

# Provisions for the Identification and Protection of Well-known Trademarks 2014

July 3, 2014

**Article 1** These Provisions are hereby drawn up in accordance with the Trademark Law of the People's Republic of China (hereinafter referred to as the Trademark Law) and the Implementing Regulations of the Trademark Law of the People's Republic of China (hereinafter referred to as the Implementing Regulations) so as to standardize the identification of well-known trademarks and protect the legal interest of the holders of well-known trademarks.

**Article 2** "Well-known mark" refers to a mark which is widely known to the relevant section of the public in China. The relevant section of the public shall include the consumers concerned with a class of goods or service designated by a trademark in use, other operators who manufacture said goods or provide services, and the marketing people involved or those concerned in the channel of commerce.

**Article 3** The Trademark Office and Trademark Review and Adjudication Board shall handle the establishment and protection of well-known trademarks in procedures of trademark registration examination, trademark dispute resolution, and investigation into trademark violation cases by the State Administrative Department for Industry and Commerce based on the request of the parties concerned and requirements for examination.

**Article 4** Identification of well-known trademarks shall obey the principle of recognition of individual cases and passive protection.

**Article 5** Where the parties concerned file opposition in accordance with Article 33 of the Trademark Law or request for protection for well-known trademark in accordance with Article 13 of the Trademark Law, they may file a request for protection for well-known trademark in written form with the Trademark Office and submit evidence for the well-knownness of the trademark.

**Article 6** Where, during reexamination for denial of trademark registration or cases of declaration of invalidation, the parties concerned request protection for well-known trademark in accordance with Article 13 of the Trademark Law, they may request for protection for well-known trademark in written form with the Trademark Review and Adjudication Board and submit evidence for the well-knownness of the trademark.

**Article 7** Where a trademark violation case involves a well-known trademark, the Administrative Department for Industry and Commerce of a city (prefecture or autonomous prefecture) and above shall be in charge. Where a party concerned requests the Administrative Department for Industry and Commerce to investigate into the violation act of trademark and requests protection for well-known trademark in accordance with Article 13 of the Trademark law, the party concerned may make complaint with the Administrative Department for Industry and Commerce of city (prefecture or autonomous prefecture) and above located where the illegal act happened, request for protection of well-known trademark in written form and submit evidence for well-knownness of the said trademark.

**Article 8** Where the party concerned requests for protection for well-known trademark, it shall obey principle of good faith and be responsible for the authenticity of facts and the evidence submitted.

**Article 9** The following may serve as proof of the well-knownness of a mark in accordance with Article 14.1 of the Trademark Law:

- (i) relevant proof as to the extent of the well-knownness of said mark to the relevant section of the public;
- (ii) relevant proof as to the duration of the use of said mark, including proof relating to the history and scope of the use and registration of said mark. If the mark is an unregistered trademark, relevant proof as to the duration of the use of said mark shall be of no less than five years. If the mark is a registered trademark, relevant proof as to the duration of the registration of said mark shall be no less than three years or relevant proof as to the duration of the use of said mark shall be no less than five years.
- (iii) relevant proof as to the duration, extent, and geographic area of any advertisement for said mark, including those concerning the approach to, geographic area of, and media for the advertisement and promotion and the scale of the advertisement over the last three years;
- (iv) relevant proof as to the record of protection of said mark as a well-known mark in China or any other country and region; and
- (v) other proof as to the well-knownness of said mark, including relevant proof of the output, volume of sales, sales income, profit and tax, and regions of sales of the principal goods using said mark over the last three years.

“Three years” and “five years” in the preceding clauses refer to three years or five years before the application date for registration of the mark opposed, or application date for registration of the mark requested to be invalidated, or three years or five years before the date of request for protection for well-known trademark in trademark violation cases.

**Article 10** Where the parties concerned request for protection for well-known trademark in accordance with Rule 5 or Rule 6 in these Provisions, the Trademark Office or Trademark Review and Adjudication Board shall handle the request timely within the prescribed time limited stipulated in Article 35, Article 37, and Article 45 of the Trademark Law.

**Article 11** Where the parties concerned request the Administrative Department for Industry and Commerce to investigate trademark violation acts in accordance with Article 7 in these Provisions, the Administrative Department for Industry and Commerce shall verify the complaint material and determine whether to docket the case according to relevant regulations in the Administrative Penalty Procedure Rules of the Administrative Department for Industry and Commerce. If so, the Administrative Department for Industry and Commerce shall preliminarily verify and examine if the request for protection for well-known trademark and relevant evidence by the parties concerned are in accordance with Article 13 and Article 14 of the Trademark Law, Rule 3 of the Implementing Regulations and Article 9 of these Provisions. For those in accordance with relevant regulations after preliminary examination, request for identification of well-known trademark and duplicate of documents shall be sent to the superior Administrative Department for Industry and Commerce within 30 days from the date of docketing. For those contrary to relevant regulations after preliminary examination, the Administrative Department for Industry and Commerce shall determine timely in accordance with relevant regulations in Administrative Penalty Procedure Rules of the Administrative Department for Industry and Commerce.

**Article 12** The Administrative Department for Industry and Commerce of province (autonomous regions or municipality directly under the Central Government) shall verify and examine if the relevant documents for identification of well-known trademark submitted by the Administrative Department for Industry and Commerce of city (prefecture or autonomous prefecture) are in accordance with Article 13 and Article 14 of the Trademark Law, Rule 3 of the Implementing Regulations,

and Article 9 in these Provisions. For those in accordance with relevant regulations, the superior Administrative Department for Industry and Commerce shall send the request for identification of well-known trademark and duplicate of documents to the Trademark Office within 30 days since the receipt of relevant documents for identification of well-known trademark. For those contrary to relevant regulations, the Administrative Department for Industry and Commerce shall return relevant documents to the original department and make a relevant decision according to regulations in the Administrative Penalty Procedure Rules of the Administrative Department for Industry and Commerce.

**Article 13** When the Trademark Office and Trademark Review and Adjudication Board are identifying a well-known trademark, they shall comprehensively consider the factors listed in Article 14.1 of the Trademark Law and Article 9 in these Provisions, but identification cannot be premised on satisfying all factors.

When the Trademark Office and Trademark Review and Adjudication Board are identifying a well-known trademark, if the local Administrative Department for Industry and Commerce is needed to verify some facts, the relevant local Administrative Department for Industry and Commerce shall give support.

**Article 14** When the Trademark Office is examining relevant documents for identification of a well-known trademark submitted by an Administrative Department for Industry and Commerce of a province (autonomous region or municipality directly under the Central Government) and identifies the well-known trademark, the Trademark Office shall give an official reply to the Administrative Department for Industry and Commerce of the province (autonomous region or municipality directly under the Central Government) that submitted the request.

The Administrative Department for Industry and Commerce that docketed the case shall deal with it within 60 days from the date the Trademark Office made an official reply, and report the written decision of administrative penalty to the Administrative Department for Industry and Commerce of province (autonomous regions or municipality directly under the Central Government). The Administrative Department for Industry and Commerce of province (autonomous regions or municipality directly under the Central Government) shall forward the handling situation and the written decision of administrative penalty to the Trademark Office within 30 days from the receipt of the written decision of administrative penalty.

**Article 15** The Administrative Departments for Industry and Commerce at all levels shall strengthen the protection for well-known trademarks and maintain the legitimate interest of right-holders and consumers in trademark registration and management. Where a trademark violation act is suspected of a crime, the case shall be transferred to the judicial department timely.

**Article 16** In trademark registration examination, trademark dispute resolution, and investigation into trademark violation cases by the Administrative Department for Industry and Commerce, when a party concerned requests for protection for well-known trademark in accordance with Article 13 of the Trademark Law, he or she may provide a record that the mark has been previously protected as a well-known trademark in China.

Where the scope of protection for well-known trademark requested by a party concerned is basically the same as the scope of protection for identified well-known trademark and the other party concerned has no opposition to the well-knownness of the mark, or even if the other party concerned has an opposition, but the reasons and evidence for opposition cannot support this opposition, the Trademark Office, Trademark Review and Adjudication Board and the department that docketed the

trademark violation case can give protection to the well-known trademark according to the protection record and relevant evidence.

**Article 17** In trademark violation cases, where a party concerned obtains the protection for well-known trademark by improper means such as falsification or providing false evidence, the Trademark Office shall withdraw the identification of the trademark involved and inform the Administrative Department for Industry and Commerce of province (autonomous regions or municipality directly under the Central Government) that submitted the identification of well-known trademark.

**Article 18** Where the local Administrative Department for Industry and Commerce violates Article 11 or Article 12 of these Provisions and does not verify or examine relevant documents for identification for well-known trademark, or violates Article 13.2 of these Provisions and does not handle the trademark violation cases timely or does not report the handling situations timely, the superior Administrative Department for Industry and Commerce shall circulate a notice and order it to rectify.

**Article 19** The Administrative Departments for Industry and Commerce at all levels shall put in place corresponding supervisory mechanisms and formulate corresponding supervisory control measures to enhance the supervision and inspection of the whole process for the establishment of well-known marks.

**Article 20** Where any official participating in the work of establishment of well-known marks abuses his power, engages in malpractice for his gain, accepts money or material wealth from any interested party, or seeks illicit interests and handles the work of establishment of well-known marks in violation of law, he or she shall be dealt with according to relevant regulations.

**Article 21** These Provisions shall enter into effect after 30 days from the publication date. The Provisions for the Identification and Administration of Well-known Trademarks issued by the State Administration for Industry and Commerce on April 17, 2003 shall be abrogated on the same date.