

Chinese Trademark Law

The New Chinese Trademark Law of 2014

Paul Kossof



CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2014
Paul Kossof
All Rights Reserved

Library of Congress Cataloging-in-Publication Data

Kossof, Paul, author.

Chinese trademark law : the New Chinese Trademark Law of 2014 / Paul
Kossof.

pages cm. -- (International legal practice)

Includes bibliographical references and index.

ISBN 978-1-61163-566-9 (alk. paper)

1. Trademarks--Law and legislation--China. I. Title.

KNQ1220.K57 2014

346.5104'88--dc23

2013050634

CAROLINA ACADEMIC PRESS
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

Contents

Acknowledgments	ix
Series Editor's Preface	xi
Introduction	xiii
Chapter One · Brief History of the Trademark Law and Select Regulations	3
I. 1949–1978	3
II. Contemporary Chinese Trademark Law	4
A. 1982 Trademark Law	4
B. 1993 Trademark Law	4
C. TRIPS	5
D. Madrid Agreement Measures	5
E. 2001 Trademark Law	6
F. Trademark Law Implementation Regulations	7
G. SPC Interpretation Concerning Trademark Disputes	8
H. Well-Known Trademark Provisions	10
I. Amendments to 2001 Trademark Law	11
Chapter Two · Trademark Procedure	13
I. Trademark Application	13
A. Trademark Application through the Madrid Protocol	13
B. Trademark Application through a Chinese Trademark Agency	14
C. Direct Trademark Application	15
II. Administrative and Judicial Process	15
A. CTMO Procedures	15
B. TRAB Procedures	17
C. Appeals to People's Courts	18
Chapter Three · Trademark Infringement	19
I. Trademark Squatters	19

II. Infringement by Another Company	21
A. Cease and Desist Letters	21
B. AICs	22
C. People's Courts	23
Chapter Four · The 2013 Trademark Law	25
I. Overview	25
II. Sound Trademarks	26
III. Multiple Class Registration	27
IV. Trademark Agency Restrictions	28
A. Obligations	28
B. Penalties	29
V. CTMO Explanation and Correction Requests	31
VI. CTMO and TRAB Time Limits	32
VII. Trademark Opposition	35
A. Absolute Grounds	35
B. Relative Grounds	37
C. Opposition Procedures	40
VIII. Well-Known Trademark Protection	42
IX. Unregistered Mark Protection	42
X. Prohibition of National Well-Known Trademark Indications on Labeling and Advertising	45
XI. Administrative Procedures	45
XII. Judicial Protections	48
XIII. No-Compensation Standard for Unused Registered Trademarks	50
XIV. Assignments and Licenses	50
XV. Passing Off Unregistered Trademarks as Registered	51
Chapter Five · Conclusion: China Pushes Forward	53
Table of Abbreviations	55
Glossary	57
Appendix One · Trademark Law of the People's Republic of China (2013 Amendment)	63
Appendix Two · 中华人民共和国商标法 (2013修正案)	83

Appendix Three · Trademark Law of the People's Republic of China (2001 Amendment)	97
Appendix Four · 中华人民共和国商标法（2001修正案）	113
Appendix Five · Measures for the Implementation of International Registration of Marks under Madrid Agreement	123
Appendix Six · 马德里商标国际注册实施办法	129
Appendix Seven · Regulations for the Implementation of the Trademark Law of the People's Republic of China	133
Appendix Eight · 中华人民共和国商标法实施条例	151
Appendix Nine · Trademark Review and Adjudication Rules	161
Appendix Ten · 商标评审规则	179
Appendix Eleven · Interpretation of the Supreme People's Court Concerning the Application of Laws in the Trial of Cases of Civil Disputes Arising from Trademarks	191
Appendix Twelve · 最高人民法院关于审理商标民事纠纷案 件适用法律若干问题的解释	199
About the Author	203
Index	205

Acknowledgments

This book would not be possible without the encouragement from Mark E. Wojcik, professor at The John Marshall Law School. I also thank Michael Harris, former COO at Gao Fei Consulting, Gentry Sayad, Co-Chair of Fredrikson & Byron's China Practice, and George Chan, consultant at Rouse.

Xiaoyun Cao, it is a blessing to have you by my side.

I dedicate this book to my mother, Gloria Ceccarelli.

Series Editor's Preface

This book on Chinese Trademark Law is the first comprehensive study of how trademarks can be registered and protected in China under the 2013 Chinese Trademark Law that enters into effect in 2014. Given the realities and interconnections of the international marketplace, no company can afford to ignore these important changes in the protection of intellectual property. Companies know that they must protect their brands in major markets. This book explains the new law and practice guidelines in simple, direct language. It gives practice tips and advice under the new rules applicable to trademarks. And it includes the first published English translation of the law—an important and valuable contribution on its own.

In addition to providing a spotlight on one area of the law in China, the book is also useful for understanding lawmaking in the People's Republic of China. Anyone interested in how laws are proposed, enacted, and enforced in China will find this book to be an exceptional resource.

This book launches a new *International Legal Practice Series* for Carolina Academic Press, following the launch of a new *International Legal Research Series* in 2013. Books in the *International Legal Practice Series* will focus on the needs of practicing attorneys for clear, direct answers to specific practice areas, including updates on the most recent developments in foreign and international law and valuable practice tips. Similarly, books in the new *International Legal Research Series* will help attorneys, students, researchers, and policy-makers find the source material they need for specific research issues in foreign and international law. I hope that you enjoy the books in both series. If you are interested in contributing a title to either series, please contact us.

Mark E. Wojcik
Professor of Law
The John Marshall Law School—Chicago
Series Editor, International Legal Practice Series
Series Editor, International Legal Research Series

Introduction:

The Future of Chinese Trademark Practice

The People's Republic of China is undeniably the world's largest up-and-coming economic superpower. National and foreign investment in manufacturing initially developed China's east coast and, as coastal cities become more expensive, western China is on its way to establishing its own powerful local economies. China's most developed cities—namely Beijing, Shanghai, and Guangzhou—are rapidly emerging as world-class centers for commerce and trade. This incredible transformation has spurred an exponential interest in improving China's legal system.

Intellectual property law in China lends a unique glimpse into the trends of legal development in China. China's patent and trademark laws were written in the 1980s, and China did not implement its copyright law until 1990. Despite the relatively short history of intellectual property in China, the Chinese legislature, administrations, and judiciary have made significant positive modifications to both the written law and intellectual property practice.

Trademark law is an essential component of a successful economy. The purpose of a trademark is to designate a product's source and, as companies seek to distinguish themselves and establish their own reputations, a trademark is essential to creating consumer recognition. A trademark also maintains a company's reputation through administrative and judicial protections. In consideration of the massive wealth being accumulated by China's upper class, and the population and potential of its growing middle class, Chinese trademarks have proven to be important for the stability and promotion of commerce within China.

The third revision to China's trademark law ("2013 Trademark Law") was eagerly anticipated by intellectual property practitioners and academics as well

as many other groups including foreign and domestic trademark owners, government officials and employees, and trademark agencies.

This book serves as a substantive review of the 2013 Trademark Law. In addition to explaining the 2013 Trademark Law, it also provides detailed citations and an appendix of select regulations and materials in order to facilitate the reader in investigating further into Chinese trademark practice.

Due to readers' varying levels of familiarity with Chinese trademark law, this book provides a condensed background on trademark practice by reviewing the history of China's trademark law, trademark procedure, trademark infringement, and the drafts of the 2013 Trademark Law. This book also provides analysis and commentary for each amendment immediately after its explanation to aid the readers in examining how the 2013 Trademark Law may affect trademark practice.