

INTA Comments on Draft Amendment on PRC Trademark Law

February 9, 2026

The International Trademark Association (INTA) thanks the Standing Committee of the National People's Congress of China for the opportunity to provide comments on behalf of its members in response to the "Draft Amendment on PRC Trademark Law" issued on December 27, 2025.

INTA is a global not-for-profit association of more than 38,000 professionals and 6,600 member organizations from over 182 jurisdictions. INTA is the largest global association of brand owners and professionals dedicated to supporting intellectual property to foster consumer trust, economic growth, and innovation. INTA's members represent a broad cross section of brand owners from major corporations, small- and medium-sized enterprises, law firms, and nonprofits, as well as government agency members, professors, and law students.

The following General and Article specific comments and suggestions were prepared by INTA's various advocacy committees and INTA staff. Our comments aim to support effective implementation while ensuring practicality and alignment with international best practices. We would welcome the opportunity to discuss these issues in depth and to answer any questions. We hope you will find our comments helpful.

General Comments

INTA commends the Draft Amendment for its systematic response to prominent issues arising from the operation of China's current trademark system. Overall, the Draft Amendment reflects meaningful progress in legislative direction, institutional structure, and rule design. It further clarifies the legislative purpose of giving equal weight to rights protection and the maintenance of market order, optimizes the structure of chapters and creates a standalone chapter on "Conditions for Trademark Registration," thereby making substantive examination rules more centralized and clearer, and expands the types of non-traditional marks eligible for registration, responding to evolving commercial practices and new forms of brand expression. It also refines typical forms of bad-faith filings and strengthens post-registration regulatory tools, which will help curb hoarding and speculative filings. In addition, the Draft Amendment establishes a systematic framework addressing functional bars and fair use defenses for non-traditional trademarks, and improves procedural mechanisms such as suspension of proceedings, post-registration supervision, and fair use. The Draft Amendment also revises or deletes certain proposals from the 2023 consultation draft that attracted significant controversy, some of which are missing opportunities and INTA recommends that the NPC consider adding them into the next draft, including transfer of bad faith filings to legitimate brand owners and civil liability for bad faith filing behaviors, as aligned with [INTA Board Resolution of Recommended Procedures to Address Bad Faith Trademark Applications and Registrations](#), the significant deterrence they can create.

While recognizing these overall improvements, INTA believes that the Draft Amendment can be further refined on several key issues. In particular:

- certain core concepts and terms remain inconsistent, which may undermine uniformity in examination and adjudication.
- the scope of non-traditional marks (such as single-color marks) remains unclear.
- the long-term barrier posed by unused registered trademarks to market entry and competition has not been adequately addressed.
- the risk of bad faith repeat filings to evade use obligations persists and
- the anti-free-riding and anti-dilution logic underlying expanded protection for well-known marks would benefit from clearer articulation.
- In addition, further responses to practical needs and stronger systemic coherence are warranted with respect to trademark licensing, coexistence agreements, assignment rules, the administration of collective and certification marks, civil remedies against bad-faith filings, and defenses such as exhaustion and comparative advertising.

INTA further notes that, within the current relative-grounds examination framework centered on likelihood of confusion, trademark coexistence agreements (including coexistence agreements and consent letters) have become an important practical tool for market participants to resolve trademark conflicts and to allocate trademark rights rationally. To enhance flexibility and predictability, **INTA recommends that the law expressly recognizes the admissibility of coexistence agreements and their role in examination, opposition, and invalidation proceedings.** Subject to safeguarding the public interest and preventing consumer confusion, appropriate deference should be afforded to reasonable coexistence arrangements reached through genuine commercial judgment. This position is consistent with the spirit of [INTA's Board Resolution on the Acceptance of Coexistence and Consent Agreements](#).

Based on the above, INTA offers the following article-by-article comments and recommendations for legislature's consideration.

II. Specific Recommendations

Article 4

For the purposes of this Law, "trademarks" refer to signs used to identify and distinguish the source of goods or services, including trademarks for goods and service marks.

The provisions of this Law concerning trademarks for goods shall apply to service marks.

The Draft Amendment alternates among multiple terms—such as “identify,” “distinguish,” “differentiate,” and “distinctiveness”—to describe a trademark's basic function and registration requirement. Inconsistent terminology in practice may result in divergent understandings and inconsistent application standards, increasing the difficulty of review, adjudication, and compliance for market participants. Functionally, the core of a trademark is source identification; concepts such as “distinctiveness” or “ability to distinguish” are specific manifestations or evaluative dimensions of “identifiability.”

To enhance the consistency and practicality of legal terminology, it is suggested that the terms "identify" and "identifiability" be uniformly used as core terminology in the trademark definition clause, and that the related wording "and distinguish" be removed. The definition of a trademark should be standardized as "a mark used to identify the source of goods or services." Unifying terminology would reduce interpretive disputes caused by mixed concepts and improve consistency and predictability in application.

Article 14

Any sign capable of distinguishing the goods of a natural person, legal person or unincorporated organization from those of others, including words, devices, letters, numerals, three-dimensional signs, color combinations, sounds, motion signs, etc., and combination of the foregoing elements, may be applied for registration as a trademark.

INTA welcomes the expansion of registrable types and the explicit inclusion of motion marks, reflecting a positive legislative response to commercial and technological development.

Meanwhile, in practice, registration of non-traditional trademarks (e.g., colors, sounds, motion marks) often hinges on whether the sign has acquired distinctiveness through use, which preserves a high threshold. Against this backdrop, whether the legislative provisions regarding the types of registrable trademarks are sufficiently open and clear is of great importance in reducing misunderstandings and enhancing the inclusiveness and predictability of the system. In other words, the use of the word "etc." in the enumeration of items within the text may lead to interpretive disputes regarding what is included and excluded, which is detrimental to the consistent understanding and application of new types of signs.

It is recommended that a more open and inclusive approach be adopted at the legislative level regarding non-traditional trademarks, and therefore suggested that Article 14 specify inclusion of other forms of non-traditional marks such as smell, single colors, position marks etc. in accordance with [INTA Model Guidelines](#) to clarify the enumeration method and avoid ambiguity in interpretation, thereby enhancing the adaptability and predictability of the clause with respect to new types of signs. Moreover, it is suggested that CNIPA specify in implementing examination guidelines how to define and depict motion marks i.e. in the form of pictures or in a .mp4 / .mov / .web format.

Article 15

The following signs shall not be used as trademarks:

(1) Signs that are identical or similar to the name, flag, emblem, medal of the Communist Party of China, the national name, national flag, national emblem, national anthem, military flag, military emblem, military anthem or medals, etc., of the People's Republic of China, or that are identical to the names or signs of central and state organs, the names of specific locations where they are situated, or the names or designs of landmark buildings of central or state organs;

(2) Signs that are identical or similar to the national names, national flags, national emblems or military flags, etc., of a foreign country, except with the consent of the government of that country;

(3) Signs that are identical or similar to the names, flags, emblems, etc., of intergovernmental international organizations, except with the consent of the organization or it is not likely to mislead the public;

(4) Signs that are identical or similar to official signs or inspection seals indicating control or certification, unless authorized;

(5) Signs that are identical or similar to the names or sign of the “Red Cross” or “Red Crescent”;

(6) Signs that are discriminatory against any ethnic group;

(7) Signs that are deceptive, likely to mislead the public as to the quality, etc., other characteristics or the place of origin of the goods;

(8) Signs that are detrimental to socialist morals or customs or have other unhealthy influences.

Names of administrative divisions at or above the county level, or foreign place names known to the public, shall not be used as trademarks. However, this shall not apply where such place names have other meanings or constitute part of a collective trademark or a certification trademark. Registered trademarks using place names shall remain valid.

From an institutional perspective, whether a place name can be protected as a trademark essentially concerns whether it is capable of identifying the source of goods or services, rather than an absolute prohibition grounded in public order, morality, or state interests. Therefore, placing the provisions regarding place names within the clause of "cannot be used as a trademark" easily blurs the line between absolute prohibition and relative prohibition in practice, affecting the internal consistency of the system.

It is recommended to move the second paragraph regarding place names from Article 15 to Article 16 (distinctiveness), and expressly preserving, in the relevant provision, the possibility that a geographical name may acquire distinctiveness through use.

Article 16

A trademark applied for registration shall possess distinctive characteristics and be readily identifiable.

The following signs shall not be registered as trademarks:

(1) Those consisting solely of the generic names, designs, or models of the goods;

(2) Those consisting solely of signs that directly indicate the quality, principal raw materials, functions, uses, weight, quantity, or other characteristics of the goods;

(3) Other signs lacking distinctive characteristics.

Where the signs listed in the preceding paragraph have acquired distinctive characteristics through use and have become readily identifiable, they may be registered as trademarks.

Signs lacking inherent distinctiveness (such as generic terms, descriptive words, and geographical names) belong to the public domain and should remain freely available for use by market participants. Absent a mandatory disclaimer requirement, applicants may exploit combination marks or the acquired distinctiveness to effectively monopolize public resources, preventing competitors from legitimately using necessary commercial signs. This may result in market confusion and unfair competition disputes. Introducing this provision would standardize examination criteria, guide applicants in asserting rights appropriately, curb abuses of trademark rights at the source, and safeguard fair market competition.

The current law does not expressly require applicants to disclaim exclusive rights to non-distinctive elements within a trademark. As a result, trademarks that are partially or wholly lacking in inherent distinctiveness may be registered, and their scope of protection improperly expanded. In subsequent infringement litigation, trademark owners often rely on registration certificates that do not specify disclaimers to assert exclusive rights over non-distinctive textual elements. Such claims exceed the reasonable boundaries of trademark protection, unjustifiably restrict competitors' lawful use of public commercial signs, disrupt fair competition, and run counter to the fundamental legislative purpose of trademark law—protecting distinctiveness while safeguarding the public interest.

It is proposed that an additional paragraph be added at the end of Article 16, reading as follows “Where a trademark is approved for registration pursuant to the preceding paragraph and contains constituent elements that lack inherent distinctiveness, the applicant shall disclaim exclusive rights to such elements. Where the applicant refuses to make such a disclaimer, the trademark administration authority under the State Council shall not approve the registration”.

Article 17

Where a trademark is filed as a 3D sign, color combination, sound, motion (dynamic) sign, etc., elements that arise solely from the nature of the goods, are necessary to obtain a technical result, or give substantial value to the goods—such as shapes, color combinations, sounds, motion effects, etc.—shall not be registered as trademarks.

The amendment extends functionality and substantial value exclusions from 3D marks only to other types of NTMs, such as color combination, sounds and motion. This is conceptually sound and follows similar amendments elsewhere and the approach in the [INTA Model Trademark Guidelines](#). However, without detailed examination guidelines the application of these criteria risks inconsistency and therefore INTA suggested that further clarification on “solely from the nature of the goods” and “substantial value” be made and how these criteria applied in the tests of functionality.

Article 18

Trademark applications that are not filed for the purpose of use and that clearly exceed normal production and business needs shall not be registered.

Trademark registration applications shall not be filed by deceptive or other improper means.

INTA understands the legislative purpose of this first clause, which aims to combat malicious trademark hoarding and maintain a normal registration order. However, the phrase "*clearly exceed normal production and business needs shall not be registered*" carries the risk of being simplified into a quantity-based judgment standard in actual examination and enforcement, where a "large number of applications" is directly equated to malicious applications. Whether using an absolute quantity standard or a proportional judgment method, this could lead to significant interpretation disputes and, in practice, unfairly harm recognized brands, large-scale businesses, or companies in the business expansion phase.

Furthermore, market entities in different industries and at different stages of development have significantly different "normal production and business needs." Without further limitations and clarification, this provision could negatively impact legitimate defensive applications or reasonable reserve applications made by companies for brand protection and proactive business planning. This would weaken the legitimate protection space for companies in terms of innovation, diversified operations, and prevent trademark squatting and imitation. Especially given the high threshold for recognizing well-known trademarks and the limited applicability of cross-class protection, defensive registration still plays an irreplaceable institutional role in practice.

To accurately target malicious hoarding while avoiding harming legitimate market participants, INTA recommends further narrowing and clarifying the first paragraph of this article. It suggests explicitly listing "defensive filing" and "those legitimate in reserve" as justifiable exceptions and to be further provided in implementing regulations and review guidelines.

Article 19

An application for trademark registration shall not be identical or similar to a trademark already registered or applied for earlier by another person in respect of the same or similar goods.

Article 19 is a restatement of Article 30 of the original Trademark Law, while the original Article 31 (the rule for same-day applications) has been moved to Chapter 4 on "Examination of Trademark Registration" under Article 34. Structurally, Article 19, as one of the core "conditions for registration," it only stipulates the prohibitive requirements concerning identical or similar prior trademarks but does not explicitly define the legal consequences of violating this article. The related provisions regarding consequences are scattered throughout subsequent examination clauses, which easily weakens the completeness and readability of the article.

The current wording does not reflect the core principle of trademark law, namely the "likelihood of confusion," during the registration process. The likelihood of confusion is not only fundamental to defining the scope of trademark protection, but also the key criteria that permeates both the registration and infringement systems in trademark legislation across many jurisdictions. China's 2013 Trademark Law introduced the element of "likelihood of confusion" into its infringement provisions, and related judicial interpretations have gradually established a multi-factor judgment framework. However, if the registration criteria only mechanically consider whether trademarks are similar and goods are similar, without explicitly incorporating a comprehensive assessment of the likelihood of confusion, it may lead to inconsistencies between the standards for registration and infringement, thereby weakening the protection of prior rights and consumer interests.

For same-day applications with prior use, this is essentially a special rule under the first-to-file principle and should be stated within the “conditions for registration,” rather than merely as a ground for rejection in the examination procedure. Otherwise, it may be detrimental to prior rights holders in asserting their rights during opposition or invalidation proceedings.

It is recommended that Article 19:

- explicitly introduce “likely to cause confusion or misidentification” as a core element for determining conflicts with prior trademarks, thereby establishing the fundamental role of the likelihood of confusion principle in the trademark registration process.
- ensure that “prior application” should be the basic evaluation standard for determining “prior trademark rights,” and incorporating “same-day filing with prior use” into the registration-conditions provision.
- **allow coexistence agreements designed to avoid confusion be considered during the examination process, provided they do not harm the public interest or consumer interests, thereby enhancing institutional flexibility and commercial viability;** and
- systematically integrate or coordinate the content of Article 19 and Article 34 to avoid a logical disconnect between registration requirements and examination procedures.

More importantly, INTA recommends that Article 19 expressly provides that coexistence agreements be considered during examination. In a relative-ground system centered on likelihood of confusion, negotiated coexistence arrangements are an important tool for resolving conflicts and maintaining stable commercial order. Trademark owners are typically most knowledgeable about how their marks are used in real market environments and consumer perception and have strong incentives to avoid actual confusion. A reasonable and careful approach that recognizes and considers coexistence agreements can better balance public interests and private autonomy. [INTA's Board Resolution on the Acceptance of Coexistence and Consent Agreements](#) emphasizes that, in jurisdictions conducting ex officio examination of relative grounds, trademark laws and examination practice should allow submission of coexistence agreements or consent letters and, while protecting the public interest, give due respect to parties’ non-confusion assessments grounded in genuine commercial judgment—supplemented by an independent review standard and transparent evaluation guidelines. Based on the above position, INTA therefore recommends **explicitly recognizing the legal status of trademark coexistence agreements (including coexistence agreements and consent letters) and rules for their consideration in examination.**

Article 20

Where a trademark applied for registration in respect of the same or similar goods is a reproduction, imitation or translation of another person’s well-known trademark that has not been registered in China and is likely to cause confusion, it shall not be registered, and its use shall be prohibited.

Where a trademark applied for registration in respect of non-identical or dissimilar goods is a reproduction, imitation or translation of another person’s well-known trademark, which misleads

the public, and may harm the interests of the holder of the well-known trademark, it shall not be registered, and its use shall be prohibited.

INTA understands the policy direction of strengthening protection for well-known marks to prevent unfair exploitation of goodwill but also believes that the current wording still has room for further clarification regarding the protection logic, scope of application, and systemic position.

First, the provision does not clearly distinguish the applicable conditions, scope, and strength of cross-class protection for registered versus unregistered well-known trademarks. In a system that adheres to principle of first-to-file and registered trademarks are given the effect of public notice, failing to differentiate between registered and unregistered well-known trademarks in anti-dilution protection may weaken the incentive function of the trademark registration system and increase uncertainty for market participants in searching and risk assessment.

Second, the wording in the second paragraph of this article “*misleads the public and may harm the interests of the holder of the well-known trademark*” is broad and does not clearly define anti-dilution and anti-free-riding conduct.

Furthermore, from a structural perspective, this provision is located in the chapter on "Conditions for Trademark Registration," but it also stipulates the legal consequences of "non-registration and prohibition of use," which easily blurs the line between registration conditions and rules regarding infringement and the exercise of rights.

It is recommended that (i) clear distinctions be made regarding the applicable conditions, scope, and strength of anti-dilution cross-class protection for registered versus unregistered well-known marks, in order to avoid undermining the first-to-file principle and the incentive function of the trademark registration system (ii) specifying, consistent with established practice, that the core concern is preventing weakening of distinctiveness, tarnishment of market reputation, or unfair advantage-taking; and (iii) relocating “prohibit use” consequences to provisions on exclusive rights protection or infringement, to maintain a clear separation between registration conditions and remedies.

Article 22

Prohibits registration/use of trademarks containing geographical indications (GIs) that mislead the public as to origin; but explicitly preserves good-faith registrations.

There is no explicit reference in the text to the principle of “first in time, first in right” in respect of the registrations that will be granted. INTA suggested that expressly provide for the important principle of “first in time, first in right” based on the well-established principles of territoriality, exclusivity, priority, and good faith, consistent with Article 24(5) of the WTO TRIPS Agreement. Prior registrations filed in good faith before the geographical indication was protected in China should be granted, without prejudice to other grounds of refusals that may exist independently of geographical indication protection.

Article 23

No application for trademark registration shall prejudice the existing prior lawful rights of others, nor shall any person intentionally preemptively register a trademark that is already in use by another person and has a certain degree of influence.

This proposed change seems motivated in part by the legislature's desire to bring consistency within language and legal principles adopted in the PRC Civil Code. INTA requested clarification whether the burden of proof or legal standard for determining liability is changed when replacing "by improper means/bad faith" with "intention".

Article 35

For a trademark that has been preliminarily approved and published, within two months from the date of publication, a prior rights holder or an interested party who considers that the trademark violates Article 19, Article 20, Article 21, Article 22 (paragraph 1), or Article 23 of this Law, or where any person considers that the trademark violates Article 15, Article 16, Article 17, Article 18, or Article 24 of this Law, such person may file an opposition with the trademark administration department under the State Council. Where no opposition is filed upon expiry of the publication period, the trademark shall be approved for registration, a trademark registration certificate shall be issued, and the registration gazetted.

Under current practice, the opposition period is a strict deadline with no extensions. Rights holders often must complete multiple steps within a short period, including monitoring, internal decision-making, evidence collection, authorization, and documentation. INTA suggested that in accordance with its Trademark [Examination Guidelines \(2025\)](#), "reasonable extension to this two-month term for a limited and defined maximum period are recommended", to ensure a reasonable time for rights holders to exercise opposition rights and to preserve the effectiveness of the opposition mechanism.

In addition, the provision lists relative grounds before absolute grounds, which is not fully consistent with the typical structural logic of trademark law. Absolute grounds, which concern public interest and the fundamental requirements of the registration system, should generally be stipulated before relative grounds to enhance the clarity and readability of the article's structure. INTA suggested that first specify the opponent raising absolute grounds and applicable scope, followed by the opponent raising relative grounds and the applicable scope, in order to conform to the systematic logic of trademark law.

Article 40

In the course of examining trademark opposition cases, refusal appeal cases, opposition appeal cases, and invalidation cases, where the determination of the prior rights involved must be based on the outcome of another case being tried by a people's court or being examined by an administrative authority, the trademark administration department under the State Council generally shall suspend examination or adjudication. After the cause of suspension is eliminated, the examination or adjudication procedure shall be resumed in a timely manner.

Where a people's court tries cases concerning refusal appeal decisions, opposition appeal decisions, or invalidation decisions made by the trademark administration department under the State Council pursuant to Article 19 of this Law, the court shall base itself on the factual status at the time the challenged decision or ruling was made.

INTA highly recognizes the legislative directions of coordinating parallel proceedings through suspension to avoid conflicting outcomes and agrees that where the determination of prior rights necessarily depends on another case outcome, the suspension mechanism should be prioritized for achieving procedural coordination. However, INTA notes that this article still has some room for further refinement in terms of several key formulations and institutional articulation. The term “generally shall suspend” may lead to inconsistent understanding and application in practices. In one respect, it may be too vague to provide procedural certainty to parties involved. In another respect, this term may also be applied mechanically or used strategically to cause protracted procedural delays. INTA recommends adopting clearer language to establish fundamental position as to the principle of suspension—for example, revising “generally shall suspend” to “in principle shall suspend”—and clarifying all possible exceptions in the implementing regulations or examination guidelines to prevent any mechanical application or abusive delay in practice.

Under the current Trademark Law and related judicial interpretations, the principle of “changed circumstances” allows authorities and courts to adjust decisions when the factual basis has materially changed. In trademark practice, this often occurs when prior rights claimed in opposition, refusal-of-registration review, or invalidation cases are themselves being challenged in separate proceedings. More critically, the second paragraph of this Article expressly precludes, by statute, the court’s discretion to provide judicial relief based on changed circumstances. If a case that fails to be suspended during administrative stage, the parties involved may not be able to achieve relief in the subsequent judicial proceedings. In practice, even where suspension is already strictly applied in the process of administrative proceedings, new facts may arise during the examination of judicial proceedings that may substantially impact the rulings of cases (e.g., citation marks being cancelled or assigned to the applicant, etc.). Mechanically requesting the Court to rule the case based on the factual status at the time the challenged decision or ruling was made may lead to repeated refile, resulting in idling procedures, wasting administrative resources, and increasing uncertainty in the registry and also, causing unnecessary costs. INTA recommends deleting the second paragraph so as not to restrict, by statute, courts’ discretion to provide substantive relief based on changed circumstances, so as to preserve the judicial authorities’ discretion on case-by-case basis and avoiding gaps in procedural reliefs.

Article 48

Where a trademark registrant applies to cancel its registered trademark, within one year from the date of the cancellation publication, the trademark administration department under the State Council shall not approve another person’s application to register a trademark identical with or similar to that trademark in respect of the same or similar goods.

INTA considers that voluntary cancellation is an active disposition by the registrant, and all the corresponding legal consequences and risks should be borne by the registrant only. A one-year limitation stated in the above article lacks sufficient institutional legitimacy.

In practice, trademarks that are in active use and of commercial value are voluntarily cancelled by the registrants. Those marks which are voluntarily cancelled are usually those which are no longer in use or in any market demands. In such cases, an additional one-year barrier is unlikely to prevent confusion among consumers but may instead prolong market-entry obstacles and prevent other market participants from timely securing and using relevant marks.

INTA also notes that, under the trend of digital economy and rapid brand iteration, there are more frequent market demands for new marks. A lengthy limitation period in registrations may not correspond to consumer perceptions or market realities. Repeat filings in bad faith, trademark hoardings or other improper conducts can be regulated through articles preventing bad-faith filings or other procedural rules, rather than applying a one-size-fits-all solution of one-year limitation in the above article.

INTA recommends deleting this provision to free up trademark resources that have been voluntarily cancelled so that the market efficiency will be improved, while maintaining regulation balances through other articles targeting bad faith filings and other improper conduct.

Article 50

Where a registered trademark violates Article 19, Article 20, Article 21, Article 22, paragraph 1, or Article 23 of this Law, within five years from the date of registration, a prior right owner or an interested party may request the trademark administration department under the State Council to declare the registered trademark invalid. In the event of malicious registrations, owners of well-known trademarks may be exempt from the aforesaid five-year duration.

Upon receiving an application for invalidation against a registered trademark, the trademark administration department under the State Council shall notify the relevant parties in writing and set a time limit for submitting defenses. The trademark administration department under the State Council shall make a ruling to maintain or invalidate the disputed registered trademark within twelve months from the date of receipt of such application. Where an extension is necessary due to special circumstances, upon approval by the official in charge of the trademark administration department under the State Council, the time limit may be extended by six months. In the event the party disagrees with the ruling, it may appeal the invalidation decision to the People's Court within thirty days from the date of receipt of the decision. The people's court shall notify the counterparty of the trademark adjudication procedure to participate in the proceedings as a third party.

While maintaining the general five-year limitation for invalidations based on relative grounds, this Article limits the exception for invalidating bad-faith registrations to “owners of well-known trademarks” only. INTA believes a system designed in this way will be further refined from value orientation and institutional logic perspective.

First, if the legislative purpose is to prevent bad-faith registration, the focus should be laid on malicious acts instead of whether the prior rights have been recognized as well-known status. Premising the recognition of a well-known trademark on surpassing the limitation of five-year limitation may easily lead to unfair protection in practice: some acts of bad-faith registrations, with full knowledge that there are existing prior rights, may evade the invalidation regulations due to the time limit, solely because these prior rights have not attained well-known status.

In addition, prior rights are diverse. Copyright and personality rights owners (e.g., name rights, portrait rights) may not engage in continuous commercial operations. They may not be able to systematically monitor trademark publications in time either. If their prior rights are maliciously registered as trademarks, they may not be entitled to initiate invalidations due to the five-year limitation, which will result in manifestly unfair outcomes.

Furthermore, from a systemic perspective, restricting the limitation exception to well-known mark scenarios may force other prior rights owners to be compelled to resort to absolute ground reasons for invalidations, which will increase institutional fragmentation and procedural complexity, and in the meantime, detrimental to form a clear and unified framework for preventing bad-faith filings.

INTA recommends expanding the scope of applying the five-year time limitation from “well-known trademarks owners” to “prior rights owners,” so that the judgment on whether the time limit applies would depend on the core fact of “whether the trademark registration is filed in bad faith”.

Article 53

Where a trademark registration applicant commits any of the following acts of malicious trademark application, causing adverse effects, the trademark enforcement department shall issue a warning and may impose a fine of not more than RMB 100,000:

- (1) knowingly applying for trademark registrations that violates Article 15 of Trademark Law;*
- (2) applying for trademark registrations in violation of Article 18 of Trademark Law;*
- (3) intentionally applying for trademark registrations in violation of Article 20, Article 21 or Article 23 of Trademark Law.*

INTA welcomes the legislative orientation of strengthening deterrence against bad-faith trademark applications through administrative penalties. That said, as a coercive public power intervention, the administrative penalties should be applied with considerable restraint, certainty and foreseeability in the scope and constitutive elements, so as to avoid excessive interference with normal civil rights disputes or triggering procedural abuses.

Certain prohibitions under Article 15, particularly those involving value judgments or public expressions, are highly subjective in practice. There are remarkable differences in standards adopted for examining and ruling different cases. Adopting the highly subjective term of “knowingly” on such basis may further increase uncertainty and the risks of unduly penalizing bona fide parties, especially considering the current stringent examination standards on inherent

registrability, not to mention it is retained in the Article 61 of Draft Amendment to empower the authorities to enforce against the use of unregistered trademarks in violation of Article 15.

Articles 19, 20, 21, and 23 are related to conflicts of relative rights or the weighing of interests between private rights. The current system has established relatively complete remedy mechanisms for prior rights owners through opposition, invalidations, and civil litigations. Bringing such relative grounds within the scope of administrative penalties may lead to undue intervention by public authorities. Such approach may be exploited strategically by market competitors, leading to malicious complaints and procedural confrontations.

By contrast, the bad-faith registrations, i.e., "without the intention of use and significantly exceeding the normal needs of business operations", targeted by Article 18, are more objectively identifiable and socially harmful, making it more applicable for administrative penalties approaches as a primary regulatory tool. INTA believes that the administrative penalty mechanism should primarily focus on such blatant acts of bad faith. Such mechanisms, together with civil and administrative validation procedures, form a tiered and complementary institutional structure.

INTA recommends limiting the scope of applying administrative penalties under Article 53 to bad-faith registrations in violation of Article 18 only, i.e., trademark applications without the intention of use and significantly exceeding the normal needs of business operations. At the same time, the result elements, such as "causing adverse effects" should be retained for applying administrative penalties. When implementing this article, the criteria for determining "serious circumstances" requires further clarification to prevent the overreach of penalties. The circumstances related to relative right conflicts, e.g., Articles 19, 20, 21, 23, should remain seeking resolutions through oppositions, invalidations, and civil remedies rather than routine subjects of administrative penalties.

Article 56

Where, during uses of a registered trademark, the trademark registrant, at his/her discretion, changes the registered trademark, the name or address of the registrant or other registered matters, or uses of the registered trademark causing misleading among public, the trademark enforcement department shall order rectification within a specified time limit; where rectification is not made upon expiration of the prescribed period, a fine of not more than RMB 50,000 shall be imposed; where the circumstances are serious, the trademark administration department under the State Council shall revoke the registered trademark.

Where a registered trademark becomes the generic name of the goods for which it is approved for use, or where the registered trademark has not been used for three consecutive years without justifiable reasons, any unit or individual may apply to the trademark administration department under the State Council for revocation of the registered trademark. The trademark administration department under the State Council shall make a decision within nine months from the date of receipt of the application. Where an extension is necessary due to special circumstances, upon approval by the official in charge of the trademark administration department under the State Council, the time limit may be extended by three months.

Where a registered trademark falls under the circumstances set out in the preceding paragraph, the trademark administration department under the State Council may revoke the registered trademark.

INTA recognizes the addition of “uses of the registered trademarks causing misleading among public” as an important supplement to post-registration supervision, with profound institutional significance. However, the administrative authority still adopts a tiered approach under the Draft Amendment, i.e., “order rectification—impose fine — revocations only under serious circumstances”.

Functionally, the key issue is not whether sporadic non-compliant trademark uses shall fall within the scope of applying administrative penalties, but rather whether an effective revocation mechanism can be promptly triggered when a registered trademark has substantively degenerated into a deceptive or misleading trademark, rendering it no longer suitable for continued protection as a trademark. If the revocations’ threshold is too high, the actual deterrence may be weakened.

Moreover, altered use and misleading use of trademarks are often intertwine with trademark infringements or unfair competitions in practice. Sole reliance on ex officio initiation by administrative authorities makes it difficult to establish a robust and sustainable oversight mechanism.

INTA recommends expressly including “uses of the registered trademarks causing misleading among public” as a ground for revocations upon requests by any entity or any interested party. As for those altered use or misleading use of trademarks, which have substantively caused deceptive effects, these trademarks are no longer suitable for protection. The law should expressly stipulate that such trademarks can be directly revoked by the trademark administration department, either ex officio or upon request, rather than mechanically applying a tiered approach. This is also in alignment with the non-use cancellation or generic-based cancellation as stipulated in the provision.

Article 62

Where a trademark well known to the relevant public, the holder thereof, upon believing its rights have been infringed, may request protection of a well-known trademark in accordance with this Law.

In the course of trademark registration examination and review, investigation and punishment of trademark violations, or investigation and punishment of unfair competition cases, where a party lawfully asserts its rights, the trademark administration department under the State Council may, as required for case handling, confirm the well-known status of a trademark.

In the trial of trademark civil, administrative or unfair competition cases, where a party lawfully asserts its rights, the people’s courts designated by the Supreme People’s Court may, as required for case adjudication, confirm the well-known status of a trademark.

The well-known status of a trademark shall be confirmed upon request of the party, as a fact necessary for the resolution of the trademark-related cases. In confirming the well-known status of a trademark, the following factors shall be comprehensively considered:

- (1) the degree of awareness of the trademark among the relevant public;*
- (2) the duration, manner and geographical scope of use of the trademark;*
- (3) the duration, extent and geographical scope of any publicity of the trademark;*
- (4) records of protection of the trademark, in particular records of protection as a well-known trademark;*
- (5) other factors relating to the well-known status of the trademark.*

INTA notes that this Article repeatedly uses the term “confirm” in place of “determine,” which has long been used in previous legislation and practice. INTA deems that although whether a mark is well-known (known to the relevant public) is a legal fact, such a fact does not exist in natura or self-evidently without adjudication; rather, it must be determined through a comprehensive assessment of multiple statutory factors. In that sense, the term “determine” more accurately reflects the adjudicative function performed by administrative and judicial authorities and better conforms to the expression of fact-law relationships within the context of Chinese legal usage.

Particularly since the third amendment to the Trademark Law effectively curbed the “abuses” associated with well-known mark protection, practice has instead witnessed a trend toward excessive cautious or even undue stringency in recognizing well-known status. Against this backdrop, replacing “determine” with “confirm” across the board in order to “further dilute administrative recognition” may objectively reduce accessibility of well-known (known to the relevant public) mark protection for legitimate rights holders.

INTA recommends that replacing all instances of “confirm” with “determine” consistently, so as to accurately reflect the adjudicative function performed by administrative and judicial authorities in assessing well-known (known to the relevant public) status in individual cases, ensure terminological consistency, and maintain logical clarity by avoiding the interchangeable use of “confirm/determine”.

Article 66

Where a trademark agency engages in any of the following acts, the trademark enforcement department shall order rectification within a specified time limit and impose a fine of not less than RMB 10,000 but not more than RMB 100,000; where the circumstances are serious, a fine of not less than RMB 100,000 but not more than RMB 200,000 shall be imposed. The persons directly responsible in charge and other directly responsible persons shall be given a warning and fined not less than RMB 5,000 but not more than RMB 50,000; where the circumstances are serious, a fine of not less than RMB 50,000 but not more than RMB 100,000 shall be imposed:

- (1) forging, altering or using forged or altered legal documents, seals or signatures in the course of handling trademark matters;*

- (2) soliciting trademark agency businesses by means of fraud, inducement or disparagement of other trademark agencies;*
- (3) accepting entrustment from both parties with conflicting interests in the same trademark case;*
- (4) accepting entrustment while knowing or having reason to know that the trademark applied for registration falls under circumstances specified in Article 15, Article 18, Article 20, Article 21 or Article 23 of this Law;*
- (5) violating Article 24 of this Law or committing any act specified in Article 53 of this Law;*
- (6) disrupting the order of the trademark agency market by other improper means.*

Where a trademark agency handles overseas trademark registration applications or other matters for domestic clients by fraudulent or other improper means, thereby harming the clients' interests, the penalties in accordance with the preceding paragraph shall apply.

Where a trademark agency commits any of the acts specified in the preceding two paragraphs and the circumstances are serious, the trademark administration department under the State Council may decide to cease acceptance of trademark agency business handled by the agency and make an announcement.

Where a trademark agency violates the principle of good faith and infringes upon the lawful rights and interests of clients, it shall bear civil liability in accordance with law, and the trademark agency industry organization shall impose disciplinary measures in accordance with its articles of association.

INTA supports the objective of regulating the conduct of trademark agencies to curb bad-faith registrations and maintain market order but emphasizes that trademark agencies are by their legal nature, procedural, administrative agents whose core duty is to assist clients in completing procedural acts in good faith and in compliance with law.

In accordance with the basic principles of the PRC Civil Code, responsibility for the legality and consequences of an application shall, as a rule, rest with the principal (the represented party). Imposing administrative liability on agencies at a level equal to or higher than that of principal, without differentiating between subjective fault and degree of participation, risks undermining the basic structure of agency system and may also raise concerns regarding legal legitimacy and international comparability.

INTA is particularly concerned about item (4), which requires agencies to make ex ante determinations and refuse engagement for trademark applications that may potentially implicate Articles 15, 18, 20, 21, and others. Certain provisions of Article 15 (particularly those relating to morality, public order and good morals, and misleadingness) are highly subjective; the standard of "obviously exceeding the needs of normal production and business operations" in Article 18 is difficult to delineate in practice; and Articles 20, 21, and 23 mostly involve relative grounds or conflicts of private rights that typically become apparent only when asserted by a prior rights holder. Against this backdrop, requiring agencies to "know or should have known" and accordingly

refuse representation effectively imposes a substantive examination duty far beyond a reasonable duty of care, and may generate uncertainty and over-defensive behavior.

INTA also notes that item (5)'s inclusion of "falling under the circumstances specified in Article 53 of this Law" into the scope of penalties against agencies may result in joint penalties against the agency after the applicant has already been penalized. Unless the agency has induced, assisted, or participated as a joint tortfeasor, such provision lacks an independent basis for liability.

INTA recommends narrowing the scope of administrative penalties to clearly limit the focus of penalties to: serious procedural misconduct such as falsification or alteration of documents; clear market-order harms such as conflicts of interest, fraud, or disparagement; and circumstances where the agency knowingly induces, participates in, or tolerates bad-faith registration, thereby constituting a joint infringer or the true actor.

Article 69

Any of the following acts shall constitute infringement of the exclusive right to use a registered trademark:

- (1) using a trademark identical with a registered trademark on the same goods without the permission of the trademark registrant;*
- (2) using a trademark similar to a registered trademark on the same goods, or using a trademark identical with or similar to a registered trademark on similar goods, without the permission of the trademark registrant, where confusion is likely to be caused;*
- (3) selling goods that infringe the exclusive right to use a registered trademark;*
- (4) forging or manufacturing, without authorization, representations of another person's registered trademark, or selling such forged or unauthorized representations;*
- (5) replacing a registered trademark without the consent of the trademark registrant and placing the goods bearing the replaced trademark back on the market;*
- (6) intentionally providing facilitation for acts infringing the exclusive right to use another person's registered trademark or assisting others in committing such acts;*
- (7) causing other damage to another person's exclusive right to use a registered trademark.*

INTA notes that Article 69 mixes the constitutive requirements for trademark infringement with specific modes of infringing conduct, without structural separation. This may blur application logic and impede the accurate coverage of new infringing act. From a comparative law and international treaty perspective, trademark infringement regimes typically establish first "what circumstances constitute infringement" before enumerating "through which acts infringement may be committed." The current structural arrangement of the provisions necessitates systematic adjustment.

Under Article 16 of the TRIPS Agreement, the core of infringement analysis focuses on whether a sign capable of identifying the commercial origin of goods or services has been used, not on whether the sign itself qualifies as a "trademark." Whether the use is generic, descriptive, or non-

identifying should be addressed through fair use defenses rather than by narrowing the infringement definition. Thus, the pervasive use of the term "trademark" in the current provisions may unnecessarily narrow the scope of infringement regulation.

Anti-dilution and anti-free-riding protection for well-known marks in non-confusion scenarios is an important part of trademark infringement law. However, at present, relevant content is largely embedded in registration-condition provisions, and the infringement provision lacks a clear, independent expression. Further, unregistered well-known marks generally cannot directly rely on "registered trademark infringement" rules; without express provision within the infringement articles, a systemic gap may arise.

INTA recommends that in the structural arrangement of the provisions, separating infringement requirements from modes of infringing conduct. In the definition of infringement, replacing "trademark" with "sign" to align with TRIPS Agreement terminology, and avoid unnecessarily restricting the scope of infringement regulation. Additionally, clear provisions for protection of well-known marks should be incorporated within the infringement articles.

Article 70

Where a registered trademark contains the generic name, device or model number of the goods, or directly indicates the type, nature, quality, main raw materials, function, use, weight, quantity, value, geographical origin or other characteristics of the goods, or contains a geographical name, the trademark registrant shall have no right to prohibit others from making legitimate use thereof.

Where a registered trademark in the form of a three-dimensional sign, color combination, sound or motion sign contains shape, color combination, sound or motion effect that results solely from the nature of the goods themselves, that is necessary to obtain a technical effect, or that gives the goods substantial value, the trademark registrant shall have no right to prohibit others from making legitimate use thereof.

Where a registered trademark is used solely to indicate information such as the purpose, target users or application scenarios of the goods provided, or to indicate the true source, the trademark registrant shall have no right to prohibit others from making legitimate use thereof, except where confusion is likely to be caused.

Where, prior to the application for trademark registration, another party has already used a trademark identical with or similar to the registered trademark on the same or similar goods and such trademark has acquired a certain influence, the trademark registrant shall have no right to prohibit that user from continuing to use the trademark within the original scope of use, but may require the user to add appropriate distinguishing signs.

INTA strongly welcomes the systematic expansion of fair use defenses under Article 70 of Draft Amendment, particularly the unified framework covering functional elements, non-traditional elements, and indicative use, which helps balance trademark rights with competition and public interest.

At the same time, INTA notes that—except for paragraph 3—several paragraphs in this Article provide only that the registrant “has no right to prohibit legitimate use,” without explicitly excluding misleading use or use likely to cause confusion. In practice, this may be exploited and may weaken core trademark functions.

In particular, in e-commerce, repair services, spare parts supply, franchise solicitation, there exist scenarios where parties invoke “indicating true source” or “indicating purpose” while in fact misleading the public or passing off the rights holder or its affiliates. Without explicit statutory exclusion of misleading or confusing uses, predictability of the legal framework may be reduced.

Regarding Paragraph 4, divergent views have emerged in practice as to whether “prior use” must precede the registrant’s actual use, and further clarification is needed. Furthermore, to align with the Anti-Unfair Competition Law and ensure that earlier use with a certain influence can exclude later entrants, the law should specify that where the registrant enters the same scope of market use, it is the registrant who must add distinguishing indications to differentiate its goods, rather than placing that burden on the prior user.

INTA recommends introducing a uniform limitation across fair use provisions to “exclude uses that mislead or are likely to cause confusion” and adopting a restrictive interpretation of “legitimate use” under paragraph 3. INTA also recommends clarifying the chronological sequence and accompanying obligations for the prior use defense: the prior use should precede the registrant’s actual use before filing, and where the registrant enters that market scope, the registrant should add appropriate distinguishing indications.

Article 74

The amount of compensation for the infringement of the exclusive right to use a registered trademark shall be determined based on the actual losses suffered by the right holder due to the infringement or the benefits obtained by the infringer from the infringement; where it is difficult to determine the actual losses of the right holder or the benefits obtained by the infringer, the amount shall be reasonably determined with reference to the multiple of the licensing fee of the registered trademark. For intentional infringement of the exclusive right to use a registered trademark with serious circumstances, the amount of compensation may be determined as not less than one time but not more than five times the amount determined in accordance with the above methods.

When hearing a trademark dispute case, the people’s court shall, at the request of the right holder, order the destruction of the goods bearing counterfeit registered trademarks except in special circumstances; order the destruction of the materials and tools mainly used for manufacturing the goods bearing counterfeit registered trademarks without compensation; or, in special circumstances, order the prohibition of the aforementioned materials and tools from entering the commercial channels without compensation.

Goods bearing counterfeit registered trademarks shall not enter the commercial channels merely by removing the counterfeit registered trademarks.

INTA welcomes the proposed revision of methods in calculating damages as right owners will no longer need to prove the benefits obtained by the infringer, which is not only practically difficult to determine, and often cannot reflect the scale of the damage caused by the infringement.

The current article only orders the disposal of the counterfeit goods. However, INTA deems the disposal measure should apply to all forms of trademark-infringing goods.

The Draft Amendment includes a change in the language on recovery of reasonable expenses incurred by the plaintiff in connection with civil actions that would seem to require courts to award such costs not only in cases where actual damages are sought but also statutory damages.

Article 78

Where a trademark lawsuit is maliciously instituted, the people's court shall impose penalties in accordance with law; where losses are caused to the opposing party, civil liability shall be borne in accordance with law.

INTA commends the Draft Amendment for, for the first time, expressly providing that malicious trademark litigation may be sanctioned according to law and that civil liability shall be borne for losses caused.

In practice, because the costs of trademark application, review, and litigation are relatively low, some bad-faith actors can repeatedly file applications, seek review, and initiate administrative or civil litigation, thereby subjecting prior rights holders to prolonged procedural delays and financial burdens. In such circumstances, malicious litigation is often not an isolated act but is closely coupled with bad-faith filings and abusive enforcement activities. If the law provides only procedural sanctions for malicious litigation without enabling adequate, enforceable compensation, it may not remove the economic incentives driving abusive conduct.

INTA recommends clarifying that bad-faith trademark filings followed by abusive rights assertions through litigation should be included within the scope of this provision, thereby reflecting the practical reality of integrated abuse as a unified scheme of “filing—enforcement—litigation.” Moreover, it remains unclear whether reasonable expenses incurred by the right holder in responding to such malicious litigation are included within the compensable scope.

Article 81

Where a public official engaged in trademark registration, management, enforcement, or other related work neglects their duties, abuses their power, practices favoritism and irregularities, or handles trademark registration, management, enforcement, or other related matters in violation of the law, they shall be given administrative sanctions in accordance with the law.

The manner of assuming responsibility for the conduct regulated by this article applies to situations where the act does not constitute a crime. If it does constitute a crime, criminal liability shall be assumed in accordance with Article 82 of this revised draft. Therefore, to make the legal text more precise and to avoid duplicate liability, it is recommended to add the limitation 'does not yet constitute a crime.' The suggested revised provision is “Public officials engaged in trademark

registration, management, and law enforcement who neglect their duties, abuse their powers, show favoritism or commit fraud, and handle trademark registration, management, and law enforcement matters in violation of the law, if their actions do not yet constitute a crime, shall be disciplined according to the law.

INTA once again extends its sincere appreciation to the Standing Committee of the National People's Congress for the opportunity to provide these comments. Should you have any questions regarding the foregoing comments or any other matters, INTA remains at your disposal. If you wish to discuss any of the issues raised herein or any other matters further, please contact INTA Chief Representative in China, Ms. Monica Su at msu@inta.org.