



The Status Quo of the Sound Trademarks in China

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As a non-conventional trademark, sound trademarks have been eligible for registration in China since 2014. After several years' practice, what is the current status of its applications for registration in China? This article intends to introduce and analyze the status quo and difficulties in registering sound trademarks in China, to provide more companies in need of applying for sound trademarks a more comprehensive and objective understanding of applications for registration concerning sound trademarks in China.

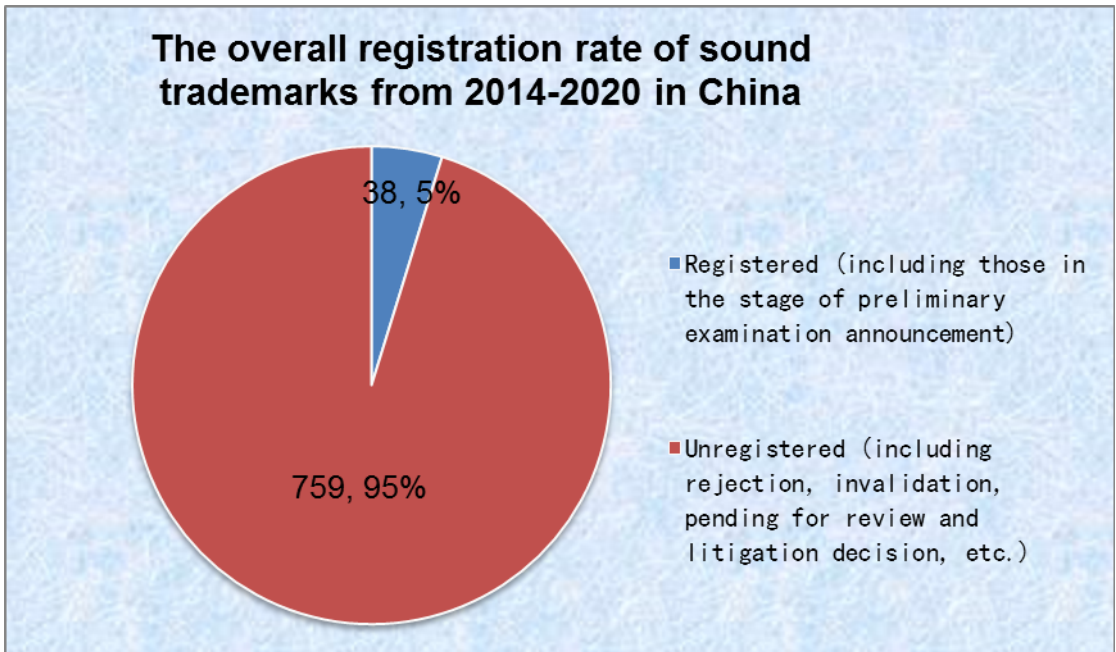
I. The initial introduction of sound trademark system in China

In China, the “visibility” required as the constitutive elements of a trademark has been deleted from the Article 8 of the *Trademark Law* that came into effect on May 1, 2014, and a new type of non-conventional trademark- sound trademark has been added. At the same time, the *Regulations for the Implementation of the Trademark Law of the People's Republic of China* was also revised in 2014, adding the formal examination standards for sound trademark registration applications in the fifth paragraph of Article 13. In addition, the part 6 of the Trademark Examination Standards of the first chapter of the *2014 Trademark Examination and Trial Standards* also added formal and substantive examination standards for sound trademarks.

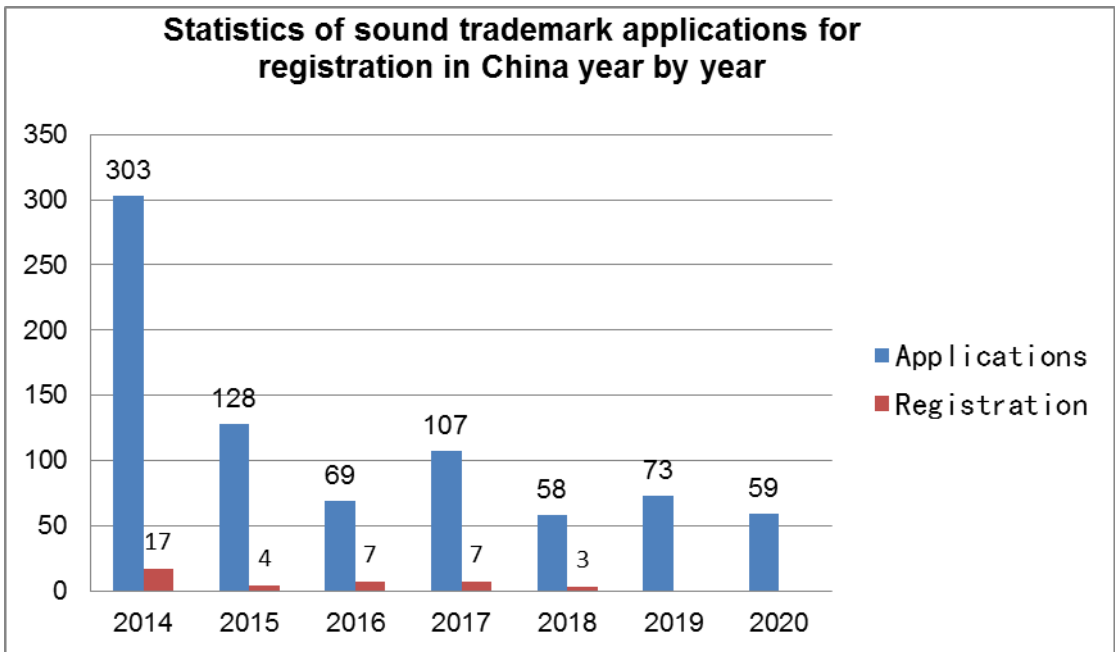
II. The success rate of sound trademark registration

In order to check the number of applications and registrations of sound trademarks in China in recent years, the author uses the CNIPA online database (<http://wcjs.sbj.cnipa.gov.cn/txnT01.do>) to do the search and sort out relevant data.

According to the incomplete statistics publicly available on the CNIPA official database, in China, there were 797 applications for sound trademarks from May 1, 2014 to the end of 2020, of which only 38 have been registered (including 1 in the stage of preliminary approval and publication on Trademark Gazette), with the registration rate of only about 5%; and from the perspective of overall application and registration volume, we can draw a conclusion that although a wave of applications emerged at the beginning of the law amendment in 2014, with realizing the objective circumstances of the low registration rate, trademark applicants seems to become more and more cautious about the applications for sound trademark.



Unregistered (including rejected, pending in review of rejection and litigation, etc.)



III. Difficulties in the registration of sound trademarks-distinctiveness determination

What is the reason for the low registration rate of sound trademarks in China? By analyzing the statistics and relevant application and registration examples, the author believes that this should be attributed to the over strict examination standards for the distinctiveness of sound trademarks in China's examination practice.

Firstly, whether a sound trademark itself is distinctive or not plays a significant role in determining whether it can be registered. **China's Trademark Examination and Trial Standards has the following provisions on the examination of distinctive features of sound trademarks. (中文版没有此段,请确认是否已经删除。)**

(二) 声音商标显著特征审查

1、仅直接表示指定商品或服务内容、消费对象、质量、功能、用途及其他特点的声音，缺乏显著特征。

例如：

- (1) 钢琴弹奏声使用在“乐器”上；
- (2) 儿童嬉笑声使用在“婴儿奶粉”上；
- (3) 狗吠或猫叫声使用在“宠物饲养”上；
- (4) 古典音乐使用在“安排和组织音乐会”上；
- (5) 开启酒瓶的清脆“喀”声使用在“啤酒”上；
- (6) 儿童“水开啦，水开啦”的叫声使用在“电热水壶”上。

2、其他缺乏显著特征的声音。

例如：

- (1) 简单、普通的音调或旋律；
- (2) 一首完整或冗长的歌曲或乐曲；
- (3) 以平常语调直接唱呼广告用语或普通短语；
- (4) 行业内通用的音乐或声音。

一般情况下，声音商标需经长期使用才能取得显著特征，商标局可以发出审查意见书，要求申请人提交使用证据，并就商标通过使用获得显著特征进行说明。

Looking at the cases of unregistered sound trademarks, the trademark itself being indistinctive is undoubtedly the biggest obstacle in obtaining registration. As for under what circumstances should sound trademarks be deemed as lacking distinctiveness, the *Trademark Examination and Trial Standards* merely gives a relatively broad description and lists several specific situations lacking of distinctive features, which are not clear enough. For example, how to define the “simple and ordinary” in “simple, ordinary tone or melody”, and how to determine the “ordinary intonation” and “common phrases” in “singing and reading advertising slogans or common phrases in the ordinary intonation” are not clearly defined.

For instance, Guangzhou Kugou Computer Technology Co., Ltd. tried to apply for its sound trademark “hello kugou” many times. Many of its applications failed to obtain registration, but some were successfully registered. Comparing the unregistered trademark No. 19655326 with the registered trademark No. 27123201 of the company, it can be found that the two trademarks are identical in composing elements and description of the sound trademarks are also quite similar. Why did the authority finally come to a different examination conclusion? It seems that there are also inconsistencies in the authority’s examination of distinctiveness.



此声音商标由人声组成，音频采用四四拍，E大调。商标总共两小节，第一小节为1个八分音符，第二小节第一拍为2个八分音符，第二拍为2个八分音符，以二分休止符结束。



此声音商标由人声组成，音频采用四四拍，E大调。商标总共两小节，第一小节为1个八分音符，第二小节第一拍为2个八分音符，第二拍为2个八分音符，以二分休止符结束。

此声音商标由“hello kugou”组成，其中“hello”是英文发音，“kugou”是酷狗的中文拼音，用女声发出“hello kugou”的声音。

(Chinese trademark No. 19655326) (Chinese trademark No. 27123201)

Secondly, for the sound trademarks that have been registered in China, it is not difficult to see that they have been used in China for a long time and have a relatively high popularity among the relevant public, such as Nokia’s mobile phone ringtones, Intel’s computer startup melody, the opening melody of the 20th Century Fox movie, the opening song of China Radio International (China’s first registered sound trademark), Unicharm’s “sofy” (The first sound trademark registered by a foreign trademark applicant in China).



商标为一段音乐，共 13 个音符，按顺序为：
E, D, F 升调，G 升调，C 升调，B, D, E, B, A, C 升调，E, A.

(Trademark No. 14515370- Nokia's mobile phone ringtones)



该声音商标是中国国际广播电台广播节目的开始曲，全长 40 秒，共 18 小节，四分之二拍慢板节奏，G 大调和 C 大调交替转换。前四小节为整段声音商标前奏部分，曲调为 G 大调；中间 11 小节为整段声音商标主题部分，曲调为 C 大调，其中第十二、十三小节播音员报出“中国国际广播电台”的呼号后音乐延续两小节，主题部分结束；最后三小节钢片琴再次奏响主题音乐，转调回 G 大调，该声音商标结束。

(Trademark No. 14503615- the opening song of China Radio International)

The *Trademark Examination and Trial Standards* provides that “the Trademark Office may issue an Office Action requesting the applicant to submit the use evidence and explain how the trademark has acquired distinctive features through use.” It is difficult to judge how much use evidence the applicant need to provide to prove that the trademark has acquired distinctive features through use. According to the public information on CNIPA online database, many applicants of sound trademarks that failed to obtain trademark rights received office action after the application was submitted, but most of them failed to persuade the examiner in the response and ended up with the rejection.

For this situation, some have pointed out that requesting the applicants of sound trademarks to provide use evidence in the registration application stage and treating them differently from conventional trademarks such as word trademarks greatly increases the threshold for registration of sound trademarks and almost deprives the possibility of registration from most sound trademarks.

The same situation applies to foreign applicants. Even though a sound trademark is well-known and has been approved for registration in the applicant's own country, it is still necessary to consider its popularity among the relevant public in China, which may directly lead to the unavailability of the registration of the sound trademarks in China for many foreign applicants. Taking Japan's Daiko

Pharmaceutical Co., Ltd. as an example, its sound trademark composed of a horn melody (see the picture below) has obtained trademark rights in Japan, but it failed to register in China.



该声音商标分为4个小节，每个小节有4拍，时长约8秒。

(Chinese trademark No. 18485240)



(Japanese trademark No. 5985746)

The applications for registration of sound trademarks have existed in China for 6 years, but the registration rate has remained very low. In the author's view, the authority should give more detailed and valuable suggestions for applications for the registration of sound trademarks.

It is known that the China Trademark Office is making new revisions to the *Trademark Examination and Trial Standards*, wherein the amendment of examination standards for sound trademarks is included. Will this revision appropriately relax the examination standards for the distinctiveness of sound trademarks? Will a more detailed explanation be given to the examination standard? Will the requirement to provide use evidence in the substantive examination stage be revised? Let us find the answer together in the new *Trademark Examination and Trial Standards* coming soon in the future!