

# W&B IP Newsletter

—[Special Issue]—

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## Trademark Law of the People Republic of China Anti-Unfair Competition Law of the People Republic of China Comparison Tables of Revisions



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## ◀ Special Issue ▶

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On April 23, 2019, the 10th Session of the Standing Committee of the 13th National People's Congress passed the *Decision of the Standing Committee of the National People's Congress on Amendments to the Eight Laws including the Construction Law of the People's Republic of China*, in which Part 6 and Part 7 involve the revisions to the *Trademark Law of the People's Republic of China* and the *Anti-Unfair Competition Law of the People's Republic of China*.

In this special issue of our Watson & Band IP Newsletter, we will compare the differences between the articles of the said two laws before and after the amendments, and work out comparison tables for your kind reference.

### Trademark Law of the People Republic of China Comparison Table of Revisions

(The texts in **RED** below reflect the revised or new provisions.)

BEFORE (2013 Version)	AFTER (2019 Version)
<p><b>Article 4</b> Any natural person, legal person, or other organization that needs to acquire the exclusive right to use a trademark in the production and operation activities shall file an application for trademark registration with the Trademark Office.</p> <p>...</p>	<p><b>Article 4</b> Any natural person, legal person, or other organization that needs to acquire the exclusive right to use a trademark in the production and operation activities shall file an application for trademark registration with the Trademark Office. <b>Applications for trademark registration filed out of bad faith and not for the purpose of use shall be rejected.</b></p> <p>...</p>
<p><b>Article 19</b> ...</p> <p>Where a trademark agency knows or should have known that the client's trademark applying for registration falls into any of the circumstances prescribed in Article 15 and Article 32 hereof, the trademark agency shall not accept the client's entrustment.</p>	<p><b>Article 19</b> ...</p> <p>Where a trademark agency knows or should have known that the client's trademark applying for registration falls into any of the circumstances prescribed in <b>Article 4</b>, Article 15 and Article 32 hereof, the trademark agency shall not accept the client's entrustment.</p>

<p><b>Article 33</b></p> <p>Where any prior right owner or interested person believes that provisions of Paragraphs 2 and 3 of Article 13, Article 15, Paragraph 1 of Article 16, Article 30, Article 31 or Article 32 hereof have been breached, or if any person believes that the provisions of Article 10, Article 11 or Article 12 hereof have been violated, it may file an objection to the Trade Office against a trademark that has been published after a preliminary examination within three months from the date of announcement. When no objections have been filed as of expiration of such period, the application shall be approved for registration with issuance of a certificate of trademark registration and announcement of the trademark.</p>	<p><b>Article 33</b></p> <p>Where any prior right owner or interested person believes that provisions of Paragraphs 2 and 3 of Article 13, Article 15, Paragraph 1 of Article 16, Article 30, Article 31 or Article 32 hereof have been breached, or if any person believes that the provisions of <b>Article 4</b>, Article 10, Article 11, Article 12 <b>or Paragraph 4 of Article 19</b> hereof have been violated, it may file an objection to the Trade Office against a trademark that has been published after a preliminary examination within three months from the date of announcement. When no objections have been filed as of expiration of such period, the application shall be approved for registration with issuance of a certificate of trademark registration and announcement of the trademark.</p>
<p><b>Article 44</b></p> <p>The Trademark Office shall annul the registered trademark if it violates the provisions of Articles 10, 11 or 12 hereof, or it was acquired by fraud or any other improper means. Other units or individuals may request the Trademark Review and Adjudication Board for a ruling to annul such a registered trademark.</p> <p>...</p>	<p><b>Article 44</b></p> <p>The Trademark Office shall annul the registered trademark if it violates the provisions of Articles <b>4</b>, 10, 11, 12 <b>or Paragraph 4 of Article 19</b> hereof, or it was acquired by fraud or any other improper means. Other units or individuals may request the Trademark Review and Adjudication Board for a ruling to annul such a registered trademark.</p> <p>...</p>
<p><b>Article 63</b></p> <p>The amount of compensation for infringing the exclusive right to use the trademark shall be determined based on the right owner's actual losses due to the infringement; or the infringer's actual interests obtained due to the same if the actual losses are hard to be determined; or may be determined based on times of the royalties of the registered trademark when both the losses and the infringer's actual interests obtained are hard to be determined. For seriously malicious infringement, the amount of compensation may be one time to three times of the aforesaid amount determined in light of the foregoing regulations. The amount of compensation shall include reasonable expenses of the right owner to prevent the infringement.</p> <p>...</p> <p>Where it is hard to determine the right owner's actual losses due to infringement, the infringer's actual interests obtained due to the same or the royalties of the registered trademark, the People's Court shall, based on the actual circumstance of infringement, bring in a verdict of compensation in the amount up to CNY 3 million.</p>	<p><b>Article 63</b></p> <p>The amount of compensation for infringing the exclusive right to use the trademark shall be determined based on the right owner's actual losses due to the infringement; or the infringer's actual interests obtained due to the same if the actual losses are hard to be determined; or may be determined based on times of the royalties of the registered trademark when both the losses and the infringer's actual interests obtained are hard to be determined. For seriously malicious infringement, the amount of compensation may be <b>one time to five times</b> of the aforesaid amount determined in light of the foregoing regulations. The amount of compensation shall include reasonable expenses of the right owner to prevent the infringement.</p> <p>...</p> <p>Where it is hard to determine the right owner's actual losses due to infringement, the infringer's actual interests obtained due to the same or the royalties of the registered trademark, the People's Court shall, based on the actual circumstance of infringement, bring in a verdict of compensation in the amount up to CNY <b>5 million</b>.</p> <p><b>When the People's Court tries a case involving a trademark dispute, upon request of the rights owner, it shall</b></p>

	<p>demand destruction of the products that counterfeit the registered trademark, except in special circumstances; demand destruction of the materials and tools that are primarily used for manufacturing the counterfeit products, without any compensation; or demand prohibition of the aforesaid materials and tools from entering commercial channels, without any compensation.</p> <p>Products that counterfeit registered trademarks shall be prohibited from entering commercial channels after merely removing the counterfeit marks.</p>
<p><b>Article 68</b></p> <p>If a trademark agency has any one of the following conducts, the administrative department for industry and commerce shall order the agency to rectify the same within a specified time, give corresponding warning and impose a fine of more than CNY10,000 up to CNY100,000; and give warnings to managers in direct charge and other persons bearing direct responsibilities and impose a fine of more than CNY5,000 up to CNY50,000; those who have committed crimes shall be prosecuted for criminal responsibilities:</p> <p>...</p> <p>(3) Violating provisions of Paragraphs 3 and 4 of Article 19 of the Law.</p>	<p><b>Article 68</b></p> <p>If a trademark agency has any one of the following conducts, the administrative department for industry and commerce shall order the agency to rectify the same within a specified time, give corresponding warning and impose a fine of more than CNY10,000 up to CNY100,000; and give warnings to managers in direct charge and other persons bearing direct responsibilities and impose a fine of more than CNY5,000 up to CNY50,000; those who have committed crimes shall be prosecuted for criminal responsibilities:</p> <p>...</p> <p>(3) Violating provisions of <b>Article 4</b>, Paragraphs 3 and 4 of Article 19 hereof.</p> <p><b>(4) In the event of applications for trademark registration out of bad faith, administrative penalties including warnings and fines shall be imposed in accordance with the circumstance; in the event of trademark infringement litigation initiated out of bad faith, the People’s Court shall impose penalties (upon the party in bad faith).</b></p>

## Anti-Unfair Competition Law of the People Republic of China Comparison Table of Revisions

(The texts in **RED** below reflect the revised or new provisions.)

<b>BEFORE (2017 Version)</b>	<b>AFTER (2019 Version)</b>
<p><b>Article 9</b></p> <p>A business operator shall not engage in any of the following infringement of trade secrets:</p> <p>(1) obtaining a rights owner's commercial secrets by theft, bribery, intimidation or other improper means;</p> <p>...</p> <p>(3) disclosing, using or allowing others to use a rights owner's trade secrets in violation of an agreement or the</p>	<p><b>Article 9</b></p> <p>A business operator shall not engage in any of the following infringement of trade secrets:</p> <p>(1) obtaining a rights owner's commercial secrets by theft, bribery, intimidation, <b>electronic intrusion</b> or other improper means;</p> <p>...</p> <p>(3) disclosing, using or allowing others to use a rights</p>

<p>rights owner's requirements on keeping such trade secrets confidential.</p> <p>Where a third party knows or should know the fact that an employee or former employee of the right owner of trade secrets or any other entity or individual conducts any of the illegal acts specified in the preceding paragraph, but still acquires, discloses, uses or allows any other party to use such secrets, such practice shall be deemed as infringement of the trade secrets.</p> <p>For the purpose of this Law, trade secrets refer to any technical information or operational information which is not known to the public and has commercial value, and for which the rights owner has adopted measures to ensure their confidentiality.</p>	<p>owner's trade secrets in violation of <b>its obligation of confidentiality</b> or the rights owner's requirements on keeping such trade secrets confidential;</p> <p><b>(4) abetting, inducing or helping others to violate the obligations of confidentiality or the rights owner's requirements on keeping such trade secrets confidential, and thereby acquiring, disclosing, using or allowing others to use the rights owner's trade secrets.</b></p> <p><b>Where any natural person, legal person and non-legal person organization other than the business operator commits any illegal conduct prescribed in the preceding paragraph, he or it shall be deemed to have infringed the trade secrets.</b></p> <p><b>Where any natural person, legal person and non-legal person organization other than the business operator commits any illegal conduct prescribed in the preceding paragraph, he or it shall be deemed to have infringed the trade secrets.</b></p> <p>Where a third party knows or should know the fact that an employee or former employee of the right owner of trade secrets or any other entity or individual conducts any of the illegal acts specified in <b>Paragraph 1 of this Article</b>, but still acquires, discloses, uses or allows any other party to use such secrets, such practice shall be deemed as infringement of the trade secrets.</p> <p>For the purpose of this Law, trade secrets refer to any <b>commercial information such as technical information or operational information</b> which is not known to the public and has commercial value, and for which the rights owner has adopted measures to ensure their confidentiality.</p>
<p><b>Article 17</b></p> <p>The amount of compensation for damages caused by any unfair competition act to a business operator shall be determined depending on the actual losses suffered by such operator as a result of the infringement; where it is difficult to calculate the actual losses, such amount shall be determined in accordance with the benefits obtained by the infringer from the infringement. The amount of compensation shall also include the reasonable expenses paid by the business operator for curbing the infringement.</p> <p>Where a business operator violates the provisions stipulated in Article 6 or Article 9 hereof, and it is difficult to determine the actual losses suffered by the rights owner as a result of the infringement or the benefits obtained by the infringer from the infringement, the People's Court shall award the rights owner less than CNY 3 million as</p>	<p><b>Article 17</b></p> <p>The amount of compensation for damages caused by any unfair competition act to a business operator shall be determined depending on the actual losses suffered by such operator as a result of the infringement; where it is difficult to calculate the actual losses, such amount shall be determined in accordance with the benefits obtained by the infringer from the infringement. <b>Where a business operator commits infringement of trade secrets out of bad faith and to a serious extent, the amount of compensation for damages may be determined one time up to five times the amount determined by the aforesaid means.</b> The amount of compensation shall also include the reasonable expenses paid by the business operator for curbing the infringement.</p> <p>Where a business operator violates the provisions stipulated in Article 6 or Article 9 hereof, and it is difficult to</p>

<p>the damages, depending on the seriousness of the infringement.</p>	<p>determine the actual losses suffered by the rights owner as a result of the infringement or the benefits obtained by the infringer from the infringement, the People's Court shall award the rights owner less than <b>CNY 5 million</b> as the damages, depending on the seriousness of the infringement.</p>
<p><b>Article 21</b> Where a business operator infringes any trade secret in violation of Article 9 hereof, the supervision and inspection authority shall order it to cease the illegal act and impose on it a fine of between CNY100,000 and CNY500,000; where the circumstance is serious, the fine shall be between CNY500,000 and CNY 3 million.</p>	<p><b>Article 21</b> Where a business operator and <b>any other natural person, legal person and non-legal person organization</b> infringes any trade secret in violation of Article 9 hereof, the supervision and inspection authority shall order it to cease the illegal act, <b>confiscate its illegal income</b> and impose on it a fine of between CNY100,000 and <b>CNY 1 million</b>; where the circumstance is serious, the fine shall be between CNY500,000 and <b>CNY 5 million</b>.</p>
	<p><b>[A NEW ARTICLE]</b> <b>Article 32</b> In the civil trial proceedings involving infringement of trade secrets, where the rights owner of the trade secrets has provided preliminary evidence to prove that he or it has adopted confidentiality measures for the asserted trade secrets and has reasonably demonstrated that the trade secrets have been infringed, the suspected infringer shall prove that the trade secrets asserted by the rights owner do not belong to the trade secrets prescribed under this Law. Where the rights owner of the trade secrets has provided preliminary evidence to prove that the trade secrets have been infringed, and has provided any of the following evidence, the suspected infringer shall prove that he or it has not committed any infringement of the trade secrets: (1) there is evidence to prove that the suspected infringer had the channel or opportunity to acquire the trade secrets and the information used by the suspected infringer was substantially identical to the said trade secrets; (2) there is evidence to prove that the trade secrets have already been disclosed or used by the suspected infringer, or are at the risk of being disclosed or used; or (3) there is other evidence to prove that the trade secrets have been infringed by the suspected infringer.</p>