



# Trademark registration in China

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Information provided below will guide you to:

- Why Register Trademark in China?
- Documents Required & Registration Procedure of Trademark
- Fee for Trademark Registration
- Why Register Trademark in China?

Owners of registered trademarks have the ability to prevent others (i.e., their competitors, partners in China, we had clients that found out their trademark was registered by their supplier in China and other third parties) from using their registered trademark without permission. Your registered trademark can also successfully prevent others from (A)- acquiring trademark rights in your trademark, and/or (b)- claiming that you are infringing their trademark rights. Trademark Infringement actions can be costly. Few companies have the financial strength to overcome the full or partial loss of their right to use their own business name or product name. Consequently, trademarks are critical business assets. Coca-Cola is commonly believed to be the most valuable and admired trademark worldwide.

Trademarks protect your business name, product names, Domain names, logos and slogans. The decision to Trademark is likely one of the most important business decisions you will make. We would be pleased to assist you with the complex trademark registration process. It's what we do best.

## China's Trademark Law

### 1. How to protect your trademarks and service marks in China?

In China you must register your trademark with the Chinese Trademark Office in order to protect your exclusive rights to that trademark in China.

The Chinese trademark law system is different from the U.S. federal trademark law system. The Chinese Trademark Law provides: "Any natural person, legal entity or other organization intending to acquire the exclusive right to use a trademark, including service mark, shall file an application for the registration of the trademark with the Trademark Office".

### 2. What types of signs can be registered trademarks?

Any visual sign, if it can be used to distinguish the goods or service 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 combination, may be filed for registration.

One important change is that before 2002, three-dimensional symbols or combinations of colors could not be registered trademarks in China, and now this category is readily available. Needless to say that, some special words or symbols, like countries names, international organizations names and symbols, such as the Red Cross, may not be registered as trademarks.

### **3. Application First Principle**

This principle says that where two or more applicants apply for the registration of identical or similar trademarks for the same or similar goods, the Trademark Office will approve the trademark application which is first filed. Where applications are filed on the same day, the preliminary approval shall be given to the trademark which was the earliest used, and the applications of the others shall be rejected and their trademarks shall not be published.

Apparently, where the registration of a trademark which has been applied for is identical with or similar to the trademark of another person that has, in respect of the same or similar goods, been registered or, after examination, preliminarily approved, the Trademark Office shall refuse the application and shall not publish the said trademark.

### **4. The term for a registered trademark and trademark renewal**

The period of validity of a registered trademark shall be ten years, counted from the date of approval of the registration.

If the registrant intends to continue to use of the registered trademark beyond the expiration of the period of validity, an application for renewal of the registration shall be made within six months before the said expiration. Where no application therefore has been filed within the said period, a grace period of six months may be allowed. If no application has been filed at the expiration the grace period, the registered trademark shall be cancelled.

The period of validity of each renewal of registration shall be ten years.

### **5. Trademark Licensing**

Any trademark registrant may, by concluding a trademark license contract, authorize other persons to use his registered trademark. The licensor shall supervise the quality of the goods in respect of which the licensee uses his registered trademark, and the licensee shall guarantee the quality of the goods in respect of which the registered Trademark is used.



Where any party is authorized to use a registered trademark of another person, the name of the licensee and the origin of the goods must be indicated on the goods that bear the registered trademark.

The trademark license contract shall be submitted to the Trademark Office for record.

## **6. Trademark Infringements**

The following acts shall constitute an infringement:

- (1) To use a trademark that is identical with or similar to a registered trademark in respect of the identical or similar goods without the authorization from the trademark registrant
- (2) To sell goods that he knows bear a counterfeited registered trademark
- (3) To counterfeit, or to make, without authorization, representations of a registered trademark of another person, or to sell such representations of a registered trademark as were counterfeited, or made without authorization
- (4) To replace, without the consent of the trademark registrant, its or his registered trademark and market again the goods bearing the replaced trademark or
- (5) To cause, in other respects, prejudice to the exclusive right of another person to use a registered trademark

## **7. If your trademark right is infringed, what can you do?**

If your trademark right is infringed, first, you can resolve the dispute through consultation; if you are reluctant to resolve the matter through consultation or the consultation fails, second, you may institute legal proceedings in the People's Court or request the administrative authority for industry and commerce for actions.

The Administration of Industry and Commerce (AIC) plays an extremely important role in China to assist business entities and individuals in resolving trademark disputes and infringement claims. AIC operates on national, provincial, county, and municipal levels, and is the key government agency that is responsible for corporations registration, fair competition, trademark administration, market supervision, and exercises other important functions. The AIC has the administrative authority to investigate and handle any acts of infringement of the exclusive rights to use a registered trademark according to law.

When an infringing act is constituted, the AIC shall order the infringer to immediately stop the infringing act, confiscate and destroy the infringed goods and tools specially used for the manufacture of the infringing goods and for counterfeiting the representations of the registered trademark, and impose a fine. Where any interested party is dissatisfied with the decision on the



matter, it or he may file a lawsuit in the People's Court according to the Administrative Procedure Law of the People's Republic of China.

## 8. Criminal Penalty

If any party uses, without the authorization from the trademark registrant, a trademark identical with a registered trademark, and the case is so serious as to constitute a crime, he shall be prosecuted, according to law, for his criminal liabilities in addition to his compensation for the damages suffered by the infringe.

## Documents Required of Trademark Registration

Trademark Registration by Company:

- 1x copy of the company's certificate of incorporation
- Company name and address in both English and Chinese
- Signature by company's director
- Print and digital version of proposed trademark (6 originals in print, size: between 5cm\*5cm and 10cm\*10cm)
- Category of the proposed trade mark (and choose 10 sub-categories)
- Trademark Registration by Individual applicant:
  - 1 x copy of the passport of applicant
  - Individual's mailing address in both English and Chinese.
  - Signature by the applicant
  - Print and digital version of proposed trademark (6 originals in print, size: between 5cm\*5cm and 10cm\*10cm)
  - Category of the proposed trade mark (and choose 10 sub-categories)

### In details:

(1) Anyone who applies for registration of a trademark shall file an application based on the categories in the published Classification of Goods and Services. For each application for registration of a trademark, the applicant shall submit to the Trademark Office one copy of the Application for Trademark Registration and five copies of reproductions of the trademark; if color or colors is or are designated, five copies of colored reproductions of the trademark and one copy of the black and white design shall be submitted. The trademark designs shall be conspicuous and easy to be attached. They shall be printed on smooth and durable paper or be replaced by photos, the size of which shall be no more than 10 centimeters but no less than 5 centimeters in length or width. If applying for the registration of a three-dimensional sign as a trademark, the applicant shall make a statement in the application, and submit a reproduction thereof by which the threedimensional shape can be determined. If applying for the registration of the combination of colors as a trademark, the applicant shall make a statement in the application, and submit the descriptions thereof. If applying for the registration of a collective mark or a certification mark, the



applicant shall make a statement in the application, and submit the documents certifying the qualifications of the subjects and the rules on the administration of the use of the mark. Where a trademark is, or consists of, foreign words, their Chinese meanings shall be indicated.

(2) 1 x power of attorney and 1x Application form for trademark registration should be signed and stamped (if applicable) by applicant . The applicant's name should be in exact concordance with the registered name of the enterprise.

### **Procedure of Trademark Registration**

- Check if the trademark still be available
- Prepare documents and application forms.
- Application forms signed by applicant and then submit the application
- Formality check
- Notice of first approval by SAIC in Beijing
- Substantive examination [ around 12 months from the Step 2 ]
- Formality approve and publish the trademark [ around 14 months from the Step 2 ]
- Approve the whole registration [ around 3 months from the Step 6 ]
- Obtain the approval certificate [ around 2 months from the Step 7 ]

Timing: Approx. 24-36 months

### **Fee for Trademark Registration in China**

#### **Trademark checkup fee:**

Chinese or English words - 100 USD

#### **Trademark registration fee:**

Service charge: USD 1,000 (Register with one Class and 10 sub-categories)

Government fee: included

In Total: USD 1,100

\*Duration of the Trademark: first time is 10 years, if you extend it after then, it becomes permanent.

#### **About Payment:**

- All payment should be settled up before the application submitted.
- Cost above including the translation fee
- The service fee will not be refunded If a trademark application be rejected.

Source: Pathtochina.com