

# 96 年商標法修正各主要國家 12、13 款規定

## 相關立法例參考資料

2007 年 11 月 5 日

議 題	國 別	相 關 立 法 例
12、13 款規定	德國	<p>第九條 依據已申請或已註冊之商標作為相對禁止註冊之事由</p> <p>(1) 商標之註冊，得因以下任一情形予以撤銷：</p> <ol style="list-style-type: none"> <li>1. 相同於先前已申請或已註冊之商標，且指定註冊之商品或服務與先前已申請或已註冊之商標所表彰者相同；</li> <li>2. 因申請之商標與先前申請或註冊之商標相同或近似且兩者涵蓋之商品或服務相同或類似，致使公眾有產生混淆之虞，包括使公眾對於該等商標有產生聯想之虞；或</li> <li>3. 相同或近似先前申請或註冊之商標且其所表彰之商品或服務與先前申請或註冊之商標不類似者，惟先前存在之商標於德國享有聲譽且該註冊商標不具備正當事由之使用足以對先前商標之顯著性或聲譽產生不公平影響或損害者。</li> </ol>

議 題	國 別	相 關 立 法 例
<p style="text-align: center;"><b>12、13 款規定</b></p>	<p style="text-align: center;">德國</p>	<p>(2) 商標之申請僅於核准註冊後構成前項定義之註冊禁止事由。</p> <p>第十條 著名商標</p> <p>(1) 與德國先前存在之著名商標相同或近似者不得註冊。所謂著名，須與巴黎公約第六之一條之定義相同且符合前條第一項第一款、第二款或第三款之其他要件。</p> <p>(2) 前項規定，於申請人獲得該著名商標專用權人之授權而提出申請者，不適用之。</p> <p><i>Sec. 9.</i></p> <p>(1) Registration of a trade mark may be cancelled</p> <p>1. if it is identical with an earlier filed or registered trade mark, and the goods or services for which the trade mark is registered are identical with the goods or services for which the earlier trade mark is filed or is registered,</p> <p>2. if because of its identity with, or similarity to, the earlier filed or registered trade mark, and the identity or similarity of the goods or services covered by the trade marks there exists a likelihood of confusion on the part of the public, which includes</p>

議 題	國 別	相 關 立 法 例
12、13 款規定	德國	<p>the likelihood of association with the other trade marks, or</p> <p>3. if it is identical with or similar to an earlier filed or registered trade mark, and has been registered for goods or services which are not similar to those for which the earlier trade mark is filed or registered, where the earlier trade mark has a reputation in the Federal Republic of Germany and where the use of the registered trade mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of such trade mark.</p> <p>(2) Applications for trade marks constitute grounds for refusal within the meaning of <a href="#">subsection (1)</a> only if they are registered.</p> <p style="text-align: center;"><i>Well-Known Trade Marks</i></p> <p><i>Sec. 10.</i></p> <p>(1) A trade mark shall not be registered if it is identical with or similar to an earlier trade mark well known in the Federal Republic of Germany within the meaning of <a href="#">Article 6bis of the Paris Convention</a> and if the additional requirements under <a href="#">Section 9(1), Nos. 1, 2 or 3</a>, are met.</p> <p>(2) <a href="#">Subsection (1)</a> shall not apply if the applicant has been authorized to file the application by the proprietor of the well-known trade mark.</p>

議 題	國 別	相 關 立 法 例
<p style="text-align: center;"><b>12、13 款規定</b></p>	<p style="text-align: center;">澳州</p>	<p>43・可能造成欺騙或引起混淆的商標</p> <p>在下述情況下在特定商品或服務上申請註冊的商標必須被駁回，即，商標或商標包含的標記中含有某種含義，當該商標在這些商品或服務上使用時可能造成欺騙或引起混淆。</p> <p>44・相同等的商標</p> <p>(1) 根據第(3)、(4)段，在下列情況下在某些商品（申請人的商品）上的商標（申請人的商標）註冊申請必須被駁回：</p> <p>A 申請人的商標與下列事項實質上相同或欺騙性地近似：</p> <p>a 他人在類似商品或與之緊密相連的服務上註冊的商標；</p> <p>b 他人就類似商品或與之緊密相連的服務提出註冊申請的商標。</p> <p>B 申請人在其商品上就其商標註冊的優先權日期不早於他人在類似商品或與之緊密相連的服務上註冊的優先權日期。</p> <p>(2) 根據第(3)、(4)段，在下列情況下在某些服務（申請人的服務）上的商標（申請人的商標）註冊申請必須被駁回：</p> <p>A 申請人的商標與下列事項實質上相同或欺騙性地近似：</p> <p>a 他人在類似服務或與之緊密相連的商品上註冊的商標；</p> <p>b 他人就類似服務或與之緊密相連的商品提出註冊申請的商標。</p> <p>B 申請人在其服務上的商標註冊優先權日期不早於他人在類似服務或與之緊密相連的商品上註冊的優先權日期。</p> <p>(3) 在上述任何一種情況下，如果註冊長官認為：</p>

議 題	國 別	相 關 立 法 例
<p style="text-align: center;"><b>12、13 款規定</b></p>	<p style="text-align: center;">澳洲</p>	<p>A 商標存在誠實的同時使用的情況；</p> <p>B 因為其他情況，註冊長官應如下行事：</p> <p>註冊長官可以在施加他認為適當的條件或限制的情況下受理該商標註冊申請。如果申請人的商標曾在某待定地區使用，則限制中可包括該商標的使用僅限於該地區。</p> <p>(4) 在上述任何一種情況下，如果註冊長官認為申請人，或申請人商標的原所有人在一定時期內持續使用該商標：</p> <p>A 該時期起始點早於在下列事項上註冊的他人註冊商標的優先權日期：</p> <p>a 類似商品或與之緊密相連的服務；</p> <p>b 類似服務或與之緊密相連的商品。</p> <p>B 該時期結束于申請人商標註冊的優先權日期</p> <p>則註冊長官可能不因為另一商標的存在而駁回該申請。</p> <p>60．商標與另一已在澳大利亞取得名譽的商標近似</p> <p>在下列情況下，在特定商品或服務上提出的商標註冊可被異議：</p> <p>A 該商標與另一商標實質上相同，或欺騙性地近似，而在其在這些商品或服務上註冊的優先權日期之間，那個商標已在澳大利亞取得了聲譽。</p> <p>B 因為那個商標的聲譽，上述商標的使用可能造成欺騙或引起混淆。</p>

議 題	國 別	相 關 立 法 例
12、13 款規定	澳洲	<p><i>Trade mark likely to deceive or cause confusion</i></p> <p>43. An application for the registration of a trade mark in respect of particular goods or services must be rejected if, because of some connotation that the trade mark or a sign contained in the trade mark has, the use of the trade mark in relation to those goods or services would be likely to deceive or cause confusion.</p> <p><i>Identical etc. trade marks</i></p> <p>44.-(1) Subject to <a href="#">subsections (3)</a> and <a href="#">(4)</a>, an application for the registration of a trade mark (<i>applicant's trade mark</i>) in respect of goods (<i>applicant's goods</i>) must be rejected if:</p> <p>(a) the applicant's trade mark is substantially identical with, or deceptively similar to:</p> <p>(i) a trade mark registered by another person in respect of similar goods or closely related services; or</p> <p>(ii) a trade mark whose registration in respect of similar goods or closely related services is being sought by another person; and</p> <p>(b) the priority date for the registration of the applicant's trade mark in respect of the applicant's goods is not earlier than the priority date for the registration of the other trade mark in respect</p>

議 題	國 別	相 關 立 法 例
12、13 款規定	澳洲	<p>of the similar goods or closely related services.</p> <p>(2) Subject to <a href="#">subsections (3)</a> and <a href="#">(4)</a>, an application for the registration of a trade mark (<i>applicant's trade mark</i>) in respect of services (<i>applicant's services</i>) must be rejected if:</p> <p>(a) it is substantially identical with, or deceptively similar to:</p> <p>(i) a trade mark registered by another person in respect of similar services or closely related goods; or</p> <p>(ii) a trade mark whose registration in respect of similar services or closely related goods is being sought by another person; and</p> <p>(b) the priority date for the registration of the applicant's trade mark in respect of the applicant's services is not earlier than the priority date for the registration of the other trade mark in respect of the similar services or closely related goods.</p> <p>(3) If the Registrar in either case is satisfied:</p> <p>(a) that there has been honest concurrent use of the 2 trade marks; or</p> <p>(b) that, because of other circumstances, it is proper to do so; the Registrar may accept the application for the registration of the applicant's trade mark subject to any conditions or limitations that</p>

議 題	國 別	相 關 立 法 例
12、13 款規定	澳洲	<p>the Registrar thinks fit to impose. If the applicant's trade mark has been used only in a particular area, the limitations may include that the use of the trade mark is to be restricted to that particular area.</p> <p>(4) If the Registrar in either case is satisfied that the applicant, or the applicant and the predecessor in title of the applicant, have continuously used the applicant's trade mark for a period:</p> <p>(a) beginning before the priority date for the registration of the other trade mark in respect of:</p> <p>(i) the similar goods or closely related services; or</p> <p>(ii) the similar services or closely related goods; and</p> <p>(b) ending on the priority date for the registration of the applicant's trade mark;</p> <p>the Registrar may not reject the application because of the existence of the other trade mark.</p> <p><b>60.</b> The registration of a trade mark in respect of particular goods or services may be opposed on the ground that:</p> <p>(a) it is substantially identical with, or deceptively similar to, a trade mark that, before the priority date for the registration of</p>



議 題	國 別	相 關 立 法 例
12、13 款規定	歐盟	<p>the first-mentioned trade mark in respect of those goods or services, had acquired a reputation in Australia; and because of the reputation of that other trade mark, the use of the first-mentioned trade mark would be likely to deceive or cause confusion.</p> <p>第 8 條 駁回註冊的相對理由</p> <p>1．申請註冊的商標，因在先商標所有人的異議，不得予以註冊：</p> <p>（a）申請註冊的商標與在先的商標相同的以及申請註冊的商標使用的商品或服務與在先的商標所保護的商品或服務相同的；</p> <p>（b）由於申請註冊的商標與在先的商標相同或近似以及申請註冊的商標所使用的商品和提供的服務與在先的商標所保護的商品或服務相同或相似而容易在先商標受到保護的共同體區域內的公眾中引起混淆的；這種容易引起混淆包括容易與在先商標相聯繫。</p> <p>2．第 1 條所指的“在先商標”指：</p> <p>（a）下列幾種商標，其申請註冊日早於申請註冊共同體商標的日期，如有必要，應考慮這幾種商標的優先權請求：</p> <p>（i）共同體商標；</p> <p>（ii）在成員國註冊的商標，或者就比利時、荷蘭、盧森堡而言在比荷盧商標局註冊的商標；</p>

議 題	國 別	相 關 立 法 例
<p style="text-align: center;"><b>12、13 款規定</b></p>	<p style="text-align: center;"><b>歐盟</b></p>	<p>(iii) 在成員國有效的國際註冊的商標；</p> <p>(b) 以上 (a) 所指的商標申請，但最後應核准註冊；</p> <p>(c) 在申請註冊共同體商標之日，或者在提出申請註冊共同體商標優先權之日，在巴黎公約第六條之二意義上在聯盟成員國已馳名的商標；</p> <p>3· 商標所有人的代理人或代表人，未經該所有人的同意而以自己的名義申請商標註冊的，在商標所有人的異議下，該商標不應予以註冊，除非該代理人或代表人證明其行為是正當的；</p> <p>4· 申請註冊的商標，經非註冊商標所有人或經在不單限於當地的商業活動中使用另一標誌的所有人的異議，根據成員國有關該標誌的法律規定，不應予以註冊：</p> <p>(a) 如果該標誌的權利是在申請註冊共同體商標前或在提出申請共同體商標優先權之日前取得的；</p> <p>(b) 如果該標誌賦予其所有人禁止在後商標使用的權利的；</p> <p>5· 此外，申請註冊的商標與在先商標相同或近似的，儘管其註冊的商品或服務與在先商標保護的商品或服務不類似的；有一在先共同體商標而且該商標在共同體享有聲譽的；有一在先國家商標而且在有關成員國享有聲譽的；無正當理由使用申請註冊的商標會使在先商標處於不利地位或會給在先商標的顯著特徵或聲譽造成損害的；上述申請註冊的商標，經第 2 款所指的在先商標所有人的異議，不得予以註冊。</p>

議 題	國 別	相 關 立 法 例
12、13 款規定	歐盟	<p><b>Article 8: Relative grounds for refusal</b></p> <p>1. Upon opposition by the proprietor of an earlier trade mark, the trade mark applied for shall not be registered:</p> <p>(a) if it is identical with the earlier trade mark and the goods or services for which registration is applied for are identical with the goods or services for which the earlier trade mark is protected;</p> <p>(b) if because of its identity with or similarity to the earlier trade mark and the identity or similarity of the goods or services covered by the trade marks there exists a likelihood of confusion on the part of the public in the territory in which the earlier trade mark is protected; the likelihood of confusion includes the likelihood of association with the earlier trade mark.</p> <p>2. For the purposes of paragraph 1, "Earlier trade marks" means:</p> <p>(a) trade marks of the following kinds with a date of application for registration which is earlier than the date of application for registration of the Community trade mark, taking account, where appropriate, of the priorities claimed in respect of those trade marks:</p> <p>(i) Community trade marks;</p> <p>(ii) trade marks registered in a Member State, or, in the case of</p>

議 題	國 別	相 關 立 法 例
12、13 款規定	歐盟	<p>Belgium, the Netherlands or Luxembourg, at the Benelux Trade Mark Office;</p> <p>(iii) trade marks registered under international arrangements which have effect in a Member State;</p> <p>(iv) trade marks registered under international arrangements which have effect in the Community<sup>21</sup>;</p> <p>(b) applications for the trade marks referred to in subparagraph (a), subject to their registration;</p> <p>(c) trade marks which, on the date of application for registration of the Community trade mark, or, where appropriate, of the priority claimed in respect of the application for registration of the Community trade mark, are well known in a Member State, in the sense in which the words "well known" are used in Article 6 bis of the Paris Convention.</p> <p>3. Upon opposition by the proprietor of the trade mark, a trade mark shall not be registered where an agent or representative of the proprietor of the trade mark applies for registration thereof in his own name without the proprietor's consent, unless the agent or representative justifies his action.</p> <p>4. Upon opposition by the proprietor of a non-registered trade mark or of another sign used in the course of trade of more than</p>

議 題	國 別	相 關 立 法 例
12、13 款規定	歐盟	<p>mere local significance, the trade mark applied for shall not be registered where and to the extent that, pursuant to <a href="#">the Community legislation</a> or the law of the Member State governing that sign<sup>22</sup>:</p> <p>(a) rights to that sign were acquired prior to the date of application for registration of the Community trade mark, or the date of the priority claimed for the application for registration of the Community trade mark;</p> <p>(b) that sign confers on its proprietor the right to prohibit the use of a subsequent trade mark.</p> <p>5. Furthermore, upon opposition by the proprietor of an earlier trade mark within the meaning of paragraph 2, the trade mark applied for shall not be registered where it is identical with or similar to the earlier trade mark and is to be registered for goods or services which are not similar to those for which the earlier trade mark is registered, where in the case of an earlier Community trade mark the trade mark has a reputation in the Community and, in the case of an earlier national trade mark, the trade mark has a reputation in the Member State concerned and where the use without due cause of the trade mark applied for would take unfair advantage of, or be detrimental to, the</p>

議 題	國 別	相 關 立 法 例
<p style="text-align: center;"><b>12、13 款規定</b></p>	<p style="text-align: center;">英國</p>	<p>distinctive character or the repute of the earlier trade mark.</p> <p>5・拒絕註冊的相對理由</p> <p>（1）如果一個商標與另一個在先商標相同，並且所申請的商品或服務與該在先商標被保護的商品或服務相同，則該商標不予註冊。</p> <p>（2）一個商標將不予註冊，如果因為</p> <p>（a）它與某一在先商標相同，並且將要註冊在與該在先商標被保護的商品或服務近似的商品或服務上，或</p> <p>（b）它與某一在先商標近似，並將要註冊在與該在先商標被保護的商品或服務相同或近似的商品或服務上，存在公衆混淆的可能性，包括與在先商標相聯繫的可能性。</p> <p>（3）一個商標</p> <p>（a）與某一在先商標相同或近似，並</p> <p>（b）將要註冊在與該在先商標被保護的商品或服務不類似的商品或服務上，應不予註冊。如果在先商標在英國（或共同體的某一商標在歐共體內）享有一定聲譽，而且後一個商標無正當理由的使用將不公平地利用在先商標的顯著性或聲譽或對該顯著性或聲譽產生有害的影響，或達到這樣的程度。</p> <p>（4）一個商標應不予註冊，如果該商標在英國的使用因下列原因有可能被禁止，或達到被禁止的程度：</p>

議 題	國 別	相 關 立 法 例
<p style="text-align: center;"><b>12、13 款規定</b></p>	<p style="text-align: center;">英國</p>	<p>(a) 在貿易過程中保護未注冊商標或其他標記的任何法規（尤其是冒充法），或</p> <p>(b) 除第（1）至（3）款或（a）中所涉及的權利之外的其他在先權利，尤其是依據著作權、設計權、或註冊設計而獲得的權利，這樣，本法中有權禁止某一商標使用的人指與該商標有關的“在先權利”所有人。（5）本條中的任何內容均不禁止經在先商標所有人或其他在先權利所有人同意的某一商標的註冊。</p> <p>6．“在先商標”的含義</p> <p>(1) 本法中，“在先商標”指</p> <p>(a) 申請註冊的日期比有爭議的商標的申請日期早的已注冊商標、國際商標（英國）或共同體商標，應考慮這些商標要求的優先權（在適當之處）；</p> <p>(b) 依據在先注冊商標或國際商標（英國）產生的在先權利提出有效請求的歐共體商標，或</p> <p>(c) 在某一有爭議商標提出註冊申請的申請日或（適當之處）在有爭議商標所要求的優先權日，已有權享有《巴黎公約》馳名商標保護的商標。</p> <p>(2) 本法中所指的在先商標包括已提出有關註冊申請的商標，而且，如果被註冊，可依據第（1）款（a）或（b）而成為在先注冊商標，但須以它能被這樣註冊為條件。</p> <p>(3) 在決定後來一個商標能否註冊時，對第（1）款（a）或（b）項</p>

議 題	國 別	相 關 立 法 例
12、13 款規定	英國	<p>中的有效期滿的商標在期滿一年內仍應加以考慮，除非註冊局長認為在有效期滿前的兩年內，該商標未真實地使用。</p> <p><b>Relative grounds for refusal of registration.</b></p> <p><b>5.-</b></p> <p>(1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected.</p> <p>(2) A trade mark shall not be registered if because-</p> <p>(a) it is identical with an earlier trade mark and is to be registered for goods or services similar to those for which the earlier trade mark is protected, or</p> <p>(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.</p> <p>(3) A trade mark which-</p> <p>(a) is identical with or similar to an earlier trade mark, and</p>



議 題	國 別	相 關 立 法 例
12、13 款規定	英國	<p>(b) is to be registered for goods or services which are not similar to those for which the earlier trade mark is protected, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a Community trade mark, in the European Community) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.</p> <p>(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented-</p> <p>(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or</p> <p>(b) by virtue of an earlier right other than those referred to in <a href="#">subsections (1) to (3)</a> or <a href="#">paragraph (a)</a> above, in particular by virtue of the law of copyright, design right or registered designs. A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an "earlier right" in relation to the trade mark.</p> <p>(5) Nothing in this section prevents the registration of a trade mark where the proprietor of the earlier trade mark or other</p>

議 題	國 別	相 關 立 法 例
12、13 款規定	英國	<p>earlier right consents to the registration.</p> <p><b>Meaning of "earlier trade mark".</b></p> <p><b>6.-</b></p> <p>(1) In this Act an "earlier trade mark" means-</p> <p>(a) a registered trade mark, international trade mark (UK) or Community trade mark which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,</p> <p>(b) a Community trade mark which has a valid claim to seniority from an earlier registered trade mark or international trade mark (UK), or</p> <p>(c) a trade mark which, at the date of application for registration of the trade mark in question or (where appropriate) of the priority claimed in respect of the application, was entitled to protection under the Paris Convention as a well known trade mark.</p> <p>(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of <a href="#">subsection (1)(a)</a> or <a href="#">(b)</a>, subject to its being so</p>

議 題	國 別	相 關 立 法 例
12、13 款規定	英國	<p>registered.</p> <p>A trade mark within <a href="#">subsection (1)(a)</a> or <a href="#">(b)</a> whose registration expires shall continue to be taken into account in determining the registrability of a later mark for a period of one year after the expiry unless the registrar is satisfied that there was no <i>bona fide</i> use of the mark during the two years immediately preceding the expiry.</p>
	日本	<p>第四條 不能註冊的商標</p> <p>(10) 與表示他人業務相關的商品或服務、且為消費者廣泛熟知的商標或與之近似的商標，並用幹這些商品或服務或與其類似的商品或服務上的商標；</p> <p>(11) 與該商標註冊申請日前他人已註冊的商標相同或近似的、並用於該商標註冊所指定的商品或指定的服務（系指根據第六條第一項的規定指定的商品或服務，包括第 68 條 1 項中所准用者，以下同）或與其類似的商品或服務上的商標；</p> <p>(15) 可能與他人業務有關的商品或服務發生混淆的商標（第 10 款至</p>

議 題	國 別	相 關 立 法 例
12、13 款規定	日本	<p>前款所列出者除外)</p> <p>(x) trademarks which are well known among consumers as indicating the goods or services as being connected with another person's business, and trademarks similar thereto, and which are used in respect of such goods or services or similar goods or services;</p> <p>(xi) trademarks which are identical with, or similar to, another person's registered trademark applied for prior to the filing date of the trademark application concerned and which are used on the designated goods or designated services [meaning the goods or services designated in accordance with Section 6(1) (including its application under Section 68(1))-hereinafter referred to as "the designated goods or designated services"] covered by the trademark registration referred to or on similar goods or services;</p> <p>trademarks which are liable to cause confusion with goods or services connected with another person's business (other than the trademarks mentioned in paragraphs (x) to (xiv));</p>

議 題	國 別	相 關 立 法 例
<p><b>12、13 款規定</b></p>	<p>中國大陸</p>	<p>第九條 申請註冊的商標，應當有顯著特徵，便於識別，並不得與他人 在先取得的合法權利相衝突。 商標註冊人有權標明“註冊商標”或者註冊標記。</p> <p>第十三條 就相同或者類似商品申請註冊的商標是複製、摹仿或者翻譯 他人未在中國註冊的馳名商標，容易導致混淆的，不予註冊並禁止使用。 就不相同或者不相類似商品申請註冊的商標是複製、摹仿或者翻譯 他人已經在中國註冊的馳名商標，誤導公眾，致使該馳名商標註冊人的 利益可能受到損害的，不予註冊並禁止使用。</p>

