



国家知识产权局

NATIONAL INTELLECTUAL PROPERTY ADMINISTRATION, PRC

Introduction to the 4th Amendment of the *Trademark Law*

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I. Background of the 4th Amendment of the *Trademark Law*



- ◆ The current *Trademark Law* has been implemented since March 1, 1983
- ◆ Legislative purpose: To protect the exclusive right to use registered trademarks and meanwhile protect the interests of consumers
- ◆ Basic principles: first to file, first to register, take into account the use of trademarks, and prohibit trademark squatting;
- ◆ Protection characteristics: equal emphasis on administrative law enforcement and judicial trial

After more than 40 years of reform and opening-up, a complete trademark law system has been established in China, which is not only consistent with China's national conditions, but also meets the requirements of national treaties to which China has acceded to and conforms to international practices.

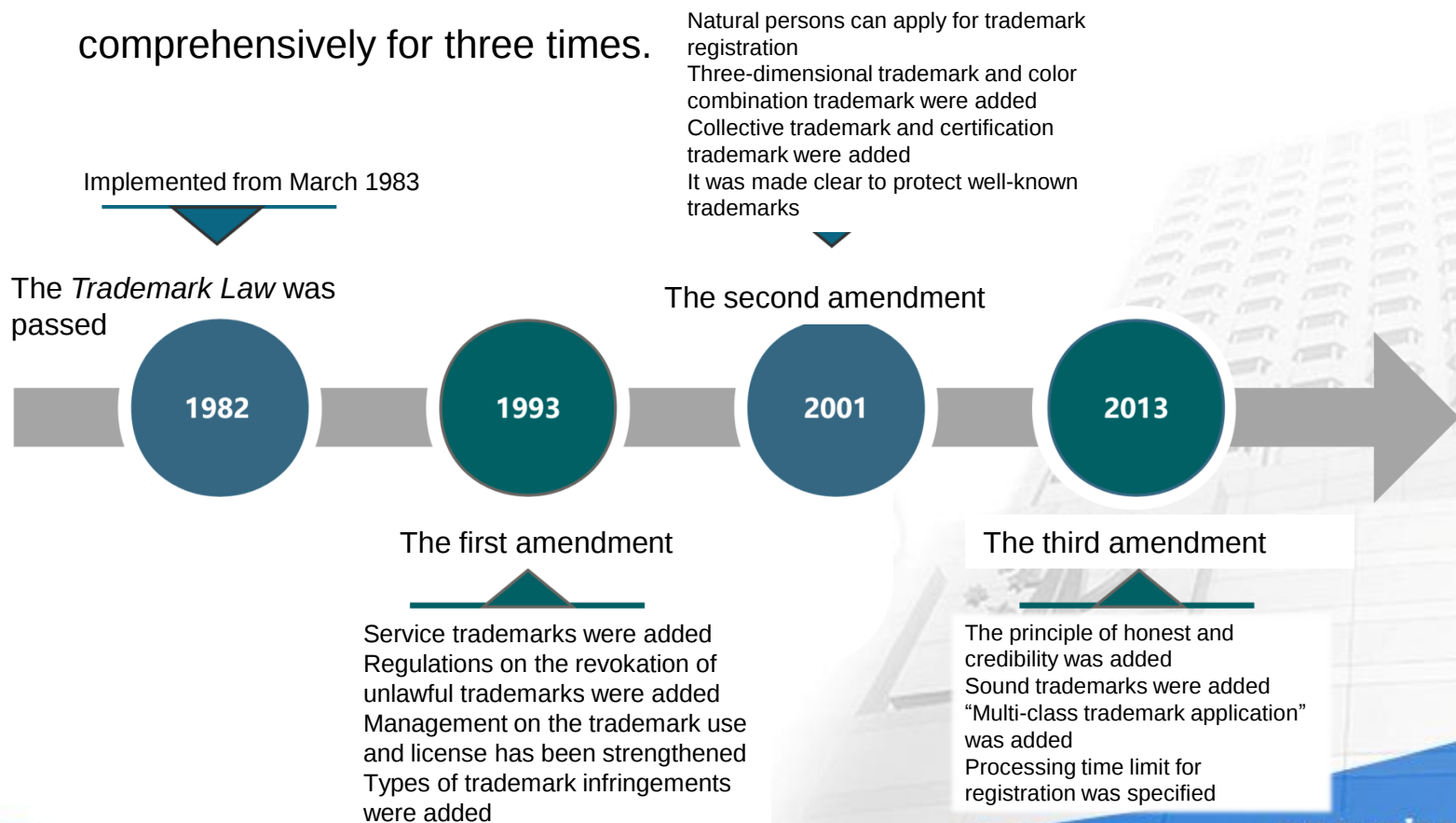


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I. Background of the 4th Amendment of the *Trademark Law*

- ◆ Before this amendment, the *Trademark Law* has been amended comprehensively for three times.





I. Background of the 4th Amendment of the *Trademark Law*

- ◆ The *Trademark Law* amended in 2013 has played a significant role in protecting the exclusive right to use trademarks and boosting China's economic and social development.
- ◆ However, in recent years, bad-faith registration for the purpose of “jumping on the bandwagon of famous brands” and hoarding registration for the purpose of transferring for profit have kept emerging, disturbing the market economic order and trademark management order.
- ◆ Meanwhile, the protection of trademark exclusive right needs to be strengthened.



I. Background of the 4th Amendment of the *Trademark Law*

- ◆ In order to align with the efforts to deepen reforms to streamline administration and delegate power, improve regulation, and upgrade services, move faster to create a market-oriented, law-based, and internationalized business environment, and facilitate the implementation of the *Foreign Investment Law*, the State Council reviewed and approved a series of draft amendments to the *Administrative Permission Law*, *Trademark Law* and other laws in its executive meeting on April 3rd, 2019, and decided to submit them to the Standing Committee of the National People's Congress for deliberation.
- ◆ On April 23rd, 2019, the Standing Committee of the National People's Congress reviewed and approved the decision to amend eight laws including the *Trademark Law* of the PRC, among others.
- ◆ The amendments to individual provisions of the *Trademark Law* are mainly focused on two aspects, namely, **regulating bad-faith application of trademarks, hoarding registrations and other improper actions**, and **increasing the intensity of punishment for trademark infringement**.
- ◆ The amendment involves six provisions in total, which was implemented on November 1st, 2019.



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II. Main contents of the 4th Amendment of the *Trademark Law*

(1) Increase the content of regulating bad-faith registration

1. Strengthen the purpose of trademark use

◆ Add in Article 4:

“An application for bad-faith trademark registration not intended for use shall be rejected.”



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II. Main contents of the 4th Amendment of the *Trademark Law*

(1) Increase the content of regulating bad-faith registration

1. Strengthen the purpose of trademark use

◆ Applicable at the examination stage →

Move forward the barrier for cracking down on bad-faith registration

◆ As the subject of requesting for opposition and invalidation announcement →

Applicable to opposition procedures

Applicable to invalidation announcement



II. Main contents of the 4th Amendment of the *Trademark Law*

2. Standardize trademark agency behavior

- ◆ The trademark agency shall not accept the entrustment of the principal if it knows or is supposed to know that the principal has bad-faith registration behavior, and once found, it shall be investigated for responsibility according to law.



II. Main contents of the 4th Amendment of the *Trademark Law*

3. Punishments are stipulated for bad-faith trademark registration and litigation by applicants and trademark agencies.

- ◆ The regulation of bad-faith registration runs through the whole trademark application for registration and protection procedures, including the applicant and the obligee as well as the intermediary service agencies.



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II. Main contents of the 4th Amendment of the *Trademark Law*

(2) Increase the punishment for infringement of trademark exclusive rights

Calculation multiple of compensation amount for bad-faith infringement:

◆ More than one time and less than three times  More than one time and less than **five** times

The upper limit of legal compensation for bad-faith infringement:

◆ Three million yuan  **Five million** yuan



II. Main contents of the 4th Amendment of the *Trademark Law*

(2) Increase the punishment for infringement of trademark exclusive rights

- ◆ Intensify the disposal of goods with counterfeited registered trademarks and materials and tools mainly used to manufacture goods with counterfeited registered trademarks.
- ◆ It is clear that **“goods with counterfeit trademarks shall not enter commercial channels only after counterfeited registered trademarks are removed”**.



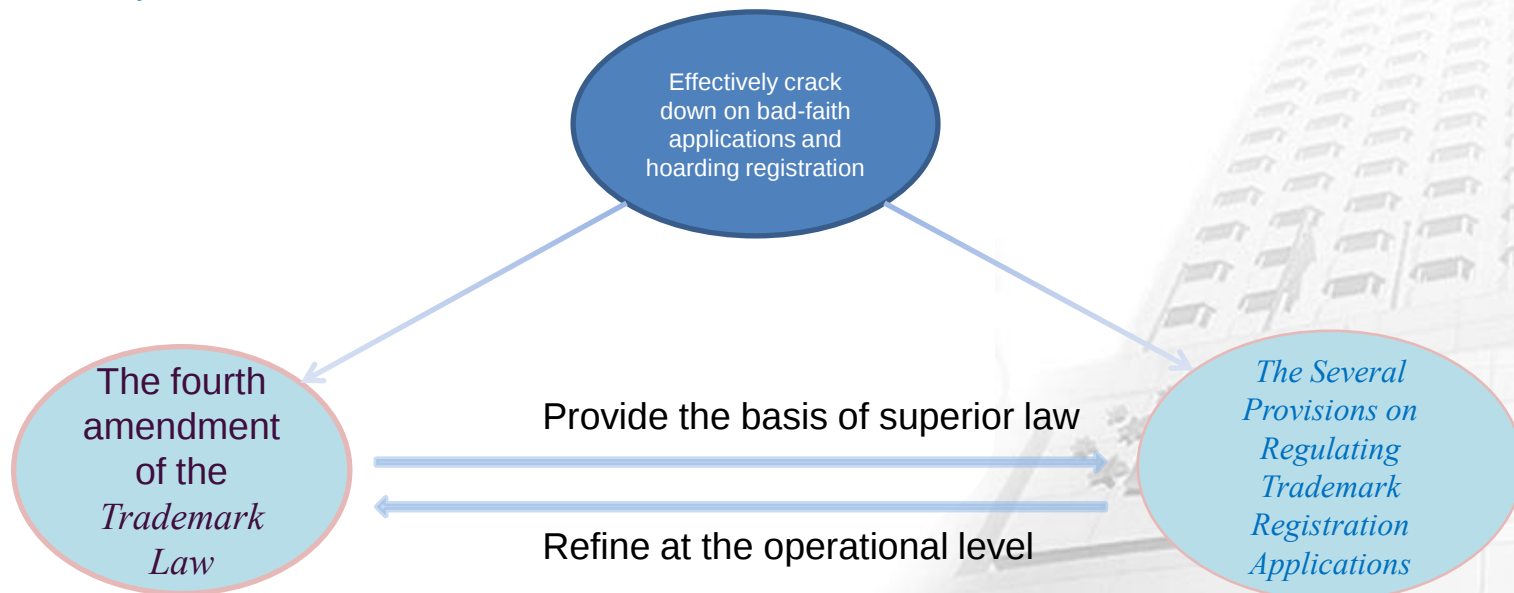
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II. Main contents of the 4th Amendment of the *Trademark Law*

(3) Supporting measures for the 4th Amendment of the *Trademark Law*

- ◆ *The Several Provisions on Regulating Trademark Registration Applications* was implemented on December 1, 2019





II. Main contents of the 4th Amendment of the *Trademark Law*

◆ *Provisions on Regulating Trademark Registration*

1

Restrict bad-faith trademark registration, clarify the requirements for applying for trademark registration and engaging in trademark agency, give full play to the functions of intellectual property management departments, move the crackdown barrier forward and cover the whole process.

2

In line with the latest revision of the *Trademark Law*, the factors to be considered by the trademark registration department in the examination according to Article 4 of the *Trademark Law*, as well as the application and punishment range of administrative punishment in Article 68 are detailed.

3

Emphasis is placed on the combination of supervision and guidance, the combination of trademark examination, regulation means within the management process and measures outside the process such as credit record and agency management, and the combination of guidance by government departments and industry self-discipline to form a long-term mechanism to severely crack down on bad-faith trademark registration.



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III. The Latest Progress of the New Round of Amendment of the *Trademark Law*

Preparations for the amendment of the *Trademark Law* and its *Regulations for the Implementation* have been fully launched

☆ Since 2018, research and demonstration work has been carried out, and extensive discussions on key issues such as continuing to regulate bad-faith trademark registration and strengthening the protection of trademark exclusive rights have been conducted.

☆ At the end of 2022, the draft proposal for amending the *Trademark Law* and its *Regulations for the Implementation* will be initially formed



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Thank you for you time.