

Trademarks Regulations 2003

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Rule 1

These Regulations are formulated pursuant to the provisions of Article 93 of the Trademark Act (hereinafter referred to as "the Act").

Rule 2

Any application filed under the Act or these Regulations shall use the form provided by the Registrar Office in the number of copies prescribed, and shall bear the signature or seal of the applicant. For an application filed by a trademark agent, it may be signed or sealed by the agent only.

Rule 3

With regard to an application for registration of a single color trademark, a three-dimensional trademark, a sound trademark or a collective trademark with a claim of priority right, any priority date that is earlier than November 28, 2003, shall be deemed to be November 28, 2003.

Rule 4

Where an applicant appoints a trademark agent, an original power of attorney shall be submitted, specifying powers delegated to the agent.

The appointment specified under the preceding paragraph may be made in a general basis covering one or multiple existing or future trademark applications, changes, oppositions, invalidation, revocations and other relevant procedures.

After the original of a general power of attorney specified in the preceding paragraph has been submitted to the Registrar Office, a duplicate copy of such power of attorney thereafter may satisfy the requirement for any individual procedure specified under the scope of appointment. However, the Registrar Office, when deems necessary, may notify the applicant to submit supporting documents proving the existence of the appointment relationship.

In submittal of a copy of the power of attorney under the preceding paragraph, a statutory declaration stating its authenticity to the original and the serial number of the case filed with the original power of attorney shall also be provided.

Rule 5

The Registrar Office, when deems necessary, may notify the applicant of a trademark application to submit a certificate of identification or a certificate of incorporation.

Rule 6

The applications and all relevant documents submitted shall be in Chinese. Certificates or other documents written in foreign languages shall be accompanied by a full or excerpted Chinese translation thereof as required.

Rule 7

The filing date of a single color trademark application, a three-dimensional trademark application, a sound trademark application or a collective trademark application filed prior to November 28, 2003, shall be deemed to be November 28, 2003.

Rule 8

In applying for a trademark registration, the applicant shall submit an application accompanied by five duplicate copies of the trademark representation, between 8 centimeters and 5 centimeters in length and width. In the case of a colored trademark, two additional black and white duplicates thereof shall be provided.

Rule 9

In applying for a color trademark registration, the applicant shall submit an application with an indication stating to that effect, and specifying the color(s) along with a relevant description.

The trademark set forth under the preceding paragraph may appear, in dotted lines, the manner, placement or context in which the trademark is actually applied on the designated goods or services.

"Dotted lines" under the preceding paragraph do not belong to part of the color trademark.

Rule 10

In applying for a sound trademark registration, the applicant shall submit an application containing an indication stating to that effect, and the trademark shall be represented by musical score, numerical musical score or a written description. In addition, a CD recording of the sound shall be submitted. In providing the musical score or the numerical musical score, a written description shall also be enclosed.

Rule 11

In applying for a three-dimensional trademark registration, the applicant shall submit an application containing an indication stating to that effect, a drawing of the trademark in three-dimensional form and a description of the trademark.

To present the exact image of the three-dimensional shape of the trademark, the applicant may submit at the same time, a maximum of five additional perspective drawings or samples in different views but with the same scales. The Registrar Office, when deems necessary, may also request the applicant to submit such materials.

If the "three-dimensional shape" specified under the preceding two paragraphs includes some portion for which rights have not been claimed, the portion claimed for rights shall be depicted in solid lines, while the portion not claimed for rights shall be depicted in dotted lines with a disclaimer of the right to exclusive use of that portion.

Rule 12

"A visually perceptible representation" specified in the provisions of paragraph 2 of Article 17 of the Act refers to a representation, using words, devices, symbols, colors, or a combination of them to express a trademark, so that consumers with common knowledge and experience can visually recognize such representation.

Rule 13

In applying for a trademark registration, the applicant shall designate the class(es) of goods or services in the order listed in the Table of Classification of Goods and Services (please see the Schedule for details), and shall specifically list the names of goods or services.

For a trademark registered prior to the amendment to the Table of Classification of Goods and Services, the class of goods or services for which the trademark is designated shall be those as registered. For a trademark that has not been registered, the class of goods or services for which the trademark is designated shall be those as designated at the time of filing.

Rule 14

When an agreement between/among applicants is required under the provisions of Article 18 of the Act, the Registrar Office shall notify all applicants involved to reach such an agreement within a reasonable specified time. In the case where no agreement is reached within the time limit, the Registrar Office shall notify all applicants involved to appear on a designated date and at a designated place to have the matter resolved by drawing lots.

Rule 15

In applying to change the particulars of a trademark application or the particulars of a trademark registration, the applicant shall submit a request with proof of change attached.

Rule 16

The term, "well-known," specified in the Act refers to a mark, which, with sufficient evidence to prove, has been commonly recognized by the relevant enterprises or consumers.

Rule 17

The expression, "the name of a juristic person, entity or other group," specified in Item (16), paragraph 1 of Article 23 of the Act, refers to the specific part thereof.

Rule 18

The applicant of a trademark application, who claims the application of paragraph 4 of Article 23 of the Act, shall submit relevant evidence.

Rule 19

In applying for renewal of the term of trademark rights, the applicant shall submit a request specifying all or part of the goods or services designated for the trademark sought to be renewed.

Rule 20

A request for reduction of the items of the goods or services designated for a trademark application prior to the rejection/approval of the trademark shall not affect the filing date of the trademark application.

Rule 21

In applying for rights assignment arising from a trademark application, the applicant shall submit a request together with the assignment agreement or other documents proving the assignment.

Rule 22

In applying for division of trademark application, the applicant shall submit a request together with a duplicate copy of the request and relevant documents for each divided application .

Rule 23

In applying for division registration after the approval of the trademark application but prior to the publication of the trademark registration, the applicant shall submit a request specifying the designated goods or services for each application after the division, together with a duplicate copy of the request for each divided application.

The Registrar Office shall not proceed with the division specified in the preceding paragraph until the applicant has paid the registration fee and the trademark registration has been published.

Rule 24

In applying for division of trademark rights, the applicant shall submit a request specifying the goods or services designated for each trademark after the division, together a duplicate copy of the request for each divided trademark.

Where division of trademark rights has been approved, the Registrar Office shall issue a trademark registration certificate for each trademark after the division.

Rule 25

Where after the approval of a division of trademark rights has been published but an opposition action is filed against the trademark before the division, the Registrar Office shall direct the opposer to re-designate the trademark to be opposed within a set time limit, to submit documents required for the application and to calculate the required government fees based on the applications after the division. If insufficient payment is made, the remaining amount shall be submitted; if any overpayment of the government fees has been made, the opposer may apply for refund of the extra fees by submitting the required documents.

Rule 26

Where division of a trademark right is approved before the opposition action has been decided, the Registrar Office shall direct the opposer to make a statement within a set time limit, stating which trademark(s) after the division will be the subject of opposition. Failure to make the statement within the time limit would deem that the opposition action is filed against all of the trademarks after the division.

Rule 27

Where, during the proceeding of administrative remedy procedures for a trademark opposition, division of the opposed trademark rights has been approved or the goods or services designated for the opposed trademark have been reduced, the Registrar Office shall notify the authority in charge of the administrative remedies and the opposer of such division or reduction.

The provisions of the preceding paragraph shall apply *mutatis mutandis* in cases where an applicant applies to divide a trademark application or reduce the items of goods or services designated for a trademark application before the disapproval decision of such application is finalized.

Rule 28

The provisions of Rule 25, Rule 26 and paragraph One of Rule 27 shall apply *mutatis mutandis* to invalidation cases and revocation cases.

Rule 29

In applying to record a trademark license, the trademark right holder or a licensee shall submit a request specifying the licensee, the registration number of the trademark to be licensed, the term of license, and the class(es) and names of goods or services to be licensed.

If the license recordation under the preceding paragraph is filed by a licensee, the license agreement or the excerpted license agreement signed or sealed by both parties, or other certificates sufficiently proving the license shall be submitted.

A request for recordation of a trademark sublicense shall enclose documents proving the trademark right holder's consent to the sublicense.

The goods or services covered by the recorded trademark license and the term of license are confined to be within the scope of the trademark rights. If the term of license as agreed exceeds the term of the trademark rights, the last date of the term of license shall fall on the expiration date of the term of the trademark rights. If the term of the trademark rights has been renewed, a request for recordation of the license shall be additionally submitted.

The goods or services covered by the recorded trademark sublicense and the term of sublicense shall not exceed the scope of the goods or services covered by the trademark license and the term of license, respectively.

Rule 30

In applying to record an assignment of trademark rights, the applicant shall submit a request together with the assignment agreement or other documents that prove the assignment.

Rule 31

In applying to record a pledge on trademark rights, the applicant shall submit a request specifying the name of the trademark, the registration number, the amount of liability, and the term of pledge created, together with the following documents based on the item(s) to be recorded:

1. In the case of recording a pledge creation, the pledge agreement and other documents proving the same.
2. In the case of recording the change of a pledge, the certificate of change.
3. In the case of recording the extinguishment of a pledge, the liability discharge certificate or other documents proving that the pledgee agrees to cancel the recordation of the pledge creation.

The term of pledge to be recorded shall be confined to the term of the trademark rights. If the term of pledge as agreed exceeds the term of the trademark rights, the last date of the term of pledge shall fall on the expiration date of the term of the trademark rights. If the term of the trademark rights has been renewed, a request for

recordation of the pledge creation shall be additionally submitted.

Rule 32

If a trademark registration certificate is damaged, destroyed or lost, the trademark right holder shall apply for issuance of a replacement certificate or re-issuance of the certificate by submittal of a written statement indicating the grounds.

When a replacement certificate is issued or a certificate is re-issued pursuant to the preceding paragraph, the original registration certificate shall be nullified by a public notice.

Rule 33

In the case of ipso facto extinguishment of trademark rights under Article 39 of the Act, the date of extinguishment shall be as follows:

1. The date following the expiration date of the term of the trademark rights, if no renewal is made pursuant to the provisions of Article 28; or
2. The time of death, if the trademark right holder dies without an heir.

Rule 34

In requesting for an opposition under Article 40 of the Act, the applicant shall file an opposition request and a duplicate copy thereof, together with the following documents:

1. The opposer's identification certificate; and
2. Two sets of the relevant evidence.

In case the facts and grounds in respect of the opposition are unspecific or incomplete, the Registrar Office may notify the opposer to make corrections within a given time limit.

The opposer may make changes or additions to the facts and grounds as claimed within three months upon the date of publication of the trademark registration.

Rule 35

A trademark right holder, while defending against an opposition pursuant to paragraph 3 of Article 41 of the Act, shall provide the defense in writing and a duplicate copy thereof within the time limit prescribed by the Registrar Office.

The Registrar Office shall deliver such duplicate of the defense under the preceding paragraph to the opposer.

Rule 36

The provisions of paragraphs 1 and 2 of Rule 34 and Rule 35 shall apply mutatis mutandis to a request for invalidation or revocation of another person's trademark registration.

Rule 37

When submitting documentary evidence and articles in relation to a trademark claims retrieval in advance, such retrieval shall be completed within thirty days after the particular case has been concluded.

Rule 38

In applying for a certification mark registration, the applicant shall submit an application specifying the following information:

1. Goods or services to be certified;
2. Contents to be certified by the certification mark;
3. Requirements for labeling the certification mark;
4. Applicant's qualifications or capability to do the certification;
5. Manners governing the use of the certification mark; and
6. A declaration made by the applicant stating that he/she does not engage in the manufacturing and marketing of the goods to be certified or provision of the services to be certified.

Rule 39

In applying to register a collective membership mark or a collective trademark, the applicant shall submit an application together with the certificate of incorporation and the set of articles governing the use of the collective membership mark or collective trademark.

The set of articles governing the use specified in the preceding paragraph shall contain the qualifications of the members and the manners controlling the use of the collective membership mark or collective trademark.

Rule 40

These Regulations relating to trademarks shall apply mutatis mutandis to certification marks, collective membership marks and collective trademarks as the case may be.

Rule 41

These Regulations shall come into force from the date of promulgation.

Table of Classification of Goods and Services

GOODS

Class 1

Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesive substances used in industry

Class 2

Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; coloring matters; mordants; raw natural resins; metals in foil and power form for painters, decorators, printers and artists

Class 3

Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils; cosmetics; hair lotions; dentifrices

Class 4

Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles and wicks for lighting

Class 5

Pharmaceutical and veterinary preparations; sanitary preparations for medical purposes; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides

Class 6

Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores

Class 7

Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements; incubators for eggs

Class 8

Hand tools and implements (hand-operated); cutlery; side arms; razors

Class 9

Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signaling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, and data processing equipment; fire-extinguishing apparatus

Class 10

Surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, artificial eyes, artificial teeth; orthopedic articles; suture materials

Class 11

Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes

Class 12

Vehicles; apparatus for locomotion by land, air or water

Class 13

Firearms; ammunition and projectiles; explosives; fireworks

Class 14

Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewellery, precious stones; horological and chronometric instruments

Class 15

Musical instruments

Class 16

Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); printers' type; printing blocks for relief printing

Class 17

Rubber, gutta-percha, gum, asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, not of metal

Class 18

Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and traveling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery

Class 19

Building materials (non-metallic); non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-metallic transportable buildings; monuments, not of metal

Class 20

Furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics

Class 21

Household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paint brushes), brush-making materials; articles for cleaning purposes; steelwool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes

Class 22

Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials(except of rubber or plastics); raw fibrous materials for textiles

Class 23

Yarns and threads, for textile use

Class 24

Textiles and textile goods, not included in other classes; bed and table covers

Class 25

Clothing, footwear, headgear

Class 26

Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers

Class 27

Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile)

Class 28

Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees

Class 29

Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs, milk and milk products; edible oils and fats

Class 30

Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices, ice

Class 31

Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals; malt

Class 32

Beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages

Class 33

Alcoholic beverages (except beers)

Class 34

Tobacco; smokers' articles; matches

SERVICES

Class 35

Advertising; business management; business administration; office functions

Class 36

Insurance; financial affairs; monetary affairs; real estate affairs

Class 37

Building construction; repair; installation services

Class 38

Communications

Class 39

Transport; packaging and storage of goods; travel arrangement

Class 40

Treatment of materials

Class 41

Education; training; entertainment; sporting and cultural activities

Class 42

Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; legal services

Class 43

Services for providing food and drink; temporary accommodation.

Class 44

Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services

Class 45

Personal and social services rendered by others to meet the needs of individuals; security services for the protection of property and individuals