
全国人大常委会关于修改《商标法》等法律的决定
Decision of the Standing Committee of the National
People's Congress on Amendment to the Trademark Law
and other Applicable Laws

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(2019年4月23日第十三届全国人民代表大会常务委员会第十次会议通过)

(Adopted at the 10th session of the Standing Committee of the 13th National People's Congress on April 23, 2019)

第十三届全国人民代表大会常务委员会第十次会议决定修改《建筑法》等八部法律，其中：

The 10th session of the Standing Committee of the 13th National People's Congress decided to amend the Construction Law and other seven laws, including:

六、对《商标法》作出修改

VI. Amendment to the *Trademark Law*

(一) 将第四条第一款修改为：“自然人、法人或者其他组织在生产经营活动中，对其商品或者服务需要取得商标专用权的，应当向商标局申请商标注册。**不以使用为目的的恶意商标注册申请，应当予以驳回。**”

(I) Paragraph 1, Article 4 is amended into: "Any natural person, legal person, or other organization that needs to obtain the exclusive right to use a trademark for its products or services during production and business operations shall apply for trademark registration with the Trademark Office. **Bad-faith applications for trademark registration for other than the intended purpose shall be rejected.**"

(二) 将第十九条第三款修改为：“**商标代理机构知道或者应当知道委托人申请注册的商标属于本法第四条、第十五条和第三十二条规定情形的，不得接受其委托。**”

(II) Paragraph 3, Article 19 is amended into: "**If a trademark agency knows or should have known that a trademark registration a client intends to apply for is under the circumstances as set out in Article 4, Article 15, and Article 32 of this Law, the trademark agency shall not accept the entrustment.**"

(三) 将第三十三条修改为：“对初步审定公告的商标，自公告之日起三个月内，在先权利人、利害关系人认为违反本法第十三条第二款和第三款、第十五条、第十六条第一款、第三十条、第三十一条、第三十二条规定的，或者任何人认为违反本法**第四条**、第十条、第十一条、第十二条、第十九条第四款规定的，可以向商标局提出异议。公告期满无异议的，予以核准注册，发给商标注册证，并予公告。”

(III) Article 33 is amended into: "The prior right holder or any interested party may raise objections to the Trademark Office in respect of an preliminarily approved and announced application for a trademark registration within three months from the date the trademark is announced if he/she finds that the said application violates the provisions of Paragraph 2 and Paragraph 3 of Article 13, Article 15, Paragraph 1 of Article 16, Article 30, Article 31, and Article 32 of this Law, or any person finds that the said application violates the provisions of **Article 4**, Article 10, Article 11, Article 12, and Paragraph 4, Article 19 of this law. If no objections are raised within the specified announcement period, such trademark registration shall be approved, the trademark registration certificate shall be issued, and the trademark shall be announced."

(四) 将第四十四条第一款修改为：“已经注册的商标，违反本法**第四条**、第十条、第十一条、第十二条、第十九条第四款规定的，或者是以欺骗手段或者其他不正当手段取得注册的，由商标局宣告该注册商标无效；其他单位或者个人可以请求商标评审委员会宣告该注册商标无效。”

(IV) Paragraph 1, Article 44 is amended into: "Where a registered trademark violates the provisions of **Article 4**, Article 10, Article 11, Article 12, and Paragraph 4, Article 19 of this Law, or the registration of a trademark has been acquired by fraud or any other unfair means, the Trademark Office shall declare the registered trademark invalid; any other organization or individual may request the Trademark Review and Adjudication Board to declare such registered trademark invalid."

(五) 将第六十三条第一款中的“一倍以上三倍以下”修改为“**一倍以上五倍以下**”；第三款中的“三百万元以下”修改为“**五百万元以下**”；增加两款分别作为第四款、第五款：“人民法院审理商标纠纷案件，应权利人请求，对属于假冒注册商标的商品，除特殊情况外，责令销毁；对主要用于制造假冒注册商标的商品的材料、工具，责令销毁，且不予补偿；或者在特殊情况下，责令禁止前述材料、工具进入商业渠道，且不予补偿。”

(V) The words "more than one time and less than three times" in Paragraph 1 of Article 63 are amended into "**more than one time and less than five times**"; the words "less than RMB 3 million" in

Paragraph 3, Article 63 are amended into "**less than RMB 5 million**"; the following two paragraphs are added as Paragraph 4 and Paragraph 5: "Where a people's court hears a trademark dispute case, it shall, at the request of the right holder, order the infringer to destroy the products with counterfeit registered trademarks, except for special circumstances; order the infringer to destroy the materials and tools used for the production of products with counterfeit registered trademarks without compensation; or under special circumstances, order the infringer to prohibit said materials and tools from entering commercial channels without compensation."

“假冒注册商标的商品不得在仅去除假冒注册商标后进入商业渠道。”
"Products with counterfeit registered trademarks shall not enter commercial channels only after the counterfeit registered trademarks are removed."

(六) 将第六十八条第一款第三项修改为：“(三) 违反本法第四条、第十九条第三款和第四款规定的”；增加一款作为第四款：“对恶意申请商标注册的，根据情节给予警告、罚款等行政处罚；对恶意提起商标诉讼的，由人民法院依法给予处罚。”

(VI) Item 3, Paragraph 1, Article 68 is amended into: "(III) For violation of the provisions of Article 4, Paragraph 3 and Paragraph 4 of Article 19 of this Law"; a paragraph is added as Paragraph 4: "For a bad-faith application for trademark registration, administrative penalties such as a warning or a fine shall be imposed on the violator according to the severity of the circumstances; for a bad-faith filing of a trademark lawsuit, the violator shall be punished by the people's court according to law."

七、对《反不正当竞争法》作出修改

VII. Amendment to the *Anti-unfair Competition Law*

(一) 将第九条修改为：“经营者不得实施下列**侵犯商业秘密**的行为：
(I) Article 9 is amended into: "An operator shall not commit the following acts that **infringe upon trade secrets**:

“（一）以盗窃、贿赂、欺诈、胁迫、**电子侵入**或者其他不正当手段获取权利人的商业秘密；

"(1) Obtaining trade secrets from the right holder by stealing, offering bribes, defrauding, resorting to coercion, **electronic intrusion**, or other illegitimate means;

“（二）披露、使用或者允许他人使用以前项手段获取的权利人的商业秘密；

"(2) Disclosing, using, or allowing others to use the trade secrets of the right holder obtained by the means mentioned in the preceding item;

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“（三）违反保密义务或者违反权利人有关保守商业秘密的要求，披露、使用或者允许他人使用其所掌握的商业秘密；

"(3) Disclosing, using, or allowing others to use the trade secrets of the right holder by violating the obligation of confidentiality or disregarding the right holder's requirements for keeping confidential the trade secrets.

“（四）教唆、引诱、帮助他人违反保密义务或者违反权利人有关保守商业秘密的要求，获取、披露、使用或者允许他人使用权利人的商业秘密。

"(4) **Obtaining, disclosing, using, or allowing others to use the trade secrets by instigating, inducing, and helping others to violate the obligation of confidentiality or disregard the right holder's requirements for keeping confidential the trade secrets.**

“经营者以外的其他自然人、法人和非法人组织实施前款所列违法行为的，视为侵犯商业秘密。

"Other natural persons, legal persons, and unincorporated organizations (other than the operators) who commit the illegal acts listed in the preceding paragraph shall be deemed to have infringed upon the relevant trade secrets.

“第三人明知或者应知商业秘密权利人的员工、前员工或者其他单位、个人实施本条第一款所列违法行为，仍获取、披露、使用或者允许他人使用该商业秘密的，视为侵犯商业秘密。

"A third person shall be deemed to have infringed upon the relevant trade secrets if he/she still obtains, discloses, uses, or allows others to use the trade secrets after he/she knows or should have known that the current or former employees of the right holder or other units or individuals have committed the illegal acts listed in the first paragraph of this Article.

“本法所称的商业秘密，是指不为公众所知悉、具有商业价值并经权利人采取相应保密措施的技术信息、经营信息等商业信息。”

"Trade secrets referred to in this Law mean **the technical information, operation information, and other business information** which is not known to the public and is of commercial value and on which the right holder has taken the corresponding confidentiality measures."

（二）将第十七条修改为：“经营者违反本法规定，给他人造成损害的，应当依法承担民事责任。

(II) Article 17 is amended into: "If an operator violates the provisions of this Law, thereby resulting in injury to others, the operator shall assume the civil liability for compensation according to law.

“经营者的合法权益受到不正当竞争行为损害的，可以向人民法院提起诉讼。

"When the legitimate rights and interests of the operator are damaged by the acts of unfair competition, such operator may institute proceedings in a people's court.

“因不正当竞争行为受到损害的经营者的赔偿数额，按照其因被侵权所受到的实际损失确定；实际损失难以计算的，按照侵权人因侵权所获得的利益确定。经营者恶意实施侵犯商业秘密行为，情节严重的，可以在按照上述方法确定数额的**一倍以上五倍以下**确定赔偿数额。赔偿数额还应当包括经营者为制止侵权行为所支付的合理开支。

"The amount of compensation for an operator who is prejudiced by an act of unfair competition shall be subject to the actual loss sustained by the operator in the infringement; if the actual loss is difficult to be calculated, it shall be determined according to the benefit obtained by the infringer from the infringement. Where the operator infringes upon the trade secrets in bad faith, if the infringement act is serious, the amount of compensation can be determined by **more than one time and less than five times** the amount determined according to the above method. The amount of compensation also covers reasonable expenses paid by the operator for stopping the infringement.

“经营者违反本法第六条、第九条规定，权利人因被侵权所受到的实际损失、侵权人因侵权所获得的利益难以确定的，由人民法院根据侵权行为的情节判决给予权利人**五百万元以下**的赔偿。”

"Where the operator violates the provisions of Article 6 and Article 9 of this Law, if it is difficult to determine the actual loss sustained by the right holder in the infringement and the benefit obtained by the infringer from the infringement, the people's court shall order the infringer to pay the right holder the compensation in the amount of **less than RMB 5 million** according to the severity of the infringement act."

（三）将第二十一条修改为：“经营者以及其他自然人、法人和非法人组织违反本法第九条规定侵犯商业秘密的，由监督检查部门责令停止违法行为，没收违法所得，处十万元以上一百万元以下的罚款；情节严重的，处五十万元以上五百万元以下的罚款。”

(III) Article 21 is amended into: "If the operator and other natural persons, legal persons, and unincorporated organizations infringe upon the trade secrets of the right holder in violation of the provisions of Article 9 of this Law, the supervision and inspection department shall order them to stop the illegal act, confiscate their illegal income, and impose a fine of more than RMB 100,000 and less than RMB 1 million on them; if the infringement act is serious, a fine of more than RMB 500,000 but less than RMB 5 million shall be imposed."

（四）增加一条，作为第三十二条：“在侵犯商业秘密的民事审判程序中，商业秘密权利人提供初步证据，证明其已经对所主张的商业秘密采取保密措施，且合理表明商业秘密被侵犯，**涉嫌侵权人应当证明权利人所主张的商业秘密不属于本法规定的商业秘密。**

(IV) The following article is added as Article 32: "In the civil trial procedure for infringement of trade secrets, the right holder of trade secrets provides preliminary evidence proving that it has taken confidentiality measures on the claimed trade secrets and reasonably indicated that the relevant trade secrets have been infringed upon, and **the alleged infringer shall prove that the trade secrets claimed by the right holder do not belong to those as prescribed in this Law.**

“商业秘密权利人提供初步证据合理表明商业秘密被侵犯，且提供以下证据之一的，**涉嫌侵权人应当证明其不存在侵犯商业秘密的行为：**
"Where the right holder of trade secrets provides preliminary evidence proving that its trade secrets have been infringed upon and provides one of the following evidence, **the alleged infringer shall prove that there is no infringement of trade secrets:**

“（一）有证据表明涉嫌侵权人有渠道或者机会获取商业秘密，且其使用的信息与该商业秘密实质上相同；

"(1) There is evidence proving that the alleged infringer has channels or opportunities of obtaining the trade secrets and that the information it uses is substantially the same as the trade secrets;

“（二）有证据表明商业秘密已经被涉嫌侵权人披露、使用或者有被披露、使用的风险；

"(2) There is evidence proving that the trade secrets have been disclosed or used by the alleged infringer or have risks of being disclosed or used;

“（三）有其他证据表明商业秘密被涉嫌侵权人侵犯。”

"(3) There is other evidence proving that the trade secrets have been infringed upon by the alleged infringer."

《商标法》的修改条款自**2019年11月1日**起施行，其他法律的修改条款**自本决定公布之日起**施行。

The amended terms of the Trademark Law shall enter into force as of **November 1, 2019**, and the amended terms of other laws shall enter into force as of **the date of enactment of this Decision.**