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Highlights of 5th Revision of Chinese Trademark Law

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The Chinese Congress recently passed the 5th Revision of the Chinese Trademark Law ("the Revision"), which will take effect as from January 1, 2027. In the Revision, there are some changes important for foreign trademark owners to know and we have summarized the highlights of the Revision with our brief comments below for your easy information.

1. Use of trademarks online is considered valid use under Article 2.3.

2. **Motion mark will become acceptable** under Article 14.

Under Article 14, motion mark is listed as a new element or a new type of non-convention marks, though the door is not yet explicitly open to smell marks.

3. The Revision will strictly forbid the use or registration of signs identical or similar to the Chinese Communist Party's name, banner, emblem or medals or signs related to its important theoretical achievements, or historical events under Article 15.

4. Under Article 21.2, it will become possible for well-known marks not registered in China to enjoy cross-class protection. However, the well-known mark owners shall prove that the targeted mark misleads the public and is likely to harm the interests of the owners.

5. Under Article 36, **the opposition period will be shortened from three months to two months**, which might further expedite the registration process.

6. Under Article 41, it will become **possible to suspend four types of cases**, namely, (1). opposition, (2). appeal against rejection, (3). appeal against disapproval of registration, and (4) invalidation, where the determination of the related prior right or interest depends on the outcome of a pending lawsuit or another pending case being processed by an administrative agency. This will enable the China National Intellectual Property Administration (CNIPA) to put off the examination until the reason for suspension disappears. It will thus be possible to break through the corresponding statutory deadlines to finish the examination.

7. Under Article 54, in cases where "indecent influence" is caused, **the trademark**

enforcing authorities will be empowered to punish or fine the bad-faith filers, particularly those that knowingly file applications in violation of the provisions on prohibited marks, hoard trademarks without intention to use, register marks deceptively or through other unjustifiable means, or deliberately preempt others' prior rights or interests. The filers may be fined by a maximum of CNY100K. However, some of the definitions need to be clarified later on through other regulations or guidelines.

8. Misleading use of registered marks will be ordered to make rectification within a prescribed time limit and fined by the enforcing authorities under Article 56, or the CNIPA may cancel the registration. The examiners who grant approval of such marks is likely to be held liable. As a result, we assume that the rate of rejection based on absolute grounds will increase.
9. Under Article 57.1, the trademark enforcing authorities will be empowered to order the registrants who arbitrarily alter the registered marks or change such items as name or address to make correction within a prescribed period, **or fine the registrants by a maximum of CNY50K**. In serious scenarios, the CNIPA may cancel the registration.

As such, we strongly suggest that the trademark owners who have changed their names or moved their business to new locations immediately record the changes to avoid the penalty or even cancellation of their marks. Even if the CNIPA overlooks this problem, the competitors may also report to the CNIPA.

10. Under Article 57.3, the CNIPA will be authorized to **take its own ex officio action to cancel the registered trademarks** that have grown into generic names or have been in non-use status for three consecutive years. This will help to clear the Chinese Trademark Register, which has been crowded with more than 50 million effectively registered marks, and make room for new marks.

To sum up, during the transitional period before the Revision takes effect, we suggest that the trademark owners take the following steps to make active preparation:

- A. According to actual business needs, file applications for motion marks shortly after the Revision takes effect;
- B. Watch the Trademark Gazette more closely and file oppositions before the new deadlines;
- C. Review the trademark portfolios to check whether there are possibly misleading ones; and
- D. Collect use evidence to prepare for the possibly more frequent non-use cancellations. Such evidence might also support the potential acquired distinctiveness or well-known status.

Before the Revision comes into effect next year, the CNIPA needs to revise or update the corresponding Implementing Regulations and the Trademark Examination Guidelines. We will follow up closely and keep you informed.

We will soon finish translating the newly revised Law into English. If you are interested or have any questions, please do not hesitate to let us know.