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INTELLECTUAL PROPERTY

What you need to know now to protect your brand in China

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Brand owners take note. Effective 2027 China will amend its Trade Mark Law. Efforts to curb trade mark hoarding are further prioritised coupled with more stringent accountability.

China passed a fifth revision to its Trade Mark law in June 2026, effective 1 January 2027.

Significant changes include enforcement measures by the State Council against bad faith registrations and State Council non-use cancellations, the recognition of well-known marks and online trade mark use. The opposition period is reduced from three to two months on publication, increasing efficiency.

Bad Faith

Bad-faith applications and the hoarding of registrations or "trade mark squatting" remains a significant issue for brand owners who are active in China. If someone else owns your mark without your authorisation, your preferred agent or distributor may be reluctant to act on your behalf. Imports could also be detained at customs. The revision sees a shift towards further enforcement against bad faith registrations amending the existing provision from *"not for the purpose of use"* to disallowing marks that are *"not intended for use and clearly exceeding normal production and business needs"* with the State Council permitted to impose fines and revoke trade marks.

Non-use cancellations

An applicant should have a bona fide intention to use a trade mark for the goods and services for which registration is sought in the relevant territory. Generally, a registered trade mark may be vulnerable to cancellation for non-use if it has not been used for a certain period, being three years in China. Non-use cancellations commonly require active steps by an interested third party.

Some territories, such as the U.S.A. require a Declaration of Use and specimens of use on filing the application and/or on renewal to maintain a registration. While Declarations of Use may have been tabled in drafting China's fifth revision, the final revision does not stipulate Declarations of Use.

Despite this, *ex officio* cancellations will be allowed whereby the State Council may cancel trade marks that have become generic or have not been used for three consecutive years without legitimate reason. This is a significant change as non-use cancellations may also now be initiated by the authorities.

Well-known marks

A well-known mark or famous mark is a trade mark that has achieved such a degree of recognition among the relevant public that it is afforded a broader scope of protection than ordinary trade marks, beyond the goods or services for which it is registered and without registration.

The fifth revision recognises well-known marks however the onus to establish well-known status remains high requiring substantial evidence of market recognition, including survey evidence, revenue, advertising expenditure, media coverage and decided on a case by case basis. This is a significant introduction whereby marks which imitate a well-known mark or mislead the public to the detriment of the rightful owner will not be registered and that use forbidden.

Online use

The revision defines evidence of use of a mark on goods, packaging, commercial transaction documents, advertising, exhibitions and *other commercial activities* for the purpose of identifying and distinguishing the source of goods. *Other commercial activities* includes evidence of use of the mark on the internet, e-commerce platforms, social media and digital advertising which should ease the burden of providing evidence of use in non-use cancellations and contentious matters.

Procedural revisions

Further changes include reducing the opposition term from three to two months and a one-year bar on filing only following a voluntary cancellation. Motion marks and sound marks are a further expansion. There is also a significant move to stringent control and accountability for trade mark agencies and practitioners who will be required to register their information with the State Council Trademark Authority with failures attracting hefty fines.

Practical take-aways

There is always the risk of non-use cancellations however particularly so in China as it is a common recourse in review proceedings where a trade mark has been refused due to a prior mark that may in turn be vulnerable to cancellation. The recognition of online use should assist brand owners in defending non-use cancellations. Considering the authorities will too have the ability to initiate cancellations of marks that have become generic or have not been used for three consecutive years without legitimate reason, brand owners are reminded to conduct regular portfolio reviews, keep records in order and ensure that registrations are in genuine use.

Please contact Werksmans Intellectual Property practice area for further advice and assistance.

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