

Policy for the Implementation of International Registration of Marks under Madrid Agreement

(Issued by the State Administration for Industry and Commerce on 17 April 2003)

Article 1 This policy is hereby formulated in accordance with the provision of Article 12 of the Implementing Regulations of the Trademark Law of the People's Republic of China (hereinafter referred to as the Implementing Regulations)

The international registration of marks provided for in Article 12 of the Implementing Regulations refers to international registration of marks under the Madrid Agreement Concerning the International Registration of Marks (hereinafter referred to as the Madrid Agreement), the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (hereinafter referred to as the Madrid Protocol) and the Common Regulations under the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to that Agreement (hereinafter referred to as the Common Regulations).

Article 2 This Policy shall apply to applications for international registration of marks with China being the country of origin, applications designating territorial extension to China and other relevant applications.

Attendance to registration of trademarks in a foreign country through a route rather than the Madrid System shall fall outside the scope of regulation by this Policy. The applicant may appoint a trademark agency, or entrust a foreign representative or a law firm or its branch in a foreign country to attend to the matter.

Article 3 Any party applying for international registration of a mark with China being the country of origin shall have a real and effective place of industrial or commercial operation in China, or have residence in China, or be a Chinese national.

Article 4 An applicant for international registration of a mark having the qualification as provided for in Article 3 of this Policy whose trademark has been registered with the Trademark Office of the Administrative Department for Industry and Commerce under the State Council (hereinafter referred to as the Trademark Office) may apply for international registration of said mark under the Madrid Agreement.

An applicant for international registration of a mark having the qualification as provided for in Article 3 of this Policy whose trademark has been registered with the Trademark Office or who has filed an application for the registration of said mark may apply for international registration of said mark under the Madrid Agreement.

Article 5 Any party applying for international registration of a mark shall attend the matter through the Trademark Office.

An applicant or the trademark agency appointed thereby may directly file an application at, or post the application to, the Trademark Office.

Article 6 Any party filing application in respect of matters, such as subsequent designation, abandonment and cancellation of the international registration of a mark

under the Madrid Agreement shall attend the matter through the Trademark Office. Any party filing application in respect of such matters as assignment, deletion, change of the name and/or address of the applicant, change of the name and/or address of an agency or renewal of international registration of the mark under the Madrid Agreement may attend the matter through the Trademark Office or directly at the International Bureau of the World Intellectual Property Office (hereinafter referred to as the International Bureau).

Any party filing application in respect of subsequent designation, assignment, abandonment and cancellation of the international registration of a mark under the Madrid Protocol, change of the name and/or address of the applicant, change of the name and/or address of the agency or renewal of the international registration of the mark under the Madrid Agreement may attend the matter through the Trademark Office or directly at the International Bureau of the International Bureau.

Attending the matter through the Trademark Office, the applicant or the trademark agency appointed thereby may directly file an application at, or post the application to, the Trademark Office.

Attending the matter through the International Bureau, the applicant or the trademark agency appointed thereby may file the application with, or post the application to, the International Bureau.

Article 7 Anyone applying for international registration of a mark or attend other relevant matters through the Trademark Office may fill out in English or French the forms prepared by the International Bureau, or fill out the Chinese forms prepared by the Trademark Office, but it or he shall pay the Trademark Office the translation fee.

In addition to the fees provided for in the Common Regulations, anyone applying for international registration of a mark or attend other relevant matters shall pay the Trademark Office the procedural fee.

Article 8 If the applicant for international registration of a mark is a natural person, he shall indicate his Chinese name. If the applicant is a corporate person or any other organisation, it shall indicate its Chinese name in full.

If the natural person, corporate person or any other organisation has his or its a name of equivalent translation in a foreign language, he or it shall indicate the name in the foreign language. If he or it does not have a name in a foreign language, he or it shall indicate his or its name in the Chinese phonetic alphabet.

Article 9 An applicant shall indicate his or its name in full in the application for international registration of a mark (including the address and postal code), telephone number and facsimile number.

Article 10 An application for international registration of a mark may designate a class of goods or service, or two or more classes of goods or service.

Article 11 Applying for international registration of a mark, the applicant shall

furnish:

(i) a copy of the Certificate of Trademark Registration in China or a copy of the Notification on the Acceptance of Application for Trademark Registration issued by the Trademark Office;

(ii) a Certificate of Priority if priority is claimed;

(iii) a Certificate of Qualification of the Applicant, such as a copy of Business License, a copy of Certification of Residence, and a copy the Identification Card;

(iv) a Power of Attorney if an agency is appointed; and

(v) two copies of the reproduction of the mark, with the size not more than 80mm×80mm or not less than 20mm×20mm.

Article 12 The date on which the Trademark Office receives an application for international registration of a mark shall be the filing date.

Any application for international registration of a mark which has not been filled as prescribed shall be turned back and the filing date thereof not retained.

Where an application has met the substantial formal requirements, but amendments are required, the Trademark Office shall notify the applicant or the agency thereof to make the amendments within fifteen days from the date of receipt of the notification. The date on which the Trademark Office posts an interested party the Notification of Amendment shall be the date indicated by the postmark on which the interested party receives the Notification of Amendment. Where the date of posting indicated by the postmark is illegible or where there is no postmark, or it is not returned by the Post Office, the document shall be deemed to have been delivered to the interested party on the fifteenth day from the date of posting the document. Failure to make amendments shall be deemed abandonment of the application, and the Trademark Office shall notify the applicant in writing.

Where fees are required of the application for international registration of a mark or any other application attended to through the Trademark Office, payment of the relevant fees shall be made to the Trademark Office within fifteen days from the date of receipt of the notification from the Trademark Office on the payment of the fees. The date on which the Trademark Office posts an interested party the notification of on the payment of the fees shall be the date indicated by the postmark on which the interested party receives the notification. Where the date of posting indicated by the postmark is illegible or where there is no postmark, or it is not returned by the Post Office, the document shall be deemed to have been delivered to the interested party on the fifteenth day from the date of posting the document. Failure to make the payment shall be deemed abandonment of the application, and the Trademark Office shall notify the applicant in writing.

Article 13 Where the Trademark Office notifies the International Bureau to reject an application requesting for territorial extension to China, the Trademark Office will no

longer conform to International Bureau said rejection.

Article 14 Within three months from the first date of the month following the publication by the World Intellectual Property Organisation of the International Mark Gazette, any person may raise opposition with the Trademark Office to an application requesting for territorial extension to China published in said Gazette.

An application for opposition may relate to a class of goods or service, or two or more classes of goods or service..

If an opponent withdraws his or its application for opposition, the Trademark Office shall terminate the opposition proceeding and notify the interested party in writing.

Article 15 An applicant requesting for territorial extension of a collective mark or certification mark to China shall submit, through a trademark agency and according to the relevant provisions, to the Trademark Office the certificate of the qualification of the subject, the rules for the administration of the use of the mark and any other certification document within three months from the date of entry in the International Register of the International Bureau of the World Intellectual Property Organisation.

If the certificate of the qualification of the subject and the rules for the administration of the use of the mark and any other certification document are not submitted within said three months, the Trademark Office shall reject the application requesting for territorial extension.

Article 16 Where an assignor fails to apply, according to law, for simultaneous assignment, the Trademark Office shall notify the applicant for international registration of a mark to rectify the situation within thirty days from the date of receipt of the notification; if the situation is not rectified at the expiration of the time limit, the Trademark Office shall decide that said assignment is not valid in China, and declare to the International Bureau to this effect. Any interested party who is not satisfied with the declaration by the Trademark Office may institute proceedings in the people's court within thirty days from the date of receipt of the declaration by the Trademark Office. Where the proceedings are not instituted at the expiration of the time limit, the decision of the Trademark Office shall come into effect, and the date for the decision to come into effect is the date on which the decision is made.

If any deletion and/or reduction do not comply with the requirement on the classification of goods or services, the Trademark Office shall decide that the deletion and/or reduction shall not valid in China, and declare to the International Bureau to this effect. Any interested party who is not satisfied with the declaration by the Trademark Office may institute proceedings in the people's court within thirty days from the date of receipt of the declaration by the Trademark Office. Where the proceedings are not instituted at the expiration of the time limit, the decision of the Trademark Office shall come into effect, and the date for the decision to come into effect is the date on which the decision is made.

Article 17 If anyone licenses another person to use his or its trademark of international registration in the territory of China, he or it shall attend the matter in

accordance with the Trademark Law and the Implementing Regulations thereof.

Article 18 Where an applicant requesting for territorial extension to China substitute his or its trademark of international registration for a trademark registered in China, said international registration shall not affect the right of the trademark registration obtained in China.

Anyone who request for substitution of the international registration entered in the Trademark Registration Register of the Trademark Office for an earlier national registration shall do so through a trademark agency and pay the fees as required.

Article 19 Where a trademark of international registration under protection in China has the circumstances provided for in Article 41 of the Trademark Law, the owner of the trademark or an interested party or any other person may, depending on the circumstances, apply to the Trademark Review and Adjudication Board for adjudication of the dispute or for adjudication on the cancellation of said trademark under protection in China. The application for adjudication shall be filed after the expiration of the time limit for rejection of the trademark in China.

Article 20 Any party who requests for protection of international registration of a mark in China may, from the date of expiration of the time limit for rejection of the mark, appoint a trademark agency to apply to the Trademark Office for issuance of a certificate that his or its mark is under protection in China.

Article 21 This Policy shall enters into effect on 1 June 2003, and the Policy for the Implementation of International Registration of Marks under Madrid Agreement issued by the State Administration for Industry and Commerce on 24 March 1996 shall be simultaneously abrogated.