



British Embassy
Beijing



INTELLECTUAL
PROPERTY OFFICE



Chinese Trademark Law Consultation – January 2013

The National People's Congress (NPC - China's house of representatives) has published revisions to the Chinese Trademark Law for public comments (in Chinese only [here](#)).

The consultation deadline is **January 31, 2013**. Comments can be submitted via the NPC website [here](#) or to the postal address:

Legislative Affairs Commission of the NPC Standing Committee
National People's Congress
No.1 Qianmen Xi Dajie
Xicheng District
Beijing 100805
People's Republic of China

We are interested to read the comments of UK stakeholders as we continue our bilateral cooperation with China on intellectual property, so would be grateful if you would send a copy of any submitted comments to TMDNotification@ipo.gov.uk.

The NPC is the final stage of a 3-step legislative process. The Trademark Law revision began with the State Administration for Industry & Commerce (SAIC – the Ministry-level body responsible for trade mark law), before being passed to the State Council Legislative Affairs Office (SCLAO) in 2011. SCLAO submitted the draft amendments to the NPC in late 2012.

The NPC amendments to the Chinese Trademark Law include:

- The NPC revision includes the **requirement that applications are made in good-faith**. The current Chinese Trademark Law does not explicitly mention good-faith, but does require that applications are not “detrimental to socialist ethics & customs, or having other unwholesome influences”. The NPC draft also includes a new section requiring trade mark agents to act in good faith, and would give trade mark attorney industry associations an obligation to strictly regulate their members.

- In line with earlier drafts, the NPC revision **strengthens protection for owners of prior rights**. The NPC revision removes the need for a prior right to have been used in China, but retains the requirement for the opposing party to show a contractual, business or other relationship which enabled the applicant to be aware of the prior right.
- **Opposition procedures** are simplified and only open to owners of prior rights or other parties that can demonstrate an interest in the case. Deadlines to respond in opposition and cancellation procedures are lengthened.
- A formal communication channel between applicants and examiners is included in **trade mark examination procedures**, and multiple-class applications are introduced. Single colours are added to the non-traditional marks that can be registered in China.
- The Anti-Unfair Competition Law is referenced as providing protection against **well-known trade marks being registered as company names**. The NPC revision removes a provision on company name disputes included in earlier drafts of the Trademark Law amendments.
- The **definition of use of a trade mark** in the NPC revisions is modelled on the current Trademark Law implementing regulations, as in previous versions of the draft amendments.
- **Secondary infringement liability** is included in the revision for intentional actions that assist infringement by others. The NPC revision inserts an option for courts determining **damages in civil cases** to give preference to plaintiffs' arguments if infringers don't provide accounting books or other relevant materials. In cases where damages to the rights holder/gains to the infringer are difficult to calculate, the NPC retains earlier proposals to raise **statutory damages** to a maximum of RMB 1,000,000 (approx. £100,000).