

Shanghai General Chamber of Commerce.

COPY OF TRANSLATION

OF THE

Provisional Regulations

GOVERNING THE

Registration of Trade Marks
in China,

Formulated by the Chinese Government,

to come into force 23rd October, 1904.

1904.

"NORTH-CHINA HERALD" OFFICE, SHANGHAI.

Provisional Regulations governing the Registration of Trade Marks.

1.—All merchants, Chinese or foreign, wishing to make exclusive use of trade marks, must have them registered in conformity with the following rules.

The principle, underlying the constitution of a trade mark, is that it must, in design, in verba description, or in whatever form it assumes, possess a distinctive character of its own. All three forms may be employed together or separately.

2.—The Board of Commerce will establish an office, which shall have sole control of matters connected with registration.

The Custom Houses at Shanghai and Tientsin will be created branch offices of registry, where application for registration may be made, as most convenient to those concerned.

3.—All who desire to register trade marks must send in their applications to the Head Office or to either of the Branch Offices.

4.—To every application must be appended a memorandum. This memorandum, in addition to giving a full description of the mark, must be accompanied by a triplicate copy of the same, must state the kind of goods it is intended to cover, and the classes, or sub-classes, under which they come (for classification *vide* below). In the event of application being made to a branch office, it and the memorandum must be made out in duplicate.

5.—If on receipt of an application the Head Office finds it to be in order, and if, within a period of six months, no protest against the same shall have been made, registration will be proceeded with.

6.—Applications in respect of marks resembling each other, or for the same or similar kinds of goods, will be entertained in order of their presentation. The first comer will have the right to registration. All marks, in respect of which application is made on the same day and at the same time, will be registered.

7.—In the case of trade marks registered abroad, if application for registration be made within a period of four months from the date of original registration, the date of original registration will be accepted (as the date from which registration in China shall count).

8.—Trade marks which infringe the following conditions cannot be registered:—

- (a) Marks likely to injure young or old, offending against morality or harbouring an intent to deceive.
- (b) Marks embodying symbols or phraseology reserved for Government use, *e.g.* Imperial or official seals, the national standard or military flags, or devices appropriated for the reward of merit (such as the insignia of an Order).
- (c) Marks already registered, or marks resembling, or of the same nature as, marks, which for over two years prior to the application for registration, have been publicly used in China or have covered a similar class of goods.
- (d) Marks in respect of articles, which cannot be clearly specified.

9.—The period during which Chinese or foreign merchants shall have the exclusive right to a trade mark is limited to twenty years from the date of registration.

The period for trade marks registered abroad, which it is desired to register in China, shall count from the date of original registration, but in no case must it exceed 20 years.

10.—If owners of a trade mark wish to have their exclusive rights therein continued, they must within six months prior to the date of expiry give notice of their intention to renew registration.

11.—If an owner of a registered trade mark wishes to transfer his exclusive rights therein to another or to give others a share therein, he must at once give notice to the Registration Office and have the fact recorded.

12.—If a mark, already registered, contravenes paragraphs *a*, *b*, or *d*, of Regulation 8, the Registrar will have the right to cancel the same.

13.—Anyone who considers himself injured by the fact that a trade mark has been registered in contravention of Regulation 6, or Regulation 8, *c.*, may apply to the Registrar to have registration cancelled, but he must do so within a period of three years from the date of registration.

14.—The Registrar must state in writing any reasons he may have for refusing to register a trade mark

15.—Any reason for objection to the Registrar's ruling under Regulation 14, must be filed within six months from the date of refusal to register. If this be done the decision will be subject to revision.

16.—Applicants for registration, or owners of trade marks not resident in China, or residing at a distance from the Registration Office, must appoint some trustworthy agent to act for them.

17.—Copies of entries on the Register, or permission to inspect the Register, may be applied for through the Registration Office or its branches. Those residing at a distance may apply through their agent.

18.—The Registrar will publish a Trade Marks' Gazette with a list of trade marks, and of any matters concerning the registration or cancellation of the same.

19.—At the instance of the owners of exclusive rights in a trade mark, suits may be instituted against any who may infringe such rights, and, on conviction, the latter will be mulcted in damages.

20.—Suits for infringement of trade marks will be conducted as follows:—

- (a) If the defendant be a foreigner, the local authorities will move the Consul concerned to hold a joint investigation and trial.
- (b) If the defendant be a Chinese, the Consul concerned will communicate with the Chinese authorities and a joint investigation will take place.
- (c) If both plaintiff and defendant are Chinese, or if both are foreigners, the Courts concerned will, in case of infringement, afford all necessary protection.

21.—The undermentioned offences are punishable with imprisonment up to one year, and a fine not exceeding Tls. 300, but judgment can only be given in a suit instituted by the party aggrieved.

- (a) Any attempt to use a similar class of goods, or to imitate a registered trade mark, belonging to another party, or to offer the same for sale.
- (b) To imitate a trade mark, or apply it to a similar class of goods, or knowingly to sell such goods, or have the same on the premises for purposes of sale.
- (c) To use an imitation of a trade mark as a "chop," or to employ it for purposes of advertisement.
- (d) Knowingly to use packages or wrappers bearing the registered trade mark of others, for the same class of goods, or knowingly to offer the same for sale.
- (e) To import goods, being well aware of the fact that they infringe the trade mark rights of others.

22.—In the event of any infringement, such as described in Regulation No. 21, being discovered, all trade marks, or articles used for making the same, shall be confiscated, and any goods or wrappers, packages or "chops," which cannot be dissociated from the marks they bear, shall be destroyed.

23.—Chinese or foreigners must pay fees according to the following scale, in connection with the registration of their marks and the issue of certificates:

	Halkuan Taels.
On every application to register a mark	5.00
On registration of a mark and issue of a stamped certificate	30.00
On transfer of, or declaration of partnership in, a mark	20.00
On renewal of registration	25.00
For every copy of a document, connected with registered marks... ..	2.00
If above 100 characters, for every additional 100 characters	50
For inspecting register, every half hour	1.00
For renewal of certificate, if lost	10.00
On reporting any case of fraudulent imitation	5.00
On application for reconsideration of ruling given	5.00
On application to cancel registration	30.00
On requesting the transfer of ownership rights to next of kin, in the event of death	5.00

Supplementary Regulations.

24.—The above regulations will come into force on the 15th day of the 9th moon of the 30th year of Kuanghsü (October 23rd, 1904.)

25.—As, according to Treaty, reciprocal protection is guaranteed, the Registration Office undertakes to recognise as valid all applications for registration of trade marks, made through the proper channels, prior to its assuming its functions.

26.—If, in the case of trade marks registered abroad, application for registration has been made to the Registrar within six months of the Office commencing its functions, such applications will be considered as standing at the head of the list.

27.—Trade marks, which, prior to the commencement of its functions by the Registration Office, may have been protected by proclamation on the part of the local authorities, will cease to enjoy such protection, if due application for registration be not made within six months of the time when the Registration Office shall have been opened.

28.—The three foregoing regulations do not affect the provisions of Regulation No. 5.

The above regulations are provisional and are subject to revision when the Code governing trade marks shall have been compiled.

Detailed Rules of the Trade Marks' Registration Office.

1.—All applications and memoranda connected with trade marks must be made out in duplicate. They must state clearly applicant's name and residence, and the date on which application is made.

Applications must be made in the Chinese language, and foreign applications must be accompanied by Chinese translations.

2.—Applications must be made out on the forms laid down.

3.—Applications, made through an agent, must be accompanied by proof of authority to act.

4.—The Branch Offices will retain the copies of the applications made to them, and forward the originals to the Head Office.

5.—The Head Office will number all applications made to them, and furnish the applicant with his particular number, which, in all future correspondence regarding his application, will have to be quoted.

6.—In any correspondence regarding registered marks the register-number of the mark must always be cited.

7.—In cases where first application has been made to a Branch Office the latter must forward to the Head Office all subsequent correspondence, the printing blocks and the fees.

8.—Branch Offices must keep a record of all their transactions connected with trade marks.

9.—Applications in respect of trade marks registered abroad must be accompanied by a certified copy of the entry in the Foreign Register.

10.—On application for the renewal of registration, the original certificate must be produced. If extension has been granted abroad, documentary proof of this having been done must be handed in.

11.—Should any forms have been improperly made out, the Head Office shall fix a time within which they must be corrected and sent in again.

12.—Failure to do so in the given time, in accordance with the Provisional Regulations, due consideration being had for distance and other contingencies, will involve the rejection of the application.

13.—If an application is in order, registration will at once ensue and the applicant be duly informed. On receipt of such notice, the applicant will, within a given time fixed by the Registrar, pay his fees, return the notice and hand in a block of his trade mark either to the Head Office or branch office.

14.—When this shall have been done, the Head or Branch Office will affix to the notice a stamp, intimating that all formalities have been complied with, and return it to the applicant. Any action of this kind taken by a Branch Office must at once be reported to the Head Office.

All blocks must be forwarded monthly to the Head Office, so that the marks may be printed in the Gazette. Similarly all fees must be remitted at the end of every month.

15.—When the applicant shall have complied with the terms of para. 2, of Rule 13., the Registrar will register his mark and issue him a stamped certificate.

16.—The block, which may be either of wood or metal, must not exceed four inches in length, three inches in breadth, and .75 of an inch thick.

17.—All objections lodged in terms of Provisional Regulation No. 13 must be in duplicate. The grounds of objection must be clearly stated and any material evidence available must be adduced.

18.—In the case of an objection being raised, the Registrar will retain the original plaint, send the copy to the defendant and fix a time for the latter to defend his case. The decision will be given after a hearing of both parties.

19.—If the Registrar has to cancel registration of a mark if the owner does not desire any longer to use a mark, or ceases to do business, the certificate must at once be returned.

20.—On the death of an owner, should his next of kin wish to retain his rights of ownership, they must send adequate proof of their rights of succession to the Registrar, and apply for a fresh certificate.

21.—In the event of a transfer of rights, or of admitting a partner in the rights of ownership, as provided for in Provisional Regulation No. 11, a joint application, signed by both parties, must be sent in, accompanied by the original certificate of registration and a copy of the agreement (between the parties). In the case of trade marks registered abroad the application must be accompanied by a certified copy of the extract from the Foreign Register.

An entry will then be made in the register and an endorsement on the back of the certificate.

22.—Changes of residence on the part of the owner of a trade mark, or of his representative, must in all cases be promptly reported.

23.—All applicants must specify to which of the hereinafter mentioned classes or sub-classes their goods belong. If they are unable to do so the Registrar will determine the point.

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Correspondence relating to the Registration of Trade Marks in China.

OFFICE OF THE COMMERCIAL ATTACHÉ
TO H.M.'S LEGATION, CHINA.

Shanghai, 29th August, 1904.

SIR,—As you are doubtless aware, the Chinese Government have, for some time past, been engaged in drafting regulations to govern the registration of trade-marks, in terms of their recent Treaty engagements.

The Board of Commerce has now, after consultation with the representatives of Great Britain, the United States and Japan, drawn up a set of Provisional Regulations, which it is intended to put in force on the 23rd of October next.

Of these regulations I have, in accordance with instructions from Sir Ernest Satow, the honour to hand you herewith, for the information of your Chamber, a translation. It has been prepared by myself from the Chinese text, and embodies certain alterations, suggested by His Majesty's Minister. Should any farther modifications be subsequently adopted, I will not fail to communicate them to you.

The classification list and the prescribed forms appended to these Regulations, have not been translated, as the Chinese Government will, presumably, shortly publish them, in an authoritative form, in some foreign language.

I have the honour to be,

Sir,

Your obedient servant,

J. W. JAMIESON,

Commercial Attaché.

W. D. LITTLE, Esq.,

Chairman,

Shanghai General Chamber of Commerce.

Shanghai, 8th September, 1904.

SIR,—In continuation of my letter to you of the 29th ult., enclosing a copy of the Provisional Regulations governing the registration of trade-marks, I have now, in accordance with instructions received from His Majesty's Minister, the honour to hand you copies of certain correspondence which has taken place between Sir Ernest Satow and Prince Ch'ing, relative to the interpretation of Article 20 of the regulations in question.

I have the honour to be,

Sir,

Your obedient servant,

J. W. JAMIESON,

Commercial Attaché.

W. D. LITTLE, Esq.,

Chairman,

Shanghai General Chamber of Commerce.

Copy.

SIR ERNEST SATOW TO PRINCE CH'ING.

Peking, August 18th, 1904.

YOUR HIGHNESS,—My attention has been drawn to the wording of Article 20 of the Provisional Regulations for the Registration of Trade-marks forwarded to me in your Highness's Note of August 12th.

This Article lays it down that suits for infringement of trade-marks will be conducted as follows :—

(a) If the defendant be a foreigner, the local authorities will move the Consul concerned to hold a joint investigation and trial.

(b) If the defendant be a Chinese, the Consul concerned will communicate with the Chinese Authorities to hold a joint investigation and trial.

It is possible that the draughtsman who prepared the Regulations had in his mind the Chinese text of the 16th Article of the Treaty of Tientsin between Great Britain and China; but I beg to remind Your Highness of the interpretation of that Article, laid down in Section 2 of the Chefoo Agreement of 1876, namely that as long as the laws of the two countries differ from each other, there can be but one principle to guide judicial proceedings in Mixed Cases in China, namely that the case is tried by the official of the defendant's nationality, the official of the plaintiff's nationality merely attending to watch the proceedings in the interests of justice, and that the law administered will be that of the nationality of the officer trying the case.

I trust to receive from Your Highness an assurance that this is the sense in which Article 20 of the Trade-mark Regulations is understood by the Chinese Government.

Copy.

PRINCE CH'ING TO SIR ERNEST SATOW.

August 29th, 1904.

YOUR EXCELLENCY,—I have the honour to acknowledge receipt of your Excellency's Note of August 18th, enquiring whether Article 20 of the Trade-mark Regulations is understood by the Chinese Government in the sense of the interpretation of the principle of joint investigation laid down in Section 2 of the Chefoo Agreement.

In response to our enquiries the Board of Commerce has replied that the principle laid down in sub-Section 3, Section 2 of the Chefoo Agreement with regard to judicial proceedings in Mixed Cases, being in itself so eminently reasonable, should of course be duly followed by both sides in questions affecting Article 20 of the Trade-mark Regulations, which Article was drafted with the above-mentioned Treaty provision in view.

I have the honour therefore to reply to Your Excellency in the above sense.