



The Art of War

10 Tips
to Successful
Branding



**CREATING WEALTH THROUGH
BRAND BUILDING**

HOW TO REGISTER YOUR TRADEMARK in The PRC



The mere fact that trademarks can be registered in China through an international extension as an alternative to a national registration, the procedure for which has recently further improved, is another reflection of China's official commitment to improving and protecting foreign investments there, particularly in the area of intellectual rights. Nathalie Tortellier, from law firm Thomas, Mayer & Associés, gives useful advice. Website: www.tmahk.com

The Chinese Registration Procedure

In October 2001, China amended its Trademark Law with the objective of joining the WTO. A trademark is a sign that distinguishes the goods and services of a specific trader (individual or company) from another. It can be characters, words in any language, letters, emblems, numerals, drawings, combinations of colours, or any combination of these.

The owner of a well-known trademark, which is not registered, could oppose the registration and use of an identical or similar trademark of similar or different goods or services by other people. Anybody can file an application for trademark registration, but a foreigner must go through an agent duly registered with the Trademark Office.

The application procedure before the Trademark Office lasts at least 18 months and is summarised as follows:

- A preliminary search to find out if the same trademark has already been registered is essential;
- An application has to be filed for each international class of goods/services;
- The Trademark Office carries out a thorough check of the application, specifically to verify if any information is missing and to ensure the trademark satisfies registration requirements. Then, the trademark is published;
- If, within a three-month period from the date of advertisement, there is no opposition notice from a third party or from the Trademark Office, the trademark is accepted for registration;
- The owner has a property right of 10 years from the

date of registration. The request for renewal has to be filed six months before the end of the 10-year protection period;

- If the trademark is not used effectively during three consecutive years, any third party may ask for the trademark to be de-registered.

The International Registration System

China has signed the Madrid Agreement and Protocol for the international registration of trademarks. Under this, the owner files only one application before the Trademark Office of the country of origin of his trademark, requesting an extension of the protection of the trademark to designated countries.

The procedure of extension is as follows:

- The trademark must be registered or filed in its country of origin.
- The application is submitted to the Trademark Office of the country of origin. The Trademark Office forwards the file to the World Intellectual Property Organisation (WIPO).
- The WIPO carries out a check on the application and publishes the trademark.
- The file is passed on to the Chinese Trademark Office. If no objection is notified by the Chinese Trademark Office to the WIPO within 18 months from the date of receipt of the file, the trademark is registered in China.
- During five years, the international registration is dependent on the registration of origin (if the latter ceases to produce effects, the former could be struck off). After five years, the international registration is independent.