

Official Guideline of Implementation of New China Trademark Law

By Xiang Gao, Peksung Intellectual Property Ltd., China

New amendment to China Trademark Law (the new law) will become effective as of May 1, 2014. In order to implement the new law, on April 17, 2014 the State Administration for Industry and Commerce (SAIC), higher authority of China Trademark Office (CTMO), published a notice to Administrations for Industry and Commerce at all different levels (AICs) about issues of connection between the old law and the new law in implementing the new law.

1. Applications before China Trademark Office (CTMO)

1.1 As for applications filed to the CTMO before May 1, 2014 for trademark registration, opposition, change of proprietor's name and/or address, assignment, renewal, cancellation, removal, or recordal of license, etc., the CTMO, when making administrative decisions on or after May 1, 2014, shall apply the new law. However in the above situation, the CTMO shall apply the old law when examining the opponent's qualification and the opposition grounds.

1.2 As for applications filed to the CTMO before May 1, 2014 for trademark registration, opposition, or cancellation, the examination term shall be calculated from May 1, 2014. However, if the period from the date of publication of a preliminarily approved mark to May 1, 2014 is less than three months, the examination term shall be calculated from the expiry date of the publication.

2. Reviews before China Trademark Review and Adjudication Board (TRAB)

2.1 If a party lodges a review application against the CTMO's refusal with the TRAB before May 1, 2014, the TRAB, when dealing with it on or after May 1, 2014, shall apply the new law.

2.2 If a party lodges a review application against the CTMO's opposition decision with the TRAB before May 1, 2014, the TRAB, when dealing with it on or after May 1, 2014, shall apply the old law to examine the qualifications of the opponent and the review applicant, and apply the new law to other procedural and substantial issues.

2.3 If a party lodges a cancellation review or dispute against a registered trademark with the TRAB before May 1, 2014, the TRAB, when dealing with it on or after May 1, 2014, shall apply the new law to procedural issues, and apply the old law to substantial issues.

2.4 As for review applications filed to the TRAB before May 1, 2014, the review examination term shall be calculated from May 1, 2014.

3. Supervision and administration of trademark use

3.1 If an illegal act occurs before May 1, 2014, the AICs shall apply the old law to deal with it; if an illegal act occurs before May 1, 2014 and continues until after May 1, 2014, the AICs shall apply the new law to deal with it.

3.2 Manufacturers and dealers shall not use the wordings “well-known mark” on goods, packages of goods or containers of goods, or in advertising, promotions, exhibitions or other commercial activities on or after May 1, 2014 according to the new law. However, the exception is for those which have entered into circulation before May 1, 2014. The AICs have power to investigate and punish the said illegal act.

Though the notice is issued to the AICs, the applicants can know as well how the new law is implemented during transition.

For more information on patents, please contact:



Xiang Gao
Partner, Head of Trademark Department
Peksung Intellectual Property Ltd.
mail@peksung.com, gxiang@peksung.com
www.peksung.com

Xiang Gao is a partner at Peksung Intellectual Property Ltd and head of its trademarks department. He can be contacted at: gxiang@peksung.com