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## **Order No. 17 of the State Administration for Market Regulation**

The Rules for Regulating Trademark Registration Applying Conducts have been passed by the State Administration for Market Regulation (SAMR) after discussion at the 13th Administration Session in 2019 and announced, effective as of December 1, 2019.

Xiao Yaqing, Director General  
October 11, 2019

### **The Rules for Regulating Trademark Registration Applying Conducts**

Announced under Order No. 17 of the State Administration for Market Regulation

**Rule 1** In order to regulate trademark registration applying conducts, prevent bad faith trademark applications, maintain the trademark registration administrative order, and protect the public interests, these Rules are made under the Trademark Law of the People's Republic of China (hereinafter referred to as "the Trademark Law") and the Implementing Regulations of the Trademark Law of the People's Republic of China (hereinafter referred to as "the Implementing Regulations").

**Rule 2** Applications for trademark registration shall comply with the Law, Administrative Regulations, and the Ministries' Rules, with actual need of obtaining the exclusive right of trademark.

**Rule 3** An application for trademark registration shall follow the principle of honesty and shall not carry any of the conducts below.

- 1) A bad faith application for trademark registration without the purpose of use under Article 4 of the Trademark Law;
- 2) Reproduction, imitation or translation of another party's well-known trademark under Article 13 of the Trademark Law;
- 3) An agent or representative's application, without authorization of the

- client, for the registration of the client's trademark, or an application for the registration of a trademark which is clearly known to be another party's earlier used trademark in existence through contractual, business or other relationships under Article 15 of the Trademark Law;
- 4) An application harming another person's existing prior rights or an unfair application for an influential trademark in use by another person under Article 32 of the Trademark Law;
  - 5) An application for trademark registration filed in a deceptive or other unfair means; or
  - 6) An application against the principle of honesty and creditability, the public order, or carrying other indecent influence.

**Rule 4** A trademark agency shall follow the principle of honesty and shall not accept the representation where it knows or should know that the client's trademark application carries any of the scenarios below.

- 1) A bad faith application for trademark registration without the purpose of use under Article 4 of the Trademark Law;
- 2) A scenario under Article 15 of the Trademark Law; or
- 3) A scenario under Article 32 of the Trademark Law.

A trademark agency shall not apply for registration of a trademark in respect of goods or services beyond its representative services or disrupt the trademark agency market order in an unfair manner.

**Rule 5** The trademark registration organ shall legally reject an application for trademark registration if the organ finds the application filed in bad faith without the purpose of use against Article 4 of the Trademark Law.

The specific rules shall be separately made by the trademark registration organ under the Trademark Law and the Implementing Regulations.

**Rule 6** Where a provisionally approved trademark is opposed during the publication period for the reasons prescribed under these Rules, the trademark registration organ shall legally make a decision of disapproval where the examination proves the reasons tenable.

Where an appeal is filed against a rejection or disapproval decision, the

trademark registration organ shall legally make a decision of rejection or disapproval where the review proves the violation of these Rules.

**Rule 7** Where a registered trademark is found in violation of the prescribed reasons under these Rules and is requested for invalidation during the statutory time frame, the trademark registration organ shall legally make a decision of invalidation where the review proves the reasons for invalidation tenable.

Where a registered trademark is found by the trademark registration organ in violation of the scenarios prescribed under these Rules, the organ shall declare the registered trademark invalid under Article 44 of the Trademark Law.

**Rule 8** Where the trademark registration organ judges whether or not a trademark application violates Article 4 of the Trademark Law, the elements below shall be considered in a comprehensive manner:

- 1) The number of applications, designated classes, actual transaction of the trademarks of an applicant or the natural persons, legal persons, and other organizations related to the applicant;
- 2) An applicant's industry and business situation;
- 3) An applicant was once ruled in an administrative decision or judicial judgement that the applicant registered a trademark in bad faith or infringed another party's registered trademark;
- 4) An applied-for trademark is identical with or similar to another party's trademark with certain fame;
- 5) An applied-for trademark is identical with or similar to a famous personal or corporate name, an enterprise name abbreviation, or another business sign etc.;
- 6) Any other element that the trademark registration organ regards necessary for consideration.

**Rule 9** Assignment of a trademark shall not influence the trademark registration organ's decision on whether or not the trademark violates Rule 3 of these Rules.

**Rule 10** Where a registered trademark has not been in use for three

consecutive years without a justifiable reason, any entity or individual may apply to the trademark registration organ for cancellation of the registered trademark. The trademark registration organ, after receipt, shall notify the trademark registrant to submit, within two months as of the notification receipt date, evidence proving the use before the cancellation request or explain the justifiable reason for the non-use. Where the time limit expires and no evidence of use is submitted or the evidence is invalid without a justifiable reason, the trademark registration organ shall cancel the registered trademark.

**Rule 11** The trademark registration organ shall publish its decisions made under Rules 5, 6 and 7 of these Rules.

**Rule 12** Where an applicant violates Rule 3 of these Rules by filing a trademark application in bad faith, the Administration for Market Regulation above county level in the applicant's domicile or law violating location shall impose an administrative penalty of warning or fine according to the scenario under Article 68.4 of the Trademark Law. Where illegal income has been made, a fine of triple income and CNY30,000 in maximum may be imposed. Where illegal income has not been made, a fine of CNY10,000 in maximum shall be imposed.

**Rule 13** Where a trademark agency violates Rule 4 of these Rules, the Administration for Market Regulation above county level in the agency's domicile or law violating location shall order rectification within a prescribed time limit, grant a warning and a fine between CNY10,000 and CNY100,000. The directly responsible manager and other directly responsible persons shall be warned and fined in the amount between CNY5,000 and CNY50,000. Criminal liability shall be legally sought where crime is committed. Where the scenario is serious, the intellectual property administrative organ may decide to stop accepting the agency's cases and publish the decision.

**Rule 14** A governmental organ that makes the penalty decision shall legally publish the penalty information through the national enterprise credit publication system.

**Rule 15** Where a trademark agency violates Rule 4 of these Rules, the intellectual property administrative organ shall interview the agency's responsible person about rectification.

**Rule 16** The intellectual property administrative organ and the administrations for market regulation shall actively guide the applicants to legally apply for trademark registration and the trademark agencies to legally practice trademark representation, and regulate the use of a registered trademark in production and business.

The intellectual property administrative organ shall further facilitate trademark applications, optimize the trademark registration process, raise the trademark public service level, and provide convenient services for applicants to directly apply for trademark registration.

**Rule 17** The intellectual property administrative organ shall perfect its internal supervising mechanism to strengthen the supervision and inspection of the national organ's staff in charge of trademark registration in the course of law enforcement and compliance with the disciplines.

Where a staff member of the national organ in charge of trademark registration abuses his right, practices favoritism, illegally process trademark registration matters, accepts property from a concerned party, or seeks to derive improper gains, penalty shall be legally imposed. Criminal liability shall be legally sought where a crime is committed.

**Rule 18** The trademark agent association shall perfect its self-disciplinary rules, enhance the industrial self-discipline, and punish its member who violates its self-disciplinary rules and announce it to the public.

**Rule 19** These Rules shall take effect as of December 1, 2019.

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Notes:

1. The trademark registration organ under the current government refers to the China National IP Administration (CNIPA).
2. The intellectual property administrative organ under the current government refers to the China National IP Administration (CNIPA).
3. This is Haoyu and Xiaoming's non-official translation based on the Chinese original for our clients' easy information. If discrepancy arises, the Chinese original prevails.