

Guidelines on Trademark Removal Procedures

Trademark registrants have an obligation to use their registered trademarks. They can proactively remove unused trademarks to further release trademark resources and stimulate market vitality. To assist business entities in understanding and correctly applying the trademark removal procedures, this guideline has been developed.

1. Scope of Application

The term "trademark removal" in this guideline refers to the situation where a trademark registrant voluntarily applies for the removal of all or part of the exclusive rights of a registered trademark according to the provisions of the Trademark Law and its Implementation Regulations, leading to the termination or partial termination of trademark exclusive rights.

2. Specific Requirements and Procedures

(a) Trademarks

The application for trademark removal should target registered and valid trademarks.

Applications should not be made for trademarks that are in opposition, undergoing reexamination for non-registration, litigation, or those that have been rejected or are undergoing reexamination and litigation. Additionally, trademarks that have exceeded their validity period or have become invalid, as well as those frozen or sealed by the people's court, should not be removed. For pledged trademarks, consent from the pledgee is required before removal.

(b) Applicants

The application for trademark removal should be made by the trademark registrant, and the name of the applicant should match that of the trademark registrant in the trademark records.

For applications to remove jointly owned trademarks, the application should be made in the name of the representative, with consent obtained from all co-owners. All co-owners should seal or sign the application (including the cover page and annex) or power of attorney and submit copies of their identification documents.

If the name of the trademark registrant has been changed and approved by the

business registration authority, the application for removal should be made under the new name, accompanied by documents proving the change of name and a new business license. In such cases, parties can apply for removal directly without first applying for a trademark change.

The applicant for trademark removal must possess the appropriate civil rights and capacity. For entities that have lost civil rights and capacity, or for those that have ceased to exist, or for those deceased individuals, their legal guardian, successor, or heirs can apply for trademark removal. In these cases, the application should still be made in the name of the original trademark registrant, but if the signature or seal cannot be provided for objective reasons, relevant explanations and proof materials can be submitted.

(c) Goods or Services

The application for trademark removal should target the goods or services approved for use under the registered valid trademark. The categories and items of goods or services for which removal is requested should be consistent with those recorded in the trademark register. The application for removal can be made for all goods or services approved for use under the valid registered trademark, or it can target partial goods or services.

(d) Trademarks Removal Involving Stakeholders

Successful removal will lead to the termination or partial termination of trademark exclusive rights. Therefore, for involving stakeholders such as assignees of trademark transfer applications, pledgees, licensees, or parties involved in judicial seizure cases, a written document of consent from the stakeholders to the removal is generally required.

When applying for removal or during the examination process of the removal application, the applicant can voluntarily or as required submit relevant proof documents regarding the above situations.

(e) Application Methods and Requirements

Applications for trademark removal can be submitted online through the trademark online service system or handled offline at designated locations. Applicants must upload or submit the "Trademark Removal Application Form," original "Trademark Registration Certificate" (for electronic applications, original "Trademark Registration Certificate" may be mailed separately, and reasons should be provided for any original "Trademark Registration Certificate" that cannot be returned/mailed), copies of the applicant's identification documents, and written statements consenting to the removal of the registered trademark.

If the application documents are in a foreign language, a Chinese translation should also be provided.

For applications to remove collective trademarks or certification trademarks, written documents of consent from all stakeholders must be submitted. In cases of geographic indication collective trademarks/certification trademarks, the approval from local government or competent authorities for the removal of the geographic indication application must also be submitted.

(f) Effects of Trademark Removal

For trademarks approved for removal after examination, written notification will be served to the applicant, and the removal will be published on the Trademark Gazette. The exclusive rights of registered trademarks or exclusive rights on the removed goods or services will terminate from the date the trademark registration authority receives the removal application. For applications for partial removal, a new “Trademark Registration Certificate” will be reissued.

(g) Withdrawal and Suspension of Removal Applications

If the applicant withdraws the removal application, a written request must be submitted. If it is verified that the removal application has not yet been approved and the withdrawal reason is reasonable, the withdrawal will be granted, and the removal examination will be terminated.

If during the removal examination, a stakeholder raises an objection, affects the review of related cases, or cannot be approved due to assignment recordation or other reasons, the removal examination may be suspended within the relevant timeframe.

3. Correctly Understanding and Applying the Trademark Removal Procedures

As a sign used to identify and distinguish the source of goods or services, a trademark can only allow consumers to access a specific trademark through use and accumulate goodwill based on good business practices. The life of a trademark lies in its use, and the use of a trademark is the fundamental prerequisite for realizing its functions.

(a) Relevant business entities can proactively clear their own unused trademarks

In practice, due to various circumstances such as the operating conditions, business strategies, or changes in main goods and services of business entities,

there may be cases where there is no longer an intention or need to use certain specific registered valid trademarks. These business entities can proactively apply for the removal of related unused trademarks.

Moreover, for entities that have ceased to exist, trademark exclusive rights do not automatically become invalid upon the termination of the business. Relevant business entities should actively manage their trademarks based on specific circumstances, and for unused trademarks, they can proactively apply for removal.

(b) Consequences of Failing to Timely Address Unused Trademarks

According to relevant provisions of China's Trademark Law, if a registered trademark is not used for three consecutive years without justifiable reasons, any entity or individual may apply for its cancellation. Unused trademarks that have not been put to practical use for an extended period may face legal consequences of being canceled at any time.

Typically, trademarks belonging to defunct entities or deceased individuals that have long been unused, without evidence of a successor, will not continue to be used in the market. Consumers will not be able to access these trademarks, and confusion regarding the source of goods or services is unlikely to arise.

(c) Relevant business entities should proactively clear illegal trademarks

According to Articles 44 and 45 of China's Trademark Law, for trademarks that violate relevant provisions or have been registered through deceptive or improper means, relevant entities may request a declaration of invalidation. The National Intellectual Property Administration can also declare the aforementioned improperly registered trademarks invalid ex officio. Furthermore, applicants for malicious trademark registrations may face warnings, fines, and other penalties, which will be publicly recorded in the National Enterprise Credit Information Disclosure System.

Therefore, relevant business entities that are aware of their own registered trademarks in violation of relevant legal provisions should proactively remove those trademarks.