

RESEARCH GUIDE TO
CHINESE TRADEMARK LAW
AND PRACTICE

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AND PRACTICE

Robert H. Hu

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I dedicate this book to my family
— *Mary, Michael, Richard, and Linda*

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- Beijing Zheng Pu Technology Development Co. v. Alibaba.com Corporation*, Beijing First Intermediate People's Court, 2001
- Boss v. Beijing Kaifei Co.*, Beijing First Intermediate People's Court, 1998
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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)

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Rules for Trademark Review and Adjudication (Revised September 26, 2005, Effective October 26, 2005)

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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

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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

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France

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Letters of Exchange between China and Japan Regarding Trademark Registration (September 29, 1977)

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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 <i>Paris Convention for the Protection of Industrial Property</i> (1883).
March 19, 1985	China becomes a member to <i>Paris Convention</i> .
January 3, 1988	The <i>Implementing Regulations under the Trademark Law</i> is adopted.
October 4, 1989	China joins the <i>Madrid Agreement Concerning the International Registration of Marks</i> (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 <i>Implementing Regulations under the Trademark Law</i> is adopted (1st revision).
May 5, 1994	China accedes to <i>Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks</i> (1957), which enters into force on August 9, 1994.
June 1994	China issues the <i>White Paper on the Status of Intellectual Property Protection in China</i> .
October 28, 1994	China signs the <i>Trademark Law Treaty</i> (1994).
February 26, 1995	China and the U.S. enter into an <i>Agreement Regarding Intellectual Property Rights</i> .
April 23, 1995	The revised the <i>Implementing Regulations under the Trademark Law</i> is adopted (2nd revision).
December 1, 1995	China becomes a member of the <i>Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks</i> (1989).

- June 17, 1996 China and the U.S. conclude the *Agreement on Intellectual Property Rights Enforcement and Market Access*.
- 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.
- November 11, 2001 China joins *Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods* (TRIPS Agreement) (1994).
- 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 IRP 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.

COMMON CHINESE TRADEMARK TERMINOLOGY WITH ENGLISH TRANSLATION

商标	Trademark
注册商标	Registered trademark
驰名商标	Well-known trademark
商标注册	Trademark registration
商标注册申请	Application for trademark registration
假冒商标	Trademark pass-off
地理标志	Geographic indicator
服务标志	Service mark
商标法	Trademark law
商标法规	Trademark laws and regulations
商标法实施细则	Implementing rules under the trademark law
商标条例	Trademark rules and regulations
商标局	Trademark Office
商标评审委员会	Trademark Review and Adjudication Board
商标公告	Trademark Gazette
商标文献	Trademark publication(s)
商标侵权	Trademark infringement
商标代理人	Trademark agent
商标事务所	Trademark law office
知识产权	Intellectual property (rights)
知识产权法	Intellectual property law
国家工商行政管理局	State Administration for Industry and Commerce (SAIC)

PREFACE

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