

(This is a temporary English translation of the Trademark Act 2012 and might be amended in the near future.)

Trademark Act 2012

Enacted and Promulgated on May 6, 1930 by the Government

Enforced on Jan. 1, 1931

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Article 4 and 94 Amended and Promulgated on August 25, 2010 by Presidential Order, and enforced on September 12, 2010

Passed on May 31, 2011 by the Legislative Yuan, and Amended and Promulgated on June 29, 2011 by President Order

(The date of enforcement of this Act shall be prescribed by the Executive Yuan)

Chapter I

General Provisions

Article 1

This Act is enacted to safeguard the rights of trademark, certification mark, collective membership mark, collective trademark and consumers' interest, to maintain fair market competitions, and to facilitate the development of the industrial and commercial sectors.

Article 2

Any person who wishes to obtain the rights of trademark, certification mark, collective membership mark, or collective trademark shall file an application therefor in accordance with this Act.

Article 3

The competent authority of this Act shall be the Ministry of Economic Affairs ("MOEA").

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

Article 4

A trademark application for registration, filed by a national of a country other than the Republic of China, may be rejected if such country is not a member of an international treaty for the protection of trademarks, of which the Republic of China is a member, or does not have a treaty or agreement with the Republic of China on mutual protection of trademarks, or does not accept trademark applications for registration filed by nationals of the Republic of China.

Article 5

The use of a trademark refers to one of the following situations where the use in the course of trade is capable of making the trademark be recognized by relevant consumers as such:

(1) the trademark is used in connection with goods or packaging or containers thereof;

(2) the goods referred to in the preceding sub-paragraph are possessed, displayed, sold, exported, or imported;

(3) the trademark is used on articles in connection with the provision of services; or

(4) the trademark is used in commercial documents or advertisements relating to goods or services.

The same shall apply if the use of a trademark referred to in any of the above situations is done by digital audio-visual means, electronic media, on the Internet, or through other media.

Article 6

Trademark registration and relevant affairs thereof may be performed and managed by an appointed trademark agent. Those who have no domicile or establishment 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.

Article 7

When there are two or more persons who wish to have co-ownership of a trademark, an application shall be filed in the names of all the persons, with one of them chosen to represent all the co-proprietors and to do all the filing process and receive relevant documents on their behalf.

If no representative referred to in the preceding paragraph is chosen, the first applicant set forth in the application shall be considered by the Registrar Office as the person to be served upon, in which case the remaining applicants of the jointly owned trademark shall also be notified of the matter served.

Article 8

Unless otherwise provided in this Act, a trademark application as well as other proceedings shall be dismissed if there is failure to comply within the statutory period, failure to conform with legal formality that cannot be corrected, or failure to conform with legal formality which is not corrected within the period specified in a notification. However, those that fail to comply within the period specified in a notification shall still be accepted if such noncompliance is remedied before the disposition has been made.

An applicant may, in the case where the statutory period has not been complied due to natural disasters or causes not attributable to the applicant, submit a written statement clarifying all reasons within thirty days after the extinction of such cause to the Registrar Office for reinstating the application to its *status quo ante*. However, an application may not be reinstated to its *status quo ante* if the statutory period has been expired for more than one year.

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

The provisions of the preceding two paragraphs shall not apply to expiration of the period provided in Paragraph 3 of Article 32.

Article 9

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

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

Article 10

Where service of a disposition or any other document cannot be executed, such decision or document shall be published in the official gazette of trademark and shall be deemed to have been served thirty days after the date of publication.

Article 11

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

The official gazette referred to in the preceding paragraph may be done by electronic means; the date of commencement thereof shall be prescribed by the Registrar Office.

Article 12

The Registrar Office shall maintain a trademark register. Trademark registrations, changes to trademark rights and all matters prescribed by laws or regulations shall be entered in the register and made available for public inspection.

The trademark register referred in the preceding paragraph may be done by electronic means.

Article 13

Application and other procedures of trademark may be done by electronic means; the implementing regulations thereof shall be prescribed by the competent authority.

Article 14

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

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

Article 15

The Registrar Office shall render a written disposition on examination of applications referred to in paragraph 1 of the preceding article, with grounds stated, and serve the said disposition to the applicant.

The name(s) of the examiner(s) shall also be noted in the disposition referred to in the preceding paragraph.

Article 16

For the purpose of calculation of a period, except those referred to in Paragraph 1 of Article 33, Paragraph 4 of Article 75, and Article 103, the first day does not count.

Article 17

The provisions of this Chapter with respect to trademarks shall apply *mutatis mutandis* to certification marks, collective membership marks, and collective trademarks.

Chapter II

Trademark

Section I

Application for Registration

Article 18

A trademark shall refer to any sign with distinctiveness, which may consist of, but not limit to, word (letter, character), device, symbol, color, three-dimensional shape, motion, hologram, sound, or any combination thereof.

The term “distinctiveness” used in the preceding paragraph refers to the character which is capable of making a sign be recognized by relevant consumers as an indication of the source of goods or services and distinguishing goods or services of one undertaking from those of other undertakings.

Article 19

An application for registration of a trademark shall be made to the Registrar Office by submitting an application containing (the name and address of) the applicant, a representation of the trademark, and the designated goods or services.

The date of filing of an application for registration of a trade mark is the date on which an application referred to in the preceding paragraph are furnished to the Registrar Office.

A representation of the trademark shall be represented in a manner that is clear, precise, self-contained, objective, durable, easily accessible and intelligible.

An application for trademark registration shall be filed for a trademark, and may be designated to use on goods and services in two or more classes.

Classification of goods or services referred to in the preceding paragraph shall be prescribed in the Enforcement Rules of this Act.

Determination of similar goods or services shall not be constrained by the classification of goods or services referred to in the preceding paragraph.

Article 20

A person who has duly filed an application for registration of a trade mark in a country which has mutual recognition of priority rights with the Republic of China or is a member of the World Trade Organization may claim a right of priority, for the purposes of registering the same trade mark in the Republic of China for some or all of the same goods or services, within six months after the date of filing of the first such application.

Any foreign applicant who is a national of a country which is not a member of the World Trade Organization or does not have mutual recognition of priority rights with the Republic of China may claim a right of priority pursuant to the provisions of the preceding paragraph if he is domiciled or has an establishment in the territory of a country which has mutual recognition of priority rights with the Republic of China or is a member of the World Trade Organization.

A priority pursuant to Paragraph 1 shall be claimed along with the application for registration being filed, and the application shall set forth the following matters:

- (1) the date of filing of the first application;
- (2) the country or the member of the World Trade Organization in which the first application was accepted; and
- (3) the application number of the first application.

The applicant shall submit, within three months after the date of filing of the application, submit a certified copy of the application accepted by the country or the member of the World Trade Organization referred to in the preceding paragraph.

Any application not filed in accordance with the provisions of Sub-paragraph 1 or Sub-paragraph 2 of Paragraph 3 or the preceding paragraph shall be deemed that no priority has been claimed.

In the case of an application filed with a priority claim, the priority date shall be deemed to be the filing date.

In the case of an application filed with a claim of multiple priorities, the priority date of each priority shall be deemed to be the filing date of goods or services referred to in such priority.

Article 21

In the case of an application for registration of a trademark which the applicant has displayed goods or services under the trademark applied for at an international exhibition which was held or officially recognized by the Government of the Republic of China, if the application has been filed within a period of six months from the date of the first display of such goods or services, the date of the first display shall be deemed to be the filing date of the application.

The provisions of the preceding article shall apply *mutatis mutandis* to applications filed with a claim of exhibition priority under the preceding paragraph.

Article 22

If two or more trademark applications for registration, with identical or similar trademarks and identical or similar goods or services which are likely to cause confusion to relevant consumers, filed separately by different applicants on the same day of which time precedence cannot be determined, all of such applicants shall reach a consensus on the precedence. Lots shall be casted for deciding precedence where a consensus has failed to be reached.

Article 23

No changes shall be made in the representation of a trademark and the designated goods or services thereof after an application for registration of the trademark has been filed. However, it shall not apply to a restriction of designated goods or services or an amendment to the representation of the trademark which does not substantially affect the identity of the trademark.

Article 24

A change to the name or address of the applicant, the trademark agent, or any other change to the particulars in an application for registration shall be made by submitting to the Registrar Office a request therefor.

Article 25

The following errors in the particulars of an application for registration of a trademark may be corrected *ex officio* or upon request:

- (1) errors in the name or address of the applicant;
- (2) errors of wording or of copying; or
- (3) any other obvious mistakes.

Any correction under the preceding paragraph shall not affect the identity of the trademark or broaden the scope of the designated goods or services.

Article 26

An applicant may request to the Registrar Office for dividing an application for registration into two or more applications by dividing the designated goods or services into respective divisional applications, in which the filing date of the original application shall remain as the filing date of the divisional applications.

Article 27

Rights derived from an application for registration of a trademark may be assigned to another person.

Article 28

Any assignment of the right of an application of a jointly owned trademark or the share of a co-proprietor shall have the consent of all co-proprietors, except those assigned by inheritance or as a result of compulsory execution or a court decision or pursuant to other legal provisions.

Any abandonment of the right of a jointly owned trademark shall have the consent of all co-proprietors, except in the case of each co-proprietor's abandonment of his own share in the trademark.

The share abandoned by a co-proprietor under the preceding paragraph shall be distributed among the remaining co-proprietors in proportion to each co-proprietor's share.

The provisions of the preceding paragraph shall apply *mutatis mutandis* to cases where a co-proprietor dies or ceases to exist with no successor.

Any restriction or division of the designated goods or services of an application for registration of a jointly owned trademark shall have the consent of all co-proprietors.

Section II

Examination and Approval

Article 29

A trademark shall not be registered if it is devoid of distinctiveness in one of the following ways:

(1) consisting exclusively of a description of the quality, intended purpose, material, geographical origin, or relevant characteristics of the designated goods or services;

(2) consisting exclusively of the generic mark or term for the designated goods or services; or

(3) consisting exclusively of other signs which are devoid of any distinctiveness.

Sub-paragraph 1 or 3 of the preceding paragraph shall not apply if the trademark has been used by the applicant and has become, in trade, a sign capable of distinguishing the goods or services of the applicant.

Where the representation of a trademark contains an element which is not distinctive, and where the inclusion of that element in the trademark could give rise to doubts as to the scope of protection of the trademark, the applicant shall state that he disclaims any exclusive right to such element. If there is no disclaimer, the trademark may not be registered.

Article 30

A trademark in one of the following situations shall not be registered:

(1) being exclusively necessary to perform the function of the goods or services;

(2) being identical with or similar to the national flag, national emblem, national seal, military flags, military insignia, official seals, or medals of the Republic of China, or the state flags of foreign countries, or the armorial bearings, national seals or other state emblems of foreign countries notified by any member of the World Trade Organization under Paragraph 3 of Article 6^{ter} of the Paris Convention;

(3) being identical with the portrait or name of the late Dr. Sun Yat-Sen or of the head of the state;

(4) being identical with or similar to the mark of a government agency of the Republic of China or a official exhibition conducted thereby, or a medal or certificate awarded thereby;

(5) being identical with or similar to the armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations or well-known domestic or foreign institutions which are of particular public interest, such that the public is likely to be misled;

(6) being identical with or similar to domestic or foreign official signs and hallmarks indicating control and warranty adopted by the countries, and being designated to the identical or similar goods or services;

(7) being contrary to public policy or to accepted principles of morality;

(8) being likely to mislead the public with respect to the nature, quality, or geographical origin of the designated goods or services;

(9) being identical with or similar to a geographical indication for wines or spirits in the Republic of China or a foreign country, and being designated for use on goods that are identical with or similar to wines or spirits, where that foreign country is a member of an international treaty for the protection of geographical indications for wines or spirits, of which the Republic of China is a member, or has an agreement with the Republic of China on mutual protection of geographical indications for wines or spirits, or has mutual recognition of the protection of geographical indications for wines or spirits;

(10) being identical with or similar to a registered trademark or an earlier filed trademark and to be registered for goods or services identical with or similar to those for which the registered trademark is protected or the earlier filed trademark is designated, and hence there exists a likelihood of confusion on relevant consumers, though the restriction shall not apply if the application is filed with consent from the proprietor of the said registered trademark or the applicant of the said earlier filed trademark and the situation is not obviously improper;

(11) being identical with or similar to an well-known trademark or mark and hence there exists a likelihood of confusion on the relevant public or a likelihood of dilution of the distinctiveness or reputation of the said well-known trademark or mark, though the restriction shall not apply if the

application is filed with consent from the proprietor of the said well-known trademark or mark;

(12) being identical with or similar to an earlier used trademark and to be registered for goods or services identical with or similar to those for which the earlier used trademark is applied in relation to, where the applicant thereof, being aware of the existence of the said trademark due to contractual, geographical, or business connections, or any other relationship with the proprietor of the earlier used trademark, files the application for registration with the intent to imitate that trademark, though the restriction shall not apply if the application is filed with consent from the proprietor of the earlier used trademark;

(13) containing the portrait of another person or a well-known name, stage name, pseudonym, alternative name, or alias, though the restriction shall not apply if the application is filed with consent from that person;

(14) containing the name of a well-known legal person, business establishment or any group, and hence being likely to cause confusion among the relevant public, though the restriction shall not apply if the application is filed with consent from that legal person, business establishment or group; or

(15) being an infringement of another person's copyrights, patent rights, or any other rights, for which a final court decision has been rendered, though the restriction shall not apply if the application is filed with consent from that person.

The determination of a geographical indication, well-known status and earlier use as prescribed in Sub-paragraph 9 and Sub-paragraphs 11 to 14, respectively, of the preceding paragraph shall be based on the facts at the time of filing.

The provisions of Sub-paragraphs 4, 5 and 9 of Paragraph 1 of this Article shall not apply if the applicant is a government agency or related institution.

The provisions of Paragraph 3 of the preceding article shall apply *mutatis mutandis* to the situation described in Sub-paragraph 1 of Paragraph 1.

Article 31

A trademark application for registration shall be rejected if it is held, after examination, that under Paragraphs 1 and 3 of Article 29, Paragraphs 1 and 4 of the preceding paragraph, or Paragraph 3 of Article 65, the trademark may not be registered.

Before rendering a disposition of rejection provided under the preceding paragraph, a written notice stating grounds for rejection shall be sent to the applicant, who shall state whose comment within the prescribed period.

Any request of restriction of the designated goods or services, amendment to the representation of the trademark which does not substantially affect the identity of the trademark, division of an application for registration, or disclaimer shall be made before the disposition of rejection is rendered.

Article 32

A trademark application for registration shall be approved if, after examination, none of the situations described in Paragraph 1 of the preceding article is found to exist.

A trademark been approved for registration shall be published for registration and a trademark certificate shall be issued on the condition that a registration fee has been paid by the applicant thereof within two months after the service of the disposition. Where the said fee remains unpaid by the end of the stipulated time limit, a trademark shall not be published for registration.

Where an applicant has unintentionally failed to pay the required fee within the time limit specified in the preceding paragraph, the applicant may pay the registration fee in double within six months after the stipulated time limit expires, in which case the Registrar Office will publish the registration. However, this may not be applied if it would affect trademark applications for registration filed by a third party during such period or trademark rights obtained by a third party during such period.

Section III

Trademark Rights

Article 33

A registered trademark shall confer on the proprietor exclusive rights therein for a period of ten years from the date of publication for registration.

The term of trademark rights may be renewed at the request for further periods of ten years.

Article 34

A request for renewal of trademark rights shall be made, and the renewal fee paid, within six months before the expiry of the term of trademark rights; failing this, the request may be made and the fee paid within such further period of six months after the expiry of the term of trademark rights, in which case a renewal fee shall also be paid in double within that period.

The term of renewal approved under the preceding paragraph shall take effect after the date of expiry of the previous term of trademark rights.

Article 35

The proprietor of a registered trademark has exclusive rights in the trademark with respect to the designated goods or services.

Unless otherwise provided in Article 36 of this Act, consent of the proprietor of a registered trademark shall be required in any of the following conditions:

(1) a person who uses a trademark which is identical with the registered trademark in relation to goods or services which are identical with those for which it is registered;

(2) a person who uses a trademark where because the trademark is identical with the registered trademark and used in relation to goods or services similar to those for which the registered one is designated, there exists a likelihood of confusion on relevant consumers; or

(3) a person who uses a trademark where because the trademark is similar to the registered trademark and used in relation to goods or services identical with or similar to those for which the registered one is designated, there exists a likelihood of confusion on relevant consumers.

A trademark may, if registered, be identified by displaying a registered trademark symbol or an internationally used symbol for registration.

Article 36

The following shall not be limited by the effects of rights of a registered trademark:

(1) one who, in accordance with honest practices in industrial or commercial matters, indicates his own name, title, or the name, shape, quality, nature, characteristics, intended purpose, geographical origin, or other description with respect to his own goods or services, provided he does not use them as trademarks;

(2) being necessary to perform the function of the goods or services; or

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

Where goods bearing a registered trademark have been put on the domestic or foreign market for trade and circulation by the proprietor of the registered trademark or with his consent, the proprietor may not claim trademark rights on the said goods. However, this restriction shall not apply if such claim is made to prevent the condition of the goods been changed or impaired after they have been put on the market for circulation or there exists other legitimate reasons.

Article 37

The proprietor of a registered trademark may request to the Registrar Office for dividing the registration of the trademark into two or more registrations by dividing the designated goods or services into respective divisional registrations.

Article 38

No changes shall be made to the representation of a trademark and the designated goods and services thereof once the said trademark has been registered. However, the aforementioned does not apply to a restriction of designated goods or services.

The provisions of Articles 24 and 25 shall apply *mutatis mutandis* to any change or correction of the particulars of a trademark registration.

If a registered trademark is involved in an opposition, invalidation, or revocation case, the request to divide trademark rights or to restrict the designated goods or services shall be made before the disposition is rendered.

Article 39

The proprietor of a registered trademark may grant a person an exclusive or non-exclusive license to use, within a designated locality, his registered trademark in connection with all or part of the designated goods or services.

A license under the preceding paragraph shall not be effective against any third party unless it has been recorded in the Registrar Office.

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.

Where the proprietor grants an exclusive license after a non-exclusive license has been recorded, the earlier recorded non-exclusive license shall not be affected thereby.

To the extent of the exclusive license, an exclusive licensee may exclude the proprietor and any third party from using the registered trademark.

In cases where an infringement of trademark rights occurs, the exclusive licensee may, to the extent of the exclusive license, exercise rights in his own name, unless otherwise provided by the contract.

Article 40

An exclusive licensee may, to the extent of the exclusive license, grant a sub-license to others, unless otherwise provided by the contract.

A non-exclusive licensee may not grant a sub-license to others without the consent of the proprietor of the registered trademark or the exclusive licensee.

A sub-license shall not be effective against any third party unless it has been recorded in the Registrar Office.

Article 41

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

(1) where the proprietor of the registered trademark 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 license agreement expressly prescribes that either the proprietor or the licensee may terminate a licensing relationship at any time, and the declaration of termination has been made;

(3) where the proprietor notifies the licensee to rescind or terminate the licensing agreement on account of breach by the said licensee, who has shown no objection thereto; or

(4) where there is other relevant evidence that is sufficient to establish that the license relationship no longer exists.

Article 42

An assignment of trademark rights shall not be effective against any third party unless it has been recorded in the Registrar Office.

Article 43

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

Article 44

A creation, change, or extinguishment of a pledge made by the proprietor of a registered trademark shall not be effective against any third party unless it has been recorded in the Registrar Office.

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

A pledgee shall not use the pledged trademark unless otherwise licensed by the proprietor thereof.

Article 45

The proprietor of a registered trademark may abandon its trademark right(s). However, one who has recorded a licensing or pledge and wishes to do so shall have consent from the licensee(s) or pledgee(s).

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

Article 46

Any license, sub-license, assignment, abandonment of, or creation of pledge on, the rights in a jointly owned trademark or any assignment of, or creation of pledge on, the share of a co-proprietor shall have the consent of all co-proprietors, except those assigned by inheritance or as a result of compulsory execution or a court decision or pursuant to other legislation.

The provisions of Paragraph 3 and the proviso to Paragraph 2 of Article 28 shall apply, *mutatis mutandis*, to a co-proprietor's abandonment of his share.

Where a co-proprietor is dead or has ceased to exist with no successor, the provisions of Paragraph 4 of Article 28 shall apply, *mutatis mutandis*, to the distribution of the co-proprietor's share.

The provisions of Paragraph 5 of Article 28 shall apply, *mutatis mutandis*, to a restriction or division of the designated goods or services of a jointly owned registered trademark.

Article 47

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

(1) where a registration is not renewed in accordance with the provisions of Article 34, the trademark rights shall be extinguished after the expiry of the term of trademark rights;

(2) where the proprietor of a registered trademark has died without a successor, the trademark rights shall be extinguished following the death of the proprietor; or

(3) where trademark rights are abandoned pursuant to the provisions of Article 45, such trademark rights shall be extinguished as of the date on which a written statement to that effect arrives at the Registrar Office.

Section IV

Opposition

Article 48

In the case where the registration of a trademark violates the provisions of Paragraph 1 of Article 29, Paragraph 1 of Article 30, or Paragraph 3 of Article 65, anyone may file an opposition with the Registrar Office within three months after the date on which the registration is published.

The opposition referred to in the preceding paragraph may be made to part of the designated goods or services of a registered trademark.

An application for opposition shall be filed against a registered trademark.

Article 49

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

The Registrar Office shall forward a copy of the application for opposition to the proprietor of a registered trademark and set a time limit for defenses thereto; where the proprietor files a written defense to the opposition, the Registrar Office shall forward a copy of the written defense to the opponent and set a time limit for the opponent to state his opinions.

Where a written defense or statement of opinions filed pursuant to the provisions of the preceding paragraph is likely to delay the proceedings, or if the facts and evidence are clear enough to be firmly established, the Registrar Office may start examining without noticing the respondent party to provide a written defense or statement of opinions.

Article 50

Except as provided in Paragraph 1 and Paragraph 3 of Article 106, whether the grounds for opposition is applicable to the opposed trademark

registration shall be determined pursuant to the provisions in effect at the time of publication for registration.

Article 51

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

Article 52

An assignment of trademark rights of which the opposition proceedings of the trademark is underway shall have no effect on the said opposition proceedings.

An assignee of trademark rights set forth in the preceding paragraph may declare to undertake the position of the opposed party to continue opposition proceedings.

Article 53

An opponent may withdraw an opposition before the disposition of the opposition is rendered.

An opponent who has withdrawn an opposition shall not request once more for an opposition or invalidation against the same trademark with respect to the same fact(s) by using the same evidence and the same ground(s).

Article 54

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

Article 55

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

Article 56

No one shall request for an invalidation based on the same fact(s) by using the same evidence and the same ground(s) against a registered trademark of which a disposition of opposition has become final.

Section V

Invalidation

Article 57

Where the provisions of Paragraph 1 of Article 29, Paragraph 1 of Article 30, or Paragraph 3 of Article 65 are applicable to the registration of a trademark, an interested party or a trademark examiner may request or inquire the Registrar Office to invalidate the said registration.

Any application made to the Registrar Office for invalidation of the registration of a trademark on the ground that such registration violates the provisions of Sub-paragraph 10 of Paragraph 1 of Article 30 shall, if the trademark relied upon to bring the invalidation action has been registered for three years or more, be accompanied by evidence that the trademark relied upon was in use on the goods or services relied upon in three years before the filing of the invalidation action, or by any facts or evidence of proper reasons for non-use.

The evidence of use provided pursuant to the provisions of the preceding paragraph shall be capable of establishing the genuine use of the trademark and shall comply with the general practice of trade.

Article 58

No invalidation shall be requested or inquired against the registration of a trademark which violates conditions prescribed under provisions of Sub-paragraph 1 and 3 of Paragraph 1 of Article 29, Sub-paragraphs 9 through 15 of Paragraph 1 of Article 30, or Paragraph 3 of Article 65 and which has been registered for five years after the date of the publication for registration.

For the registration of a trademark which violates conditions prescribed under provisions of Sub-paragraphs 9 and 11 of Paragraph 1 of Article 30 with a *mala fide* intention, the period prescribed in the preceding paragraph shall not be applied.

Article 59

An application for invalidation shall be examined by three examiners or more appointed by the head of the Registrar Office to be the members of the invalidation committee.

Article 60

A trademark registration shall be cancelled once an invalidation thereof has been affirmed. However, in the case where the cause on which the trademark was held to be unregistrable no longer exists, a disposition to deny the said invalidation may be rendered upon considering the need for proportionality between the interests of the public and the interests of the concerned parties.

Article 61

No one shall request for an invalidation based on the same fact(s) by using the same evidence and the same ground(s) against a registered trademark of which a disposition of invalidation has been rendered.

Article 62

The provisions of Paragraphs 2 and 3 of Article 48, Articles 49 through 53, and Article 55 shall apply *mutatis mutandis* to trademark invalidation actions.

Section VI

Revocation

Article 63

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 is identical with or similar to other's registered trademark and is registered for goods or services identical with or similar to those for which the other's registered trademark is protected, and hence there exists a likelihood of confusion on relevant consumers;

(2) where a trademark has not yet been put to use or such use has been suspended for an uninterrupted period of three years, and there are no proper reasons for non-use, unless the trademark has been put to use by the one with the proprietor's consent;

(3) where no appropriate and distinguishing label(s) is affixed pursuant to Article 43, unless the aforementioned label(s) has been affixed before the

disposition of revocation rendered by the Registrar Office and hence there does not exist any likelihood of confusion;

(4) where a trademark has become a generic mark or term or common shape for the designated goods or services; or

(5) where in consequence of the actual use, a trademark is likely to mislead the public with respect to the nature, quality, or geographical origin of the designated goods or services.

The aforementioned shall also apply in the case where the proprietor of a registered trademark who, knowingly or with reasonable grounds to know, has shown no objection to the conduct as prescribed in Sub-paragraph 1 of preceding paragraph by a licensee thereof.

The registration of a trademark shall not be revoked on the ground mentioned in Sub-paragraph 2 of Paragraph 1 if such use as in referred to in that paragraph has been commenced or resumed at the time that the application for revocation is made, unless any such commencement or resumption of use within the period of three months before the making of the application is because the proprietor became aware that the application might be made.

Where grounds for revocation exist in respect of only some of the goods or services for which the trademark is registered, revocation shall relate to those goods or services only.

Article 64

Use of a registered trademark in practice by the proprietor in a form which differs from the form in which it was registered, but does not affect the identity of the trademark in common perception of the society, shall be deemed that the registered trademark has been used by the proprietor.

Article 65

The Registrar Office shall notify the proprietor of a registered trademark of the application for revocation and set a time limit for defenses thereto; where the proprietor files a written defense to the revocation, the Registrar Office shall forward a copy of the written defense to the applicant and set a time limit for the applicant to state his opinions. A revocation may be overruled

directly if the application is devoid of any concrete facts and evidence or based on obviously groundless claims.

Where the notice of defense for condition set forth under Sub-paragraph 2 of Paragraph 1 of Article 63 has been served, the proprietor of a registered trademark shall prove with fact(s) of use thereof; registration for those who have failed to defend within the prescribed time may be revoked.

The proprietor of a registered trademark, whose registration was revoked owing to compliance to Sub-paragraph 1 of Paragraph 1 of Article 63, shall not register, be assigned or licensed to use a trademark that is identical with or similar to the said revoked trademark on the identical or similar goods or services within three years after the date of revocation; the aforementioned shall also apply to whom abandoning whose trademark rights before the disposition of revocation rendered by the Registrar Office.

Article 66

In determining whether there are grounds for revocation of a trademark after registration, the provisions in effect at the time the application for revocation is filed shall apply.

Article 67

The provisions of Paragraphs 2 and 3 of Articles 48, Paragraphs 1 and 3 of Article 49, Article 52 and Article 53 shall apply *mutatis mutandis* to the examination of revocation.

For applications for revocation filed on the ground that the registered trademark meets the condition specified in Sub-paragraph 1 of Paragraph 1 of Article 63, the provisions of Paragraphs 2 and 3 of Article 57 shall apply *mutatis mutandis*.

For cases where the proprietor of a registered trademark provides evidence of use in accordance with Paragraph 2 of Article 65, the provisions of Paragraph 3 of Article 57 shall apply *mutatis mutandis*.

Section VII

Infringement Remedies

Article 68

Any of the following acts committed in the course of trade without the consent of the proprietor of a registered trademark infringes the trademark rights:

(1) using a trademark which is identical with the registered trademark in relation to goods or services which are identical with those for which it is registered;

(2) using a trademark where because the trademark is identical with the registered trademark and used in relation to goods or services similar to those for which the registered one is designated, there exists a likelihood of confusion on relevant consumers; or

(3) using a trademark where because the trademark is similar to the registered trademark and used in relation to goods or services identical with or similar to those for which the registered one is designated, there exists a likelihood of confusion on relevant consumers.

Article 69

The proprietor of a registered trademark whose trademark rights are infringed is entitled to claim the removal of the infringement; in the case the trademark rights might be infringed, the proprietor is entitled to claim the prevention of such infringement.

When making a claim under the provisions of the preceding paragraph, the proprietor may claim for destruction of infringing goods and materials or implements the use of which has been in the creation of the infringing goods. However, the court may order other dispositions as it considers necessary after taking into account the need for proportionality between the seriousness of the infringement and the interests of third parties.

The proprietor may claim for damages against the person who knowingly, or with reasonable grounds to know, infringed his trademark rights.

The right to claim for damages under the preceding paragraph shall be extinguished by prescription, if not exercised within two years from the time when the claimant obtains knowledge of the infringement and of the identity of the person bound to make compensation; same rule shall be applied if ten years have elapsed from the date when the infringing act was committed.

Article 70

Any of the following acts committed without the consent of the proprietor of a registered trademark shall be deemed to infringe the trademark rights:

(1) knowingly using a trademark identical or similar to a well-known registered trademark, and hence there exists a likelihood of dilution of the distinctiveness or reputation of the said well-known trademark;

(2) knowingly using the word(s) contained in a well-known registered trademark as the name of one's own company, business, group (association) or domain or any other name that identifies a business entity, and hence there exists a likelihood of confusion on the relevant public or a likelihood of dilution of the distinctiveness or reputation of the said well-known trademark;
or

(3) manufacturing, possessing, displaying, selling, exporting or importing labels, tags, packaging or containers that have not been applied in relation to goods or services, or articles that have not been applied in relation to services, knowing that such items would likely infringe trademark rights as described in Article 68.

Article 71

When claiming for damages, the proprietor of a registered trademark may choose one of the following measures to estimate the amount thereof:

(1) damages may be claimed pursuant to Article 216 of the Civil Code, though in the event where evidence cannot be presented to prove the damages thereof, the proprietor 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 damages;

(2) damages may be claimed in accordance with the profit that are attributable to the infringement of trademark rights, though where no evidence on costs or necessary expenses can be proved by the infringer, the total amount of income from selling the infringing goods shall be presumed as the amount of profit;

(3) damages may be claimed in an amount not more than 1,500 times of the unit retail price of the infringing goods, though in the case where over

1,500 pieces of infringing goods are found, the amount of damages to be claimed shall be a lump sum of the market value of the said infringing goods; or

(4) damages may be claimed in an amount equivalent to the amount of royalties the proprietor may receive under a license granted to another person.

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

Article 72

The proprietor of a registered trademark may request the Customs Authority to detain imported or exported goods that are suspected of infringing the trademark rights of the said proprietor.

The request referred to in the preceding paragraph shall be made in writing, explicating the facts of the infringement, and along with a security 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 assurance.

Once the Customs Authority accepts a request for detention, it shall immediately inform the applicant thereof; where detention 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 Authority to revoke the detention by providing a security equivalent to two times the security set forth in the Paragraph 2 or an equivalent assurance while following the procedures in accordance with applicable customs regulations on import and export goods clearance.

Where the applicant thereof is awarded an final judgement by the court stating that the detained goods have 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.

Article 73

The Customs Authority shall revoke detention if one of the following situations exists:

(1) within twelve days from the next day of the day that the applicant has been served notice of the acceptance of detention, the Customs Authority has not been informed that proceedings claiming that the detained goods are infringing goods pursuant to Article 69 have been initiated by the applicant;

(2) a final court ruling overruled the litigation initiated by the applicant alleging that the detained goods are infringing goods;

(3) a final court ruling held that the detained goods do not infringe trademark rights;

(4) the applicant thereof requests for revocation of detention; or

(5) one that complies with the condition set forth in Paragraph 4 of the preceding article.

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

In carrying out the revocation pursuant to Paragraph 1, the Customs Authority shall follow the procedures in accordance with applicable customs regulations on import and export goods clearance.

Where detention is revoked pursuant to Sub-paragraphs 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 74

When the detained goods are affirmed to be non-infringing by a final court ruling, the applicant for detention shall compensate the party whose goods were detained for any losses resulting from the detention or from the provision of the security set forth in Paragraph 4 of Article 72.

The applicant of the security set forth in Paragraph 4 of Article 72, or the party, whose goods were detained, of the security stipulated in Paragraph 2 of Article 72 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 the preceding article and Paragraph 5 of Article 72 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 security set forth in Paragraph 2 of Article 72 upon request by the applicant thereof:

(1) where the security is no longer required owing to the applicant thereof has either obtained a favorable final judgment or reached 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 detention is revoked on account of any circumstances set forth in Sub-paragraphs 1 through 4 of Paragraph 1 of the preceding article in which the party of the detained goods has suffered from losses owing to the detention, or after the party of the detained goods has been awarded a favorable final judgment; or

(3) where the party whose goods were detained agrees to the return of the security.

Under any of the following circumstances, the Customs Authority shall return the security set forth in Paragraph 4 of Article 72 upon request by the party whose goods were detained:

(1) where the security is no longer required owing to either the detention order has been revoked pursuant to the provisions of Sub-paragraphs 1 through 4 of Paragraph 1 of the preceding article, 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 final judgment; or

(3) where the applicant thereof agrees to the return of the security.

Article 75

If, when performing customs duties, the Customs Authority finds that an imported or exported good is evidently likely to infringe trademark rights, the Customs Authority shall give notice to the proprietor of the trademark and the importer/exporter.

The Customs Authority, in making the notice referred to in the preceding paragraph, shall specify a time period for the proprietor of the trademark to come to the customs to identify and examine the infringement and provide evidence of infringement, and shall also specify a time period for the importer/exporter to provide evidentiary documents of non-infringement. However, the proprietor of the trademark or the importer/exporter may file a request in writing to the Customs Authority, setting forth the reasons therefor, for an extension of time if he has good cause for failure to comply, and such extension of time shall be limited to one time only.

In the event that evidence of infringement has been provided by the proprietor of the trademark, but the importer/exporter did not provide evidentiary documents of non-infringement in compliance with the preceding paragraph, the Customs Authority may suspend the release of the imported/exported goods.

In the event that evidence of infringement has been provided by the proprietor of the trademark, and the importer/exporter has also provided evidentiary documents of non-infringement in accordance with Paragraph 2, the Customs Authority shall notify the proprietor that he may, within three working days after the notice is given, file a request for detention of the imported/exported goods in accordance with Paragraph 1 of Article 72.

In the event that the proprietor did not file within the time period specified in the preceding paragraph a request for detention of the imported/exported goods in accordance with Paragraph 1 of Article 72, the Customs Authority may release the goods after taking a sample that is representative of the goods.

Article 76

Without prejudice to the protection of the confidentiality of the detained goods, the Customs Authority may allow the inspection of the detained goods upon request made by the applicant or the party whose goods are detained as

defined in Article 72 or the proprietor of the trademark or importer/exporter defined in the preceding article.

After the Customs Authority carries out the detention pursuant to the provisions of Paragraph 3 of Article 72 or suspends the release of goods pursuant to the provisions of Paragraph 3 of the preceding article, the proprietor of the trademark may apply to the Customs Authority for provision of relevant information; upon the Customs Authority's consent, the names and addresses of the import/exporter, consignor/consignee, and the quantity of the suspected infringing goods will be provided.

The information obtained by the proprietor pursuant to the provisions of the preceding paragraph shall be used strictly for the purposes of investigating trademark infringement cases and filing suits, and may not be disclosed to a third party.

Article 77

To identify and examine infringement pursuant to the provisions of Paragraph 2 of Article 75, the proprietor of the trademark may request samples of the goods from the Customs Authority by providing a security in an amount equivalent to 120 percent of the duty-paid price of the imported goods and relevant duties and taxes or the F.O.B. price of the exported goods and relevant duties and taxes, assessed by the Customs Authority, provided that such request shall be limited to circumstances in which it is necessary in order to identify and examine infringement and the proprietor of the trademark has undertaken in writing not to infringe the interests of the importer/exporter and not to use the samples for unjustifiable purposes.

The amount of the security set forth in the preceding paragraph shall not be less than NT\$3,000.

If the proprietor of the trademark does not return the requested samples within the time period for providing the evidence of infringement specified in Paragraph 2 of Article 75, or if the samples returned are not the same as the original ones or are defective, the Customs Authority shall hold the security provided by the proprietor and use it to compensate the importer/exporter for damages suffered.

The importer/exporter of the samples of the goods shall enjoy the same right as a pledgee with respect to the security held pursuant to the provisions of the preceding paragraph.

Article 78

The regulations governing the application for detaining goods, revocation of a detention, payment, provision and return procedures for a security or assurance, required documents and other matters to be abided by as set forth in Articles 72 through 74 shall be prescribed by the competent authority and the Ministry of Finance.

The regulations governing the procedures, the required documents, and other relevant matters as to the Customs Authority's taking measures to protect trademark rights, the proprietor's application for inspection of the detained goods, request for relevant information of the infringing goods and for samples of the goods as set forth in Articles 75 through 77 shall be prescribed by the Ministry of Finance.

Article 79

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

Chapter III

Certification Marks, Collective Membership Marks and Collective Trademarks

Article 80

A certification mark means any sign that is used by the proprietor of the certification mark to certify a particular quality, accuracy, material, mode of manufacture, geographical origin or other matters of another person's goods or services and can be used to distinguish the goods or services from those that are not certified.

If the certification mark referred to in the preceding paragraph is used to certify a geographical origin, the goods or services from that geographical region shall have a given quality, reputation or other characteristic, and the applicant of the certification mark may apply to register a sign containing that

geographical term or a sign capable of indicating that geographical region as a geographical certification mark.

The competent authority shall work with the central authorities in charge of the business on providing guidance and subsidies to industries that are in difficulties, industries that are on the verge of being in difficulties, and traditional industries, to help them raise their productivity and the quality of their products, as well as to help them establish and use industry-specific certification marks to certify the geographical origin of their products as made in Taiwan.

The regulations governing the identification, provision of guidance, objects and standards and duration of provision of subsidies, and other matters to be followed shall be prescribed by the competent authority and each central authority in charge of such business. If necessary, related fees of certification mark may be waived.

Article 81

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

An applicant referred to in the preceding paragraph who carries on a business of goods or services of the kind to be certified shall not apply to register the certification mark.

Article 82

Any person who applies to register a certification mark shall submit documents proving his capability to certify another person's goods or services, the regulations governing the use of the certification mark, and a declaration that he does not carry on a business involving manufacture and marketing of goods or provision of services of the kind certified.

If there is any doubt regarding the representativeness of the applicant who applies to register a geographical certification mark, the Registrar Office may consult and seek advice from the central authorities in charge of business related to such goods or services.

A foreign legal person, group or government agency applying to register a geographical certification mark shall submit documentation proving that the geographical certification mark is protected in its name in its country of origin.

The regulations governing the use of the certification mark referred to in Paragraph 1 shall set forth the following matters:

- (1) the characteristics certified by the certification mark;
- (2) the conditions on the use of the certification mark;
- (3) the methods used to manage and supervise the use of the certification mark; and
- (4) the procedures for applying to use the certification mark and resolving disputes.

When the registration is published, the Registrar Office shall also have the regulations governing the use of the certification mark published; any amendment thereto made after registration shall have the Registrar Office's approval and, if approved, be published.

Article 83

The use of a certification mark refers to the use of the certification mark by any person consented by the proprietor of the certification mark pursuant to the conditions set forth in the regulations governing the use of the certification mark.

Article 84

The provisions of Sub-paragraph 1 of Paragraph 1 and Paragraph 3 of Article 29 shall not apply to the geographical term of a geographical certification mark.

The proprietor of a geographical certification mark is not entitled to prohibit the use of the signs to indicate the geographic origin of their goods or services in accordance with honest practices in industrial or commercial matters.

Article 85

A collective membership mark means any sign that is used by an association, society or any other group existing as a legal person to identify the membership of its members and to distinguish its members from non-members.

Article 86

An application for registration of a collective membership mark shall be made by submitting to the Registrar Office an application setting forth relevant matters, as well as the regulations governing the use of the collective membership mark.

The regulations governing the use of the collective membership mark shall set forth the following matters:

- (1) the qualifications of the members,
- (2) the conditions of the use of the collective membership mark;
- (3) the methods used to manage and supervise the use of the collective membership mark; and
- (4) the provisions on handling any violations of the regulations.

Article 87

The use of a collective membership mark refers to the use of the collective membership mark by the members of a group, pursuant to the conditions set forth in the regulations governing the use of the collective membership mark, in order to identify the membership of the members.

Article 88

A collective trademark means any sign that is used by an association, society or any other group existing as a legal person to indicate the goods or services provided by the members and to distinguish the goods or services provided by the members from those by non-members.

If the goods or services provided by the members as referred to in the preceding paragraph are from a particular geographical origin, the goods or services from that geographical region shall have a given quality, reputation or other characteristics, the applicant of the collective trademark may apply to register a sign containing that geographical term or a sign capable of indicating that geographical region as a geographical collective trademark.

Article 89

An application for registration of a collective trademark shall be made by submitting to the Registrar Office an application setting forth the goods or services, as well as the regulations governing the use of the collective trademark.

The regulations governing the use of the collective trademark shall set forth the following matters:

- (1) the qualifications of the members;
- (2) the conditions of the use of the collective trademark;
- (3) the methods used to manage and supervise the use of the collective trademark; and
- (4) the provisions on handling any violations of the regulations.

In addition to the matters required by the preceding paragraph, the regulations governing the use of the geographical collective trademark shall also specify that the proprietor of the geographical collective trademark shall give consent for a person within the extent of the defined geographical region to become a member if his goods or services comply with the conditions of, and he is possessed of the qualifications stated in, the regulations governing the use of the geographical collective trademark.

When the registration is published, the Registrar Office shall also have the regulations governing the use of the collective trademark published; any amendment thereto made after registration shall have the Registrar Office's approval and, if approved, be published.

Article 90

The use of a collective trademark refers to the use of the collective trademark by a group or the members thereof pursuant to the conditions set forth in the regulations governing the use of the collective trademark.

Article 91

The provisions of Paragraph 2 and Paragraph 3 of Article 82 and the provisions of Article 84 shall apply *mutatis mutandis* to geographical collective trademarks.

Article 92

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.

Article 93

The Registrar Office may, upon any person's request or *ex officio*, revoke the registration of a certification mark, a collective membership mark or a collective trademark if one of the following situations exists on the part of the proprietor of the certification mark, the collective membership mark or the collective trademark:

- (1) the certification mark is used as a trademark;
- (2) the proprietor of the certification mark carries on a business of goods or services of the kind certified;
- (3) the proprietor of the certification mark is no longer competent to certify the goods or services for which the certification mark is registered;
- (4) the proprietor of the certification mark treats those who apply for certification differently;
- (5) an assignment, licensing, or creation of pledge is established in violation of the provisions of the preceding article;
- (6) no management and supervision is exercised over use in accordance with the regulations governing the use; or
- (7) other improper uses that would likely cause damage to others or the public.

The same shall also apply in the case where the proprietor of the certification mark, the collective membership mark or the collective trademark who, knowingly or with reasonable grounds to know, has shown no objection to the conduct as prescribed in preceding paragraph by a licensee thereof.

Article 94

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.

Chapter IV

Penalty

Article 95

Any person who commits any of the following acts in the course of trade without the consent of the proprietor of a registered trademark or collective trademark shall be imprisoned not more than three years, or detained, and/or fined not more than NT\$200,000:

(1) using a trademark which is identical with the registered trademark or collective trademark in relation to goods or services which are identical with those for which it is registered;

(2) using a trademark where because the trademark is identical with the registered trademark or collective trademark and used in relation to goods or services similar to those for which the registered trademark or collective trademark is designated, there exists a likelihood of confusion on relevant consumers; or

(3) using a trademark where because the trademark is similar to the registered trademark or collective trademark and used in relation to goods or services identical with or similar to those for which the registered trademark or collective trademark is designated, there exists a likelihood of confusion on relevant consumers.

Article 96

Any person who, in the course of trade, uses a mark where because the mark is identical with or similar to a registered certification mark and used in relation to goods or services identical with or similar to those for which the registered certification mark is designated, there exists a likelihood of confusion on relevant consumers, without the consent of the proprietor of the registered certification mark shall be imprisoned not more than three years, or detained, and/or fined not more than NT\$200,000.

The same shall apply if a person sells or, due to an intention to sell, manufactures, possesses, displays labels, packaging, containers, or other articles that are affixed with a sign identical with or similar to another person's registered certification mark, knowing that such items would likely infringe rights of the certification mark as described in the preceding paragraph.

Article 97

Any person who knowingly sells or, due to an intention to sell, possesses, displays, exports, or imports the goods supplied by another person referred to in the preceding two articles, shall be imprisoned not more than one year, or detained, and/or fined not more than NT\$50,000; the same shall apply if said act is done by electronic media or on the Internet.

Article 98

All articles or documents that constitute infringement upon the rights of trademark, certification mark, or collective trademark shall be confiscated, regardless of whether such articles or documents belong to the offender.

Article 99

A non-recognized foreign legal person or group may file a complaint, initiate a private prosecution, or institute a civil suit in respect of matters prescribed in this Act. The same shall apply to a domestic group without legal personality which has acquired the rights to a certification mark.

Chapter V

Supplementary Provisions

Article 100

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

Article 101

An associated trademark, associated service mark, associated collective membership mark or associated certification mark that was already registered prior to the enforcement of the amended articles of this Act as of April 29,

2003 shall be deemed to be an independent registered trademark or mark as of the said date; its registration term shall be the same as which originally granted.

Article 102

A defensive trademark, defensive service mark, defensive collective membership mark or defensive certification mark already registered before the enforcement of the amended articles of 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.

Article 103

With respect to a registered trademark or mark which has been changed to an independent mark as provided under the preceding article, the three-year period set forth in Sub-paragraph 2 of Paragraph 1 of Article 63 shall commence from the date on which the said change takes place.

Article 104

Any person who files an application for registration, renewal, a request to record any changes, an application for opposition, invalidation, revocation, and any other proceedings under this Act shall pay the required fees of filing, registration, renewal, recording, opposition, invalidation, and revocation.

The regulations of the fees referred to in the preceding paragraph shall be promulgated by the competent authority.

Article 105

For those who chose to pay registration fees by two installments before the enforcement of the articles of this Act amended on May 31, 2011, the payment for the second installment shall be made in accordance with the provisions before the amendment.

Article 106

Registration of a trademark against which an application for opposition or invalidation has been filed and accepted but the disposition thereof has not been rendered prior to the enforcement of the articles of this Act amended on

May 31, 2011 shall be cancelled only in the case where the said trademark complies with grounds for cancellation set forth under provisions both at the time of registration and after the enforcement of the amendment to this Act; the proceedings thereof shall follow the provisions after the said enforcement. However, proceedings that had legally commenced prior to the enforcement of the amendment shall not be affected.

The provisions of Paragraph 2 and Paragraph 3 of Article 57 shall not apply to invalidation cases which have been filed and accepted but the dispositions thereof have not been rendered prior to the enforcement of the articles of this Act amended on May 31, 2011.

A trademark, certification mark, or collective membership mark, which is registered prior to the enforcement of the articles of this Act amended on May 31, 2011, against which an application for opposition or invalidation was filed, requested or inquired after the enforcement of the amendment to this Act, shall be cancelled only in the case where the said trademark or mark complies with grounds for cancellation set forth under provisions both at the time of registration and after the enforcement of the amendment to this Act.

Article 107

Trademark revocation cases of which the dispositions had not been rendered prior to the enforcement of the articles of this Act amended on May 31, 2011 shall be processed pursuant to the provisions after the enforcement of the amendment to this Act. However, proceedings that had legally commenced prior to the enforcement of the amendment shall not be affected.

The provisions of Paragraph 2 of Article 57 applicable *mutatis mutandis* to Paragraph 2 of Article 67 shall not apply to revocation cases which have been filed and accepted but the dispositions thereof have not been rendered prior to the enforcement of the articles of this Act amended on May 31, 2011.

Article 108

In an application filed prior to the enforcement of the articles of this Act amended on May 31, 2011 to register motion, hologram, or any combination thereof as a trademark, the date of the enforcement of the amended articles shall be deemed to be the filing date thereof.

Article 109

In an application filed to register motion, hologram, or any combination thereof as a trademark with a priority claim, if the date of filing of the first such application in a country which has mutual recognition of priority rights with the Republic of China or is a member of the World Trade Organization is earlier than the enforcement of the articles of this Act amended on May 31, 2011, the date of the enforcement of the amended articles shall be deemed to be the priority date thereof.

In the case of an application for registration of a trademark which the applicant has exhibited goods or services under the trademark applied for at an official international exhibition held by the Government of the Republic of China or an international exhibition officially recognized by the Government of the Republic of China, if the date of the first exhibition of such goods or services is earlier than the enforcement of the articles of this Act amended on May 31, 2011, the date of the enforcement of the amended articles shall be deemed to be the priority date thereof.

Article 110

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

Article 111

The date of enforcement of this Act shall be prescribed by the Executive Yuan.