

## **Provisions on Recognition and Protection of Famous Trademarks**

*(Promulgated on 17 April 2003 via the Decree of the State Administration for Industry and Commerce No. 5, and revised on 3 July 2014 pursuant to the Decree of the State Administration for Industry and Commerce No. 66)*

**Article 1** These Provisions are formulated pursuant to the Trademark Law of the People's Republic of China (hereinafter referred to as the "Trademark Law"), the Implementation Regulations for the Trademark Law of the People's Republic of China (hereinafter referred to as the "Trademark Law Implementation Regulations") for the purposes of standardizing recognition of famous trademarks, protecting the legitimate rights and interests of holders of famous trademarks.

**Article 2** Famous trademarks are trademarks well-known in China among the relevant public.

The relevant public shall include consumers of certain commodities or services bearing the said trademark, business operators who manufacture the aforesaid commodities or provide the said services and sales persons and the relevant personnel involved in the distribution channels.

**Article 3** The Trademark Bureau and the Trademark Review and Adjudication Board shall be responsible for recognition and protection of famous trademarks pursuant to the request of a party concerned and the requirements for examination and handling of cases during the process of examination of trademark registration and handling of trademark disputes and investigation of trademark violation cases by the administration for industry and commerce.

**Article 4** Recognition of famous trademarks shall adhere to the principles of case-by-case recognition and passive protection.

**Article 5** Where a party concerned makes a trademark opposition to the Trademark Bureau pursuant to the provisions of Article 33 of the Trademark Law and requests for protection of famous trademark pursuant to the provisions of Article 13 of the Trademark Law, it may

submit a written request to the Trademark Bureau for protection of famous trademark and submit evidence to prove that the said trademark is a famous trademark.

**Article 6** In a review case for non-registration of trademark and request for invalidation of trademark, where a party concerned requests for protection of famous trademark pursuant to the provisions of Article 13 of the Trademark Law, it may submit a written request to the Trademark Review and Adjudication Board for protection of famous trademark and submit evidence to prove that the said trademark is a famous trademark.

**Article 7** Trademark violation cases which involve protection of famous trademark shall be governed by the administration for industry and commerce of municipal (prefectural) level and above. Where a party concerned requests for investigation of a trademark violation by the administration for industry and commerce and requests for protection of famous trademark pursuant to the provisions of Article 13 of the Trademark Law, it may lodge a complaint with the administration for industry and commerce of municipal (prefectural) level and above at the location where the illegal act occurs, submit a written request for protection of famous trademark, and submit evidence to prove that the trademark is a famous trademark.

**Article 8** A party concerned who requests for protection of famous trademark shall adhere to the principle of good faith and be responsible for the veracity of the facts and the evidence submitted.

**Article 9** The following materials may be used as evidence to prove compliance with the provisions of the first paragraph of Article 14 of the Trademark Law:

(1) proof that the said trademark is well-known among the relevant public.

(2) proof of the duration of continued use of the said trademark, e.g. proof of history and scope of use and registration of the said trademark. Where the said trademark is not a registered trademark, proof that the duration of continued use is not less than five years shall be submitted. Where the said trademark is a registered trademark, proof that the trademark has been registered for three years or longer or the duration of continued use is not less than five years shall be submitted.

(3) proof of duration, extent and geographical scope of any publicity work for the said trademark, e.g. methods, geographical scope, type of media and spending on advertising and promotion for the past three years.

(4) proof that the said trademark has been protected as a famous trademark in China or any other country or region.

(5) any other evidence to prove that the said trademark is famous, e.g.

sales revenue, market share, net profits, tax amount, sales regions etc. for the past three years of the main commodities bearing the said trademark.

"Three years", "five years" referred to in the preceding paragraph shall mean the three-year period or five-year period preceding the date of application for trademark registration of the trademark for which opposition is made, the date of application for trademark registration of the trademark for which a request for invalidation is made, and the three-year period or five-year period preceding the date of request for protection of famous trademark made in the investigation of trademark violation cases.

**Article 10** Where a party concerned submits a request for protection of famous trademark pursuant to Article 5 and Article 6 of these Provisions, the Trademark Bureau and the Trademark Review and Adjudication Board shall process the request promptly within the timeframe stipulated in Article 35, Article 37 and Article 45 of the Trademark Law.

**Article 11** Where a party concerned submits a request pursuant to Article 7 of these Provisions for the administration for industry and commerce to investigate a trademark violation, the administration for industry and commerce shall examine the complaint materials, and decide whether to set up a case pursuant to the relevant provisions of the Provisions and Procedures on Administrative Punishment by Administration for Industry and Commerce. Where a case is set up, the administration for industry and commerce shall carry out preliminary verification and examination of the request for protection of famous trademark submitted by the party concerned and whether the evidence complies with the provisions of Article 13 and Article 14 of the Trademark Law, Article 3 of the Trademark Law Implementation Regulations and Article 9 of these Provisions. Where the preliminary examination concludes that the evidence complies with the provisions, the request for recognition of famous trademark and duplicate copy of the case materials shall be submitted to the higher-level administration for industry and commerce within 30 days from the date on which the case is set up. Where the examination concludes that the evidence does not comply with the provisions, the request shall be dealt with pursuant to the provisions of the Procedures on Administrative Punishment by Administration for Industry and Commerce.

**Article 12** The administration for industry and commerce of the province (autonomous region or centrally-administered municipality) shall verify and examine whether the materials for recognition of famous trademark submitted by the administration for industry and commerce of municipal (prefectural) level within their jurisdiction comply with the provisions of Article 13 and Article 14 of the Trademark Law, Article 3 of the Trademark Law Implementation Regulations and Article 9 of these Provisions. Where the examination concludes that the materials comply with the provisions, the request for recognition of famous trademark and duplicate copy of the case materials shall be submitted to the Trademark Bureau within 30 days from receipt of the relevant materials for recognition of famous trademark. Where the examination concludes that the materials do not comply with the provisions, the relevant materials shall be returned to the authorities which set up the case to be handled by the latter promptly pursuant to the provisions of the Procedures on Administrative Punishment by Administration for Industry and Commerce.

**Article 13** During the recognition of famous trademark, the Trademark Bureau and the Trademark Review and Adjudication Board shall take into account all the factors set out in the first paragraph of Article 14 of the Trademark Law and Article 9 of these Provisions, subject to the prerequisite that it is not necessary to satisfy all the factors.

During the recognition of famous trademark, where the Trademark Bureau and the Trademark Review and Adjudication Board require the local administration for industry and

commerce to verify the relevant information, the relevant local administration for industry and commerce shall render assistance.

**Article 14** Upon examination of the relevant materials for recognition of famous trademark submitted by the administration for industry and commerce of the province (autonomous region or centrally-administered municipality, where the Trademark Bureau recognizes the trademark as a famous trademark, it shall issue an approval reply to the administration for industry and commerce of the province autonomous region or centrally-administered municipality).

The administration for industry and commerce which sets up the case shall handle the matter pursuant to the law within 60 days from issuance of approval reply by the Trademark Bureau, and forward a copy of the letter of administrative punishment decision to the administration for industry and commerce of the province (autonomous region or centrally-administered municipality) at the locality. The administration for industry and commerce of the province (autonomous region or centrally-administered municipality) shall forward the duplicate copy of the letter of administrative punishment decision to the Trademark Bureau within 30 days from receipt of the copy of the letter of administrative punishment decision.

**Article 15** All levels of administration for industry and commerce shall strengthen protection of famous trademarks, safeguard the legitimate rights and interests of the rights holders and consumers in their trademark registration and administration work. Where a trademark violation constitutes a criminal offence, the case shall be promptly forwarded to the judicial authorities.

**Article 16** During the process of examination of trademark registration, handling of trademark disputes and investigation of trademark violation cases by the administration for industry and commerce, where a party concerned requests for protection of famous trademark pursuant to the provisions of Article 13 of the Trademark Law, it may provide records which prove that the said trademark has been protected as a famous trademark in China.

Where the scope of request for protection of famous trademark is basically the same as the scope of protection of famous trademarks, and the counterparty does not oppose against the assertion that the said trademark is famous, or where the counterparty opposes but the reason for opposition and the evidence provided are inadequate to support its opposition, the Trademark Bureau, the Trademark Review and Adjudication Board and the authorities which set up the trademark violation case may grant protection of famous trademark for the said trademark based on the protection records and taking into account the relevant evidence.

**Article 17** In a trademark violation case, where a party concerned sought protection of famous trademark through improper means such as fraud or provision of false evidence etc., the Trademark Bureau shall revoke the recognition for the said trademark, and notify the administration for industry and commerce of the province (autonomous region or centrally-administered municipality) which submits the request for recognition of famous trademark.

**Article 18** Where the local administration for industry and commerce violates

**Article 11** and Article 12 of these Provisions in failure to perform verification and examination of the relevant materials for recognition of famous trademark, or violates the second paragraph of Article 13 of these Provisions in failure to render assistance or perform verification, or violates the second paragraph of Article 14 of these Provisions in failure to handle the trademark violation case within the stipulated period or failure to submit information on handling of the case within the stipulated period, the higher-level administration for industry and commerce shall circulate a notice and order the local administration for industry and commerce to make correction.

**Article 19** All levels of administration for industry and commerce shall establish and improve upon the supervision and inspection system for recognition of famous trademarks.

**Article 20** Personnel participating in recognition and protection of famous trademarks guilty of dereliction of duties, abusing official powers, corruption, illegal handling of recognition of famous trademarks, collection of monies from the parties concerned, seeking improper gains shall be dealt with pursuant to the relevant provisions.

**Article 21** These Provisions shall be effective 30 days after the date of promulgation. The Regulations on Verification and Protection of Famous Trademarks promulgated by the State Administration for Industry and Commerce on 17 April 2003 shall be repealed simultaneously.