 撤回商标异议申请 | <input type="checkbox"/> applying for withdrawal of opposition |
| <input type="checkbox"/> 商标评审事宜 | <input type="checkbox"/> review and adjudication of trademark dispute |
| <input type="checkbox"/> 其他 | <input type="checkbox"/> others |

委托人

Name of Applicant _____

地址

Address _____

联系人

Authorized person _____

Date _____

签字(章戳)

Signature or Company Seal _____

年 月 日

Application for Trademark Registration Form TM-2

Use of Form

This form is submitted for the initial application to register a trademark.

Information Required

- Class of goods.

✓ ***Comment:*** A separate application is required for each class. The International Classification of Goods applies. In this Chapter: Appendix, International Classification of Goods.

- Description of goods.

✓ ***Comment:*** The list of goods should be sufficiently broad to cover the applicant's goods. If the specification includes all or a large variety of the goods in a class, registration may be refused unless the Registrar is satisfied that the specification is justified by the applicant's use or intended use of the trademark. All goods specified must be in a single class.

- Full name, address, description, and nationality of the applicant.

✓ ***Comment:*** If the applicant is an individual, describe as "an individual". For a partnership, list all of the names of the partners in full. For a corporate entity, indicate the type of entity and the country of incorporation.

- Full name and address of agent.

- Filing date, number, and country of initial registration if priority is claimed.

- Type of mark applied for—ordinary, collective or certification.

- A written description of the mark and its meaning.

- Whether the color of the mark is protected.

Attachments to Form

- Representations of mark.

✓ **Comment:** One representation of the mark must be affixed to Form TM-3. In addition, 5 representations must be attached. Applications for marks which incorporate colors must be accompanied by one black and white specimens of the mark and at least 5 color representations. The prints should be clear and easy to paste, and made of smooth and durable paper or photographs. Each specimen must be between 5cm and 10cm in length and width. Applications for three-dimensional trademarks shall be accompanied by the representation capable of defining the three-dimensional shape⁴⁶

- Government filing fee.

✓ **Comment:** Before submission, verify the amount of the fee and what type of payment instrument is acceptable.

- Authorization of agent (Power of Attorney).

- If priority date is claimed, copy of document proving priority filing in another Paris Convention country.

⁴⁶ Regulations, Rule 13.



Application for Trademark Registration

Applicant

(Chinese):

(English):

Nationality:

Address

(Chinese):

(English):

Trademark Possessed in Common: Yes No

Agency:

Trademark Category: normal collective certification
 3-D mark color

Description:

First-Filing Nation:

Filing Date:

Filing Number:

Class:

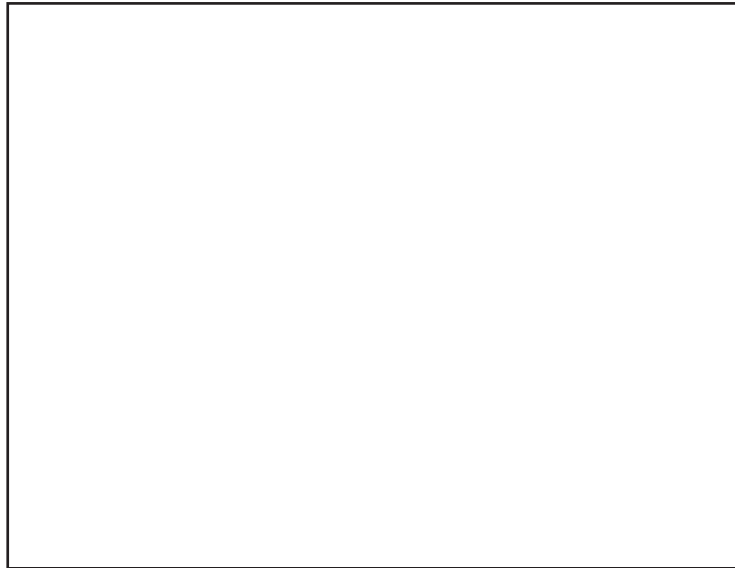
Designated Goods/Services:

Seal of applicant: (Signature)

Seal of Agency:

Signature of Agent:

STICK ONE TM SPECIMEN WITHIN THE SPACE AND ATTACH FIVE MORE COPIES. IF COLOR IS CLAIMED, FIVE SPECIMENS IN COLOR AND ONE IN BLACK & WHITE ARE REQUIRED.



Application for Trademark Registration

Applicant

(Chinese):

(English):

Nationality:

Address

(Chinese):

(English):

Trademark Possessed in Common: Yes No

Agency:

Trademark Category: normal collective certification
 3-D mark color

Description:

First-Filing Nation:

Filing Date:

Filing Number:

Class:

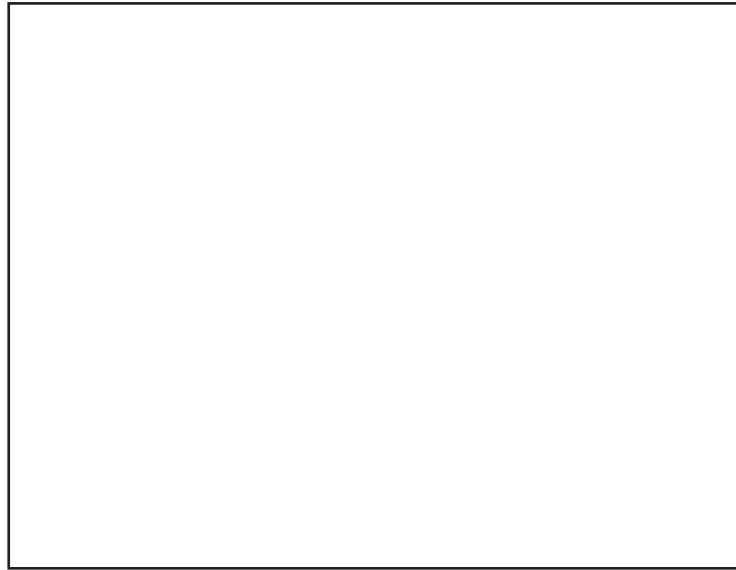
Designated Goods/Services:

Seal of applicant: (Signature)

Seal of Agency:

Signature of Agent:

STICK ONE TM SPECIMEN WITHIN THE SPACE AND ATTACH FIVE MORE COPIES. IF COLOR IS CLAIMED, FIVE SPECIMENS IN COLOR AND ONE IN BLACK & WHITE ARE REQUIRED.



POST-REGISTRATION

Renewal of Registration

Duration of Protection

The initial registration is effective for ten years from the date of the application for registration. Each renewal is effective for 10 years from the expiration of the last registration.⁴⁷

Renewal Before Expiration

Renewal applications must be made through an authorized agent within six months before the expiration date. Renewals will be published after they are accepted.⁴⁸

Renewal After Expiration

Where no application for renewal has been filed within six months prior to expiration of a registration, a grace period of six months may be allowed. If no application has been filed at the expiration of the grace period, that registered trademark will be canceled.⁴⁹

Reinstatement

When a registered trademark has been canceled the Trademark Office will approve no application for the registration of a trademark that is identical or similar to the trademark for a period of one year, during which time the owner may submit application materials to re-register the trademark.⁵⁰

Alteration or Modification

To Trademark Application or Registration Documents

If the applicant or registrant discovers any obvious mistakes in the trademark application or registration documents, the Trademark Office may make corresponding corrections within its limits of functions and powers upon the request from the applicant or registrant.⁵¹

✓ ***Comment:*** Here, the mistakes to be modified do not refer to the essential contents in such application documents or registration documents. There should be further clarifications or definitions on

47 Trademark Law, Art. 37.

48 Trademark Law, Art. 38.

49 Trademark Law, Art. 38.

50 Trademark Law, Art. 46.

51 Trademark Law, Art. 36.

this. Also, it should be noted that mistakes in the registration documents may also refer to mistakes made by the Trademark Office.

To Trademark

Once the application has been submitted, no modification of the mark is granted, unless the applicant is responding to a request of the Trademark Office. Where any word or device of a registered trademark is to be altered, a new application must be filed.⁵²

To Goods or Services

In case of a deletion or subtraction of the goods or services to which the mark applies, modifications may be made by filing modification applications after the original applications have been registered. If new goods or services will be added to the application, however, a new application must be filed.⁵³

To Name, Address or Other Registered Matters

When applying for modification of a name, address or any other matters relating to a trademark registration, the registrant must send an Application for Modification and a proof of the modification to the Trademark Office. The Trademark Office will examine the request and, if approved, will issue a corresponding certification to the trademark owner. The approved modification will be published.⁵⁴

Cancellation

Registration of a trademark may be canceled for the following reasons:

Non-use

The Trademark Office or any interested party may request the cancellation of a registered trademark if it has not been used for three consecutive years. The request for cancellation may be limited to a part of the goods covered by a registration.⁵⁵

Non-registrable

The Trademark Office will cancel registration if the trademark is prohibited from registration by law because it is deceptive, generic, or descriptive or otherwise contains prohibited signs or references.⁵⁶

52 Trademark Law, Art. 22.

53 Trademark Law, Art. 21.

54 Trademark Law, Art. 23; Regulations, Rule 24.

55 Trademark Law, Art. 44.

56 Trademark Law, Arts. 10, 11, 12 and 41.

Fraud

Any party may request the cancellation of a trademark acquired by fraud or any other unfair means.⁵⁷

Disputed Trademark

Any person disputing a registered trademark may, within five years from the date of approval of the trademark registration, apply to the Trademark Review and Adjudication Board for adjudication of the dispute. Where a trademark, before being approved for registration has been the object of opposition and decision, however, no application for adjudication may be filed based on the same set of facts and grounds.⁵⁸

Well-known Marks

If the trademark registered is a reproduction, imitation, or translation of a well-known mark in another country which has not been registered in China, the well-known mark owner or any other interested party may, within five years from the date of approval of the trademark registration, apply to the Trademark Review and Adjudication Board for cancellation. If the trademark was registered in bad faith, the 5-year time limit does not apply to the well-known mark owner.⁵⁹

Prior Rights

If the trademark registered may jeopardize the earlier rights of others and has been registered by illegal means, the right owner or other interested party may, within five years, apply to the Trademark Review and Adjudication Board for cancellation.⁶⁰

Geographical Indication

If the registered trademark includes geographical indication, but the goods bearing the trademark are not originally from that area and thus causing confusion to the public, the right owner or other interested party may, within five years, apply to the Trademark Review and Adjudication Board for cancellation.⁶¹

Unauthorized Registration

If the registered trademark is registered by the agents or representatives of principals without authorization, the right owner or other interested party may, within five years, apply to the Trademark Review and Adjudication Board for cancellation.⁶²

57 Trademark Law, Art. 41.

58 Trademark Law, Arts. 41 and 42.

59 Trademark Law, Art. 41.

60 Trademark Law, Art. 41.

61 Trademark Law, Art. 41.

62 Trademark Law, Art. 41.

Cancellation by Owner

The registered owner of a trademark may file an Application for Trademark Removal with the Trademark Office to have his trademark removed from the register. The original Certificate of Trademark Registration must be returned with the application. Where a registered trademark is removed the Trademark Office will publish the removal in the Trademark Gazette, and from the date of announcement of the removal there will be no further existence of the exclusive right to use the trademark.⁶³

Assignments**Right to Assign**

A trademark owner may assign a registered trademark, in which case both the assignor and assignee must enter into a trademark assignment agreement and jointly file an Application for Assignment with the Trademark Office. The registrant must assign all its identical or similar registered trademarks to only one party with respect to identical or similar goods or services. Where an attempted assignment of a registered trademark may mislead the public, cause confusion, or exert any other unhealthy influences, the Trademark Office will not grant its approval. An application which has not yet been approved for registration may not be assigned.⁶⁴

Legal Documents

The following documents must be filed with the Trademark Office before an assignment is valid:

- The assignment agreement jointly signed by both the assignor and the assignee;
- An assignment application jointly signed by both the assignor and assignee;
- A duly executed Power of Attorney signed by the assignee;
- A copy of the Certificate of Registration of the trademark;
- Evaluation reports in the case of publicly acknowledged trademarks.⁶⁵

Registration of Assignment

An assignment will not be valid unless both the assignor and assignee apply jointly to the Trademark Office, and the application for assignment is approved and registered.⁶⁶

63 Regulations, Rule 46.

64 Trademark Law, Art. 39; Regulations, Rule 25, 26.

65 Trademark Law, Art. 39; Regulations, Rule 25, 26.

66 Trademark Law, Art. 39; Regulations, Rule 25, 26.

Licenses or Registered Use

Right to Grant Use

Any trademark registrant, may, by signing a trademark license contract, authorize other persons to use the registered trademark. The licensor must supervise and the licensee must guarantee the quality of the goods to which the licensed trademark will apply. Where any party is authorized to use a registered trademark of another person, the name of the licensee and the origin of the goods must be indicated on the goods that bear the registered trademark.⁶⁷

Recordation

The trademark license contract must be submitted to the Trademark Office for recording. Both the licensor and the licensee must, within three months from the trademark license date, submit the license agreement for recording.⁶⁸

⁶⁷ Trademark Law, Art. 40.

⁶⁸ Trademark Law, Art. 40.

POST-REGISTRATION DOCUMENTS

- | | |
|-------------|--|
| Form TM-11 | Application For Assignment of a Pending/Registered Trademark |
| Form No. 09 | Application for Renewal of Trademark Registration |
| Form No. 04 | Application For Change Of The Name/Address of Trademark Applicant/Registrant |

Application for Assignment of a Pending/Registered Trade Mark Form Form TM-11

Use of Form

This form is submitted jointly by the assignor and assignee, along with the assignment document, for registering the assignment of a trademark.

Information Required

- Filing date and number will be provided by the Trademark Office.
- Description or rendering of the assigned marks (may be attached to form)
- Registration number of the assigned mark, and the designated classification of the goods and/or services to which the mark is applied.
- Full name and business address, in both foreign language (if applicable) and in Chinese of both the assignor and assignee.
- Signatures of both the assignor and assignee.
- Full name, business address and telephone number of agent.

Attachments to Form

- Representations of mark (if unable to describe or render on the form).
- The document of assignment, containing the signatures of both the assignor and assignee.
- Government filing fee.

✓ ***Comment:*** Before submission, verify the amount of the fee and what type of payment instrument is acceptable.

CHINA

POST-REGISTRATION

Application for Assignment of a Pending/Registered Trademark

Ref. No.: TM-08

Assignor

(Chinese):

(English):

Address

(Chinese):

(English):

Assignee

(Chinese):

(English):

Address

(Chinese):

(English):

Common Mark: Yes No

Postcode:

Contact Person:

Telephone:

Facsimile:

Agency:

Appl./Reg. No.:

Class:

Signature of Assignor:

Seal of Agency:

Signature of Assignee:

Signature of Agent:

CHI-36

TRADEMARK PRACTICE & FORMS

Application for Renewal of Trademark Registration Form No. 09

Use of Form

This form is submitted by the registered owner or his agent, prior to expiration of the current registration, for purposes of renewing the trademark registration.

Information Required

- Filing date and number will be provided by the Trademark Office.
- The classification number of the designated goods and services in respect of which the applicant seeks renewal.
- Complete description of each good and/or service to be renewed, the specific use of the goods, the materials involved and the previous registration number applicable to each.
- Description or rendering of the mark.
- Registration number.
- Expiration date of current registration.
- Nationality of applicant.
- Full name and business address, in both foreign language (if applicable) and in Chinese of applicant.
- Signatures of applicant.
- Full name, business address and telephone number of agent.
- All disclaimers (if any) of the exclusive right to any portion of the mark.

Attachments to Form

- Representations of mark must be affixed to application, and an additional 10 representations must be attached.
- Government filing fee.

✓ **Comment: Before submission, verify the amount of the fee and what type of payment instrument is acceptable.**

CHINA

POST-REGISTRATION

Application for Renewal of Registered Trademark

Applicant :

Address :

Postcode :

Contact Person :

Tel :

Fax :

Agency :

Reg. No. :

Class :

Seal of Applicant (Signature):

Seal of Agency:

Signature of Agent:

CHI-38

TRADEMARK PRACTICE & FORMS

Application for Change of the Name/Address of Trademark Applicant/Registrant Form No. 04

Use of Form

This form is submitted to register a change of address of the holder of a trademark.

Information Required

- New and old business address of registrant.
- Description and/or rendering of the trademark.
- Trademark registration number.

Attachments to Form

- Government filing fee.
 - ✓ ***Comment:*** Before submission, verify the amount of the fee and what type of payment instrument is acceptable.

Application for Change of the Name/Address of Trademark Applicant/Registrant

Applicant

(Chinese):

(English):

Address

(Chinese):

(English):

Common Mark: Yes No

Postcode:

Contact Person:

Tel:

Fax:

Agency:

Appl./Reg. No.:

Class:

Previous Name of Applicant:

Previous Address:

Seal of Applicant (Signature):

Seal of Agency:

Signature of Agent:

RESOURCES**GOVERNMENT OFFICES**

Trademark Office of State Administration for Industry and Commerce
State Administration for Industry and Commerce
8 Sanlihe Donglu
Xicheng District
Beijing, 100820
Tel: (86 10) 68032233

Customs General Administration
Building East
6 Jianguomen Nei Dajie
Beijing 100730
Tel: (86 10) 6519 4114

China Council for the Promotion of International Trade
China Chamber of International Commerce
1 Fuxingmen Wai Dajie
Beijing 100860
Tel: (86 10) 68034830
Fax: (86 10) 68030747, 68011370
Email: info@ccpit.org

PUBLICATIONS

Trademark Gazette

WEBSITES

The official website of the Trademark Office
<http://www.tmo.gov.cn/default.htm>

State Administration for Commerce and Industry
<http://www.saic.gov.cn>

Customs General Administration
<http://www.customs.gov.cn>

China Chamber of International Commerce
<http://www.ccpit.org>

Law firm & Trademark Agent—Lehman, Lee & Xu
<http://www.lehmanlaw.com>



