

English Translation¹ of China Standards for Trademark Examination and Trial (I) and (II) (Draft for Comment) (Chapters I, II, VI, VII, VIII, and IX)

Chapter I

Overview

1. Basic principles applicable to examination and adjudication

1.1 Principle of good faith

The principle of good faith is one of the basic principles of the civil code. As trademark right falls into the scope of civil rights, the basic principles of the civil code are applicable, without doubt, to various legal relations of trademarks, such as registration, use, administration, protection, etc. Therefore, it is clearly stipulated in the General Provisions of the *Trademark Law* that anyone who applies or uses a trademark shall observe the principle of good faith.

To implement the principle of good faith in the process of applying for trademark registration or using a trademark, the interested party and any trademark agency thereof shall be in the subjective state of honesty, good faith and credibility, and ensure their acts that: handle registration application or other trademark matters in accordance

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with the provisions of laws and regulations, and do not attempt to obtain registration by knowingly illegal or coercive means; ensure that the matters reported and materials submitted in the application for trademark registration are true, accurate and complete, and do not attempt to obtain registration by means of fabrication, concealment, forgery or deception; reasonably avoid social public interests, trademark rights of others or other prior rights that are already known or should have been known, and do not attempt to obtain registration by damaging social public interests or the rights of others.

1.2 Principle of taking registration as a priority and use as a supplement

Registration principle is the basic principle for obtaining the exclusive right to use a trademark in China, and a registration system with voluntary registration as a priority and compulsory registration as a supplement is adopted, that is to say, the legal procedure for obtaining the exclusive right to use a trademark is to apply for the registration of trademark. In general, whether to apply for the registration of trademark is determined by the trademark user himself based on his own actual needs and laws do not compel him to do so; however, when it comes to the goods for which registered trademarks must be used according to the provisions of laws and administrative regulations, their trademarks must be applied for registration and those whose trademarks have not been approved for registration shall not be sold in the market. Meanwhile, a certain degree of protection is provided to the prior used unregistered trademarks in accordance with law in order to ensure that the application for trademark registration returns to the origin of the system (i.e. for the purpose of use), make up for the deficiency that unfair consequences may be caused by the strict implementation of the registration principle, consider compatibility with the concept of use principle, and strengthen the use requirements for the application for trademark registration.

The principle of taking registration as a priority and use as a supplement shall always be implemented in the process of examination and adjudication. Firstly, the

inherent requirement that the application for trademark registration is out of the need of real production and operation activities and intended for actual use shall be grasped accurately, and any malicious application for registration of trademark that is not intended for use shall be refused according to law, that is, to curb any malicious application for registration of a trademark that lacks the intention for truly applying the trademark to legitimate production and operation or that based on reasonable inference that there is no possibility of actual use of the trademark.. Secondly, prior used unregistered trademarks shall be protected to a certain extent in accordance with law, for example: do not approve registration and prohibit from using the trademarks that reproduce, imitate or translate the well-known trademarks of others that are not registered in China on the identical or similar goods or services, prohibit registration of the prior used trademarks of others based on contracts, business relationships or other relationships, prohibit pre-emptive registration of the trademarks of others already used and having certain influences by illicit means, etc. Thirdly, a registered trademark shall be cancelled upon requested if the use of the registered trademark has been ceased for three consecutive years without justified reasons. The implementation of "first to apply" principle with use as a supplement is also reflected in that where two or more applicants apply for the registration of identical or similar trademarks for the same or similar goods, preliminary approval and publication shall be made for the trademark which has been applied for first; where applications are filed on the same day, preliminary approval and publication shall be made for the trademark which has been first used, and the applications of the others shall be refused.

1.3 Principle of protecting legal prior rights

The legal prior rights in the principle hereby refer to the rights that have already been acquired or enjoyed by others according to law and protected by law prior to the application date of trademark registration, including not only prior registered and obtained trademark rights and prior applied and prior actually used trademarks, but also

other legal prior rights and the legal rights that shall be protected, such as copyrights, design patent rights, right of name, right of portrait, influential enterprise names that have been registered and used, influential names, packaging and decorations of goods or services, etc.

Legal prior rights shall be protected in the process of examination and adjudication, that is to say, the trademark applied for registration shall not conflict with the legal prior rights of others or damage the existing legal prior rights of others. The existence of the prior legal rights of others can be a reason for obstructing trademark registration or can be a reason for invalidating a registered trademark as well.

1.4 Principles of consistent implementation of standards and case-by-case examination

The principles of consistent implementation of standards and case-by-case examination are important principles to be followed during trademark examination and trial, and they also embody the dialectical unity between the consistency of legal principles and the differences among case facts.

The principle of consistent implementation of standards means that the examination and adjudication of various trademark-related cases, such as application for trademark registration, opposition, re-examination of refused trademark registration, declaration of invalidation, etc., shall keep consistent with those of the previous cases with correct conclusions in terms of the application of law and implementation of standards, emphasizing “the same disposal of the same circumstances”. In essential, the principle of consistent implementation of standards requires the application of the trademark law to be systematic and predictable so as to avoid different adjudications of the similar cases.

On the basis of following the principle of consistent implementation of standards, trademark examination and adjudication should also follow the case-by-case examination principle. This principle means that since there are differences

between various facts of different trademark cases, such as the designated goods or services of trademarks, the distinctiveness and popularity of trademarks, the use condition of trademarks, consumer groups, sales channels, the attention exerted by consumers, etc., the benchmark of trademark examination, i.e. the cognition of relevant public, will also vary under the influence of the overall social environment and the use condition of trademarks; moreover, the consistency of applicable standards does not necessarily lead to consistent conclusions. Due to the different factors to be considered, the evidence submitted by the interested parties, the dynamic changes of case facts and other varied factors during the examination or adjudication by each procedure, the consistent standards applied to the examination and adjudication of cases of the same trademark may come to different conclusions. Therefore, simple and mechanical application of standards from the prior cases should be avoided, instead, multiple factors should be considered comprehensively in the process of trademark examination and adjudication. Case-by-case examination principle emphasizes “different disposals of different circumstances”, which is the requirement and embodiment of equal protection of the interests of trademark-related parties.

1.5 Principle of preventing abuse of rights

It is stipulated in the Article 132 of the *Civil Code* that no person of the civil law shall abuse civil-law rights and harm the interests of the state, the public interests, or the lawful rights and interests of others. The principle of prohibiting abuse of rights means that the exercise of all civil rights shall not exceed their proper limits, otherwise the exercise will constitute an abuse of rights and relevant liabilities shall be assumed. As a general principle for the exercise of civil rights, this principle still has the attributes as a general clause although it is often regarded as the embodiment of the principle of good faith in the field of academic theory. As stated in the preamble of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (hereinafter referred to as “TRIPS Agreement”), “recognizing that intellectual property rights are private rights”, the

principle of prohibiting abuse of rights in terms of private law still has relatively a large application space in the trademark law. When applying for the registration of trademarks, parties of the civil law shall have true intentions to use the trademarks, meet the usage requirements of the trademarks, and be compatible with the ability to use the trademarks, and the application for trademark registration shall be reasonable and legitimate. Where a trademark applicant registers a large number of trademarks without ability or intention to use them, or even waits for the right price to sell them after registration or obstruct others from registering trademarks, such act constitutes an abuse of trademark rights as the application improperly occupies trademark resources and disturbs the order of trademark registration, thus the application or request shall not be supported in accordance with the principle of good faith.

2. Scope of examination and adjudication

2.1 Absolute reasons and relative reasons

Regarding the reasons for rejecting registration as stipulated in the *Trademark Law*, they can be divided into two categories, namely absolute reasons and relative reasons, according to their different natures. It is of great significance to distinguish between absolute reasons and relative reasons for distinguishing applicable circumstances of law, relevant procedures, the subject qualification of claimant, prescription of claim and the scope of examination and adjudication.

2.1.1 Absolute reasons

Absolute reasons involve violation of distinctiveness, non-functionality and public interest in terms of the trademark law, are absolute without regard to the influence on specific right holders, and generally fall into the scope of active ex officio adjudication by trademark registration administration authority. They include: the malicious application for registration of trademark that is not intended for use as stipulated in Article 4, the signs that shall not be used as trademarks as stipulated in Article 10, the signs that lack distinctive features and shall not be registered as trademarks as stipulated in Article 11, the three-

dimensional signs that have functionality and shall not be registered as stipulated in Article 12, the trademarks that trademark agency shall not apply for except for those used in its trademark agency services as stipulated in Article 19(4), and the trademarks whose registration was acquired by fraud or any other unfair means as stipulated in Article 44 of the *Trademark Law*.

2.1.2 Relative reasons

Relative reasons involve damages to the prior trademark rights of others, the other existing prior rights of others, etc., and they are relative because the legitimate rights and interests of specific subjects are damaged. In addition to taking the prior trademark rights of others as one reason for refusal according to authority in the registration examination procedure, trademark registration administration authority generally cannot carry out active adjudication of relative reasons according to authority, but only examine and adjudicate them in accordance with the application filed by the interested parties in the opposition or review and adjudication procedure. They include: the well-known trademarks of others as stipulated in Article 13, the trademarks of the principal, the represented or other specific related parties as stipulated in Article 15, the geographical indications of others as stipulated in Article 16(1), the trademarks of others that have been registered or preliminarily approved as stipulated in Article 30, the trademarks of others that have been applied for registration as stipulated in Article 31, and the existing prior rights of others and trademarks already used and having certain influences as stipulated in Article 32 of the *Trademark Law*.

2.2 Substantive examination of trademark registration

Substantive examination work of trademark registration is responsible for examining whether the trademark applied for registration has any circumstance of prohibition of use as specified in law, whether it has distinctive features as a trademark, whether it is a three-dimensional trademark with functionality and whether it conflicts

with any trademark right that have already been applied for or registered by others, and responsible for refusing the malicious application for registration of trademark that is not intended for use and the trademark registration application filed by trademark agency beyond its scope of trademark agency services. The main applicable clauses hereby are Article 4, Article 10, Article 11, Article 12, Article 16(1), Article 19(4), Article 30 and Article 31 of the *Trademark Law*.

Articles 13, Articles 15 and Articles 32 of the *Trademark Law* aim to implement the principle of good faith and strengthen the protection of well-known trademarks, prior used unregistered trademarks and the existing prior rights of others, so as to make up for the deficiency of strict registration system. According to the principle of self-governance and disposition of private rights, the holder of prior right or the interested party shall file an application to the trademark registration administration authority in accordance with law in such procedures as opposition, re-examination of non-approved trademark registration and request for declaration of invalidation. The application shall have clear request, facts, reasons and legal basis, and corresponding evidence shall be provided. The provisions of Article 13, Article 15 and Article 32 of the *Trademark Law* shall not apply to the substantive examination of trademark registration.

2.3 Examination of trademark oppositions

Trademark opposition is a system where the qualified subject puts forward different opinions on a trademark of the applicant for registration that has been preliminarily approved and published by the trademark registration administration authority within the legal period, then the trademark registration administration authority makes a decision according to law after investigation and verification.

It is stipulated in Article 33 of the *Trademark Law* that where the holder of the prior right or the interested party who considers a preliminarily approved and published trademark is in violation of Article 13(2) and 13(3), Article 15, Article 16(1), Article 30, Article 31, and Article 32 of this law, or where any person considers it is in

violation of Article 4, Article 10, Article 11, Article 12, and Article 19(4) of this law, he may, within three months from the date of the publication, file an opposition to the trademark registration administration authority.

Scope of examination and adjudication of trademark opposition shall be determined in accordance with the above-mentioned clauses and a decision of approving / not approving the registration of the opposed trademark shall be made according to the objections and facts raised by the opponent as well as the defense reasons and facts raised by the applicant.

2.4 Review and adjudication of trademarks

Trademark review refers to the examination of trademark-related disputes in accordance with the provisions of Articles 34, Articles 35, Articles 44, Articles 45 and Articles 54 of the *Trademark Law*. The cases about re-examination of refused trademark registration, re-examination of non-approved trademark registration, request for declaration of invalidation, re-examination of ex officio declaration of invalidation and re-examination of cancelled registered trademark shall be reviewed based on facts and in accordance with law.

Article 4, Article 10, Article 11, Article 12, Article 13(2) and (3), Article 15, Article 16(1), Article 19(4), Article 22, Article 30, Article 31, Article 32, Article 44, Article 49 and Article 50 of the *Trademark Law* shall apply to the review of cases.

The scope of trademark review and adjudication covers:

(1) The cases about re-examination of refused trademark registration shall be adjudicated in light of the refusal decision and the facts, reasons and requests raised by the applicant applying for re-examination as well as the status of facts at the time of review. If it is found that the trademark applied for registration is in violation of the circumstances specified in Article 4, Article 10, Article 11, Article 12, Article 16(1) and Article 19(4) of the *Trademark Law* and that the refusal decision is not made in accordance with the above-mentioned clauses, a decision of refusing re-examination

may be made in accordance with the above-mentioned clauses after hearing the opinions raised by the applicant;

(2) The cases about re-examination of non-approved trademark registration shall be adjudicated in light of the non-approval decision and the facts, reasons and requests raised by the applicant applying for re-examination as well as the opinions put forward by the original opponent;

(3) The cases about requesting for declaration of invalidation shall be adjudicated in light of the application and defence facts, reasons and requests raised by the interested parties;

(4) The cases about re-examination of ex officio invalidation declaration shall be adjudicated in light of the decision of declaration of invalidation and the facts, reasons and requests raised by the applicant applying for re-examination;

(5) The cases about re-examination of cancelled registered trademark shall be adjudicated in light of the decision of cancelling or maintaining the registered trademark as well as the facts, reasons and requests based on which the interested party applies for re-examination.

2.5 Examination of cancellation of registered trademarks

Where any trademark registrant alters unilaterally the registered trademark or other registered matters and fails to rectify, the trademark registration administration authority shall cancel the registered trademark.

Where the registered trademark becomes a generic term for the approved goods or without justified reasons, the use of the registered trademark has been ceased for three consecutive years, any organization or individual may request the trademark registration administration authority to cancel the registered trademark, and the trademark registration administration authority shall carry out examination and make a decision in accordance with law.

2.6 Examination of the assignment of registered trademarks

Where a registered trademark is assigned and the trademark registrant fails to assign all the trademarks which are identical with or similar to the said trademarks on the same or similar goods simultaneously, the trademark registration administration authority shall notify the trademark registrant to make correction within a definite time; the trademark registrant fails to make such correction at the expiration of the time limit, such failure shall be deemed as waiving application for the assignment of the registered trademark. Where the assignment is likely to cause confusion or has other unhealthy effects, the trademark registration administration authority shall not approve it.

2.7 Active declaration of invalidation of registered trademarks according to authority

Where a registered trademark is found to have violated the provisions of Article 4, Article 10, Article 11, Article 12, Article 19(4) and Article 44 of the *Trademark Law* at the time of application for registration or approval of registration, the trademark registration administration authority shall declare the registered trademark invalid in accordance with its authority. The decision of declaration of invalidation that has already taken effect shall be published at the expiration of the statutory re-examination period. According to the provisions of Article 45 of the *Trademark Law*, the interested party shall file an application for declaring the registered trademark invalid through the review procedure under the circumstance where the registered trademark damages the civil rights and interests of a specific subject.

3. Basic concepts

3.1 Trademark

Trademarks are signs used to identify and distinguish the sources of goods or services. In respect of any visual sign capable of distinguishing the goods of one natural person, legal entity or any other organization from that of others, including any words, graphics, letters of an alphabet, numerals, three-dimensional

signs, combinations of colors, sounds, etc. and their combinations, an application may be filed for registration.

Any natural person, legal entity or other organization intending to acquire the exclusive right to use a trademark for its goods or services in the production and operation activities, shall file an application for the registration of the trademark. The trademarks that have been approved for registration are registered trademarks. Registered trademarks include goods trademarks, service marks, collective marks and certification marks. The trademark registrants shall enjoy the exclusive right to use the trademarks, and be protected by law. The exclusive right to use a trademark shall be limited to the trademark approved for registration and the goods or services approved for use.

The subject that applies for trademark registration may be any natural person, legal entity or other organization engaged in production and operation activities. When applying for registration of a trademark in the name of a natural person, the applicant shall submit his individual business license, contract of rural land contracting and operating or other materials that can prove that he is engaged in production and operation activities in the name of a natural person. CPC organs, NPC organs, administrative organs, CPPCC organs, supervisory organs, judicial organs and procuratorial organs at all levels shall not apply for registration of any trademark.

The sign to be applied for registration as a trademark shall have distinctive features. Distinctive features are the core attribute of a trademark, and the sign without distinctive features cannot play the role of a trademark.

3.2 Distinctive features of trademarks

The distinctive features of a trademark, i.e. the distinctiveness of a trademark, are the prerequisite for the trademark to obtain registration. The distinctiveness of a trademark refers to that the trademark shall have enough characteristics to enable the

relevant public to distinguish the source of goods or services. Specifically speaking, the trademark enables consumers to identify and remember, and then it plays the function of indicating the source of goods or services. The distinctiveness of a trademark can be either inherent or acquired through use. The inherent distinctiveness is owned by the trademark itself while the distinctiveness obtained by use is obtained through the continuous actual use of the trademark.

3.3 Identical and similar trademarks

Identical trademarks mean that two trademarks, basically, have no difference in terms of visual effect, or in terms of auditory perception in the case of sound trademarks. The so-called basically no indifference refers to that although some minor parts of the two trademarks are not completely identical, their major parts are identical or there is so little variation on the whole that it is difficult for the relevant public or ordinary consumers to distinguish them visually or audibly under the general attention.

Similar trademarks mean that although there are some differences in pronunciation, vision, meaning or order of arrangement in the elements of two trademarks such as words, graphics, letters of an alphabet, numerals, three-dimensional signs, combinations of colors and sounds, etc., the overall difference is not significant; when the two trademarks are used on the same or similar goods or services, it is easy for the relevant public to get confused about the source of goods or services. Regarding the similarity between word trademarks, mainly three aspects, namely form, sound and meaning, shall be considered; as for graphic trademarks, mainly layout, appearance and coloring shall be considered; and in respect of combined trademarks, both overall expression form and distinctive part shall be considered.

Regarding the judgment on trademark similarity, priority shall be given to the form, sound, meaning, overall expression form, etc. of the trademarks themselves with the general attention of the relevant public as the criteria to judge whether the trademarks themselves are identical with or similar to each other by adopting such

methods as isolated comparison, overall comparison and important part comparison. Isolated comparison means that when judging whether the trademarks are similar to each other, they shall not be placed side by side for comparison, instead, they shall be compared respectively in an isolation state. However, comparison during the examination of trademarks can only be direct and non-isolated, therefore, no effort should be spared to simulate the scenario of consumers purchasing goods and services when it comes to the isolated observation during examination. As for overall comparison, it means that two trademarks should be compared and judged as a whole instead of partial judgment. In respect of important part comparison, it refers to comparison of the distinctive and distinguishable parts of trademarks. The general attention of the relevant public can be understood as the attention exerted by the consumers of goods or services with general knowledge and experience on the goods or services when they purchase the goods or receive the services.

3.4 The same and similar goods or services

The same goods refer to the goods with the same name, or the goods with different names but with the same or basically the same function, use, main raw material, production department, sales channel, consumption object, etc. which are generally considered to be the same thing by the relevant public.

The same services refer to the services with the same name, or the services with different names but with the same or basically the same purpose, content, mode, object, place, etc. which are generally considered to be the same services by the relevant public.

Similar goods refer to the goods that are same or basically same in terms of function, use, production department, sales channel, consumption object, etc.

Similar services refer to the services that are same or basically same in terms of service purpose, content, mode, object, etc.

The judgment on similar goods should comprehensively consider the functions and uses of goods, the raw materials and main processes of goods, the sales channels and places of goods, the producers and consumer groups of goods, the relationship between goods and parts & components, consumption habits and other relevant factors affecting the judgment on similar goods.

The judgment on similar services should comprehensively consider the purpose of service, service content and mode, service place, the relevance of the industry that the service provider belongs to, the group scope of service recipient and other related factors affecting the judgment on similar services.

Similarity of goods and services indicates that there is relatively great relevancy between goods and services. The judgement on whether goods and services are similar should comprehensively consider the degree of connection between goods and services and the consistency in terms of use, users, general effects, sales channels, sales habits, etc.

In order to stabilize the order of trademark registration, improve the efficiency of examination and adjudication, and unify examination and adjudication standards, the judgement of similar goods or services should be done with reference to the *Similar Goods and Services Distinguishing Form*. The *Similar Goods and Services Distinguishing Form* is formulated and publicized by Chinese trademark registration administration authority based on the *International Classification of Goods and Services for the Purposes of the Registration of Marks* provided by the World Intellectual Property Organization, and by summarizing years of practical work experience. The *Similar Goods and Services Distinguishing Form* defines the similar relationships of goods and service items that are generally considered to be obviously similar. However, for the reason of constant update and development of goods and service items and constant change of the status of market transactions, whether the goods or service items not covered in the *Similar Goods and Services Distinguishing Form*

constitute similar goods or services shall be judged based on the general cognitive ability of the relevant public and by comprehensively considering the function, use, main raw materials, production department, consumption object, sales channel and other factors of goods as well as the purpose, content, mode, object, place and other factors of services.

In principle, the cases about trademark registration examination and re-examination of refused registration shall be adjudicated based on the *Similar Goods and Services Distinguishing Form*. Where the judgement on similarity of goods or services is involved in the examination and adjudication of cases about trademark opposition, re-examination of non-approved trademark registration and declaration of invalidation, the cases shall be judged individually with reference to the *Similar Goods and Services Distinguishing Form* and with these Standards as the principle. The examination and adjudication of individual cases shall be done in combination with actual situations. For the goods or services that do not fall within the scope of the *Similar Goods and Services Distinguishing Form* but still have certain similar relationships, they shall be handled in the judgment of likelihood of confusion.

3.5 Confusion

Confusion usually refers to that the trademarks used on the same or similar goods or services cause the relevant public to misunderstand the source of goods or services because the two trademarks are identical with or similar to each other. The identification function of trademarks is the essential attribute reflecting the core value of trademarks while confusion is substantial detriment to the identification function of trademarks.

Confusion includes not only making the relevant public think that the goods or services related to the disputed trademark are produced or provided by the true right holder himself, but also making the relevant public think that the supplier of the goods

or services related to the trademark has certain connection with the true right holder, such as license relationship, cooperation relationship, etc.

Generally speaking, the judgement on whether a disputed trademark constitutes the identical or similar trademark on the same or similar goods in the examination and adjudication practice does not take actual occurrence of confusion as an important element, instead, it is only necessary to judge whether there is likelihood of confusion.

Regarding the judgement on the likelihood of confusion, first of all, the similarity degree of goods or services and the similarity degree of the trademarks of both parties shall be considered; secondly, such factors as the distinctiveness and popularity of prior trademarks shall be considered; thirdly, the trademark applicant's intention to cause confusion deliberately contributes to the determination of likelihood of confusion, but whether the applicant has malicious intention is not a necessary element for determining likelihood of confusion; finally, other factors affecting the judgement of likelihood of confusion include the degree of attention from the relevant public, the actual occurrence of confusion, etc. The distinctiveness and popularity of prior trademarks, the subjective intention of the trademark applicant and the actual occurrence of confusion should be judged in combination with the evidence submitted by the right holder of the trademark.

The judgment of likelihood of confusion is based on the identity and similarity of trademarks and the same goods and similar goods. If the trademarks of both parties are judged to be the identical trademarks on the same goods or services, the disputed trademark can be presumed to have constituted confusion without the necessity of further judging the likelihood of confusion. Even if the trademarks of both parties constitute similar trademarks on the same goods or services, or identical or similar trademarks on similar goods or services, the disputed trademark may not be judged as insufficient to produce the likelihood

of confusion in the case that the prior trademark has no distinctiveness or popularity.

3.6 Use of trademarks

The use of a trademark refers to the behaviour of applying a trademark to goods, goods packaging or containers and goods transaction documents, or to advertisements, exhibitions and other commercial activities in order to distinguish the source of goods. The judgment of the use of trademarks is covered in all links of trademark registration.

The life of a trademark lies in its use. On the one hand, the use of a trademark is a necessary condition for maintaining and protecting the exclusive right to use it. The use of a trademark is the premise for the realization of its function. Only by giving full play to the function of identifying source of a trademark can the use of the trademark be constituted. On the other hand, the value of a trademark is reflected in the process of use and the goodwill carried by it is obtained through the use of it.

The use of a trademark generally needs to satisfy the following elements: first, the user of the trademark is the right holder of the trademark or person authorized by the right holder. Second, the trademark is used on the goods or services that are designated or approved for use. Third, the use of the trademark is standardized. Fourth, the place where the trademark is used is within the territory of China, including the production, processing, sales of goods or related services provided within the territory of China. Fifth, the use should be open, true and legal commercial use.

3.7 Improper means and malice

Unless otherwise specified in these Standards, improper means refer to trademark applicant's or trademark agency's behaviours of violating the principle of good faith, disturbing the order of trademark registration and violating

commercial morality or industry practices for the purpose of seeking illegitimate interests when applying for trademark registration or handling other trademark matters.

Unless otherwise specified in these Standards, malice refers to the subjective psychological state that is held by trademark applicant or trademark agency when applying for trademark registration or handling other trademark matters, and displayed by certain acts, i.e. obviously violating the principle of good faith, continuing to commit corresponding behaviours in order to seek illegitimate interests despite the fact of knowing or being supposed to know that such behaviours violate the provisions of laws, hinder public order and good custom and damage public interest or infringe upon the rights of others, and seeking or allowing the occurrence of the consequences thereof.

Chapter II Examination and adjudication of malicious application for registration of trademark that is not intended for use

1. Legal basis

Trademark Law

Article 4 Any natural person, legal entity or other organization intending to acquire the exclusive right to use a trademark for the goods in the production and operation activities, shall file an application for the registration of the trademark with the Trademark Office. A malicious application for registration of trademark that is not intended for use shall be rejected.

Several Provisions on Regulating the Application for Registration of Trademarks

Article 3 In an application for trademark registration, the principle of good faith shall be followed, and none of the following acts may be conducted:

(1) A malicious application for registration of trademark that is not intended for use as stipulated in Article 4 of the Trademark Law.

...

Article 5 For a trademark applied for registration, if the trademark registration administration authority finds out that its application for trademark registration falls within the scope of the malicious application for registration of trademark that is not intended for use as stipulated in Article 4 of the Trademark Law, the application shall be rejected according to law and not published.

Specific examination procedures will be formulated separately by the trademark registration administration authority in accordance with the Trademark Law and the Regulations for the Implementation of the Trademark Law.

Article 8 When determining whether an application for trademark registration violates the provisions of Article 4 of the Trademark Law, the trademark registration administration authority may comprehensively consider the following factors:

(I) The number of trademarks that are applied for registration, designated categories for use, status of trademark transactions, etc. by the applicant or the natural person, legal person or other organization having connections with the applicant;

(II) The industry and state of operation of the applicant, etc. ;

(III) Where the applicant's previous engagement in any malicious trademark registration or infringement upon the exclusive right to use a registered trademark of others is determined in administrative decisions or rulings or judicial judgments that have taken effect;

(IV) Where the trademark applied for registration is identical with or similar to the trademarks of others with certain popularity;

(V) Where the trademark applied for registration is identical with or similar to the name of a well-known person, enterprise name, abbreviation of enterprise name or other commercial marks, etc.;

(VI) Other factors that should be considered from the viewpoint of the trademark registration administration authority.

2. Interpretations

The Standing Committee of the 13th National People's Congress decided on April 23rd, 2019 to amend the *Trademark Law* by adding the provision that "a malicious application for registration of trademark that is not intended for use shall be rejected" to Article 4(1). The newly-added clause aims to resolutely curb malicious application for registration of trademark "that is not intended for use",

resolutely crack down on the registration application behaviours of hoarding trademarks, and effectively regulate the order of application for trademark registration. The legislative intention of Article 4 is to regulate such behaviours as malicious applications “that is not intended for use” and hoarding registered trademarks, and to enhance the use obligations of applicants for registration. This article adds the content of regulating the malicious application for registration of trademark that is not intended for use of the *Trademark Law*, so as to prevent malicious application for registration of trademark that is not intended for use from the source, and make application for trademark registration return to the origin of the system (i.e. for the purpose of use).

The “malicious application for registration of trademark that is not intended for use” as stipulated in Article 4 of the *Trademark Law* refers to the applicant’s behaviours of submitting a large number of applications for trademark registration that are not based on the requirements of production and operation activities and lacks true use intention, thus improperly occupying trademark resources and disturbing the order of trademark registration.

In order to judge whether applications constitute “malicious application that is not intended for use”, comprehensive consideration shall be given to the industrial characteristics, business scope, operating qualification and other basic conditions of the applicant; the overall situation such as the number, category span and time span of the applications for trademark registration filed by the applicant; various factors such as the specific composition of the signs that are applied for registration as trademarks, the actual use of the trademarks, and whether the applicant has committed any prior malicious trademark registration or infringement upon the exclusive right to use the registered trademarks of multiple subjects, so as to comprehensively judge whether the applications are obviously not in line with commercial practices, obviously beyond legitimate business needs and actual operating capacity, and obviously with the intention of seeking illegitimate interests and disturbing normal order of trademark registration.

3. Applicable elements

The act of applying for registration of trademark “that is not intended for use” means that when applying for trademark registration, the applicant has neither the purpose of actually using the trademark nor the act of preparing to use the trademark, or it can be reasonably inferred that there is no possibility of actually using the trademark. The legislative purpose of Article 4 of the *Trademark Law* is to curb malicious application behaviours that occupy trademark resources improperly and disturb the order of trademark registration, such as trademark hoarding. The intention of these behaviours is to apply for a large number of trademarks that are not intended for use but for the purpose of seeking profits, thus falling within the scope of the “malice” of “not intended for use” which is supposed to be regulated by this article.

Article 4 of the *Trademark Law* shall not apply to the following circumstances. If they fall within the scope of the malicious registration circumstances supposed to be regulated by other clauses of the *Trademark Law*, the other clauses shall apply:

(1) The applicant applies for the identical or similar trademarks based on defensive purposes in order to prevent pre-emptive registration of his registered trademarks by others;

(2) The applicant only damages the civil rights and interests of specific subjects and is not involved in making any damage to the public interest;

(3) The applicant should apply for an appropriate number of trademarks in advance for his future business with realistic expectations.

4. Considerations

In order to judge whether an application constitutes a malicious application for registration of trademark that is not intended for use, priority shall be given to the clues that are found in the registration examination procedure and to the evidence on record in the opposition and review procedure, and the following factors may be considered comprehensively:

4.1 Basic conditions of applicant

Including the duration of existence; actual payment of registered capital; the industry and details of business scope; whether operating status is normal, and whether there are abnormal circumstances such as revocation, cancellation, suspension of business, liquidation, etc.

4.2 Overall situation of the application for trademark registration submitted by applicant

Including the cumulative number of trademarks applied by the applicant and the categories of designated goods or services; the time span of the applications for trademark registration that are filed by the applicant; the number of the applications for trademark registration newly submitted by the applicant within a short period of time, the categories of designated goods or services, etc.

4.3 Specific composition of trademarks

Including whether the trademark applied for registration is identical with or similar to a trademark of others with certain popularity or having relatively strong distinctiveness; whether it contains public resources such as names of administrative divisions, mountains and rivers, scenic spots, industrial terms and other public resources; whether it contains the name of a well-known person, enterprise name, e-commercial name, the well-known and distinguishable commercial signs of others such as advertising slogans, fine art works, appearance designs, etc.

4.4 The applicant's behaviors in the process of applying for trademark registration and after obtaining trademark registration

Including that the applicant sells or assign the trademark to a third party in the process of applying for trademark registration and after obtaining the trademark registration and fails to effectively prove that he has use intention before the sales or assignment or provide reasonable explanations of his behaviour of not using the trademark; and that the applicant commits the acts of actively peddling or publicly selling the trademark to others, coercing others into conducting business cooperation with him, and demanding from others high amount of assignment fee, licensing fee, tort compensation and litigation settlement fee, for the purpose

of seeking illegitimate interests in the process of applying for trademark registration and after obtaining trademark registration.

4.5 Status of relevant evidence in opposition and review procedure

Including that there is proof in the opposition and review procedure to prove that the applicant lacks true use intention when applying for registration of the trademark, or the applicant neither has actual use behaviour nor commits any act of preparing for using the trademark after obtaining registration and the applicant fails to effectively prove his use intention or make reasonable explanations of his behaviour of not using the trademark; and there is evidence in the opposition and review procedure to prove that the disputed trademark applicant files the application just for the purpose of making use of the exclusive right to use the disputed trademark as a tool of safeguarding rights against a third party.

4.6 Other considerations

Including but not limited to:

(1) Where the applicant's previous engagement in any malicious trademark registration or infringement upon the exclusive right to use a registered trademark of others as determined in administrative decisions or rulings or judicial judgments that have taken effect;

(2) Where the applicant has been included in the List of Enterprises with Serious Illegal and Dishonest Acts by National Enterprise Credit Information Publicity System due to malicious application for registration of trademark or infringement upon trademark;

(3) The cumulative number of trademarks applied by the natural person, legal person or other organizations that have specific relationships with the applicant as well as the number of applications for trademark registration to be examined and the categories of designated goods or services;

(4) The actual trademark transactions, offers and invitations for offer of the natural person, legal person or other organizations that have specific relationships with the applicant.

The above factors are often considered in the opposition and review procedure.

5. Applicable circumstances

The following circumstances falls within the scope of “malicious application for registration of trademark that is not intended for use” as referred to in this article, unless the interested parties provide evidence to the contrary:

(1) Apply for registration of a large number of trademarks, obviously exceeding the needs of normal operating activities, lacking true use intention and disturbing the order of trademark registration;

(2) Reproduce, imitate or plagiarize a large number of prior trademarks of multiple subjects with certain popularity or having relatively strong distinctiveness, thus disturbing the order of trademark registration;

(3) Repeatedly apply for registration of specific trademarks of the same subject with certain popularity or having relatively strong distinctiveness, thus disturbing the order of trademark registration;

Where such act of repeated application for registration falls within the scope of the malicious registration circumstances regulated by other provisions of the *Trademark Law*, the other provisions shall apply.

(4) Apply for registration of a large number of signs that are identical with or similar to the enterprise names, abbreviations of enterprise names, e-commercial names and domain names of others, the names, packaging and decorations of goods with certain influence, and the well-known and distinguishable commercial signs of others such as advertising slogans, appearance designs, etc.;

(5) Apply for registration of a large number of signs that are identical with or similar to the names of well-known persons, names of well-known works or characters and the well-known and distinguishable public cultural resources of others such as fine art works, etc.;

(6) Apply for registration of a large number of signs that are identical with or similar to the names of administrative divisions, mountains and rivers, scenic spots, buildings, etc.;

(7) Apply for registration of a large number of marks on designated goods or services that lack distinctiveness such as generic terms, industrial terms, marks that directly indicate the quality, major raw materials, functions, uses, weights, quantities, etc. of goods or services;

(8) Submit a large number of applications for trademark registration and assign a large number of trademarks with assignees relatively scattered, thus disturbing the order of trademark registration;

(9) The applicant commits the acts of selling a large number of trademarks, coercing the prior users of trademarks or others into conducting business cooperation, and demanding high amount of assignment fee, licensing fee or tort compensation, for the purpose of seeking illegitimate interests;

(10) Other circumstances that can be determined as malicious application for registration of trademark.

In the above circumstances, (3) and (9) are often applicable to the opposition and review procedure; the other circumstances are applicable to the registration examination, opposition and review procedures.

The trademarks that are maliciously applied for registration and not intended for use are not limited to the trademarks applied for registration by the applicant himself, but also include the trademarks applied for registration by a natural person, legal person or other organization that colludes with the applicant or that has a specific identity relationship or other specific connection with the applicant.

The assignment of trademarks shall not affect the determination of the trademark applicant's violation against the circumstances under this article.

6. Typical cases

6.1 Apply for registration of a large number of trademarks, obviously exceeding the needs of normal operating activities, lacking true use intention and disturbing the order of trademark registration

Case I:

Since 2017, an enterprise management consulting company has cumulatively filed applications for registration of over 800 trademarks covering more than 30 categories, including Category 14, 29, 30, 32 and 36. Among them, over 100 trademarks were applied for registration just in December 2019.

Investigation shows that the company is a limited liability company solely owned by a natural person and established in 2017 with a registered capital of RMB one million, but the paid-up capital is not publicized. Its business scope covers solar water heater product consulting, tourism consulting, corporate image planning & consulting, etc. The applicant has filed applications for registration of a total of over 800 trademarks covering more than 30 categories, including the categories with a relatively large span from its business scope such as Category 30 "Food", and the special categories with relatively strong industrial attributes and high qualification requirements such as Category 36 "Financial Services", etc. The applications are far beyond the applicant's business scope and do not conform to business practices. Having already owned hundreds of registered trademarks, the applicant continued to file applications for registration of over 100 trademarks in December 2019. The number of the applications for trademark registration submitted by the applicant is so huge and the rationality of the applications is difficult to explain. As the applications obviously exceed the needs of normal operating activities and lack true use intention, the applications are determined to have constituted malicious applications for registration of trademark that is not intended for use and thus rejected according to Article 4 of the *Trademark Law*.

Case II:

A natural person cumulatively applied for registration of over 900 trademarks covering more than 30 categories from 2004 to November 2019, and most of them have already been approved for registration. From December 2019 to April 2020, the natural person successively filed several applications for registration of a small number of trademarks with the total number of applied trademarks amounting to over 100. The trademark registration administration authority requested, through the procedure of office action, the applicant to explain his intention of the applications for trademark registration as well as the use status of the applied trademarks and provide necessary evidence thereof. The applicant responded that first, he applies for registration of the trademarks because he likes trademarks; second, he provides trademark design services for his enterprise customers; third, he takes the trademarks as backup for his business operation; fourth, some of the trademarks have been previously approved for registration, thus the applications this time belong to defensive registration intended for extended protection within other categories.

Upon investigation, the individual business license submitted by the applicant shows that the individual business was established in 2007 with a registered capital of RMB 10,000 and its business scope covers "economic information consulting; sales of clothing, jewelry, handicrafts, hardware & electrical material, daily necessities, fodder, cosmetics, household appliances; computer graphic design". The applicant has filed applications for registration of over 1,000 trademarks covering more than 30 categories, which obviously exceeds his actual use demand; and the designated categories of multiple trademarks applied for registration by him have a relatively large industrial span from his business scope, such as Category 33 "Liquor" and Category 5 "Medicines for Human Purposes", thus obviously exceed his business scope. The defensive registration put forward by the applicant is supposed to refer to that the applicant applies for registration of identical or similar trademarks for the purpose of preventing pre-emptive registration by others on the premise that his prior registered trademarks have been

put into actual commercial use and have certain popularity. However, the applicant in this case has failed to submit relevant explanations of the use status of his prior registered trademarks, thus his argument of applying for registration based on defensive intention is not established. Though the applicant also argued that his act of applying for registration is a backup for his business operation, he has failed to provide relevant materials to prove that he has made actual preparations; besides, the hundreds of trademarks previously registered by the applicant are already sufficient to meet his production and operation needs. Since the applicant has failed to make reasonable explanations of his act of submitting applications for registration of a large number of new trademarks and provide necessary evidence thereof, the above-mentioned applications for registration of trademarks have constituted malicious applications for registration of trademarks that are not intended for use and shall be rejected according to Article 4 of the *Trademark Law*.

Case III:

The application for trademark registration filed by a scientific trade company was rejected according to Article 4 of the *Trademark Law* during the registration examination procedure. The applicant refused to accept the above rejection decision and filed an application for re-examination of it. The reason for filing the re-examination application was as follows: the trademark applied for registration by the applicant is intended for use and belongs to normal commercial use behaviour and no trademark sales have been committed.

It is found through the re-examination that the applicant has registered 929 trademarks covering all 45 categories of goods and services; among them, over 500 trademarks were applied and registered within less than nine months during the period from 2018 to 2019. Re-examination conclusion is that the applicant's act of applying for registration of a large number of trademarks within a short period of time obviously exceeds his normal production and operation needs. Although the applicant raised his reason for applying for re-examination is that all his recent trademark applications are the extended registration of his trademarks that have

been put into actual use, such argument is inconsistent with his actual application act and the composition of the trademarks, thus the reason cannot explain the rationality and legitimacy of his registration act. Therefore, the applications for trademark have constituted the circumstances as referred to in Article 4 of the *Trademark Law*.

First of all, the registration applications filed by the applicant as a scientific trade company covers all categories of goods and services, which is obviously inconsistent with the industrial characteristics and the actual operating status of the company. Secondly, the applicant has applied and registered a total of 929 trademarks, including the special categories with relatively strong industrial attributes and high qualification requirements, such as Category 1 "Industrial Chemicals", Category 36 "Insurance Consulting Services", Category 38 "Wireless Broadcasting Service", etc.; in particular, over 500 trademarks among them are applied for registration within less than nine months from the time period from May 2018 to January 2019, and the applicant could not explain the rationality of his act of registration application. Thirdly, the applicant has registered a large number of trademarks that have nothing to do with his self-claimed main trademark within different categories, and has also applied for registration of a large number of signs that do not conform to commercial usage habits, and the applicant could not explain the legitimacy of his registration act. Therefore, the acts committed by the applicant have constituted the circumstances referred to in Article 4 of the *Trademark Law* and his registration applications shall be rejected.

6.2 Reproduce, imitate or plagiarize a large number of multiple subjects' prior trademarks with certain popularity or having relatively strong distinctiveness, thus disturbing the order of trademark registration

Case I:

A natural person filed applications for registration of over 80 trademarks for the goods of Category 24 and Category 25 in January 2020. Most of the trademarks applied for registration were in the form of "踏奖安", "宁俊李", "克妮耐", "娜控富安", "司登魔波", "弟持哥", etc.

Investigation shows that the applicant has filed applications for registration of 105 trademarks. Most of the trademarks are reproduction, imitation and plagiarizing of the prior trademarks of multiple subjects with certain popularity or having relatively strong distinctiveness by means of deformation, splitting and reorganization, and their designated categories are basically identical with or relevant to the categories of approved goods or services for the prior trademarks of others with certain popularity or having relatively strong distinctiveness. Such act of reproducing, imitating and plagiarizing the prior trademarks of multiple subjects with certain popularity or having relatively strong distinctiveness on the categories of goods or services that are similar or have relatively strong connections has constituted malicious application for registration of trademark that is not intended for use and shall be rejected by according to Article 4 of the *Trademark Law*.

Case II:

A company filed applications for registration of 12 trademarks such as “天王宾利”, “BENTLEY DESIGN”, “博纳多兰博基尼” and “FARRARIMAY” in March 2020 within 12 categories including Category 3, 9, 14 and 25.

Investigation shows that the applicant has applied for 95 trademarks since December 2019. Although their designated categories have nothing to do with automobiles, all of them contain complete trademarks of the automobile brands with relatively high popularity and distinctiveness, such as “宾利”, “BENTLEY”, “兰博基尼”, “FARRARI”, etc. The applicant’s act of applying for registration of a large number of marks that reproduce, imitate and plagiarize the prior trademarks of multiple subjects with certain popularity or having relatively strong distinctiveness on dissimilar goods or services has disturbed normal order of trademark registration and constituted malicious application for registration of trademark that is not intended for use, therefore shall be rejected according to Article 4 of the *Trademark Law*.

Case III:

A technology limited company has applied for over 30 trademarks since 2017 covering the categories of multiple goods or services, including Category 6, 9, 10, 16, 18 and 43, and the applicant has continued to file applications for registration of trademarks covering Category 9 “Pedometer” and other goods.

Investigation shows the applicant has applied for registration of multiple trademarks that are identical with or similar to the prior trademarks of others with certain popularity or having relatively strong distinctiveness on dissimilar goods or services, such as “清扬”, “翰皇HANOR”, “蜂花”, “章华SAVOL” and “张小泉”, and some of the trademarks have been rejected or opposed by relevant right holders. The applicant’s act of registering multiple trademarks has obviously exceeded normal business operating needs. In this case, the trademarks applied by the applicant for Category 9 “Pedometer” and other goods are exactly identical with the prior trademarks of others with certain popularity and approved for use on Category 5 “Eyedrops” and other goods, thus the application act is obviously malicious and constitutes the circumstance of “malicious application for registration of trademark that is not intended for use” as referred to in Article 4 of the *Trademark Law*.

6.3 Repeatedly apply for registration of specific trademarks of the same subject with certain popularity or having relatively strong distinctiveness, thus disturbing the order of trademark registration

Case:

The original applicant of the trademark “马石油酷腾” was natural person A. The trademark had been assigned to natural person B by natural person A upon the examination of the application for registration of the trademark.

Investigation shows that: the trademark “马石油酷腾” applied for registration in this case is identical with the simply combined characters of the trademarks “马石油” and “酷腾” previously registered by the same subject and having certain distinctness, and does not form a new meaning obviously different from the quoted trademarks, thus the trademarks of both parties has constituted similar trademarks. The original applicant has applied for over 20 trademarks. In addition to the application for the trademark “马石油酷腾” in this case, the original applicant has also repeatedly applied for the trademarks “马石油途特力”, “马石油酷泰”, “马石油迈奇”, “马石油欣腾” and “马石油炫腾”, which are simple combinations of the trademarks previously registered by the same subject, i.e. “马石油”, “途特力”, “酷泰”, “迈奇”, “欣腾”, “炫腾” etc., in Category 1 and Category 4 without reasonable explanations. Meanwhile, investigation reveals that it was once judged in the case about declaration of invalidation of the trademark “马石油” applied for registration by the original applicant that the original applicant neither provided evidence to prove that he had true intention to use the trademark nor provided reasonable source of his trademark, hence his act of registering a large number of trademarks had exceeded the needs of normal production and operation, therefore the trademark was declared invalid. To sum up, the applicant’s act of applying for the trademarks involved in this case is a repeated application for registration of specific trademarks of the same subject with certain popularity or having relatively strong distinctiveness, disturbs normal order of trademark registration, and falls within the scope of malicious application for registration of trademark that is not intended for use. Although the trademark has been assigned, it does not affect the application of Article 4 of the *Trademark Law*. Therefore, the act has constituted the circumstance of malicious application for registration of trademark that is not intended for use as referred to in Article 4 of the *Trademark Law*.

6.4 Apply for registration of a large number of signs that are identical with or similar to the enterprise names, abbreviations of enterprise names, e-commercial names and domain

names of others, the names, packaging and decorations of goods with certain influence, and the well-known and distinguishable commercial signs of others such as advertising slogans, appearance designs, etc.

Case I:

Since December 2019, a network technology limited company has successively filed applications for registration of 92 trademarks, including “百利金 PELIKAN”, “优凡文具 YOUFAN”, “普贴 PUTY”, etc. The trademarks are designated for use on goods of Category 11, 17, 18, 22, 24, 26, 27 and 33. Investigation shows that 73 of them are the names of Taobao Tmall shops. The trademark registration administration authority requested, through the procedure of office action, the applicant to explain his intention of the application for trademark registration as well as the use status of the applied trademarks and provide necessary evidence thereof, but the applicant failed to reply within the legal time limit.

The applicant filed applications for registration of multiple trademarks within a short period of time and most of the trademarks were identical with or similar to the names of several Taobao Tmall shops located in different regions. In particular, the Chinese and English parts of multiple trademarks were the same as the names of Taobao Tmall shops and the categories of designated goods were the same as those of the main goods operated by the Taobao Tmall shops. It is hard to believe that it is a coincidence for the applicant to have applied for the same trademarks in relevant categories. Moreover, the applicant has failed to give reasonable explanations of his application intention. Therefore, the applicant’s act of applying for registration of a large number of signs that are identical with or similar to the e-commercial names of others as trademarks has constituted malicious application for registration of trademark that is not intended for use and shall be rejected in accordance with Article 4 of the *Trademark Law*.

Case II:

The opposed party has successively applied for registration of over 100 trademarks covering more than 20 categories of goods or services. Dozens of the trademarks are identical with or similar to the enterprise names of others, such as “科旭业”, “博盛尚”, “瞬知”, “禧涤”, “VEONEER”, “安软慧视”, “锱云科技”, etc. The opposed party neither has submitted the use evidence of the above-mentioned trademarks and source of creation, nor provided evidence to prove that he intends to use them. The number and categories of the trademarks applied for registration by the opposed party have obviously exceeded the normal demand of market subjects. In this case, the opposed trademarks are identical with the prior enterprise names of the opponents with certain distinctiveness, therefore, the opposed party’s act of applying for the opposed trademarks has constituted the circumstance of “malicious application for registration of trademark that is not intended for use” as referred to in Article 4 of the *Trademark Law*.

Case III:

The opposed party applied for registration of over 40 trademarks covering 26 different categories of goods or services, including 28 trademarks covering Category 35, during the period from August 2017 to January 2018. Some of the trademarks are identical with the e-commercial names of others with certain market influence, such as “美伦博士”, “资莱皙”, “迪特亚诺”, “唇梦缘”, “红品爱家”, “进鑫铭帮”, “淘孕喜”, etc. The opposed trademarks in this case are identical with the names of the prior e-commercial flagship shops of the opponents, the opposed party has applied for registration of a number of marks that are identical with or similar to the e-commercial names of others, and the opposed party has failed to give reasonable explanations of his creative ideas or use intention. Therefore, the opposed party’s act of applying for the opposed trademarks has constituted the circumstance of “malicious application for registration of trademark that is not intended for use” as referred to in Article 4 of the *Trademark Law*.

6.5 Apply for registration of a large number of signs that are identical with or similar to

the names of well-known persons, names of well-known works or characters and the well-known and distinguishable public cultural resources of others such as fine art works, etc.

Case I

A biotechnology company filed applications for registration of over 30 trademarks in June 2020, including "Michael Kremer", "James Peebles", "Gregg L. Semenza", "Michel Mayor", etc. The designated categories of the trademarks are mainly Category 5 and Category 30.

It is found upon investigation that "Michael Kremer", "James Peebles", "Gregg L. Semenza" and "Michel Mayor" are Nobel Prize winners. The applicant's application for registration of a large number of names of well-known persons as trademarks disturbs normal order of trademark registration and is judged to have constituted malicious application for registration of trademark that is not intended for use, thus shall be rejected in accordance with Article 4 of the *Trademark Law*.

Case II:

A trading limited company has applied for over 20 trademarks. All of the trademarks are designated to be used on such services as Category 35 "Promote Sales for Others; Marketing".

Investigation shows that the name patterns of 20 trademarks among all the trademarks applied for registration by the applicant are "name of craftsman + 建盏(Jian Zhan)", such as "陈大鹏建盏", "蔡炳龙建盏", "黄文勇建盏", "吴立主建盏", "杨敏建盏", etc. Among them, Chen Dapeng (陈大鹏) is the national master of Jian Zhan and the representative inheritor of national intangible cultural heritage, Cai Binglong (蔡炳龙) is the provincial inheritor of intangible cultural heritage, Huang Wen Yong (黄文勇) is the municipal master of arts and crafts as well as inheritor of intangible cultural heritage, and Wu Lizhu (吴立主) is county-level inheritor of intangible cultural heritage. All of them have certain reputation in the industry of Jian Zhan. The applicant applied for the above trademarks with obvious malice and failed to provide evidence of his actual use of

the above-mentioned trademark. Therefore, the applicant's application for registration of multiple trademarks that are identical with or similar to the names of well-known persons has constituted the circumstance of "malicious application for registration of trademark that is not intended for use" as referred to in Article 4 of the *Trademark Law*.

6.6 Apply for registration of a large number of signs that are identical with or similar to the names of administrative divisions, mountains and rivers, scenic spots, buildings, etc.

Case I:

A cultural media limited company filed applications for registration of over 160 trademarks covering more than 20 categories in November 2019. Among them, more than 100 trademarks are geographic names or names of scenic spots in Nanchang and Ganzhou of Jiangxi Province, such as "四贤坊", "瓦市街" and "马祖岩". Investigation shows that the company is a limited liability company established in April 2019 invested or controlled by natural person, and its business scope is cultural and artistic exchange planning, corporate image planning, commercial information consulting, etc. The applicant did not make reasonable explanations of his intention of applying for the above-mentioned trademark registration. Geographic names and the names of scenic spots are public resources and shall not be monopolized by one enterprise by means of registering them as trademarks in large quantity. Such act of registering a large number of public resources such as geographic names and the names of scenic spots as trademarks has the intention of improperly hoarding public resources and has constituted malicious application for registration of trademark that is not intended for use, therefore shall be rejected according to Article 4 of the *Trademark Law*.

Case II:

An information technology limited company applied for registration of over 50 trademarks from November 2016 to June 2017. The trademarks were centrally designated for use on goods

of Category 29 "Dry Vegetables", Category 30 "Rice; Noodles" and Category 31 "Fresh Fruits", etc.

Investigation shows that most of the trademarks applied for registration by the applicant are geographic name trademarks, such as "围底", "簕竹", "葵潭", "黎溪", "涧头集", "谭格庄", etc. Among them, "围底" is the name of Weidi Town, Luoding City, Guangdong Province; "簕竹" is the name of Lezhu Town, Xinxing County, Yunfu City, Guangdong Province; "葵潭" is the name of Kuitan Town, Huilai County, Jieyang City, Guangdong Province; "黎溪" is the name of Lixi Town, Huili County, Liangshan Prefecture, Sichuan Province; "涧头集" is the name of Jiantouji Town, Taierzhuang District, Zaozhuang City, Shandong Province; and "谭格庄" is the name of Tangezhuang Town, Laiyang City, Shandong Province. The applicant has applied for the above-mentioned trademarks with obvious malice and failed to provide evidence to prove that he intends to use them. Therefore, the applicant's application for registration of a large number of trademarks that are identical with or similar to the geographical names with certain popularity has constituted the circumstance of "malicious application for registration of trademark that is not intended for use" as referred to in Article 4 of the *Trademark Law*.

Case III:

An enterprise management consulting company has a registered capital of RMB 100,000 and its business scope is limited to enterprise consulting services and brand planning. The applicant applied for registration of over 100 trademarks for the goods or services of Category 9, 25, 33, 34 and 36 from October 2016 to November 2017. Most of the trademarks belong to the following eight types: (1) trademarks identical with the names of public places that are well known to the public, such as "粤港澳大湾区", "九龙半岛", "铜锣湾", "维港", "纽伦港", "北部湾", "杭州湾", etc.; (2) trademarks identical with the names of famous scenic spots all over China, such as "抚仙湖", "鼋头渚", "清江画廊", "三峡人家", "爱晚亭", "醉翁亭", "野三坡", "塞罕坝", "壶口瀑布",

“黄果树瀑布”, “大梅沙”, etc.; (3) trademarks identical with the names of well-known commercial districts, such as “南京路”, “春熙路”, “王府井大街”, “陆家嘴”, “旺角”, etc.; (4) trademarks identical with the mottos of Nankai University, Beijing Institute of Technology, Nanjing University and the Chinese University of Hong Kong and other famous universities of China, such as “允公允能”, “学以精工”, “诚朴雄伟”, “博文约礼”, etc.; (5) trademarks identical with the names of buildings that are well known to the public, such as “粤港澳大桥”, etc.; (6) trademarks identical with the names of persons with certain popularity, such as “可桢”, “仲尼”, “唐叔虞”, “冉季载”, “皋陶公”, etc.; (7) trademarks identical with the names of the Twenty-Four Solar Terms, such as “春分”, “处暑”, “大暑”, “寒露”, etc.; (8) trademarks identical with the twelve constellations in Chinese, such as “天秤座”, “天蝎座”, “水瓶座”, etc.

The goods and services corresponding to the trademarks applied for registration by the applicant are not related to his business scope. The Category 34 “Tobacco” goods and Category 36 “Banking” services on which the applied trademarks are designated for use have such industrial specialty that it is difficult for the applicant to realize the true use purpose of the registered trademarks; meanwhile, the applicant could not provide evidence, thus the trademarks applied by the applicant has obviously exceeded the needs of normal production and operation, and the applicant’s application for registration of a large number of trademarks has occupied public resources and disturbed normal order of trademark registration and management. Therefore, the applicant’s application for trademarks has constituted the circumstance of “malicious application for registration of trademark that is not intended for use” as referred to in Article 4 of the *Trademark Law*.

6.7 Apply for registration of a large number of marks on designated goods or services that lack distinctiveness such as generic terms, industrial terms, marks that directly indicate the quality, major raw materials, functions, uses, weights, quantities, etc. of goods or services

Case:

A technology limited company filed applications for registration of over 400 trademarks in December 2019. The name patterns of the trademarks included "abbreviation of provincial capital + 链" and "computer terminology in English + TOKEN/CHAIN", such as "闽链", "GSMTOKEN", "GOTONE CHAIN", etc., and the trademarks were designated for use on 25 categories of goods or services, including Category 3, 5, 9, 12, 18, etc. The applicant submitted explanations of use intention and evidence through the procedure of office action, including such evidentiary materials as articles of association, business cards, product publicity pages, product procurement contracts, the original copy and photocopy of VAT invoices, description of notarization contents of commercial activities, etc.

Investigation shows that the applicant is a limited liability company (solely invested by natural person) established in July 2019 with a registered capital of RMB ten million, but the paid-up capital is not publicized. Its business scope covers "software technology consulting; technical development, promotion and transfer of blockchain; import and export of general merchandise and technology; conference services", etc. Although the applicant has made explanations of his operating status and act of applying for trademarks, the evidentiary materials submitted by him are irrelevant to the trademarks applied by him and there is no other evidence to support so, thus a complete chain of evidence cannot be formed to prove that he is making or prepares to make true and reasonable use of the trademarks applied by him; moreover, most of the designated categories of the trademarks applied by the applicant have little relevance to his business scope, therefore the applications have constituted malicious application for registration of trademark that is not intended for use and shall be rejected according to Article 4 of the *Trademark Law*.

6.8 Submit a large number of applications for trademark registration and assign a large number of trademarks with assignees relatively scattered, thus disturbing the order of trademark registration

Case:

A company filed applications for registration of over 20 trademarks in May 2020. Investigation shows that the applicant has filed applications for registration of over 700 trademarks covering more than 30 categories from 2014 to March 2020. Among them, 198 trademarks registration applications have been assigned to others with the number of assignees amounting to 198.

The applicant also assigned a large number of trademarks when submitting a large number of applications for trademark registration, and the assignees are relatively scattered. It can be inferred that the applications are filed by the applicant not for the purpose of use but for sales of a large number of trademarks so as to seek illicit interests, thus the applicant obviously lacks true use intention, and the applicant has failed to explain the legitimacy of his assignment intention and the rationality of his assignment act. The applications have disturbed normal order of trademark registration and constituted malicious application for registration of trademark that is not intended for use, therefore they shall be rejected according to Article 4 of the *Trademark Law*.

6.9 The applicant commits the acts of selling a large number of trademarks, coercing the prior users of trademarks or others into conducting business cooperation, and demanding high amount of assignment fee, licensing fee or tort compensation, for the purpose of seeking illegitimate interests

Case:

The opposed party has successively filed applications for registration of over 600 trademarks covering 36 categories of goods or services. Among them, over 130 different trademarks are sold at high prices on the Internet and some of sold trademarks have been actually assigned. At the same time, the evidence provided by the opponent shows that the opposed party once demanded high amount of assignment fee from the opponent. The opposed party has failed to give reasonable explanations of the above-mentioned facts. On

these grounds, it is judged upon examination of this case that the opposed party has filed applications for registration of the trademarks that are not intended for use but for selling them in large quantity or demanding high amount of assignment fee to seek illicit interests. Therefore, the aforesaid acts committed by the opposed party have constituted the circumstance of “malicious application for registration of trademark that is not intended for use” as referred to in Article 4 of the *Trademark Law*.

6.10 Other circumstances that can be determined as malicious application for registration of trademark.

Case I:

Among the over 90 trademarks applied for registration by the opposed party, 20 trademarks have been opposed. According to the materials provided by the opponents and as shown by verification: among the 74 trademarks applied for registration by an international trading limited company, 14 trademarks have been opposed; among the 42 trademarks applied for registration by a exhibition (Beijing) limited company, 7 trademarks have been opposed and the company’s business license has been revoked because it has not opened up or operated; and among the 65 trademarks applied for registration by a media incorporated company, 3 trademarks have been opposed. As the legal representatives or shareholders of the aforesaid three companies are the same as the legal representatives of the opposed party, it can be judged that the aforesaid companies have connections with the opposed party in this case. The opposed party and the companies that have specific relationships with him have applied for registration of a number of trademarks that are identical with or similar to those previously registered and used by others and having certain popularity within different categories of goods and services. Taking the above factors into consideration, it is judged in this case that the trademarks that are maliciously applied for registration and not intended for use are not limited to the trademarks applied for registration by the opposed party himself, but also include the trademarks applied for registration by a natural person, legal person or other organization that has specific

relationships with the opposed party. As the disputed trademarks in this case are identical with the trademarks of others with certain distinctiveness, therefore, the acts committed by the opposed party have constituted the circumstance of "malicious application for registration of trademark that is not intended for use" as referred to in Article 4 of the *Trademark Law*.

Case II:

The brand planning studio A of City A filed applications for registration of a total of over 100 trademarks from March 2019 to March 2020. Most of the trademarks were arbitrary combinations of two or three Chinese characters. The over 80 trademarks applied for registration in and before October 2019 have been examined and most of them have been approved for registration. When examining the applications for trademark registration submitted by the applicant in November 2019, the trademark registration administration authority found that some of the trademarks were identical with those applied for registration by brand planning studio B and fashion design studio C of City A and that the applications for trademark registration were submitted around the same time. Further verification revealed that brand planning studio A, brand planning studio B, fashion design studio C and trade firm D in City A are individual businesses with the same natural person as their legal representative and that such natural person and the aforesaid entities had filed applications for registration of over 1200 trademarks in the past year. The trademark registration administration authority issued an office action on all the applications for trademark registration that had been submitted by the aforesaid subjects with specific relationships and were still under examination, and required the applicant to explain his intention of the applications for trademark registration as well as the use status of the applied trademarks and provide necessary evidence thereof. The applicant failed to reply within the legal time limit.

The applicant and the subjects that have specific relationships with him have filed applications for registration of a large number of trademarks within a short period of time which obviously beyond the needs of normal operating activities. Besides, the applicant has failed to

explain the rationality of the above-mentioned act of trademark application, thus the applications have constituted malicious application for registration of trademark that is not intended for use and shall be rejected in accordance with Article 4 of the *Trademark Law*.

Case III:

The opposed party has successively filed applications for registration of over 1,000 trademarks for more than 40 categories of goods or services, including Category 5, 9, 35, etc. A large number of the trademarks are identical with or similar to those previously registered by others and having certain distinctiveness, such as "LAMERCOLLECTIONS", "SMEG", "喵趣 KITEKAT", "张小泉", etc. The opposed party was once determined in the trademark examination period to have committed the act of malicious application for registration of trademark that is not intended for use. It is hard to believe that it is a coincidence for the opposed trademarks applied by the opposed party to be exactly the same as those previously registered by the opponents and having certain distinctiveness. Moreover, the opposed party has failed to give reasonable explanations of the use intention of the large number of trademarks that are applied for registration. Considering the above factors, the opposed party's act of applying for the opposed trademarks has constituted the circumstance of "malicious application for registration of trademark that is not intended for use" as referred to in Article 4 of the *Trademark Law*.

Chapter VI Examination and Adjudication of Three-Dimensional Trademarks

1. Legal basis

Trademark Law

Article 8 In respect of any mark capable of distinguishing the goods of one natural person, legal entity or any other organization from that of others, including any word, design, letters of an alphabet, numerals, three-dimensional symbol, combinations of colors, and their combinations, an application may be filed for registration.

Article 12 Where an application is filed for registration of a three-dimensional sign as a trademark, any shape derived from the nature of the goods per se, any shape of the goods required for achieving technical results, or any shape providing the goods with substantive value, shall not be registered.

Implementing Regulations of the Trademark Law

Article 13 Where an application is filed for registration of a trademark in the form of a three-dimensional mark, the applicant concerned shall make relevant statements in the written application, explain the use methods of the trademark, and submit a reproduction thereof by which the three-dimensional shape can be determined. The reproduction thereof submitted shall include at least three-view drawing.

Article 43 Where an applicant for territorial extension to China requests protection of a three-dimensional mark, color combinations or a sound mark as a trademark or requests for the protection of a collective mark or certification mark, it shall, within three months from the date of registration of the trademark in question in the International Register of the International Bureau, submit relevant materials prescribed by Article 13 herein to the Trademark Office via a legally established trademark agency. Where the applicant fails to submit relevant materials within the prescribed time limit, the Trademark Office shall refuse its application for territorial extension.

2. Interpretation²

A three-dimensional trademark refers to the trademark only composed of a three-dimensional mark or a three-dimensional mark containing other elements. A three-dimensional trademark may be the three-dimensional shape of goods per se, the three-dimensional shape of the packaging or container of the goods or other three-dimensional marks.

This Chapter sets forth the substantive examination of application for registration of three-dimensional trademarks. The substantive examination of three-dimensional trademarks shall include examination of prohibitory provisions, examination of distinctive features, examination of functionality and examination of identity and similarity.

Regarding the substantive examination of a three-dimensional trademark, whether the three-dimensional trademark can distinguish the sources of goods or services must also be judged comprehensively in combination with the use mode of the three-dimensional trademark, in addition to the consideration of general factors such as the constitution of the trademark itself, the category of designated goods or services, and the cognitive habits of the relevant public like the examination of a two-dimensional trademark. It shall be noted that even if a three-dimensional trademark composed of a three-dimensional shape without distinctive features and two-dimensional elements with distinctive features obtains registration, it does not mean that the three-dimensional shape without distinctive features itself has been granted with protection by the exclusive right to use the trademark.

3. Substantive examination of three-dimensional trademarks

Substantive examination of a three-dimensional trademark includes examination of prohibitory provisions, examination of distinctive features,

² Note: For the convenience of presentation and explanation, only the main view among the multiple views of the three-dimensional marks submitted by applicants is selected in some legends in this Chapter.

examination of functionality and examination of identity and similarity, of the three-dimensional trademark.

3.1 Examination of prohibitory provisions of three-dimensional trademarks

The registration of a three-dimensional trademark shall not breach the prohibitory provisions of the *Trademark Law*.

For example:



Designated goods: perfume

(Note: Skull shape with undue influence.)



Designated goods: candy
containing aerated candy and/or
fruity gummy candy

(Note: Eyeball shape with undue influence.)

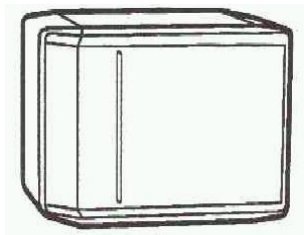
3.2 Examination of distinctive features of three-dimensional trademarks

Just as with the examination of a two-dimensional trademark, the examination of the distinctive features of a three-dimensional trademark shall take into comprehensive consideration of such factors as the constitution form of the trademark itself, the designated goods or services, the cognitive habits of the relevant public, as well as actual use status in the industry, etc. In addition, special factors such as constituent elements, visual effects and use modes of the three-dimensional trademark shall also be considered.

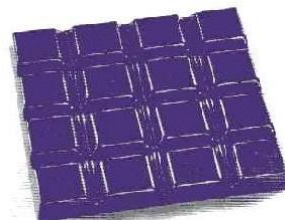
3.2.1 Three-dimensional shape of the goods per se

Where a three-dimensional trademark is applied for registration only on the basis of the three-dimensional shape of the goods per se, it is generally difficult for the relevant public to identify the trademark as a sign indicating the source of goods, therefore the trademark generally does not have the distinctive features for use as a trademark as it cannot distinguish the source of goods.

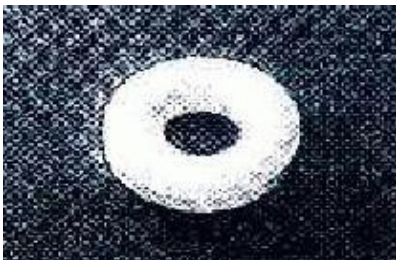
For example:



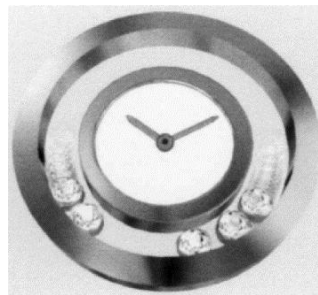
Designated goods: amplifier



Designated goods: chocolate



Designated goods: candy



Designated goods: clock



Designated goods: chocolate

Even if the three-dimensional shape of the goods per se gains unique visual effect through design, it cannot be taken for granted based on the originality thereof that the trademark has

gained the distinctive features for use as a trademark. However, if there is evidence to prove that such three-dimensional trademark has acquired the role of distinguishing the source of goods through long-term or extensive use, the trademark can be deemed to have acquired distinctive features.

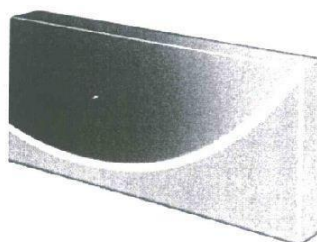
3.2.2 Three-dimensional shape of packaging or container of the goods

The main function of the packaging or container of goods is to protect and contain goods for the convenience of storage, transportation and sales. If a three-dimensional trademark is applied for registration only based on the three-dimensional shape of the packaging or container of goods, it is generally difficult for the relevant public to identify the trademark as a sign indicating the source of goods, therefore the trademark generally does not have the distinctive features for use as a trademark as it cannot distinguish the source of goods.

For example:



Designated goods: blanket for children

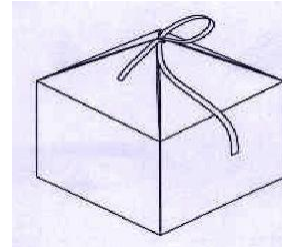


Designated goods: drug

Designated goods:
alcoholic beverage

Designated goods:
jam

Designated goods:
cake



Designated goods: edible oil

Designated goods: soft drink

Even if the three-dimensional shape of the packaging or container of goods gains unique visual effect through design, it cannot be taken for granted based on the originality thereof that the trademark has gained the distinctive features for use as a trademark. However, if there is evidence to prove that such three-dimensional trademark has acquired the role of distinguishing the source of goods through long-term or extensive use, the trademark can be deemed to have acquired distinctive features.

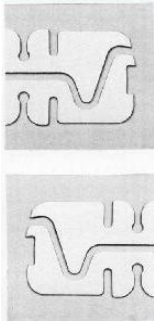
3.2.3 Other three-dimensional marks

(1) A simple and common three-dimensional shape or a decorative three-dimensional shape lacks distinctive features if it cannot distinguish the source of goods.

For example:

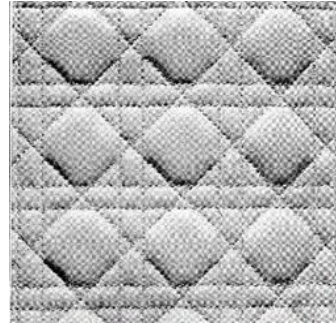


Designated goods: clothing



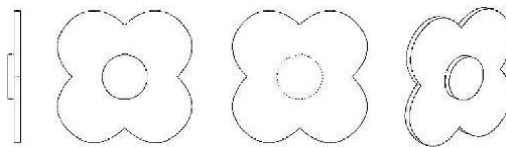
Designated goods: sunglasses

(Note: Such three-dimensional mark is a pattern attached to the legs of glasses)



Designated goods: clothing

(Note: Such three-dimensional mark is three-dimensional pattern cloth)

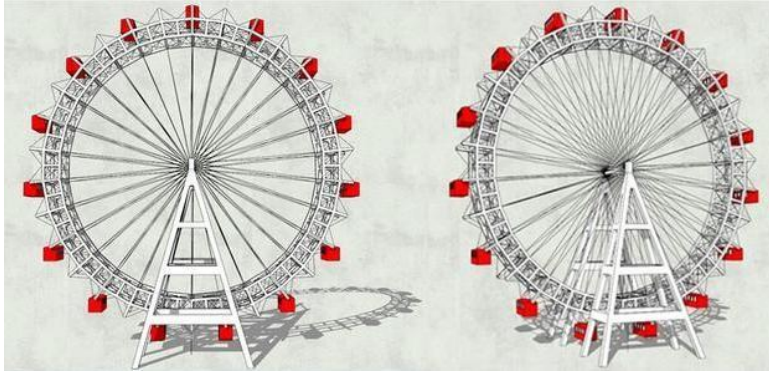


Designated goods: clothing

(Note: Such three-dimensional mark is directly attached to goods as decoration)

(2) A three-dimensional shape of generally or frequently used goods that are used in the service industry in order for providing services lacks distinctive features if it cannot distinguish the source of services.

For example:

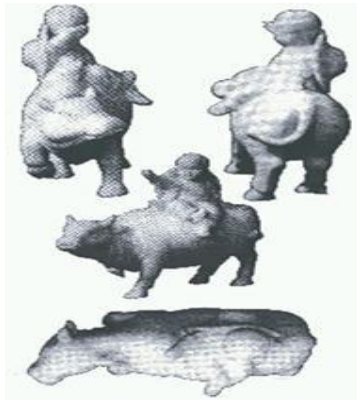


Designated services: amusement park service

(Note: Such three-dimensional mark is an effect drawing of Ferris wheel which is often used for amusement park service. Such three-dimensional mark lacks distinctive features as it cannot distinguish the source of services.)

(3) A three-dimensional mark with unique design and not directly related to the designated goods or services has distinctive features.

For example:



Designated services: restaurants



Designated services: preparing banquet



Designated services: providing
Internet search engine

Designated goods: hand-
operated tools

3.2.4 Combinations of three-dimensional marks and two-dimensional elements

3.2.4.1 Where a trademark is the combination of a three-dimensional shape with distinctive features and two-dimensional elements with distinctive features

Where a trademark is the combination of a three-dimensional shape with distinctive features and two-dimensional elements with distinctive features, such three-dimensional trademark as a whole has distinctive features.

For example:



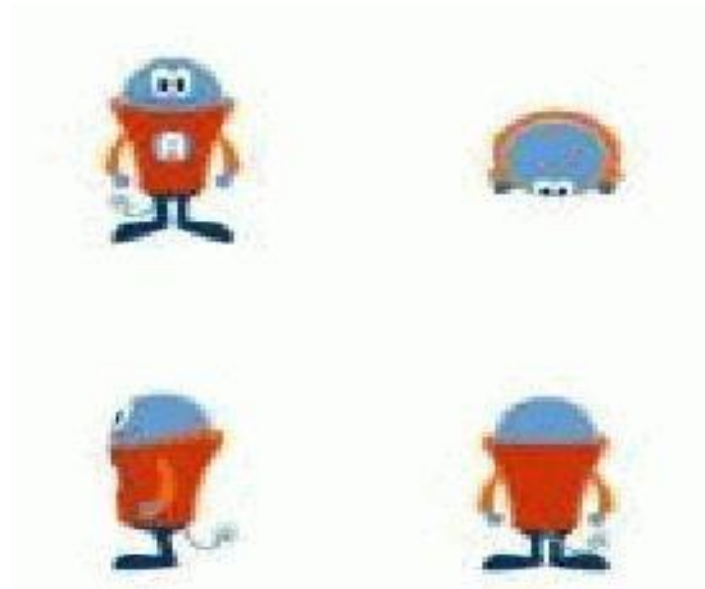
Designated goods: liquor

(Note: The three-dimensional shape described in the application is a ribbon-shaped label connected by a grape branch and written with the words "ITALO CESCONE")

3.2.4.2 Where a trademark is the combination of a three-dimensional shape with distinctive features and two-dimensional elements without distinctive features

Where a trademark is the combination of a three-dimensional shape with distinctive features and two-dimensional elements without distinctive features, such three-dimensional trademark as a whole has distinctive features.

For example:



Designated service: restaurant

(Note: The trademark is composed of the cartoon three-dimensional shape and the letter "A")

3.2.4.3 Where a trademark is the combination of a three-dimensional shape without distinctive features and other two-dimensional elements with distinctive features

Where a three-dimensional trademark is the combination of a three-dimensional shape without distinctive features and two-dimensional elements with distinctive features, it is generally deemed that such three-dimensional trademark as a whole has distinctive features. After such three-dimensional trademark is approved to register, it shall be protected as a whole, that is, the right holder of the trademark cannot claim rights of the three-dimensional shape without distinctive features separately. If the applicant does not voluntarily declare to waive the exclusive right to use the three-dimensional shape part without distinctive features of the trademark, an office action shall be issued during the examination to require the

applicant to waive. Such waiver of the exclusive right shall be indicated on the trademark approval announcement and trademark registration certificate.

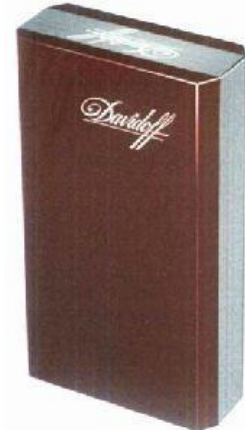
For example:



Designated goods:
beer



Designated goods:
chocolate



Designated goods:
tobacco



Designated goods:
distilled water



Designated goods:
cosmetics



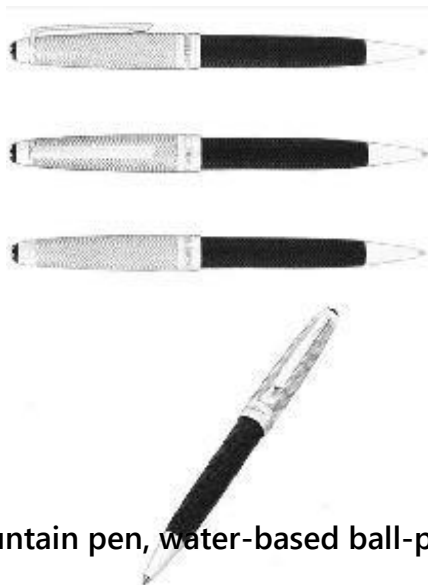
Designated goods:
dry cheese

However, the following circumstances are exceptional:

(1) Where two-dimensional elements with distinctive features account for a too small portion in the three-dimensional trademark which is the combination of the two-dimensional elements and a three-dimensional shape without distinctive features, or are located at a position that is not easy to be identified in the three-dimensional trademark, it is difficult for the general attention of the relevant public to identify the whole trademark as a sign of

distinguishing the source of goods or services, therefore, the three-dimensional trademark as a whole does not have distinctive features.

For example:



Designated goods: fountain pen, water-based ball-point pen

(Note: The three-dimensional trademark shown in the figure is the combination of a three-dimensional shape and two-dimensional elements. The three-dimensional shape belongs to the general shape of pens and does not have distinctive features; two-dimensional elements include "star graph", "circular ring pattern", floral designs of letter "M", as well as the words "MONTBLANC" & "MEISTERSTÜCK". Though the two-dimensional elements themselves have distinctive features, they only account for a too small proportion on the pen body. Therefore, when the whole three-dimensional trademark is used on such goods as "fountain pen, water-based ball-point pen", it is only identified as the general shape of pens according to the recognition ability of the relevant public and it as a whole does not have distinctive features.)

(2) Where a three-dimensional trademark is the combination of three-dimensional shapes without distinctive features and two-dimensional elements with distinctive features, the three-dimensional trademark does not have distinctive features if it as a whole can be easily identified as the packaging decoration or decoration of goods.

For example:



Designated goods: alcoholic beverage

(Note: The three-dimensional trademark shown in the figure is the combination of a three-dimensional shape and a two-dimensional element. The three-dimensional shape belongs to the general shape of wine bottles and does not have distinctive features; two-dimensional element part is flower pattern and has distinctive features per se. However, when the whole three-dimensional trademark is used on such goods as “alcoholic beverage”, it as a whole can be easily identified as the packaging decoration or decoration of wine bottles according to the recognition ability of the relevant public, thus the three-dimensional trademark as a whole does not have distinctive features.)

3.2.5 A three-dimensional trademark without inherent distinctive features can acquire distinctive features through long-term or extensive use

Where there is sufficient evidence to prove that the three-dimensional trademark without inherent distinctive features has acquired the role of distinguishing the source of goods through long-term or extensive use, the trademark can be deemed to have acquired distinctive features.

At the substantive examination stage of the application for registration of a trademark, the examiner may issue an office action to require the applicant to submit evidence of use

and to explain the relevant circumstances under which the three-dimensional mark acquires distinctive features through long-term or extensive use. The examiner shall carry out further examination and trial according to the use evidence as well as the explanation of circumstances that are submitted by the applicant.

For example:



Designated goods: perfume

Applicant: Cristian Dior Spices

Company

Designated goods: chocolate

Applicant: Ferrero Co., Ltd.

3.3 Examination of functionality of three-dimensional trademarks

Article 12 of the *Trademark Law* stipulates that registration of the appearance of goods with functionality is prohibited. The purpose of such stipulation is to ensure that the features of goods with practical or aesthetic value are not permanently protected by obtaining the exclusive right to use a registered trademark that can be renewed indefinitely, so as to encourage legal market competition. Therefore, if a three-dimensional mark is determined as having functionality, it shall not be registered as a trademark even if it has been used for a long term.

3.3.1 Where a three-dimensional mark is only composed of the three-dimensional shape from the nature of the goods per se, that is, such three-dimensional shape is one necessary or commonly used for achieving the inherent purpose and use of the goods, then such three-dimensional mark shall have functionality.

For example:



Designated goods: tire

(Note: Tires are circular-ring-shaped elastic rubber products that are assembled on various vehicles or machinery for rolling on ground. They can support vehicle bodies, buffer external impact, realize contact with road surface and ensure driving performance of vehicles. Consequently, tires must have the three-dimensional shape shown in the above figure so that they can be used for driving vehicles. Therefore, the three-dimensional mark is only composed of the three-dimensional shape from the nature of the goods per se and shall not be registered as a trademark as it has functionality when used on “tire” goods.)



Designated goods: hand sewing needle

(Note: In order to realize the purposes of leading thread and penetrating clothes for sewing, a hand sewing needle must have a needle tip as well as a needle eye, and usually adopts the three-dimensional shape as shown in the above figure. Therefore, the three-dimensional mark is only composed of the three-dimensional shape from the nature of the goods per se and shall not be registered as a trademark as it has functionality when used on the goods of "hand sewing needle".)

3.3.2 Where a three-dimensional mark is only composed of the three-dimensional shape required for obtaining certain technical effects, that is, such three-dimensional shape is one necessary for the goods to have specific function or for easier realization of the inherent function of the goods, then such three-dimensional mark shall have functionality.

For example:



Designated goods: shaver head

(Note: The figure shows the three-dimensional shape of a three-head shaver head. The shaver adopting such three-dimensional shape can change face-attaching angles according to the change of the user's facial contour, thus increase shaving area and improve shaving effect significantly. Therefore, the three-dimensional mark is only composed of the three-dimensional shape necessary for easier realization of the inherent function of the goods and

shall not be registered as a trademark as it has functionality when used on the goods of “shaver heads”).)



Designated goods: toothbrush

(Note: The figure shows a three-dimensional shape which is applied for use as a trademark on the goods of “toothbrush”. The toothbrush adopting such three-dimensional shape has a counterweight block set at the lower part of the brush rod, thus the center of gravity is at the lower part of the brush rod. Therefore, the toothbrush looks like a tumbler which will not fall easily and can be placed everywhere so as to avoid potential pollution hazard when put in wash cup. Hence, the three-dimensional mark is only composed of the three-dimensional shape that enables the goods to have a specific function, and shall not be registered as a trademark as it has functionality when used on the goods of “toothbrush”).)

3.3.3 Where a three-dimensional mark is only composed of the three-dimensional shape granting substantive value to the goods, that is, such three-dimensional shape is one used for the appearance and modelling of the goods to acquire aesthetic value and thus substantially affecting the purchase intent of consumers, such three-dimensional mark shall have functionality.

For example:



Designated goods: jewelry

(Note: The figure shows a three-dimensional shape which is applied for use as a trademark on the goods of “jewelry”. It has beautiful shape, floral designs and certain aesthetic value. The three-dimensional shape enables the appearance and modelling of the jewelry to acquire more aesthetic sense, thus encouraging consumers to buy the goods. Therefore, the three-dimensional mark shall not be registered as a trademark as it has functionality.)



Designated goods: porcelain bottle

(Note: The figure shows a three-dimensional shape that is applied for use as a trademark on the goods of “porcelain bottle”. It has a ware shape of primitive simplicity, exquisite pattern design, as well as certain aesthetic value. The three-dimensional shape enables the appearance and modelling of the porcelain bottle to acquire more aesthetic sense, thus encouraging consumers to buy the goods. Therefore, the three-dimensional mark shall not be registered as a trademark as it has functionality.)

3.4 Examination on identity and similarity of three-dimensional trademarks

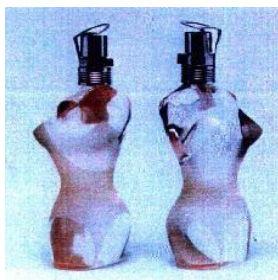
The examination on identity and similarity of three-dimensional trademarks includes the examination on identity and similarity between three-dimensional trademarks and between a three-dimensional trademark and a two-dimensional trademark. Any observable angle of the three-dimensional shape in the trademark shall be considered and the expressed content that is observed as well as visual effects shall be compared with those of the prior trademarks of others during the examination.

3.4.1 Examination on identity and similarity between three-dimensional trademarks

3.4.1.1 Where three-dimensional trademarks are only composed of three-dimensional shapes

Where a three-dimensional trademark is only composed of a three-dimensional shape and its overall visual effect is identical with or similar to that of other's prior three-dimensional trademark, which will likely confuse the relevant public with regard to the source of goods or services, the two trademarks shall be determined as identical or similar trademarks.

For example:



Designated goods: perfume Designated goods: perfume

3.4.1.2 Where three-dimensional trademarks are the combinations of three-dimensional shapes with distinctive features and other two-dimensional elements

Where a three-dimensional trademark is the combination of a three-dimensional shape with distinctive features and other two-dimensional elements, and its three-dimensional shape part with distinctive features or the two-dimensional element part with distinctive

features is identical with or similar to the corresponding part of other's prior three-dimensional trademark, which will likely confuse the relevant public with regard to the source of goods or services, the two trademarks shall be determined as identical or similar trademarks.

For example



Designated goods: perfume



Designated goods: perfume

(Note: The three-dimensional shapes of the two trademarks as shown in the figures are similar and two-dimensional graphics are similar, hence their overall visual effects are similar, which will likely confuse the relevant public with regard to the source of goods or services, the two trademarks shall be determined as similar trademarks.)

3.4.1.3 Where three-dimensional trademarks are the combinations of three-dimensional marks without distinctive features and two-dimensional elements with distinctive features

(1) Where both three-dimensional trademarks are the combinations of three-dimensional marks without distinctive features and two-dimensional elements with distinctive features and their two-dimensional elements with distinctive features are identical with or similar to each other, which will likely confuse the relevant public with regard to the source of goods or services, the two trademarks shall be determined as identical or similar trademarks.

For example:



Designated goods: chocolate



Designated goods: chocolate

(Note: The three-dimensional shape parts of the two trademarks as shown in the figures do not have distinctive features and the two-dimensional element parts with distinctive features are similar to each other, which will likely confuse the relevant public with regard to the source of goods or services, the two trademarks shall be determined as similar trademarks.)

(2) Where both three-dimensional trademarks are the combinations of three-dimensional marks without distinctive features and two-dimensional elements with distinctive features and there are relatively large differences between their two-dimensional element parts with distinctive features, thus the relevant public can distinguish the source of goods or services, they shall not be determined as identical or similar trademarks.

For example:



Designated goods: wine



Designated goods: wine

(Note: The two-dimensional word in the mark on the left is "KURG" and the two-dimensional word in the mark on the right is "LAGRANDEDAME". The three-dimensional shape parts of the two trademarks as shown in the figures do not have distinctive features and the two-dimensional elements with distinctive features thereof are not similar, thus the relevant public can distinguish the source of the two goods, therefore they shall not be determined as similar trademarks.)

3.4.2 Examination on identity and similarity between a three-dimensional trademark and a two-dimensional trademark

3.4.2.1 Where three-dimensional trademarks are only composed of three-dimensional shapes

Where a three-dimensional trademark only composed of a three-dimensional shape is identical with or similar to other's prior two-dimensional trademark in terms of overall visual effect, which will likely confuse the relevant public with regard to the source of goods or services, the two trademarks shall be determined as identical or similar trademarks.

For example:



Designated goods: clothing



Designated goods: clothing

(Note: Among the two trademarks as shown in the figures, the three-dimensional shape of penguin in the three-dimensional trademark on the left is similar to the two-dimensional graphics of penguin in the two-dimensional trademark on the right in terms of overall visual

effect, which will likely confuse the relevant public with regard to the source of goods, the two trademarks shall be determined as similar trademarks.)



Designated goods: cleaning preparations



Designated goods: cleaning preparations

(Note: Among the two trademarks as shown in the figures, the whole three-dimensional shape in the three-dimensional trademark on the left is "G" which is similar to the two-dimensional word "G" in the two-dimensional trademark on the right in terms of overall visual effect, which will likely confuse the relevant public with regard to the source of goods, the two trademarks shall be determined as similar trademarks.)



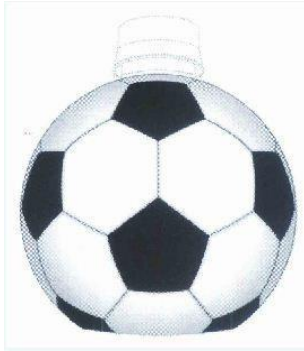
Designated goods: alcoholic beverage



Designated goods: alcoholic beverage

(Note: Among the two trademarks as shown in the figures, the three-dimensional shape of standing horse in the three-dimensional trademark on the left is similar to the two-

dimensional graphics of standing horse in the two-dimensional trademark on the right in terms of overall visual effect, which will likely confuse the relevant public with regard to the source of goods, the two trademarks shall be determined as similar trademarks.)



Designated goods: beverage



Designated goods: beverage

(Note: Among the two trademarks as shown in the figures, the three-dimensional shape of football bottle in the three-dimensional trademark on the left is similar to the two-dimensional football graphics in the two-dimensional trademark on the right in terms of overall visual effect, which will likely confuse the relevant public with regard to the source of goods, the two trademarks shall be determined as similar trademarks.)

3.4.2.2 Where three-dimensional trademarks are the combinations of three-dimensional shapes and other two-dimensional elements

Where a three-dimensional trademark is the combination of a three-dimensional shape and other two-dimensional elements, and its three-dimensional shape part with distinctive features is identical with or similar to other's prior two-dimensional trademark in terms of overall visual effect or its two-dimensional element part with distinctive features is identical with or similar to other's prior two-dimensional trademark, which will likely confuse the relevant public with regard to the source of goods or services, the two trademarks shall be determined as identical or similar trademarks.

For example:



OFFENSIV



Designated goods:

perfume

Designated goods:

perfume

Designated goods:

perfume

(Note: Among the three trademarks as shown in the figures, the three-dimensional shape



of football in the three-dimensional trademark on the left is similar to the two-dimensional football graphics in the two-dimensional trademark on the right in terms of overall visual effect, which will likely confuse the relevant public with regard to the source of goods, the two trademarks shall be determined as similar trademarks; the two-dimensional word "OFFENSIVE" in the three-dimensional trademark on the left is similar to the two-dimensional word "OFFENSIVE" in the two-dimensional trademark in the middle, which will likely confuse the relevant public with regard to the source of goods, the two trademarks shall be determined as similar trademarks.)

Designated goods: cosmetics

Designated goods: cosmetics

(Note: Among the two trademarks as shown in the figures, the prefix "R" of the three-dimensional trademark on the left is similar to the prefix "R" of the two-dimensional trademark on the right, which will likely confuse the relevant public with regard to the source of goods, the two trademarks shall be determined as similar trademarks.)



Designated goods: alcoholic
beverage



Designated goods: alcoholic
beverage

(Note: Among the two trademarks as shown in the figures, the two-dimensional word "GARDET" in the three-dimensional trademark on the left is similar to the word "GUADET" in the two-dimensional trademark on the right, which will likely confuse the relevant public with regard to the source of goods, the two trademarks shall be determined as similar trademarks.)

4 Other notes on the substantive examination of three-dimensional trademarks

Where it is still difficult to identify and determine the unique three-dimensional shape after the trademark drawing submitted by the applicant is explained by the applicant in the substantive examination procedure of a three-dimensional trademark, the trademark shall not be approved to register in accordance with relevant provisions of Article 30 of the *Trademark Law* and Article 13 of the *Implementation Regulations of the Trademark Law*.

For example:



Designated goods: automobile

Explanation of design: the trademark adopts the form of embossment with the top surface of an open umbrella composed of six fabrics as modelling. The six umbrella fabrics cycling in the color sequence of black, red and yellow symbolize German national flag and imply German automobile. The middle capitalized letter J represents the automobile brand name starts with the letter J. The outer blue concave ring represents the Earth. This trademark is used as automobile logo.

(Note: In the provided drawings of the three-dimensional trademark as shown in the figure, the three-dimensional shape shown in the section view is not unique and may be different from the three-dimensional shapes formed by other views, thus the mark does not meet the application requirements for three-dimensional trademarks.)

Chapter VII Examination and Adjudication of Color Combination Trademarks

1. Legal basis

Trademark Law

Article 8 In respect of any mark capable of distinguishing the goods of one natural person, legal entity or any other organization from that of others, including any word, design, letters of an alphabet, numerals, three-dimensional symbol, combinations of colors, and their combinations, an application may be filed for registration.

Implementation Regulations of the Trademark Law

Article 13 Where an application is filed for registration of a trademark in the form of a color combination mark, the applicant concerned shall make relevant statements in the written application, and explain the use methods of the trademark.

Article 43 Where an applicant for territorial extension to China requests for the protection of a three-dimensional mark, color combinations or a sound mark as a trademark or requests for the protection of a collective mark or certification mark, it shall, within three months from the date of registration of the trademark in question in the International Register of the International Bureau, submit relevant materials prescribed by Article 13 herein to the Trademark Office via a legally established trademark agency. Where the applicant fails to submit relevant materials within the prescribed time limit, the Trademark Office shall refuse its application for territorial extension.

2. Interpretations

Color combination trademarks refer to trademarks consisting of two or more colors that are combined in specific ways.

Due to the extremely limited variety of single colors in the natural world, the acceptance of application for registration of a single color as trademark may lead to monopolization of the use of a certain color and hinder normal use of it by other production and operation entities. Therefore, only the application for registration of a color combination as trademark is accepted in China at present and the application for registration of a single color as trademark is not accepted.

A color combination trademark is only composed of colors and not limited by specific shape. Protection object is the color combination itself which is used in a specific way. The shape presented in the trademark drawing is not the protection object of color combination trademark. The designated color trademark containing words, graphics and other elements does not belong to color combination trademarks.

When a color combination trademark is used on goods, it can be used on all or part of the goods or on all or part of the packaging of the goods; when a color combination trademark is used on service, it can be used on the carriers required by the service, such as packaging boxes, means of transport or couriers' clothing in the process of express service, or on the external decoration and internal decoration of the service premise.

In general, a color combination trademark lacks inherent distinctiveness. Instead, it needs to gain a stable association with the applicant through long-term or extensive use and acquire the function of distinguishing the source of goods or services before it acquires distinctive features.

This Chapter sets forth that the substantive examination of the application for registration of a color combination trademark includes examination of prohibitory provisions, examination of distinctive features and examination of identity and similarity.

3. Substantive examination of color combination trademarks

During the substantive examination of a color combination trademark, the registrability of the color combination trademark shall be examined on the whole in combination with its use methods.

3.1 Examination of prohibitory provisions of color combination trademarks

The provisions of this Title shall be applicable to the examination of prohibitory provisions of color combination trademarks. Whether a color combination trademark violates prohibitory provisions shall be judged in combination with the specific use methods of the trademark.

Where a color combination trademark is used according to the use methods described by the applicant and the overall visual effect presented by it is identical or similar to the color combination of the national flag, national emblem or military flag of China or any foreign country, the mark shall not be used as a trademark.

For example:



Description of trademark: This trademark is composed of three colors, namely, green, white and red. They are of vertical long-ribbon shape in the ratio of 1:1:1 and laid and used on the appearance of goods.

(Note: This mark is used according to the use methods described by the applicant and the overall visual effect presented by it is similar to that of the national flag of Italy, therefore it shall not be used as a trademark.)

Where the overall visual effect presented by a color combination trademark in commercial activities through use according to the use methods described by the applicant will not make the public associate it with the national flag, national emblem and military flag of China or any foreign country, the mark can be registered and used as a trademark.

For example:



Description of trademark: This trademark is composed of three colors, namely black, red and yellow. They are of vertical long-ribbon shape in the ratio of 1:10:1 and laid and used on the appearance of the designated goods "air dryer". The color number of black color is RAL 9011 (international standard color card); the color number of red color is RAL 3020 (international standard color card), and the color number of yellow color is RAL 1018 (international standard color card).

(Note: This mark is used according to the use methods described by the applicant and the actual using shape, expression form and overall visual effect presented by it are obviously different from the national flag of Germany, therefore the public will not associate it with the national flag of Germany.)

3.2 Examination of distinctive features of color combination trademarks

Color combination trademarks follow the judgment principles, standards and rules of the distinctness of traditional trademarks. When a color combination is used on the designated goods or service items, it usually makes consumers think that it is the product itself, packaging of product or decoration design of business places, etc., and it is not easy to be identified as a trademark and does not have inherent distinctiveness of trademarks, therefore it cannot play the function and role of distinguishing the source of goods or services. In general, there shall be sufficient evidence to prove that the color combination trademark has acquired distinctive features through long-term or extensive use and is capable of identifying and distinguishing the source of goods or services.

Regarding the examination of distinctive features of a color combination trademark, such factors as the composition of the trademark per se, the designated goods or services as well as the cognitive habits of relevant public need to be considered comprehensively, just as with the examination of distinctive features of a traditional visual trademark. Besides, such factors as the attributes of the color combination trademark per se, constituent elements, use methods, continuous use time, use intensity, the use status of equivalent colors by peer operators, trademark use practices of relevant industries, advertising and publicity of the color combination trademark and effects thereof, as well as the knowledge and awareness of relevant public, shall also be considered in order to make a comprehensive judgment.

At the time of examination, the Trademark Office may issue an office action to demand the applicant to submit use evidence and make explanations on the distinctive features acquired by the color combination through use. The use evidence needs to prove that the color combination has acquired the function of indicating the source of goods or services through use, that is, when the relevant public sees the color combination, they first associate that such color combination is directed to a specific good or service rather than the color combination per se.

3.2.1 Where a color combination trademark only has natural colors of the designated goods, or general or common colors for the goods per se or the packaging thereof and the service places, which are insufficient to distinguish the source of the concerned goods or service from others, the color combination trademark shall be determined as lack of distinctive features.

For example:



Designated goods: toothpaste

(Note: The color combination in the figure is the common color combination of the designated goods, which is insufficient to distinguish the source of goods.)



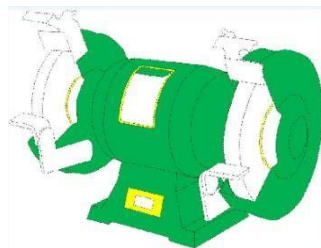
Designated goods: laundry detergent, laundry sheets

(Note: The color combination of blue and white colors in the figure is the common color combination of the designated goods per se or the packaging thereof, which is insufficient to distinguish the source of goods.)



Designated services: hairdressing

(Note: The color combination in the figure is a general sign used outside the service places of hairdressing industry, which is insufficient to distinguish the source of services.)



Designated goods: electric grinding machine

(Note: The color combination in the figure is the common color combination of the designated goods, which is insufficient to distinguish the source of goods.)

3.2.2 Where there is sufficient evidence to prove that a color combination used in a specific way has acquired distinctive features through use, the color combination can be registered as color combination trademark.

The general rules specified in Chapter IV “Standards for the examination and trial of marks that have acquired distinctive features through use” of this Title are applicable to the determination of distinctive features acquired by color combination trademarks through use.

When determining whether a certain color combination trademark has acquired distinctive features through use, one also needs to: consider the impact of actual use methods of the color combination trademark on the attention and cognition of the relevant public; and even if the color combination trademark is originally created or used earliest by the applicant, which does not necessarily mean that the mark has the distinctive features as a trademark.

For example:



Designated
goods: battery



(Note: drawing of actual use
method)

Description of trademark: The trademark consists of color blocks in long-ribbon strips and two colors, namely, brass and black; brass accounts for 1/3 and black accounts for 2/3.



Designated goods: gasoline station (Note: drawing of actual use method)

Description of trademark: This trademark is composed of three colors, namely, white, yellow and red; white (Pantone white C) accounts for 30%, yellow (Pantone 116C) accounts for 50% and red (Pantone 485C) accounts for 20% , and three colors are arranged as showed above, and used for appearance of vehicle service station and gasoline station

3.3 Examination of identity and similarity of color combination trademarks.

The examination of identity or similarity of color combination trademarks includes the examination of identity or similarity between color combination trademarks and between color combination trademarks and other types of trademarks.

The examination of identity or similarity of color combination trademarks shall be based on the color combination elements applied for registration and the specific use methods described in the *Application for Trademark Registration*. During the examination, it is necessary to conduct searches of the color combination elements. When judging whether they are identical or similar to others, they shall be examined and judged mainly from the perspective of overall visual effect in combination with the use methods of the color combination trademark.

3.3.1 Examination of identity or similarity between color combination trademarks

(1) Where two color combination trademarks have identical or similar combined colors and arrangement methods, and there is no obvious difference between their specific use methods in commercial activities or between their overall visual effects, which will likely mislead the relevant public with regard to the source of goods or services, the two trademarks shall be determined as identical or similar trademarks.

For example:



Designated goods: electric saw

Description of trademark: the color combination trademark is composed of two colors, namely, orange and gray; orange is Pantone PQ-17-1464TCX and gray is Pantone P 179-15 C. Gray is used for the lawn mower body, orange is used for the cover and handle of air filter, the pat in dashed line represents the location of color on the concerned goods, and the outline and appearance of sawtooth are not components of the trademark.

Designated goods: chain saw for forestry and horticulture

Description of trademark: This trademark is a color combination trademark. The graph outline of the trademark only represents the location of color. The graph outline per se is not the trademark to be applied for. The colors contained in the trademark are orange (No. in RAL color comparison table is 2010) and gray (No. in RAL color comparison table is 7035), which are consistent with the colors of the goods designated by the trademark; orange is located at the upper part of the housing of the designated goods, and gray is located at the lower part of the housing of the designated goods.

(2) Where two color combination trademarks have identical or similar combined colors but different arrangement methods, and their specific use methods in commercial activities are different and there is a relatively large difference between their overall visual effects, which will not likely mislead the relevant public with regard to the source of goods or services, the two trademarks shall not be determined as identical or similar trademarks.

For example:



Designated goods: charging
station for electric power tools

Description of trademark:

This color combination
trademark is the color
combination of two colors,
namely gold and black. The
whole product is of gold color
with black vertical stripes on it.



Designated goods:
battery

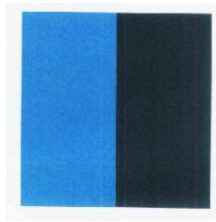
Description of

trademark: This trademark
consists of color blocks in
strip shape and two colors,
namely brass and black;
brass accounts for 1/3 and
black accounts for 2/3.

3.3.2 Examination of identity or similarity between color combination trademarks and other types of trademarks

(1) Under general circumstances, where the overall visual effect of a color combination trademark has a relatively large difference from that of another type of trademark due to the color arrangement method of the color combination trademark and its specific use in commercial activities based on the description of trademark provided by the applicant, which will not likely mislead the relevant public with regard to the source of goods or services, the two trademarks shall not be determined as identical or similar trademarks.

For example:



(Color combination trademark)

Designated service: metal pipe sleeve



(Two-dimensional trademark)

Designated service: metal pipe elbow, etc.

Note: This trademark is a color combination trademark composed of blue color (color number in international standard color card is: 2925) and black color (color number in international standard color card is: black color). There are certain graphic restrictions during actual use. Blue and black are used on the designated goods in the form of concentric circles with the black circle located in the central position and surrounded by blue frame.

(2) Under particular circumstances, where the identity or similarity between a color combination trademark and another type of trademark refers to that the colors of the color combination trademark are identical or similar to the colors designated by the other type of trademark and there is basically no difference or little difference between the overall visual effect presented by the color combination trademark through use according to the use

methods described by the applicant and the overall visual effect of the other type of trademark, which will likely mislead the relevant public with regard to the source of goods or services, the two trademarks shall be determined as identical or similar trademarks.

For example:



Designated goods: paper or cardboard box



Designated goods: paper box

Chapter VIII Examination and Adjudication of Sound Trademarks

1. Legal basis

Trademark Law

Article 8 In respect of any mark capable of distinguishing the goods of one natural person, legal entity or any other organization from that of others, including any word, design, letters of an alphabet, numerals, three-dimensional symbol, combinations of colors, and their combinations, an application may be filed for registration.

Implementation Regulations of the Trademark Law

Article 13 Where an application is filed for registration of a trademark in the form of a sound mark, the applicant concerned shall make relevant statements in the written application, submit sound samples that meet relevant requirements, describe the sound mark under application for registration, and explain the use methods of the trademark. When describing the sound mark, the applicant shall describe the sound under application for being used as trademark with staff or numbered musical notation, and add textual descriptions thereto. The applicant shall describe the sound in words if it is unable to provide such descriptions with staff or numbered musical notation. Trademark descriptions shall be consistent with sound samples.

Article 43 Where an applicant for territorial extension to China requests for the protection of a three-dimensional mark, color combinations or a sound mark as a trademark or requests for the protection of a collective mark or certification mark, it shall, within three months from the date of registration of the trademark in question in the International Register of the International Bureau, submit relevant materials prescribed by Article 13 herein to the Trademark Office via a legally

established trademark agency. Where the applicant fails to submit relevant materials within the prescribed time limit, the Trademark Office shall refuse its application for territorial extension.

2. Interpretations

A sound trademark refers to a trademark in the form of sound used for distinguishing source of goods or services. A sound trademark may be composed of musical sound, e.g. a piece of music, or unmusical sound, e.g. sound from the natural world, sound of human or animals, or may combine musical sound and unmusical sound.

In general, a sound trademark lacks inherent distinctiveness. It needs to gain a stable association with the applicant through long-term or extensive use, and has the function of distinguishing the source of goods or services first before it can acquire distinctive features.

This Chapter sets forth the substantive examination of application for registration of a sound trademark, which includes examination of prohibitory provisions, examination of distinctive features and examination of identicalness and similarity.

3. Substantive examination of sound trademarks

Regarding the substantive examination of a sound trademark, the registrability of the sound trademark shall be examined on the whole in combination with its use methods.

3.1 Examination of prohibitory provisions of sound trademarks

The provisions of Chapter III of this Title shall be applicable to the examination of prohibitory provisions of sound trademarks

For example:

(1) Sounds identical or similar to the melody of the national anthem, military anthem of the PRC or the Internationale.

(2) Sounds identical or similar to patriotic songs well known to the public, such as *Ode to the Motherland*, etc.

(3) Religious music or sound indicating terrorism, violence, pornography or other adverse effects.

3.2 Examination of distinctive features of sound trademarks

Sound trademarks follow the judgment principles, standards and rules of the distinctness of traditional trademarks. For a long time, most trademarks are elements or combinations of such elements as words, numerals, graphics and colors that are intuitively displayed in visual form. They are combined with goods or services relatively closely when used, and the relevant public has formed a relatively solidified visually cognitive habit of trademarks. In contrast, the recognition of sound trademarks is mainly realized through hearing, and the dependence of sound on playing carriers makes sound trademarks difficult to be intuitively and closely combined with many goods and services. When used, they may only be cognized as background music or advertising and publicity. Even if a sound is unique, it does not naturally have inherent distinctiveness of trademarks, thus it is difficult to play the function and role of distinguishing the source of goods or services. In general, there shall be sufficient evidence to prove that the sound trademark has acquired distinctive features through long-term or extensive use and is capable of identifying and distinguishing the source of goods or services.

Regarding the examination of distinctive features of a sound trademark, such factors as the composition of the trademark per se, the designated goods or services as well as the cognitive habits of relevant public need to be considered comprehensively, just as with the examination of distinctive features of a traditional visual trademark. Besides, such factors as the auditory perception, sound effect, use methods, continuous use time, use intensity, the use status of equivalent sounds by peer operators, trademark use practices of relevant industries, advertising and publicity of the sound trademark and effects thereof, as well as the knowledge and awareness of relevant public, shall also be considered in order to make a comprehensive judgment.

At the time of examination, the Trademark Office may issue an office action to demand the applicant to submit use evidence and make explanations on the distinctive features acquired by the sound trademark through use. The use evidence needs to prove that the sound has acquired the function of indicating the source of goods or services through use,

that is, when the relevant public hear the sound, they first associate that it is directed to a specific good or service rather than the sound per se.

3.2.1 Sounds only directly representing the content, consumers, quality, function, use or other features of the designated goods or services that lack distinctive features.

For example:

Piano sound is designated on “musical instruments”;

Children’s laughing sound is designated on “infant formula”;

Bark or mew sound is designated on “pet raising”;

Classic music is designated on “arrangement and organization of concerts”; and

The yell of “the water is boiling, the water is boiling” is designated on “electric kettle”.

3.2.2 Sounds that otherwise lack distinctive features

Including but not limited to the following types:

(1) Sounds that are difficult to be avoided or usually occur when using goods or providing services

For example:

The crispy sound “Ta (嗒)” when opening bottles is designated on “Beer”;

The “swoosh (哗哗)” note-checking sound of a money detector is designated on “Bank” service.

(2) Music or sounds generally or frequently used in the industry

For example:

The theme melody of *Wedding March* is designated on “planning and arrangement of wedding services”.

(3) Too simple or sophisticated sounds

For example:

Simple and common tones or melodies; and

A complete or lengthy song or music.

(4) Word phrases directly sung or shouted in normal tones or simple rhythms

For example:

Singing “May you be happy and prosperous” in a simple rhythm;

Singing or shouting “Here you come, mister” in normal tone;

Shouting “Traveling thousands of miles, sounds move my heart” in normal tone;

Shouting “Good luck comes naturally once Remy Martin is opened” in normal tone;

and

Shouting “Panasonic” in English in normal tone.

3.2.3 Determination of distinctive features of sound trademarks acquired through long-term or extensive use

The general rules specified in Chapter IV “Standards for the examination and trial of marks that acquire distinctive features through use” of this Title are applicable to the determination of distinctive features acquired by sound trademarks through use.

When determining whether a certain sound trademark has acquired distinctive features through use, one also needs to note that: distinguish whether it is the called words or the sound per se that plays the role of identification in the use process if the sound trademark falls under word calling type. Where the sound trademark is in the constitution form of calling words in normal tone or extremely simple rhythm, it is quite possible that the words are impressive and play the role of identification while the sound is only regarded as the auxiliary background of the words or “vocalization of the words”. Although such sound trademark may be proved to have been well known by the relevant public through long-term or extensive use, whether the “vocalized words” or the sound per se is used as a trademark for identifying and distinguishing the source of goods or services needs to be analyzed and judged according to actual situations. Even if the sound of a sound mark is originally created or used earliest by the applicant, this does not necessarily mean that the mark has the distinctive features of trademarks.

Sound trademarks that acquire distinctive features through use:

For example:

本件声音商标是由六声短促且频率一致的“嘀 嘀 嘀 嘀 嘀 嘀”
(di-di-di-di-di-di) 的声音构成。

(Note: This sound trademark is designated for use on services such as providing online forum; the applicant of this trademark is Tencent Technology (Shenzhen) Co., Ltd.; the use of this trademark on the designated service by the applicant is embodied in the short “di-di-di-di-di-di” sound when information is prompted in the application program provided by the applicant.)



声音由引子、主题和尾声三段构成。引子由铜管演奏，分解的大三和弦旋律庄严而神圣；中段为弦乐演奏的主题；结尾由三个音构成。

(Note: This sound trademark is designated for use on services such as news agency service; the applicant of this trademark is CCTV; the sound consists of three sections, i.e. introduction, theme and ending, the introduction is played by brass and the rhythm of decomposed major triad is solemn and sacred, the middle section is the theme played by stringed instruments, and the ending is composed of three notes; this sound is used as the opening song of CCTV News.)



本声音商标是爱奇艺出品视频的片头曲，全长5秒，共2小节，四分之二拍慢板节奏，E大调。整段声音商标前奏部分为下滑音、顺波音和上滑音三个合成的物体弹性声音；2个小节为整段声音商标主题部分，曲调为E大调，旋律为F到G各一拍，最后一个小节由十六分音符G回到一级音程BE上，该声音商标结束。

(Note: This sound trademark is designated for use on video-on-demand transmission service; the applicant of this trademark is Beijing iQiyi Technology Co., Ltd.; this trademark is used at the beginning/end of videos or on websites; this sound is used at the beginning/end of videos.)

Another example is:



人声用真假嗓音急变互换的方式歌唱出
“YAHOO”

(Note: This sound trademark is designated for use on goods such as “providing Internet search engine” and on services such as “computer software for electronic information transmission”; the applicant of this trademark is Aoshi Company (original applicant: Yahoo Company), and “YAHOO” is sung out in the way of rapid change and switching of true and false human voices; this sound is used in computer software, promotional videos, commercial advertisements, exhibitions and activities for distinguishing the source of goods or services.)

3.3 Examination on identity and similarity of sound trademarks

The examination on identity or similarity of sound trademarks includes the examination on identity or similarity between sound trademarks and between sound trademarks and other types of trademarks.

3.3.1 Examination on identity or similarity between sound trademarks

Where two sound trademarks are identical or similar in auditory perception or overall music image, which will likely confuse and mislead the relevant public with regard to the source of goods or services, or cause the relevant public to believe that there is any particular relevance between them, they shall be determined as identical or similar trademarks.

3.3.2 Examination on identity or similarity between sound trademarks and other types of trademarks

Where the words or other elements corresponding with the sound in a sound trademark are identical or similar to the pronunciation of the words or other elements in a visible trademark, which will likely confuse and mislead the relevant public with regard to the source of goods or services, or cause the relevant public to believe that there is any particular relevance between them, they shall be determined as identical or similar trademarks.

For example:



人声用真假嗓音急变互换的方式歌唱出
“YAHOO”。

(Sound Trademark)

YAHOO

(Trademark in Foreign Language)

Chapter IX Examination and Adjudication of Collective Trademarks and Certification Trademarks

1. Legal basis

Trademark Law

Article 3: Registered trademarks mean trademarks that have been approved and registered by the Trademark Office, including goods trademarks, service trademarks, collective trademarks and certification trademarks; the trademark registrants shall enjoy the exclusive right to use the trademarks, and be protected by law.

For the purpose of this Law, the said collective trademark means any mark registered in the name of a group, association or any other organization for being used by the members thereof in their commercial activities to indicate their membership of such organization.

For the purpose of this Law, the said certification trademark means any trademark controlled by an organization in charge of the supervision over certain goods or services and used by entities or individuals outside the organization in respect of its goods or services to certify the origin, raw materials, manufacturing methods, quality or other specific characteristics of the goods or services.

Regulations for the particular matters of registration and administration of collective trademarks and certification trademarks shall be established by the administrative department for industry and commerce under the State Council.

Article 8: In respect of any visual sign capable of distinguishing the goods or service of one natural person, legal entity or any other organization from that of others, including any word, graphics, letters of an alphabet, numerals, three-dimensional symbol, combinations of colors, sound, etc. and their combination, an application may be filed for registration.

Article 10 (2): The geographic names as the administrative divisions at or above the county level and the foreign geographic names well known to the public shall not be used as trademarks, but such geographic names as have otherwise meanings or are a part of collective

trademarks or certification trademarks shall be exclusive. Where a trademark using any of the above-mentioned geographic names has been approved and registered, it shall continue to be valid.

The following marks shall not be registered as a trademark:

(1) those only comprising generic names, graphics or models of the goods in respect of which the trademarks are used; (2) those only comprising direct reference to the quality, main raw materials, function, use, weight, quantity or other features of the goods in respect of which the trademarks are used; and (3) those lacking distinctive features.

Any of those marks mentioned in the preceding paragraphs may be registered as a trademark only after it has acquired distinctive features through use and become readily identifiable.

Article 16: Where a trademark contains a geographic indication of the goods in respect of which the trademark is used, the goods do not originate from the region indicated therein and it misleads the public, the registration of such trademark shall be rejected and its use shall be prohibited; however, where such a trademark that has been registered in good faith shall remain valid.

The geographic indication mentioned in the preceding paragraph refers to the sign indicating the place of origin, specific quality, reputation or other features of the goods as mainly decided by the natural or cultural factors of the region.

Implementing Regulations of the Trademark Law

Paragraph 1 of Article 4: Geographic indications as stipulated in Article 16 of the *Trademark Law* may, according to the provisions of the *Trademark Law* and the Regulations, be registered as certification trademarks or collective trademarks.

Measures for the Registration and Administration of Collective Trademarks and Certification Trademarks (No.6 Order of the State Administration for Industry and Commerce of the People's Republic of China, effective from June 1, 2003).

2. Interpretation

Based on whether they are geographic indications or not, collective trademarks and certification trademarks can be divided into ordinary collective trademarks, ordinary certification trademarks, geographic indication collective trademarks and geographic indication certification trademarks.

Ordinary collective trademarks and ordinary certification trademarks may be composed of signs prescribed in Article 8 of the *Trademark Law*. Sections 3 & 4 in this Chapter stipulate the examination of ordinary collective trademarks and ordinary certification trademarks, as well as the examination of particular matters such as the subject qualifications of their applicants and use management rules, etc.

Geographic indication collective trademarks and geographic indication certification trademarks may be composed of signs prescribed in Article 8 of the *Measures for the Registration and Administration of Collective Trademarks and Certification Trademarks*. The subject qualifications of applicants of and the use management rules of geographic indication collective trademarks and geographic indication certification trademarks shall also conform to the special conditions prescribed in the *Implementing Regulations of the Trademark Law* and *Measures for the Registration and Administration of Collective Trademarks and Certification Trademarks*. Sections 5 & 6 in this Chapter stipulate the examination of geographic indication collective trademarks and geographic indication certification trademarks, as well as the examination of particular matters such as the subject qualifications of their applicants and use management rules, etc.

Collective trademarks and certification trademarks shall be subject to the provisions of Paragraph 1 of Article 10, Article 11, Article 30 and Article 31 of the *Trademark Law*, and their examination and adjudication shall also be governed by the basic provisions of other chapters of this Title.

3. Examination of ordinary collective trademarks and ordinary certification trademarks

As a type of trademarks, collective trademarks and certification trademarks shall be examined according to the relevant basic provisions of the *Trademark Law*, that is, whether

the trademarks are prohibited by the *Trademark Law* and whether they have distinctive features, are readily identifiable, or conflict with prior rights.

However, collective trademarks and certification trademarks are different from ordinary trademarks in terms of function and usage, use conditions, as well as rights and obligations of registrants and users, etc. Therefore, the principles of consistent implementation of standards and case-by-case examination shall be adhered to during the examination of them. For example, Paragraph 2 of Article 10 of the *Trademark Law* stipulates that “The geographic names of the administrative divisions at or above the county level and the foreign geographic names well known to the public shall not be used as trademarks, but...are a part of collective trademarks or certification trademarks shall be exclusive”. Section 3.4 in this Chapter specifies the standards for examining ordinary collective trademarks and ordinary certification trademarks containing the geographic names of the administrative divisions at or above the county level and not having otherwise meanings.

3.1 Examination of prohibitive articles on ordinary collective trademarks and ordinary certification trademarks

The registration of ordinary collective trademarks and ordinary certification trademarks shall not violate the provisions of Paragraph 1 of Article 10 of the *Trademark Law* and shall be governed by the basic provisions of Chapter III of this Title.

For example:



Type of trademark: collective trademark

Designated goods: Cat. 30 cereal products, rice, flour, etc.

Applicant: Sidaowanzi Rice Association of Aohan Town

(Note: The trademark makes it easy for consumers to misunderstand the quality of the

products, thus violates the provisions of Item (7) of Paragraph 1 of Article 10 of the *Trademark Law*.)



Type of trademark: collective trademark

Designated goods: Cat. 25 shirts; clothing, etc.

Applicant: Patriotic Volunteer Association of Shaanxi Province

(Note: the hammer and sickle as shown in the graphics of the trademark is similar to the flag of the Communist Party of China, so it is easy to exert adverse effects when used as a trademark. The trademark violates the provisions of Item (8) of Paragraph 1 of Article 10 of the *Trademark Law*.)



Type of trademark: certification trademark

Designated goods: Cat. 31 fresh fruits, fresh vegetables, etc.

Applicant: Green Food Development Center of Shandong Province

(Note: The trademark contains “放心农产品 (safe agricultural products in English) ” and “reliable”, and it is easy for consumers to misunderstand the quality of the products once it is used on designated goods, thus it is in violation of the provisions of Item (7) of Paragraph 1 of Article 10 of the *Trademark Law*.)

3.2 Examination of distinctive features of ordinary collective trademarks and ordinary certification trademarks

Distinctiveness is the basis for a trademark to play the role of distinguishing different goods or services, and it is also an important element for the trademark to obtain registration. As a type of trademarks, collective trademarks and certification trademarks shall have distinctive features and be readily identifiable, and their registration shall not violate the provisions of Article 11 of the *Trademark Law*. The basic provisions of Chapter IV of this Title shall apply to the examination of the distinctive features of ordinary collective trademarks and ordinary certification trademarks.

When judging on whether a collective trademark or a certification trademark has distinctive features or not, one shall not only consider the meaning, appellation and appearance composition of the trademark itself, but also make a case-by-case judgment in combination with the categories of goods or service category designated by the trademark, the recognition habits of relevant public, the situation of actual use in the industry, and other factors.

For example:



Type of trademark: collective trademark

Designated goods: Cat. 21 tempered glass lid, tempered glass cover, etc.

Applicant: GLASS MANUFACTURERS' ASSOCIATION OF JAPAN

(Note: The Japanese meaning in the trademark is "toughened glass lid certification". When it is used on the designated goods, it only directly indicates the quality characteristics of the goods, which violates the provisions of Item (2) of Paragraph 1 of Article 11 of the *Trademark Law*.)

蓝牙

Type of trademark: certification trademark

Designated services: Cat. 9 satellite receivers, radio receivers, etc.

Applicant: Brutus SIG Co., Ltd.

(Note: "Bluetooth" is a type of wireless technology that supports short-range communication between devices and enables wireless information exchange between multiple devices, including mobile phones, PDA, wireless headsets, laptops, related peripherals, etc. Therefore, the use of "Bluetooth" ~~is used~~ on "phones, satellite receivers, radio receivers" and other goods. ~~The trademark~~ directly indicates the technical characteristics of the designated goods and lacks the intrinsic distinctiveness as a trademark. ~~I~~ Therefore, it violates the provisions of Item (2) of Paragraph 1 of Article 11 of the *Trademark Law*.)

烹饪名师

Type of trademark: certification trademark

Designated services: Cat. 43 hotels, restaurants, etc.

Applicant: China Cuisine Association

(Note: The trademark directly indicates the content and characteristics of designated services such as Cat. 43 "hotels", etc., thus it violates the provisions of Item (2) of Paragraph 1 of Article 11 of the *Trademark Law*.)

3.3 Examination of identicalness or similarity of ordinary collective trademarks and ordinary certification trademarks

The registration of ordinary collective trademarks and ordinary certification trademarks shall not violate the provisions of Article 30 and Article 31 of the *Trademark Law*. The basic provisions of Chapter V of this Title shall apply to the examination of their identicalness or similarity.

For example:

环都菜园

Type of trademark: collective
trademark
Designated goods: Cat. 31 fresh
vegetables

Applicant: The Head Office of
Vegetable Industry Development
Association of Hebei Province

环都

Type of trademark: collective
trademark
Designated goods: Cat. 31 beets

Applicant: Liu Zhilin

小沙窝萝卜

Type of trademark: collective
trademark
Designated goods: Cat. 31 fresh
radishes, etc.

Applicant: Shuguang Shao
Radish Specialized Cooperative of
Tianjin City



Type of trademark: geographic
indication certification trademark
Designated goods: Cat. 31 fresh
radishes

Applicant: Shao Radish
Production and Sales Association,
Xinkou Town, Xiqing District, Tianjin
City

It is worth noting that even the same applicant cannot register two different types of identical or similar trademarks on the identical or similar goods or services. Although ordinary collective trademarks, ordinary certification trademarks and ordinary trademarks, geographic indication collective trademarks and geographic indication certification trademarks are all ~~belongs to the types of~~ trademarks, they are different in terms of function and usage, use patterns, use conditions for goods or services, rights and obligations of registrants and users

and other aspects. The registration of two different types of trademarks on the identical or similar goods or services at the same time will still cause the public to misunderstand the source and quality of the goods or services, thus such registration shall be rejected.

For example:



Type of trademark: ordinary
collective trademark

Designated goods: Cat. 31
honey peaches and peaches

Applicant: Jiangqiaozhangshan
Fruit Association, Runzhou District,
Zhenjiang City





Type of trademark: ordinary
trademark

Designated goods: Cat. 31 fresh
fruits, etc.

Applicant: Jiangqiaozhangshan
Fruit Association, Runzhou District,
Zhenjiang City

(Note: In order to prevent the public from misunderstanding the source and quality of

the goods, the latter ordinary collective trademark "  " applied by the applicant within the same type and for the similar goods is rejected to register by citing with reference to the ordinary trademark "  " prior registered by the applicant.)

3.4 Examination of ordinary collective trademarks and ordinary certification trademarks containing the geographic names of the administrative divisions at or above the county level and not having otherwise meanings

In general, geographic names can only indicate the source of goods, but cannot identify the producers and operators of goods or the providers of services and lack the intrinsic function of distinguishing sources as trademarks. Therefore, geographic names of administrative divisions at or above the county level shall not be used as trademarks in principle. However, in view of the nature of collective trademarks and certification trademarks

themselves, Paragraph 2 of Article 10 of the *Trademark Law* excludes “such geographic name as are a part of collective trademarks and certification trademarks” from the stipulation that geographic names cannot be used as trademarks.

However, although the law stipulates that the geographic names of administrative divisions at or above the county level and not having otherwise meanings can be registered as a part of collective trademarks and certification trademarks, trademarks are signs for distinguishing the source of goods or services and distinctiveness is a basic attribute necessary for identifying and using as trademarks. The distinctiveness of trademarks containing geographic names is relatively weak and ordinary collective trademarks or ordinary certification trademarks are allowed to use the geographic names of the administrative division at or above the county level, regarding producers whose residences and places of business are not within the above-mentioned regions, it is easy for the public to misrecognize the place of origin of the goods or services if they are the applicants. Therefore, the distinctive features and popularity of the trademarks containing geographic names and the requirements of Paragraph 2 of Article 10 as well as Article 11 of the *Trademark Law* shall be considered comprehensively, and certain conditions shall be satisfied and a comprehensive judgment shall be performed for the application for the registration of ordinary collective trademarks and ordinary certification trademarks containing the geographic names of the administrative divisions at or above the county level and not having otherwise meanings.

3.4.1 Where a trademark applied for registration consists of the geographic name of an administrative division at or above the county level and not having otherwise meanings as well as other distinctive word elements, the trademark is in line with the provisions of Paragraph 2 of Article 10 of the *Trademark Law* if the meaning of the overall geographic name is still relatively strong but the following conditions are satisfied at the same time:

- (1) The applicant is authorized by the people’s government at the place of the geographic name contained in the trademark or by the people’s government at the higher level;
- (2) The trademark applied for registration has acquired distinctiveness after long-term

use;

(3) The trademark applied for registration has had relatively high popularity within relevant industries or is generally known among relevant consumer groups;

(4) The goods or services designated by the application belong to the industry explicitly supported by national policies.



For example:



Type of trademark: collective trademark

Designated goods: 16 categories including Cat.29, Cat. 30, Cat.31, etc., and on such goods as meat products, candied fruits, live animals, fresh fruits, fresh vegetables, etc.

Applicant: Ecological Agriculture Association of Lishui City

(Note: By the end of 2019, the registration applicant of “” has taken 1,122 co-operative bases under its control, had 866 member enterprises, cultivated over 1,000 brand-endorsed agricultural products, and formed mainly nine leading industries, i.e. fungus, tea, fruits, vegetables, medicine, animal husbandry, camellia oleifera, bamboo shoots and fishery, with the cumulative sales volume of its products amounting to 12.322 billion RMB and the regional brand value of “” up to 2.6 billion RMB.)

3.4.2 Where a trademark applied for registration consists of the geographic name of an administrative division at or above the county level and not having otherwise meanings as well as generic name(s) of goods or services, the trademark is in line with the provisions of Paragraph 2 of Article 10 of the *Trademark Law* if not only the conditions listed in the above-mentioned Section 3.4.1 but also the following conditions are satisfied:

The designated goods or services are consistent with or closely related to the generic

name(s) of goods or services contained in the trademark.

The specific quality of designated goods or services is not determined by local natural and cultural factors, but its reputation is closely related to the geographic name contained in the trademark and it will not be mistaken as a geographic indication.

For example:



Type of trademark: collective trademark

Designated goods: Cat. 20 furniture;

Applicant: Furniture Association of Nankang District, Ganzhou City

(Note: Starting in the early 1990s, the furniture industry in Nankang District has formed an industrial cluster integrating processing and manufacturing, sales and circulation, professional supporting, furniture base, etc. after over 20 years of development, and has become the most important industry, poverty-alleviation industry and people-enriching industry of Nankang. At present, Nankang has over 7,500 furniture manufacturers, over 400,000 employees and over 300 furniture enterprises above designated scale. With the built-up business area and annual turnover ranking the top in China, the specialized furniture market of Nankang covers an area of 2,200,000 m². The output value of "Nankang Furniture" cluster reached 160 billion RMB in 2020, making Nankang the largest furniture manufacturing base in China.)



Type of trademark: collective trademark

Designated goods: Cat. 43 hotels, restaurants, etc.

Applicant: Trade Association of Shaxian County Snacks

(Note: “沙县小吃” (Shaxian County Snacks in English) have a long history of more than 1000 years, and the production technology hereof is originated from the folk customs around the ancient Central Plains. “Shaxian County Snacks” is also one of the main industries of Shaxian County. In order to promote the development of the snack industry of Shaxian County, the CPC committee of Shaxian County as well as the government hereof have set up a leading group for the development of the snack industry of Shaxian County as early as March 1998, with an office set under its leadership. In the same year, the Trade Association of Shaxian County Snacks was established. In order to publicize, promote and protect Shaxian County Snacks, the government of Shaxian County has invested a lot of human, material and financial resources. After years of use, “Shaxian County Snacks” has acquired distinctiveness and enjoyed relatively high popularity across the country.)

3.4.3 Where the geographic names referred to in the above-mentioned Sections 3.4.1 & 3.4.2 are of the provincial-level administrative divisions, relevant trademarks are in line with the provisions of Paragraph 2 of Article 10 of the *Trademark Law* if not only the conditions as mentioned above but also the following conditions are satisfied:

The trademark applied for registration has had high popularity all over the country;

The goods or services designated by the application belongs to the industries that are clearly supported and specially financed by national policies;

The goods or services designated by the application belongs to local pillar industries, can make a great contribution to local economic development, and account for a relatively high proportion in the national industry.

When determining whether a trademark has acquired distinctiveness after long-term use, the following factors shall be generally considered: firstly, the fact that the trademark is used on designated goods or services; secondly, the earliest use time and continuous use situation of the trademark; thirdly, relevant information such as sales volume, industrial scale, market share, profit and tax contribution and export situation, etc. of the goods or services

designated by the trademark; fourthly, the way, frequency, content and coverage, etc. of publicity of the trademark via radio, film, television, newspapers, periodicals, Internet, outdoor and other media; fifthly, the business reputation such as awards of the trademark. Evidence that is acceptable to prove the above facts includes: sales contracts, invoices, receipts, etc. of goods; certifications issued by advertising, broadcasting, publishing houses, printing houses and other institutions; certifications issued by trade associations, trading partners or consumers; certifications issued by governmental departments at all levels, foreign embassies and other public institutions.

3.4.4 Where the materials provided by the applicant cannot prove that the applied trademark can satisfy the conditions and requirements listed in ~~the~~ Section 3.4.1, 3.4.2 & 3.4.3, the trademark shall be rejected to register.

For example:



Type of trademark: collective trademark

Designated goods: Cat. 25 overalls, shirts, coats, etc.

Applicant: Clothing Industry Association of Lusong District, Zhuzhou City

(Note: "LUSONG" contained in the mark is the geographic name of an administrative division at or above the county level and not having otherwise meanings. According to the materials provided by the applicant, the mark has not acquired the distinctiveness of trademark through long-term use.)

锦州烧烤

Type of trademark: collective trademark

Designated services: Cat. 43 hotels, restaurants, etc.

Applicant: Cuisine Association of Jinzhou City

(Note: “锦州” contained in the mark is the geographic name of an administrative division at or above the county level and not having otherwise meanings, but the applicant failed to provided materials to prove that the mark has had relatively high popularity within relevant industry or is well-known among the relevant public, thus the mark lacks the due distinctiveness for use as a trademark.)



Type of trademark: collective trademark

Designated goods: Cat. 41 training; arrangement and organization of meetings, etc.

Applicant: Agricultural Science and Technology Education Station of Shanghe County

(Note: “商河” contained in the mark is the geographic name of an administrative division at or above the county level and not having otherwise meanings, which can only indicate the place of origin of the goods but lacks the due distinctiveness for use as a trademark, and the materials provided by the applicant cannot prove that the trademark has had relatively high popularity within relevant industry or is well-known among the relevant public.)



Type of trademark: collective trademark

Designated goods: Cat. 16 paper, toilet paper, etc.

Applicant: Papermaking Industry Association of Sichuan Province

(“SICHUAN” contained in the mark is the geographic name of a provincial-level

administrative division without otherwise meanings. The applicant failed to provide sufficient relevant evidence and materials to prove that the trademark accounts for a relatively high proportion in the national industry through long-term use and is well-known among the public, therefore the mark lacks the due distinctiveness for use as a trademark)



Type of trademark: collective trademark

Designated services: Cat. 41 training, arrangement and organization of meetings, etc.

Applicant: Guangxi Veterinary Association

(Note: “Guangxi” contained in the mark is the geographic name of a provincial-level administrative division without otherwise meanings. The materials submitted by the applicant cannot prove that the mark has been well-known among the public in China through being widely used and publicized, therefore the mark lacks the due distinctiveness for use as a trademark.)

4. Examination of particular matters of ordinary collective trademarks and ordinary certification trademarks

According to the provisions of the *Implementing Regulations of the Trademark Law and Measures for the Registration and Administration of Collective Trademarks and Certification Trademarks*, the applicant applying for the registration of a collective trademark shall submit subject qualification certification documents, use management rules of collective trademarks, as well as the names and addresses of collective members. Where an applicant applies for the registration of a certification trademark, it shall submit subject qualification certification documents, use management rules of certification trademarks, as well as materials proving the applicant’s supervision and testing ability.

As both ordinary collective trademarks and ordinary certification trademarks belong to a

special type of trademarks, such particular matters as the applicants' subject qualifications, use management rules, quality criteria for the designated goods or services, as well as inspection and testing ability, etc. shall also be examined besides the examination of the marks themselves.

4.1 Examination of particular matters of ordinary collective trademarks

4.1.1 Examination of subject qualifications of applicants

The basic function of a collective trademark is to endow the goods or services of the producers and operators who are members of the collective organization with certain commonness, indicating that the producers and operators are the members of a certain collective organization so as to distinguish them from those producers and operators who are not members of the collective organization. Therefore, what the collective trademark highlights are common characteristics, and the subject of the application for registration shall be the collective organization. For example, Xinhua Bookstore Association of China, the Chamber of Commerce of Yueyang City of Hunan Province in Foshan City, Panggezhuang Watermelon Production & Marketing Federation of Daxing District of Beijing City, etc.

According to the *Law on Farmers' Professional Cooperatives*, farmers' professional cooperatives are voluntarily united and democratically managed mutual-aid economic organizations that are formed by the producers and operators of agricultural products or the providers and users of agricultural production and operation services on the basis of rural household contract management, and belong to "other organizations" as referred to in Paragraph 2 of Article 3 of the *Trademark Law*. They can be the subjects for applying for the registration of ordinary collective trademarks.

A single enterprise, individual operator or group company, for example: the Agricultural Technology Promotion Station of Yanggao County, Economic Construction Service Center of Yuanhua Town of Haining City, Grain Corporation of Ar Khorchin Banner and the People's Government of Anningbao Township of Anning District of Lanzhou City, etc. are not collective organizations and cannot be the applicants for collective trademarks.

An applicant for the registration of a collective trademark shall submit the identity qualification certification documents for its legal establishment to prove that it has subject qualifications for the application, including the legal person certification of public institution, the legal person registration certification of social entity, as well as the business license of farmers' professional cooperative, etc.

4.1.2 Examination of use management rules of ordinary collective trademarks

According to the provisions of Article 10 of the *Measures for the Registration and Administration of Collective Trademarks and Certification Trademarks*, the use management rules of a collective trademark shall include the following main contents: purposes of the use of the collective trademark; quality of the goods or services designated by the collective trademark; formalities for the use of the collective trademark; rights and obligations for the use of the collective trademark; liabilities of members who breach the use management rules; and systems on the registrant's inspection and supervision of the goods using the collective trademark.

The above-mentioned contents shall be clear and specific and are not only convenient for the collective members applying for using the collective trademark to have evidence to rely on when carrying out the production and operation of goods or providing services but also convenient for the management of the collective organization and the supervision of other collective members. For example, the applicant for the registration of the collective trademark shall specify the rights to be enjoyed by and the obligations to be performed by the collective members according to the needs of its own management, instead of generally expressing them as "other rights" and "other obligations" in the use management rules.

4.1.3 Examination of the quality of the goods or services designed by ordinary collective trademarks

As stipulated in Article 10 of the *Measures for the Registration and Administration of Collective Trademarks and Certification Trademarks*, the use management rules of a collective trademark shall include the quality of the goods (or specification of services) designated by

the collective trademark. The quality of the goods or services designed by ordinary collective trademarks shall have corresponding criteria that are currently effective, specific and clear, and relevant to the goods or services that are designated. The criteria can be national standards, industrial standards, local standards or entity standards, or standards or specifications self-set by the applicant (the criteria cannot be lower than national standards).

If the criteria submitted by the applicant do not meet relevant requirements, the criteria shall be rejected. For example, if the applicant applied for the registration of a certain collective trademark at the end of 2019 and the designated goods were “rice”, the national standard GB/T 1354-2018 [Rice] which remained in force at the time of application could be adopted instead of the national standard GB/T 1354-2009 [Rice] which had been abolished upon application. If the applicant applied for the registration of a certain collective trademark and the designated goods were “corn”, the standard GB 1353-2018 [Corn] could be adopted rather than the standard GB/T 35835-2018 [Corn Straw Granule].

4.2 Examination of particular matters of ordinary certification trademarks

4.2.1 Examination of subject qualifications of applicants

The basic function of a certification trademark is to prove the place of origin, raw materials, manufacturing methods, quality or other specific qualities of goods or services. Therefore, the subject applying for the registration of a certification trademark shall be an organization that is established in accordance with the law and capable of supervising the specific quality of the applied goods or services. For example, China Wine Industry Association, China Green Food Development Center, UL Co., Ltd. of the United States, etc.

An applicant for the registration of a certification trademark shall submit the identity qualification certification documents for its legal establishment to prove that it has subject qualifications for the application, including business license, the legal person certification of public institution, the legal person registration certification of social entity, etc.

4.2.2 Examination of use management rules of certification trademarks

According to the provisions of Article 11 of the *Measures for the Registration and*

Administration of Collective Trademarks and Certification Trademarks, the use management rules of a certification trademark shall include the following main contents: purposes of the use of the certification trademark; specific quality of goods or services as the certification trademark may certify; conditions on the use of the certification trademark; formalities for the use of the certification trademark; rights and obligations for the use of the certification trademark; liabilities of members who breach the use management rules; and systems on the registrant's inspection and supervision of goods using the certification trademark.

The above-mentioned contents shall be clear and specific and are not only convenient for the management by the registrant of the certification trademark but also convenient for the applicant applying for using the certification trademark to have evidence to rely on when carrying out the production and operation of goods or providing services, for example, the contents (including raw materials, manufacturing methods, quality or other specific qualities, etc.) certified by the certification trademark shall be explained in detail in the use management rules; such ambiguous expressions as "other rights" and "other obligations" shall not appear in the use management rules.

4.2.3 Examination of quality criteria of goods or services designated by certification trademarks

According to the provisions of Article 11 of the *Measures for the Registration and Administration of Collective Trademarks and Certification Trademarks*, the use management rules of a certification trademark shall include the specific quality of the goods or services certified by the certification trademark.

A certification trademark is a mark used to prove the place of origin, raw materials, manufacturing methods, quality or other specific qualities of the goods or services. Its purpose is to standardize the operating behaviors of enterprises and improve the product quality level of the entire industry by introducing a third-party market evaluation mechanism. Therefore, the applicant shall describe in detail the specific criteria for the raw materials, manufacturing methods, quality or other specific qualities of the goods or services certified

by the certification trademark in the use management rules, which is not only convenient for the supervision and management of the quality of the goods or services using the certification trademark after registration and for the applicant applying for using the certification trademark to have evidence to rely on when carrying out the production and operation of goods or providing services, but also is helpful for consumers to know, through the management rules, the special advantages of the goods or services using the certification trademark that are different from those of similar goods or services so as to facilitate selection and purchase. The quality of the goods or services using the certification trademark shall be higher than that stipulated in national standards.

For example:

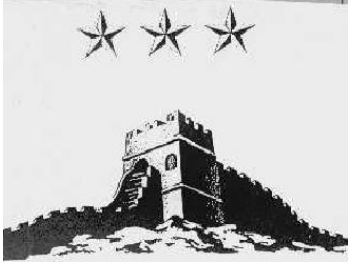


Type of trademark: certification trademark

Designated goods: Cat. 16 pencils

Applicant: China Pen-Making Association

(Note: According to the use management rules of the certification trademark, the quality criteria for the approved goods “pencil” are: “pencil (the pencils and mechanical pencils for exam shall conform to and be higher than the national standard GB/T26698-2011 [Pencils and mechanical pencils for exam]). 1. The word “2B” on the pencils for exam is clearly visible; the cross section is flat with a lead core in the middle; the rod diameter and length are uniform; the paint surface is bright and uniform in color; the lead core is not easy to fracture and its performance can reach or exceed the pencil standard during sharpening, that is, the force on the core tip $/N \geq 9.31$; and slip (friction coefficient) ≤ 0.175 ; 2. Retractable pencils shall satisfy the requirement for retractable mechanical pencils with nominal diameter of lead core of 1.0 mm as stated in Chapter 4 of the light industry standard QB/T1023-2007 [Mechanical Pencils].



Type of trademark: certification trademark

Designated goods: Cat. 42 residences (hotels, boarding houses)

Applicant: Tourism Quality Supervision and Administration Institute of National Tourism Administration

(Note: According to the use management rules of the certification trademark, the certification trademark using the “graphics” must meet the following requirements: “in terms of facilities, there shall be a general service center which is corresponding to the scale of the hotel and located reasonably for providing information such as hotel service items and guest room prices; there shall be a dining area provided with tables, chairs and other supporting facilities, as well as sufficient lighting and good ventilation; guest rooms shall be well decorated and beautiful and equipped with such supporting furniture as bed(s) with soft mattress, dressing table(s) or writing table(s), wardrobe(s) and hanger(s), chair(s) or simple sofa(s), bedside table(s) and luggage rack(s)...In terms of services, there shall be management and security personnel on duty for 24 hours a day; 24-hour reception, inquiry, check-out and message service are provided; general billing and check-out services and credit card settlement service are provided; hot drinking water and free tea or coffee are available in guest rooms for 24 hours a day; and breakfast, lunch and dinner services are provided...”)

4.2.4 Examination of the testing ability of applicants for the registration of ordinary certification trademarks

The main responsibility of the registrant of a certification trademark is to manage the certification trademark. Such management can be divided into two aspects: firstly, management of the quality of goods or services; secondly, supervision of the user’s behavior

of using the certification trademark. Therefore, the registrant of the certification trademark must be an organization with the ability to supervise the goods or services that it applies for.

When applying for the registration of a certification trademark, the applicant shall provide a detailed description of the professional technicians and professional testing equipment, etc. owned by itself or the organization entrusted by it so as to show that it has the ability to supervise the quality of the particular goods certified by the certification trademark.

Where the applicant for a certification trademark has testing ability itself, it shall submit its own testing qualification certificates as well as lists of its testing personnel and testing equipment for determining that it has the ability to supervise the quality of the particular goods certified by the certification trademark.

Where the applicant for a certification trademark entrusts others to carry out test because itself does not have testing ability, it shall submit an entrusted testing agreement, testing qualification certificates of the entrusted unit as well as lists of testing personnel and testing equipment for indirectly determining that the applicant has the ability to supervise the quality of the particular goods certified by the certification trademark.

5. Examination of geographic indication collective trademarks and geographic indication certification trademarks

According to the provisions of the *Trademark Law* and *Implementing Regulations of the Trademark Law*, a geographic indication refers to a sign indicating the origin of place of certain goods as well as the specific quality, reputation or other features of the goods as mainly decided by natural or cultural factors of the region. A geographic indication can be applied for registration as a certification trademark or collective trademark.

As a type of trademarks, geographic indication collective trademarks and geographic indication certification trademarks shall be examined according to relevant basic provisions of the *Trademark Law*, that is, whether the trademarks are prohibited by the *Trademark Law*, whether they have distinctive features and are readily identifiable, and whether they conflict

with prior rights. Therefore, in principle, the examination of geographic indication collective trademarks and geographic indication certification trademarks shall not violate the provisions of Articles 10, 11, 30 and 31 of the *Trademark Law* and shall be subjected to the provisions of Chapters III, IV and V of this Title.

However, the specific quality, reputation or other features of the goods indicated by geographic indications are gradually formed in a long history. As a gift of nature and the crystallization of the hard work and wisdom of the broad masses of working people, they are obviously different from ordinary trademarks in terms of expression form, function, usage and other aspects, therefore the examination of geographic indication collective trademarks and geographic indication certification trademarks shall also have its particularity.

5.1 Examination of prohibitive articles on geographic indication collective trademarks and geographic indication certification trademarks

5.1.1 The registration of geographic indication collective trademarks and geographic indication certification trademarks shall not violate the provisions of Paragraph 1 of Article 10 of the *Trademark Law* and shall be subjected to the basic provisions of Chapter III of this Title.

For example:



Type of trademark: geographical indication certification trademark

Designated goods: beef

Applicant: Animal Husbandry Association of Yangxin County

(Note: “清真” contained in the trademark is a religious term which means “Islamic” and refers to food prepared according to the religious rules of Muslim. When it is used on designated goods, it is easy for consumers to misunderstand the quality, content and other features of the goods and hurt the feelings of religious people, therefore it violates the

provisions of Item (7) & (8) of Paragraph 1 of Article 10 of the *Trademark Law*.)

汝城硒香茶

Type of trademark: geographical indication certification trademark

Designated goods: Cat. 30 green tea

Applicant: Agricultural Industrialization Promotion Association of Rucheng County

(Note: The trademark contains “硒” and the applicant failed to submit certification materials to prove that the scope of the production region of the designated goods is within the region whose natural soil contains selenium or is enriched with selenium as determined by the state, and cannot prove that the quality features of the product are necessarily related to the natural factors at the place of origin, therefore the trademark is easy to cause consumers to misunderstand the quality features of the goods and violates the provisions of Item (7) of Paragraph 1 of Article 10 of the *Trademark Law*.)

When judging whether a geographic indication collective trademark or a geographic indication certification trademark violates prohibitive articles, one shall make a case-by-case judgment based on the origin of the name of the geographic indication, the specific quality of geographic indication products and their connection with the natural environment of the production region, and the public’s cognition of the geographic indication, etc., and shall not apply relevant articles mechanically. Where a geographic indication is indeed formed objectively in a long history, the specific quality of the products indicated by it is closely related to the natural environment of the production region, and it will not cause misunderstanding among the public or exert adverse effects, then the geographic indication shall be an exceptional circumstance and not be judged as having violated the provisions of prohibitive articles.

For example:

(1) A geographic indication collective trademark or geographic indication certification

trademark contains a religious word, but the meaning of the word that is associated with religion has been generalized, or has a clear direction and other meanings under a specific context, and it will not cause the public to associate it with a specific religion.



Type of trademark: geographical indication certification trademark

Designated goods: Cat. 30 tea

(Note: As a symbol of compassion and wisdom in Buddhism and a religious term, “GUANYIN” generally refers to Guanyin Bodhisattva while TIEGUANYIN is a generic name of a type of tea. Since such tea leaves look as heavy as iron, just like the face of Guanyin Bodhisattva, such tea was named “TIEGUANYIN” by Emperor Qianlong. When it is used on designated goods, it will not make the public associate it with a specific religion.)

普陀佛茶

Trademark type: geographical indication certification trademark

Designated goods: Cat. 30 tea

Applicant: Tea Industry Association of Putuo District, Zhoushan City

(Note: The production of “普陀佛茶” (Putuo Buddha Tea in English) has a long history.

Tea began to be planted at Mount Putuo more than 1,000 years ago — during the reign of Tang Dynasty or the period of Five Dynasties and Ten Kingdoms. It is recorded in the *Tittle-Tattle of Zitao Pavilion* written by Li Rihua of the Ming Dynasty: “An old monk of Putuo accidentally found a small amount of Xiaobaiyan Tea whose leaves had white fuzz. Though it was colorless after being boiled, inner heart would feel thoroughly cool after drinking it slowly.” The monk said: “Muyan Tea is supreme and has survived six generations. Since it is specially served for (Guanyin) Avalokitesvara, few monks can have a taste of it”. The *General*

Annals of Zhejiang quoted *Dinghai County Annals* that: “Most of Dinghai Tea is wild tea produced in mounts and valleys. ...Putuo Buddha Tea can cure lung carbuncle and blood dysentery, but it is quite rare and hard to come by”. During the reign by Emperor Guangxu of the Qing Dynasty (1875-1908), Putuo Buddha Tea was listed as a tribute. In 2010, Putuo was awarded the honorary title of “Hometown of Buddha Tea” by China International Tea Culture Research Association.)

佛头寺黑陶

Type of trademark: geographical indication certification trademark

Designated goods: Cat. 21 pottery

Applicant: Fotou Black Pottery Research Institute of Kenli County

(Note: The black pottery at Yellow River Estuary is the essence of the life and culture of Yellow River Basin. Since the origin of the black pottery is Fotousi Village in Shengtuo Town, Kenli County, so it is also called “Fotou Black Pottery”. Fotousi Village has natural red mud unique to the lowest reaches of the Yellow River and such mud is a high-quality raw material for making pottery. Fotou Black Pottery has a history of more than 200 years. The raw material used is the red mud naturally falling from the Yellow River more than 10 meters underground. It is developed and produced by local artists in combination with traditional clay pottery technology. It is the crystallization of “fire” and “soil” and featured by “color is like ink, sounds like clock, thin as paper, bright as mirror and hard as porcelain”. Since it feels as light as nothing when weighed in the hand and emits jungling sound when knocked, it is known as the “Flower of Qilu Black Pottery”).

(2) A geographic indication collective trademark or geographic indication certification trademark contains “selenium” or “selenium enrichment”, but the scope of the production region of the goods designated by the trademark is within the region whose natural soil contains selenium or is enriched with selenium as determined by the state; the content of selenium or selenium enrichment in designated goods has already been clearly stipulated in

national standards or industrial standards; in addition, there are clear indicators of the content of selenium or selenium enrichment in line with national standards or industrial standards, as well as a clear statement that the “selenium” contained or “selenium enriched” in the designated goods is absorbed from natural soil in the growth process, in the quality features of the designated goods in the use management rules provided by the applicant.



Type of trademark:
geographical indication certification
trademark

Designated goods: Cat. 30 tea

Applicant: Tea Industry

Association of Ankang City



Type of trademark:
geographical indication certification
trademark

Designated goods: Cat. 30 tea

Applicant: Tea Industry

Association of Enshi City

(Note: Industrial standard is NY/T 600-2002 Rich-Selenium Tea, which has been implemented since December 20, 2002)

5.1.2 Examination of trademarks containing geographic indications that are easy to mislead the public

Where a trademark contains a geographic indication of a certain goods which does not originate from the region as indicated by the geographic indication, thus the trademark may mislead the public, the trademark shall not be approved to register and prohibited from use according to Paragraph 1 of Article 16 of the *Trademark Law* shall apply.

For example:



Designated goods: tea, etc.

Address of applicant: Changsha

City of Hunan Province



Designated goods: tea

Right holder of geographical

indication: Tea Association of

Yuanling County

(Note: "JIETANCHA" is a geographical indication used on the tea goods in China and represents the unique quality of tea products from specific production areas in Yuanling County, Huaihua City, Hunan Province. The disputed trademark "杜泉碣滩" contains the two words "碣滩" (JIETAN in English) but the applicant is not from the production area indicated by the geographical indication, so it is easy to mislead the public if the disputed trademark is applied for registration on tea products. Therefore, the application for registration of the disputed trademark has constituted the circumstance as referred to in Paragraph 1 of Article 16 of the *Trademark Law*.)

香 檳 小 乔

Designated goods: wine, etc.

Address of applicant: Minquan

County of Henan Province

香 檳

Designated goods: wine

Right holder of geographical

indication: French Champagne

Industry Committee

(Note: "CHAMPAGNE (香檳)" is a town which is located in northern France and famous for abundance in champagne. In this case, the evidence submitted by the opponent can prove that "香檳" (champagne in English) is a geographical indication on the goods of "wine" while the goods designated by the disputed trademark do not come from the area indicated by the geographical indication, thus it is easy to mislead the public. Therefore, the application for

registration of the disputed trademark has constituted the circumstance as referred to in Paragraph 1 of Article 16 of the *Trademark Law*.)

5.2 Examination of distinctive features of geographic indication collective trademarks and geographic indication certification trademarks

5.2.1 As a type of trademarks, geographic indication collective trademarks and geographic indication certification trademarks shall also not violate the basic provisions of Article 11 of the *Trademark Law*.

For example:



Type of trademark: geographical indication collective trademark

Designated goods: Cat. 30 fried rice, etc.

Applicant: Cuisine Association of Yangzhou City

(Note: “扬州炒饭” (Yangzhou Fried Rice in English) is a generic name of a Chinese dish, thus it violates the provisions of Item (1) of Paragraph 1 of Article 11 of the *Trademark Law*)

However, a geographic indication emphasizes the close relationship between the specific quality of goods and the production region. As a sign indicating that certain goods originates from a certain region as well as the specific quality, reputation or other features of the goods and is mainly decided by natural or cultural factors of the region, the name of a geographic indication is established by the people through long social practice in the historical development, and its expression form is generally composed of “geographic name + generic name of goods”. As a whole, a geographic indication belongs to the circumstance of acquiring the distinctiveness of trademark through long-term use, therefore it shall not be judged as lack of distinctive features.

For example:



Type of trademark: geographical indication certification trademark

Designated goods: Cat. 31 fresh pear

Applicant: Dangshan Pear Marketing Management Association

五常大米

Type of trademark: geographical indication certification trademark

Designated goods: Cat. 30 rice

Applicant: Rice Association of Wuchang City

5.2.2 Different from ordinary trademarks, a comprehensive judgment shall be made in combination with Paragraph 2 of Article 16 of the *Trademark Law* when examining the distinctive features of geographic indication collective trademarks and geographic indication certification trademarks. Where a trademark meets the basic provisions of Article 11 of the *Trademark Law* on the distinctiveness of trademarks, but does not meet the requirements of Paragraph 2 of Article 16 on the definition of geographic indications, the trademark shall be rejected to register.

For example:

(1) Where the quality of goods is only decided by human factors or natural factors

盱眙野生蜈蚣

Type of trademark: geographical indication certification trademark

Designated goods: Cat. 31 centipede (live)

Applicant: Traditional Chinese Medicinal Materials Industry Federation of Xuyi County

(Note: The formation of the specific quality of “野生蜈蚣” (wild centipede in English) is not necessarily related to the human factors at the place of origin, thus the mark is not in line

with the concept of geographical indication and violates the provisions of Article 16 of the *Trademark Law*.)

(2) Where any trademark contains the description of the type of goods

肥乡食用菌

Type of trademark: geographical indication certification trademark

Designated goods: Cat. 31 fresh edible fungi

Applicant: Distinctive Agricultural Products Industry Association of Feixiang County

(Note: “食用菌” (edible fungi in English) refers to a kind of large fungi that can be eaten by humans or used as medicine. There are about 657 species that are already known in China, such as *Pleurotus ostreatus* and *Lentinus edodes*. The quality of products is difficult to be unified, thus the mark does not meet the conditions for registration as a geographical indication and violates the provisions of Article 16 of the *Trademark Law*.)

(3) Where any trademark contains constituent elements not belonging to geographic indications

三亚芒果, 爱上三亚的另一个理由!

Type of trademark: geographical indication collective trademark

Designated goods: Cat. 31 mango

Applicant: Mango Association of Sanya City

(Note: “爱上三亚的另一个理由” (another reason for falling in love with Sanya in English) contained in the trademark does not meet the definition requirements of geographical indications, thus the trademark violates the provisions of Article 16 of the *Trademark Law*.)

5.3 Examination of the identicalness and similarity of geographic indication collective trademarks and geographic indication certification trademarks

As a type of trademarks, geographic indication collective trademarks and geographic indication certification trademark shall also be subjected to comparison and examination of trademark similarity, and comply with the provisions of Articles 30 & 31 of the *Trademark Law*. The examination of their identicalness and similarity shall be governed by the basic provisions of Chapter V of this Title.

For example:

金秀红茶



Type of trademark:
geographical indication certification
trademark

Designated goods: Cat. 30 black
tea

Applicant: Dayaoshan Tea
Industry Association of Jinxiu Yao
Autonomous County

Type of trademark: ordinary
trademark

Designated goods: Cat. 30 tea;

iced tea; tea beverages

Applicant: Jinxiuyaoqu
Agricultural, Forestry and Local
Specialty Leafy Industry Association
Co., Ltd.



Type of trademark:
geographical indication certification
trademark

Designated goods: Cat. 29

Type of trademark: ordinary
trademark

Designated goods: Cat. 29
meat; poultry (non-living), etc.

mutton; sheep (non-living)

Applicant: Hongxu Agricultural

Applicant: Yichang Animal
Husbandry Green Industry Research
Institute

Development Co., Ltd. in Honghe
County

赵县黄冠梨

赵县雪花梨

ZHAOXIANXUEHUALI

Type of trademark:

geographical indication certification
trademark

Designated goods: Cat. 31 fresh
pear

Applicant: Da'an Green Pear
Association of Zhao County

Type of trademark:

geographical indication certification
trademark

Designated goods: Cat. 31 fresh
snowflake pear

Applicant: Pear Industry
Association of Zhao County

However, in view that the right to a geographic indication is jointly shared by the market entities engaged in relevant production and operation activities at the place of origin and that geographic indication trademarks are obviously different from ordinary trademarks in terms of function, use, specific quality of product, historical origin, etc., one shall make case-by-case judgement instead of applying relevant articles mechanically when comparing and examining the identicalness and similarity of geographic indication collective trademarks and geographic indication certification trademarks.

Where geographic indication collective trademarks and geographic indication certifications are applied after the application of ordinary trademarks, such factors as the popularity, distinctiveness and the cognition of relevant public of geographic indication collective trademarks and geographic indication certification trademarks shall be combined, and the trademarks shall not be determined to constitute similar trademarks if they are not

easy to cause confusion and misunderstanding among the relevant public.

Where geographic indication collective trademarks and geographic indication certification trademarks are applied prior to the application of ordinary trademarks and it is easy to cause confusion and misunderstanding among the relevant public about the source of goods or services, they shall be deemed to constitute similar trademarks if the popularity of geographic indication collective trademarks or geographic indication certification trademarks is adhered to inappropriately.

5.3.1 The form of Chinese characters in reverse order

Where the words of non-generic names in geographic indication collective trademarks and geographic indication certification trademarks are the same as those of prior trademarks but just arranged in different order, a comprehensive judgment shall be made in combination with such factors as the popularity, distinctiveness and the cognition of relevant public of geographic indication collective trademarks and geographic indication certification trademarks, the trademarks shall not be determined to constitute similar trademarks if they are not easy to cause confusion and misunderstanding among the relevant public.

For example:



Type of trademark: geographical indication certification trademark	Type of trademark: ordinary trademark
Designated goods: Cat. 30 tea	Designated goods: Cat. 30 tea; tea substitutes
Applicant: Agricultural Technology Service Association of	Applicant: Gulai Agricultural Corporation of Shengzhou City

5.3.2 Mixing large and small geographic names together

Where geographic indication collective trademarks and geographic indication certification trademarks are composed of two-level geographic names with inclusion relationship, namely “big geographic name + small geographic name + generic name of goods”, they shall be determined to constitute similar trademarks on similar goods if the place indicated by the small geographic name falls under the jurisdiction of the place indicated by the big geographic name and the prior trademark owner of the small geographic name comes from the area indicated by the big geographic name, therefore it is easy to cause misunderstanding.

For example:

巨鹿哈口西瓜

Type of trademark: geographical
indication certification trademark

Designated goods: Cat. 31
watermelon

Applicant: Hakou Watermelon
Planting Association of Julu County

哈口

Type of trademark: ordinary
trademark

Designated goods: Cat. 31 fresh
fruit; watermelon, etc.

Applicant: Hakou Professional
Fruit and Vegetable Cooperative of
Julu County

(Note: Hakou is the name of a village under the jurisdiction of Julu County, Xingtai City, Hebei Province. A professional fruit and vegetable cooperative in this village prior registered the ordinary trademark 哈口. In order to avoid misunderstanding by the public, the geographical indication certification trademark 巨鹿哈口西瓜 which is applied later shall

be rejected to register for quoting the prior trademark  .)

When comparing the similarity of geographic indication collective trademarks and geographic indication certification trademarks with other trademarks, please refer to Section 6.1.2 “Determination of similar relationship of designated goods” in this Chapter for the determination of similar relationship of goods.

6. Examination of particular matters of geographic indication collective trademarks and geographic indication certification trademarks

According to Article 4 of the *Implementing Regulations of the Trademark Law* and the relevant provisions of the *Measures for the Registration and Administration of Collective Trademarks and Certification Trademarks*, applications for the registration of geographic indication collective trademarks and geographic indication certification trademarks shall be provided with subject qualification certificates, the approval documents issued by local people’s government or industrial authorities concerned of the areas indicated by the geographic indications, and the certification materials of the applicant’s testing ability, etc. Therefore, when examining geographic indication collective trademarks and geographic indication certification trademarks, such particular matters as the applicant’s subject qualifications, use management rules as well as inspection and testing ability, etc. shall also be examined in addition to the examination of the marks.

6.1 Examination of designated goods

6.1.1 Notes on the declaration of the goods using geographic indication collective trademarks and geographic indication certification trademarks

The examination of the goods designated by geographic indication collective trademarks and geographic indication certification trademarks shall be based on the *Similar Goods and Services Distinguishing Form*. However, what are emphasized by geographic indications are the specific quality of goods and its relevance to the natural and human factors of the production region, therefore:

The goods indicated by geographic indications are usually agricultural products, food, wine, ardent spirits, and also include some traditional handicraft works and other products. Where the specific quality of goods is determined only by natural factors or only by human factors, such as handicraft works and local snacks without relevance to the natural factors at the place of origin, or pure industrial products, minerals, wild animals and plants without relevance to the natural factors at the place of origin, such goods cannot be the goods designated by geographic indication collective trademarks and geographic indication certification trademarks.

The goods designated by geographic indication collective trademarks and geographic indication certification trademarks shall be clear, specific and closely related to the names of geographic indications. For example, the goods approved by the geographic indication certification trademark  is "fresh apple" instead of "fresh fruit"; the goods designated by the geographic indication certification trademark "象州大米" is "rice" instead of "husked seed".

The designated goods of geographic indication collective trademarks and geographic indication certification trademarks are often single goods and may be directed to multiple goods or categories as listed in *Similar Goods and Services Distinguishing Form* under special circumstances. For example: the designated goods of "建阳建盏" are Cat. 21 "porcelain; daily porcelain ware (including basins, bowls, plates, pots, tableware, vats and jars)", and the designated goods of "宜昌白山羊" include Cat. 29 "mutton; sheep (non-living)" and Cat. 31 "sheep (live)".

6.1.2 Determination of similar relationship of designated goods

The determination of identical or similar relationship between the goods designated by geographic indication collective trademarks and geographic indication certification trademarks and the goods designated by prior trademarks shall be based on *Similar Goods*

and Services Distinguishing Form. However, the determination of identicalness or similarity between geographic indication collective trademarks and geographic indication certification trademarks and prior trademarks is only based on the identical or inclusive relationship of the designated goods. For example, both “watermelon” and “apple” belong to 3105 similarity group. If the goods designated by a geographic indication collective trademark and a geographic indication certification trademark is “watermelon” and the goods designated by the prior trademark is “apple”, then the geographic indication collective trademark and geographic indication certification trademark and the prior trademark shall not be determined to constitute identical or similar trademarks; if the goods designated by the prior trademark are “fresh fruit”, the geographic indication collective trademark and geographic indication certification trademark and the prior trademark shall be determined to constitute identical or similar trademarks because “watermelon” is included in the goods item “fresh fruit”.

6.2 Examination of the applicant’s subject qualifications

According to Article 123 of the *Civil Code*, civil subjects enjoy proprietary rights in respect of geographic indications in accordance with the law. Therefore, first of all, the applicants of geographic indication collective trademarks and geographic indication certification trademarks shall be civil subjects

Secondly, the right to a geographic indication is jointly shared by the market entities engaged in relevant production and operation activities at the place of origin. Therefore, the applicants for geographic indication collective trademarks and geographic indication certification trademarks shall be entities, associations or other organizations which are approved by local people’s government at or above the county level or industrial authorities concerned of the areas indicated by the geographic indications, have the ability to supervise and test the specific quality of the geographic indication products, and do not aim at making profits. They are generally legal persons of social entities or institutions, and their business scope is related to the geographic indication products that they supervise.

Companies and farmers' professional cooperatives, etc. cannot be the applicants for geographic indication collective trademarks and geographic indication certification trademarks because they are profit-making entities.

An applicant shall submit the subject qualification certification documents for its legal establishment. Subject qualification certification documents include legal person certification of public institution and legal person registration certification of social entity, etc.

The entity, association or other organization applying for the registration of a geographic indication collective trademark shall be composed of members from the area indicated by the geographic indication.

Where a foreigner or a foreign enterprise applies for the registration of a geographic indication collective trademark or a geographic indication certification trademark, the applicant shall provide proof that the geographic indication is protected by law in its name in the country of origin.

6.3 Examination of the approval documents issued by local people's government at or above the county level or industrial authorities concerned of the areas indicated by geographic indications

An applicant for the registration of a geographic indication collective trademark or a geographic indication certification trademark shall submit the document issued by local people's government at or above the county level or industrial authorities concerned of the area indicated by the geographic indication to prove that it is approved to apply for the registration of as well as supervise and manage the geographic indication.

Where the geographic scope indicated by the geographic indication is within a county/city, the approval document shall be issued by the local people's government or industrial authorities concerned of that county/city; where the geographic scope indicated by the geographic indication covers two or more counties/cities, the approval document shall be issued by the local people's government or industrial authorities concerned at the higher level.

For example:

晋州山楂

Type of trademark: geographical indication certification trademark

Designated goods: Cat. 31 fresh hawthorn

Applicant: Shenglin Hawthorn Association of Jinzhou City

Scope of production region: within Mayu Town, Zongshizhuang Town and Donglizhuang Town in Jinzhou City

(Note: Although the production region of “晋州(Jinzhou in English) Jawthorn” is only a few towns of Jinzhou City, the area indicated by the geographical indication is Jinzhou. Therefore, an approval document shall be issued by the local people’s government or industrial authorities concerned at or above the level of Jinzhou City.)



Type of trademark: geographical indication certification trademark

Designated goods: Cat. 31 aroma pear

Applicant: Korla Aroma Pear Association of Bayingolin Mongolian Autonomous Prefecture

Scope of production region: Kongque River Basin and Tarim River Basin, the northern edge of Taklimakan Desert, and such hot & cold air accumulation and impact zones as Korla City, Yuli County, Luntai County, Kuqa County, Xinhe County, Shaya County, Aksu City and Awati Township as well as the state-owned farms (regiments) distributed in these areas.

(Note: Although the name of the geographical indication is “库尔勒香梨” (Korla Fragrant Pear in English), the scope of production area covers not only Korla City, but also other counties and townships of Bayingolin Prefecture as well as Aksu and other regions. Therefore, an approval document shall be issued by the local people’s government or industrial

authorities concerned of Xinjiang Uygur Autonomous Region.)

6.4 Examination of the applicant's supervision and testing ability

Where the applicant has testing ability itself, it shall submit its own testing qualification certificates as well as lists of its testing personnel and testing equipment for determining that it has the ability to supervise and test the specific quality of the geographic indication product.

Where the applicant entrusts others to carry out test because itself does not have supervision and testing ability, it shall submit specified entrustment agreement for testing the specific quality of the geographic indication product, as well as the testing qualification certificates and lists of testing equipment and testing personnel of the entrusted testing party for determining that the applicant has the ability to supervise and test the specific quality of the geographic indication product.

6.5 Examination of the scope of production regions indicated by geographic indications

The scope of the production regions indicated by geographic indications may be the geographic scope stated in county annals, agricultural annals, product annals, yearbooks and textbooks, or may be determined by the geographic scope certification documents issued by the local people's government or industrial authorities concerned of the areas indicated by geographic indications. Where the geographic scope indicated by the geographic indication is within a county/city, the certification document shall be issued by the local people's government or industrial authorities concerned of that county/city; where the geographic scope indicated by the geographic indication covers two or more counties/cities, the certification document shall be issued by the local people's government or industrial authorities concerned at the higher level. In case of trans-provincial area, the certification shall be settled by relevant industrial authorities concerned of the Central People's Government or corresponding provincial people's governments through consultation.

The geographic scope may be inconsistent with the name and scope of the current administrative divisions of the regions.

The scope of production region can be defined in one of or a combination of the

following ways:

- (1) Administrative division;
- (2) Latitude and longitude;
- (3) Taking geographic features such as mountains and rivers in the natural environment as boundary;
- (4) Map marking;
- (5) Other ways capable of clearly determining the scope of production region.

But expressions shall be clear, specified and specific. Vague expressions such as “mainly distributed” and “mainly include” do not meet requirements. The geographic scope of a product expressed in various ways shall be consistent with each other instead of conflicting with each other.

6.6 Examination of explanations of the relationship between the specific quality, reputation or other features of geographic indication products and the natural and human factors of the regions

The specific quality, reputation or other features of the goods designated by geographic indication collective trademarks and geographic indication certification trademarks shall be mainly decided by the natural or human factors of the regions indicated by the geographic indications. According to the decisive role played by the natural or human factors of the production regions in the formation process of the specific quality of geographic indication products, three circumstances are listed as follows:

6.6.1 Specific quality is mainly decided by local natural conditions

For example:



Type of trademark: geographical indication certification trademark

Designated goods: Cat. 31 fresh grapes

Applicant: Grape Industry Association of Turpan Region

(Note: grapes have been planted in Turpan Basin for 2,000 years. This region is featured by high temperature and dry, little precipitation, high heat, high temperature difference and strong light. The unique water, soil, light, heat and other natural resources have determined such unique qualities of “Turpan Grapes” as thin skin, crispy, high sugar and low acid, and high dry output rate.)



Type of trademark: geographical indication certification trademark

Designated goods: Cat. 30 tea

Applicant: Tea Industry Corporation of Anxi County

(Note: “ANXI TIEGUANYIN” is a semi-fermented tea produced in Anxi county, Fujian Province, where is subject to subtropical oceanic monsoon climate and surrounded by mountains and covered by thick soil with high organic content. The soil, altitude, accumulated temperature, rainfall, temperature and humidity of the production area plus the unique primary processing technology have contributed to the unique qualities characterized as the tight, plump and smooth appearance of dark green color, and the rich and lasting aroma and the golden, bright, clear tea with mellow, fresh and sweet tasting upon brewing.)

6.6.2 Both natural factors and human factors play a decisive role

For example:



Type of trademark: geographical indication certification trademark

Designated goods: Cat. 33 rice wine

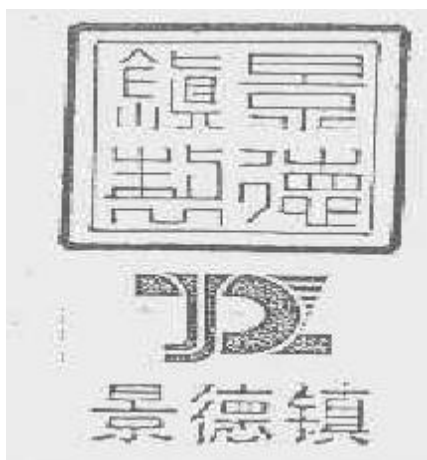
Applicant: Rice Wine Industry Association of Shaoxing City

(Note: The specific quality of Shaoxing Rice Wine is determined by the water of Jian Lake

and the unique production process. The production area has four distinct seasons and plenty of rainfalls, and is appropriate for the growth of microorganism as required for brewing. The water of Jian Lake is of high quality and abundant in microelements and minerals. Shaoxing Rice Wine takes white sticky rice as raw materials and is brewed with the water of Jian Lake, and the final product of Shaoxing Rice Wine is orange color, bright and transparent, and mellow, soft and fresh in taste.)

6.6.3 Specific quality is mainly decided by human factors.

For example:



Type of trademark: geographical indication certification trademark

Designated goods: Cat. 21 porcelain

Applicant: Jingdezhen Porcelain Association

(Note: “景德镇” (Jingdezhen in English) porcelain adopts the unique binary formula of “white clay + porcelain stone” that are produced locally. Oxides such as iron, copper and cobalt are prepared into different pigments and applied to the surface of clay base or porcelain body, and then calcined at high or low temperature to form into Jingdezhen porcelain, which makes Jingdezhen porcelain colorful, crystal and good-looking with unique style: white as jade, bright as mirror, thin as paper, and sounds like chime stone.)

Where the specific quality of products is decided only by natural factors or only by human factors, relevant marks do not conform to the concept of geographic indications.

For example:



Type of trademark: geographical indication certification trademark

Designated goods: Cat. 14 gems

Applicant: Sibin Stone Needle Association of Sishui County

(Note: The materials provided by the applicant can only prove that the quality of the goods designated by the mark is closely related to the natural factors of the area indicated by the mark, but failed to prove that the formation of the specific quality is inevitably related to the human factors at the place of origin and the goods does not have any reputation, therefore the applied trademark does not meet the conditions for registration as a geographical indication trademark and violates the provisions of Article 16 of the *Trademark Law*.)



Trademark type: geographical indication collective trademark

Designated goods: Cat. 31 fresh muskmelon

Applicant: Agricultural Association of Pudong New Area, Shanghai City

(Note: The materials submitted by the applicant such as *Nanhui Agricultural Annals*, *Continued Annals of Nanhui County 1986-2001* and *Technical Operation Procedures for the Production of Nanhui Muskmelon* show that “南汇甜瓜” (Nanhui Muskmelons in English) are planted in greenhouses and their growth environment is artificially controlled. The growth environment under such mode can be imitated in any area and the formation of the specific quality is not necessarily related to the natural environmental factors at the place of origin, therefore the applied trademark does not conform to the concept of geographical indications

and violates the provisions of Article 16 of the *Trademark Law*.)



Type of trademark: geographical indication collective trademark

Designated services: Cat. 43 cafes, restaurants, etc.

Applicant: Snack Association of Lingbao City

(Note: As the generic name of a kind of food with specific style and features, “XIAOCHI” (snacks in English) plays an indispensable and important role in a region. However, as XIAOCHI contains a variety of products and their tastes and product qualities are different, thus the applied trademark does not meet the single requirement that shall be specified concerning the specific quality of geographical indication products. In addition, the geographical indication “LINGBAOXIAOCHI” applied by the applicant is designated for use on Cat. 43 catering service, etc. Since service is a man-made activity and has no connection with local natural factors, therefore the applied service trademark does not meet the concept of geographical indications and violates the provisions of Article 16 of the *Trademark Law*.)

6.7 Examination of the certification materials of the objective existence and reputation of geographic indications

The certification materials of the objective existence and reputation of geographic indications is an important basis for affirming the ownership of geographic indications.


- (1) County annals, agricultural annals, product annals, yearbooks and textbooks;
- (2) Publicly published books, state-level professional journals and ancient books, etc. except for the above-mentioned materials;
- (3) Other materials that can prove the objective existence and reputation of the geographic indication product.

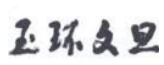
The certification materials of the objective existence and reputation of geographic indications may be original documents or the photocopies of the cover, copyright pages and content pages that are affixed with the official seal of the issuing unit.

The above-mentioned certification materials shall have clear and definite records of the name and reputation of the geographic indication.

For example: the evidence of the objective evidence of the geographic indication



certification trademark “” is the publicly published book — *Cangshan County Annals* which records: “苍山大蒜 (Cangshan Garlic in English) is a type of famous native products of Shandong Province which is named after the place of origin — Cangshan County. It is featured by big head and orderly bulblet, skin as thin as paper, color as white as jade, spicy and fragrant taste, rich nutrition, etc., and it enjoys great reputation in China and abroad. Therefore, Cangshan County has become a national base county for the production and export of high-quality garlands and known as the “hometown of garlands”.

Another example: the evidence of the objective evidence of the geographic indication certification trademark “” is the publicly published book — *Tangerine Regionalization and Improved Tangerine Varieties in China*. It is recorded in the book that: “文旦(Wendan in English) pomelo is mainly produced in Zhangzhou of Fujian, and 玉环 (Yuhuan in English) , Wenling in Zhejiang, and Taiwan.”

6.8 Examination of use management rules

Regarding the examination of the use management rules of geographic indication collective trademarks and geographic indication certification trademarks, the specific quality, reputation or other features and the scope of production region of the designated goods shall also be examined in addition to the application of Sections 4.1.2 & 4.2.2 of this Chapter.

6.8.1 Examination of specific quality of designated goods

The specific quality of geographic indication goods includes the sensory features,

physical and chemical indexes or special production methods of the goods.

Sensory features include visual features such as shape, size, color and texture, as well as smell, taste perception, etc. Physical and chemical indexes include biological characteristics such as family and species, physical characteristics such as weight, density and pH, as well as chemical characteristics such as water, protein, fat and content of trace elements. Production methods include the description of processing technology and the quality criteria for final product, such as the feeding process and slaughtering method of animal products, the planting process, harvesting practice and storage method of plant products, as well as the raw materials, ingredients and production process of traditional handicraft works, etc.

For example:



Type of trademark: geographical indication certification trademark

Designated goods: Cat. 31 apple

Applicant: Apple Association of Yantai City

(Note: Yantai Apple is featured by round shape, smooth surface, bright color, juicy and refreshing taste, as well as crisp flesh, with fruit shape index more than 0.8, coloring area more than 80%, soluble solid content more than 15%, fruit hardness more than 8.0 kgf/cm², and total acid content $\leq 0.4\%$)



Type of trademark: geographical indication certification trademark

Designated goods: Cat. 31 Chinese Onion

Applicant: Chinese Onion Industry Association of Zhangqiu District, Jinan City

(Note: Zhangqiu Chinese Onion can grow as high as 1.5 meters, with the fistular onion stalk being 0.5-0.6 meter and the stem diameter being 3-5 cm, and weigh over 1 kg, and is therefore called “King of Chinese Onion”. Zhangqiu Chinese Onion is of light spicy, fragrant and sweet with large and crispy fistular onion stalk, and may be stored for a long time without deterioration and chewed up without dross, and is juicy and sweet in taste.)

Where the specific quality of the goods designated by geographic indication collective trademarks and geographic indication certification trademarks is not clear or objective, or the specific quality, reputation or other features of the goods are not determined by local natural and cultural factors, the marks shall be rejected to register according to the provisions of Paragraph 2 of Article 16 of the *Trademark Law*.

For example:

昌吉火烧
CHANG JI HUO SHAO

Type of trademark: geographical indication collective trademark

Designated goods: Cat. 30 Huo Shao

Applicant: Seed Association of Changji City

(Note: The relevant materials submitted by the applicant show that “CHANG JI HUO SHAO” is a kind of hand-made pastry in Xinjiang, with refined flour, oil and honey as main raw materials. The producers may mix different auxiliary materials such as peanut, honeydew melon mud, walnut kernel, egg, fresh rose mud and honey cherry into it according to their own habits. Due to the special technology, exquisite selection of materials, crisp outside and soft inside, as well as sweet and delicious taste, it is known as the traditional nutritional food with unique characteristics among the food of the Hui people. Since the specific quality of the finished product after “CHANG JI HUO SHAO” is processed is inconsistent and its physical and chemical indexes cannot be fixed, the mark do not conform to the concept of geographical


indications, therefore it shall be rejected to register by quoting Article 16 of the *Trademark Law*.)

6.8.2 Examination of the relationship between the specific quality, reputation or other features of the designated goods and the natural factors of the areas indicated by the geographic indication

When examining the relationship between the specific quality of geographic indication products and the specific natural geographic environment of the production region, one shall focus on the causal relationship between them. The expression of the causal relationship that a certain specific time and a certain specific environmental factor exert specific impact on a certain specific quality of the product shall be reasoned clearly and completely. If only the natural conditions such as air temperature, light, precipitation, soil and rivers in the producing area are listed, relevant marks shall be judged as not meeting requirements.

Where the human factors at the place of origin are expressed together, the planting area (such as in front of/behind mountains and orientation), the selection of planting seasons, special production buildings (such as inflow mills), local unique production technology, etc.



For example: about “”: the daily average temperature in the first ten days of October in 金乡 (Jinxiang in English) is 17.6°C, which is conducive for garlic sprouts to grow into strong seedlings with five leaves and one core before winter so as to survive the cold winter. The period from the last ten days of March to the first ten days of April in the next year is the standing stage of garlics, which is the most critical period for the growth of garlics and requires relatively high ground temperature. The annual average temperature during this period in Jinxiang is often 12.3°C, which is very suitable for... “金乡黑蒜” (Jinxiang Black Garlics in English) is made of complete, plump, unskinned and mildew-free garlics of Jinxiang, which are dried in the air after soaked in local weak alkaline water and then specially fermented for 40 days under a high-temperature and high-humidity sealed container at 60-90°C.

6.8.3 Examination of the scope of production region

Refer to 6.5 “Examination of explanations of the relationship between the specific quality, reputation or other features of geographic indication products and the natural and human factors of the regions” for the expression of the scope of production regions of geographic indication products as referred to in the use management rules of geographic indication collective trademarks and geographic indication certification trademarks.