

商标侵权案件违法经营额 计算办法	Measures for Calculating the Illegal Business Turnover in Trademark Infringement Cases
<p>第一条 为了推动商标侵权案件严格规范公正文明执法,维护经营主体合法权益,营造公平竞争的市场环境,根据《中华人民共和国商标法》《中华人民共和国商标法实施条例》等法律法规制定本办法。</p>	<p>Article 1 In order to promote strict, standardized, fair, and civilized law enforcement in trademark infringement cases, safeguard the legitimate rights and interests of business entities, and create a fair competitive market environment, these Measures are formulated in accordance with the <i>Trademark Law of the People's Republic of China</i>, the <i>Implementing Regulations of the Trademark Law of the People's Republic of China</i>, and other relevant laws and regulations.</p>
<p>第二条 商标行政执法部门在处理商标侵权案件过程中,当事人的行为已被认定为商标侵权行为时适用本办法。</p>	<p>Article 2 These Measures apply when a trademark administrative law-enforcement department handling trademark infringement cases determines that the actions of the parties involved constitute trademark infringement.</p>
<p>第三条 违法经营额的计算应当遵循合法、合理、客观、公正原则。</p>	<p>Article 3 The calculation of the illegal business turnover should adhere to the principles of legality, reasonableness, objectivity, and fairness.</p>
<p>第四条 违法经营额是指当事人实施商标侵权行为所涉及的侵权商品价值总额或者因侵权所产生的营业收入。</p> <p>第五条 已销售的侵权商品的价值,按照实际销售的价格计算。</p> <p>尚未销售的侵权商品的价值,按照已查清侵权商品的实际销售价格平均价格计算;实际销售价格无法查清的,按照侵权商品的标价计算。</p> <p>无法查清实际销售价格或者侵权商品没有标价的,按照侵权发生期间被侵权商品的市场中间价格计算。</p> <p>对于已经制造完成但尚未附着侵权注册商标标识的商品,如果有确实、充分证据证明该商品将侵犯他人注册商标专用权的,其价值应当计入违法经营额。</p>	<p>Article 4 The illegal business turnover refers to the total value of the infringing goods involved in the parties' trademark infringement or the business income generated due to the infringement.</p> <p>Article 5 The value of infringing goods that have been sold should be calculated based on the actual sales price.</p> <p>For infringing goods that have not been sold, the value should be based on the actual average sales price of the infringing goods, if available. If the actual average sales price cannot be determined, the listed price of the infringing goods should be used.</p> <p>If the actual sales price cannot be determined, or if the infringing goods are not priced, the market average price of the infringed goods during the period of infringement should be used.</p> <p>For goods that have been manufactured but not yet labeled with the logos infringing registered trademarks, if there is certain and sufficient evidence proving that these goods will infringe on the others' exclusive rights on registered trademarks, their value should be included in the illegal business turnover.</p>

<p>第六条 被侵权产品的市场中间价格按照被侵权人已公布的同种产品指导零售价格确定，没有公布指导零售价格的，按照下列方法确定：</p> <p>（一）市场有多个商家销售同种被侵权产品的，抽样调取其中若干商家的零售价，取其平均值确定市场中间价格；只有一个商家销售的，按该商家的零售价确定市场中间价格；</p> <p>（二）市场没有同种被侵权产品销售的，按照此前市场同种被侵权产品销售的中间价格确定，或者按照市场有销售的与侵权产品在功能、用途、主要用料、设计、配置等方面相同或相似的同类被侵权产品的市场中间价格确定。</p> <p>按照前款规定难以确定市场中间价格的，可以由价格认定机构认定后确定。</p> <p>当事人陈述、商标权利人提供的被侵权产品市场中间价格，经对其他关联证据审查并查证属实后可以作为参考。</p> <p>当事人对被侵权产品市场中间价格计算结果有异议的，应当提供证据证明。</p>	<p>Article 6 The market average price of the infringed products should be determined based on the recommended retail price of the same product published by the right holder. If no recommended retail price is available, the following measures should be used to determine the market average price:</p> <p>(1) If multiple businesses are selling the same infringed product, the retail prices from several businesses should be sampled, and their average value should be used to determine the market average price. If only one business is selling the product, that business's retail price should be used.</p> <p>(2) If no identical infringed products are being sold in the market, the market average price of the same infringed products that had been sold before, or the price of the infringed products of the same type, which are identical with or similar to the infringing products in terms of function, use, primary materials, design, configuration, etc., should be used.</p> <p>If it is difficult to determine the market average price according to the above measures, a price determination organization may be consulted to establish the price.</p> <p>Statements provided by the parties or the trademark right holder regarding the market average price of the infringed product may be used as references after reviewing and confirming them with other related evidence.</p> <p>If the parties have objections to the calculation of the market average price of the infringed product, they must provide evidence to support their claims.</p>
<p>第七条 包工包料的加工承揽经营活动中，使用侵犯注册商标专用权商品的，应当按照侵权商品实际销售价格计算违法经营额；侵权商品未独立计价的，按照其在包工包料加工承揽经营活动中的价值比例计算，无法区分价值比例的，按照被侵权商品的市场中间价格计算违法经营额。</p>	<p>Article 7 In processing and manufacturing activities where registered trademarks are infringed upon, the illegal business turnover should be calculated based on the actual sales price of the infringing goods. If the infringing goods are not separately priced, the value proportion of the infringing goods in the processing and manufacturing activities should be used. If the value proportion cannot be determined, the market average price of the infringed goods should be used.</p>
<p>第八条 免费赠送的商品侵犯他人注册商标专用权的，应当按照赠品的实际购入价格或者制造成本计算违法经营额；赠品无法</p>	<p>Article 8 If free gifts infringe upon others' exclusive rights on registered trademarks, the illegal business turnover should be calculated based on the actual purchase price or manufacturing cost of the gifts. If the</p>

确定实际购入价格或者制造成本的，或者赠品属于非标准商品的，按照标价或者被侵权商品的市场中间价计算违法经营额。	actual purchase price or manufacturing cost of the gift cannot be determined, or if the gift is a non-standard item, the listed price or market average price of the infringed goods should be used.
<p>第九条 翻新后的商品侵犯他人注册商标专用权的，按照侵权商品整体价值计算违法经营额。</p> <p>翻新商品本身不侵犯他人注册商标专用权，仅其零件或者配件侵犯他人注册商标专用权的，按照侵权零件或者配件的价值计算违法经营额。</p>	<p>Article 9 For refurbished goods that infringe upon others' exclusive rights on registered trademarks, the illegal business turnover should be calculated based on the total value of the infringing goods.</p> <p>If only parts or components of the refurbished goods infringe upon others' exclusive rights on registered trademarks while the refurbished goods per se are not infringing, the illegal business turnover should be calculated based on the value of the infringing parts or components.</p>
第十条 属于商标法第五十七条第（四）项规定的侵权行为的，按照侵权标识的实际销售价格计算违法经营额。	<p>Article 10 In cases of infringement as specified in Article 57, Section (4) of the Trademark Law, the illegal business turnover should be calculated based on the actual sales price of the infringing logos.</p> <p>Note: Article 57, Section (4) of the Trademark Law specifies the trademark infringement act of counterfeiting, unauthorized manufacturing or selling the logos of others' registered trademarks.</p>
第十一条 故意为侵犯他人注册商标专用权提供便利条件的，按照帮助侵权获得的收入计算违法经营额；没有收入的，按照没有违法经营额处理。	Article 11 If a party intentionally provides facilitation for the infringement against others' exclusive rights on registered trademarks, the illegal business turnover should be calculated based on the income obtained from assisting the infringement. If no income is obtained, it will be treated as having no illegal business turnover.
第十二条 出租商品侵犯他人注册商标专用权的，按照租赁收入计算违法经营额。	Article 12 In the case of rental of goods infringing upon others' exclusive rights on registered trademarks, the illegal business turnover should be calculated based on the rental income.
第十三条 在广告宣传和他人注册商标专用权、无法查实侵权商品的，按照没有违法经营额处理。	Article 13 If the infringement against others' exclusive rights on registered trademarks involves in advertisement and publicity, and there are no verifiable infringing goods, it will be treated as having no illegal business turnover.
第十四条 商标许可人与被许可人共同侵犯他人注册商标专用权的，依据本办法第五条、第六条的规定计算违法经营额。	Article 14 When both the trademark licensors and the licensees jointly infringe on others' exclusive rights on registered trademarks, the illegal business turnover should be calculated in accordance with Articles 5 and 6 of these Measures.

商标许可人构成帮助被许可人侵犯他人注册商标专用权的，按照许可收入计算违法经营额；商标无偿许可使用的，按照没有违法经营额处理。	If the trademark licensors are found to have assisted the licensees in infringing upon others' exclusive rights on registered trademarks, the illegal business turnover should be calculated based on the licensing income. If the trademarks are licensed free of charge, it will be treated as having no illegal business turnover.
第十五条 根据上述规定均无法查证实际违法经营额的，按照没有违法经营额处理。对于仅能查证部分违法经营额的，按照已查证的违法经营额处理。	Article 15 If the actual illegal business turnover cannot be verified based on the above provisions, it will be treated as having no illegal business turnover. If only part of the illegal business turnover can be verified, it will be treated in accordance of the verified portion.
第十六条 当事人提供充分证据证明通过刷单等虚假销售手段增加的侵权商品销售数额，不计入违法经营额。	Article 16 If the parties provide sufficient evidence to prove that the sales volume of the infringing goods was artificially inflated through such false sales activities as "click farming", such sales amounts should not be included in the illegal business turnover.
第十七条 行刑衔接反向移送案件中，行政机关与公安机关对违法经营额认定不一致的，可以按照行政机关调查情况，依据本办法规定予以认定。	Article 17 In cases involving the reverse referral of cases from criminal organs to administrative organs, if there is a discrepancy in the determination of the illegal business turnover between administrative and public security organs, the determination may be made based on the findings of the administrative organ, in accordance with the provisions of these Measures.
第十八条 本办法由国家知识产权局、国家市场监督管理总局解释。	Article 18 These Measures shall be interpreted by the National Intellectual Property Administration and the State Administration for Market Regulation.
第十九条 本办法自公布之日起施行。	Article 19 These Measures shall come into effect on the date of publication.