



# Protecting Your Trademark in China



CHINA NATIONAL INTELLECTUAL  
PROPERTY ADMINISTRATION

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INTELLECTUAL PROPERTY COOPERATION



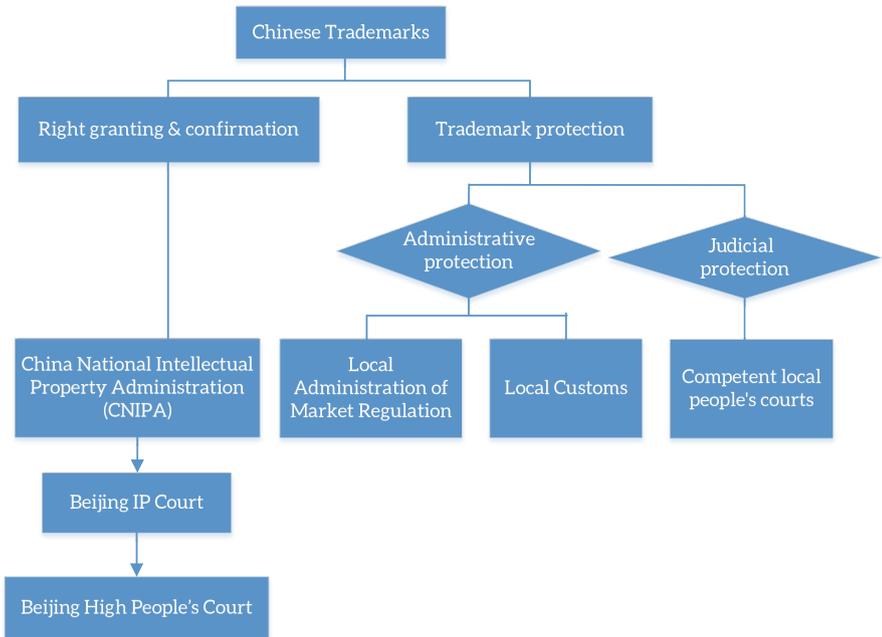


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# Chapter I: Trademark-Related Laws and Authorities in China



## 1. Main laws and regulations related to trademarks

The basic and most important law for trademark registration and protection in China is the Trademark Law of the People's Republic of China (Trademark Law) as well as the Implementing Regulations for the Trademark Law of the People's Republic of China (Implementing Regulations). Meanwhile, China is a member state of the Madrid



CNIPA Headquarters

Agreement Concerning the International Registration of Marks and Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks.

## 2. Authorities related to trademark right granting, confirmation and protection

### (1) Authority for trademark right granting and confirmation

The China National Intellectual Property Administration (CNIPA) is the only competent authority to receive and examine trademark right granting and confirmation cases in China. The Trademark Office, a subordinate unit of CNIPA, is responsible for trademark registration and administration, e.g. conducting trademark examination and issuing review and adjudication decisions.

If any concerned party is dissatisfied with a trademark review and adjudication decision of CNIPA, that party may file an administrative lawsuit with the competent court in accordance with the law. In such

a lawsuit, CNIPA is the defendant, and the adverse party, if any, is a third party. According to the Provisions of the Supreme People's Court on the Jurisdictions over Cases by Intellectual Property Courts in Beijing, Shanghai and Guangzhou, the Beijing Intellectual Property Court ("Beijing IP Court") is the only competent first instance court to accept any administrative lawsuits on CNIPA decisions, including those related to trademarks. The second instance court is the Beijing High People's Court.

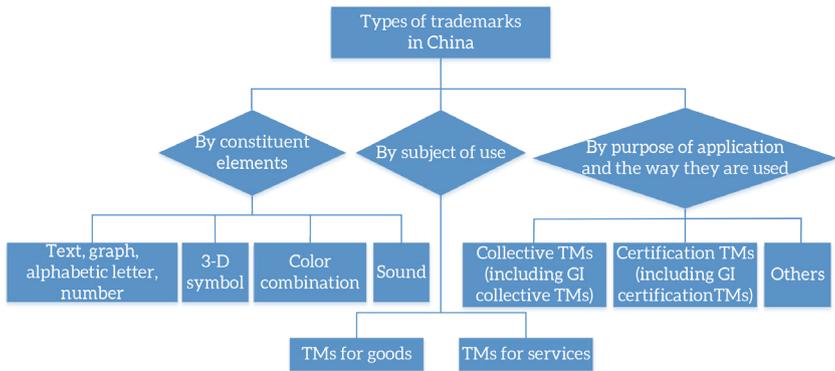
(2) Authorities for trademark protection

In the case of trademark infringement, a right holder may seek administrative or judicial protection in China for his/her trademark. Please refer to Chapter XII for more detailed information.

	Competent authority
Administrative protection	1. Local intellectual property administrative authorities 2. Local customs authorities
Judicial protection	Competent people's courts at different levels



## Chapter II: Basic Information on Trademark Registration System in China



### 1. Ways for a foreign applicant to register a trademark in China

There are two ways for a foreign applicant to register a trademark in China.

#### (1) Direct national application

An applicant may directly file an application for trademark registration with CNIPA. A foreign applicant shall entrust a duly-established trademark agency to apply for trademark registration and handle other trademark-related matters in China. The list of Chinese trademark agencies recorded in CNIPA can be viewed on the official website of the Trademark Office of CNIPA (<http://sbj.cnipa.gov.cn/sbdl/>, only in Chinese).



Service hall at the Trademark Office of CNIPA

## (2) International registration

An applicant may also file, with the World Intellectual Property Organization (WIPO), an international trademark registration under the Madrid System and designate China. Please see details relating to international registration at WIPO's website ([www.wipo.int](http://www.wipo.int)) and the website of the Trademark Office of CNIPA (<http://sbj.cnipa.gov.cn/gjzc/>).

## 2. Eligibility of trademark applicant

Any individual, legal person or other organization can apply for trademark registration in China, separately or jointly. In the case of a joint application, all applicants jointly enjoy and exploit the exclusive right to use the trademark after it is approved for registration.

## 3. Rule of first-to-file

In China, use is not a pre-condition for trademark application or reg-

istration. China adopts a first-to-file rule. However, under certain conditions, a level of protection is given to earlier-used trademarks, such as a trademark that has been used earlier and has gained certain influence in the market, or an unregistered well-known trademark.

#### 4. Types of trademarks

Subject to Article 8 of the Trademark Law, any signs, including words, graphs, letters, numbers, three-dimensional symbols, color combinations, sound or any combination thereof, that are capable of distinguishing the goods of a natural person, legal person or other organization from those of others, may be applied for registration as trademarks.

Joyoung 九阳

Siegel+Gale  
Simple is smart.



Examples of trademarks for goods, services and collective and certification trademarks

Subject to Article 3 of the Trademark Law, trademarks registered with the approval of CNIPA include trademarks for goods and trademarks for services, as well as collective trademarks and certification trademarks.

#### Collective trademarks and certification trademarks

“Collective trademarks” refer to signs that have been registered in the name of groups, associations, or other organizations, and which are

intended to be used by members of such organizations in commercial activities to indicate the organization membership of users.

“Certification trademarks” refer to signs that are controlled by organizations having the capacity for supervision over certain goods or services and which are used by organizations or individuals other than such controlling organizations on goods or services to certify the origin, raw materials, manufacturing method, quality, or other characteristics of such goods or services.

#### GI certification trademarks and GI collective trademarks

The Trademark Law also provides protection mechanisms for geographical indications (GIs). GIs may be applied for registration as certification trademarks or collective trademarks. Where a foreign enterprise or other foreign organization applies for the registration of a GI in China, it shall provide proof that such a GI is protected by laws in its own name in its country of origin.

### 5. Signs which shall not be used as trademarks

Subject to Article 10 of the Trademark Law, the following signs shall not be used as trademarks:

(1) Those identical with or similar to the State name, the national flag, emblem or anthem, the military flag, emblem or songs, or medals of the People’s Republic of China; or those identical with the names or emblems of Central State organs, the names of the specific locations where the Central State organs are seated; or those identical with the names or designs of landmark buildings;

(2) Those identical with or similar to the State name, national flag, na-

tional emblem or military flag etc., of a foreign country, except with the consent of the government of that country;

(3) Those identical with or similar to the name, flag or emblem of an international inter-governmental organization, except with the consent of that organization or except where it is unlikely to mislead the public;

(4) Those identical with or similar to an official mark or inspection stamp that indicates control and guarantee, except where authorized;

(5) Those identical with or similar to the symbol or name of the Red Cross or the Red Crescent;

(6) Those having the nature of discrimination against any nationality;

(7) Those that are deceptive and are likely to mislead the public in terms of the quality, place of production or other characteristics of the goods; and

(8) Those detrimental to socialist ethics or customs, or having other unwholesome influences.

No geographical names of administrative divisions at or above the county level and foreign geographical names known to the public shall be used as trademarks, except where geographical names have other meanings or constitute part of a collective mark or certification mark. Registered trademarks that use geographical names shall remain valid.

## 6. Signs which shall not be registered as trademarks

Subject to Article 11 of the Trademark Law, the following signs shall not be registered as trademarks:

- (1) Where the mark bears only generic name, design or model number of the goods concerned;
- (2) Where it only directly indicates the quality, principal raw materials, function, use, weight, quantity or other features of the goods; and
- (3) Marks that otherwise lack distinctive features.

Any mark mentioned in the preceding paragraph may be registered as a trademark where it has acquired distinctive features through use and is readily identifiable.

## 7. The classification of goods and services

China is a member state of the Nice Union and adopts the International Classification of Goods and Services for the Purposes of the Registration of Marks (the Nice Classification). The current Nice Classification divides goods and services into 45 classes, including classes 1-34 for goods and classes 35-45 for services. Based on the Nice Classification, CNIPA also includes names of goods and services commonly and specially used in China and further divides each class into subgroups of similarity, thus formulating the Classification Table of Similar Goods and Services (the Classification Table). The Classification Table is a very useful tool for trademark application and examination.

## 8. Means for filing a trademark application

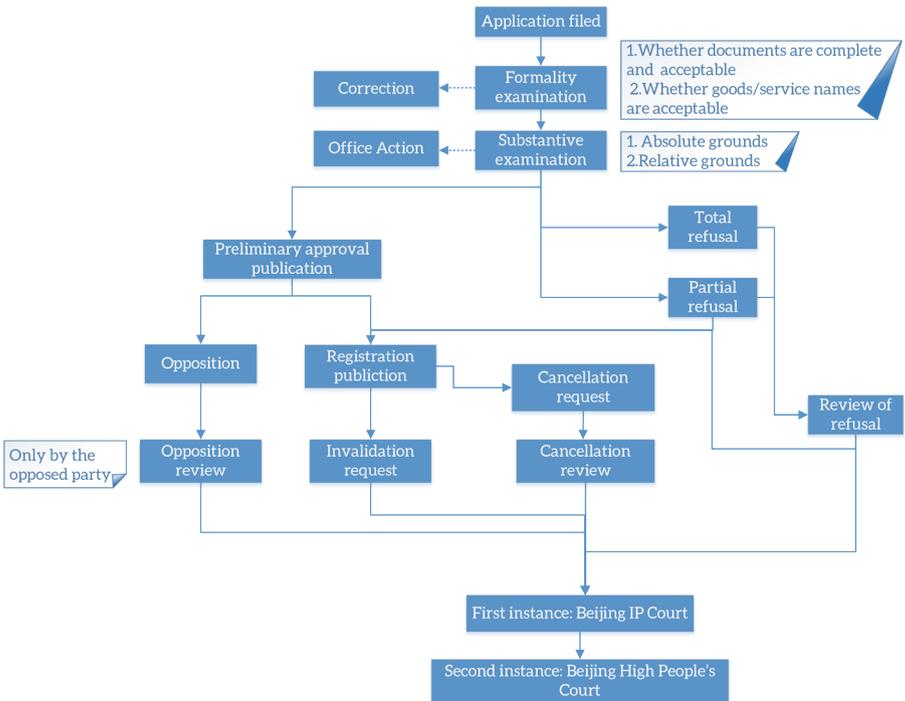
An applicant may file a trademark application either electrically or in

paper form. Because of the convenience and efficiency of electronic filing, the vast majority of trademark applications are filed electronically nowadays.

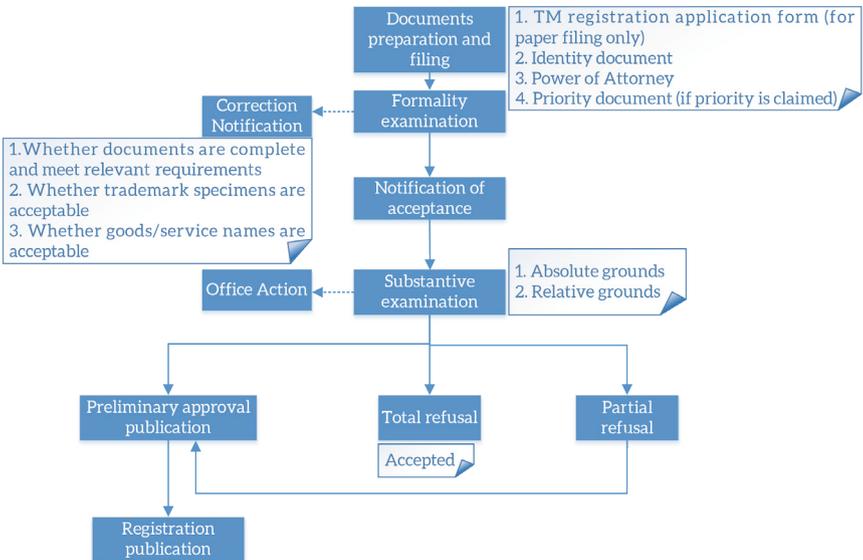
### 9. Territorial protection scope of Chinese trademark registration

A registered trademark approved by CNIPA is valid in China's mainland.

### 10. Process Diagram of Trademark Registration in China



## Chapter III: Application for Trademark Registration



### 1. Documents required for trademark application

Where an applicant files an application for trademark registration, the following documents shall be submitted:

(1) An application form for trademark registration (only if the application is filed in paper; if the application is filed electronically, the application particulars can be input in the electronic filing system and an application form is not needed)

(2) A photocopy of the applicant's identity document and the corresponding Chinese translation if it is in a foreign language;

(3) A signed Power of Attorney (if a trademark agency is used);

(4) Supporting documents of the right of priority where the applicant claims the right of priority, which can be submitted at the time of filing the application or within three months from the application date.

## 2.Examination period of an application for trademark registration

Subject to Article 28 of the Trademark Law, CNIPA shall complete the examination of a trademark registration application within 9 months from the date of receiving the application. According to the current practice, the substantive examination is completed in approximately 4 months from the application date.

## 3.Examination of applications for trademark registration

An application for trademark registration filed by an applicant is first subject to the formality examination by CNIPA. If the application meets the formality requirements, it will be accepted and a notification of acceptance will be issued. In the process of the formality examination, if CNIPA holds that some corrections should be made, it will issue a Correction Notification requesting the applicant to make corrections within 30 days upon receipt of the notification. Where the applicant fails to make corrections within the specified time limit or the corrections made fail to meet the requirement, the application will not be accepted by CNIPA.

After accepting the application, CNIPA will carry out substantive examination with respect to both absolute and relative grounds.

### Absolute grounds and relative grounds

The absolute grounds involve the violation of provisions on distinctiveness, non-functionality and protection of public interests under the Trademark Law, and does not consider the impact on a specific right holder. Such grounds may relate to the following provisions:

1. Article 4 of the Trademark Law: A bad-faith application for trademark registration not filed for the purpose of use.
2. Article 10 of the Trademark Law: signs that shall not be used as a trademark.
3. Article 11 of the Trademark Law: signs that shall not be registered as a trademark.
4. Article 12 of the Trademark Law: three-dimensional signs that are functional and shall not be registered as a trademark.
5. Article 19 (the 4th paragraph) of the Trademark Law: trademarks applied in the name of a trademark agency but on goods/services other than agency services in class 45.
6. Article 44: trademarks obtained by deception or other improper means.

The relative grounds involve infringement of a specific party's prior trademark rights or other existing prior rights. Such grounds may relate to the following provisions:

1. Article 13 of the Trademark Law: infringing upon others' prior well-known trademark.
2. Article 15 of the Trademark Law: being a trademark of another party with which the applicant has an agency, representative or other business relationship.
3. Article 16 of the Trademark Law: infringing upon others' geographical indication right.
4. Articles 30 & 31 of the Trademark Law: infringing upon others' prior registered or applied trademark right.
5. Article 32 (first part) of the Trademark Law: infringing upon existing prior rights of others' other than a trademark right
6. Article 32 (second part) of the Trademark Law: identical or similar to trademarks that have been used and have obtained a certain influence already beforehand.



An example of Chinese trademark registration certificate

The substantive examination will lead to three possible results, preliminary approval, partial refusal and total refusal. Where an application is totally or partially refused and the applicant is dissatisfied with the refusal, a review of refusal may be filed within 15 days from the date on which the applicant receives the refusal notification. Where an application is partially refused, the applicant may divide the application into two parts, i.e. the preliminarily approved part, which may be published separately; and the refused part, which will be subject to the review proceedings. After the division, the applications will share the original application date but become two separate applications.

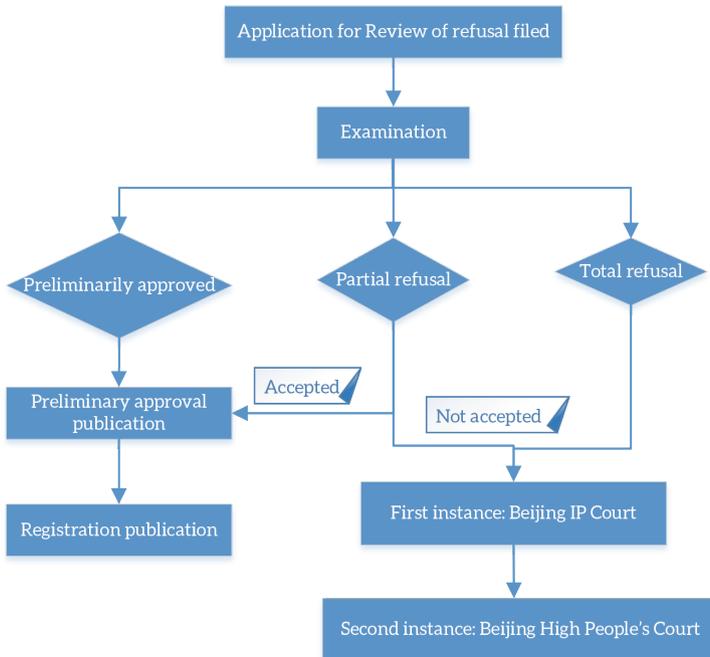
Where an application is preliminarily approved, it will be published for 3 months, within which a third party may file an opposition. If no opposition is filed upon expiry of the publication period, CNIPA will approve the registration application, issue the registration certificate and publish the registration.

#### 4. Term of validity of registered trademark

Subject to Article 39 of the Trademark Law, the term of validity of a registered trademark shall be 10 years from the date of approval for registration.

Items subject to check in formality examination and substantive examination	
Formality examination	<p>The formality examination checks the following items:</p> <ol style="list-style-type: none"> <li>1. Whether the documents are complete and meet the requirements.</li> <li>2. Whether the trademark specimen is acceptable.</li> <li>3. Whether the names of goods/services are acceptable.</li> </ol>
Substantive examination (absolute grounds and relative grounds)	<p>The substantive examination checks the following items:</p> <ol style="list-style-type: none"> <li>1. Whether the trademark violates the prohibitory provisions of the Trademark Law.</li> <li>2. Whether the trademark has legal constituent elements and whether it has distinctive features.</li> <li>3. Whether a three-dimensional trademark has functionality.</li> <li>4. Whether the trademark is identical with or similar to a trademark of another person on the similar or similar goods/services that has been applied for or registered earlier.</li> <li>5. Whether the application is filed with bad faith and not for the purpose of use.</li> <li>6. Whether the application is filed on goods/services other than the agency services in class 45 if the applicant is a trademark agency.</li> </ol>

## Chapter IV: Review of Refusal of a Trademark Application



### 1. Time limit for filing a review of refusal

Subject to Article 34 of the Trademark Law, where an application is refused and the applicant is dissatisfied with the refusal, a review of refusal may be filed within 15 days after the applicant receives the refusal notification. If the applicant intends to supplement relevant documents and evidence, such intention should be declared when the review application is filed and such documents and evidence should be submitted within 3 months from the date on which the review is filed.



Trademark examiner's office

## 2. Examination period of a review of refusal

Subject to Article 34 of the Trademark Law, CNIPA shall make a decision on review of refusal within 9 months from the date of receiving the review application. Where it is necessary under special circumstances, an extension of 3 months may be granted upon approval.

According to the current practice, the examination of a review of refusal is normally completed within 6 months.

## 3. Examination results of a review of refusal

There are three possible results on a review of refusal, namely preliminary approval, total refusal and partial refusal.

Where the applicant is dissatisfied with the decision on review of refusal, an administrative lawsuit may be brought to the Beijing IP Court within 30 days from the date on which the applicant receives the decision. If no lawsuit is filed within the time limit, the decision on review of refusal will become effective.

## Chapter V: Trademark Opposition and Invalidation

When to file a trademark opposition and invalidation?	
Opposition	Within 3 months from the date of publication of the preliminary approval
Invalidation based on absolute grounds	Any time after a trademark is granted for registration
Invalidation based on relative grounds	Within 5 years upon the registration of the trademark. Where a registration is obtained in bad faith, the owner of a well-known trademark is not bound by the 5-year restriction.

A trademark opposition is filed against a trademark which is preliminarily approved but not yet registered, while a trademark invalidation is filed against a registered trademark. The grounds for trademark opposition and invalidation are almost the same, including both absolute grounds and relative grounds.

### 1. Grounds for trademark opposition and invalidation and eligibility of petitioner

Subject to Articles 33 and 44 of the Trademark Law, any organization or individual may apply for an opposition or invalidation based on the following absolute grounds:

- A trademark is filed in bad faith and is not for the purpose of use;
- A trademark is contrary to provisions concerning signs prohibited from registration;
- A trademark is contrary to provisions concerning signs prohibited

from use;

- A three-dimensional sign is contrary to restrictive conditions;
- The trademark agency violates relevant codes of conduct;
- A trademark is registered by fraudulent or other illegitimate means.

Subject to Articles 33 and 45 of the Trademark Law, a holder of prior rights or an interested party may file an opposition or invalidation on the following relative grounds:

- A trademark infringes upon a prior trademark of another person;
- A trademark infringes upon a prior right of another type;
- A trademark is applied or registered in improper means and is similar to a trademark of another person that has already been used and has gained certain influence before its application date;
- The trademark is contrary to provisions concerning protection of well-known trademarks;
- The trademark is contrary to provisions concerning geographical indications.

## 2. Application and examination process for a trademark opposition

Subject to Article 33 of the Trademark Law and Article 27 of the Implementing Regulations, an opposition shall be filed within 3 months after a trademark application is published for preliminary approval. Where the petitioner needs to supplement related evidence, a statement shall be made in the application for trademark opposition, and the evidence shall be submitted within 3 months after the opposition is filed.

If the opposition meets the requirements for acceptance, CNIPA will

promptly send a copy of the opposition materials to the respondent, who is required to respond within 30 days after receiving the copy of the opposition materials. Where the respondent needs to supplement related evidence after making a response, a statement shall be made in the response, and the evidence shall be submitted within 3 months from the date on which the opposition is filed.

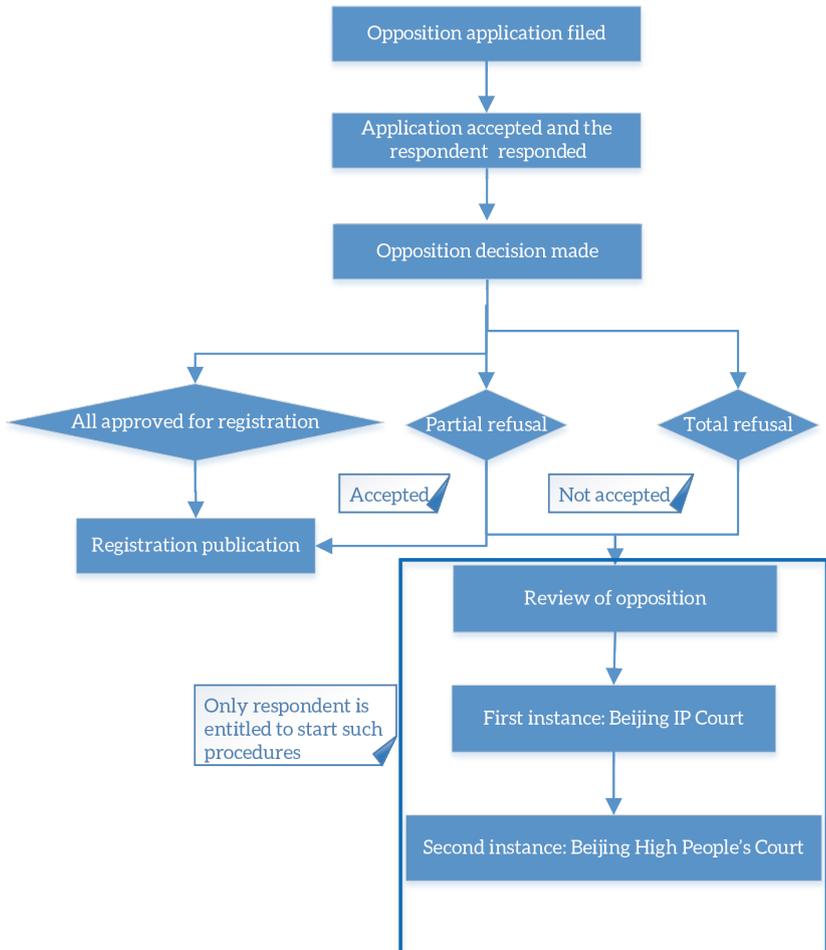
Where the respondent fails to make a response, the making of a decision by CNIPA shall not be affected.

Subject to Article 35 of the Trademark Law, where an opposition is filed and accepted, CNIPA shall make a decision on whether or not to approve the registration of the trademark within 12 months from the expiry date of the publication period. Where it is necessary, an extension of 6 months for examination may be granted upon approval.

Based on the facts and grounds stated by the petitioner and the respondent and after investigation and verification, CNIPA will make a decision of approval of registration, or total refusal, or partial refusal. Where the petitioner is dissatisfied with the decision of approval of registration or partial refusal, the petitioner may start an invalidation process after the registration is published. Where the respondent is dissatisfied with the decision of total refusal or partial refusal, the respondent may file a request for review.

### 3. Application and examination process for trademark invalidation

Subject to Articles 44 and 45 of the Trademark Law as well as Article 59 of the Implementing Regulations, an invalidation based on absolute



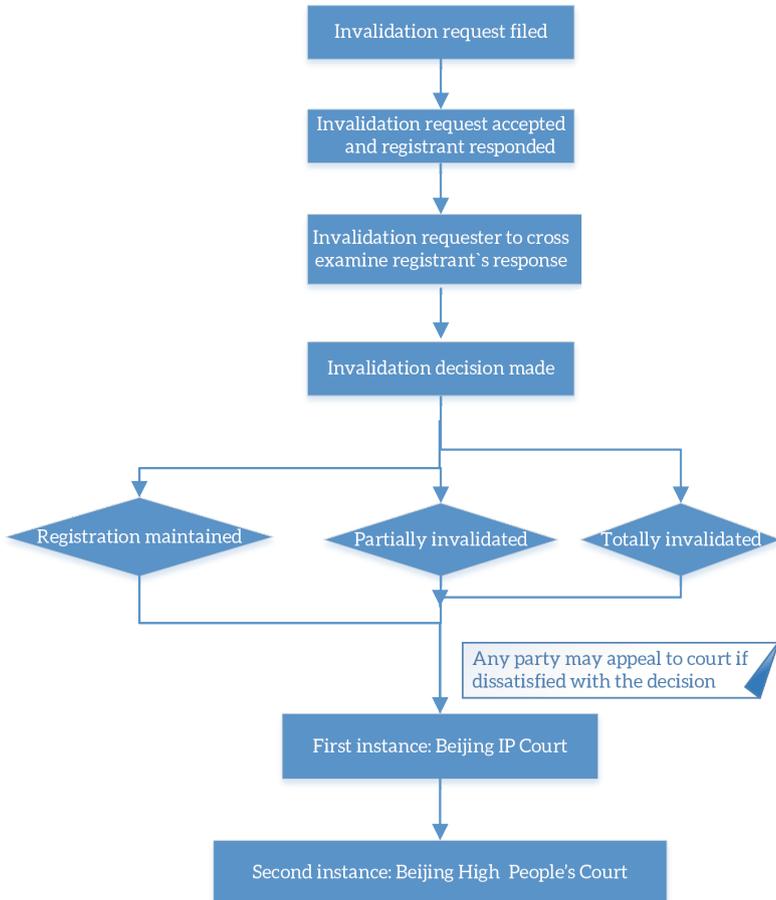
grounds may be filed any time after a trademark is registered but an invalidation based on relative grounds shall be filed within 5 years with the exception that a well-known trademark is not subject to the abovementioned time limit in relation to a trademark registered

in bad faith by copying or mimicking that well-known trademark. If the applicant needs to supplement relevant documents and evidence, it shall be declared when the invalidation is filed and done within 3 months after the invalidation is filed.

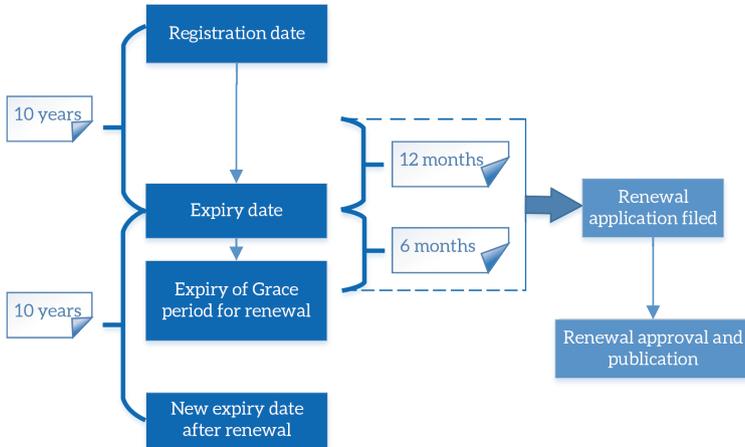
After accepting the invalidation request, CNIPA will notify the trademark registrant to respond within 30 days upon receiving the notification. Where the registrant declares to supplement documents and evidence in the response, a 3-month period is also given to the registrant to do so. The registrant's failure to respond will not affect CNIPA's rendering of a decision. The response of the registrant will be forwarded to the petitioner of the invalidation for cross-examination.

Subject to Article 44 of the Trademark Law, CNIPA shall make a decision within 9 months upon receiving an invalidation request based on absolute grounds. Where it is necessary, an extension of 3 months for examination may be granted upon approval. In the situation that the invalidation is based on relative grounds, CNIPA shall make a decision within 12 months upon receiving the request pursuant to Article 45 of the Trademark Law. Where it is necessary, an extension of 6 months for examination may be granted upon approval in such a case.

Any party concerned may appeal to the court by bringing an administrative lawsuit if that party is dissatisfied with the invalidation decision.



## Chapter VI: Renewal of Registered Trademark



### 1. Term of validity of registered trademark

Subject to Article 39 of the Trademark Law, the term of validity of a registered trademark shall be 10 years from the date of approval of registration. Each renewal of registration will allow another 10- year term.

### 2. Time limit for filing trademark renewal

Time limit: within 12 months prior to the expiry date.

Grace period: 6 months after the expiry date.

An application for renewal of a trademark registration shall be filed by the trademark registrant within 12 months prior to the expiry date. Where no application has been filed within said period, a grace

period of 6 months may be granted. Where no application for renewal has been filed before the expiration of the grace period, the registered trademark will be de-registered.

### 3. Documents required for trademark renewal

Where an applicant files an application for trademark renewal, the following documents shall be submitted:

- (1) An application form of trademark renewal (only if the application is filed in paper; if the application is filed electronically, the trademark particulars can be input in the electronic filing system and an application form is not required);
- (2) A copy of the applicant's identity document and the corresponding Chinese translation if it is in a foreign language;
- (3) A signed Power of Attorney (if a trademark agency is used).

### 4. Certification and publication of trademark renewal

CNIPA shall issue a renewal certification and publish the same where it decides to approve the application for renewal.





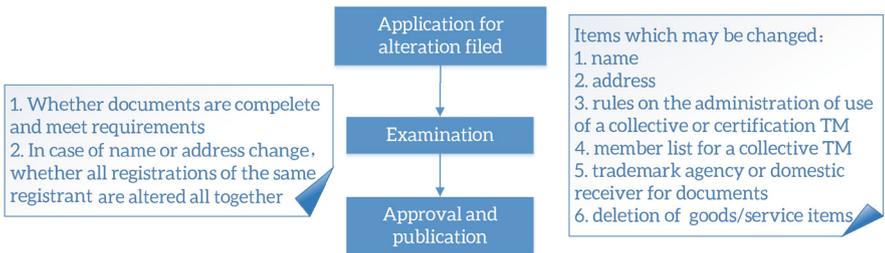
Building of the Trademark Office of CNIPA

## 5. Notes on trademark renewal

(1) An application for trademark renewal shall be filed by the trademark registrant. If a trademark to be renewed is jointly owned, the application for renewal shall be filed by a representative among the joint registrants. Where no representative is designated, the registrant listed in the front in the registration application shall be the representative;

(2) Details of the applicant on the documents for renewal shall be consistent with records archived by CNIPA. If the trademark is in the process of name/address change or assignment, the application for renewal can be filed in the name of the registrant with the information after change or in the name of the assignee.

## Chapter VII: Alteration of Registered Trademark



### 1. Particulars of registered trademark that may be altered

Subject to Article 41 of the Trademark Law, “where the name or address of the owner of a registered trademark or other particulars of the registration needs to be altered, an application for alteration shall be filed”. The following particulars of a registered trademark may be altered:

- (1) Name of the trademark applicant/registrant;
- (2) Address of the trademark applicant/registrant;
- (3) Rules on the management of use of a collective or certification trademark;
- (4) Member list of a collective trademark;
- (5) Trademark agency or domestic receiver of documents;
- (6) Deletion of item(s) of goods/services.

## 2. Documents required for alteration

When filing an application for trademark alteration, the applicant shall submit a copy of the applicant's identity document together with its corresponding Chinese translation if it is in a foreign language and a signed Power of Attorney if a trademark agency is used. In addition,

(1) Where the name of the trademark applicant/registrant is changed, the certification document issued by the relevant business registration authority to prove the change of name and the corresponding Chinese translation (where the name is in a foreign language) should also be submitted. If the applicant/registrant only needs to change the Chinese translation of the name, they should submit a declaration about their application to change the Chinese translation of the name and the Chinese translation of the declaration (where the original declaration is in a foreign language);

(2) Where the rules on the management of use of a collective or certification trademark are changed, the amended rules and their corresponding Chinese translation (where the rules are in a foreign language) should also be submitted. If said rules involve a change in the geographical scope of a geographical indication, the certification document for such a change in the original country and the corresponding Chinese translation (where it is in a foreign language) should be submitted;

(3) Where the member list of a collective trademark is changed, the amended member list and its Chinese translation (where it is in a foreign language) should also be submitted.

### 3. Certification and publication of trademark alteration

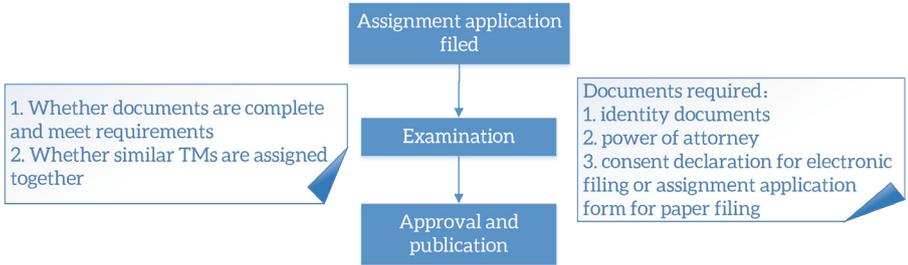
Where an application for alteration is approved, CNIPA shall issue a certification of alteration and publish the same.

### 4. Alterations to be made all together

Subject to Article 30 of the Implementing Regulations, where the name or address of a trademark registrant is changed, the change in respect of all the registered trademarks of the trademark registrant shall be made all together; where the change is not made all together, CNIPA shall notify the trademark registrant to do so within a specified time limit; where the registrant fails to do as required at the expiration of the time limit, the application for alteration is considered abandoned.



## Chapter VIII: Trademark Assignment



### 1. Documents required for trademark assignment

The following documents are required to assign a trademark:

- (1) Copies of the identity documents of the assignor and the assignee and the Chinese translation thereof (where they are in a foreign language);
- (2) Power of Attorney signed by the assignor and the assignee (where a trademark agency is used);
- (3) A declaration of consent for assignment jointly signed by the assignor and the assignee for electronic filing, or an assignment application form jointly signed by the assignor and the assignee for paper filing;

(4) For an assignment as a result of inheritance or separation or merger of an enterprise, the assignor does not need to sign or provide the documents stated in paragraphs (2) and (3), but are required to provide relevant certification documents or legal instruments as well as the Chinese translation thereof (where they are in a foreign language)

## 2. Certification and publication of trademark assignment

Where an application for trademark assignment is approved, CNIPA shall issue an assignment certification and publish the assignment. The assignee shall enjoy the exclusive right to use the trademark starting from the date of such publication.

## 3. Assignments to be made all together

Subject to Article 42 of the Trademark Law and Articles 31 and 32 of the Implementing Regulations, where a trademark is assigned, all of the assignor's registered trademarks that are identical with or similar to the assigned trademark in respect of the same or similar goods/services shall be assigned all together; where such registered trademarks are not assigned all together, CNIPA shall notify the assignor and the assignee to do so within a specified time limit; where the parties fail to act as required at the expiration of the time limit, the application for assignment shall be considered abandoned. Alternatively, a registrant may choose to de-register unwanted trademarks instead of filing an application for assignment.

## Chapter IX: Trademark Cancellation

When to file a trademark cancellation application?	
Cancellation on the grounds that a trademark has become a generic name of the designated goods/services	At any time after a trademark is granted for registration
Cancellation for non-use for three consecutive years without justification	-For a national registration: after 3 years upon registration -For an international registration: after 3 years upon the expiration of the period of refusal; or after 3 years upon the effective date of the decision to approve the registration where the trademark is still under review of refusal or under opposition after the period of refusal.

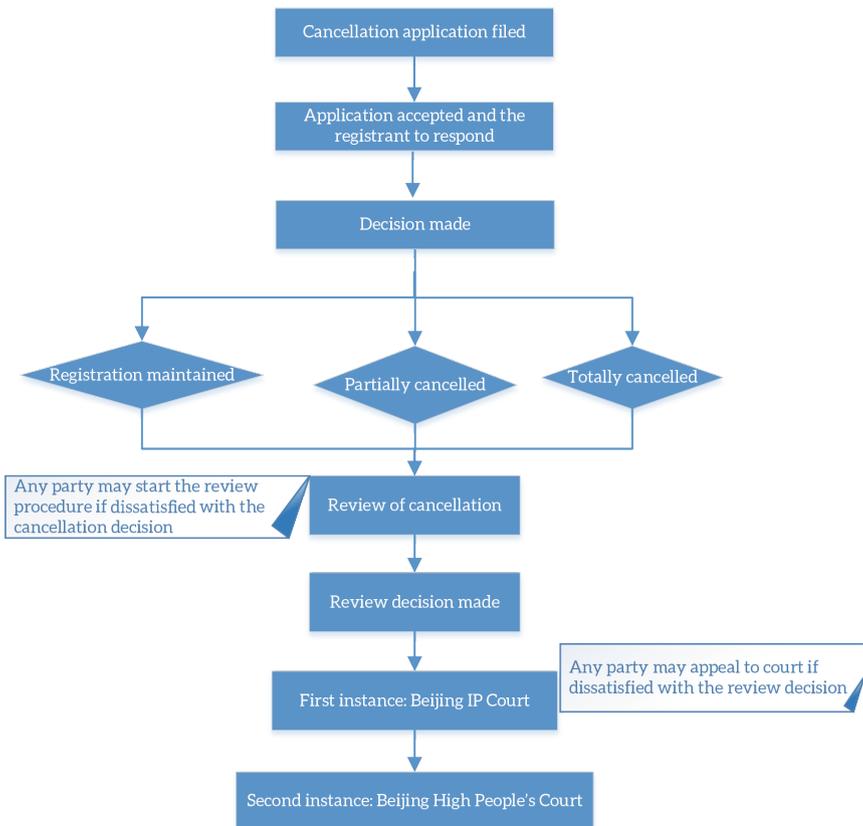
### 1. Grounds for trademark cancellation and eligibility of petitioner

Subject to Article 49 of the Trademark Law, any organization or individual may apply for cancellation of a registered trademark on the following grounds:

- (1) The trademark has become a generic name of the designated goods/services;
- (2) The trademark has not been used for 3 consecutive years after registration without justification.

## 2. Application and examination of a trademark cancellation application

A cancellation application on the grounds that the trademark has become a generic name of the designated goods/services after registration may be filed any time after a trademark is registered as long as the petitioner is able to prove the grounds for cancellation.





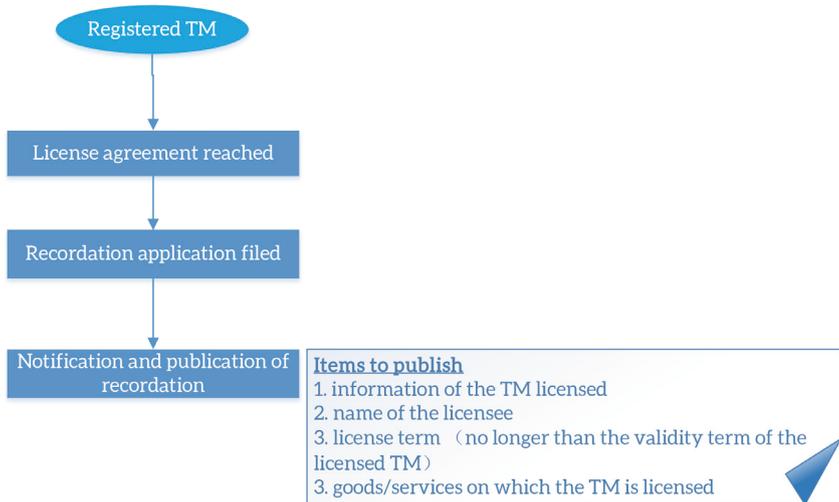
The earliest date for filing a non-use cancellation application is the first day after 3 years upon the registration of the trademark in question. The methods for calculating the 3-year period are different for a national registration and an international registration. Please refer to the above table for details.

After receiving the cancellation application, CNIPA will notify the trademark registrant to respond within 2 months upon receipt of the notification from CNIPA.

CNIPA shall make a decision within 9 months upon receiving the cancellation application. Where it is necessary, an extension of 3 months may be granted upon approval.

After the decision is made, either party may request for a review of the cancellation decision if it is dissatisfied with the decision and may further file an administrative lawsuit in a competent court if it is dissatisfied with the review decision.

## Chapter X: Recordation of Trademark License



A trademark license shall be recorded in CNIPA by the licensor pursuant to Article 43 of the Trademark Law.

### 1. Documents required for trademark license recordation

(1) Copies of the identity documents of the licensor and the licensee and Chinese translation thereof (where they are in a foreign language);

(2) A Power of Attorney signed by the licensor (where a trademark agency is used);

(3) Where the recordation is made for a trademark sub-license, a sub-license authorization letter signed by the trademark registrant and its corresponding Chinese translation (where it is in a foreign language) shall be also submitted;

(4) If the application is filed in paper, an application form for trademark license recordation jointly signed by the licensor and the licensee shall be submitted. Such a form is not required for electronic filing.

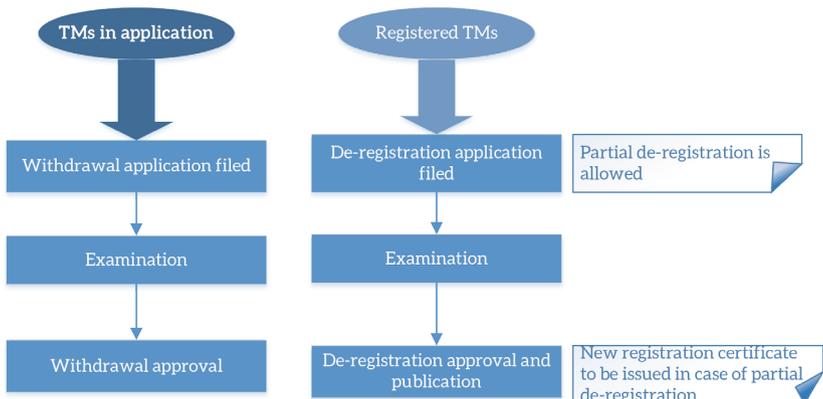
## 2. Certification and publication of trademark license recordation

Where a trademark license is recorded, CNIPA shall issue a license recordation certification to the licensor and make a publication thereon.

## 3. Legal force of trademark license recordation

Trademark license recordation is an antagonistic requirement for a trademark license rather than a precondition for it to take effect. Subject to Article 43 of the Trademark Law, the trademark license is still effective between the parties without recordation, but shall not be used against a bona fide third party. Therefore, timely recordation of a trademark license is important for the protection of the licensee's interests.

## Chapter XI: Withdrawal of Trademark Application and De-registration of Trademark Registration



### 1. Withdrawal of trademark application

A trademark applicant may, before a trademark is registered, request to withdraw the application for trademark registration.

(1) Documents required for withdrawal of trademark application:

- a. A copy of the applicant's identity document and the Chinese translation thereof (where it is in a foreign language);
- b. A Power of Attorney signed by the applicant (where a trademark agency is used);
- c. Where the name of the applicant is changed, the applicant shall file the application for withdrawal in the amended name and submit certification documents on the name change issued by the relevant authority and the corresponding Chinese translation thereof (where they are in a foreign language)

d. If the application is filed in paper, the application form signed by the applicant shall be submitted. Such a form is not needed for electronic filing.

(2) Where the withdrawal application is approved, CNIPA shall issue a notification to the applicant.

## 2. De-registration of registered trademark

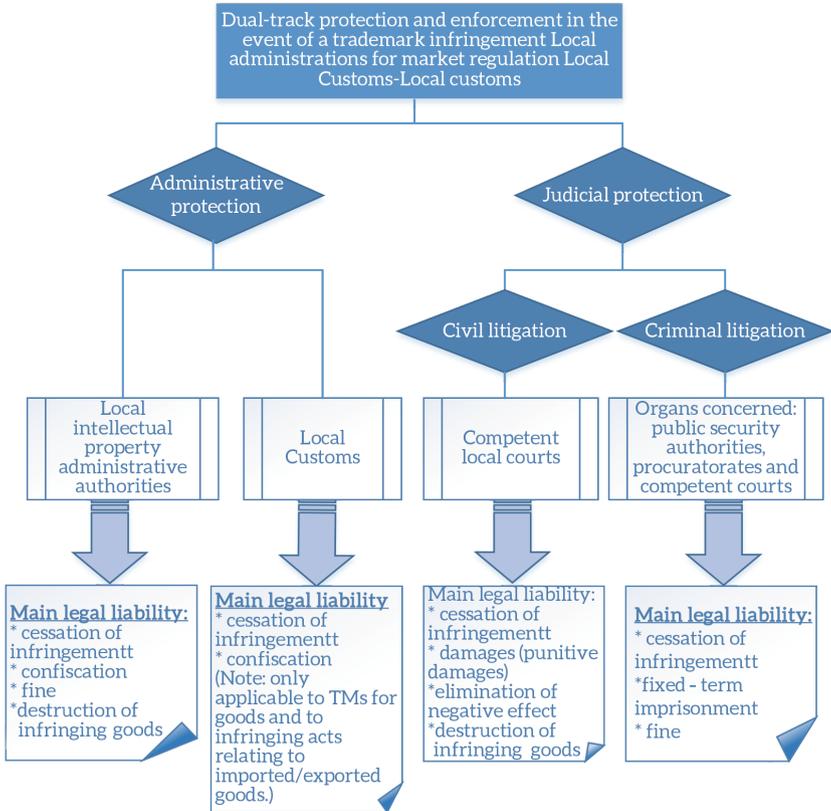
Subject to Article 73 of the Implementing Regulations, where a trademark registrant wishes to de-register a registered trademark in full or on certain designated goods/services, an application for de-registration of the trademark should be filed in CNIPA, and the original trademark registration certificate should be returned to CNIPA at the same time.

(1) Documents required for de-registration of registered trademark:

- a. A copy of the registrant's identity document and the Chinese translation thereof (where it is in a foreign language);
- b. A Power of Attorney signed by the registrant (where a trademark agency is used);
- c. The original Trademark Registration Certificate. Where the applicant fails to submit the original certificate, he/she is required to provide the reasons;
- d. If the application is filed in paper, an application form signed by the registrant shall be submitted. Such a form is not needed for electronic filing.

(2) Where an application for the de-registration of a registered trademark is approved, CNIPA shall issue a notification; where the de-registration only applies to part of the designated goods/services, CNIPA shall issue a new Trademark Registration Certificate and publish the de-registration.

## Chapter XII: Protection of Registered Trademark



The Chinese government has always attached great importance to the protection of trademark rights. The Trademark Law provides a dual-track protection mechanism composed of administrative protection and judicial protection. In a trademark infringement dispute, the parties may settle the case through negotiation. Where either party is unwilling to negotiate or the negotiation fails, the trademark

registrant or an interested party may refer the case to a competent administrative authority or file a lawsuit in a competent court of law. The administrative authority includes both local intellectual property administrative authorities and local customs, but the customs can only handle cases involving imported or exported goods.

## 1. Administrative protection

### (1) Protection through the intellectual property administrative authorities

The trademark registrant or an interested party may lodge a complaint with a local intellectual property administrative authorities at or above county level and request for an investigation and punishment on trademark infringement. The intellectual property administrative authorities may also conduct ex officio actions to investigate and deal with trademark infringement.

The intellectual property administrative authorities are responsible for conducting investigations and rendering decisions on trademark infringements, yet they are not responsible for settling disputes on damages between the parties. Where a dispute arises in connection with the amount of damages, the parties may request a mediation by the competent intellectual property administrative authority. The agreement reached by the parties through the mediation is not legally enforceable. Where the parties fail to reach an agreement in the mediation or fail to perform the mediation agreement, they may file a lawsuit in a competent court of law.

Where the intellectual property administrative authorities finds that infringement is established, it shall order the infringer to immediately cease the infringing acts, and shall confiscate and destroy the infringing goods and equipment mainly used for manufacturing the

infringing goods or forging the registered trademark. Where the illegal business revenue amounts to RMB 50,000 or above, a fine of up to five times of the illegal business revenues may be imposed on the infringer; where there is no illegal business revenue or the illegal business revenue is less than RMB 50,000, a fine of up to RMB 250,000 may be imposed on the infringer. If a party has committed trademark infringement for two or more times within five years or has any other serious circumstances, it shall be subject to a severer punishment.

## (2) Protection through the customs

Where a trademark registrant or an interested party finds that suspected infringing goods are being imported or exported, it may request the local customs at the relevant port to detain such goods. Where the local customs finds that any imported or exported goods are suspected to infringe upon a registered trademark recorded in the customs, it shall notify the trademark registrant in writing. Customs recordation of a registered trademark is a prerequisite for the customs to take protective measures. An application for customs recordation shall be filed with the General Administration of Customs of the People's Republic of China (GACC). Where the customs, after investigation, determines that a suspected infringing goods under detention have infringed upon a trademark right, it shall render an administrative decision and confiscate the goods.

## 2. Judicial protection

### (1) Civil litigation

The trademark registrant or an interested party may bring a civil litigation against the trademark infringement to a competent court, requesting cessation of infringement and elimination of negative effects and seeking damages.



The amount of damages for infringement shall be determined based on the actual loss suffered by the right holder as a result of the infringement; if it is difficult to determine the actual loss, the amount of damages may be determined pursuant to the profit gained by the infringer from the infringement; if it is difficult to determine either the loss of the right holder or the profit gained by the infringer, the amount of damages may be reasonably determined as a multiple of the trademark royalties. For a malicious infringement upon a trademark right which involves serious circumstances, the amount of damages may be determined as an amount more than one time of the amount that is determined according to the aforesaid method but less than five times of the same. The amount of damages shall cover the reasonable expenses paid by the right holder for stopping the infringing act.

Where none of the aforesaid actual loss, profit, reasonable royalty can be determined, a statutory damage may be decided by the court, i.e., damages in an amount up to RMB 5,000,000 based on the circumstances of the infringing acts.

## (2) Criminal litigation

Where a crime is committed in a trademark infringement, the infringer shall, in addition to the civil liability and payment of damages to cover the losses of the infringed party, be subject to criminal liability in accordance with the law. Acts of infringement upon either a trademark for goods and a trademark for services could both constitute a crime, and the infringer may be sentenced to imprisonment of up to 10 years, plus a fine. Investigation in a trademark criminal case is generally conducted by a public security authority, and the relevant people's procuratorate shall initiate a public prosecution in a competent people's court.

## 3. Comparison between administrative protection and judicial protection for trademark rights

	Administrative Protection		Judicial Protection	
	Protection through Administration for Market Regulation	Protection through the customs	Civil litigation	Criminal litigation
Applicable conditions	Any trademark infringing acts	Trademark infringing acts involving imported or exported goods	Any trademark infringing acts	Any trademark infringing acts committing a crime
Protected rights	Trademarks for both goods and services	Trademarks for goods only	Trademarks for both goods and services	Trademarks for both goods and services

Jurisdiction	Local intellectual property administrative authorities at or above county level at the place of infringement	Local customs at the port of import or export of the suspected infringing goods	Local primary or intermediate people's courts at the place of infringement or at the domicile of the defendant	The primary court at the place where the crime is committed or at the place of residence of the defendant, as appropriate
Main Legal liabilities	<ul style="list-style-type: none"> <li>-cessation of infringing acts;</li> <li>-confiscation and destruction of infringing goods and manufacturing tools;</li> <li>-payment of fines;</li> <li>-other.</li> </ul>	<ul style="list-style-type: none"> <li>-cessation of infringing acts;</li> <li>-confiscation of infringing goods;</li> <li>-other.</li> </ul>	<ul style="list-style-type: none"> <li>-cessation of infringing acts;</li> <li>-confiscation and destruction of infringing goods and manufacturing tools;</li> <li>-payment of damages;</li> <li>-elimination of negative effects;</li> <li>-etc.</li> </ul>	<ul style="list-style-type: none"> <li>-fixed-term imprisonment;</li> <li>-payment of fines;</li> <li>-other.</li> </ul>
Comparison of main features	<p>-The procedure is simple and fast, and has obvious advantages in preventing continued infringing acts.</p> <p>-An administrative decision is not final and cannot impose damages on the infringer.</p>	<p>-The procedure is simple and fast, and has obvious advantage in preventing continued infringing acts.</p> <p>-An administrative decision is not final and cannot impose damages on the infringer; in addition, it can only be taken against imported or exported goods.</p>	<p>-A judicial decision is final and can render civil damages.</p> <p>-The procedure is more complicated and slower, and the plaintiff has to bear a heavy burden of proof.</p>	<p>-A judicial decision is final and effectively deters trademark crimes.</p> <p>-A case has to meet relatively high criteria in order to be accepted by the court.</p>





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