

THƯƠNG VỤ VĂN PHÒNG KINH TẾ VĂN HÓA VIỆT NAM TẠI ĐÀI BẮC

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LUẬT NHÃN HIỆU HÀNG HÓA ĐÀI LOAN

名 稱：商標法

修正日期：民國 100 年 06 月 29 日

第 一 章 總則

第 1 條 為保障商標權、證明標章權、團體標章權、團體商標權及消費者利益，維護市場公平競爭，促進工商企業正常發展，特制定本法。

第 2 條 欲取得商標權、證明標章權、團體標章權或團體商標權者，應依本法申請註冊。

第 3 條 本法之主管機關為經濟部。
商標業務，由經濟部指定專責機關辦理。

第 4 條 外國人所屬之國家，與中華民國如未共同參加保護商標之國際條約或無互相保護商標之條約、協定，或對中華民國國民申請商標註冊不予受理者，其商標註冊之申請，得不予受理。

第 5 條 商標之使用，指為行銷之目的，而有下列情形之一，並足以使相關消費者認識其為商標：
一、將商標用於商品或其包裝容器。
二、持有、陳列、販賣、輸出或輸入前款之商品。
三、將商標用於與提供服務有關之物品。
四、將商標用於與商品或服務有關之商業文書或廣告。
前項各款情形，以數位影音、電子媒體、網路或其他媒介物方式為之者，亦同。

- 第 6 條 申請商標註冊及其相關事務，得委任商標代理人辦理之。但在中華民國境內無住所或營業所者，應委任商標代理人辦理之。
商標代理人應在國內有住所。
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- 第 7 條 二人以上欲共有一商標，應由全體具名提出申請，並得選定其中一人為代表人，為全體共有人為各項申請程序及收受相關文件。
未為前項選定代表人者，商標專責機關應以申請書所載第一順序申請人為應受送達人，並應將送達事項通知其他共有商標之申請人。
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- 第 8 條 商標之申請及其他程序，除本法另有規定外，遲誤法定期間、不合法定程式不能補正或不合法定程式經指定期間通知補正屆期未補正者，應不予受理。
。但遲誤指定期間在處分前補正者，仍應受理之。
申請人因天災或不可歸責於己之事由，遲誤法定期間者，於其原因消滅後三十日內，得以書面敘明理由，向商標專責機關申請回復原狀。但遲誤法定期間已逾一年者，不得申請回復原狀。
申請回復原狀，應同時補行期間內應為之行為。
前二項規定，於遲誤第三十二條第三項規定之期間者，不適用之。
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- 第 9 條 商標之申請及其他程序，應以書件或物件到達商標專責機關之日為準；如係郵寄者，以郵寄地郵戳所載日期為準。
郵戳所載日期不清晰者，除由當事人舉證外，以到達商標專責機關之日為準。
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- 第 10 條 處分書或其他文件無從送達者，應於商標公報公告之，並於刊登公報後滿三十日，視為已送達。
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- 第 11 條 商標專責機關應刊行公報，登載註冊商標及其相關事項。
前項公報，得以電子方式為之；其實施日期，由商標專責機關定之。
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- 第 12 條 商標專責機關應備置商標註冊簿，登載商標註冊、商標權異動及法令所定之一切事項，並對外公開之。
前項商標註冊簿，得以電子方式為之。
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第 13 條 有關商標之申請及其他程序，得以電子方式為之；其實施辦法，由主管機關定之。

第 14 條 商標專責機關對於商標註冊之申請、異議、評定及廢止案件之審查，應指定審查人員審查之。
前項審查人員之資格，以法律定之。

第 15 條 商標專責機關對前條第一項案件之審查，應作成書面之處分，並記載理由送達申請人。
前項之處分，應由審查人員具名。

第 16 條 有關期間之計算，除第三十三條第一項、第七十五條第四項及第一百零三條規定外，其始日不計算在內。

第 17 條 本章關於商標之規定，於證明標章、團體標章、團體商標，準用之。

第二章 商標

第一節 申請註冊

第 18 條 商標，指任何具有識別性之標識，得以文字、圖形、記號、顏色、立體形狀、動態、全像圖、聲音等，或其聯合式所組成。
前項所稱識別性，指足以使商品或服務之相關消費者認識為指示商品或服務來源，並得與他人之商品或服務相區別者。

第 19 條 申請商標註冊，應備具申請書，載明申請人、商標圖樣及指定使用之商品或服務，向商標專責機關申請之。
申請商標註冊，以提出前項申請書之日為申請日。
商標圖樣應以清楚、明確、完整、客觀、持久及易於理解之方式呈現。
申請商標註冊，應以一申請案一商標之方式為之，並得指定使用於二個以上類別之商品或服務。
前項商品或服務之分類，於本法施行細則定之。
類似商品或服務之認定，不受前項商品或服務分類之限制。

第 20 條 在與中華民國有相互承認優先權之國家或世界貿易組織會員，依法申請註冊之商標，其申請人於第一次申請日後六個月內，向中華民國就該申

請同

一之部分或全部商品或服務，以相同商標申請註冊者，得主張優先權。
外國申請人為非世界貿易組織會員之國民且其所屬國家與中華民國
無相互

承認優先權者，如於互惠國或世界貿易組織會員領域內，設有住所或
營業

所者，得依前項規定主張優先權。

依第一項規定主張優先權者，應於申請註冊同時聲明，並於申請書載
明下

列事項：

一、第一次申請之申請日。

二、受理該申請之國家或世界貿易組織會員。

三、第一次申請之申請案號。

申請人應於申請日後三個月內，檢送經前項國家或世界貿易組織會員
證明

受理之申請文件。

未依第三項第一款、第二款或前項規定辦理者，視為未主張優先權。
主張優先權者，其申請日以優先權日為準。

主張複數優先權者，各以其商品或服務所主張之優先權日為申請日。

第 21 條

於中華民國政府主辦或認可之國際展覽會上，展出使用申請註冊商標
之商

品或服務，自該商品或服務展出日後六個月內，提出申請者，其申請
日以

展出日為準。

前條規定，於主張前項展覽會優先權者，準用之。

第 22 條

二人以上於同日以相同或近似之商標，於同一或類似之商品或服務各
別申

請註冊，有致相關消費者混淆誤認之虞，而不能辨別時間先後者，由
各申

請人協議定之；不能達成協議時，以抽籤方式定之。

第 23 條

商標圖樣及其指定使用之商品或服務，申請後即不得變更。但指定使
用商

品或服務之減縮，或非就商標圖樣為實質變更者，不在此限。

第 24 條

申請人之名稱、地址、代理人或其他註冊申請事項變更者，應向商標
專責

機關申請變更。

第 25 條

商標註冊申請事項有下列錯誤時，得經申請或依職權更正之：

一、申請人名稱或地址之錯誤。

二、文字用語或繕寫之錯誤。

三、其他明顯之錯誤。

前項之申請更正，不得影響商標同一性或擴大指定使用商品或服務之範圍。

第 26 條 申請人得就所指定使用之商品或服務，向商標專責機關請求分割為二個以上之註冊申請案，以原註冊申請日為申請日。

第 27 條 因商標註冊之申請所生之權利，得移轉於他人。

第 28 條 共有商標申請權或共有人應有部分之移轉，應經全體共有人之同意。但因繼承、強制執行、法院判決或依其他法律規定移轉者，不在此限。共有商標申請權之拋棄，應得全體共有人之同意。但各共有人就其應有部分之拋棄，不在此限。前項共有人拋棄其應有部分者，其應有部分由其他共有人依其應有部分之比例分配之。前項規定，於共有人死亡而無繼承人或消滅後無承受人者，準用之。共有商標申請權指定使用商品或服務之減縮或分割，應經全體共有人之同意。

第 二 節 審查及核准

第 29 條 商標有下列不具識別性情形之一，不得註冊：

- 一、僅由描述所指定商品或服務之品質、用途、原料、產地或相關特性之說明所構成者。
- 二、僅由所指定商品或服務之通用標章或名稱所構成者。
- 三、僅由其他不具識別性之標識所構成者。

有前項第一款或第三款規定之情形，如經申請人使用且在交易上已成為申請人商品或服務之識別標識者，不適用之。商標圖樣中包含不具識別性部分，且有致商標權範圍產生疑義之虞，申請人應聲明該部分不在專用之列；未為不專用之聲明者，不得註冊。

第 30 條 商標有下列情形之一，不得註冊：

- 一、僅為發揮商品或服務之功能所必要者。

二、相同或近似於中華民國國旗、國徽、國璽、軍旗、軍徽、印信、勳章

或外國國旗，或世界貿易組織會員依巴黎公約第六條之三第三款所為

通知之外國國徽、國璽或國家徽章者。

三、相同於國父或國家元首之肖像或姓名者。

四、相同或近似於中華民國政府機關或其主辦展覽會之標章，或其所發給

之褒獎牌狀者。

五、相同或近似於國際跨政府組織或國內外著名且具公益性機構之徽章、

旗幟、其他徽記、縮寫或名稱，有致公眾誤認誤信之虞者。

六、相同或近似於國內外用以表明品質管制或驗證之國家標誌或印記，且

指定使用於同一或類似之商品或服務者。

七、妨害公共秩序或善良風俗者。

八、使公眾誤認誤信其商品或服務之性質、品質或產地之虞者。

九、相同或近似於中華民國或外國之葡萄酒或蒸餾酒地理標示，且指定使

用於與葡萄酒或蒸餾酒同一或類似商品，而該外國與中華民國簽訂協

定或共同參加國際條約，或相互承認葡萄酒或蒸餾酒地理標示之保護

者。

十、相同或近似於他人同一或類似商品或服務之註冊商標或申請在先之商

標，有致相關消費者混淆誤認之虞者。但經該註冊商標或申請在先之

商標所有人同意申請，且非顯屬不當者，不在此限。

十一、相同或近似於他人著名商標或標章，有致相關公眾混淆誤認之虞，

或有減損著名商標或標章之識別性或信譽之虞者。但得該商標或標

章之所有人同意申請註冊者，不在此限。

十二、相同或近似於他人先使用於同一或類似商品或服務之商標，而申請

人因與該他人間具有契約、地緣、業務往來或其他關係，知悉他人

商標存在，意圖仿襲而申請註冊者。但經其同意申請註冊者，

不在

此限。

十三、有他人之肖像或著名之姓名、藝名、筆名、字號者。但經其同意申

請註冊者，不在此限。

十四、有著名之法人、商號或其他團體之名稱，有致相關公眾混淆誤認之

虞者。但經其同意申請註冊者，不在此限。

十五、商標侵害他人之著作權、專利權或其他權利，經判決確定者。但經

其同意申請註冊者，不在此限。

前項第九款及第十一款至第十四款所規定之地理標示、著名及先使用之認

定，以申請時為準。

第一項第四款、第五款及第九款規定，於政府機關或相關機構為申請人時

，不適用之。

前條第三項規定，於第一項第一款規定之情形，準用之。

第 31 條

商標註冊申請案經審查認有第二十九條第一項、第三項、前條第一項、第

四項或第六十五條第三項規定不得註冊之情形者，應予核駁審定。

前項核駁審定前，應將核駁理由以書面通知申請人限期陳述意見。

指定使用商品或服務之減縮、商標圖樣之非實質變更、註冊申請案之分割

及不專用之聲明，應於核駁審定前為之。

第 32 條

商標註冊申請案經審查無前條第一項規定之情形者，應予核准審定。經核准審定之商標，申請人應於審定書送達後二個月內，繳納註冊費後，

始予註冊公告，並發給商標註冊證；屆期未繳費者，不予註冊公告。

申請人非因故意，未於前項所定期限繳費者，得於繳費期限屆滿後六個月

內，繳納二倍之註冊費後，由商標專責機關公告之。但影響第三人於此期

間內申請註冊或取得商標權者，不得為之。

第 三 節 商標權

第 33 條

商標自註冊公告當日起，由權利人取得商標權，商標權期間為十年。商標權期間得申請延展，每次延展為十年。

- 第 34 條 商標權之延展，應於商標權期間屆滿前六個月內提出申請，並繳納延展註冊費；其於商標權期間屆滿後六個月內提出申請者，應繳納二倍延展註冊費。
- 前項核准延展之期間，自商標權期間屆滿日後起算。
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- 第 35 條 商標權人於經註冊指定之商品或服務，取得商標權。
- 除本法第三十六條另有規定外，下列情形，應經商標權人之同意：
- 一、於同一商品或服務，使用相同於註冊商標之商標者。
 - 二、於類似之商品或服務，使用相同於註冊商標之商標，有致相關消費者混淆誤認之虞者。
 - 三、於同一或類似之商品或服務，使用近似於註冊商標之商標，有致相關消費者混淆誤認之虞者。
- 商標經註冊者，得標明註冊商標或國際通用註冊符號。
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- 第 36 條 下列情形，不受他人商標權之效力所拘束：
- 一、以符合商業交易習慣之誠實信用方法，表示自己之姓名、名稱，或其商品或服務之名稱、形狀、品質、性質、特性、用途、產地或其他有關商品或服務本身之說明，非作為商標使用者。
 - 二、為發揮商品或服務功能所必要者。
 - 三、在他人商標註冊申請日前，善意使用相同或近似之商標於同一或類似之商品或服務者。但以原使用之商品或服務為限；商標權人並得要求其附加適當之區別標示。
- 附有註冊商標之商品，由商標權人或經其同意之人於國內外市場上交易流通，商標權人不得就該商品主張商標權。但為防止商品流通於市場後，發生變質、受損，或有其他正當事由者，不在此限。
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- 第 37 條 商標權人得就註冊商標指定使用之商品或服務，向商標專責機關申請分割商標權。
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- 第 38 條 商標圖樣及其指定使用之商品或服務，註冊後即不得變更。但指定使用商
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品或服務之減縮，不在此限。
商標註冊事項之變更或更正，準用第二十四條及第二十五條規定。
註冊商標涉有異議、評定或廢止案件時，申請分割商標權或減縮指定使用
商品或服務者，應於處分前為之。

第 39 條 商標權人得就其註冊商標指定使用商品或服務之全部或一部指定地區為專屬或非專屬授權。
前項授權，非經商標專責機關登記者，不得對抗第三人。
授權登記後，商標權移轉者，其授權契約對受讓人仍繼續存在。
非專屬授權登記後，商標權人再為專屬授權登記者，在先之非專屬授權登記不受影響。
專屬被授權人在被授權範圍內，排除商標權人及第三人使用註冊商標。
商標權受侵害時，於專屬授權範圍內，專屬被授權人得以自己名義行使權利。但契約另有約定者，從其約定。

第 40 條 專屬被授權人得於被授權範圍內，再授權他人使用。但契約另有約定者，從其約定。
非專屬被授權人非經商標權人或專屬被授權人同意，不得再授權他人使用。
再授權，非經商標專責機關登記者，不得對抗第三人。

第 41 條 商標授權期間屆滿前有下列情形之一，當事人或利害關係人得檢附相關證據，申請廢止商標授權登記：
一、商標權人及被授權人雙方同意終止者。其經再授權者，亦同。
二、授權契約明定，商標權人或被授權人得任意終止授權關係，經當事人聲明終止者。
三、商標權人以被授權人違反授權契約約定，通知被授權人解除或終止授權契約，而被授權人無異議者。
四、其他相關事證足以證明授權關係已不存在者。

第 42 條 商標權之移轉，非經商標專責機關登記者，不得對抗第三人。

- 第 43 條 移轉商標權之結果，有二以上之商標權人使用相同商標於類似之商品或服務，或使用近似商標於同一或類似之商品或服務，而有致相關消費者混淆誤認之虞者，各商標權人使用時應附加適當區別標示。
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- 第 44 條 商標權人設定質權及質權之變更、消滅，非經商標專責機關登記者，不得對抗第三人。
商標權人為擔保數債權就商標權設定數質權者，其次序依登記之先後定之。
質權人非經商標權人授權，不得使用該商標。
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- 第 45 條 商標權人得拋棄商標權。但有授權登記或質權登記者，應經被授權人或質權人同意。
前項拋棄，應以書面向商標專責機關為之。
-
- 第 46 條 共有商標權之授權、再授權、移轉、拋棄、設定質權或應有部分之移轉或設定質權，應經全體共有人之同意。但因繼承、強制執行、法院判決或依其他法律規定移轉者，不在此限。
共有商標權人應有部分之拋棄，準用第二十八條第二項但書及第三項規定。
共有商標權人死亡而無繼承人或消滅後無承受人者，其應有部分之分配，準用第二十八條第四項規定。
共有商標權指定使用商品或服務之減縮或分割，準用第二十八條第五項規定。
-
- 第 47 條 有下列情形之一，商標權當然消滅：
一、未依第三十四條規定延展註冊者，商標權自該商標權期間屆滿後消滅。
二、商標權人死亡而無繼承人者，商標權自商標權人死亡後消滅。
三、依第四十五條規定拋棄商標權者，自其書面表示到達商標專責機關之日消滅。
-

第 四 節 異 議

- 第 48 條 商標之註冊違反第二十九條第一項、第三十條第一項或第六十五條第三項
規定之情形者，任何人得自商標註冊公告日後三個月內，向商標專責機關
提出異議。
前項異議，得就註冊商標指定使用之部分商品或服務為之。
異議應就每一註冊商標各別申請之。
- 第 49 條 提出異議者，應以異議書載明事實及理由，並附副本。異議書如有提出附
屬文件者，副本中應提出。
商標專責機關應將異議書送達商標權人限期答辯；商標權人提出答辯書者
，商標專責機關應將答辯書送達異議人限期陳述意見。
依前項規定提出之答辯書或陳述意見書有遲滯程序之虞，或其事證已臻明
確者，商標專責機關得不通知相對人答辯或陳述意見，逕行審理。
- 第 50 條 異議商標之註冊有無違法事由，除第一百零六條第一項及第三項規定
外，
依其註冊公告時之規定。
- 第 51 條 商標異議案件，應由未曾審查原案之審查人員審查之。
- 第 52 條 異議程序進行中，被異議之商標權移轉者，異議程序不受影響。
前項商標權受讓人得聲明承受被異議人之地位，續行異議程序。
- 第 53 條 異議人得於異議審定前，撤回其異議。
異議人撤回異議者，不得就同一事實，以同一證據及同一理由，再提
異議
或評定。
- 第 54 條 異議案件經異議成立者，應撤銷其註冊。
- 第 55 條 前條撤銷之事由，存在於註冊商標所指定使用之部分商品或服務者，
得僅
就該部分商品或服務撤銷其註冊。
- 第 56 條 經過異議確定後之註冊商標，任何人不得就同一事實，以同一證據及
同一
理由，申請評定。

第 五 節 評 定

第 57 條 商標之註冊違反第二十九條第一項、第三十條第一項或第六十五條第三項規定之情形者，利害關係人或審查人員得申請或提請商標專責機關評定其註冊。
以商標之註冊違反第三十條第一項第十款規定，向商標專責機關申請評定，其據以評定商標之註冊已滿三年者，應檢附於申請評定前三年有使用於據以主張商品或服務之證據，或其未使用有正當事由之事證。依前項規定提出之使用證據，應足以證明商標之真實使用，並符合一般商業交易習慣。

第 58 條 商標之註冊違反第二十九條第一項第一款、第三款、第三十條第一項第九款至第十五款或第六十五條第三項規定之情形，自註冊公告日後滿五年者，不得申請或提請評定。
商標之註冊違反第三十條第一項第九款、第十一款規定之情形，係屬惡意者，不受前項期間之限制。

第 59 條 商標評定案件，由商標專責機關首長指定審查人員三人以上為評定委員評定之。

第 60 條 評定案件經評定成立者，應撤銷其註冊。但不得註冊之情形已不存在者，經斟酌公益及當事人利益之衡平，得為不成立之評定。

第 61 條 評定案件經處分後，任何人不得就同一事實，以同一證據及同一理由，申請評定。

第 62 條 第四十八條第二項、第三項、第四十九條至第五十三條及第五十五條規定，於商標之評定，準用之。

第 六 節 廢 止

第 63 條 商標註冊後有下列情形之一，商標專責機關應依職權或據申請廢止其註冊：

一、自行變換商標或加附記，致與他人使用於同一或類似之商品或服務之

註冊商標構成相同或近似，而有使相關消費者混淆誤認之虞者。

二、無正當事由迄未使用或繼續停止使用已滿三年者。但被授權人有使用

者，不在此限。

三、未依第四十三條規定附加適當區別標示者。但於商標專責機關處分前

已附加區別標示並無產生混淆誤認之虞者，不在此限。

四、商標已成為所指定商品或服務之通用標章、名稱或形狀者。

五、商標實際使用時有致公眾誤認誤信其商品或服務之性質、品質或產地

之虞者。

被授權人為前項第一款之行為，商標權人明知或可得而知而不為反對之表

示者，亦同。

有第一項第二款規定之情形，於申請廢止時該註冊商標已為使用者，除因

知悉他人將申請廢止，而於申請廢止前三個月內開始使用者外，不予廢止

其註冊。

廢止之事由僅存在於註冊商標所指定使用之部分商品或服務者，得就該部

分之商品或服務廢止其註冊。

第 64 條 商標權人實際使用之商標與註冊商標不同，而依社會一般通念並不失其同
一性者，應認為有使用其註冊商標。

第 65 條 商標專責機關應將廢止申請之情事通知商標權人，並限期答辯；商標
權人
提出答辯書者，商標專責機關應將答辯書送達申請人限期陳述意見。
但申
請人之申請無具體事證或其主張顯無理由者，得逕為駁回。
第六十三條第一項第二款規定情形，其答辯通知經送達者，商標權人
應證
明其有使用之事實；屆期未答辯者，得逕行廢止其註冊。
註冊商標有第六十三條第一項第一款規定情形，經廢止其註冊者，原
商標
權人於廢止日後三年內，不得註冊、受讓或被授權使用與原註冊圖樣
相同

或近似之商標於同一或類似之商品或服務；其於商標專責機關處分前，聲明拋棄商標權者，亦同。

第 66 條 商標註冊後有無廢止之事由，適用申請廢止時之規定。

第 67 條 第四十八條第二項、第三項、第四十九條第一項、第三項、第五十二條及第五十三條規定，於廢止案之審查，準用之。
以註冊商標有第六十三條第一項第一款規定申請廢止者，準用第五十七條第二項及第三項規定。
商標權人依第六十五條第二項提出使用證據者，準用第五十七條第三項規定。

第 七 節 權利侵害之救濟

第 68 條 未經商標權人同意，為行銷目的而有下列情形之一，為侵害商標權：
一、於同一商品或服務，使用相同於註冊商標之商標者。
二、於類似之商品或服務，使用相同於註冊商標之商標，有致相關消費者混淆誤認之虞者。
三、於同一或類似之商品或服務，使用近似於註冊商標之商標，有致相關消費者混淆誤認之虞者。

第 69 條 商標權人對於侵害其商標權者，得請求除去之；有侵害之虞者，得請求防止之。
商標權人依前項規定為請求時，得請求銷毀侵害商標權之物品及從事侵害行為之原料或器具。但法院審酌侵害之程度及第三人利益後，得為其他必要之處置。
商標權人對於因故意或過失侵害其商標權者，得請求損害賠償。
前項之損害賠償請求權，自請求權人知有損害及賠償義務人時起，二年間不行使而消滅；自有侵權行為時起，逾十年者亦同。

第 70 條 未得商標權人同意，有下列情形之一，視為侵害商標權：
一、明知為他人著名之註冊商標，而使用相同或近似之商標，有致減損該

商標之識別性或信譽之虞者。

二、明知為他人著名之註冊商標，而以該著名商標中之文字作為自己公司

、商號、團體、網域或其他表彰營業主體之名稱，有致相關消費者混淆

淆誤認之虞或減損該商標之識別性或信譽之虞者。

三、明知有第六十八條侵害商標權之虞，而製造、持有、陳列、販賣、輸出

或輸入尚未與商品或服務結合之標籤、吊牌、包裝容器或與服務有關之物品。

第 71 條

商標權人請求損害賠償時，得就下列各款擇一計算其損害：

一、依民法第二百十六條規定。但不能提供證據方法以證明其損害時，商

標權人得就其使用註冊商標通常所可獲得之利益，減除受侵害後使用

同一商標所得之利益，以其差額為所受損害。

二、依侵害商標權行為所得之利益；於侵害商標權者不能就其成本或必要

費用舉證時，以銷售該項商品全部收入為所得利益。

三、就查獲侵害商標權商品之零售單價一千五百倍以下之金額。但所查獲

商品超過一千五百件時，以其總價定賠償金額。

四、以相當於商標權人授權他人使用所得收取之權利金數額為其損害。

前項賠償金額顯不相當者，法院得予酌減之。

第 72 條

商標權人對輸入或輸出之物品有侵害其商標權之虞者，得申請海關先予查

扣。

前項申請，應以書面為之，並釋明侵害之事實，及提供相當於海關核估該

進口物品完稅價格或出口物品離岸價格之保證金或相當之擔保。

海關受理查扣之申請，應即通知申請人；如認符合前項規定而實施查扣時

，應以書面通知申請人及被查扣人。

被查扣人得提供第二項保證金二倍之保證金或相當之擔保，請求海關廢止

查扣，並依有關進出口物品通關規定辦理。

查扣物經申請人取得法院確定判決，屬侵害商標權者，被查扣人應負

擔查
扣物之貨櫃延滯費、倉租、裝卸費等有關費用。

第 73 條

有下列情形之一，海關應廢止查扣：

一、申請人於海關通知受理查扣之翌日起十二日內，未依第六十九條規定

就查扣物為侵害物提起訴訟，並通知海關者。

二、申請人就查扣物為侵害物所提訴訟經法院裁定駁回確定者。

三、查扣物經法院確定判決，不屬侵害商標權之物者。

四、申請人申請廢止查扣者。

五、符合前條第四項規定者。

前項第一款規定之期限，海關得視需要延長十二日。

海關依第一項規定廢止查扣者，應依有關進出口物品通關規定辦理。

查扣因第一項第一款至第四款之事由廢止者，申請人應負擔查扣物之貨櫃

延滯費、倉租、裝卸費等有關費用。

第 74 條

查扣物經法院確定判決不屬侵害商標權之物者，申請人應賠償被查扣人因

查扣或提供第七十二條第四項規定保證金所受之損害。

申請人就第七十二條第四項規定之保證金，被查扣人就第七十二條第二項

規定之保證金，與質權人有同一之權利。但前條第四項及第七十二條第五

項規定之貨櫃延滯費、倉租、裝卸費等有關費用，優先於申請人或被查扣

人之損害受償。

有下列情形之一，海關應依申請人之申請，返還第七十二條第二項規定之

保證金：

一、申請人取得勝訴之確定判決，或與被查扣人達成和解，已無繼續提供

保證金之必要者。

二、因前條第一項第一款至第四款規定之事由廢止查扣，致被查扣人受有

損害後，或被查扣人取得勝訴之確定判決後，申請人證明已定二十日

以上之期間，催告被查扣人行使權利而未行使者。

三、被查扣人同意返還者。

有下列情形之一，海關應依被查扣人之申請返還第七十二條第四項規定之

保證金：

一、因前條第一項第一款至第四款規定之事由廢止查扣，或被查扣人與申

請人達成和解，已無繼續提供保證金之必要者。

二、申請人取得勝訴之確定判決後，被查扣人證明已定二十日以上之期間

，催告申請人行使權利而未行使者。

三、申請人同意返還者。

第 75 條

海關於執行職務時，發現輸入或輸出之物品顯有侵害商標權之虞者，應通

知商標權人及進出口人。

海關為前項之通知時，應限期商標權人至海關進行認定，並提出侵權事證

，同時限期進出口人提供無侵權情事之證明文件。但商標權人或進出口人

有正當理由，無法於指定期間內提出者，得以書面釋明理由向海關申請延

長，並以一次為限。

商標權人已提出侵權事證，且進出口人未依前項規定提出無侵權情事之證

明文件者，海關得採行暫不放行措施。

商標權人提出侵權事證，經進出口人依第二項規定提出無侵權情事之證明

文件者，海關應通知商標權人於通知之時起三個工作日內，依第七十二條

第一項規定申請查扣。

商標權人未於前項規定期限內，依第七十二條第一項規定申請查扣者，海

關得於取具代表性樣品後，將物品放行。

第 76 條

海關在不損及查扣物機密資料保護之情形下，得依第七十二條所定申請人

或被查扣人或前條所定商標權人或進出口人之申請，同意其檢視查扣物。

海關依第七十二條第三項規定實施查扣或依前條第三項規定採行暫不放行

措施後，商標權人得向海關申請提供相關資料；經海關同意後，提供進出

口人、收發貨人之姓名或名稱、地址及疑似侵權物品之數量。

商標權人依前項規定取得之資訊，僅限於作為侵害商標權案件之調查

及提
起訴訟之目的而使用，不得任意洩漏予第三人。

第 77 條 商標權人依第七十五條第二項規定進行侵權認定時，得繳交相當於海關核估進口貨樣完稅價格及相關稅費或海關核估出口貨樣離岸價格及相關稅費百分之一百二十之保證金，向海關申請調借貨樣進行認定。但以有調借貨樣進行認定之必要，且經商標權人書面切結不侵害進出口人利益及不使用於不正當用途者為限。
前項保證金，不得低於新臺幣三千元。
商標權人未於第七十五條第二項所定提出侵權認定事證之期限內返還所調借之貨樣，或返還之貨樣與原貨樣不符或發生缺損等情形者，海關應留置其保證金，以賠償進出口人之損害。
貨樣之進出口人就前項規定留置之保證金，與質權人有同一之權利。

第 78 條 第七十二條至第七十四條規定之申請查扣、廢止查扣、保證金或擔保之繳納、提供、返還之程序、應備文件及其他應遵行事項之辦法，由主管機關會同財政部定之。
第七十五條至第七十七條規定之海關執行商標權保護措施、權利人申請檢視查扣物、申請提供侵權貨物之相關資訊及申請調借貨樣，其程序、應備文件及其他相關事項之辦法，由財政部定之。

第 79 條 法院為處理商標訴訟案件，得設立專業法庭或指定專人辦理。

第 三 章 證明標章、團體標章及團體商標

第 80 條 證明標章，指證明標章權人用以證明他人商品或服務之特定品質、精密度、原料、製造方法、產地或其他事項，並藉以與未經證明之商品或服務相區別之標識。
前項用以證明產地者，該地理區域之商品或服務應具有特定品質、聲譽或

其他特性，證明標章之申請人得以含有該地理名稱或足以指示該地理區域之標識申請註冊為產地證明標章。
主管機關應會同中央目的事業主管機關輔導與補助艱困產業、瀕臨艱困產業及傳統產業，提升生產力及產品品質，並建立各該產業別標示其產品原產地為台灣製造之證明標章。
前項產業之認定與輔導、補助之對象、標準、期間及應遵行事項等，由主管機關會商各該中央目的事業主管機關後定之，必要時得免除證明標章之相關規費。

第 81 條 證明標章之申請人，以具有證明他人商品或服務能力之法人、團體或政府機關為限。
前項之申請人係從事於欲證明之商品或服務之業務者，不得申請註冊。

第 82 條 申請註冊證明標章者，應檢附具有證明他人商品或服務能力之文件、證明標章使用規範書及不從事所證明商品之製造、行銷或服務提供之聲明。
申請註冊產地證明標章之申請人代表性有疑義者，商標專責機關得向商品或服務之中央目的事業主管機關諮詢意見。
外國法人、團體或政府機關申請產地證明標章，應檢附以其名義在其原產國受保護之證明文件。
第一項證明標章使用規範書應載明下列事項：
一、證明標章證明之內容。
二、使用證明標章之條件。
三、管理及監督證明標章使用之方式。
四、申請使用該證明標章之程序事項及其爭議解決方式。
商標專責機關於註冊公告時，應一併公告證明標章使用規範書；註冊後修改者，應經商標專責機關核准，並公告之。

第 83 條 證明標章之使用，指經證明標章權人同意之人，依證明標章使用規範書所定之條件，使用該證明標章。

- 第 84 條 產地證明標章之產地名稱不適用第二十九條第一項第一款及第三項規定。
產地證明標章權人不得禁止他人以符合商業交易習慣之誠實信用方法，表示其商品或服務之產地。
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- 第 85 條 團體標章，指具有法人資格之公會、協會或其他團體，為表彰其會員之會籍，並藉以與非該團體會員相區別之標識。
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- 第 86 條 團體標章註冊之申請，應以申請書載明相關事項，並檢具團體標章使用規範書，向商標專責機關申請之。
前項團體標章使用規範書應載明下列事項：
一、會員之資格。
二、使用團體標章之條件。
三、管理及監督團體標章使用之方式。
四、違反規範之處理規定。
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- 第 87 條 團體標章之使用，指團體會員為表彰其會員身分，依團體標章使用規範書所定之條件，使用該團體標章。
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- 第 88 條 團體商標，指具有法人資格之公會、協會或其他團體，為指示其會員所提供之商品或服務，並藉以與非該團體會員所提供之商品或服務相區別之標識。
前項用以指示會員所提供之商品或服務來自一定產地者，該地理區域之商品或服務應具有特定品質、聲譽或其他特性，團體商標之申請人得以含有該地理名稱或足以指示該地理區域之標識申請註冊為產地團體商標。
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- 第 89 條 團體商標註冊之申請，應以申請書載明商品或服務，並檢具團體商標使用規範書，向商標專責機關申請之。
前項團體商標使用規範書應載明下列事項：
一、會員之資格。
二、使用團體商標之條件。
三、管理及監督團體商標使用之方式。
四、違反規範之處理規定。
產地團體商標使用規範書除前項應載明事項外，並應載明地理區域界

定範
圍內之人，其商品或服務及資格符合使用規範書時，產地團體商標權人應
同意其成為會員。
商標專責機關於註冊公告時，應一併公告團體商標使用規範書；註冊
後修
改者，應經商標專責機關核准，並公告之。

第 90 條 團體商標之使用，指團體或其會員依團體商標使用規範書所定之條件，使
用該團體商標。

第 91 條 第八十二條第二項、第三項及第八十四條規定，於產地團體商標，準
用之
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第 92 條 證明標章權、團體標章權或團體商標權不得移轉、授權他人使用，或
作為
質權標的物。但其移轉或授權他人使用，無損害消費者利益及違反公平競
爭之虞，經商標專責機關核准者，不在此限。

第 93 條 證明標章權人、團體標章權人或團體商標權人有下列情形之一者，商
標專
責機關得依任何人之申請或依職權廢止證明標章、團體標章或團體商
標之
註冊：
一、證明標章作為商標使用。
二、證明標章權人從事其所證明商品或服務之業務。
三、證明標章權人喪失證明該註冊商品或服務之能力。
四、證明標章權人對於申請證明之人，予以差別待遇。
五、違反前條規定而為移轉、授權或設定質權。
六、未依使用規範書為使用之管理及監督。
七、其他不當方法之使用，致生損害於他人或公眾之虞。
被授權人為前項之行為，證明標章權人、團體標章權人或團體商標權
人明
知或可得而知而不為反對之表示者，亦同。

第 94 條 證明標章、團體標章或團體商標除本章另有規定外，依其性質準用本
法有
關商標之規定。

第 四 章 罰 則

第 95 條 未得商標權人或團體商標權人同意，為行銷目的而有下列情形之一，處三年以下有期徒刑、拘役或科或併科新臺幣二十萬元以下罰金：
一、於同一商品或服務，使用相同於註冊商標或團體商標之商標者。
二、於類似之商品或服務，使用相同於註冊商標或團體商標之商標，有致相關消費者混淆誤認之虞者。
三、於同一或類似之商品或服務，使用近似於註冊商標或團體商標之商標，有致相關消費者混淆誤認之虞者。

第 96 條 未得證明標章權人同意，為行銷目的而於同一或類似之商品或服務，使用相同或近似於註冊證明標章之標章，有致相關消費者誤認誤信之虞者，處三年以下有期徒刑、拘役或科或併科新臺幣二十萬元以下罰金。
明知有前項侵害證明標章權之虞，販賣或意圖販賣而製造、持有、陳列附有相同或近似於他人註冊證明標章標識之標籤、包裝容器或其他物品者，亦同。

第 97 條 明知他人所為之前二條商品而販賣，或意圖販賣而持有、陳列、輸出或輸入者，處一年以下有期徒刑、拘役或科或併科新臺幣五萬元以下罰金；透過電子媒體或網路方式為之者，亦同。

第 98 條 侵害商標權、證明標章權或團體商標權之物品或文書，不問屬於犯人與否，沒收之。

第 99 條 未經認許之外國法人或團體，就本法規定事項得為告訴、自訴或提起民事訴訟。我國非法人團體經取得證明標章權者，亦同。

第 五 章 附 則

第 100 條 本法中華民國九十二年四月二十九日修正之條文施行前，已註冊之服務標章，自本法修正施行當日起，視為商標。

第 101 條 本法中華民國九十二年四月二十九日修正之條文施行前，已註冊之聯合商

標、聯合服務標章、聯合團體標章或聯合證明標章，自本法修正施行之日
起，視為獨立之註冊商標或標章；其存續期間，以原核准者為準。

第 102 條 本法中華民國九十二年四月二十九日修正之條文施行前，已註冊之防護商
標、防護服務標章、防護團體標章或防護證明標章，依其註冊時之規定；
於其專用期間屆滿前，應申請變更為獨立之註冊商標或標章；屆期未申請
變更者，商標權消滅。

第 103 條 依前條申請變更為獨立之註冊商標或標章者，關於第六十三條第一項
第二
款規定之三年期間，自變更當日起算。

第 104 條 依本法申請註冊、延展註冊、異動登記、異議、評定、廢止及其他各項程
序，應繳納申請費、註冊費、延展註冊費、登記費、異議費、評定費、廢
止費等各項相關規費。
前項收費標準，由主管機關定之。

第 105 條 本法中華民國一百年五月三十一日修正之條文施行前，註冊費已分二期繳
納者，第二期之註冊費依修正前之規定辦理。

第 106 條 本法中華民國一百年五月三十一日修正之條文施行前，已受理而尚未處分
之異議或評定案件，以註冊時及本法修正施行後之規定均為違法事由為限
，始撤銷其註冊；其程序依修正施行後之規定辦理。但修正施行前已依法
進行之程序，其效力不受影響。
本法一百年五月三十一日修正之條文施行前，已受理而尚未處分之評定案
件，不適用第五十七條第二項及第三項之規定。
對本法一百年五月三十一日修正之條文施行前註冊之商標、證明標章及團
體標章，於本法修正施行後提出異議、申請或提請評定者，以其註冊時及
本法修正施行後之規定均為違法事由為限。

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第 107 條 本法中華民國一百年五月三十一日修正之條文施行前，尚未處分之商標廢止案件，適用本法修正施行後之規定辦理。但修正施行前已依法進行之程序，其效力不受影響。
本法一百年五月三十一日修正之條文施行前，已受理而尚未處分之廢止案件，不適用第六十七條第二項準用第五十七條第二項之規定。

第 108 條 本法中華民國一百年五月三十一日修正之條文施行前，以動態、全像圖或其聯合式申請註冊者，以修正之條文施行日為其申請日。

第 109 條 以動態、全像圖或其聯合式申請註冊，並主張優先權者，其在與中華民國有相互承認優先權之國家或世界貿易組織會員之申請日早於本法中華民國一百年五月三十一日修正之條文施行前者，以一百零五年五月三十一日修正之條文施行日為其優先權日。
於中華民國政府主辦或承認之國際展覽會上，展出申請註冊商標之商品或服務而主張展覽會優先權，其展出日早於一百零五年五月三十一日修正之條文施行前者，以一百零五年五月三十一日修正之條文施行日為其優先權日。

第 110 條 本法施行細則，由主管機關定之。

第 111 條 本法之施行日期，由行政院定之。

Trademark Act

Chapter I General Provisions

- Article 1 Purpose of this Act
This Act is enacted for protection of the rights of trademark, certification mark, collective membership mark, collective trademark and the interests of consumers, maintenance of fair competition, and promotion of development of the industry and commerce.
- Article 2 Registration for protection
Any person who wishes to obtain the rights of trademark, certification mark, collective membership mark, or collective trademark shall apply for registration therefor in accordance with this Act.
- Article 3 Competent Authority and Registrar Office
The Competent Authority of this Act is the Ministry of Economic Affairs (hereinafter as the MOEA).
Trademark affairs shall be administered under a registrar office appointed by the MOEA.
- Article 4 Principle of reciprocity
An application for trademark registration, filed by a national of a country other than the Republic of China (ROC), may be inadmissible if such country does not accede to any international treaty for protection of trademarks, to which the ROC accedes, or does not conclude with the ROC any treaty or agreement for reciprocal protection of trademarks, or does not admit applications for trademark registration filed by nationals of the ROC.
- Article 5 Use of trademark
“Use of a trademark” means any of the following act, in the course of trade, where such trademark is capable of being recognized by relevant consumers as a trademark:
(1) to apply a trademark to goods or packaging or containers thereof;
(2) to possess, display, sell, export, or import the goods referred to in the preceding subparagraph;
(3) to apply a trademark to articles relating to the provision

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of services; or

(4) to apply a trademark to commercial documents or advertisements relating to goods or services.

The preceding paragraph shall also apply to acts performed by digital audio-visual means, through electronic media, on the Internet, or through other media.

Article 6

Appointment of trademark agent

An applicant, holder or other interested person may appoint a trademark agent to apply for trademark registration and related affairs. Those who have no domicile or business establishment in the territory of the ROC shall appoint a trademark agent to apply for trademark registration and related affairs.

A trademark agent shall have a domicile in the ROC.

Article 7

Application for registration of jointly owned trademark

When there are two or more persons who wish to jointly own a trademark, the application shall be filed in the names of all the joint applicants. The joint applicants may also elect one of them to represent all the joint applicants in the process of application for registration and related affairs, and receive relevant documents on their behalf. In the absence of electing a representative referred to in the preceding paragraph, the Registrar Office shall assign the first-listed joint applicant in the application as the person to be served upon and shall give the subsequent joint applicants a notice of such service matters.

Article 8

Inadmissibility of application; restoration to status quo ante

Unless otherwise prescribed in this Act, an application or other proceedings of trademark shall be inadmissible if an applicant, holder or other interested person thereof has failed to comply within the statutory period, to conform to legal formality that cannot be amended, or to conform to legal formality which is not amended within the period specified in a notice. However, if the failure to conform to legal formality which is not amended within the specified period has been amended before the disposition is rendered, such application or proceeding shall still be admissible.

Where an applicant, holder or other interested person has failed to comply within the statutory period by reason of an act of God or any event not attributable to such applicant, holder or interested person, he/she may apply for restoration to the status quo ante, within thirty days from the day following the date on which the cause vanishes, by submitting a written statement to the Registrar Office clarifying the reason. No application for restoration to the status quo ante may be made upon the failure to comply within the statutory period for more than one year. When applying for restoration to the status quo ante, the omitted act that should have been done within the statutory period shall be completed together with the application for restoration. The preceding two paragraphs shall not apply to the failure to comply within the period prescribed in Paragraph 3 of Article 32.

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Article 9	Date to be based on The date of application and other proceedings of trademark shall be based on the date of receipt of the written documents or articles at the Registrar Office. The date of those via postal service shall be based on the postmarked date of the place of origin. Unless otherwise proved by the concerned party, the date of those whose postmarked date appears to be ambiguous will be based on the date of receipt at the Registrar Office.
Article 10	Service by publication Where a disposition or any other document cannot be served, such disposition or document shall be published in the Trademark Gazette and shall be deemed having been duly served in thirty days from the day following the date of publication.
Article 11	Trademark Gazette The Registrar Office shall publish and circulate the Trademark Gazette, in which registered trademarks and relevant particulars shall be entered. The Trademark Gazette referred to in the preceding paragraph may be published and circulated by electronic

means; the date of commencement thereof shall be prescribed by the Registrar Office.

Article 12 Trademark Register
The Registrar Office shall maintain the Trademark Register, in which the trademark registrations, changes to trademark rights and all other particulars prescribed by acts or regulations shall be entered and made available to the public.
The Trademark Register referred to in the preceding paragraph may be produced by electronic means.

Article 13 E-filing
Application and other proceedings of trademark may be transmitted by electronic means; the implementing regulations thereof shall be prescribed by the Competent Authority.

Article 14 Assignment of examiner
The Registrar Office shall assign examiner(s) to conduct the examination of applications for trademark registration, opposition, invalidation, and revocation.
The qualification of examiner referred to in the preceding paragraph shall be prescribed by law.

Article 15 Disposition in writing
The Registrar Office shall render a written disposition on examination of applications referred to in paragraph 1 of the preceding article, in which the reason is stated, and serve the said disposition to the applicant.
The disposition referred to in the preceding paragraph shall bear the name(s) of the examiner(s).

Article 16 Calculation of period
For the purpose of calculation of a period, except those referred to in Paragraph 1 of Article 33, Paragraph 4 of Article 75, and Article 103, the first day does not count.

Article 17 Provisions applied mutatis mutandis
The provisions of this Chapter with respect to trademarks shall apply mutatis mutandis to certification marks, collective membership marks, and collective trademarks.

Chapter II Trademark

Section I Application for Registration

Article 18 Signs of which trademark may consist; distinctiveness
A trademark shall refer to any sign with distinctiveness, which may, in particular, consist of words, devices, symbols, colors, three-dimensional shapes, motions, holograms, sounds, or any combination thereof. The term “distinctiveness” used in the preceding paragraph refers to the character of a sign capable of being recognized by relevant consumers as an indication of the source of goods or services and distinguishing goods or services of one undertaking from those of other undertakings.

Article 19 Application for trademark registration; date of filing
An application for trademark registration shall be made to the Registrar Office by submitting an application containing (the name and address of) the applicant, a reproduction of the trademark, and the list of designated goods or services.
The date of filing of an application for trademark registration is the date on which an application referred to in the preceding paragraph is furnished to the Registrar Office.
A reproduction of the trademark shall be represented in a manner that is clear, precise, self-contained, objective, durable, easily accessible and intelligible.
An application for trademark registration shall relate to a single trademark, and may designate goods or services classified in two or more classes.
Classification of goods or services referred to in the preceding paragraph shall be prescribed by the Enforcement Rules of this Act.
The classification of goods or services referred to in the preceding paragraph shall not constrain the determination of similarity of goods or services.

Article 20 Right of priority; same treatment for certain categories of persons as for nationals of ROC
An applicant who has duly filed an application for trademark registration in a country which has reciprocal recognition of priority rights with the ROC, or filed such

application with a member of the World Trade Organization (WTO), may claim a right of priority, for the purposes of registering the same trademark in the ROC for some or all the same goods or services, within six months from the day following the date of filing of the first such application.

An applicant of a foreign country which is not a member of the WTO nor a country having reciprocal recognition of priority rights with the ROC, may claim a right of priority pursuant to the preceding paragraph if he/she is domiciled or has a business establishment in the territory of a country which has reciprocal recognition of priority rights with the ROC or in the territory of a member of the WTO. An applicant who claims priority pursuant to paragraph 1 shall submit a written statement to that effect simultaneously with the application which shall set forth the following:

- (1) the date of filing of the first application;
- (2) the country or the member of the WTO in which the first application was made; and
- (3) the application number of the first application.

The applicant shall submit, within three months from the day following the date of filing of the application, a copy of the application certified as admitted by the country or the member of the WTO referred to in the preceding paragraph.

If an application is not filed pursuant to Subparagraph 1 or Subparagraph 2 of Paragraph 3 or the preceding paragraph, the priority claim thereof shall be deemed not having been made.

If an application is filed with a claim of priority, the date of priority shall count as the date of filing.

If an application is filed with a claim of multiple priorities, the date of each priority shall count as the date of filing of goods or services in respect of such priority.

Article 21

Right of exhibition priority

If an applicant for a trademark has displayed goods or services under the trademark applied for, at an international exhibition which was held or officially

recognized by the Government of the ROC, and if such applicant files the application within a period of six months from the day following the date of the first display of such goods or services, the date of the first display shall count as the date of filing of the application.

The preceding article shall apply mutatis mutandis to applications filed with a claim of exhibition priority under the preceding paragraph.

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- Article 22 Filing on same date
If two or more applications for trademark registration relating to identical or similar trademarks which designate identical or similar goods or services are filed separately by different applicants on the same date of which time precedence cannot be determined, and hence there exists a likelihood of confusion on relevant consumers, all of such applicants shall reach an agreement on the precedence by consultations among the applicants. Where no agreement is reached in the consultations, the precedence shall be decided by a lottery.
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- Article 23 Prohibition and exception of amendment to trademark reproduction and designated goods or services
No amendments shall be made to the reproduction of a trademark and the designated goods or services thereof after an application for trademark registration has been filed, unless such amendment is a restriction of designated goods or services or an amendment to the reproduction of a trademark which does not substantially change such trademark.
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- Article 24 Change to application
Changes to the name or address of the applicant, the trademark agent, or any other particulars in an application for registration shall be made by submitting to the Registrar Office a request therefor.
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- Article 25 Correction of application
The following errors in the particulars of an application for registration of a trademark may be corrected upon request or ex officio:
(1) errors in the name or address of the applicant;
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(2) errors of wording or of copying; or

(3) any other obvious mistakes.

The correction referred to in the preceding paragraph shall not affect the identity of the trademark or broaden the scope of the designated goods or services.

Article 26	Division of application An applicant may request the Registrar Office to divide an application for registration into two or more applications by distributing the designated goods or services included in the original application among divisional applications which shall preserve the filing date of the original application.
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Article 27	Transfer of application The rights derived from an application for trademark registration may be transferred to another person.
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Article 28	Limitation and exception of disposition of right derived from application for registration of jointly owned trademark Any transfer of the right derived from an application for registration of a jointly owned trademark or the share of a joint applicant in such trademark shall have the consent of all joint applicants, unless such right or share is transferred by succession, compulsory execution, a judgment of the court or operation of other law. Any abandonment of the right derived from an application for registration of a jointly owned trademark shall have the consent of all joint applicants, unless in the case that a joint applicant abandons his/her own share in such trademark. The share abandoned by a joint applicant referred to in the preceding paragraph shall be distributed among the remaining joint applicants in proportion to each one's share. The preceding paragraph shall apply mutatis mutandis to cases where a joint applicant dies with no successor or ceases to exist with no assumer. Any restriction or division of the designated goods or services of an application for registration of a jointly owned trademark shall have the consent of all joint applicants.
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Section II Examination and Acceptance

Article 29 Grounds for refusal of registration: devoid of distinctiveness; disclaimer

A trademark shall not be registered if it is devoid of distinctiveness in any of the following:

- (1) consisting exclusively of a description of the quality, intended purpose, material, place of origin, or relevant characteristics of the designated goods or services;
- (2) consisting exclusively of the generic mark or term for the designated goods or services; or
- (3) consisting exclusively of other signs which are devoid of any distinctiveness.

Subparagraph 1 or 3 of the preceding paragraph shall not apply if the trademark has been used by the applicant and has become, in trade, a sign capable of distinguishing the goods or services of the applicant.

Where the reproduction of a trademark contains an element which is not distinctive, and where the inclusion of that element in the trademark could give rise to doubts as to the scope of the trademark rights, the applicant shall state that he/she disclaims any exclusive right to such element. Such trademark without disclaimer shall not be registered.

Article 30 Other grounds for refusal of registration

A trademark shall not be registered in any of the following:

- (1) being exclusively necessary for the goods or services to be functional;
- (2) being identical with or similar to the national flag, national emblem, national seal, military flags, military insignia, official seals, or medals of the ROC, or the state flags of foreign countries, or the armorial bearings, national seals or other state emblems of foreign countries communicated by any member of the WTO under Paragraph 3 of Article 6ter of the Paris Convention;
- (3) being identical with the portrait or name of Dr. Sun Yat-Sen or of the head of the state;
- (4) being identical with or similar to the mark of a government agency of the ROC or an official exhibition held thereby, or the medal or certificate awarded thereby;

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- (5) being identical with or similar to the armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations or well-known domestic or foreign institutions undertaking businesses for public interests, and hence being likely to mislead the public;
- (6) being identical with or similar to official signs and hallmarks indicating control and warranty adopted by the domestic or foreign countries, and being designated to the identical or similar goods or services;
- (7) being contrary to public policy or to accepted principles of morality;
- (8) being likely to mislead the public as to the nature, quality, or place of origin of the goods or services;
- (9) being identical with or similar to a geographical indication for wines or spirits in the ROC or a foreign country, and being designated to goods that are identical with or similar to wines or spirits, where that foreign country concludes with the ROC an agreement, or accedes to an international treaty, to which the ROC also accedes, or has reciprocal recognition with the ROC of protection of geographical indications for wines or spirits;
- (10) being identical with or similar to another person's registered trademark or earlier filed trademark and to be applied for goods or services identical with or similar to those for which the registered trademark is protected or the earlier filed trademark is designated, and hence there exists a likelihood of confusion on relevant consumers, unless the consent of the proprietor of the said registered trademark or earlier filed trademark to the application has been given and is not obviously improper;
- (11) being identical with or similar to another person's well-known trademark or mark, and hence there exists a likelihood of confusion on the relevant public or a likelihood of dilution of the distinctiveness or reputation of the said well-known trademark or mark, unless the proprietor of the said well-known trademark or mark consents to the application;
- (12) being identical with or similar to another person's

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earlier used trademark and to be applied for goods or services identical with or similar to those for which the earlier used trademark is applied, where the applicant with the intent to imitate the earlier used trademark, being aware of the existence of the earlier used trademark due to contractual, regional, or business connections, or any other relationship with the proprietor of the earlier used trademark, files the application for registration, unless the proprietor of the said earlier used trademark consents to the application;

(13) containing another person's portrait or well-known name, stage name, pseudonym, or alternative name, unless the said person consents to the application;

(14) containing the name of a well-known juridical person, business or any group, and hence there exists a likelihood of confusion on the relevant public, unless the said juridical person, business or group consents to the application; or

(15) being an infringement of another person's copyright, patent right, or any other right, where a final judgment of the court has been rendered, unless the said person consents to the application.

The determination of a geographical indication, well-known trademark/mark, and earlier used trademark as prescribed in Subparagraph 9 and Subparagraphs 11 to 14, respectively, of the preceding paragraph shall be based on the facts at the time of filing.

Subparagraphs 4, 5 and 9 of Paragraph 1 of this Article shall not apply if the applicant is a government agency or related institution.

Paragraph 3 of the preceding article shall apply mutatis mutandis to the ground for refusal prescribed in Subparagraph 1 of Paragraph 1.

Article 31

Disposition of refusal; time limit on request of restriction of goods or services, amendment to reproduction without substantial change, division and disclaimer

An application for trademark registration shall be refused if it is held, after examination, that under Paragraph 1 or 3 of Article 29, Paragraph 1 or 4 of the preceding paragraph,

or Paragraph 3 of Article 65, the trademark shall not be registered.

Before rendering a disposition of refusal pursuant to the preceding paragraph, a written notice stating grounds for refusal shall be given to the applicant, who may make observations on the intended refusal within the prescribed period.

Any restriction of the designated goods or services, amendment to the reproduction of a trademark which does not substantially change such trademark, division of an application for registration, or disclaimer shall be requested before the disposition of refusal is rendered.

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Article 32	Disposition of acceptance; payment of registration fee; relief measure of failure to pay An application for trademark registration shall be accepted if, after examination, none of the grounds for refusal prescribed in Paragraph 1 of the preceding article is found to exist. A trademark been accepted for registration shall be published for registration and a trademark certificate shall be issued, provided that the registration fee has been paid by the applicant within two months from the day following the date of the service of the disposition. Where the said fee remains unpaid by the end of the prescribed period, a trademark shall not be published for registration. Where an applicant has unintentionally failed to pay the fee within the period prescribed in the preceding paragraph, the applicant may pay double within six months from the day following the date on which the prescribed period expires, in which case the Registrar Office will publish the registration. However, this shall not be applied if an application for trademark registration filed or rights of a trademark obtained by a third party during such period would be affected.
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Section III Trademark Rights

Article 33	Right conferred by registered trademark and duration of registration The proprietor of a registered trademark shall have the exclusive right of the trademark for a period of ten years
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from the date of publication for registration.

The period of the trademark right may be renewed, and the duration of each renewal period shall be ten years.

Article 34

Renewal of registration

A request for renewal of the trademark right shall be made, and the renewal fee paid, within six months before the expiry of the period of the trademark right; failing this, the request may be made and the fee paid in double within such further period of six months from the day following the date of expiry of the period of the trademark right.

Renewal referred to in the preceding paragraph shall take effect from the day following the date of expiry of the previous period of the trademark right.

Article 35

Right in registered trademark

The proprietor of a registered trademark has the exclusive right in the trademark in relation to the designated goods or services.

Unless otherwise prescribed in Article 36 of this Act, consent of the proprietor of a registered trademark shall be required in any of the following:

- (1) using a trademark which is identical with the registered trademark in relation to goods or services which are identical with those for which it is registered;
- (2) using a trademark which is identical with the registered trademark and used in relation to goods or services similar to those for which the registered one is designated, and hence there exists a likelihood of confusion on relevant consumers; or
- (3) using a trademark which is similar to the registered trademark and used in relation to goods or services identical with or similar to those for which the registered one is designated, and hence there exists a likelihood of confusion on relevant consumers.

A trademark may, if registered, be displayed with the words “registered trademark” or the internationally used symbol for registration (the letter R enclosed within a circle).

Article 36

Limits on effect of registered trademark

A registered trademark shall not entitle the proprietor to prohibit a third party from:

- (1) indicating his/her own name, or the term, shape, quality, nature, characteristic, intended purpose, place of origin, or any other description in relation to his/her own goods or services, in accordance with honest practices in industrial or commercial matters and not using it as a trademark;
- (2) using where it is necessary for the goods or services to be functional; or
- (3) using bona fide, prior to the filing date of the registered trademark, an identical or similar trademark on goods or services identical with or similar to those for which the registered trademark is protected, provided that the use is only on the original goods or services; the proprietor of the registered trademark is entitled to request the party who use the trademark to add an appropriate and distinguishing indication.

Where goods have been put on the domestic or foreign market under a registered trademark by the proprietor or with his consent, the proprietor is not entitled to claim trademark rights on such goods, unless such claim is to prevent the condition of the goods been changed or impaired after they have been put on the market or there exist other legitimate reasons.

Article 37	Division of registration The proprietor of a registered trademark may request the Registrar Office to divide the registration into two or more registrations by distributing the designated goods or services included in the original registration among divisional registrations.
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Article 38	Change and correction of registration; time limit on division and restriction No amendments shall be made to the reproduction of a trademark and the designated goods or services thereof after the trademark has been registered, unless such amendment is a restriction of designated goods or services.
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Articles 24 and 25 shall apply mutatis mutandis to any

change or correction of the particulars of a trademark registration.

If an application for opposition, invalidation or revocation has been entered at the Registrar Office against a registered trademark, any division of the registration or restriction of the designated goods or services shall be requested before the disposition of the application is rendered.

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- Article 39 Entry of license in the Register
- A registered trademark may be licensed by the proprietor, exclusively or non-exclusively, for all or some of the designated goods or services for which it is registered and for a particular locality.
- A license referred to in the preceding paragraph shall have no locus standi against any third party unless it is entered in the Register by the Registrar Office.
- If the trademark right have been transferred after the license is entered in the Register, the transferee is still bound by the licensing contract.
- If the entry of an exclusive license is requested by the proprietor of a registered trademark after a non-exclusive license is entered in the Register, such non-exclusive license shall not be affected.
- An exclusive licensee is entitled, within the scope of the license, to exclude the proprietor and any third party from using the registered trademark.
- Unless otherwise prescribed in a licensing contract, an exclusive licensee is entitled, within the scope of the license, to bring infringement proceedings in his/her own name.
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- Article 40 Entry of sub-license in the Register
- Unless otherwise prescribed in a licensing contract, an exclusive licensee is entitled, within the scope of the license, to sub-license the registered trademark to another person.
- A non-exclusive licensee shall not sub-license the registered trademark to another person, unless the proprietor or the exclusive licensee consents to the sub-license.
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A sub-license shall have no locus standi against any third party unless it is entered in the Register by the Registrar Office.

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- Article 41 Removal of license from the Register
- Before the expiry of the period of a license, a concerned or an interested party may, by submitting relevant evidence, request the Registrar Office to remove the license from the Register under any of the following:
- (1) both the proprietor of the registered trademark and the licensee agree to terminate the license; such request shall also apply to the sub-license;
 - (2) where the licensing contract expressly prescribes that either the proprietor or the licensee may terminate the license at any time, the concerned party declares the termination;
 - (3) due to the licensee's breaching the licensing contract, the proprietor gives such licensee a notice of rescinding or terminating the licensing contract, and the licensee shows no objection thereto; or
 - (4) there is other relevant evidence capable of establishing that the license no longer exists.
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- Article 42 Entry of transfer in the Register
- A transfer of trademark right shall have no locus standi against any third party unless it is entered in the Register by the Registrar Office.
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- Article 43 Addition to appropriate and distinguishing indication
- If, due to a transfer of trademark right, two or more proprietors use an identical trademark on similar goods or services or similar trademarks on identical or similar goods or services, and hence there exists a likelihood of confusion on relevant consumers, each proprietor shall add an appropriate and distinguishing indication while using his/her own trademark.
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- Article 44 Entry of pledge in the Register
- A creation, change, or extinguishment of a pledge made by the proprietor of a registered trademark shall have no locus standi against any third party unless it is entered in the Register by the Registrar Office.
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Where a proprietor creates multiple pledges on his/her trademark right for the purpose of securing multiple creditors' rights, the ranks of these pledges shall be decided by the order of the entry in the Register.
A pledgee in respect of right in a registered trademark shall not use such trademark unless otherwise licensed by the proprietor thereof.

Article 45 Abandonment of registration
The proprietor of a registered trademark may abandon his/her trademark right. However, if a license or a pledge has entered in the Register, the proprietor shall get the consent of the licensee or pledgee.
The abandonment referred to in the preceding paragraph shall be made in writing to the Registrar Office.

Article 46 Disposition of right of jointly owned trademark
Any license, sub-license, transfer, abandonment of, or creation of pledge on the right in a jointly owned trademark or any transfer of or creation of pledge on the share in a jointly owned trademark shall have the consent of all joint proprietors, unless such right or share is transferred by succession, compulsory execution, a judgment of the court or operation of other law.
The proviso to Paragraph 2 of Article 28 and Paragraph 3 of same Article shall apply mutatis mutandis to a joint proprietor's abandonment of his/her share.
Where a joint proprietor dies with no successor or ceases to exist with no assumer, Paragraph 4 of Article 28 shall apply mutatis mutandis to the distribution of such joint proprietor's share.
Paragraph 5 of Article 28 shall apply mutatis mutandis to a restriction or division of the designated goods or services of a jointly owned registered trademark.

Article 47 Extinguishment of registration
Right of a registered trademark shall become extinguished under any of the following:
(1) where the right is not renewed pursuant to Article 34, such right shall become extinguished from the day following the date of expiry of the period of such right.
(2) where the proprietor of such trademark dies with no

successor, such right shall become extinguished from the day following the date of death of such proprietor; or
(3) where the right is abandoned pursuant to Article 45, such right shall become extinguished from the date of receipt of a written statement on the abandonment at the Registrar Office.

Section IV Opposition

Article 48 Grounds for opposition and time limit on filing
Any person may file an opposition to registration of a trademark with the Registrar Office within three months from the day following the date of publication of registration on the grounds that such registration falls under Paragraph 1 of Article 29, Paragraph 1 of Article 30, or Paragraph 3 of Article 65.
The opposition referred to in the preceding paragraph may be filed for some of the designated goods or services of the registered trademark.
An application for opposition shall be filed against a single registered trademark.

Article 49 Opposition procedure
Any person who opposes a registered trademark shall file an application stating the facts and grounds along with a copy thereof. Any attachments to the application shall also be enclosed with the copy.
The Registrar Office shall serve the copy on the proprietor of opposed trademark, who may make observations to the opposition within the prescribed period; where the proprietor files the observations, the Registrar Office shall serve a copy of the observations on the opponent, who may comment on the observations of the proprietor within the prescribed period.
Where the observations filed pursuant to the preceding paragraph is likely to delay the proceedings, or where the facts and evidence are sufficiently clear, the Registrar Office may conduct opposition proceedings directly without giving the opposite party a notice to make observations.

Article 50 Provisions govern in opposition

With respect to the grounds for an opposition to a registered trademark, the provisions in effect at the time of the said trademark publication of registration shall govern, unless otherwise prescribed in Paragraph 1 and Paragraph 3 of Article 106.

Article 51	Avoidance of examiner in opposition An application for opposition to a trademark shall be examined by an examiner, who did not participate in the examination of the application for registration of the opposed trademark.
Article 52	Invariance of concerned party in opposition A transfer of the right of a trademark of which the opposition proceedings is underway shall have no effect on the said opposition proceedings. A transferee of trademark right referred to in the preceding paragraph may declare to assume the position of the opposed party in the opposition proceedings.
Article 53	Withdraw of opposition An opponent may withdraw his/her opposition to a registered trademark before the disposition of such opposition is rendered. An opponent who withdrew his/her opposition to a registered trademark shall not file an opposition once more or invalidation against such opposed trademark based on the same facts, evidence and grounds as those in the withdrawn opposition.
Article 54	Effect of sustained opposition Where an opposition to a registered trademark is sustained, the registration of the opposed trademark shall be cancelled.
Article 55	Cancellation of some goods or services Where grounds for cancellation referred to in the preceding article exist in respect of some of the designated goods or services of the registered trademark, the registration may only be cancelled in respect of those goods or services.
Article 56	Ne bis in idem Where a disposition of the opposition to a registered

trademark became final, no one shall file any invalidation against such opposed trademark based on the same facts, evidence and grounds as those in the opposition.

Section V Invalidity

Article 57 Grounds for invalidation; proof of use of earlier trademark

An interested party may file an invalidation with the Registrar Office, or a trademark examiner may submit a proposal to the Registrar Office for an invalidation, against a trademark registration on the grounds that such registration falls under Paragraph 1 of Article 29, Paragraph 1 of Article 30, or Paragraph 3 of Article 65. An applicant who file an invalidation with the Registrar Office against a trademark registration on the grounds that such registration falls under Subparagraph 10 of Paragraph 1 of Article 30 shall furnish proof that, during the period of three years preceding the date of the application for invalidation, the earlier trademark has been used in connection with the goods or services in respect of which it is registered and which he/she cites as justification for his/her application, or that there are proper reasons for non-use, provided the earlier trademark has at that date been registered for not less than three years. The proof of use furnished pursuant to the preceding paragraph shall be capable of establishing the genuine use of the trademark in accordance with general commercial practices.

Article 58 Time limit on filing invalidation and exception

No invalidation shall be filed, or no proposal for an invalidation shall be submitted, against a trademark registration on the grounds that such registration falls under Subparagraph 1 or 3 of Paragraph 1 of Article 29, any of Subparagraphs 9 through 15 of Paragraph 1 of Article 30, or Paragraph 3 of Article 65 if the registration has at that date been published for not less than five years.

The period referred to in the preceding paragraph shall not apply to the invalidation against a trademark registration on the grounds that such registration falls under Subparagraph 9 or 11 of Paragraph 1 of Article 30 if

the registration was applied for in bad faith.

Article 59 Invalidation procedure
An examination on an application for invalidation shall be conducted by an invalidation panel consisting of three or more examiners assigned by the head of the Registrar Office.

Article 60 Effect of sustained invalidation
Where an invalidation against a registered trademark is sustained, such registration shall be cancelled. However, if the circumstance on which the trademark is not registrable no longer exists, a disposition to overrule such invalidation may be rendered upon considering the need for proportionality between the interests of the public and the interests of the concerned parties.

Article 61 Ne bis in idem
Where a disposition of an invalidation against a registered trademark was rendered, no one shall file another invalidation against such trademark based on the same facts, evidence and grounds as those in the earlier invalidation.

Article 62 Provisions applied mutatis mutandis to invalidation
Paragraphs 2 and 3 of Article 48, Articles 49 through 53, and Article 55 shall apply mutatis mutandis to an invalidation of a registered trademark.

Section VI Revocation

Article 63 Grounds for revocation; revocation of some goods or services
The Registrar Office shall, ex officio or upon an application, revoke the registration of a trademark if such trademark is in any of the following:
(1) where the trademark is altered by the proprietor in different forms in which it was registered or supplemented with additional notes whereby the trademark is identical with or similar to another person's registered trademark in relation to goods or services which are identical with or similar to those for which another person's registered trademark is designated, and hence there exists a likelihood of confusion on relevant consumers;

(2) where the trademark has not yet been put to use or such use has been suspended for a continuous period of not less than three years without proper reasons for non-use, unless the trademark has been put to use by a licensee;

(3) where no appropriate and distinguishing indication is added pursuant to Article 43, unless the indication has been added and hence there does not exist any likelihood of confusion before the disposition of revocation rendered by the Registrar Office;

(4) where the trademark has become the generic mark or term, or common shape for the designated goods or services; or

(5) where, in consequence of the actual use of the trademark, such trademark is likely to mislead the public as to the nature, quality, or place of origin of the goods or services.

The revocation shall also apply in the case where the proprietor of the registered trademark who, knowingly or with reasonable grounds to know, shows no objection to the conduct as prescribed in Subparagraph 1 of preceding paragraph by a licensee.

The trademark registration shall not be revoked on the ground prescribed in Subparagraph 2 of Paragraph 1 if such use as in referred to in that subparagraph is commenced or resumed before the application for revocation is filed, unless any such commencement or resumption of use within the period of three months before the filing of the application is because the proprietor became aware that the application might be filed.

Where grounds for revocation exist in respect of some of the designated goods or services of the registered trademark, the registration may be revoked in respect of those goods or services.

Article 64

Identity of trademark

Actual use of a registered trademark by the proprietor in a form differing in elements which do not affect the identity of the trademark according to general concepts in the society shall constitute use of the registered trademark.

Article 65

Revocation procedure

The Registrar Office shall serve a copy of an application for revocation on the proprietor of a registered trademark, who may make observations to the revocation within the prescribed period; where the proprietor files the observations, the Registrar Office shall serve a copy of the observations on the applicant, who may comment on the observations of the proprietor within the prescribed period. An application for revocation may be dismissed directly if the application is devoid of any concrete facts and evidence or based on obviously groundless claims. Where a copy of an application for revocation against a registered trademark on the ground prescribed in Subparagraph 2 of Paragraph 1 of Article 63 has been served on the proprietor of such trademark, such proprietor shall furnish proof of his/her use. Such registration may be revoked directly if the proprietor fails to make observations within the prescribed period. Where the trademark registration was revoked on the ground prescribed in Subparagraph 1 of Paragraph 1 of Article 63, a trademark which is identical with or similar to the revoked trademark in relation to goods or services which are identical with or similar to those for which the revoked trademark is designated shall not be applied for registration by the former proprietor of the revoked trademark or transferred or licensed to such former proprietor within three years from the day following the date of revocation; the aforementioned shall also apply to the circumstance that the trademark right has been abandoned before the disposition of revocation rendered by the Registrar Office.

Article 66

Provisions govern in invalidation

With respect to the grounds for a revocation against a registered trademark, the provisions in effect at the time of the application for revocation filed shall govern.

Article 67

Provisions applied mutatis mutandis to revocation

Paragraphs 2 and 3 of Articles 48, Paragraphs 1 and 3 of Article 49, Article 52 and Article 53 shall apply mutatis mutandis to the examination of revocation.

Paragraphs 2 and 3 of Article 57 shall apply mutatis mutandis to an application for revocation on the ground prescribed in Subparagraph 1 of Paragraph 1 of Article 63.

Paragraph 3 of Article 57 shall apply mutatis mutandis to the circumstance that a proprietor of a revoked trademark furnishes proof of use pursuant to Paragraph 2 of Article 65.

Section VII Infringement Remedies

Article 68 **Infringement of registered trademark**
Any of the following act, in the course of trade and without consent of the proprietor of a registered trademark, constitutes infringement of the right of such trademark:
(1) using a trademark which is identical with the registered trademark in relation to goods or services which are identical with those for which it is registered;
(2) using a trademark which is identical with the registered trademark and used in relation to goods or services similar to those for which the registered one is designated, and hence there exists a likelihood of confusion on relevant consumers; or
(3) using a trademark which is similar to the registered trademark and used in relation to goods or services identical with or similar to those for which the registered one is designated, and hence there exists a likelihood of confusion on relevant consumers.

Article 69 **Exclusion, prevention and damages of infringement; time limit to demand damages**
A proprietor of a registered trademark is entitled to demand a person who infringes or is likely to infringe the trademark right to stop or prevent such infringement. When making a demand pursuant to Paragraph 1, the proprietor is entitled to demand for destruction of infringing articles and the materials or implements used in infringing the trademark. However, the court may order other dispositions as it considers necessary after taking into account the need for proportionality between the seriousness of the infringement and the interests of third parties.

The proprietor is entitled to demand the infringer who knowingly, or with reasonable grounds to know, infringed such trademark rights to pay the proprietor damages. The rights to demand referred to in the preceding paragraph shall become extinguished if not exercised within two years from the date on which the proprietor become aware of the damage and the person liable for damages. This right shall also become extinguished if it is not exercised within ten years from the time of infringement.

Article 70

Acts deemed infringement

Any of the following acts, without consent of the proprietor of a registered trademark, shall be deemed infringement of the right of such trademark:

(1) knowingly using a trademark which is identical with or similar to another person's well-known registered trademark, and hence there exists a likelihood of dilution of the distinctiveness or reputation of the said well-known trademark;

(2) knowingly using words contained in another person's well-known registered trademark as the name of a company, business, group or domain or any other name that identifies a business entity, and hence there exists a likelihood of confusion on relevant consumers or a likelihood of dilution of the distinctiveness or reputation of the said well-known trademark; or

(3) manufacturing, possessing, displaying, selling, exporting or importing labels, tags, packaging or containers that have not been applied in relation to goods or services, or articles that have not been applied in relation to services, knowing that such articles would likely infringe trademark rights as prescribed in Article 68.

Article 71

Calculation of damages

Damages demanded by the proprietor of a registered trademark may be calculated according to any of the following:

(1) the method provided in Article 216 of the Civil Code; the proprietor is entitled to demand damages based on the amount of the balance derived by subtracting the profit

earned through using the trademark after infringement from the profit normally expected through using the same trademark, if no method of proof can be furnished to prove the damage suffered;

(2) the profit earned by the infringer as a result of trademark infringement; if no proof on costs or necessary expenses can be furnished by the infringer, the total amount of income from selling the infringing goods shall be presumed to be the amount of profit;

(3) the amount not more than 1,500 times of the unit retail price of the infringing goods; if over 1,500 pieces of infringing goods were found, the amount of damages shall be a lump sum of the market value of the infringing goods; or

(4) the equivalent amount of royalty that may be collected from using the trademark under licensing.

A court may, at its discretion, reduce the amount of damages referred to in the preceding paragraph if such amount is apparently unequal.

Article 72

Application to Customs for detention

A proprietor of a registered trademark may file an application to Customs for detention of articles that are suspected of infringing the rights in the trademark.

Any application referred to in the preceding paragraph shall be filed in writing, accompanied by a statement of the facts of the infringement and a security in an amount equivalent to the duty-paid price of the imported articles or the F.O.B. price of the exported articles, assessed by Customs, or equivalent assurance.

Customs shall immediately give a notice to the applicant once the application for detention is admitted; if suspected articles are detained because the application conforms to the preceding paragraph, Customs shall give a notice to the applicant and the owner of detained articles in writing.

The owner of detained articles may request Customs to revoke the detention on provision of a security equivalent to two times the security referred to in the Paragraph 2 or equivalent assurance while following the procedures in accordance with applicable Customs Regulations on

import and export articles clearance.

Where the applicant is awarded a final judgment of the court stating that the detained articles have infringed trademark rights, the owner of detained articles shall be liable for all relevant expenses incurred as a result of the delay of containers, warehousing, loading, and unloading of the detained articles.

Article 73

Revocation of detention

Customs shall revoke the detention if any of the following exists:

- (1) within a period of twelve days after the applicant has been served notice of admission of the application, Customs has not been informed that proceedings claiming that the detained articles are infringing articles pursuant to Article 69 have been initiated by the applicant;
 - (2) a final ruling of the court which dismisses the litigation initiated by the applicant claiming that the detained articles are infringing article;
 - (3) a final judgment of the court which holds that the detained articles do not infringe trademark rights;
 - (4) the applicant requests for revocation of the detention;
- or
- (5) the circumstance in accordance with Paragraph 4 of the preceding article.

The period as prescribed in Subparagraph 1 of the preceding paragraph may be extended by another twelve days by Customs in appropriate cases.

If the detention is revoked pursuant to Paragraph 1, Customs shall follow the procedures in accordance with applicable Customs Regulations on import and export articles clearance.

Where the detention is revoked pursuant to Subparagraphs 1 to 4 of Paragraph 1, the applicant shall be liable for all relevant expenses incurred as a result of the delay of containers, warehousing, loading, and unloading of the detained articles.

Article 74

Release of security

If a final judgment of the court holds that the detained articles do not infringe trademark rights, the applicant shall

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compensate the owner of detained articles for injury caused to them through wrongful detention of articles or provision of a security as prescribed in Paragraph 4 of Article 72.

The applicant shall enjoy the same right as a pledgee in relation to the security as prescribed in Paragraph 4 of Article 72. The owner of detained articles shall enjoy the same right as a pledgee in relation to the security as prescribed in Paragraph 2 of Article 72. However, all relevant expenses incurred as a result of the delay of containers, warehousing, loading, and unloading of the detained articles as prescribed in Paragraph 4 of the preceding article and Paragraph 5 of Article 72 shall be paid prior to compensate the applicant or the owner of detained articles for injury.

Customs shall release the security as prescribed in Paragraph 2 of Article 72 upon request by the applicant in any of the following:

- (1) where the security is no longer required as the applicant has either obtained a final judgment in his/her favor or reached a settlement with the owner of detained articles;
- (2) where the applicant proves that the owner of detained articles has been notified but failed to exercise his/her rights within twenty days or more after the detention is revoked on the grounds prescribed in Subparagraphs 1 through 4 of Paragraph 1 of the preceding article and hence there is injury caused to them through wrongful detention, or after such owner obtained a final judgment in his/her favor; or
- (3) where the owner of detained articles agrees to release the security.

Customs shall release the security as prescribed in Paragraph 4 of Article 72 upon request by the owner of detained articles in any of the following:

- (1) where the security is no longer required as either after the detention is revoked on the grounds prescribed in Subparagraphs 1 through 4 of Paragraph 1 of the preceding article or such owner has reached a settlement

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with the applicant;

(2) where such owner proves that the applicant has been notified but failed to exercise his/her rights within twenty days or more after the applicant has obtained a final judgment in his/her favor; or

(3) where the applicant agrees to release the security.

Article 75

Suspension of release upon Customs' own initiative

Where Customs acts upon its own initiative and finds that imported or exported articles in respect of which it has acquired prima facie evidence that a trademark right is likely to be infringed, Customs shall give a notice to the proprietor of the trademark and the importer/exporter.

In giving the notice referred to in the preceding paragraph, Customs shall specify a period for the proprietor of the trademark to come to the customs to identify the infringement and furnish proof of infringement, and Customs shall also specify a period for the importer/exporter to furnish proof of non-infringement. However, the period may be extended once only at the request of the proprietor of the trademark or the importer/exporter to Customs in writing, stating legitimate reasons for failure to furnish proof.

If proof of infringement has been furnished by the proprietor of the trademark and proof of non-infringement has not been furnished by the importer/exporter pursuant to the preceding paragraph, Customs may suspend the release of such articles.

If proof of infringement has been furnished by the proprietor of the trademark and proof of non-infringement has been furnished by the importer/exporter pursuant to Paragraph 2, Customs shall give a notice to the proprietor that he/she may, within three working days after the notice is given, file an application for detention pursuant to Paragraph 1 of Article 72.

If the proprietor did not file within the period prescribed in the preceding paragraph an application for detention pursuant to Paragraph 1 of Article 72, Customs may release the articles after retaining a representative sample.

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Article 76 Provision of information of suspected articles upon request

Without prejudice to the protection of confidential information of detained articles, Customs may allow the inspection of detained articles upon request by the applicant or the owner of detained articles referred to in Article 72 or the proprietor of the trademark or importer/exporter referred to in the preceding article. After Customs detained suspected articles pursuant to Paragraph 3 of Article 72 or suspended the release of such articles pursuant to Paragraph 3 of the preceding article, Customs shall inform the proprietor of the trademark, at his/her request, of the names and addresses of the import/exporter, the consignor/consignee, and the quantity of the suspected articles.

Proprietors of trademarks are permitted to use the data obtained on the basis of preceding paragraph solely for the purpose of investigating and bringing legal actions concerning alleged infringements of their trademark rights without disclosing such data to any third party.

Article 77 Request to Customs on taking samples of suspected articles

When identifying the infringement pursuant to Paragraph 2 of Article 75, the proprietor of the trademark may request Customs to take samples of suspected articles and hand them over or send them to such proprietor for identification by providing a security in an amount equivalent to 120 percent of the duty-paid price of the imported articles and relevant duties and taxes or the F.O.B. price of the exported articles and relevant duties and taxes, assessed by Customs, provided that it is necessary to take samples for identification, as well as such proprietor has undertaken in writing not to infringe the legitimate interests of the importer/exporter and not to use the samples for unjustifiable purposes.

The amount of the security referred to in the preceding paragraph shall not be less than NT\$3,000.

If such proprietor does not return the requested samples

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within the period for furnishing proof of infringement prescribed in Paragraph 2 of Article 75, or if the samples returned are not the same as the original ones or are defective, Customs shall hold the security to compensate the importer/exporter for injury caused to them.

The importer/exporter of samples of articles shall enjoy the same right as a pledgee in relation to the security held as prescribed in preceding paragraph.

Article 78	Regulations prescribed by Customs The regulations governing the application for detention, revocation of a detention, payment, provision and release procedures for a security or assurance, required documents and other matters to be followed as prescribed in Articles 72 to 74 shall be prescribed by the Competent Authority coordinating with the Ministry of Finance. The regulations governing the procedures, the required documents, and other related matters as to Customs' implementing measures for protecting rights of trademarks, the proprietor's request for inspection of detained articles, for related data of the infringing articles and for samples of suspected articles as prescribed in Articles 75 to 77 shall be prescribed by the Ministry of Finance.
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Article 79	Formation of specialized tribunal A court may form specialized tribunal(s) or assign specific staff members to take charge of trademark litigation cases.
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Chapter III Certification Mark, Collective Mark and Collective Trademark

Article 80	Definitions of certification mark and geographical certification mark A certification mark is a sign that serves to certify a particular quality, accuracy, material, mode of manufacture, place of origin or other matters of another person's goods or services by the proprietor of the certification mark and distinguish the goods or services from those that are not certified. Where the certification mark referred to in the preceding paragraph serves to certify a place of origin, the goods or
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services from that geographical region shall have a given quality, reputation or other characteristic. An applicant may file an application for registration of a sign which contains such geographical name or is capable of indicating such geographical region as a geographical certification mark.

The Competent Authority shall coordinate with the central government authorities in charge of end enterprises in order to provide guidance and grants to industries that are in difficulties, industries that are on the verge of being in difficulties and traditional industries, to help them raise their productivity and the quality of their products; and to help them establish industry-specific certification marks to certify their products as made in Taiwan.

The regulations governing the identification, provision of guidance, objects and standards and duration of provision of grants, and other matters to be followed shall be prescribed by the Competent Authority in consultation with each central government authority in charge of end enterprises. If necessary, fees charged in connection with the certification mark may be waived.

Article 81

Applicant of certification mark

Only a juridical person, a group or a government agency which is competent to certify another person's goods or services shall be eligible to be an applicant of an application for registration of a certification mark.

An applicant referred to in the preceding paragraph who carries on a business of goods or services of the kind certified shall not file an application for registration of a certification mark.

Article 82

Requirements of application for registration of certification mark

An applicant of an application for registration of a certification mark shall file documents of proof of its competence to certify another person's goods or services, regulations governing the use of the certification mark, and a declaration that it does not carry on a business involving manufacture and marketing of goods or provision of services of the kind certified.

If there is any doubt about the representativeness of the applicant of an application for registration of a geographical certification mark, the Registrar Office may consult and seek advice from the central government authorities in charge of business related to such goods or services.

A foreign juridical person, group or government agency, who files an application for registration of a geographical certification mark, shall file documents of proof of such geographical certification mark being protected in the name and country of origin of such applicant.

The regulations governing the use of the certification mark referred to in Paragraph 1 shall specify the following:

- (1) the characteristics to be certified by the certification mark;
- (2) the conditions on the use of the certification mark;
- (3) the methods of managing and supervising the use of the certification mark; and
- (4) the procedures for applying to use the certification mark and resolving disputes thereof.

The Registrar Office shall publish the registration of the certification mark along with regulations governing the use of such mark; any amendment of such regulations after registration is not effective unless the amended regulations are accepted and published by the Registrar Office.

Article 83	Use of certification mark “Use of a certification mark” means the use of such mark by any person who is allowed by the proprietor of such mark in accordance with the conditions prescribed in the regulations governing the use of such mark.
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Article 84	Special provisions for geographical certification mark Subparagraph 1 of Paragraph 1 and Paragraph 3 of Article 29 shall not apply to the geographical name in a geographical certification mark. A registered geographical certification mark shall not entitle the proprietor to prohibit a third party from indicating place of origin in relation to his/her own goods or services, in accordance with honest practices in
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industrial or commercial matters.

Article 85 Definition of collective mark
A collective mark is a sign that serves to identify the membership of members in an association, society or any other group which is a juridical person and distinguish such members from those who are not members.

Article 86 Requirements of application for registration of collective mark
An application for registration of a collective mark shall be made to the Registrar Office by submitting an application containing relevant matters and filing the regulations governing the use of the collective mark.
The regulations governing the use of the collective mark referred to in Paragraph 1 shall specify the following:
(1) the qualifications of the members,
(2) the conditions on the use of the collective mark;
(3) the methods of managing and supervising the use of the collective mark; and
(4) the provisions against any violation of the regulations.

Article 87 Use of collective mark
“Use of a collective mark” means the use of such mark by any member to identify his/her membership in a group in accordance with the conditions prescribed in the regulations governing the use of such mark.

Article 88 Definition of collective trademark and geographical collective trademark
A collective trademark is a sign that serves to indicate goods or services of a member in an association, society or any other group which is a juridical person and distinguish goods or services of such member from those of others who are not members.
Where the collective trademark referred to in the preceding paragraph serves to indicate a specific place of origin of goods or services of a member, such goods or services from that geographical region shall have a given quality, reputation or other characteristic. An applicant may file an application for registration of a sign which contains such geographical name or is capable of

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indicating such geographical region as a geographical collective trademark.

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- Article 89 Requirements of application for registration of collective trademark
- An application for registration of a collective trademark shall be made to the Registrar Office by submitting an application designating goods or services and filing the regulations governing the use of the collective trademark. The regulations governing the use of the collective trademark referred to in Paragraph 1 shall specify the following:
- (1) the qualifications of the members,
 - (2) the conditions on the use of the collective trademark;
 - (3) the methods of managing and supervising the use of the collective trademark; and
 - (4) the provisions against any violation of the regulations.
- In addition to the matters which shall be specified referred to in the preceding paragraph, the regulations governing the use of the geographical collective trademark shall also specify that any person from the corresponding geographical region whose goods or services and qualifications comply with the conditions contained in such regulations may be allowed to become a member of the group by the proprietor of the geographical collective trademark.
- The Registrar Office shall publish the registration of the collective trademark along with regulations governing the use of such mark; any amendment of such regulations after registration is not effective unless the amended regulations are accepted and published by the Registrar Office.
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- Article 90 Use of collective trademark
- “Use of a collective trademark” means the use of such mark by the group or any of its members in accordance with the conditions prescribed in the regulations governing the use of such mark.
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- Article 91 Provisions applied mutatis mutandis to geographical collective trademark
- Paragraph 2 and Paragraph 3 of Article 82 and Article 84
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shall apply mutatis mutandis to geographical collective trademarks.

Article 92 Limitation of transfer, license and pledge
The right of a certification mark, collective mark or collective trademark shall not be transferred, licensed, or be the subject of a pledge, unless such transfer or license is unlikely to damage the interests of consumers or contravene fair competition and has been accepted by the Registrar Office.

Article 93 Special provisions for grounds for revocation
The Registrar Office may, upon an application by any person or ex officio, revoke the registration of a certification mark, collective mark or collective trademark if:

- (1) the certification mark is used by the proprietor of such mark as a trademark;
- (2) the proprietor of the certification mark carries on a business of goods or services of the kind certified;
- (3) the proprietor of the certification mark is no longer competent to certify another person's goods or services to which the registration certification mark is designated;
- (4) the proprietor of the certification mark discriminates against those who apply for certification;
- (5) the proprietor of such trademark or mark transfers, licenses, or creates a pledge which falls under the preceding article;
- (6) the proprietor of such trademark or mark does not manage or supervise the use pursuant to the regulations governing the use; or
- (7) the proprietor of such trademark or mark uses such trademark or mark improperly that is likely to cause damage to others or the public.

The revocation shall also apply in the case where the proprietor of the registered certification mark, collective mark or collective trademark who, knowingly or with reasonable grounds to know, shows no objection to the conduct as prescribed in the preceding paragraph by a licensee.

Article 94 Provisions applied mutatis mutandis to certification mark,

collective mark and collective trademark
Unless otherwise prescribed in this Chapter, the provisions of this Act in relation to a trademark shall apply mutatis mutandis to a certification mark, collective mark or collective trademark.

Chapter IV Penal Provisions

Article 95 **Penalty for trademark or collective trademark infringement**
Any person who commits any of the following acts, in the course of trade and without the consent of the proprietor of a registered trademark or collective trademark, shall be liable to imprisonment for a period not exceeding three years and/or a fine not exceeding NT\$200,000:

- (1) using a trademark which is identical with the registered trademark or collective trademark in relation to goods or services which are identical with those for which it is registered;
- (2) using a trademark which is identical with the registered trademark or collective trademark and used in relation to goods or services similar to those for which the registered trademark or collective trademark is designated, and hence there exists a likelihood of confusion on relevant consumers; or
- (3) using a trademark which is similar to the registered trademark or collective trademark and used in relation to goods or services identical with or similar to those for which the registered trademark or collective trademark is designated, and hence there exists a likelihood of confusion on relevant consumers.

Article 96 **Penalty for certification mark infringement**
Any person who, in the course of trade and without the consent of the proprietor of a registered certification mark, uses a mark which is identical with or similar to the registered certification mark and used in relation to goods or services identical with or similar to those for which the registered certification mark is designated, and hence is likely to mislead relevant consumers shall be liable to imprisonment for a period not exceeding three years and/or a fine not exceeding NT\$200,000.

Penalties referred to in the preceding paragraph shall also

apply to any person who sells or, due to an intent to sell, manufactures, possesses, displays labels, packaging, containers, or other articles to which a sign identical with or similar to another person's registered certification mark is applied, knowing that such articles would likely infringe rights of such certification mark as prescribed in the preceding paragraph.

Article 97 Penalty for sale or intent of sale of infringing article
Any person who knowingly sells or, due to an intent to sell, possesses, displays, exports, or imports another person's goods referred to in the preceding two articles shall be liable to imprisonment for a period not exceeding one years and/or a fine not exceeding NT\$50,000; same penalties shall also apply to acts performed through electronic media or on the Internet.

Article 98 Independent confiscation
Any article or document that constitutes infringement of rights in trademark, certification mark, or collective trademark shall be confiscated, regardless of whether such article or document belongs to the offender.

Article 99 Right to sue of group other than juridical person
An unrecognized foreign juridical person or group may file a complaint, initiate a private prosecution, or institute a civil suit in respect of matters governed by this Act. Same rights shall also be entitled by a domestic group which is not a juridical person and has acquired rights to a certification mark.

Chapter V Supplementary Provisions

Article 100 Transitional provision for service mark
A service mark which was already registered prior to the enforcement of the articles of this Act amended on April 29, 2003 shall be deemed a trademark from the date of enforcement.

Article 101 Transitional provision for abolishment of associated registration system
An associated trademark, associated service mark, associated collective mark or associated certification mark which was already registered prior to the enforcement of

the articles of this Act amended on April 29, 2003 shall be deemed an independent registered trademark or mark from the date of enforcement; the period of right in such trademark or mark shall be the same as which originally granted.

Article 102 Transitional provision for abolishment of defensive registration system

With respect to a defensive trademark, defensive service mark, defensive collective mark or defensive certification mark which is already registered before the enforcement of the articles of this Act amended on April 29, 2003, the provisions in effect at the time of publication of registration of the said trademark or mark shall govern; rights of such trademark or mark shall be extinguished unless the proprietor of such trademark or mark applies for changing such trademark or mark into an independent one.

Article 103 Special provision for three-year period of non-use

With respect to the trademark or mark which has been changed into an independent one pursuant to the preceding article, the three-year period as prescribed in Subparagraph 2 of Paragraph 1 of Article 63 shall commence from the date of change.

Article 104 Trademark fees

Any person who files an application for registration, renewal, entry of change, opposition, invalidation, revocation and any other proceedings under this Act shall pay the required fees of filing, registration, renewal, entry of change, opposition, invalidation and revocation. Standards of Trademark Fees referred to in the preceding paragraph shall be prescribed by the Competent Authority.

Article 105 Transitional provision for abolishment of paying registration fees by two installments

For those who chose to pay registration fees by two installments and already paid the first installment prior to the enforcement of the articles of this Act amended on May 31, 2011, the second installment shall be paid pursuant to the provisions in effect before the amendment.

Article 106 Transitional provisions for opposition and invalidation
Registration of a trademark, against which an application for opposition or invalidation had been admitted but the disposition thereof had not been rendered prior to the enforcement of the articles of this Act amended on May 31, 2011, shall be cancelled only if such registration falls under the provisions of cancellation in effect both at the time of registration and after the enforcement of the amendment to this Act; the proceedings thereof shall follow the provisions in effect after the said enforcement. However, proceedings which had legally commenced prior to the said enforcement shall not be affected.
Paragraph 2 and 3 of Article 57 shall not apply to an application for invalidation which had been admitted but the disposition thereof had not been rendered prior to the enforcement of the articles of this Act amended on May 31, 2011.
A trademark, certification mark, or collective mark, which was registered prior to the enforcement of the articles of this Act amended on May 31, 2011 and against which an application for opposition or invalidation was filed or submitted in a proposal after the said enforcement, shall be cancelled only if such trademark or mark falls under provisions of cancellation in effect both at the time of registration and after the said enforcement.

Article 107 Transitional provisions for revocation
An application for revocation, of which the disposition had not been rendered prior to the enforcement of the articles of this Act amended on May 31, 2011, shall be processed pursuant to the provisions in effect after the said enforcement. However, proceedings that had legally commenced prior to the said enforcement shall not be affected.
Paragraph 2 of Article 57 applicable mutatis mutandis to Paragraph 2 of Article 67 shall not apply to an application for revocation which had been admitted but the disposition thereof had not been rendered prior to the enforcement of the articles of this Act amended on May 31, 2011.

Article 108 Special provision for date of filing

In an application filed prior to the enforcement of the articles of this Act amended on May 31, 2011 to register a motion, hologram, or any combination thereof as a trademark, the date of the said enforcement shall be deemed the filing date of such application.

- Article 109 Special provisions for date of priority
In an application filed to register a motion, hologram, or any combination thereof as a trademark with a priority claim, if the date of filing of the first such application in a country which has reciprocal recognition of priority rights with the ROC or with a member of the WTO was prior to the enforcement of the articles of this Act amended on May 31, 2011, the date of the said enforcement shall be deemed the priority date of such application.
In an application filed with a claim of exhibition priority, if the date of the first display of goods or services under the trademark applied for, at an international exhibition which was held or officially recognized by the Government of the ROC, was prior to the enforcement of the articles of this Act amended on May 31, 2011, the date of the said enforcement shall be deemed the date of exhibition priority of such application.
- Article 110 Enforcement Rules
The Enforcement Rules of this Act shall be prescribed by the competent authority.
- Article 111 Date of enforcement
The date of enforcement of this Act shall be decided by the Executive Yuan.

Nguồn:



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Tổng hợp ngày 20 tháng 10 năm 2014