

## Summary of the Core Amendments to the New Trademark Law

Compared with the 2019 version of the Trademark Law (hereinafter referred to as the “Current Trademark Law”), the 2027 version (hereinafter referred to as the “New Trademark Law”) was restructured from 8 chapters and 73 articles to 9 chapters and 87 articles, reflecting a shift in China's trademark legal system from “emphasis on registration” toward “strengthening the obligation to use.” The core amendments are summarized as follows:

### 1. “Use via Internet” has been incorporated into the Definition of Trademark Use

- **New provisions have been introduced regarding trademark use in the Internet context:** It clarifies that “trademark use” includes use through information networks such as the Internet. This change will have a positive impact on future trademark non-use cancellation cases and trademark infringement cases. (Article 2 of the New Trademark Law)

### 2. Expanding Registrable Subject Matter

- **Motion marks:** To adapt to the development of the digital economy, motion marks are explicitly included in the category of registrable marks, providing a legal basis for the protection of dynamic identifiers such as short videos, APP/video work splash screens, and smart terminal interactive interfaces. The introduction of this subject matter means that a new type of non-traditional trademark has been added. It is foreseeable that the examination of its distinctiveness (i.e., whether it can serve to distinguish the source of goods/services) will be relatively strict. (Articles 14 and 18 of the New Trademark Law)

### 3. Strengthening Protection of Well-Known Trademarks

- **Unregistered well-known trademarks receive cross-class protection:** The scope of prohibition against pre-emptive registration has been expanded to include unregistered well-known trademarks. Even if a trademark is not registered in China, if it is already well-known, the owner may assert rights against pre-emptive registration by others on non-identical or non-similar goods, significantly strengthening the protection for owners of unregistered well-known trademarks. (Article 21 of the New Trademark Law)

### 4. Optimizing Right Grant and Confirmation Procedures

- **Shortening the opposition period:** The period for filing oppositions against preliminarily approved and published trademarks has been reduced from the current 3 months to 2 months, aiming to shorten the trademark registration cycle and improve registration efficiency. (Article 36 of the New Trademark Law)

- **Clarifying the rules for examination suspension:** During the proceedings of opposition, review of refusal, review of non-approval, and invalidation, if the determination of prior rights involved must be based on the outcome of another case pending before a people's court or an administrative authority, the proceedings may be suspended. This provision further clarifies the types of cases to which suspension applies, which is consistent with existing administrative regulations and current practice. (Article 41 of the New Trademark Law)

## 5. Severe Crackdown on Bad-Faith Registration Applications and Litigation

- **Refining “bad faith” determination standards:** The current law's more subjective standard of “malicious application without intent to use” has been quantified as “clearly exceeding normal production and operational needs,” making the standard more objective. It is expected that this change will avoid inadvertently harming defensive trademark applications by enterprises. Meanwhile, the circumstances governed by Article 44 of the current Trademark Law “registration obtained by deceptive or other improper means” have been incorporated into the conditions for trademark registration under the new law, clarifying that “trademark applications shall not be filed by deceptive or other improper means.” This extends the provisions originally applicable only to invalidation to all stages including application and opposition, intensifying the crackdown on bad faith trademark application. (Article 19 of the New Trademark Law)
- **Introducing administrative penalties:** Three typical types of bad-faith application conduct are expressly enumerated, including violations of Article 15 (provisions regarding prohibition of use), Article 16, paragraph 1 (geographical names), Article 19 (no intent to use, deception or other improper means), Article 21 (well-known trademarks), Article 22 (agent/representative's pre-emptive registration), and Article 24 (prior rights, pre-emptive registration of others' unregistered and prior used trademarks with certain influence)), with penalties including warnings and fines of up to RMB 100,000. (Article 54 of the New Trademark Law)
- **Cracking down on bad-faith litigation:** The relatively abstract “bad-faith trademark litigation” has been refined and defined as two specific categories: “malicious collusion; and fabrication of basic facts unilaterally.” At the same time, it is clarified that where the perpetrator causes losses to the opposing party, they shall bear civil liability in accordance with the law, providing clearer adjudicative standards for accurately identifying and determining bad-faith trademark litigation in judicial practice. (Article 81 of the New Trademark Law)

## 6. Strengthening Compliance Management of Trademark Use

- **Regulating on trademark use that misleads the public:** A new provision has been added stipulating corrective orders and fines for the use of registered trademarks in a manner that misleads the public (where the illegal business volume exceeds RMB 50,000, fines up to 5 times that amount may be imposed; where the illegal business volume is below RMB 50,000, fines up to RMB 250,000 may be imposed). This provision primarily targets “deceptive trademarks” frequently reported in news in recent years. Such trademarks are filed for registration with concealed unlawful purposes, yet when actually used, they are combined with other elements to mislead the public regarding the functions, purposes, raw materials and other characteristics of the goods or services. The addition of this provision imposes compliance constraints on trademark use by all enterprises and requires trademark agents, trademark attorneys, and in-house counsel to become more proficient in trademark use compliance practices. (Article 56 of the New Trademark Law)
- **Ex officio cancellation procedure by CNIPA is introduced:** The National Intellectual Property Administration (CNIPA) has been empowered to ex officio cancel trademarks that have not been used for three consecutive years without justifiable reasons. While this provision may have positive significance in clearing “idle” trademarks, it has also raised concerns among some enterprises about the potential cancellation of defensive trademark registrations. (Article 57 of the New Trademark Law)
- **Clarifying “fair use” circumstances:** A new provision has been added stating that where a registered trademark is used solely for the purpose of indicating information such as the purpose, applicable objects, application scenarios of the goods, or to indicate genuine source of goods, the registered trademark holder shall have no right to prohibit such fair use by others. This provision further clarifies that nominative use of a trademark may serve as a defense of fair use, provided that it does not easily cause confusion. (Article 73 of the New Trademark Law)

## 7. Optimization of Infringement Damages and Enforcement Mechanisms

- **Adjusting calculation order for damages:** The infringer’s profits have been elevated to the first tier of damage calculation methods, alongside the right holder’s actual losses, granting the right owner greater flexibility in choice. (Article 77 of the New Trademark Law)
- **Clarifying the timing for “three-year non-use” defense:** The term “preceding three years” that the registered trademark owner must prove actual use has been explicitly defined as the period “prior to the infringement.” (Article 78 of the New Trademark Law)

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## 8. Safeguards for Chinese Enterprises Going Global

- **Introducing provisions on assistance for overseas trademark applications:** Where, during the examination, adjudication, or handling of trademark cases abroad, it is necessary to prove that a trademark is well-known to the relevant public in China, the trademark administrative department of the State Council may, upon the party's request, issue a confirmation of the trademark's well-known status. This precisely addresses the intellectual property needs of Chinese enterprises in their globalization efforts and represents a landmark breakthrough in extending China's trademark legal system from domestic rights confirmation and protection to cross-border rights protection. It establishes an official cross-border well-known trademark confirmation mechanism in China, providing authoritative and efficient evidentiary support for enterprises' trademark rights enforcement abroad through the authoritative determination of the national trademark administrative authority. (Article 69 of the New Trademark Law)
- **Introducing penalty provisions for illegal agency acts in overseas trademark services:** Where overseas trademark registration applications or other trademark matters are handled for domestic principal by fraudulent or other improper means, harming the interests of the principal, national interests, public interests, or the lawful rights and interests of others, such conduct shall be dealt with and penalized in accordance with the law. This fills the regulatory gap governing irregular acts in foreign-related trademark agency and clarifies the rules for penalizing overseas trademark agency violations. (Article 69 of the New Trademark Law)

## 9. Stricter Management and Regulation of Trademark Agencies, Practitioners, and Industry Organizations

- **Clarifying obligations of trademark agencies, practitioners, and industry organizations:** The confidentiality obligations of trademark agencies and their duty to clearly inform clients of circumstances in which a trademark may not be registrable have been explicitly stipulated. It is also clearly regulated that trademark agency practitioners shall not accept engagements on their own behalf and shall not engage in trademark agency work at two or more trademark agencies simultaneously. The provisions also lay out clear rules for trademark agency industry associations concerning membership admission, implementation of disciplinary actions, and prompt disclosure of relevant information to the public. In addition, more stringent provisions have been established regarding the penalties for trademark agencies and practitioners who violate the law. (Articles 65–68 of the New Trademark Law)

## **10. Clearer Categorization of Provisions of Trademark Law:**

- **Clear separation between substantive and procedural provisions:** In the New Trademark Law, Chapter II sets forth the substantive provisions on the conditions for trademark registration, while Chapters III, IV, V, and VI respectively address procedural provisions in four areas: trademark registration applications, examination and approval, renewal/change/assignment/removal, and invalidation. This structural design is more rational from a legislative drafting perspective and can effectively avoid the conflation of substantive and procedural provisions in relevant cases.