

Thanks very much for your letter dated on December 8, 2006. Having reviewed the letter, we'd like to provide you with information as follows:

The issue concerning new types of marks

1. Existing methods of representation and description of new types of marks

Article 8 of the Trademark Law of PRC stipulates that “Any visual sign capable of distinguishing the goods or service of one natural person, legal person or any other organization from those of others, including words, devices, letters, numerals, three-dimensional symbols, combinations of colors or any combination of the above elements may be applied for the registration of a trademark.”

Chinese government has attached great importance to and has actively conducted research on the registration of new types of marks. In accordance with the provision of “ perceptible by the eye“ in Article 8 of the Trademark Law, CTMO (the Trademark Office) only accepts an application for visible trademarks and doesn't accept an application for non-visible trademarks. China is now in acceptance of application for the registration of three-dimensional marks and color combination marks.

In order to standardize the examination of trademarks and according to the provisions of the Trademark Law and the Regulations for the Implementation of Trademark Law, CTMO and TRAB (the Trademark Review and Adjudication Board) under SAIC (the State Administrative for Industry and Commerce) jointly released “Trademark Examination and Trial Guidelines”, a few articles of which focus on the stipulations on the examination of three-dimensional marks and color combination marks.

1.1 Three-dimensional marks

Three-dimensional marks refer to such trademarks as those consisting of three dimensional signs or other signs containing three dimensional signs. Three-dimensional marks can be the shape of the goods themselves, packaging material of the goods or other three dimensional signs. If

applying for the registration of three-dimensional marks, the applicant shall make a statement in the application, failure of which is deemed as a plane trademark. In addition, the applicant shall submit a reproduction thereof by which the three-dimensional shape can be determined.

When multi-views of a trademark that is not more than 6 views need to be submitted, they shall be put in one copy of reproduction of the trademark. The length and breadth of the reproductions shall be not more than ten centimeters and not less than five centimeters.

1.2 Color combination marks

Color combination marks refer to trademarks consisting of two or more colors. An applicant applying for the registration of color combination marks shall make a statement in the application. If not, the application shall be examined as a non color combination trademark even if the trademark reproduction is submitted in color. An applicant shall be requested to submit a clear-cut color reproduction indicating the code numbers of the chromatogram. In the mean time, since the reproduction is in color, the publishing cost for such trademark is therefore greater.

2. The relation of established trademark principles to new types of marks

CTMO shall applies established relevant provisions of the Trademark Law, the Regulations for the Implementation of Trademark Law and Trademark Examination Guideline when conducting registration substantive examination on three-dimensional marks and color combination marks as it does on common marks.

2.1 Three-dimensional marks

2.1.1 Functionality

Where a three-dimensional sign is applied for the registration of a trademark, it shall not be registered if it consists exclusively of the shape which results from the nature of the goods themselves, the shape of goods which is necessary to obtain a technical result, or the shape which gives

substantial value to the goods.

2.1.2 Distinctiveness

Where a three-dimensional mark only contains the generally or frequently-used shapes of the designation of the goods, packaging materials, or the trademark as a whole does not identify the origin of the goods, or where a trademark reproduction submitted by an applicant is hard to be identified as three dimensional shapes, it shall be deemed as lack of distinctiveness.

2.1.3 Speciality

The examination on the identicalness or similarity of three dimensional-marks involves the examination over the identicalness or similarity between three dimensional-marks and between three dimensional-marks and plane marks. For instance, if two trademarks both consist of a single three dimensional sign or the structure, shape and overall visual effect of such trademarks are so identical or similar that relevant general public is easily misled as to the origin of the goods or services in respect of which the trademark indicates, the two trademarks are deemed as identical or similar trademarks.

2.2. Color combination marks

2.2.1 Distinctiveness

Where a color combination mark only uses the natural colors of the designated goods, colors of goods itself or colors of its packing materials and service site that are generally or frequently used or where an applicant does not submit the reproduction of colors other than provides the statement of the color combination, such trademarks are deemed as lacking of distinctiveness.

2.2.2 Speciality

Where two trademarks are the color combination marks, if the colors combined and the way the colors are arranged is so identical or similar that relevant general public is easily misled on the origin of the designated goods or services, the two trademarks are deemed as identical or similar.

Where color combination marks are identical with or similar to the shapes of plane trademarks or the designated colors of three dimensional-marks, relevant general public is easily misled as to the origin of the designated goods or services. In such a case, the two trademarks are deemed as identical or similar trademarks.

China Trademark Office

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