

商標法中英文對照

民國 99 年 08 月 25 日修正

Trademark Act (2003.05.28 Amended)

本表中英條文資料來源：法務部全國法規資料庫 <http://mojlaw.moj.gov.tw/>

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注意一：本表內容如與各法規主管機關之公布文字有所不同，以各主管機關公布為準

注意二：英譯文部分，全國法規資料庫有若干缺漏或錯誤之處，本表不擔保其正確性

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目次

第一章 總則	Chapter I General Provisions
第二章 申請註冊	Chapter II Trademark Application
第三章 審查及核准	Chapter III Examination and Approval
第四章 商標權	Chapter IV Trademark Rights
第五章 異議	Chapter V Opposition
第六章 評定及廢止	Chapter VI Invalidation and Revocation
第一節 評定	Section I Invalidation
第二節 廢止	Section II Revocation
第七章 權利侵害之救濟	Chapter VII Remedies for Right Infringement
第八章 證明標章、團體標章及團體商標	Chapter VIII Certification Marks, Collective Membership Marks and Collective Trademarks
第九章 罰則	Chapter IX Penalty
第一〇章 附則	Chapter X Supplementary Provisions

第一章 總則

第 1 條

為保障商標權及消費者利益，維護市場公平競爭，促進工商企業正常發展，特制定本法。

第 2 條

凡因表彰自己之商品或服務，欲取得商標權者，應依本法申請註冊。

第 3 條

外國人所屬之國家，與中華民國如無互相保護商標之條約或協定，或依其本國法令對中華民國人申請商標註冊不予受理者，其商標註冊之申請，得不予受理。

第 4 條

在與中華民國有相互承認優先權之國家或世界貿易組織會員，依法申請註冊之商標，其申請人於第一次申請日次日起六個月內，向中華民國申請註冊者，得主張優先權。

依前項規定主張優先權者，應於申請註冊同時提出聲明，並於申請書中載明第一次申請之申請日及受理該申請之國家或世界貿易組織會員。

申請人應於申請日次日起三個月內，檢送經前項國家或世界貿易組織會員證明受理之申請文件。

違反前二項規定者，喪失優先權。

主張優先權者，其申請註冊日以優先權日為準。

第 4 條 (98 年修正)

在與中華民國有相互承認優先權之國家或世界貿易組織會員，依法申請註冊之商標，其申請人於第一次申請日次日起六個月內，向中華民國申請註冊者，得主張優先權。

Chapter I General Provisions

Article 1

This Act is formulated to safeguard trademark rights and consumers' interest, maintain fair competitions of markets, and facilitate normal development of industries and commerce.

Article 2

A person who wishes to obtain trademark rights in order to distinguish its goods or services shall apply for trademark registration as provided under this Act.

Article 3

An application of a foreigner, whose country has established no trademark protection treaties or agreements with the Republic of China on a mutual basis or has rejected a trademark registration made by nationals of the Republic of China in pursuance to its domestic legislations, may be rejected.

Article 4

An application of trademark, which was filed in a country mutually recognizing priority right with the Republic of China and was registered in pursuance to the domestic legislation of that country, may claim priority right within six months counting from the next day of the first filing date of that trademark application filed in the Republic of China.

Priority claims made in accordance with the preceding paragraph shall be made at the same time when filing for an application, in which the foreign filing date and the country admitting that foreign application shall be clearly indicated.

The applicant shall submit, within three months from the next day of its filing date in the Republic of China, a certified copy of the application admitted by the said foreign country.

Those who violate any of the preceding two paragraphs shall lose the priority right.

The priority date shall be referred as the filing date of those claiming priority rights.

依前項規定主張優先權者，應於申請註冊同時提出聲明，並於申請書中載明第一次申請之申請日及受理該申請之國家或世界貿易組織會員。

申請人應於申請日次日起三個月內，檢送經前項國家或世界貿易組織會員證明受理之申請文件。

違反前二項規定者，喪失優先權。

主張優先權者，其申請註冊日以優先權日為準。

第 5 條

商標得以文字、圖形、記號、顏色、聲音、立體形狀或其聯合式所組成。

前項商標，應足以使商品或服務之相關消費者認識其為表彰商品或服務之標識，並得藉以與他人之商品或服務相區別。

第 6 條

本法所稱商標之使用，指為行銷之目的，將商標用於商品、服務或其有關之物件，或利用平面圖像、數位影音、電子媒體或其他媒介物足以使相關消費者認識其為商標。

第 7 條

本法所稱主管機關，為經濟部。

商標業務，由經濟部指定專責機關辦理。

第 8 條

申請商標註冊及其相關事務，得委任商標代理人辦理之。但在中華民國境內無住所或營業所者，應委任商標代理人辦理之。

商標代理人應在國內有住所；其為專業者，除法律另有規定外，以商標師為限。商標師之資格及管理，以法律定之。

Article 5

A trademark may be composed of a word, design, symbol, color, sound, three-dimensional shape or a combination thereof.

A trademark as defined above shall be distinctive enough for relevant consumers of the goods or services to recognize it as identification to those goods or services and to differentiate such goods or services from those offered by others.

Article 6

The term, use of trademark, as referred to in this Act connotes the utilization for marketing purpose of trademark on goods, services or relevant articles thereof, or the utilization through means of two-dimensional graphic, audio and visual digitization, electronic media, or other mediums to sufficiently make relevant consumers recognize it as a trademark.

Article 7

The term, competent authority, as referred to in this Act is the Ministry of Economic Affairs (hereinafter as the MOEA).

Trademarks and related affairs shall be administrated under a registrar office (hereinafter as the Registrar Office) appointed by the MOEA.

Article 8

Trademark registration and relevant affairs thereof may be performed and managed by an appointed trademark agent. Those who have no domicile or business office within the territory of the Republic of China shall appoint a trademark agent to perform and manage relevant trademark affairs.

A trademark agent shall have a domicile in the Republic of China. Unless otherwise provided by law, only certified trademark attorneys shall claim themselves as the professionals. Qualifications and administration for certified trademark attorney shall be prescribed by law.

第 9 條

凡申請人為有關商標之申請及其他程序，遲誤法定期間、不合法定程式不能補正或不合法定程式經通知限期補正屆期未補正者，應予駁回。

申請人因天災或不可歸責於己之事由遲誤法定期間者，於其原因消滅後三十日內，得以書面敘明理由，向商標專責機關申請回復原狀。但遲誤法定期間已逾一年者，不得為之。

申請回復原狀，應同時補行期間內應為之行為。

第 10 條

商標之申請及其他程序，應以書件或物件到達商標專責機關之日為準；如係郵寄者，以郵寄地郵戳所載日期為準。

郵戳所載日期不清晰者，除由當事人舉證外，以到達商標專責機關之日為準。

第 11 條

商標註冊及其他關於商標之各項申請，應繳納規費。
商標規費之數額，由主管機關以命令定之。

第 12 條

商標專責機關應刊行公報，登載註冊商標及其相關事項。

第 13 條

商標專責機關應備置商標註冊簿，登載商標註冊、商標權變動及法令所定之一切事項，並對外公開之。
前項商標註冊簿，得以電子方式為之。

第 14 條

有關商標之申請及其他程序，得以電子方式為之；其實施日

Article 9

An application shall be rejected where, for trademark application and other procedures, the applicant fails to comply within statutory period, cannot correct those which are not in conformity to legal formality, or fails to correct those which are not in conformity to legal formality within the notified period of time.

An applicant may, in the case where the statutory period has been delayed from natural disasters or causes not attributable to the applicant, submit a written statement clarifying all reasons within thirty (30) days from extinction of such cause to the Registrar Office for restoration to the status quo ante. The aforementioned, however, does not apply to whom that has delayed the statutory period for over a year.

Where request for restoration to the status quo ante is made, proceedings that should have been done within the statutory period shall be carried out concurrently.

Article 10

The filing date of a trademark application and other trademark proceedings shall be based on the date when the written documents or articles arrive at the Registrar Office. The filing date of those arriving via postal service shall be based on the postmarked date of the place of origin.

Unless otherwise proved by the party concerned, the filing date of those whose postmarked date appears to be ambiguous will be based on the date of arrival at the Registrar Office.

Article 11

Regulatory fees shall be paid for trademark registration and other trademark related inquiries.

The amount of regulatory fees shall be prescribed under regulations by the Registrar Office .

Article 12

The Registrar Office shall publish and circulate an official gazette containing registered trademarks and relevant information thereof .

Article 13

The Registrar Office shall establish and maintain a trademark registry containing trademark registrations, changes to trademark rights, and all matters as prescribed by legislations, and shall make the said registry available to the public.

The trademark registry set forth in the preceding paragraph may be done in electronic format.

Article 14

Application and other procedures of trademark may be done in electronic format; regulations on the implementation date,

期、申請程序及其他應遵行事項之辦法，由主管機關定之。

application procedures, and other required matters thereof shall be prescribed by the Registrar Office.

第 15 條

商標專責機關對於商標註冊之申請、異議、評定及廢止案件之審查，應指定審查人員審查之。
前項審查人員之資格，以法律定之。

Article 15

The Registrar Office shall appoint examiner(s) to examine trademark application, opposition, invalidation, and revocation.

Qualifications for examiner referred to in the preceding paragraph shall be prescribed by law.

第 16 條

商標專責機關對前條第一項案件之審查，應作成書面之處分，並記載理由送達申請人。
前項之處分，應由審查人員具名。

Article 16

The Registrar Office shall render a written and stated decision on examination set forth in paragraph 1 of the preceding article, and deliver the said decision to the applicant.

The decision provided in the preceding paragraph shall be signed by the examiner(s).

第二章 申請註冊

Chapter II Trademark Application

第 17 條

申請商標註冊，由申請人備具申請書，載明商標、指定使用之商品或服務及其類別，向商標專責機關申請之。
前項商標，應以視覺可感知之圖樣表示之。
申請商標註冊，以申請書載明申請人、商標圖樣及指定使用之商品或服務，提出申請當日為申請日。
申請人得以一商標註冊申請案，指定使用於二個以上類別之商品或服務。
商品或服務之分類，於本法施行細則定之。
類似商品或服務之認定，不受前項商品或服務分類之限制。

Article 17

When filing for a trademark application, the applicant shall submit an application stating the proposed trademark, and its designated goods or services and the class(es) thereof to the Registrar Office.

The trademark referred to in the preceding paragraph shall be expressed in a visually perceptible representation.

When applying for trademark registration, the application shall provide and specify the applicant, the trademark representation, and its designated goods or services and the class(es) thereof; the filing date shall be the date on which the application is submitted.

An applicant may file for one trademark application designating for use on two and more classes of goods or services.

Classifications on goods or services shall be prescribed in the Enforcement Rules of this Act.

An assessment on similar goods or services shall not be constrained by the classifications on goods or services set forth in the preceding paragraph.

第 18 條

二人以上於同日以相同或近似之商標，於同一或類似之商品或服務各別申請註冊，有致相關消費者混淆誤認之虞，而不能辨別時間先後者，由各申請人協議定之；不能達成協議時，以抽籤方式定之。

Article 18

A compromise shall be reached between two or more applicants, whose trademark applications submitted separately on the same day of which time precedence cannot be determined may likely cause confusion to relevant consumers by providing the same or similar trademark representations and designating their use on the same or similar goods or services. Lots shall be cast where a compromise has failed to be reached.

第 19 條

商標包含說明性或不具識別性之文字、圖形、記號、顏色或立體形狀，若刪除該部分則失其商標之完整性，而經申請人聲明該部分不在專用之列者，得以該商標申請註冊。

第 20 條

商標註冊申請事項之變更，應向商標專責機關申請核准。商標及其指定使用之商品或服務，申請後即不得變更。但指定使用商品或服務之減縮，不在此限。第一項之變更，應按每一商標各別申請。但同一人有二以上申請案，而其變更事項相同者，得於一變更申請案中同時申請變更之。

第 21 條

申請人得就所指定使用之商品或服務，向商標專責機關請求分割為二個以上之註冊申請案，以原註冊申請日為申請日。

第 22 條

因商標註冊之申請所生之權利，得移轉於他人。受讓前項之權利者，非經請准更換原申請人之名義，不得對抗第三人。

第三章 審查及核准**第 23 條**

商標有下列情形之一者，不得註冊：

- 一、不符合第五條規定者。
- 二、表示商品或服務之形狀、品質、功用或其他說明者。
- 三、所指定商品或服務之通用標章或名稱者。
- 四、商品或包裝之立體形狀，係為發揮其功能性所必要者。
- 五、相同或近似於中華民國國

Article 19

A proposed trademark featuring a descriptive or non-distinctive word, sign, symbol, color, or three-dimensional shape, where deletion of that feature will defect the whole of such trademark, may be registered when the applicant disclaims the exclusive right for using the said feature.

Article 20

Any changes to a trademark application shall be submitted to and approved by the Registrar Office. No changes shall be made on the proposed trademark and its designated goods or services thereof after an application has been filed. However, the aforementioned does not apply to contraction on the scope of goods or services designated for use. A request for change set forth in paragraph 1 shall be filed separately per application. However, an applicant owning two or more applications where change on the same matter to be taken place may make such change at once by filing for one single request.

Article 21

An applicant may request to the Registrar Office for dividing its designated goods or services into two or more applications, in which the original filing date shall remain as the filing date thereof.

Article 22

Rights derived from a trademark application may be assigned to another person. An assignee of rights set forth in the preceding paragraph, unless requested and approved by the Registrar Office as the applicant, shall have no locus standi against any third party.

Chapter III Examination and Approval**Article 23**

A trademark application shall be rejected if the proposed trademark satisfies any of the following:

1. One that fails to comply with provisions of Article 5;
2. One that represents the shape, quality, function(s) or other descriptions of the goods or services;
3. A generic sign or term used in relation to the designated goods or services;
4. One that is a three-dimensional shape of the goods or packaging thereof and is indispensable for performing the intended function(s);
5. One that is identical or similar to the national flag, national

旗、國徽、國璽、軍旗、軍徽、印信、勳章或外國國旗者。

六、相同於國父或國家元首之肖像或姓名者。

七、相同或近似於中華民國政府機關或展覽性質集會之標章或所發給之褒獎牌狀者。

八、相同或近似於國際性著名組織或國內外著名機構之名稱、徽記、徽章或標章者。

九、相同或近似於正字標記或其他國內外同性質驗證標記者。

一〇、妨害公共秩序或善良風俗者。

一一、使公眾誤認誤信其商品或服務之性質、品質或產地之虞者。

一二、相同或近似於他人著名商標或標章，有致相關公眾混淆誤認之虞，或有減損著名商標或標章之識別性或信譽之虞者。但得該商標或標章之所有人同意申請註冊者，不在此限。

一三、相同或近似於他人同一或類似商品或服務之註冊商標或申請在先之商標，有致相關消費者混淆誤認之虞者。但經該註冊商標或申請在先之商標所有人同意申請者，除二者之商標及指定使用之商品或服務均相同外，不在此限。

一四、相同或近似於他人先使用於同一或類似商品或服務之商標，而申請人因與該他人間具有契約、地緣、業務往來或其他關係，知悉他人商標存在者。但得該他人同意申請註冊者，不在此限。

一五、有他人之肖像或著名之姓名、藝名、筆名、字號者。但得其同意申請註冊者，不在此限。

一六、有著名之法人、商號或其他團體之名稱，有致相關公眾混淆誤認之虞者。

一七、商標侵害他人之著作權、專利權或其他權利，經判決確定者。但得該他人同意申

emblem, national seal, military flags, military insignia, official seals, medals of the Republic of China, or flags of foreign nations.

6. One that is identical to the portrait or name of the late Dr. Sun Yat-Sen or of the head of the state;

7. One that is identical or similar to a mark used or medal or certificate awarded by a government agency of the Republic of China or by an exhibition assembly;

8. One that is identical or similar to the name, emblem, badge or mark of a well-known international organization or a well-known domestic or foreign institution;

9. One that is identical or similar to the CNS (Chinese National Standards) Mark or any domestic or foreign mark of the same certified inspection nature;

10. One that violates public order or good morals;

11. One that is likely to mislead the public with respect to the nature, quality, or place of origin of the designated goods or services;

12. One that is identical or similar to another person's well-known trademark or mark and hence is likely to confuse the relevant public or likely to dilute the distinctiveness or reputation of the said well-known trademark or mark. However, the aforementioned shall not apply to an application filed with consent from the owner of the said well-known trademark or mark;

13. One that is identical or similar to a registered trademark or a proposed trademark of a preceding application that is designated for use on identical or similar goods or services thereof and hence likely to cause confusion to relevant consumers. However, except in the case where such trademarks and their designated goods or services of both parties are identical, the aforementioned shall not apply to an application filed with consent from the owner of the said registered trademark or a proposed trademark;

14. One that is identical or similar to a trademark that has been used prior by another person on the identical or similar goods or services, and the applicant thereof is aware of the existence of the said trademark through contractual, geographical, or business connections, or any other relationship with the said person. However, the aforementioned shall not apply to an application filed with consent from the said person;

15. One that comprises a portrait, or a famous name, stage name, pseudonym or alias of another person. However, the aforementioned shall not apply to an application filed with consent from the said person;

16. One that comprises the name of a famous juristic person, entity or other group, and hence likely to cause confusion with the relevant public;

17. One that infringes another person's copyrights, patent rights, or other rights, where such infringement has been affirmed by a court. However, the aforementioned shall not apply to an application filed

請註冊者，不在此限。

一八、相同或近似於我國或與我國有相互承認保護商標之國家或地區之酒類地理標示，而指定使用於酒類商品者。

前項第十二款、第十四款至第十六款及第十八款規定之情形，以申請時為準。

第一項第七款及第八款規定，於政府機關或相關機構為申請人時，不適用之。

有第一項第二款規定之情形或有不符第五條第二項規定之情形，如經申請人使用且在交易上已成為申請人商品或服務之識別標識者，不適用之。

第 24 條

商標註冊申請案經審查認有前條第一項或第五十九條第四項規定不得註冊之情形者，應予核駁審定。

前項核駁審定前，應將核駁理由以書面通知申請人，並指定其於送達之次日起三十日內陳述意見。

第 25 條

商標註冊申請案經審查無前條第一項規定之情形者，應予核准審定。

經核准審定之商標，申請人應於審定書送達之次日起二個月內，繳納註冊費後，始予註冊公告，並發給商標註冊證；屆期未繳費者，不予註冊公告，原核准審定，失其效力。

第 26 條

前條第二項之註冊費得分二期繳納；其分二期繳納者，第二期之註冊費應於註冊公告當日起算屆滿第三年之前三個月內繳納之。

第二期註冊費未於前項期間內繳納者，得於屆期後六個月內，按規定之註冊費加倍繳納。未依前項規定繳費者，商標權

with consent from the said person; or

18. One that is identical or similar to a geographical indication of wines and spirits of a country or region that mutually protects trademark with the Republic of China, and is designated for use on wines and spirits.

The provisions of Item (12), Items (14) through (16) and Item (18) of the preceding paragraphs shall only apply in occurrence at the time of filing.

The provisions of Items (7) and (8) of paragraph 1 of this Article shall not apply if the applicant is a government agency or related institutes.

The provisions of Item (2) of paragraph 1 of this Article or paragraph 2 of Article 5 shall not apply in the case where the proposed trademark has been used by the applicant and has become a distinctive identification of the goods or services provided by the applicant in the course of trade.

Article 24

A trademark application complying with conditions of unsuccessful registration as set forth under paragraph 1 of the preceding article or paragraph 4 of Article 59 shall be rejected after examination.

Before rendering a rejection provided under the preceding paragraph, a written notice stating reasons of rejection shall be sent to the applicant, who shall state whose comment within thirty (30) days counting from the next day of receiving the said notice.

Article 25

A trademark application complying with none of the conditions set forth under paragraph 1 of the preceding article shall be approved after examination.

An approved trademark shall be registered and published and a trademark certificate shall be issued on the condition that a registration fee has been made by the applicant thereof within two months counting from the next day of receiving the decision. Where the said fee remains unpaid by the end of the stipulated period, a trademark shall not be registered and published, and the original approval shall become invalid.

Article 26

The registration fee in pursuance of provided in paragraph 2 of the preceding article may be paid in two installments. Those who wish to pay in installments shall pay the second installment within the last three months before the end of the third year counting from the publication date of trademark registration.

Those who fail to pay the second installment on registration fee within the time period stipulated in the preceding paragraph are provided with an extra period of six months after the end of the third year in which the said installment shall be made in double.

自該加倍繳費期限屆滿之次日起消滅。

Trademark rights of those who fail to pay the second installment on registration fee in pursuance of provisions of the preceding paragraph shall be extinguished on the day following the last day of the extra period for paying in double.

第四章 商標權

Chapter IV Trademark Rights

第 27 條

商標自註冊公告當日起，由權利人取得商標權，商標權期間為十年。
商標權期間得申請延展，每次延展專用期間為十年。

Article 27

Since the publication date of a registered trademark, trademark rights remaining for a term of ten years shall be bestowed upon a right holder.
A request for renewal may be filed within the trademark term; a trademark term of ten years shall be provided per successful renewal.

第 28 條

申請商標權期間延展註冊者，應於期間屆滿前六個月起至屆滿後六個月內申請；其於期間屆滿後六個月內申請者，應加倍繳納註冊費。
前項核准延展之期間，自商標權期間屆滿之次日起算。

Article 28

A request for renewal on trademark term shall be filed between six months before and after the term expiration; those file within six months after the term expiration shall pay the registration fee in double.
The term of renewal approved under the preceding paragraph shall commence from the date following the expiration of the last trademark term .

第 29 條

商標權人於經註冊指定之商品或服務，取得商標權。
除本法第三十條另有規定外，下列情形，應得商標權人之同意：
一、於同一商品或服務，使用相同於其註冊商標之商標者。
二、於類似之商品或服務，使用相同於其註冊商標之商標，有致相關消費者混淆誤認之虞者。
三、於同一或類似之商品或服務，使用近似於其註冊商標之商標，有致相關消費者混淆誤認之虞者。

Article 29

A right holder of a registered trademark shall enjoy the exclusive trademark rights with respect to the designated goods or services.
Unless otherwise provided in Article 30 of this Act, consent from the registered trademark right holder shall be required in any of the following conditions:
1.Using a trademark that is identical to a registered trademark on identical goods or services;
2.Using a trademark that is identical to a registered trademark on similar goods or services, and hence is likely to cause confusion to relevant consumers; or
3.Using a trademark that is similar to a registered trademark on the identical or similar goods or services, and hence is likely to cause confusion to relevant consumers.

第 30 條

下列情形，不受他人商標權之效力所拘束：
一、凡以善意且合理使用之方法，表示自己之姓名、名稱或其商品或服務之名稱、形狀、

Article 30

Any of the following conditions shall be free from the capacity of trademark rights of a person:
1.One who, through means of bona fide and fair use, expresses the same one's name, title, or the name, shape, quality, function, place of origin, or other description with respect to the goods or services

品質、功用、產地或其他有關商品或服務本身之說明，非作為商標使用者。

二、商品或包裝之立體形狀，係為發揮其功能性所必要者。

三、在他人商標註冊申請日前，善意使用相同或近似之商標於同一或類似之商品或服務者。但以原使用之商品或服務為限；商標權人並得要求其附加適當之區別標示。

附有註冊商標之商品，由商標權人或經其同意之人於市場上交易流通，或經有關機關依法拍賣或處置者，商標權人不得就該商品主張商標權。但為防止商品變質、受損或有其他正當事由者，不在此限。

第 31 條

商標權人得就註冊商標指定使用之商品或服務，向商標專責機關申請分割商標權。

前項申請分割商標權，於商標異議或評定案件未確定前，亦得為之。

第 32 條

商標註冊事項之變更，應向商標專責機關登記；未經登記者，不得對抗第三人。

商標及其指定使用之商品或服務，註冊後即不得變更。但指定使用商品或服務之減縮，不在此限。

第二十條第三項及前條第二項規定，於商標註冊事項之變更，準用之。

第 33 條

商標權人得就其註冊商標指定使用商品或服務之全部或一部，授權他人使用其商標。

前項授權，應向商標專責機關登記；未經登記者，不得對抗第三人。被授權人經商標權人同意，再授權他人使用者，亦同。

provided by the same one for non-trademark purposes.

2. Where a three-dimensional shape of the goods or the packaging thereof is indispensable for performing its intended function(s).

3. Where, prior to the filing date of a registered trademark, a person has been using bona fide an identical or similar trademark designating on the identical or similar goods or services. However, the aforementioned only is applicable to those goods or services on which such trademark has already been in use; the trademark right holder of the said registered trademark may request the said person to attach appropriate and distinguishing label(s).

Where goods bearing a registered trademark are traded or circulated in the marketplace by the trademark right holder or by an authorized person, or are offered for auction or disposal by a relevant agency, the right holder shall not claim trademark rights on the said goods. However, the aforementioned shall not apply in case of preventing deterioration or damage of goods or any other fair reasons.

Article 31

A trademark right holder may request the Registrar Office to divide trademark rights used on the goods or services designated by a registered trademark.

A trademark right division stipulated in the preceding paragraph may also be requested before the final decision of an opposition or invalidation to a trademark.

Article 32

Any changes to a registered trademark shall be entered and recorded by the Registrar Office. An unrecorded entry shall have no locus standi against any third party.

No changes shall be made to a registered trademark and its designated goods and services once the said trademark has been registered. However, the aforementioned does not apply to contraction on the scope of goods or services designated for use.

The provisions of paragraph 3 of Article 20 and paragraph 2 of the preceding article shall apply mutatis mutandis to any changes to a registered trademark.

Article 33

A trademark right holder may license a person to use its registered trademark on part or whole of the designated goods or services thereof.

Licensing provided in the preceding paragraph shall be entered and recorded by the Registrar Office. An unrecorded entry shall have no locus standi against any third party. The said provisions shall also apply in the case where a trademark is sub-licensed by its licensee with prior consent of the trademark right holder to a third party.

授權登記後，商標權移轉者，其授權契約對受讓人仍繼續存在。

被授權人應於其商品、包裝、容器上或營業上之物品、文書，為明顯易於辨識之商標授權標示；如標示顯有困難者，得於營業場所或其他相關物品上為授權標示。

第 34 條

被授權人違反前條第四項規定，經商標專責機關依職權或依申請通知限期改正，屆期不改正者，應廢止其授權登記。

商標授權期間屆滿前有下列情形之一者，當事人或利害關係人得檢附相關證據，申請廢止商標授權登記：

一、商標權人及被授權人雙方同意終止者。其經再授權者，亦同。

二、授權契約明定，商標權人或被授權人得任意終止授權關係，經當事人聲明終止者。

三、商標權人以被授權人違反授權契約約定，通知被授權人解除或終止授權契約，而被授權人無異議者。

第 35 條

商標權之移轉，應向商標專責機關登記；未經登記者，不得對抗第三人。

第 36 條

移轉商標權之結果，有二以上之商標權人使用相同商標於類似之商品或服務，或使用近似商標於同一或類似之商品或服務，而有致相關消費者混淆誤認之虞者，各商標權人使用時應附加適當區別標示。

第 37 條

商標權人設定質權及質權之變更、消滅，應向商標專責機關

In the case where trademark rights have been assigned after licensing of a trademark was recorded, the assignee shall still be bound by the licensing agreement.

A licensee shall label a licensed trademark in a obvious and distinguishing way on whose goods, the packaging or containers thereof or trade-related articles or documents; in the case where labeling the aforementioned becomes evidently difficult, the licensing label may be shown at the place of business or on other relevant articles.

Article 34

Where a licensee violating against the provisions of paragraph 4 of preceding article, the Registrar Office shall, ex officio or upon request, notify the said licensee to correct within a prescribed period; licensing record shall be revoked for those who fail to correct within the said period.

Before the expiration of a licensing term, a concerned or an interested party may, by submitting relevant evidence(s), apply for revoking a licensing record under any of the following conditions:

1. Where the trademark right holder and the licensee have both agreed to terminate the licensing; the same provision shall also apply in the case of sub-licensing;

2. Where the licensing agreement expressly prescribes that either the trademark right holder or the licensee may terminate a licensing relationship at any time, and the declaration of termination has been made; or

3. Where a trademark right holder notifies the licensee to rescind or terminate the licensing agreement on account of breach by the said licensee, who has shown no objection thereto.

Article 35

An assignment of trademark right(s) shall be entered and recorded by the Registrar Office. An unrecorded entry shall have no locus standi against any third party.

Article 36

In the case an assignment of trademark right(s) has resulted in a situation where two or more trademark right holders have used the same trademark on similar goods or services, or have used similar trademarks on identical or similar goods or services and hence likely causing confusion to relevant consumers, all trademark right holders thereof shall affix appropriate and distinguishing label(s) while using their respective trademarks.

Article 37

A creation, change, or extinguishment of a pledge made by a trademark right holder shall be recorded by the Registrar Office. An

登記；未經登記者，不得對抗第三人。

商標權人為擔保數債權就商標權設定數質權者，其次序依登記之先後定之。

質權存續期間，質權人非經商標權人授權，不得使用該商標。

unrecorded entry shall have no locus standi against any third party.

Where multiple pledges on trademark rights are created by a trademark right holder to secure the rights of its creditors, the sequence of pledge shall be determined by the precedence thereof.

During the term of a pledge, the pledgee shall not use the pledged trademark unless otherwise licensed by the trademark right holder thereof.

第 38 條

商標權人得拋棄商標權。但有授權登記或質權登記者，應經被授權人或質權人同意。

前項拋棄，應以書面向商標專責機關為之。

Article 38

A trademark right holder may abandon his trademark right(s). However, the abandonment shall be with the consent of the licensee or pledgee when the trademark has been recorded with a license or pledge.

The abandonment in the preceding paragraph shall be made in writing to the Registrar Office.

第 39 條

有下列情形之一者，商標權當然消滅：

- 一、未依第二十八條規定延展註冊者。
- 二、商標權人死亡而無繼承人者。

Article 39

The trademark right(s) shall ipso facto extinguish under any of the following conditions:

1. Where renewal was absent from pursuing to the provisions of Article 28 of this Act; or
2. Where the trademark right holder has died without an heir.

第五章 異議

Chapter V Opposition

第 40 條

商標之註冊違反第二十三條第一項或第五十九條第四項規定之情形者，任何人得自商標註冊公告之日起三個月內，向商標專責機關提出異議。

前項異議，得就註冊商標指定使用之部分商品或服務為之。

異議應就每一註冊商標各別申請之。

Article 40

In the case where the registration of a trademark violates the provisions of paragraph 1 of Article 23 or paragraph 4 of Article 59, anyone may file an opposition with the Registrar Office within three months from the publishing date of the said trademark.

The opposition set forth in the preceding paragraph may be made to part of the goods or services designated for use by a registered trademark .

Opposition shall be filed separately against each registered trademark.

第 41 條

提出異議者，應以異議書載明事實及理由，並附副本。異議書如有提出附屬文件者，副本中應提出。

商標專責機關認為異議不合程式而可補正者，應通知限期補正。

商標專責機關應將第一項副本

Article 41

Any person who requests for an opposition shall submit an opposition application stating the fact(s) and ground(s) along with a duplicate copy thereof. Any attachments to the said opposition application shall also be enclosed with the said duplicate copy.

The Registrar Office shall issue a notice informing whom to make a correction within a prescribed time period to a procedurally restorable opposition.

The Registrar Office shall forward the duplicate copy stipulated in

連同附屬文件送達商標權人，
並限期答辯。

paragraph 1 along with any attachments thereof to the trademark
right holder, who shall defend within a prescribed time period.

第 42 條

異議應指定未曾審查原案之審
查人員審查之。

Article 42

An opposition shall be examined by examiner(s) who have never
taken part in the original trademark examination.

第 43 條

異議人或商標權人得提出市場
調查報告作為證據。
商標專責機關應予異議人或商
標權人就市場調查報告陳述意
見之機會。
商標專責機關應就當事人陳述
之意見及市場調查報告結果綜
合判斷之。

Article 43

An opposing party or a trademark right holder may present a market
survey report as evidence.
The Registrar Office shall offer an opposing party or a trademark
right holder with an opportunity to comment on a market survey
report.
The Registrar Office shall make a decision consolidating all
comments stated by the parties concerned along with conclusion of
a market survey report.

第 44 條

異議程序進行中，被異議之商
標權移轉者，異議程序不受影
響。
前項商標權受讓人得聲明承受
被異議人之地位，續行異議程
序。

Article 44

An assignment of a trademark of which an opposition has been
requested underway shall have no effect on the proceedings of the
said opposition.
An assignee of trademark rights set forth in the preceding paragraph
may declare to be the opposed party to continue opposition
proceedings.

第 45 條

異議人得於異議審定書送達
前，撤回其異議。
異議人撤回異議者，不得以同
一事實、同一證據及同一理
由，再提異議或評定。

Article 45

An opposing party may withdraw whose opposition before the
delivery of the opposition decision thereof.
An opposing party who has withdrawn an opposition shall not
request once more an opposition or invalidation against the same
trademark based on the same fact(s), the same evidence(s), and the
same ground(s).

第 46 條

異議案件經審定異議成立者，
應撤銷其註冊。

Article 46

A trademark registration shall be cancelled once an opposition
thereof has been affirmed after examination.

第 47 條

前條撤銷之事由，存在於註冊
商標所指定使用之部分商品或
服務者，得僅就該部分商品或
服務撤銷其註冊。

Article 47

A cancellation may be made on only part of the designated goods or
services where reason(s) for cancellation provided in the preceding
article exists.

第 48 條

經過異議確定後之註冊商標，
任何人不得就同一事實、同一
證據及同一理由，申請評定。

Article 48

No one shall request for an invalidation based on the same fact(s),
the same evidence(s), and the same ground(s) against a registered
trademark of which an opposition decision was affirmed.

第 49 條

Article 49

在異議程序進行中，凡有提出關於商標權之民事或刑事訴訟者，得於異議審定確定前，停止其訴訟程序之進行。

Where a civil or criminal litigation in connection with trademark rights was initiated during the proceeding of an opposition against the same trademark, the said litigation may be suspended until the decision of the opposition has been rendered.

第六章 評定及廢止

Chapter VI Invalidation and Revocation

第一節 評定

Section I Invalidation

第 50 條

商標之註冊違反第二十三條第一項或第五十九條第四項規定之情形者，利害關係人或審查人員得申請或提請商標專責機關評定其註冊。

商標註冊前，侵害他人之著作權、專利權或其他權利，於註冊後經法院判決侵害確定者，準用前項之規定。

Article 50

Where the registration of a trademark violates provisions of paragraph 1 of Article 23 or paragraph 4 of Article 59, a concerned party or a trademark examiner may request or inquire the Registrar Office to invalidate the said registration.

The provisions of the preceding paragraph shall mutatis mutandis apply in the case where a trademark has infringed copyrights, patent rights or other rights of another person before registration thereof, and the said infringement has been affirmed upon judgment rendered by a court.

第 51 條

商標之註冊違反第二十三條第一項第一款、第二款、第十二款至第十七款或第五十九條第四項規定之情形，自註冊公告之日起滿五年者，不得申請或提請評定。

前條第二項規定之情形，於其判決確定之日起滿五年者，不得申請或提請評定。

商標之註冊有第二十三條第一項第十二款情形係屬惡意者，不受第一項期間之限制。

Article 51

No one shall request or inquire invalidation against a trademark of which the registration violates conditions prescribed under provisions of Items (1) and (2) and Items (12) through (17), paragraph 1 of Article 23, or paragraph 4 of Article 59 and where five years has passed since the publishing date thereof.

No one shall request or inquire invalidation where five years has passed since the date on which a judgment as prescribed in paragraph 2 of the preceding article became affirmed.

The prescribed period set forth in paragraph 1 shall not apply to a trademark of which the registration complies mala fide with the provisions of Item (12), paragraph 1 of Article 23.

第 52 條

評定商標之註冊有無違法事由，依其註冊公告時之規定。

Article 52

Whether a trademark to be invalidated violates the law shall be determined by the provisions of the law in effect at the time of publication for trademark registration.

第 53 條

商標評定案件，由商標專責機關首長指定審查人員三人以上為評定委員評定之。

Article 53

A trademark invalidation shall be examined by three or more invalidation committee examiners appointed by the head of the Registrar Office.

第 54 條

評定案件經評決成立者，應撤銷其註冊。但於評決時，該情

Article 54

Registration of a trademark of which invalidation was affirmed shall be invalidated. However, in the case where the cause on which the

形已不存在者，經斟酌公益及當事人利益後，得為不成立之評決。

invalidation was based no longer exists at the time of examination for the said invalidation, a decision to dismiss the said invalidation may be rendered upon considering the interests of the public and the concerned parties.

第 55 條

評定案件經評決後，任何人不得以同一事實、同一證據及同一理由，申請評定。

Article 55

No one shall request for an invalidation based on the same fact(s), the same evidence(s), and the same ground(s) against a trademark of which an invalidation decision was affirmed.

第 56 條

第四十條第二項、第三項、第四十一條第一項、第二項、第四十二條至第四十五條、第四十七條及第四十九條規定，於商標之評定準用之。

Article 56

The provisions of paragraphs 2 and 3 of Article 40, paragraphs 1 and 2 of Article 41, Articles 42 through 45, Article 47 and Article 49 shall apply mutatis mutandis to invalidation against trademark.

第二節 廢止

Section II Revocation

第 57 條

商標註冊後有下列情形之一者，商標專責機關應依職權或據申請廢止其註冊：

一、自行變換商標或加附記，致與他人使用於同一或類似之商品或服務之註冊商標構成相同或近似，而有使相關消費者混淆誤認之虞者。

二、無正當事由迄未使用或繼續停止使用已滿三年者。但被授權人有使用者，不在此限。

三、未依第三十六條規定附加適當區別標示者。但於商標專責機關處分前已附加區別標示並無產生混淆誤認之虞者，不在此限。

四、商標已成為所指定商品或服務之通用標章、名稱或形狀者。

五、商標實際使用時有致公眾誤認誤信其商品或服務之性質、品質或產地之虞者。

六、商標使用結果侵害他人著作權、專利權或其他權利，經法院判決侵害確定者。

被授權人為前項第一款之行為，商標權人明知或可得而知而不為反對之表示者，亦同。有第一項第二款規定之情形，

Article 57

In the case where any of the following conditions occurs after the registration of a trademark, the Registrar Office shall, ex officio or upon an application, revoke the said registration:

1. Where a trademark was self-altered or supplemented with additional notes whereby the trademark has caused likelihood of confusion to relevant consumers by being identical or similar to a registered trademark of another person of which is used on the same or similar goods or services;

2. Where, without valid reasons, a trademark has not yet been put into use or has been suspended from use continuously for three years after registration. However, the aforementioned shall not apply to one that is in use by a licensee;

3. Where no appropriate and distinguishing label(s) is affixed pursuant to Article 36. However, the aforementioned shall not apply to those causing no likelihood of confusion by affixing distinguishing label(s) before disposition by the Registrar Office;

4. Where a trademark has become a common sign, name or shape of the goods or services as designated for the said trademark;

5. Where practicing a trademark causes likelihood to mislead the public with respect to the nature, quality or place of origin of the goods or services designated by the trademark; or

6. Where the use of the trademark has been affirmed by judgment of a court to infringe the copyrights, patent rights or other rights of another person.

The aforementioned shall also apply in the case where a trademark right holder is or may be aware of but has shown no objection to the conduct as prescribed in Item (1) of preceding paragraph by a licensee thereof.

於申請廢止時該註冊商標已為使用者，除因知悉他人將申請廢止，而於申請廢止前三個月內開始使用者外，不予廢止其註冊。

廢止之事由僅存在於註冊商標所指定使用之部分商品或服務者，得就該部分之商品或服務廢止其註冊。

第 58 條

商標權人有下列情形之一者，應認為有使用其註冊商標：

- 一、實際使用之商標與其註冊商標不同，而依社會一般通念並不失其同一性者。
- 二、於以出口為目的之商品或其有關之物件上，標示註冊商標者。

第 59 條

商標專責機關應將廢止申請之情事通知商標權人，並限期答辯。但申請人之申請無具體事證或其主張顯無理由者，得逕為駁回。

第五十七條第一項第二款規定情形，其答辯通知經送達者，商標權人應證明其有使用之事實，屆期未答辯者，得逕行廢止其註冊。

前項商標權人證明其有使用之事實，應符合商業交易習慣。

註冊商標有第五十七條第一項第一款、第六款規定情形，經廢止其註冊者，原商標權人於廢止之日起三年內，不得註冊、受讓或被授權使用與原註冊圖樣相同或近似之商標於同一或類似之商品或服務；其於商標專責機關處分前，聲明拋棄商標權者，亦同。

第 60 條

第四十條第二項、第三項、第四十一條第一項、第二項、第四十二條至第四十四條規定，於廢止案之審查準用之。

A trademark, which is subject to Item (2) of the preceding paragraph, that has been restored for use at the time of requesting for revocation by another person shall not be revoked, unless the said use had occurred within three months before the said revocation request owing to understanding thereof.

A revocation may be made on only part of the designated goods or services of a registered trademark where reason(s) for revocation exists.

Article 58

A trademark right holder shall be deemed to have used whose registered trademark under any of the following conditions:

1. Where the trademark in actual use differs from the registered one yet commonly recognized in society to have preserved the sameness; or
2. Where, for export purposes, a registered trademark has been labeled on goods or on other relevant articles thereto.

Article 59

The Registrar Office shall notify the trademark right holder the reason(s) of revocation, and shall also set a period for defending. A revocation may be dismissed at once if no solid fact or evidence is available or the claims have failed to demonstrate obvious ground.

Upon receiving of notice of defence for condition set forth under Item (2), paragraph 1 of Article 57, a trademark right holder shall prove with fact(s) of use thereof; registration for those who have failed to defend within the prescribed time may be revoked at once.

Fact proving the use of a trademark presented by the trademark right holder set forth under the preceding paragraph shall comply with the general practice of trade.

A trademark right holder, whose registration was revoked owing to compliance to Items (1) and (6), paragraph 1 of Article 57, shall not register, be assigned or licensed within three years counting from the date of revocation to use a trademark that is identical or similar to the said revoked trademark on the same or similar goods or services; the aforementioned shall also apply to whom disclaiming whose trademark rights before disposition issued by the Registrar Office.

Article 60

The provisions of paragraphs 2 and 3 of Articles 40, paragraphs 1 and 2 of Article 41, Article 42 through Article 44 shall apply mutatis mutandis to the examination of revocation.

第七章 權利侵害之救濟

Chapter VII Remedies for Right Infringement

第 61 條

商標權人對於侵害其商標權者，得請求損害賠償，並得請求排除其侵害；有侵害之虞者，得請求防止之。

未經商標權人同意，而有第二十九條第二項各款規定情形之一者，為侵害商標權。

商標權人依第一項規定為請求時，對於侵害商標權之物品或從事侵害行為之原料或器具，得請求銷毀或為其他必要處置。

第 62 條

未得商標權人同意，有下列情形之一者，視為侵害商標權：

一、明知為他人著名之註冊商標而使用相同或近似之商標或以該著名商標中之文字作為自己公司名稱、商號名稱、網域名稱或其他表彰營業主體或來源之標識，致減損著名商標之識別性或信譽者。

二、明知為他人之註冊商標，而以該商標中之文字作為自己公司名稱、商號名稱、網域名稱或其他表彰營業主體或來源之標識，致商品或服務相關消費者混淆誤認者。

第 63 條

商標權人請求損害賠償時，得就下列各款擇一計算其損害：

一、依民法第二百十六條規定。但不能提供證據方法以證明其損害時，商標權人得就其使用註冊商標通常所可獲得之利益，減除受侵害後使用同一商標所得之利益，以其差額為所受損害。

二、依侵害商標權行為所得之利益；於侵害商標權者不能就其成本或必要費用舉證時，以銷售該項商品全部收入為所得

Article 61

A trademark right holder may claim for damages from a person infringing whose trademark rights, and may request for excluding infringement thereto; in case of likelihood of infringement, the said right holder may also request for the prevention thereof.

Using trademark under conditions stipulated by paragraph 2 of Article 29 without consent from a trademark right holder shall constitute infringement of the trademark rights.

A trademark right holder, when requesting in pursuance with provisions of the preceding paragraph 1, may request for destruction or other necessary disposal of the goods infringing trademark rights, or raw materials or equipments utilized for infringement.

Article 62

A trademark right infringement shall be deemed to have occurred where consent of trademark right holder is absent from any of the following conditions:

1. Knowingly using a trademark identical or similar to a well-known registered trademark of another person, or using the word(s) contained in the said well-known trademark as the company name, trade name or domain name or any other representation identifying the body or source of whose business, and hence diluting the distinctiveness or reputation of the said well-known trademark; or

2. Knowingly using a trademark identical or similar to a well-known registered trademark of another person, or using the word(s) contained in the said well-known trademark as the company name, trade name or domain name or any other representation identifying the body or source of whose business, and hence causing confusion to relevant consumers of goods or services thereof.

Article 63

When claiming for damages, a trademark right holder may choose one of the following methods to estimate the amount thereof:

1. Damages may be claimed in pursuance with Article 216 of the Civil Code. However, in the event where evidence cannot be presented to prove the damages thereof, the trademark right holder may use the profit normally gained from using whose registered trademark to subtract the profit gained from the same trademark after infringement, and claim the difference as the amount of damage;

2. Damages may be claimed in accordance with the profit gained from trademark rights infringement. However, where no evidence on costs or necessary expenses can be proved by the infringer, the total amount of sales from selling the infringing goods shall be

利益。

三、就查獲侵害商標權商品之零售單價五百倍至一千五百倍之金額。但所查獲商品超過一千五百件時，以其總價定賠償金額。

前項賠償金額顯不相當者，法院得予酌減之。

商標權人之業務上信譽，因侵害而致減損時，並得另請求賠償相當之金額。

第 64 條

商標權人得請求由侵害商標權者負擔費用，將侵害商標權情事之判決書內容全部或一部登載新聞紙。

第 65 條

商標權人對輸入或輸出有侵害其商標權之物品，得申請海關先予查扣。

前項申請，應以書面為之，並釋明侵害之事實，及提供相當於海關核估該進口貨物完稅價格或出口貨物離岸價格之保證金或相當之擔保。

海關受理查扣之申請，應即通知申請人；如認符合前項規定而實施查扣時，應以書面通知申請人及被查扣人。

被查扣人得提供與第二項保證金二倍之保證金或相當之擔保，請求海關廢止查扣，並依有關進出口貨物通關規定辦理。

海關在不損及查扣物機密資料保護之情形下，得依申請人或被查扣人之申請，准其檢視查扣物。

查扣物經申請人取得法院確定判決，屬侵害商標權者，除第六十六條第四項規定之情形外，被查扣人應負擔查扣物之貨櫃延滯費、倉租、裝卸費等有關費用。

regarded as the amount of profit; or

3.Damages may be claimed in an amount equivalent to 500 to 1,500 times the unit retail price of the infringing goods. However, in the case where over 1,500 pieces of infringing goods are found, the amount of damage to be claimed shall be assessed based on the total sale price of the said infringing goods.

A court may, at its discretion, reduce the amount of compensation in the case where the amount of compensation for damages assessed under the preceding paragraph is apparently unreasonable.

A trademark right holder may claim for additional compensation in a reasonable amount in the case where whose business reputation has suffered any damage on account of such infringement.

Article 64

A trademark right holder may request for publication on a newspaper, at the expense of the infringer, of the contents, in full or in part, of the judicial decision in relation to a trademark infringement.

Article 65

A trademark right holder may request the Customs Authority to suspend the release of imported or exported goods that are suspected of infringing the trademark rights of the said right holder.

The request set forth in the preceding paragraph shall be presented in writing, explicating the facts of the infringement, and along with a bond in an amount equivalent to the duty-paid price of the imported goods or the F.O.B. price of the exported goods, assessed by the Customs Authority, or with an equivalent security.

Once the Customs Authority accepts a request for suspension of release, it shall immediately notify the applicant thereof; where suspension of release is carried out owing to compliance to the preceding paragraph, the said applicant and the party whose goods are detained shall be notified in writing.

The party whose goods are detained may request the customs authorities to revoke the suspension of release by providing a bond in an amount equivalent to two times the bond set forth in the preceding paragraph 2 or an equivalent security while following the procedures in accordance with applicable customs regulations on import and export goods clearance.

Without prejudice to the protection of the confidentiality of the detained goods, the Customs Authority may allow the inspection of the detained goods requested by the applicant thereof or the party whose goods are detained.

Where the applicant thereof is awarded an affirmed court ruling stating that the detained goods has infringed trademark rights, the party of the detained goods shall be liable for all relevant expenses incurred as a result of the delay of containers, warehousing, loading, and unloading of the detained goods, except for the conditions set forth in paragraph 4 of Article 66.

第 66 條

有下列情形之一者，海關應廢止查扣：

一、申請人於海關通知受理查扣之日起十二日內，未依第六十一條規定就查扣物為侵害物提起訴訟，並通知海關者。

二、申請人就查扣物為侵害物所提訴訟經法院裁定駁回確定者。

三、查扣物經法院確定判決，不屬侵害商標權之物者。

四、申請人申請廢止查扣者。

五、符合前條第四項規定者。

前項第一款規定之期限，海關得視需要延長十二日。

海關依第一項規定廢止查扣者，應依有關進出口貨物通關規定辦理。

查扣因第一項第一款至第四款之事由廢止者，申請人應負擔查扣物之貨櫃延滯費、倉租、裝卸費等有關費用。

第 67 條

查扣物經法院確定判決不屬侵害商標權之物者，申請人應賠償被查扣人因查扣或提供第六十五條第四項規定保證金所受之損害。

申請人就第六十五條第四項規定之保證金，被查扣人就第六十五條第二項規定之保證金，與質權人有同一之權利。但前條第四項及第六十五條第六項規定之貨櫃延滯費、倉租、裝卸費等有關費用，優先於申請人或被查扣人之損害受償。

有下列情形之一者，海關應依申請人之申請，返還第六十五條第二項規定之保證金：

一、申請人取得勝訴之確定判決，或與被查扣人達成和解，

Article 66

The Customs Authority shall revoke the suspension of release under any of the following conditions:

1. Where the applicant thereof fails to initiate litigation claiming that the detained goods are infringements in pursuance with Article 61 while notifying the Customs Authority within twelve (12) days counting from the date on which the Customs Authority has notified its acceptance of suspension requested by the said applicant thereof.

2. Where a court ruling dismissing litigation initiated by the applicant thereof alleging that the detained goods are infringements becomes affirmative.

3. Where a court ruling sustaining that the detained goods infringe no trademark rights becomes affirmative.

4. Where the applicant thereof requests for revocation of the suspension of release.

5. One that complies with the condition set forth in paragraph 4 of Article 65.

The Customs Authority may extend the period set forth in Item (1) of the preceding paragraph by an additional twelve (12) days whenever necessary.

Where revocation carried out in pursuance with paragraph 1, the Customs Authority shall follow the procedures in accordance with applicable customs regulations on import and export goods clearance.

Where suspension of release is revoked in pursuance with Items (1) to (4) of paragraph 1, the applicant thereof shall be liable for all relevant expenses incurred as a result of the delay of containers, warehousing, loading, and unloading of the detained goods.

Article 67

When the detained goods are affirmed to be non-infringing by a court ruling, the applicant for suspension of release shall compensate the party whose goods were detained for any losses resulting from the suspension of release or from the provision of the bond set forth in paragraph 4 of Article 65.

The applicant of the bond set forth in paragraph 4 of Article 65, or the party, whose goods were detained, of the bond stipulated in paragraph 2 of Article 65 shall enjoy the same right as a pledgee. However, all relevant expenses incurred due to the delay of containers, warehousing, loading, and unloading of the detained goods as set forth in paragraph 4 of Article 66 and paragraph 6 of Article 65 shall be paid in priority from compensation over all losses incurred to the said applicant or the said party.

Under any of the following circumstances, the Customs Authority shall return the bond set forth in paragraph 2 of Article 65 upon request by the applicant thereof:

1. Where the bond is no longer required owing to the applicant thereof has either obtained a favorable affirmed judgment or reached

已無繼續提供保證金之必要者。

二、因前條第一項第一款至第四款規定之事由廢止查扣，致被查扣人受有損害後，或被查扣人取得勝訴之確定判決後，申請人證明已定二十日以上之期間，催告被查扣人行使權利而未行使者。

三、被查扣人同意返還者。

有下列情形之一者，海關應依被查扣人之申請返還第六十五條第四項規定之保證金：

一、因前條第一項第一款至第四款規定之事由廢止查扣，或被查扣人與申請人達成和解，已無繼續提供保證金之必要者。

二、申請人取得勝訴之確定判決後，被查扣人證明已定二十日以上之期間，催告申請人行使權利而未行使者。

三、申請人同意返還者。

第 68 條

前三條規定之申請查扣、廢止查扣、檢視查扣物、保證金或擔保之繳納、提供、返還之程序、應備文件及其他應遵行事項之辦法，由主管機關會同財政部定之。

第 69 條

依第三十三條規定，經授權使用商標者，其使用權受有侵害時，準用本章之規定。

第 70 條

外國法人或團體就本法規定事項得為告訴、自訴或提起民事訴訟，不以業經認許者為限。

第 71 條

法院為處理商標訴訟案件，得設立專業法庭或指定專人辦理。

a settlement with the party whose goods were detained;

2. Where the applicant thereof proves that the party of the detained goods was notified but has failed to exercise its rights within twenty (20) or more days after the suspension of release is revoked on account of any circumstances set forth in Items (1) through (4) of paragraph 1 of Article 66 in which the party of the detained goods has suffered from losses owing to the suspension of release, or after the party of the detained goods has been awarded a favorable affirmed judgment; or

3. Where the party whose goods were detained agrees to the return of the bond.

Under any of the following circumstances, the Customs Authority shall return the bond set forth in paragraph 4 of Article 65, upon request by the party whose goods were detained:

1. Where the bond is no longer required owing to either the suspension of the release order has been revoked pursuant to the provisions of Items (1) through (4) of paragraph 1 of Article 66, or the party whose goods were detained has reached a settlement with the applicant thereof;

2. Where the party whose goods were detained proves that the applicant thereof was notified but has failed to exercise its rights within twenty (20) or more days after the said applicant thereof has been awarded a favorable affirmed judgment; or

3. Where the applicant thereof agrees to the return of the bond.

Article 68

The regulations governing the application for detaining goods, revocation of a detaining, inspection of detained goods, payment, provision and return procedures for a bond or security, required documents and other matters to be abided by which set forth in the preceding three articles shall be prescribed by the competent authority and the Ministry of Finance.

Article 69

The provisions of this Chapter shall apply mutatis mutandis to infringement on the right to use a trademark granted through licensing as provided under Article 33.

Article 70

A foreign juristic person or entity, which is not limited to those recognized by the Government of the Republic of China, may also file a complaint, initiate a private prosecution, or institute a civil suit with respect to the matters prescribed in this Act.

Article 71

A court may establish a special tribunal or designate a specialist(s) to handle trademark litigation.

**第八章 證明標章、團體標章及
團體商標****Chapter VIII Certification Marks, Collective Membership
Marks and Collective Trademarks****第 72 條**

凡以標章證明他人商品或服務之特性、品質、精密度、產地或其他事項，欲專用其標章者，應申請註冊為證明標章。證明標章之申請人，以具有證明他人商品或服務能力之法人、團體或政府機關為限。前項申請人係從事於欲證明之商品或服務之業務者，不得申請註冊。

Article 72

Any person who wishes to exclusively use a mark to certify the characteristics, quality, precision, place of origin or other matters of another person's goods or services shall apply for certification mark registration.

Only a juristic person, an organization or a government agency which is capable of certifying another person's goods or services shall be eligible to apply for certification mark registration.

An applicant of the preceding paragraph who engages in business in connection with the goods or services to be certified shall not apply for certification mark registration thereof.

第 73 條

證明標章之使用，指證明標章權人為證明他人商品或服務之特性、品質、精密度、產地或其他事項之意思，同意其於商品或服務之相關物品或文書上，標示該證明標章者。

Article 73

The use of a certification mark shall connote that the right holder of a certification mark, in order to certify the characteristics, quality, precision, origin or other matters of another person's goods or services, agrees the said person to indicate the said certification mark on articles or documents in connection with the said goods or services.

第 74 條

凡具有法人資格之公會、協會或其他團體為表彰其組織或會籍，欲專用標章者，應申請註冊為團體標章。前項團體標章註冊之申請，應以申請書載明相關事項，並檢具團體標章使用規範，向商標專責機關申請之。

Article 74

Any business association, social organization, or any other group that exists as a juristic person and wishes to exclusively use a mark to identify its organization or membership shall apply for collective membership mark registration.

An application for collective membership mark registration of the preceding paragraph shall be filed with the Registrar Office by submitting in writing specifying relevant matters along with a set of articles governing the use of the collective membership mark thereto.

第 75 條

團體標章之使用，指為表彰團體或其會員身分，而由團體或其會員將標章標示於相關物品或文書上。

Article 75

The use of a collective membership mark shall connote the indication of such mark on relevant articles or documents by the organization or its members in order to identify an organization or membership thereof.

第 76 條

凡具法人資格之公會、協會或其他團體，欲表彰該團體之成員所提供之商品或服務，並得藉以與他人所提供之商品或服務相區別，欲專用標章者，得申請註冊為團體商標。前項團體商標註冊之申請，應

Article 76

Any business association, social organization, or any other group that exists as a juristic person and wishes to exclusively use a mark to identify the goods or services provided by its members, and therefore distinguishing these goods or services from those provided by others, may apply for collective trademark registration.

An application for collective trademark registration of the preceding

以申請書載明商品或服務類別及名稱，並檢具團體商標使用規範，向商標專責機關申請之。

paragraph shall be filed with the Registrar Office by submitting in writing specifying the designated class(es) and the name(s) of goods or services along with the a set of articles governing the use of the collective trademark thereto.

第 77 條

團體商標之使用，指為表彰團體之成員所提供之商品或服務，由團體之成員將團體商標使用於商品或服務上，並得藉以與他人之商品或服務相區別者。

Article 77

The use of a collective trademark shall connote that, in order to identify the goods or services provided by members of an organization, the said members use the collective trademark on their goods or services whereby these goods or services may be distinguished from those provided by others.

第 78 條

證明標章權、團體標章權或團體商標權不得移轉、授權他人使用，或作為質權標的物。但其移轉或授權他人使用，無損害消費者利益及違反公平競爭之虞，經商標專責機關核准者，不在此限。

Article 78

The right of a certification mark, a collective membership mark or a collective trademark shall not be assigned or licensed to another person for use, nor may it be the subject of a pledge. However, the aforementioned shall not apply in the case where such assignment or license to another person for use is unlikely to damage the interests of consumers, to contravene fair competition, and has been approved by the Registrar Office.

第 79 條

標章權人或其被授權使用人以證明標章、團體標章或團體商標為不當使用致生損害於他人或公眾者，商標專責機關得依任何人之申請或依職權廢止其註冊。

Article 79

The Registrar Office shall, upon request by any person or ex officio, revoke the registration of a certification mark, a collective membership mark or a collective trademark in the case where misuse of which by the right holder or the licensed user thereof has caused damages to another person or the public.

前項所稱不當使用，指下列情形之一：

The term, misuse, referred to in the preceding paragraph shall connote any of the following conditions:

- 一、證明標章作為商標使用，或標示於證明標章權人之商品或服務之相關物品或文書上。
- 二、團體標章或團體商標之使用，造成社會公眾對於該團體性質之誤認。
- 三、違反前條規定而為移轉、授權或設定質權。
- 四、違反標章使用規範。

1. Where a certification mark is used as a trademark or indicated on articles or documents in connection with the goods or services provided by the right holder of the said certification mark;
 2. Where the use of a collective membership mark or collective trademark has misled the general public regarding the nature of the organization thereof;
 3. Where assignment, licensing, or creation of pledge is established in violation of the provisions of the preceding article;
 4. One that has violated the set of articles governing the use thereof;
- or
5. One that is misused in other means.

- 五、其他不當方法之使用。

第 80 條

證明標章、團體標章或團體商標除本章另有規定外，依其性質準用本法有關商標之規定。

Article 80

Unless otherwise provided in this Chapter, the provisions of this Act regarding trademarks shall apply mutatis mutandis to certification marks, collective membership marks or collective trademarks.

第九章 罰則**Chapter IX Penalty****第 81 條**

未得商標權人或團體商標權人同意，有下列情形之一者，處三年以下有期徒刑、拘役或科或併科新臺幣二十萬元以下罰金：

- 一、於同一商品或服務，使用相同之註冊商標或團體商標者。
- 二、於類似之商品或服務，使用相同之註冊商標或團體商標，有致相關消費者混淆誤認之虞者。
- 三、於同一或類似之商品或服務，使用近似於其註冊商標或團體商標之商標，有致相關消費者混淆誤認之虞者。

Article 81

Any person who commits any of the following acts without prior consent of the trademark or the collective trademark right holder thereof shall be charged with imprisonment for no more than three years, detention and, in addition thereto or in lieu thereof, a fine of no more than NT\$200,000:

1. One who uses a mark identical to a registered trademark or collective trademark on the same goods or services;
2. One who uses a mark identical to a registered trademark or collective trademark on similar goods or services, and hence has caused likelihood of confusion or misleading to relevant consumers;
3. One who uses a trademark that is similar to a registered trademark or collective trademark on the identical or similar goods or services, and hence has caused likelihood of confusion to relevant consumers.

第 82 條

明知為前條商品而販賣、意圖販賣而陳列、輸出或輸入者，處一年以下有期徒刑、拘役或科或併科新臺幣五萬元以下罰金。

Article 82

Any person, who knowingly sells, displays for sale, exports or imports the goods referred to in the preceding article, shall be charged with imprisonment of no more than one year, detention, and, in addition thereto or in lieu thereof, a fine of no more than NT\$50,000.

第 83 條

犯前二條之罪所製造、販賣、陳列、輸出或輸入之商品，或所提供於服務使用之物品或文書，不問屬於犯人與否，沒收之。

Article 83

The goods manufactured, sold, displayed, exported or imported by, or the articles or documents in connection with provision of services by, a person committing any of the offenses as specified in the preceding two articles, shall be confiscated, regardless of whether such goods, articles or documents belong to the offender.

第一〇章 附則**Chapter X Supplementary Provisions****第 84 條**

本法中華民國九十二年四月二十九日修正施行前，已註冊之商標或標章，不適用第二十六條規定。

Article 84

The provisions of Article 26 shall not apply to a trademark or any other mark already registered prior to the enforcement of the amendment to this Act as of April 29, 2003.

第 85 條

本法中華民國九十二年四月二十九日修正施行前，已註冊之服務標章，自本法修正施行當日起，視為商標。

Article 85

A service mark already registered prior to the enforcement of the amendment to this Act as of April 29, 2003 shall be deemed as a trademark as of the said date.

本法中華民國九十二年四月二

A service mark application yet to be registered prior to the

十九日修正施行前，尚未註冊之服務標章申請案，於本法修正施行當日起，視為商標註冊申請案。

第 86 條

本法中華民國九十二年四月二十九日修正施行前，已註冊之聯合商標、聯合服務標章、聯合團體標章或聯合證明標章，自本法修正施行之日起，視為獨立之註冊商標或標章；其存續期間，以原核准者為準。

本法中華民國九十二年四月二十九日修正施行前，尚未註冊之聯合商標、聯合服務標章、聯合團體標章或聯合證明標章申請案，自本法修正施行之日起，視為獨立之商標或標章註冊申請案。

前項申請人得於核准審定送達前申請撤回，並請求退費。

第 87 條

本法中華民國九十二年四月二十九日修正施行前，已註冊之防護商標、防護服務標章、防護團體標章或防護證明標章，依其註冊時之規定；於其專用期間屆滿前，應申請變更為獨立之註冊商標或標章；屆期未申請變更者，商標權消滅。

本法中華民國九十二年四月二十九日修正施行前，尚未註冊之防護商標、防護服務標章、防護團體標章或防護證明標章申請案，自本法中華民國九十二年四月二十九日修正施行之日起，視為獨立之商標或標章註冊申請案。

前項申請人得於核准審定送達前申請撤回，並請求退費。

第 88 條

依第八十六條第一項規定視為獨立之註冊商標或標章者，關於第五十七條第一項第二款規

enforcement of the amendment to this Act as of April 29, 2003 shall be deemed as a trademark application as of the said date.

Article 86

An associated trademark, associated service mark, associated collective mark or associated certification mark that was already registered prior to the enforcement of the amendment to this Act as of April 29, 2003 shall be deemed as an independent registered trademark or mark as of the said date; its registration term shall be the same as which originally granted.

An associated trademark application, associated service mark application, associated collective mark application or associated certification mark application that is yet to be registered prior to the enforcement of this Act shall be deemed as an independent trademark application or other mark application as of April 29, 2003 on which the amendment to this Act takes effect.

An applicant under the preceding paragraph may withdraw its application and request for a refund before receiving the notice of approval regarding the said application.

Article 87

A defensive trademark, defensive service mark, defensive collective mark or defensive certification mark already registered before the enforcement of the amendment to this Act as of April 29, 2003 shall be subject to the provisions in force at the time of its registration, and shall be changed to an independent registered trademark or mark before the expiration of the term of exclusive use; the trademark right of those fail to make the said change shall be extinguished.

A defensive trademark application, defensive service mark application, defensive collective mark application or defensive certification mark application yet to be registered before the enforcement of this Act shall be deemed as an independent trademark or mark application as of April 29, 2003 on which the amendment to this Act takes effect.

An applicant under the preceding paragraph may withdraw its application and request for a refund before receiving the notice of approval regarding the said application.

Article 88

With respect to a registered trademark or mark which is deemed as an independent mark in pursuance with paragraph 1 of Article 86, the three-year period set forth in Item (2), paragraph 1 of Article 57

定之三年期間，自本法中華民國九十二年四月二十九日修正施行當日起算。

依前條第一項申請變更為獨立之註冊商標或標章者，關於第五十七條第一項第二款規定之三年期間，自變更當日起算。

第 89 條

本法中華民國九十二年四月二十九日修正施行前，已核准審定之註冊申請案，於本法修正施行時未經撤銷原審定者，依修正後之規定，逕予註冊；其應繳納第一期之註冊費，視為已繳納。

本法中華民國九十二年四月二十九日修正施行前，經撤銷核准審定，於本法施行後，經行政爭訟撤銷原處分確定應予註冊者，依修正後之規定，逕予註冊；其應繳納第一期之註冊費，視為已繳納。

第 90 條

本法中華民國九十二年四月二十九日修正施行前，已提出異議，尚未異議審定之案件，以本法修正施行前及本法修正施行後之規定均為違法事由為限，始撤銷其註冊；其程序依修正後之規定辦理。

第 91 條

本法中華民國九十二年四月二十九日修正施行前，已申請或提請評定，尚未評決之評定案件，以本法修正施行前及本法修正施行後之規定均為違法事由為限，始撤銷其註冊；其程序依修正後之規定辦理。

對本法中華民國九十二年四月二十九日修正施行前註冊之商標、證明標章及團體標章，於本法修正施行後申請或提請評定者，以其註冊時及本法修正

shall commence from April 29, 2003 on which the amendment to this Act takes effect.

With respect to a registered trademark or mark which has been changed to an independent mark as provided under paragraph 1 of the preceding article, the three-year period set forth in Item (2), paragraph 1 of Article 57 shall commence from the date on which the said change takes place.

Article 89

Where an application for trademark registration was approved prior to the enforcement and the said approval has not been invalidated upon the enforcement of the amendment to this Act, the said trademark shall be registered in pursuance with the provisions of this Act; the first installment of the payable registration fee shall be deemed to have been paid.

Where approval of a trademark application that was cancelled prior to the enforcement of the amendment to this Act on April 29, 2003 has been restored as the result of administrative remedial proceedings provided under the amendment to this Act, the said trademark shall be registered in pursuance with the provisions of the same amendment; the first installment of the payable registration fee shall be deemed to have been paid.

Article 90

Where opposition proceedings against a trademark were filed prior to the enforcement of the Amendment to the Trademark Act as of April 29, 2003, and are still pending after the enforcement of the Amendment, the registration of the trademark shall be cancelled only under the condition that the trademark violates both the provisions of the Trademark Act before and after the amendment. The procedure to cancel the registration shall follow the provisions of the Amendment to the Trademark Act.

Article 91

Where invalidation proceedings against a trademark were filed or requested prior to the enforcement of the Amendment to the Trademark Act as of April 29, 2003, and are still pending after the enforcement of the Amendment, the registration of the trademark shall be cancelled only under the condition that the trademark violates both the provisions of the Trademark Act before and after the amendment. The procedure to cancel the registration shall follow the provisions of the Amendment to the Trademark Act.

For a trademark, a certification mark and a collective mark registered prior to the enforcement of the Amendment to the Trademark Act as of April 29, 2003, invalidation proceedings there against may be filed upon an application or a request after the enforcement of the Amendment to the Trademark Act only under the

施行後之規定均為違法事由為限。

condition that the registration violates both the provisions of the Trademark Act before and after the amendment.

第 92 條

本法中華民國九十二年四月二十九日修正施行前，尚未處分之商標撤銷案件，適用本法修正施行後商標廢止案件之規定辦理。

Article 92

Provisions governing trademark revocation shall be applicable to trademark cancellation cases of which the decisions have not been rendered prior to the enforcement of the amendment to this Act.

第 93 條

本法施行細則，由主管機關定之。

Article 93

The Enforcement Rules of this Act shall be prescribed by the competent authority.

第 94 條

本法自公布日起六個月後施行。
本法修正條文施行日期，由行政院定之。

Article 94

This Act shall come into force six (6) months after the date of promulgation thereof.

第 94 條 (98 年修正)

本法自公布日起六個月後施行。
本法修正條文施行日期，由行政院定之。