

## **Interpretation by the Supreme People's Court of the Issues Relating to Jurisdiction over and Scope of Application of Law to the Hearing of Trademark Cases**

(Adopted at the 1203rd Meeting of the Judicial Committee of the Supreme People's Court on 25 December 2001 and entering into force on 21 January 2002)

The Decision by the Standing Committee of the National People's Congress on the Amendment of the Trademark Law of the People's Republic of China (hereinafter referred to as the Decision on the Amendment of the Trademark Law) was adopted at the 24th Meeting of the Standing Committee of the Ninth National People's Congress, and went into force on 1 December 2001.

This Interpretation of the Issues Relating to the Jurisdiction over and Scope of Application of Law to the Hearing of Trademark Cases is hereby made in accordance with the provisions of the Trademark Law of the People's Republic of China (hereinafter referred to as the Trademark Law), the Civil Procedure Law of the People's Republic of China and the Administrative Procedure Law of the People's Republic of China (hereinafter referred to as the Administrative Procedure Law) with a view to duly hearing and judging trademark cases:

**Article 1** The People's Court accepts following trademark cases:

1. Cases of dissatisfaction with reexamination decisions or adjudications made by the Trademark Review and Adjudication Board of the Administrative Department for Industry and Commerce under the State Council (TRAB);
2. Cases of dissatisfaction with specific administrative actions taken by the Administrative Department for Industry and Commerce in respect of trademarks;
3. Cases of disputes over attribution of exclusive right to use trademarks;
4. Cases of disputes arising from infringement of the exclusive right to use trademarks;
5. Cases of contractual disputes over assignment of the exclusive right to use trademarks;
6. Cases of contractual disputes over trademark licenses;
7. Cases of application for pre-trial cessation of infringement of the exclusive right to use trademarks;
8. Cases of application for pre-trial property preservation;
9. Cases of application for pre-trial evidence preservation;
10. Other trademark cases.

**Article 2** The first-instance hearing of cases in Article 1 (1) of this Interpretation is under the jurisdiction of the intermediate people's court designated by the Beijing Municipal Higher People's Court within its region of

jurisdiction in accordance with the authorization by the Supreme People's Court.

The jurisdiction over the first-instance hearing of cases in Article 1 (2) of this Interpretation is determined according to the relevant provisions of the Administrative Procedure Law.

The first-instance trademark cases are under the jurisdiction of an Intermediate People's Court or a court above.

With the approval of the Supreme People's Court, the higher people's courts may designate, according to the practical situation in the region under their respective jurisdiction, one or two grass-root People's Court of relatively large cities to hear civil cases of trademark disputes for first instance.

**Article 3** Where a trademark registrant or an interested party files with the administrative department for industry and commerce a request for handling an infringement of the exclusive right to use the trademark and institutes proceedings in the People's Court against an infringement of the exclusive right to use trademark and for compensation for damages, the People's Court shall accept the case.

**Article 4** Where an interested party institutes proceedings in the People's Court out of dissatisfaction with a reexamination decision or adjudication made by TRAB after the entry into force of the Decision of the Amendment of the Trademark Law in respect of a case accepted thereby before the entry into force of the Decision of the Amendment of the Trademark Law, the People's Court shall accept the case.

**Article 5** Except otherwise provided for in this Interpretation, the relevant provisions of the newly revised Trademark Law apply in the examination of cases of administrative proceedings instituted by interested parties out of dissatisfaction with reexamination decisions or adjudications made by TRAB after the entry into force of the Decision of the Amendment of the Trademark Law in respect of the circumstances under Articles 4, 5, 8, 9, paragraph one, 10, paragraph one (2), (3), and (4), 10, paragraph two, 11,12, 13, 15, 16, 24, 25 and 31 of the revised Trademark Law, which arose before the entry into force of the Decision of the Amendment of the Trademark Law; cases falling into other circumstances shall be examined according to the relevant provisions of the former Trademark Law.

**Article 6** Where an interested party institutes proceedings in the People's Court out of dissatisfaction with the adjudication by TRAB in respect of a case of dispute over a trademark which had been registered for a year or for a longer period of time before the entry into force of the Decision on the Amendment of the Trademark Law, the case is handled by applying the provision of Article 27, paragraph two, of the former Trademark Law set forth in respect of the time limit for filing the application; where a trademark had not been registered for a year or a longer period of time before the entry into force of the Decision on the Amendment of the Trademark Law, the case is handled by applying the provisions of Article 41, paragraphs two and three, of the revised Trademark Law set forth in respect of the time limit for filing the application.

**Article 7** Where in respect of an infringement of the exclusive right to use trademark taking place before the entry into force of the Decision on the Amendment of the Trademark Law, a trademark registrant or an interested party files an application with the People's Court for ordering cessation of the infringing act or for taking the measure of evidence preservation before instituting proceedings after the entry into force of the Decision on the Amendment of the Trademark Law, the provisions of Articles 57 and 58 of the revised Trademark Law shall apply.

**Article 8** Where the People's Court had not rendered any effective judgment at the time of the entry into force of the Decision on the Amendment of the trademark Law in respect of the cases of proceedings instituted against infringements of the exclusive right to use trademarks taking place before the entry into force of the Decision on the Amendment of the Trademark Law, the cases shall be handled with reference to the provision of Article 56 of the revised Trademark Law.

**Article 9** Except otherwise provided for in this Interpretation, the provisions of the former Trademark Law apply to civil cases of trademark disputes involving civil acts taking place before the entry into force of the Decision on the Amendment of the Trademark Law and accepted by the People's Court; where civil cases arising after the entering into force of the Decision are involved, the provisions of the revised Trademark Law shall apply; the provisions of the former and revised Trademark Laws apply respectively to civil acts which took place before and continued after the entry into force of the Decision on the Amendment of the Trademark Law.

**Article 10** Where cases of disputes arising from infringements of the exclusive right to use trademarks accepted by the People's Court are handled by the administrative department for industry and commerce, the People's Court shall conduct the hearing, all the same, as to the facts involved in the civil disputes between interested parties.