

Supreme People's Court's Provisions Concerning Several Issues Relating to Trial of Civil Cases of Dispute Arising from Conflicts between Registered Trade Marks or Enterprise Names and Prior Rights

(Issued on 18 February 2008; and coming into force
on 1 March 2008) (No. Fashi 3/2008)

With a view to duly hearing civil cases of dispute arising from conflicts between registered trademarks or enterprise names and prior rights, these Provisions have been hereby formulated under the Civil Procedure Law of the People's Republic of China, the General Principles of Civil Law of the People's Republic of China, the Trademark Law of the People's Republic of China, and the Unfair Competition Law of the People's Republic of China, and with reference to the judicial practice.

Article 1 Where a plaintiff institutes lawsuit on the ground that using the word or device of another party's registered trademark has infringed his/its prior right, such as the copyright, design patent right or enterprise name right, and the law suit complies with the provision of Article 108 of the Civil Procedure Law, the people's court shall accept the case.

Where a plaintiff institutes lawsuit on the ground that another party's trade mark registered in respect of approved goods is identical with, or similar to, his/its prior registered trademark, the people's court shall, under Article 111 (3) of the Civil Procedure Law, notify the plaintiff to file a request

with the relevant competent administrative authority for settlement. However, where a plaintiff institutes lawsuit on the ground that another party's registered trademark that has been used in respect of goods other than those in respect of which the trade mark has been approved to be used or which he/it has used with altered distinctive character, by taking it apart or putting it together with other elements is identical with, or similar to, the plaintiff's registered trademark, the people's court shall accept the case.

Article 2 Where a plaintiff institutes lawsuit on the ground that another party's enterprise name is identical with, or similar to, his/its earlier enterprise name, is sufficient to crest confusion on the part of the relevant sector of the public about the origin of the goods, and is contrary to Article 5 (3) of the Unfair Competition Law, and where the lawsuit complies with the provision of Article 108 of the Civil procedure Law, the people's court shall accept the case.

Article 3 The people's court shall, at the plaintiff's request and according to the nature of the civil legal relations involved in the dispute, determine the cause of action of the conflict between a registered trademark or enterprise name and a prior right, and apply the corresponding law under the Provisions Concerning Cause of Civil Action (Tentative).

Article 4 Where an accused enterprise name infringes the exclusive right to use a registered trademark or constitutes an act of unfair competition, the people's court may, at the plaintiff's litigant requests and according to the specific circumstances of the case, decide to hold the defendant liable for ceasing and desisting from using the enterprise name, or for using it in a due manner.