

# 九五年商標法修正各主要國家有關商標侵權使用態樣

## 相關立法例參考資料

議 題	國 別	相 關 立 法 例
輸出及輸入行為是否有意 圖販賣的主觀要件	德國	第 14 條 第 2、3 項 未設主觀要件
	歐盟	第 9 條第 2 項未設主觀要件
	澳洲	未有類似的規定（規定方式與歐洲體系不同）
	英國	第 10 條第 4 項未設主觀要件
	日本	未有類似的規定
	中國大陸	未有類似的規定

議 題	國 別	相 關 立 法 例
<p style="text-align: center;"><b>商標侵權之準備行為</b></p>	<p style="text-align: center;">德國</p>	<p>第 14 條 ( 與何謂使用規定於同一條但不同項 )</p> <p>(4) Without having the consent of the proprietor of the trade mark, third parties shall be prohibited in the course of trade from:</p> <ol style="list-style-type: none"> <li>1. affixing a sign which is identical with or similar to the trade mark to packaging or wrappings or to means of marking such as labels, tags, sewn-on labels or the like;</li> <li>2. offering packaging, wrappings or the means of marking under a sign which is identical with or similar to the trade mark, putting them on the market or stocking them for these purposes under that sign; or,</li> <li>3. importing or exporting packaging, wrappings or means of marking under a sign which is identical with or similar to the trade mark,</li> </ol> <p>if there is a risk that the packaging or wrappings are being used for the packaging or the wrapping of goods or services, or the means of marking for marking goods or services, in respect of which, pursuant to <a href="#">subsections (2)</a> and <a href="#">(3)</a>, third parties would be prohibited from using that sign.</p> <p>(5) Any person who uses a sign in breach of <a href="#">subsections (2)</a> to <a href="#">(4)</a> may be sued by the proprietor of the trade mark to enjoin such use.</p> <p>(6) Any person who undertakes such infringing action intentionally or negligently shall be liable for compensation to the proprietor of the trade mark for damage suffered therefrom.</p>

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商標侵權之準備行為		(7) Where an employee or an authorized representative undertakes such infringing action in a business establishment, the proprietor of the business establishment may be sued by the proprietor of the trade mark to enjoin such use and, where the employee or authorized representative has undertaken such action intentionally or negligently, compensation for damages may also be claimed from the proprietor of the business establishment.
	歐盟	未有規範
	英國	第 10 條 ( 與何謂使用規定於同一條但不同項 ) (5) A person who applies a registered trade mark to material intended to be used for labelling or packaging goods, as a business paper, or for advertising goods or services, shall be treated as a party to any use of the material which infringes the registered trade mark if when he applied the mark he knew or had reason to believe that the application of the mark was not duly authorised by the proprietor or a licensee.

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商標侵權之準備行為	澳洲	未有規範（規定方式與歐洲體系不同）
	日本	未有規範（規定方式與歐洲體系不同）
	中國大陸	未有規範（規定方式與歐洲體系不同）
商標侵權刑罰規定	德國	<p>第 143. 條</p> <p>(1) Any person who, in the course of trade, unlawfully</p> <ol style="list-style-type: none"> <li>1. uses a sign contrary to <a href="#">Section 14(2), No. 1</a> or <a href="#">2</a>,</li> <li>2 uses a sign with the intention of taking advantage of or of impairing the distinctive character or the repute of a mark which has a reputation contrary to <a href="#">Section 14(2), No. 3</a>,</li> <li>3. affixes a sign contrary to <a href="#">Section 14(4), No. 1</a>, or offers for sale, puts on the market, stocks, imports or exports a packaging or wrapping or a means of marking contrary to <a href="#">Section 14(4), No. 2</a> or <a href="#">3</a>, insofar as third parties would be prohibited from using</li> </ol>

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商標侵權刑罰規定	德國	<p>the sign</p> <p>(a) under <a href="#">Section 14(2), No. 1</a> or <a href="#">2</a>,</p> <p>(b) under <a href="#">Section 14(2), No. 3</a>, and the act is committed with the intention of allowing the distinctive character or the repute of a mark which has a reputation to be taken advantage of or to be impaired,</p> <p>4. uses a designation or a sign contrary to <a href="#">Section 15(2)</a>, or</p> <p>5. uses a designation or a sign contrary to <a href="#">Section 15(3)</a> with the intention of taking advantage of or of impairing the distinctive character or the repute of a commercial designation which has a reputation,</p> <p>shall be punished by imprisonment of up to three years or by a fine.</p> <p>(2) If the offender acts on a commercial basis, he shall be punished by imprisonment of up to five years or by a fine.</p> <p>(3) The attempt to commit such an offense shall be punishable.</p> <p>(4) Where the cases referred to in <a href="#">subsection (1)</a> are applicable, the offense shall only be prosecuted upon request unless in the opinion of the prosecution authority <i>ex officio</i> intervention is required in view of the particular public interest in criminal prosecution.</p>

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商標侵權刑罰規定	德國	<p>(5) Objects implicated in the offense may be confiscated. Section 74a of the Penal Code shall apply. Where the claims to destruction referred to in <a href="#">Section 18</a> are upheld in proceedings under the Code of Criminal Procedure with regard to the compensation of the injured party (Sections 403 to 406c of the Code of Criminal Procedure), the provisions on confiscation shall not be applicable.</p> <p>(6) In the case of conviction, the sentence shall be published if the injured party so requests and if he has a legitimate interest in so doing. The scope and nature of the publication shall be determined in the judgment.</p>
商標侵權刑罰規定	英國	<p><b>92.-</b></p> <p>(1) A person commits an offence who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor-</p> <p>(a) applies to goods or their packaging a sign identical to, or likely to be mistaken for, a registered trade mark, or</p> <p>(b) sells or lets for hire, offers or exposes for sale or hire or distributes goods which bear, or the packaging of which bears,</p>

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商標侵權刑罰規定	英國	<p>such a sign, or</p> <p>(c) has in his possession, custody or control in the course of a business any such goods with a view to the doing of anything, by himself or another, which would be an offence under <a href="#">paragraph (b)</a>.</p> <p>(2) A person commits an offence who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor-</p> <p>(a) applies a sign identical to, or likely to be mistaken for, a registered trade mark to material intended to be used-</p> <p>(i) for labelling or packaging goods,</p> <p>(ii) as a business paper in relation to goods, or</p> <p>(iii) for advertising goods, or</p> <p>(b) uses in the course of a business material bearing such a sign for labelling or packaging goods, as a business paper in relation to goods, or for advertising goods, or</p> <p>(c) has in his possession, custody or control in the course of a business any such material with a view to the doing of anything, by himself or another, which would be an offence under <a href="#">paragraph (b)</a>.</p> <p>(3) A person commits an offence who with a view to gain for</p>

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<p style="text-align: center;"><b>商標侵權刑罰規定</b></p>	<p style="text-align: center;">英國</p>	<p>himself or another, or with intent to cause loss to another, and without the consent of the proprietor-</p> <p>(a) makes an article specifically designed or adapted for making copies of a sign identical to, or likely to be mistaken for, a registered trade mark, or</p> <p>(b) has such an article in his possession, custody or control in the course of a business,</p> <p>knowing or having reason to believe that it has been, or is to be, used to produce goods, or material for labelling or packaging goods, as a business paper in relation to goods, or for advertising goods.</p> <p>(4) A person does not commit an offence this section unless-</p> <p>(a) the goods are goods in respect of which the trade mark is registered, or</p> <p>(b) the trade mark has a reputation in the United Kingdom and the use of the sign takes or would take unfair advantage of, or is or would be detrimental to, the distinctive character or the repute of the trade mark.</p> <p>(5) It is a defence for a person charged with an offence under this section to show that he believed on reasonable grounds that the use of the sign in the manner in which it was used, or was to</p>

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商標侵權刑罰規定	英國	<p>be used, was not an infringement of the registered trade mark.</p> <p>(6) A person guilty of an offence under this section is liable-</p> <p>(a) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;</p> <p>(b) on conviction on indictment to a fine or imprisonment for a term not exceeding ten years, or both.</p>
	美國	18 U.S.C. §2320, relating to criminal penalties for trafficking in counterfeit goods and services
	日本	<p><b>78.</b> Any person who has infringed a trademark right or a right of exclusive use shall be liable to imprisonment with labor not exceeding five years or to a fine not exceeding 5,000,000 yen.</p> <p><i>Offense of Fraud</i></p> <p><b>79.</b> Any person who has obtained a trademark or defensive mark registration or a registration of renewal of the term of a trademark right or right based on a defensive mark registration, a ruling on an opposition to a trademark registration or a trial</p>

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<p style="text-align: center;"><b>商標侵權刑罰規定</b></p>	<p style="text-align: center;">日本</p>	<p>decision, by means of a fraudulent act shall be liable to imprisonment with labor not exceeding three years or to a fine not exceeding 3,000,000 yen.</p> <p style="text-align: center;"><i>Offense of False Marking</i></p> <p><b>80.</b> Any person infringing Section 74 shall be liable to imprisonment with labor not exceeding three years or to a fine not exceeding 3,000,000 yen.</p> <p style="text-align: center;"><i>Offense of Perjury, etc.</i></p> <p><b>81.</b>-(1) A witness, expert witness or interpreter who, having taken an oath under this Law, has made a false statement or has given a false expert opinion or has interpreted falsely before the Patent Office or a court commissioned thereby shall be liable to imprisonment with labor for a term of not less than three months nor more than ten years.</p> <p>(2) Where a person committing the offense in the preceding subsection has made a voluntary confession before transmittal of the copying of judgement on the case or before a ruling or a decision on an opposition to the trademark registration has become final and conclusive, his sentence may be reduced or suppressed.</p> <p style="text-align: right;"><i>Dual Liability</i></p>

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商標侵權刑罰規定	日本	<p><b>82.</b> Where an officer representing a legal entity or a representative, employee or any other servant of a legal entity or of a natural person has committed an act in violation of the following paragraphs with regard to the business of the legal entity or natural person, the legal entity shall, in addition to the offender, be liable to the fine prescribed in the following paragraphs and the natural person shall be liable to the fine prescribed in those sections:</p> <ul style="list-style-type: none"> <li>(i) Section 78, subject to a fine up to 150 million yen;</li> <li>(ii) Section 79 or 80, subject to a fine up to 100 million yen.</li> </ul> <p style="text-align: center;"><i>Administrative Penalties</i></p> <p><b>83.</b> Where a person, who has taken an oath under Section 207(1) of the Code of Civil Procedure as applied under Section 151 of the Patent Law as respectively applied either under Section 71(3) of the Patent Law as applied under Section 28(3) (including its application under Section 68(3)) of this Law, under Section 43octies (including its application under Sections 60bis(1) and 68(4)) or 56(1) (including its application under Section 68(4)) of this Law, under Section 174(3) of the Patent Law as applied under Section 61 (including its application under</p>

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<p style="text-align: center;"><b>商標侵權刑罰規定</b></p>	<p style="text-align: center;">日本</p>	<p>Section 68(5)) of this Law, under Section 58(2) of the Design Law as applied under Section 62(1) (including its application under Section 68(5)) of this Law, or under Section 58(3) of the Design Law as applied under Section 62(2)(including its application under Section 68(5)) of this Law, has made a false statement before the Patent Office or a court commissioned thereby, he shall be liable to an administrative penalty not exceeding 100,000 yen.</p> <p><b>84.</b> Where a person who has been summoned by the Patent Office or a court commissioned thereby in accordance with this Law has failed to appear or has refused to take an oath, to make a statement, to testify, to give an expert opinion or to interpret, without a legitimate reason, he shall be liable to an administrative penalty not exceeding 100,000 yen.</p> <p><b>85.</b> Where a person who has been ordered by the Patent Office or a court commissioned thereby to produce or show documents or other evidence in accordance with the provisions of this Law relating to the examination or preservation of evidence has failed to comply with the order, without a legitimate reason, he shall be liable to an</p>

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商標侵權請求權時效	德國	<p>第二十條 消滅時效</p> <p>(1) 第十四條至前條之侵害請求權，應自請求權人知悉是項侵權及侵權人之身份起，三年內不行使而消滅，以及不論是否知悉，自有侵害行為起，逾三十年者亦同。</p> <p>(2) 民法第八百五十二條第二項之規定應準用之。</p> <p>(3) 如侵權人因其侵權行為受益，致請求權人受損害者，於第一項規定之時效屆滿後，仍負有依不當得利之相關規定歸還其所取得利益之責任。</p>
	歐盟	未明文規範

議 題	國 別	相 關 立 法 例
商標侵權請求權時效	美國	未明文規範
	澳洲	未明文規範
	英國	未明文規範
	日本	未明文規範
	中國大陸	未明文規範