AFD China
INTELLECTUAL PROPERTY LAW OFFICE

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China Released New Trademark Law – Effective 1 January 2027

On 26 June 2026, the legislative body of China formally passed and released the revised Trademark Law, which is scheduled to enter into force on 1 January 2027.

The revision introduces several significant changes to the existing legal framework. A new chapter specifically dedicated to the conditions for trademark registration has been incorporated, bringing together and refining provisions previously dispersed across various sections of the law. Under the revised framework, applications filed without a bona fide intention to use the mark and which manifestly exceed ordinary business requirements will be refused. The revised law also explicitly excludes from registration and use any signs that are identical or similar to official emblems, flags, medals, and other symbolic elements associated with the state's foundational institutions, major theoretical achievements, or significant historical events.

In terms of enforcement, where a registered trademark is used in a manner liable to mislead the public, the competent enforcement authorities may issue a corrective order. Financial penalties may be imposed at up to five times the illegal turnover where such turnover exceeds CNY 50,000, or up to CNY 250,000 where the turnover does not reach that threshold. Any entity or individual is entitled to file complaints or reports regarding such misconduct with the relevant administrative or enforcement bodies.

The revised law further strengthens protection for brand owners in cross-border contexts. In the course of overseas trademark examination or dispute resolution, where it becomes necessary to establish that a mark is well known among the relevant public within China, the national trademark authority may, upon request of the interested party, issue a formal confirmation of the mark's well-known status in accordance with applicable regulations.

In the Supplementary Issue section, you will find an ongoing series of in-depth analysis of the revised Trademark Law and its practical implications provided by AFD.

Supreme People's Procuratorate (SPP) to crack Whip on Malicious IP Lawsuits

China's judicial authorities are stepping up efforts to punish and prevent malicious intellectual property lawsuits, warning that some parties abuse IP litigation to seek improper gains, suppress competition and disrupt market order.

The SPP recently released five typical cases involving malicious IP lawsuits, covering utility model patents, design patents, trademarks and unfair competition. The Supreme People's Court (SPC) has also released related cases to guide parties to litigate in good faith.

The SPP said malicious IP lawsuits are often filed in the name of protecting rights but are actually intended to generate profits or gain an unfair competitive advantage. Such lawsuits harm the lawful rights of others, waste judicial resources, disrupt judicial order and undermine judicial authority.

An official with the SPP's intellectual property procuratorial department said procuratorates have intensified special supervision over related lawsuits in recent years.

The latest cases provide guidance on identifying clues, initiating legal procedures, conducting investigations and carrying out follow-up supervision.

In one case, a machinery technology company based in Wuxi, Jiangsu province, was sued by an intelligent equipment company from Foshan, Guangdong province, over a utility model patent for a mixing device.

The two companies produced similar products, held similar patents and had competed in several projects.

In January 2023, the Foshan company filed a patent infringement lawsuit seeking 23 million yuan ($3.38 million) in damages.

The lawsuit was filed shortly after the Wuxi company's listing application had been accepted, forcing the suspension of the listing process.

The Wuxi procuratorate found that the patent lacked a stable legal basis after the National Intellectual Property Administration concluded that all of its claims failed to meet patent authorization requirements.

Prosecutors also determined that no infringement had occurred because the Wuxi company had commissioned production of the same type of product before the patent application was filed.

The court rejected the Foshan company's claims, ordered it to pay 400,000 yuan in reasonable expenses and publish a public statement. The top court upheld the ruling in June 2024.

The SPP said procuratorates should adopt a substantive review approach when handling malicious litigation supervision cases by examining whether the IP rights have a stable legal basis, whether infringement occurred and whether the plaintiff knew of possible defects in its rights.

Prosecutors should also assess the plaintiff's litigation motive and the timing of the lawsuit.

The SPP said maliciously registering and stockpiling trademarks before suing legitimate trademark owners for compensation is a common form of malicious IP litigation.

In another case, a listed high-tech company had used the Chinese characters "Changgao" as its trade name since 1998 and had registered related trademarks for electrical equipment since 2006.

In 2022, a digital technology company applied to register 12 trademarks containing "Changgao Dianxin" across multiple categories. It later used the trademarks as intellectual property contributions to establish an international trading company.

The two companies then filed a 10-million-yuan lawsuit against the listed company in Changsha, Hunan province, alleging trademark infringement and unfair competition.

The Changsha procuratorate found that the trademarks had been registered in bad faith rather than for genuine commercial use. The two companies filed the lawsuit despite knowing their legal basis was defective, with the aim of obtaining improper gains.

The Changsha Intermediate People's Court dismissed the case in December 2023 and fined the two companies 100,000 yuan in total for malicious litigation.

The Hunan High People's Court later upheld the decision. Through coordination among prosecutors, courts and intellectual property authorities, 72 registered trademarks held by the companies and their affiliates were invalidated.

The SPP said parties that knowingly file lawsuits for improper benefits based on trademarks registered in bad faith should be deemed to have engaged in malicious litigation.

It also said prosecutors should supervise cases in which IP holders conceal key facts, such as patent invalidation, and continue litigation despite knowing the legal basis for their claims no longer exists.

For pending IP cases, if prosecutors discover evidence of malicious litigation, they may transfer relevant information to the courts and remind judges to identify abnormal circumstances and punish bad-faith lawsuits in accordance with the law, the SPP said.

https://chinaipr.mofcom.gov.cn/article/centralgovernment/202606/1996730.html

Beijing Court to Hear LV's Case against China's IP Authority

A trademark case initiated by French luxury giant Louis Vuitton will be heard by the Beijing Intellectual Property Court (IPC) on Thursday, according to a disclosed notice.

The lawsuit is against the China National Intellectual Property Administration (CNIPA), with Huang Minyao named as a third party involved in the litigation. No further details were released.

The trial information has been made public on The People's Court Announcement, a website established by the SPC, China's top court, in 2024 to provide access to court hearing schedules, enforcement messages, and published rulings.

Louis Vuitton has become a hot topic on Chinese social media following a legal clash with a domestic milk tea brand. Chinese media reported that the Suzhou Intermediate People's Court in Jiangsu found that Molly Tea, along with one of its franchise outlets in Suzhou's Wuzhong district, had violated Louis Vuitton's registered four-petal flower trademarks. The court ruled that the Chinese company should stop the infringement, apologize publicly, and pay the French luxury brand 10.3 million yuan ($1.5 million).

The notice on the court's official website does not specify whether the upcoming case proceeding is related to the milk tea chain.

According to Beijing Daily, Huang Minyao, a garment trader from Shantou, Guangdong, who is associated with two now-dissolved garment manufacturing companies, registered trademarks similar to four-petal flower marks at the CNIPA.

After the registration, Louis Vuitton filed an opposition with the administration. The authority issued a ruling that did not uphold LV's claims, and LV, dissatisfied with the decision, brought proceedings before the Beijing IPC, Beijing Daily said.

It noted that the dispute focuses on whether the administrative ruling is legal, with Huang participating in the proceedings as a third-party intervenor.

https://chinaipr.mofcom.gov.cn/article/regionalnews/202607/1996944.html

Popular Tea Chain fined $1.5m for Trademark Infringement

A dispute between a popular Chinese milk tea chain and a French luxury giant has sparked widespread public discussion on intellectual property protection and the application of cultural elements, with experts calling for a rational approach and emphasizing that trademark use should not infringe on pre-existing registered marks.

On Thursday, Chinese media reported that the Suzhou Intermediate People's Court in Jiangsu province found that Molly Tea, a Shenzhen-based milk tea company, and a franchise store in Suzhou's Wuzhong district, had infringed upon seven of Louis Vuitton's registered four-petal flower graphic trademarks.

The court ordered the milk tea chain to cease the infringement and pay 10.3 million yuan ($1.5 million) to the French luxury brand. Additionally, the Chinese company was required to issue a public apology, according to reports.

Nanfang Metropolis Daily, a newspaper based in Guangzhou, Guangdong province, revealed that the dispute revolves around the similarity between Molly Tea's brand emblem — a four-petal flower design — and Louis Vuitton's iconic monogram motifs. The lawsuit was initiated by the French brand in May 2025, and the ruling was made on June 29. Molly Tea has confirmed its intention to appeal to a higher court.

Since March 2024, Molly Tea and its affiliated firms have filed multiple trademark applications featuring floral designs with the CNIPA, primarily covering restaurant and accommodation services, advertising, and convenience foods. Most of these applications were rejected, with only the trademark containing the Chinese characters for "Molly Tea" successfully registered.

The verdict has attracted significant public attention and debate on Chinese social media platforms since it was exposed. A hashtag "Louis Vuitton sues Molly Tea for 10.3 million yuan in damages" has garnered over 360 million views, while the topic "Molly Tea's LV-like trademark invalidated" has received more than 18.7 million reads.

Opinions online are divided. Some argue that the tea brand's floral emblem closely mimics that of the French luxury giant, while others believe there are significant visual differences and that the two companies serve distinct markets. Furthermore, some netizens have questioned the originality of Louis Vuitton's signature pattern, suggesting it may have been inspired by traditional Chinese cultural motifs.

Kang Lixia, a partner at a Beijing IP Firm, noted that either party dissatisfied with the ruling has the right to appeal. The success of an appeal largely depends on whether the appellant can provide sufficient evidence to demonstrate that its design is original and distinctive.

She emphasized that floral patterns and motifs found in traditional Chinese culture are part of the public cultural domain and can be used by anyone. However, the Chinese Trademark Law follows the "first to file" principle, meaning that when multiple applicants seek to register identical or similar trademarks for the same or similar goods, the earliest applicant gains trademark rights, while subsequent applications are rejected.

"Although Molly Tea and Louis Vuitton are registered in different classes, LV's status as an earlier-registered and highly recognized mark entitles it to cross-class protection under the law," she added. "This means its rights can, in some cases, extend to unrelated product categories, creating a challenge for later applicants."

Liu Bin, an IP lawyer, called for a rational perspective on the dispute, highlighting that under the law, protection for figurative marks does not require the disputed sign to be identical to the registered trademark — the key consideration is whether consumers are likely to be confused.

He noted that the public is primarily puzzled over how traditional Chinese cultural patterns should be protected and used fairly. "Since these motifs are public resources, many believe no one should have exclusive rights to them," he said. However, he underscored that IP protection applies to the brand recognition that companies build when they use traditional elements in commerce.

"Traditional elements should remain open and be carried forward, but commercial marks must not confuse the market or mimic earlier registered brands," he added.

https://chinaipr.mofcom.gov.cn/article/regionalnews/202607/1996879.html

Artificial Intelligence (AI) Governance calls for Effective Legislation

China has developed a toolkit of AI governance mechanisms by regulating social media, online gaming, e-commerce and other digital sectors. This has enabled the country to establish an effective legislative approach that is suited to the fast-moving nature of AI.

The approach is marked by China first introducing targeted, sector-specific regulations to address concrete issues, and moving toward a comprehensive national AI law once the necessary conditions are in place.

AI technologies are applied across highly diverse industries with vastly different risk profiles and regulatory needs. Sector-specific legislation therefore provides more precise institutional solutions, avoiding the excessive generality that often accompanies comprehensive legislation. Judicial practice, local legislation and regulatory pilot programs can generate valuable experience and institutional models, laying a solid foundation for future national legislation.

At the moment, legislative priorities should focus on removing institutional barriers that constrain AI development within the existing framework of sectoral legislation, while addressing critical gaps in areas such as data circulation, intellectual property adaptation and the allocation of legal liability.

Over the next three to five years, China's AI legal framework should concentrate on several key priorities. First, it should facilitate the efficient circulation of essential production factors, including data, algorithms and computing power, while establishing clear rules governing the lawful use of training data, data ownership, data transactions and benefit-sharing mechanisms.

Second, China should further improve mechanisms governing algorithm registration, transparency requirements and security assessments, and, when appropriate, elevate these rules from administrative regulations to higher-level legislation in order to strengthen their legal authority and enforceability.

Third, the legal framework should clearly define the responsibilities of AI developers, service providers and users, while improving mechanisms for liability allocation, infringement remedies and dispute resolution to better protect the legitimate rights and interests of individuals and legal entities.

Fourth, efforts should be made to better link AI legislation with the evolving global AI governance architecture. While safeguarding national security, China can deepen international collaboration and contribute Chinese wisdom and solutions to global AI governance.

The agenda framework should guide or require all stakeholders across the AI sector to give due consideration to fundamental social values and the protection of public rights and interests.

At the same time, AI legislation must strike an appropriate balance between stability and flexibility. While establishing clear safety red lines, the legislation should leave adequate room for technological experimentation and industrial innovation. While providing transparent compliance pathways covering data governance, algorithmic models and AI applications, complementary social protection mechanisms should be strengthened to sustain public trust and confidence in AI technologies and their development.

China should deepen its global cooperation in AI research, application and governance, while continuing to build a comprehensive and pragmatic legal and regulatory framework.

https://chinaipr.mofcom.gov.cn/article/centralgovernment/202607/1996882.html

2026 IP5 Heads of Office and IP5 Industry Meetings Held

The 2026 IP5 Heads of Office Meeting and the Meeting of the IP5 Heads of Office with IP5 Industry were recently held, with a delegation led by Zhang Zhicheng, Deputy Commissioner of the CNIPA, attending the meetings online.

During the IP5 Heads of Office Meeting, the IP5 Offices exchanged views on enhancing the application of AI technologies and the role of the IP5 Offices in the AI era. The participants also reviewed the progress in cooperation projects, adopted the Joint Statement of the IP5 Offices and the new vision of IP5 cooperation, and reached preliminary consensus on updating the roadmap for new emerging technologies and AI.

At the Meeting of the IP5 Heads of Office with IP5 Industry, the IP5 Offices briefed industry representatives on the progress of various cooperation projects. Participants held in-depth discussions on efforts toward advanced and reliable intellectual property systems by utilizing AI technologies. The IP5 Offices shared updates on their recent work in the field of AI, gained a deeper understanding of industry needs regarding AI-related IP work, and agreed to continue constructive cooperation.

https://english.cnipa.gov.cn/art/2026/6/30/art_1340_206974.html

SUPPLEMENTARY ISSUE

Understanding the 2026 Revisions to China's Trademark Law (Part I): Protection and Limits of Trademark Rights

The current Trademark Law (fourth revision in 2019) contains 73 articles across 8 chapters. On December 22, 2025, the draft revision of the Trademark Law (exposure draft) was submitted for first review to the Standing Committee of the National People's Congress (NPCSC). On December 27, 2025, the National People's Congress (NPC) published the reviewed Trademark Law of the People's Republic of China (Revision Draft), consisting of 84 articles across 9 chapters. On June 26, 2026, the 23rd session of the 14th NPCSC voted to adopt the newly revised Trademark Law of the People's Republic of China, which contains 87 articles across 9 chapters and will take effect on January 1, 2027.

We will share our insights on the key changes and new provisions introduced by the 2026 revision of the Trademark Law through a series of articles, covering topics such as the prohibition of rights abuse, conditions for trademark registration, circumstances and penalties for bad-faith filings, opposition periods and statutory grounds, and protection of well-known trademarks.

As a cornerstone of intellectual property rights, trademark rights serve to maintain orderly market competition, yet they also carry the risk of abuse. China's trademark legal framework establishes a dynamic balancing mechanism through multiple provisions, ensuring both robust protection for trademark owners and safeguards against rights exercised in ways that overstep boundaries, whether by harming public interests or infringing upon the lawful rights of others. This article provides a brief overview of how the newly revised Trademark Law constructs institutions that both protect exclusive trademark rights and prevent their abuse.

I. Rights Protection: The Legitimate Foundation for Exercising Trademark Rights

The core value of trademark rights lies in granting the owner exclusive rights to use a registered mark for distinguishing goods or services. The law provides stable institutional safeguards by defining the scope of rights and available remedies.

The Trademark Law (2026 Revision) adds Article 2(1), which defines "trademark" as "a mark capable of distinguishing the source of goods or services, including goods marks and service marks." Article 2(3) is also added, clarifying that "use of a trademark includes use through the internet and other information networks."

Article 72 of the Trademark Law (2026 Revision) remains unchanged from Article 57 of the current law, enumerating specific acts that infringe upon the exclusive right to use a registered trademark. Articles 74 through 80 of the Trademark Law (2026 Revision) further refine the provisions on dispute resolution and civil liability for trademark infringement, providing direct legal remedies for rights holders while strengthening the protection of exclusive trademark rights. This "infringement-will-be-addressed" approach instills confidence in brand-building efforts by market participants, thereby contributing to the healthy development of the brand economy.

II. Preventing Abuse: Boundaries and Constraints on Exercising Rights

Unchecked expansion of rights inevitably encroaches upon the interests of others and the public. While safeguarding exclusive trademark rights, it is equally important to define appropriate boundaries to prevent misuse of rights. The law builds a firewall against trademark abuse through a combination of general principles and specific rules.

(1) Fundamental Boundaries: No Harm to State Interests, Public Interests, or Others' Rights

Article 9(1) of the Trademark Law (2026 Revision) builds on the principle of good faith by adding that the application and use of trademarks "shall not constitute an abuse of rights harming state interests, public interests, or the lawful rights and interests of others," thereby establishing clear limits on the exercise of rights.

Article 56 (newly added) provides that where a registered mark is used "in a manner that misleads the public," the trademark enforcement authorities may order the registrant to rectify the practice within a specified period and impose a fine; if the registrant fails to do so, the trademark administrative authority may cancel the trademark registration.

Article 57 (which expands upon Article 49 of the current law) adds a new paragraph 3, providing that in addition to third-party cancellation actions, the trademark administrative authority may also cancel a registered mark ex officio, where the registrant unilaterally alters the registered mark, the registrant's name, address, or other registration particulars; where the registered trademark becomes the generic name of the designated goods; or where the mark has not been used for three consecutive years without justifiable cause.

These newly added provisions give concrete expression to the principle that trademark applications and use must not harm state, public, or others' interests, and they protect public interests through the mechanism of cancellation.

(2) No Restriction on Others' Good-Faith Use

Article 73(3) (newly added) further defines the boundaries of rights by clarifying that "the owner of a registered trademark may not prohibit others from making good-faith use of the relevant registered mark for the sole purpose of indicating the intended use, target audience, application scenarios, or other information about the goods, or for indicating the true source, unless such use is likely to cause confusion." This means that others' reasonable use of a mark based on principles of good faith and commercial practice (such as descriptive or referential use) is not subject to prohibition by the trademark owner. This provision effectively prevents trademark owners from monopolizing public-domain terms and preserves the openness of market competition.

(3) Deterrence against Malicious Litigation

Article 81 (newly added) of the Trademark Law (2026 Revision) provides for civil liability in cases of malicious litigation, in addition to judicial penalties, by stipulating that where a party brings a trademark lawsuit through malicious collusion or unilateral fabrication of underlying facts, and causes loss to the opposing party, it shall bear civil liability in accordance with the law. This provision not only provides the accused party with a basis for relief but also deters abusive use of litigation rights through economic penalties, thereby preventing trademark rights from being used as tools to suppress competitors or disrupt market order.

III. The Balancing Mechanism: Coordinated Provisions and Institutional Logic

Rights protection and abuse prevention are not contradictory goals but are dynamically balanced through coordination across provisions. This balance operates on three levels:

(1) Dual Regulation: Both Granting and Constraining Rights

The Trademark Law (2026 Revision) confers exclusive rights on trademark owners by enumerating infringing acts in Article 72, while simultaneously imposing clear limits on how those rights may be exercised through Articles 9, 56, 57, 73, and 81. This creates a symmetrical structure in which rights are both granted and constrained. For example, the owner is entitled to exclusive rights against infringement but is also required to use the registered mark properly; the owner may enforce rights through litigation but must bear civil liability for any losses caused by malicious suits.

(2) Balancing Private and Public Interests

The exercise of trademark rights affects not only the owner's private interests but also the lawful rights of others and fair market competition, which are matters of public concern. In the Trademark Law (2026 Revision), Article 72 protects the private interests of the registrant by enumerating acts that constitute infringement against the exclusive right to use a registered trademark, while Articles 56 and 57 reflect the principle that private interests must not override public interests—by providing for cancellation in cases where the mark is used in a way that misleads the public (Article 56), and in cases where the mark is not used properly, has not been used for three consecutive years, or has degenerated into a generic name (Article 57). Article 73 exempts good-faith use by others, and Article 81 provides the supplementary provisions on damages for malicious litigation. Together, these provisions reflect the principle that private rights must not prevail over the public interest, and ensure that trademark rights are not turned into instruments of "rights hegemony," thereby preserving fairness and efficiency in the market.

(3) Full-Cycle Coverage: Ex Ante Prevention and Ex Post Remedies

The Trademark Law (2026 Revision) establishes a full-cycle regulatory system of “prevent, constraint, and remedies” through Article 9 (preventive principle), Articles 56, 57, 72, and 73 (constraints during the exercise of rights), and Article 81 (ex post liability for malicious litigation). For instance, applicants are expected to, at the filing stage, assess whether the mark is likely to "harm state interests, public interests, or the lawful rights of others" (prevention); after registration, owners must use the mark properly and cannot prohibit others' good-faith use (constraint); and if rights are abused through litigation causing loss to others, civil liability follows (remedies). This system ensures that every stage of rights exercise is subject to regulation, minimizing opportunities for abuse.

Closing Remark

The exercise of trademark rights is essentially the unity of "freedom of rights" and "obligations of restraint." The 2026 revision of the Trademark Law, through its institutional design combining the protection of exclusive trademark rights and the prevention of abuse, establishes both safe havens and warning lines for rights holders. This balancing approach reflects legal wisdom and carries profound significance for the healthy development of the market economy. Only by finding the fulcrum between encouraging innovation and preserving fairness can we promote a prosperous brand economy while serving the broader public interest.

Understanding the 2026 Revisions to China's Trademark Law (Part II): Key Changes to Registration Requirements

On June 26, 2026, China's NPCSC passed the newly revised Trademark Law of the People's Republic of China (the "2026 Revision"). The new law expands to 87 articles across nine chapters, compared with the current law's (the fourth revision of 2019) 73 articles across eight chapters. Among its key structural changes is the introduction of a new Chapter II, "Requirements for Trademark Registration," comprising 12 articles (Articles 14 to 25).

It is worth noting that this new chapter does not create entirely new rules from scratch. Rather, it consolidates and revises existing provisions. Nevertheless, the changes are substantial and will have a direct impact on trademark examination, opposition, and review proceedings. Below is a detailed breakdown.

I. What Has Changed in the Registration Requirements?

The 2026 Revision introduces a number of important adjustments to the requirements for trademark registration, covering registrable elements, prohibited signs, functional marks, non-registrable applications, well-known mark protection, and protection of prior lawful rights and interests.

1. New Types of Registrable Elements (Article 14)

Article 14, which corresponds to Article 8 of the current Trademark Law, expands the scope of registrable elements. In addition to the existing categories - "words, figurative mark/device mark, letters, numerals, three-dimensional signs, combination of colors, and sounds" - the new law adds motion marks and combinations that include motion elements. This change lowers the barriers to registering distinctive and identifiable signs, opens the door for marks incorporating innovative elements to receive trademark protection.

2. Expanded Prohibited Signs and the Shift from "Use" to "Registration and Use" Prohibition (Articles 15 and 16)

Article 15 revises Article 10(1) of the current law by adding a new sub-paragraph that prohibits the registration and use of marks that are identical or similar to "symbolic elements associated with the name, flag, emblem, medal, or major theoretical achievements and historical events of the Communist Party of China." It also updates the term "central state organs" to "central and state organs" for greater precision. Importantly, the law now explicitly states that such signs may be neither registered nor used.

Article 16(1), which corresponds to Article 10(2) of the current law, revises the wording from "geographical names of administrative divisions at or above the county level" to "names of administrative divisions at or above the county level," thereby similarly clarifying that such signs may not be registered or used as trademarks.

3. Expanding the Scope of Non-Registrable Functional Marks (Article 18)

Article 18 corresponds to Article 12 of the current Trademark Law. Under the current law, where a three-dimensional mark is applied for registration, shapes that are dictated by the nature of the goods themselves, necessary to achieve a technical result, or that give substantial value to the goods are not registrable. Building on this foundation, the new law expands the scope of non-registrable functional marks to include color combinations, sounds, motion marks, and others --

meaning that where such elements are merely functional in nature, they will likewise be refused registration.

4. Non-Registrable Applications: Clearer Grounds (Article 19)

Article 19(1) and (2) correspond respectively to Article 4(1) and Article 44(1) of the current Trademark Law, and consolidates and clarifies two categories of applications that will be refused:

(1) Trademark registration applications filed without the intention to use the mark and that clearly exceed the legitimate needs of normal business operations (this deletes the current requirement in Article 4 of the Trademark Law for the application to be "filed in bad faith").

(2) Trademark registration applications “filed by means of fraud or other improper means,” which could only be challenged through invalidation proceedings under the current Trademark Law, are now also subject to refusal for registration.

5. Well-Known Marks: Broader Protection (Article 21)

Article 21 revises Article 13(2) and (3) of the current law to relax the conditions for protecting well-known marks. Under the new law, protection for well-known marks against registration on different or dissimilar goods no longer requires that the mark be "registered in China." The provision now simply prohibits the registration and use of marks that are copies, imitations, or translations of another's well-known mark (whether registered in China or not) on different or dissimilar goods, where such use would mislead the public and potentially harm the interests of the holder (accordingly, no longer requiring that the holder be the "registrant" of the well-known mark.). This is a significant expansion of protection for well-known marks.

6. Strengthened Protection of Prior Lawful Rights and Interests (Article 24)

Article 24, corresponding to Article 32 of the current law, makes two key changes:

1) The scope of protected prior rights is expanded from "prior rights" to "prior lawful rights and interests," covering a broader range of protectable subject matter.

2) As regards the pre-emptive registration of marks that have already been used by others and have acquired a certain degree of influence, the requisite element has been amended from "by improper means" to "intentional," further strengthening the principle of good faith and underscoring the applicant's duty to avoid encroaching on others' prior use.

II. Practical Implications of the Changes to Registration Requirements

The above changes to registration requirements will directly affect examination, opposition, review, and other administrative proceedings. Applicants and rights holders should pay close attention to the examination guidelines and related implementing regulations that the Trademark Office is expected to issue in due course, and adjust their filing and enforcement strategies accordingly.

1. Impact on Trademark Examination Procedures

For registrable elements that now fall within the expanded scope of protection (such as motion marks) the trademark examination authorities will inevitably need to revisit their examination procedures and assessment criteria, which may affect examination timelines. Applicants filing such marks should gather evidence in advance demonstrating that the mark is capable of distinguishing the source of goods or services—for example, market sales data and consumer recognition—so as to address any potential refusals. Similarly, for color combinations, sounds, and motion marks, there may be disputes over whether they are functional. Applicants should prepare evidence showing that the mark is not functional and that it has acquired distinctiveness and capacity to indicate source.

2. Impact on Opposition Proceedings

The changes to trademark registration requirements have directly led to an expansion and refinement of the statutory grounds for opposition. For instance, absolute grounds for filing an opposition application now include prohibited signs (Articles 15 and 16), functional marks (Article 18), and non-registrable applications (Article 19). Relative grounds include well-known mark protection (Article 21) and prior lawful rights and interests (Article 24). This provides both opponents and applicants/registrants with clearer legal bases for submitting evidence and filing defenses, making opposition proceedings more focused and efficient.

3. Impact on Review Proceedings

In review proceedings, applicants may now rely on the new registration requirements to argue that their marks meet the legal standards. The trademark authorities will also reassess previous examination decisions in light of the new rules. This should make review proceedings more targeted and efficient, with a sharper focus on the core question of registrability.

Closing Remarks

The 2026 Revision brings significant changes to the registration requirements under Chinese Trademark Law. Applications that do not comply with the new rules will face increased risks of refusal, opposition, or invalidation. Moreover, under Article 54 of the new law, bad-faith filings that cause adverse effects may result in warnings, fines, or other administrative penalties. Rights holders and applicants should take these changes seriously.

If you encounter any challenges during the trademark registration process, please do not hesitate to contact us. We are here to provide professional legal advice and practical guidance to help you navigate the new landscape and secure your trademark rights smoothly.

Supreme Court (SPC): How Should Compensation Be Determined for Continuing Infringement During Prior Litigation?

Company A, the patentee of the patent in question, filed an infringement lawsuit against Company B (including three affiliated entities) in 2007 (the "Prior Action"). In May 2013, the court of first instance found infringement, ordered Company B to cease the infringing acts, and awarded damages. Company B appealed, and the appellate court affirmed the decision in January 2015.

Between July 2013 and July 2015, after the first-instance judgment in the Prior Action was issued, Company A obtained notarized evidence on multiple occasions, showing that Company B and Company C were manufacturing, offering for sale, or selling the accused infringing products. Company A filed another lawsuit (the present case), requesting that all defendants be ordered to cease infringement and pay damages.

In December 2019, the court of first instance of the present case issued a judgment ordering Company B and Company C to immediately cease infringement, and holding Company B liable for CNY 14 million in damages and CNY 300,000 in reasonable enforcement costs. Both Company A and Company B appealed.

Company A argued that the Prior Action judgment did not cover the continuing infringement losses that occurred during the entire course of the Prior Action proceedings, and claimed that the damages period for the accused infringement should run from September 30, 2007 (the day after the Prior Action was filed) to December 31, 2019 (the date of the first-instance judgment in the present case).

The SPC issued its judgment in January 2024, ruling as follows: (1) the first-instance judgment was revoked; (2) Company B was held liable for CNY 19 million in damages and CNY 500,000 in reasonable enforcement costs; (3) Company A's remaining claims were dismissed; and (4) Company B's appeal was dismissed.

The core dispute in this case was whether the period before the first-instance judgment in the Prior Action (i.e., from September 2007 to May 2013) should be included in the damages calculation period for the accused infringement in the present case.

The SPC clarified:

In patent infringement disputes, the damages calculation period is generally determined by the patentee's claim. If the patentee files a lawsuit based on infringing acts discovered before the lawsuit and specifies a particular amount of damages, and if, before the close of oral argument at first instance, the patentee does not explicitly request damages for infringing acts that have continued or may continue during the litigation, the court generally will not address damages for that litigation period.

As a general rule, the court's decision is based on the facts that exist as of the close of oral argument (typically at the first-instance stage), because the court can only hear facts that occurred before that time. However, for ongoing infringing acts, the court may, in order to reduce the burden of litigation, address the continuing conduct as a whole at the request of the parties.

Applying these principles to the present case:

1. Company A filed the Prior Action based on infringing acts discovered before that lawsuit, requesting cessation of infringement and damages. It did not raise new infringing facts or amend its damages claim during the Prior Action. Therefore, it cannot be assumed that Company A sought damages for infringing acts that may have occurred during the Prior Action proceedings, and those potential infringing acts should not automatically be included in the scope of the Prior Action.

2. In neither the Prior Action nor the present case did Company A provide evidence that Company B had engaged in continuing infringement during the Prior Action proceedings, and the court did not find such facts. The infringing acts established in the Prior Action occurred only in 2007.

Accordingly, the first-instance court's conclusion in the present case that the Prior Action judgment covered all infringement losses during the Prior Action proceedings (up to May 2013) lacked factual basis and was legally unsound. However, since Company A did not prove that Company B had continued to infringe during the Prior Action, this erroneous finding did not affect the overall outcome of the damages award.

The infringing acts established in the present case included four instances of infringement discovered through notarized purchases between July 2013 and July 2015, as well as sales of the accused products by Company B between May 2013 and June 2018, as revealed by a court-commissioned audit.

The SPC took into account two instances of bad faith conduct by Company B: (1) it continued to infringe after the Prior Action judgment found infringement; and (2) it obstructed the litigation by refusing to produce complete financial records and by withholding passwords to electronic accounting systems. In light of these factors, the Court increased the damages award to reflect strong protection of intellectual property rights. Considering the sales revenue during part of the relevant period, Company B's long-term continuing infringement, its obstructive conduct, and the fact that Company B was not primarily engaged in infringement, the SPC adjusted the damages from CNY 14 million to CNY 19 million, and increased the reasonable enforcement costs to CNY 500,000 in view of Company A's prolonged efforts to enforce its rights.

(2022) Zui Zhong Fa Zhi Min Zhong No. 111

SPC: After First-Instance Infringement Finding, Preliminary Injunction Generally Should Be Maintained

The SPC has issued rulings in two cases concerning applications for reconsideration of preliminary injunctions in patent infringement disputes, clarifying an important legal standard:

When a court, after trial, issues both a first-instance judgment ordering the defendant to cease infringement and a preliminary injunction ordering immediate cessation of the infringing acts, the factual and legal basis for the injunction is relatively strong because the case has already been subject to substantive hearings. At the reconsideration stage, the preliminary injunction should generally be maintained unless the respondent provides countervailing evidence or sufficiently strong reasons demonstrating that the conditions for granting the injunction are not met.

Two companies based in Suzhou (the plaintiffs), holders of two invention patents, filed lawsuits against two other companies (the defendants) for selling products that allegedly infringed their patents. The plaintiffs also applied for preliminary injunctions during the proceedings.

After trial, the court of first instance found infringement and ordered the defendants to immediately stop the infringing acts, awarding the plaintiffs a total of CNY 5 million in damages and reasonable enforcement costs. On the same day, the court issued preliminary injunctions ordering the defendants to immediately cease offering for sale, selling, and importing the accused infringing products, with the injunctions to remain in effect until the first-instance judgment became final. The plaintiffs provided CNY 10 million in cash security for each case. The defendants, dissatisfied with the preliminary injunctions, applied to the SPC for reconsideration.

The SPC, after trail, held that although the first-instance court had found infringement and ruled that the defendants should bear civil liability for cessation of infringement, the judgment would not take effect immediately, leaving the defendants free to continue the infringing acts. To promptly stop the ongoing harm to the right holders' legitimate interests, the court may, upon the parties' application or on its own initiative where necessary, take separate preliminary injunction measures.

Where the court issues a judgment ordering cessation of infringement and a preliminary injunction ordering immediate cessation simultaneously, the case has already undergone substantive hearings, giving the injunction a relatively strong factual and legal basis. At the reconsideration stage, the preliminary injunction should generally be maintained unless the respondent produces countervailing evidence or sufficiently strong reasons demonstrating that the conditions for the injunction are not met.

First, the preliminary injunction has a factual and legal basis. The patents in question are invention patents that have been upheld through invalidation proceedings, demonstrating their stability. At the preliminary injunction stage, it is not necessary to establish with certainty that the accused technical solutions fall within the scope of the patent claims. The defendants' objections were insufficient to show that the accused products clearly fell outside the patent scope. Given that the first-instance court had already found infringement, the injunction application could be considered to have a factual and legal basis.

Second, failure to grant the preliminary injunction would cause irreparable harm. The accused products directly compete with the patented products. Continued infringement would not only erode market share and depress prices but also undermine the plaintiffs' exclusive rights and first-mover advantage. In addition, if the infringing acts continue, the flow of infringing products becomes difficult to trace, especially when they are used as intermediate components in end products, making enforcement of the final judgment harder and potentially requiring separate litigation for new acts of infringement. Furthermore, the products in question have a short technology lifecycle. If the court waits until a final appellate ruling, the accused products may already have exited the market, rendering the cessation order meaningless.

Third, regarding the balance of harms favors, the first-instance court had already ordered the defendants to cease infringement. As honest market participants, the defendants should respect the judgment and the plaintiffs' patents. Continuing infringement would only enlarge the plaintiffs' losses. The harm to the plaintiffs from not granting the injunction clearly outweighs the harm to the defendants from granting it.

Fourth, public interest and security. The accused products are not public goods and do not involve public health, environmental protection, or other significant public interests. Alternative products are available on the market for consumers to choose. Therefore, granting the preliminary injunction does not harm the public interest. Moreover, the plaintiffs have provided sufficient cash security.

Therefore, the SPC dismissed the defendants' reconsideration applications and affirmed the preliminary injunctions issued by the court of first instance.

This ruling reflects the judiciary's commitment to strengthening intellectual property protection and supporting the development of new quality productive forces. It underscores the practical value of preliminary injunctions in promptly stopping infringement after first-instance judgments and effectively safeguarding right holders' legitimate interests.

(2026) Zui Gao Fa Zhi Min Fu Nos. 2 and 3