

Changing Tides of the Chinese Trademark Law

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Trademark law is but part of competition law. With a good faith clause, the new Chinese trademark law moves closer to competition law. The new law is more liberal to the registrable signs with more non-traditional signs such as sound marks and flora in the family of registrable signs. Some kind of *bona fide* prior use of trademark is respected and the requirement of trademark use is strengthened in the new law. The likelihood of confusion has been absorbed in the new law as the prerequisites trademark infringement other than using identical marks on identical goods or services. In the new law, a clause against using well-known trademarks as tool to promoting products is formulated. Changes on the procedures of oppositions to trademarks witness the efforts to simplify the examination of trademarks. The stronger protection efforts such as punitive damages in the new law will go against trademark infringement.

Keywords: Chinese Trademark Act, Good Faith Clause, Use of Trademark, Likelihood of Confusion, Well-Known Trademark

I. INTRODUCTION

The Chinese Trademark Act (中华人民共和国商标法) was enacted in 1982 and revised in 1993, 2001 and 2014. In this course, there has been notable progress in trademark protection which vigorously promote China's economic development. By the end of 2014, there were a total of 15,226,700 trademark applications,

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10,027,500 trademark registrations and 8,930,000 legitimate registered trademarks; all among the first in the world. In the same period, however, some problems remain unsettled including cumbersome trademark registration procedures, bad-faith-registration, and a large number of trademark infringements calling for reform of trademark law.¹ In August 30, 2013, the fourth meeting of the second session of the Chinese National People's Congress ("NPC") passed the Decision on Amending <People's Republic of China Trademark Law>(关于修改〈中华人民共和国商标法〉的决定)(主席令第六号).² It finally came into force on May 1, 2014. The 2014 amendment of the Chinese Trademark Act (hereinafter the new law) includes 53 modifications with 73 sections in contrast to 64 sections in the Chinese Trademark Act (2001) (hereinafter the old law). The amendments mainly concern the efficiency of trademark registration, stronger protection of trademarks and the establishment of a fair competitive market. In addition, various supplementary regulations including new updates to the Trademark Law Implementing Regulations,³ separate Guidelines and Notifications issued by the Trademark Review and Adjudication Board ("TRAB")⁴ and Judicial Interpretations on jurisdiction and other issues from the Supreme People's Court ("SPC")⁵ together constitute the whole trademark system of China.

The primary purpose of this research is to introduce the pertinent provisions in the new law along with some comments. This article is composed of nine parts including short Introduction and Conclusion. Part two will discuss the integration of Chinese trademark law within competition law. Part three will discuss the inception of the non-traditional trademarks such as sound marks in the new law. Part four will talk about the efforts of balance of use-dominated formula and registration-dominated formula in the new law. Part five will tackle the rational regression of the new law from similarity-of-signs test to likelihood-of-confusion test in the judgment of trademark infringement. Part six will investigate well-known trademarks and a remarkable concern of foreigners considering the protection of un-registered trademarks in China. Part seven will examine the simplified procedure of examination focusing on the change of the procedure of opposition to trademarks. Part eight will search for the way how to strengthen protection efforts such as punitive damages, in the new law.