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Analysis of the Core Amendments in the Draft Amendment to the China Trademark Law

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On December 27, 2025, the Draft Amendment to the China Trademark Law (hereinafter referred to as the “Draft Amendment”) was released for public comment. It is expected to be passed as early as the first half of 2026, with the possibility of being formally implemented within 2026.

Given the significant impact of these amendments on trademark practice, we would like to analyze 7 core amendments in the Draft Amendment below:

1. Opposition Period: Shortened to Two Months
2. Protection of Well-Known Trademarks: Expanding Scope of Cross-Class Protection
3. Suspension of Examination
4. Regulating Improper Use of Registered Trademarks
5. Trademark Use and Cleanup Mechanisms: Ex Officio Cancellation
6. Types of Registrable Trademarks: Explicitly Adding “Motion Marks”
7. Clarifying the Time Point for the Three-Year Non-Use Defense Against Damages: Defined as “Before Filing the Lawsuit”

1. Analysis of Core Amendments

1.1. Opposition Period: Shortened to Two Months

Regarding trademark examination procedures, Article 35 of the Draft Amendment clearly states: “Any person may file an opposition with the trademark administration department of the State Council within **two months from the publication date** of a preliminarily approved trademark application...”

This clause is significantly shorter than the three-month period according to the current Trademark Law. However, from an international comparative perspective, the opposition period in most countries and regions is usually only 1 to 2 months. This adjustment helps align China’s trademark system with common international practices.

Our Comments:

This change will directly reduce the time window for brand owners to evaluate preliminarily approved trademarks, make internal decisions, and prepare opposition materials. **We recommend that brand owners begin re-assessing their trademark monitoring and internal decision-making processes based on a two-month opposition period.**

1.2 Protection of Well-Known Trademarks: Expanding Scope of Cross-Class Protection

Article 20, Paragraph 2 of the Draft Amendment no longer distinguishes whether a well-known trademark is registered in China or not regarding cross-class protection:

“If a trademark applied for registration on goods that are not identical or similar is a reproduction, imitation, or translation of another party’s well-known trademark, which is likely to mislead the public and cause damage to the interests of the holder of the **well-known trademark**, it shall not be registered, and its use shall be prohibited.”

Compared to Article 13, Paragraph 3 of the current Trademark Law (which only provides cross-class protection for “**well-known trademarks registered in China**”), the Draft Amendment takes a more proactive institutional approach. If this Article is ultimately passed, it would provide a stronger basis for cross-class defense for marks that have not been registered in China but have achieved well-known status outside China.

Our Comments:

(1) For rights holders, the Draft Amendment clarifies that cross-class protection for well-known trademarks will be further strengthened. It provides a legal basis for seeking protection of marks that, even if not registered in China, may be recognized as well-known trademarks in other countries. However, well-known status is still determined on a case-by-case and as-needed basis, with a high evidentiary threshold in practice. For core brands, securing trademark registration in China in advance remains the most reliable way to reduce dispute costs and ensure protection.

(2) To combat malicious trademark squatting, it is recommended to **increase the monitoring**

frequency and internal response efficiency for applications in non-core but highly related classes. Furthermore, it is advisable to **establish or enhance an evidence chain** as early as possible to initiate opposition, invalidation, and other procedures when necessary.

(3) This article aims to protect marks that have acquired distinctiveness through actual use and have built a certain level of goodwill. It legally acknowledges goodwill derived from honest business practices, and helps prevent malicious trademark squatting. At the same time, it further regulates the trademark market order and encourages fair and honest commercial conduct among market participants.

1.3 Suspension of Examination

Regarding procedural connections, according to the Article 40 of the Draft Amendment,

“During the examination of trademark oppositions, review of refusal, review of opposition decision, and invalidation cases, if the determination of earlier rights involved must depend on the outcome of another case being tried by a people’s court or handled by an administrative authority, **the trademark administration department should generally suspend the examination until the earlier rights are determined.** When the reason for suspension is no longer present, the examination procedures shall be resumed in a timely manner.”

Our Comments:

This Article provides unified regulations on procedural suspension during trademark examinations, granting the authority for such suspension to the trademark administration department.

This change helps reduce duplicate backup trademark applications and enhances the consistency and predictability of the outcomes.

Furthermore, **in practice, the suspension of trademark review cases has already been implemented.**

However, the article in the Draft Amendment does not specify whether information on the suspension status must be made public. The uncertainty of the suspension status may impose additional costs on parties seeking to understand case progress or make inquiries with the trademark office. If relevant provisions could be added and optimized after careful consideration, it would benefit multiple parties.

1.4 Regulating Improper Use of Registered Trademarks

Article 56, Paragraph 1 of the Draft Amendment clearly stipulates:

“If a trademark registrant... **uses its registered trademark in a manner that misleads the public**, the department responsible for trademark enforcement shall **order it to make corrections** within a specified time limit; if corrections are not made within the time limit, **a fine of not more than RMB 50,000** shall be imposed; if the circumstances are serious, the trademark administration department shall **revoke its registered trademark.**”

Our Comments:

This article directly links the improper use of registered trademarks that constitutes illegal acts with administrative penalties and rights stability. It also broadens consumer protection and emphasizes the principle that registered trademarks should be used in a standardized manner.

1.5 Trademark Use and Cleanup Mechanisms: Ex Officio Cancellation

Article 56, Paragraphs 2 and 3 of the Draft Amendment clarify:

“If a registered trademark becomes the **generic name of the goods**, for which it is approved for use, or if it has **not been used for three consecutive years** without proper reasons, any party may **apply** to the trademark administration department **for the cancellation of the registered trademark**.”

“If a registered trademark falls under the circumstances stipulated in the preceding paragraph, **the trademark administration department may cancel the registered trademark**.”

Our Comments:

This provision provides a clear legal basis for the competent authorities to proactively remove idle or non-distinctive trademarks under specific circumstances.

1.6 Types of Registrable Trademarks: Explicitly Adding “Motion Marks”

Article 14 of the Draft Amendment clearly stipulates:

“Any sign capable of distinguishing the goods of a natural person, legal person, or unincorporated organization, including ‘words, devices, letters, numerals, three-dimensional signs, color combinations, sounds, **motion marks**,’ etc., as well as combinations of the above elements, **can be applied for trademark registration**.”

Our Comments:

By adding “motion marks” to the definition clause, the Draft Amendment provides a clear legal basis for animated or dynamic elements to obtain trademark registration.

However, in both examination and judicial practice, significant controversy can be expected regarding how to determine key elements such as the distinctiveness of motion marks. Therefore, to ensure the smooth operation of this new system, there is an urgent need to refine its specific rules at both the institutional and practical levels.

1.7 Clarifying the Time Point for the Three-Year Non-Use Defense Against Damages: Defined as “Before Filing the Lawsuit”

Regarding the time point for the three-year non-use defense against damages, the current Trademark Law only states **“prior to.”** There has been some controversy in practice over whether

"prior to" refers to "before the infringement act occurred," "before the plaintiff filed the lawsuit," or "before the court judgment." **The Draft Amendment clarifies it as "before filing the lawsuit."**

Our Comments:

Non-use of the registered trademark by the rights holder only exempts the infringer from liability for damages; infringement is still established. The reference point of "before filing the lawsuit" is objectively easier to confirm, which helps unify the adjudication standards and reduce differences in the application of the law.

However, rights holders might first use the trademark shortly before filing the lawsuit and then initiate the action in order to avoid this requirement.

2. Summaries and Recommendations

In summary, the Draft Amendment provides comprehensive regulations guiding legal trademark prosecution and use. And it also offers legal support for effectively combating malicious trademark filings and improper trademark use. It returns to the principle that trademark registration is based on actual needs of use. However, it does not address coexistence agreements, which have received considerable attention in practice.

We recommend that brand owners focus on the following matters:

- **Opposition Period:** Reassess trademark monitoring and internal decision-making processes based on the shortened two-month opposition period;
- **Layout Strategy (Motion Marks/Non-Traditional Marks):** Systematically review non-traditional mark layout strategies, taking motion marks into account;
- **Compliance in the Use of Registered Trademarks (Avoid Misleading the Public):** Conduct compliance reviews on how registered trademarks are presented in actual use, paying special attention to whether such use could be deemed "misleading the public."

We will continue to monitor the legislative progress. Following the release of subsequent drafts or the final adopted text, we will promptly provide further updates and alerts regarding potential impacts on corporate trademark strategy and management.

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