

Provisions on the Management of Trademarks in Foreign Trade

Full text

ARTICLE 1 For the purpose of safeguarding the business order of foreign trade, preserving the legitimate rights and benefits of trade mark registrant, encouraging enterprises to explore international market by adopting trade mark strategy and promoting the development of foreign trade of the country, the present Regulations are formulated in compliance with "Foreign Trade Law of the People's Republic of China" and "The Trademark Law of the People's Republic of China "(hereinafter referred to as "The Trademark Law").

ARTICLE 2 Ministry of Foreign Trade and Economic Cooperation (hereinafter referred to as "MOFTEC") and the State Administration of Industry and Commerce (hereinafter referred to as "SAIC") are responsible for the administration, supervision and guidance of trademark-related work in foreign trade in the country.

ARTICLE 3 The Foreign Trade and Economic Cooperation Commission (Bureau, Department) (hereinafter referred to as "the Local Department in charge of Foreign Trade and Economic Cooperation"), and Administration of Industry and Commerce (hereinafter referred to as "the Local Department in charge of Industry and Commerce") in every province, autonomous region, municipality and city with independent planning power shall be responsible for the administration, supervision and guidance of trademark-related work in foreign trade in its administrative area.

ARTICLE 4 Every chamber of commerce of importers and exporters shall, in accordance with its Article of Association and relevant laws and regulations, conduct the supervision, co-ordination and provision of advises and service to its member enterprises in respect of using trademarks.

ARTICLE 5 Trademarks stipulated in the present Regulations refer to commodity trademarks, service trademarks and other trademarks approved and registered by the State Administration of Industry and Commerce.

ARTICLE 6 The management and adoption of trademarks in foreign trade shall abide by "The Trademark Law" and the relevant laws and regulations and accept the guidance, supervision and review by concerned departments.

ARTICLE 7 Foreign trade dealers enjoy the right to use and manage its registered trademark entitled by the law which shall not be intervened by any organization or individual.

ARTICLE 8 Foreign trade dealers shall, in accordance with the actual situations in their own organizations, set up offices and amplify the system to manage trademark, handle the work of registering trademark at home and abroad in due course, formulate trademark strategy and establish famous trademark.

ARTICLE 9 Foreign trade dealers can only use the registrant's registered trademark with its permission and through a licensed contract with the owner of the registered trademark.

The owner of the registered trademark shall strictly supervise the execution of the licensed contract for trademarks in order to guarantee the product quality and safeguard the credit of the licensed trademark.

The licensee shall strictly observe the license contract for using the registered trademark and do the will of the licensor regarding the sales markets, customers, prices, quality and advertisement.

The licensee shall not re-license the licensed registered trademark to others.

ARTICLE 10 In the process of doing foreign trade business, when foreign trade dealers use the trademarks designated or provided to use by others, they shall ask the other party to present and check the true and effective trademark certificates of exclusive rights or certificates which offer the licensee to use the trademark and do not exceed the license coverage. The said trademarks shall not be identical or similar to those trademarks registered in the same or similar commodities in our country. The package and decoration of the commodities with the said trademarks shall not be identical and similar to those which had been used in our country by others.

ARTICLE 11 When Sino-foreign equity or contractual joint ventures intend to use the registered trademarks owned by either party, it shall be clearly stipulated in the agreements of the equity or contractual joint ventures. Before the Sino-foreign equity or contractual joint ventures make an application to register the trademarks in the name of the joint ventures, an agreement shall be signed to determine the ownership of the said trademark after the contracts of the joint ventures terminate.

ARTICLE 12 When foreign trade dealers purchase, make the sale in the way of agency, or conduct such marketing activities as advertisement, promotion and exhibition, they shall make sure that the trademarks used in the commodities shall not violate "the Trademark Law" and other relevant regulations. If the trademarks used in the commodities do not belong to the suppliers, foreign trade dealers shall strictly check and examine the trademark license contract held by the suppliers. In case that the suppliers do not have the right to supply the commodities or entrust others to do agency export, the commodities should not be purchased by the foreign trade dealers.

ARTICLE 13 Foreign trade dealers shall refrain from taking the following actions:

- (1) Actions prohibited by "The Trademark Law" and "Implementation Measures of the Trademark law";
- (2) To apply for the registration and use of the trademarks in the name of itself or others in foreign countries, which have been registered by others in foreign countries, which have been registered by other parties in our country;
- (3) To use the package and decoration in its own commodities which are identical to those adopted in the same kinds of commodities of the others, or use the written illustration which is deceiving, false or might lead to miss-guidance;
- (4) The trademarks of the commodities imported by foreign trade dealers forge a violation of the "The Trademark Law" of our country and other relevant laws, regulations, policies or relevant international conventions or treaties;

- (5) To forge damage by registering trademarks for others and cause the disorder in foreign trade.

ARTICLE 14 Foreign trade dealers violating the present Regulations shall bear the following punishment along with the punishment made by the State Administration of Industry and Commerce in accordance with "The Trademark Law" and "Implementation Measures of the Trademark Law":

- (1) To issue a circular of criticism;
- (2) To make administrative punishment or urge the relevant departments in charge to make administrative punishment to the leaders of the violating units and those who are directly responsible for the violation;
- (3) To suspend or deprive the right to participate in import and export commodities fairs of all kinds;
- (4) To deduct export quotas;
- (5) To suspend or deprive the right of the violating units to handle the import and export of commodities under certain category;
- (6) To suspend or deprive the right of the violating units to do foreign trade business.

ARTICLE 15 The Local Department in charge of Foreign Trade and Economic Cooperation and the chambers of commerce of importers and exporters may make the punishment accordingly within its administrative power to those foreign trade dealers who violate the Trademark Laws, regulations and policies.

ARTICLE 16 When the departments in charge investigate into the cases of infringement of trademark rights, the concerned units or individuals shall offer cooperation. If any of the following behaviors is found, a circular of criticism or warning may be issued, and the legal representatives of the enterprises and the individuals directly responsible for the infringement shall receive administrative punishment accordingly. In case the infringement is serious enough to violate the criminal laws, they shall be handed over to the judicial institutions for investigation of the criminal responsibilities.

- (1) To hide the facts and suppress the truth, give false evidence, or hide and destroy evidence;
- (2) To reject the provision of related contracts, documents, materials and other documents in evidence;
- (3) To unreasonably reject the explanation and give the facts within the stipulated period of time and in the stipulated venue on the raised questions and requests;
- (4) To disturb the investigation in other ways.

ARTICLE 17 If staff members of the departments in charge at all levels are found to cover up criminal actions, bend the laws for the benefits of relatives or friends, or neglect their duties, the departments where the staff members work or the departments at a high level shall make administrative punishment thereof. If the circumstances are serious enough to violate the criminal laws, they shall be handed over to judicial institutions for criminal responsibilities.

ARTICLE 18 MOFTEC shall be responsible for the interpretation of the present Regulations.

ARTICLE 19 The present Regulations shall enter into force as of August 1, 1995.

