Research Guide to Chinese Trademark Law and Practice
RESEARCH GUIDE TO
CHINESE TRADEMARK LAW
AND PRACTICE

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Durham, North Carolina
I dedicate this book to my family
— Mary, Michael, Richard, and Linda
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Beijing Languang Lift Co. v. LG Group, Beijing Higher People’s Court, 2002
Beijing Tirandi Electronic Group v. Procter & Gamble, Beijing Higher People’s Court, 2001
Beijing Zheng Pu Technology Development Co. v. Alibaba.com Corporation, Beijing First Intermediate People’s Court, 2001
Bragel International v. Shenzhen Shi Baoan Qiu Fulikaimei Intimate Wear Company, Shenzhen Intermediate People’s Court, 2006
Hoechst Schering Agrevo v. Fushuen County Biochemical Co., Supreme People’s Court, 2000
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- **Implementing Regulations under the Trademark Law** (Adopted August 3, 2002, Effective September 15, 2002)
- **Interpretation by the Supreme People’s Court of Several Issues Relating to Application of Law to Trial of Cases of Civil Disputes over Trademarks** (Adopted October 12, 2002, Effective October 16, 2002)
- **Interpretation by the Supreme People’s Court of the Issues Relating to Jurisdiction over and Scope of Application of Law to the Hearing of Trademark Cases** (Adopted December 25, 2001, Effective January 21, 2002)
- **Policy for the Implementation of International Registration of Marks under Madrid Agreement** (Issued April 17, 2003, Effective June 1, 2003)
- **Provisions for the Establishment and Protection of Well-Known Trademarks** (Issued April 17, 2003, Effective June 1, 2003)
- **Provisions for the Protection of Products of Geographic Indication** (Effective January 30, 2007)
- **Regulations Regarding Customs Protection of Intellectual Property Rights** (Effective March 1, 2004)
- **Rules for Trademark Review and Adjudication** (Revised September 26, 2005, Effective October 26, 2005)
- **Trademark Law** (Adopted October 27, 2001, Effective December 1, 2001)
Table of International Agreements

The agreements listed are applicable to China. The agreements are arranged by title alphabetically. Descriptions of the agreements appear in Chapter 5.

I. Multilateral

Madrid Agreement Concerning the International Registration of Marks (1891)
Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks (1957)
Paris Convention for the Protection of Industrial Property (1883)
Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989)
Trademark Law Treaty (1994)

II. Bilateral

Argentina
Letters of Exchange between China and Argentina Regarding Trademark Registration (May 30, 1978)

Australia
Exchange of Notes between Australia and the People’s Republic of China Concerning Registration of Trade Marks (October 12, 1974)

Austria
Letters of Exchange between China and Austria Regarding Reciprocal Registration of Trademarks and Service Marks (April 4, 1977)
Belgium, Netherlands, and Luxembourg
Letters of Exchange between China, as One Party, and Belgium, Netherlands and Luxembourg, as the Other Party, Regarding Reciprocal Registration and Protection of Trademarks (April 10, 1975)

Canada
Letters of Exchange between China and Canada Regarding Reciprocal Registration of Trademarks (July 16, 1973)

France
Letters of Exchange between China and France Regarding Reciprocal Registration of Trademarks (July 15, 1975)

Germany, West
Letters of Exchange between China and the Federal Republic of Germany Regarding Reciprocal Registration of Trademarks (August 8, 1975)

Greece
Letters of Exchange between China and Greece Regarding Reciprocal Protection of Trademarks (June 19, 1975)

Iran
Letters of Exchange between China and Iran Regarding Reciprocal Registration of Trademarks (December 15, 1975)

Italy
Letters of Exchange between China and Italy Regarding Reciprocal Registration of Trademarks (January 5, 1973)

Japan
Agreement on Trademark Protection between China and Japan (September 29, 1977)

Letters of Exchange between China and Japan Regarding Trademark Registration (September 29, 1977)
Luxembourg
Letters of Exchange between China, as One Party, and Belgium, Netherlands and Luxembourg, as the Other Party, Regarding Reciprocal Registration and Protection of Trademarks (April 10, 1975)

Netherlands
Letters of Exchange between China, as One Party, and Belgium, Netherlands and Luxembourg, as the Other Party, Regarding Reciprocal Registration and Protection of Trademarks (April 10, 1975)

New Zealand
Letters of Exchange between China and New Zealand Regarding Reciprocal Registration of Trademarks (June 18, 1975)

Spain
Letters of Exchange between China and Spain Regarding Agreement on Trademark Registration and Protection (June 10, 1977)

Thailand
Letters of Exchange between China and Thailand Regarding the Exclusive Rights of Registered Trademarks (January 18, 1977)

Ukraine
Agreement on Cooperation in Intellectual Property (November 18, 2002)

United States
Memorandum of Understanding on Intellectual Property (January 17, 1992)
Agreement Regarding Intellectual Property Rights (February 26, 1995)
Agreement on Intellectual Property Rights Enforcement and Market Access (June 17, 1996)
CHINA: PROVINCES AND AUTONOMOUS REGIONS
Chronology of Major Milestones

October 1, 1949  People’s Republic of China is founded.
August 23, 1982  First Trademark Law is approved.
March 1, 1983   The Trademark Law becomes effective.
December 19, 1984  China accedes to the Paris Convention for the Protection of Industrial Property (1883).
March 19, 1985  China becomes a member to Paris Convention.
January 3, 1988  The Implementing Regulations under the Trademark Law is adopted.
October 4, 1989  China joins the Madrid Agreement Concerning the International Registration of Marks (1891).
January 17, 1992  China and the U.S. conclude their first memorandum of understanding on intellectual property, which enters into force the same day.
July 15, 1993  The revised Implementing Regulations under the Trademark Law is adopted (1st revision).
May 5, 1994  China accedes to Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks (1957), which enters into force on August 9, 1994.
April 23, 1995  The revised the Implementing Regulations under the Trademark Law is adopted (2nd revision).
December 1, 1995  China becomes a member of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989).

April 30, 1999  The revised the Implementing Regulations under the Trademark Law is adopted (3rd revision).

October 20, 2000  President Bill Clinton signs into law granting China permanent “most-favored nation” trading status.

April 26, 2001  China celebrates the first World Intellectual Property Rights Day.

October 27, 2001  The revised Trademark Law is approved.

November 10, 2001  The World Trade Organization (WTO) convenes in Doha, Qatar and accepts China into the WTO. China submits the document of ratification upon signing the WTO agreement.


December 1, 2001  The revised Trademark Law becomes effective.

December 11, 2001  China’s WTO membership takes effect.

August 3, 2002  The revised Implementing Regulations under the Trademark Law is adopted.

September 15, 2002  The revised Implementing Regulations under the Trademark Law takes effect.

April 17, 2003  The State Administration for Industry and Commerce of China issues the Provisions for Implementation of International Registration of Marks under Madrid Agreement, effective on June 1, 2003.

March 12, 2004  The revised Regulations on the Protection of Intellectual Property Rights at the Customs enters into force.

April 2004  China and the United States hold the 15th annual meeting of Joint Commission on Commerce and Trade (JCCT), where China commits to significantly crack down and reduce intellectual property rights infringement across the country.

December 2004  China’s Supreme People's Court and the Supreme People's Procuratorate issue the Interpretation of the Ap-
plication of Relevant Laws As to Handling Criminal Cases Infringing on Intellectual Property Rights.

April 29, 2005 The United States Trade Representative releases the 2005 Special 301 Report and renders a negative assessment of the IPR situation in China. Consequently, China is placed on the Priority Watch List for failure to effectively protect intellectual property rights and to meet its commitment to significantly reduce infringement levels.

April 11, 2006 China and the United States hold another JCCT meeting, and the U.S. expresses dissatisfaction with China’s progress in reducing the levels of IPR infringement across the country.

April 28, 2006 The United States Trade Representative releases the 2006 Special 301 Report, and places China again on the Priority Watch List for failure to make adequate progress in cracking down and reducing IPR infringement. The USTR consequently will step up its consideration of using the WTO dispute settlement options regarding China, and will conduct the adequacy of IPR protection and enforcement at the Chinese provincial level.

April 2007 The United States files two complaints with the WTO alleging IPR violations by Chinese individuals and companies.

June 2007 The U.S. requests the WTO to set up a panel of experts to hear the U.S. complaints after the U.S. and China failed to resolve the disputes.

September 2007 The WTO establishes the panel of experts to hear the U.S. complaints.
<table>
<thead>
<tr>
<th>Chinese Term</th>
<th>English Translation</th>
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<tr>
<td>商标</td>
<td>Trademark</td>
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<tr>
<td>注册商标</td>
<td>Registered trademark</td>
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<td>驰名商标</td>
<td>Well-known trademark</td>
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<td>假冒商标</td>
<td>Trademark pass-off</td>
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<td>地理标志</td>
<td>Geographic indicator</td>
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<td>服务标志</td>
<td>Service mark</td>
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<tr>
<td>商标法</td>
<td>Trademark law</td>
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<td>Trademark laws and regulations</td>
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<td>商标法实施细则</td>
<td>Implementing rules under the trademark law</td>
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<td>商标条例</td>
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<td>Trademark Office</td>
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<td>商标评审委员会</td>
<td>Trademark Review and Adjudication Board</td>
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<td>商标公告</td>
<td>Trademark Gazette</td>
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<td>Trademark publication(s)</td>
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<td>Trademark infringement</td>
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<tr>
<td>商标代理人</td>
<td>Trademark agent</td>
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<tr>
<td>商标事务所</td>
<td>Trademark law office</td>
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<td>知识产权</td>
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<td>Intellectual property law</td>
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<tr>
<td>国家工商行政管理局</td>
<td>State Administration for Industry and Commerce (SAIC)</td>
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</tbody>
</table>
We live in the information age. There are numerous ways and means by which scholars and practitioners gather information and conduct legal research. This book was written to facilitate research and inquiries by American and international scholars, practitioners, and other professionals interested in the topic of Chinese trademark legal system. The idea behind this book is that there should be an easy, one-stop place to begin research where nearly all relevant information and resources are gathered, filtered, and analyzed therefore can be readily used for inquiry on the topic of interest.

Writing this book took nearly six years to complete. During this period the Chinese trademark legal regime has evolved rapidly, and the legal information system has gone through a transformation, especially in the area of online resources available. For example, there were few trademark cases available through the Internet six years ago, but today there are multiple Web sites on the Internet where full-text transcripts of Chinese trademark cases can be accessed free of charge. The availability and ease of access to Chinese legal information will continue to improve. This trend will continue to serve scholars and practitioners well.

During the research and writing of this book, I’ve received assistance from several individuals. In particular, I am thankful to Ms. Elizabeth Cadena and Ms. Lucia Sobrevinas for their invaluable assistance in proofreading the entire manuscript. Any errors and omissions remain my responsibility. I plan to revise and update this book in the future when it is appropriate. Comments and suggestions from the reader are always welcome. Please e-mail me at rhu@stmarytx.edu.

San Antonio, Texas
December 2008