

TABLE OF CONTENTS

<i>Foreword to the Third Edition</i>	<i>xi</i>
<i>Foreword to the Second Edition</i>	<i>xxiii</i>
<i>Foreword to the First Edition</i>	<i>xxvii</i>
<i>Preface to Third Edition</i>	<i>xxix</i>
<i>About the Author</i>	<i>xxx</i>
<i>Table of Cases</i>	<i>lv</i>
<i>Table of Legislation</i>	<i>lxi</i>

CHAPTER 1 INTRODUCTION

1. Introduction	1.001
1.1 Historical Overview	1.001
1.2 What are Trademarks and Service Marks?	1.006
1.3 A Brief History of Trademarks in China	1.009
2. The Development of Trademark Legislation in China	1.014
2.1 Trademark Law in Dynastic China?	1.014
2.2 The 1904 Trademark Law	1.017
2.3 The 1923 and 1930 Trademark Laws	1.022
2.4 The 1949 Trademark Law	1.030
2.5 The 1950 Trademark Law	1.032
2.6 The 1963 Trademark Law	1.034
3. Trademark Legislation in Post-Mao China	1.037
3.1 Prior Developments	1.037
3.2 1983 Trademark Law	1.039
3.3 1993 Amendments	1.043
3.4 2001 Trademark Law	1.045
3.5 2014 Trademark Law	1.047
4. China's Trademark Legislation in the International Context	1.048
4.1 Development of China's Trademark Law	1.048
4.2 The Paris Convention	1.051
4.3 The Madrid System	1.057
4.4 The Nice Agreement	1.063
4.5 Bilateral IPR/Trademark Agreements: China and the United States	1.065
4.6 The GATT/WTO and the TRIPS Agreement	1.070


CHAPTER 2 CHINESE-LANGUAGE MARKS

1. Choice and Translation of a Chinese Trademark	2.001
1.1 Introduction	2.001
1.2 Chinese Cultural Values	2.002
1.3 The Chinese Language	2.004
1.4 The Chinese Script	2.005

1.5 The Chinese Characters	2.008
1.5.1 The Reform	2.009
1.5.2 Everyday Use	2.010
1.6 Order of Chinese Characters	2.012
1.7 The Spoken Language	2.014
1.7.1 Tones	2.014
1.7.2 Homonyms	2.015
1.7.3 Multiple Meanings	2.018
1.7.4 Limitations	2.020
1.7.5 Accounting for Differences in Dialects	2.021
1.8 Pinyin: Romanisation of the Chinese Language	2.022
2. Devising a Chinese-Language Trademark	2.023
2.1 The Importance of Using Chinese-Language Marks	2.023
2.2 Ascribing Nicknames	2.024
2.3 Stages of Devising a Chinese Mark	2.026
2.4 Methods of Translation	2.028
2.4.1 Literal or Conceptual Method	2.030
2.4.2 Phonetic Method	2.032
2.4.3 Phonetic-Conceptual Method	2.036
2.5 Guidelines for Selecting a Chinese-Language Trademark	2.037
2.6 Consistency in Chinese-Character Trademarks	2.038
3. Marketing Factors	2.039
3.1 Breaking the Cultural Barrier	2.039
3.1.1 Appropriate Localisation	2.041
3.1.2 Understanding the Culture	2.043
3.2 Rule of Thumb: Get it Right From the Start	2.045
3.3 Trademark Recognition	2.047
3.4 One Mark for all Chinese-Speaking Jurisdictions	2.049
3.5 Logo Imagery	2.053
4. Legal Factors	2.054
4.1 Traditional or Simplified Characters	2.054
4.2 Registrability	2.057
4.3 Consistency in Chinese-Character Trademarks	2.058

CHAPTER 3 WELL-KNOWN TRADEMARKS

1. Protection of Well-Known Trademarks	3.001
1.1 Introduction	3.001
2. Relevant International Conventions and Agreements	3.002
2.1 Paris Convention for the Protection of Industrial Property ("Paris Convention")	3.002
2.2 Trade-Related Aspects of Intellectual Property Rights Agreement ("TRIPS")	3.004
3. Relevant Domestic Laws and Regulations	3.007
3.1 PRC Trademark Law	3.007


3.2 Administrative Regulations on the Recognition and Protection of Well-Known Trademarks	3.009
3.3 Judicial Interpretation on the Protection of Well-Known Trademarks	3.011
4. What Constitutes a Well-Known Trademark?	3.013
4.1 How to Determine Whether a Trademark is a Well-Known Trademark	3.013
4.2 The Nike Case	3.023
4.2.1 Device Mark in Class 5  - Opposition Appeal	3.023
5. Protection of Well-Known Trademarks in the PRC	3.026
5.1 Opposition to the Application for Registration and Invalidation of Registration	3.026
5.1.1 Well-Known Trademarks not Registered in the PRC	3.027
5.1.2 Well-Known Trademarks Registered in the PRC	3.029
5.1.3 TMO Decision Shang Biao Yi Zi No. 1963 of 2000: The Seven Up in Chinese (or Qi Xi) Case 商标局关于“七喜”商标异议案的裁定(2000) 商标异字第1963号	3.032
5.1.4 TMO Decision Shang Biao Yi Zi No. 2347 of 2000: The Second Seven Up in Chinese Case 商标局关于“七喜”商标异议案(二)的裁定(2000) 商标异字第2347号	3.033
5.1.5 Opposition Appeal to the Beijing No. 1 Intermediate Court - P&G "SK-II" in Class 21 (App. No. 5111458) 北京市第一中级人民法院(2014)一中行(知)初字第6820号	3.034
5.1.6 Another Example of Well-Known Mark Protection	3.038
5.2 Opposition and Invalidation	3.039
5.2.1 The "Xinghuacun & Device" Case	3.040
5.3 Prohibition of Use	3.042
5.4 Protection Given to "of a Certain Degree of Influence"	3.044
5.4.1 The "圣象 (Sheng Xiang in Chinese) & Device" Case	3.046
5.5 Prevent Others from Using a Well-Known Trademark as an Enterprise Name	3.047
5.5.1 The "三一 (San Yi in Chinese)" Case	3.048
6. Recognition of Well-Known Trademarks	3.050
6.1 Changing Trends in Well-Known Trademark Protection	3.050
6.2 Prior Recognition of Well-Known Status	3.051
6.3 Recognitions of Well-Known Trademarks by the Relevant Authorities	3.052
6.3.1 P&G v UK GOODAIR MATUN GROUP LIMITED: 宝洁公司 v 英国哥弟玛顿集团有限公司	3.056
6.3.2 VOLVO, TRAB Decision No. 0000117212 of 2014: The Volvo Case "VOLVO" 商标评审委员会裁定: 商评字【2014】第0000117212号: Volvo案	3.057
6.4 Judicial Recognition of Well-Known Status	3.059
6.4.1 Supreme People's Court Decision: The Qi Zheng Case 最高人民法院判决: 奇正案	3.065
6.4.2 Beijing Higher People's Court Decision: The 2006 Great Wall Case 北京高级人民法院判决: 2006 长城案	3.066
6.4.3 Beijing People's Court Decision: The Zhong Hua Case 北京法院判决: 中化案	3.067
6.4.4 Starbucks Case	3.068
6.4.4.1 Starbucks Corporation v Shanghai Xingbake Coffee Shop Co Ltd 美国星巴克咖啡公司 v 上海星巴克咖啡馆有限公司	3.068


6.4.5 Diageo Case	3.071
6.4.5.1 Diageo Brands B.V. v Bishuang Biotechnology Co, Yongru Bio Cosmetics Co 黛尔吉奥品牌公司 v 常州碧爽生物科技有限公司、无锡永如生物美容品有限公司	3.071
6.4.6 BMW Case	3.072
6.4.6.1 BMW v Shenzhen Century Baoma Apparel Co Ltd, Xianqin Fu & Jiarunduo Commercial Co Ltd 宝马股份公司 v 深圳市世纪宝马服饰有限公司、傅献琴、家润多商业股份有限公司	3.072

CHAPTER 4 ADMINISTRATIVE AND ENFORCEMENT FRAMEWORKS

1. PRC Governmental Structure	4.001
1.1 NPC and State Council	4.001
1.2 Other Relevant Bureaus and Administration Under the State Council	4.005
1.2.1 State Administration for Industry and Commerce (“SAIC”)	4.005
1.2.2 State Intellectual Property Office (“SIPO”)	4.006
1.2.3 General Administration of Customs (“GAC”)	4.007
1.2.4 General Administration of Quality Supervision, Inspection and Quarantine (“AQSIQ”)	4.008
1.2.5 National Copyright Administration (“NCA”)	4.009
1.2.6 National Working Group for Intellectual Property Rights Protection (“National Working Group”)	4.010
1.2.7 State Office of Intellectual Property Protection (“SOIPP”)	4.011
1.2.8 Intellectual Property Complaint Consultation Centers	4.012
2. Administrative Structure of Trademark Authorities	4.013
2.1 Administrative Agencies	4.013
2.1.1 Trademark Office	4.015
2.1.2 Trademark Review and Adjudication Board	4.018
2.2 Local Administrations for Industry and Commerce	4.023
2.2.1 Technical Supervision Bureau (“TSB”)	4.024
3. Enforcement Structure of Trademark Authorities	4.025
3.1 Enforcement Infrastructure	4.025
3.1.1 Administration for Industry and Commerce (“AIC”)	4.026
3.1.2 Public Security Bureau (“PSB”)	4.029
3.1.3 The People’s Courts	4.030
3.1.4 Customs Authorities	4.034
4. Agents, Investigators and Lawyers	4.037
4.1 <i>China Council for the Promotion of International Trade</i>	4.037
4.2 <i>Trademark Agents</i>	4.039
5. Other Organisations	4.041
5.1 <i>Ministry of Commerce (“MOFCOM”)</i>	4.041
5.2 Consumer Councils and Other Consumer Organisations	4.042
5.3 Non-Governmental Groups	4.043
5.3.1 China Trademark Association (“CTA”)	4.045
5.3.2 Quality Brands Protection Committee (“QBPC”)	4.046

CHAPTER 5 TRADEMARK REGISTRATION

1. Introduction	5.001
1.1 General Overview	5.001
1.2 The Importance of Trademark Registration in the PRC	5.004
1.3 What Marks are Registrable in the PRC?	5.007
1.3.1 3D Marks	5.008
1.3.2 The Hermes Case	5.011
1.3.3 The Fanta Case	5.012
1.3.4 The Ferrero Rocher Case	5.013
1.3.5 Note of Advice on Sound Marks	5.015
2. Registrability of Trademarks under the Trademark Law	5.018
2.1 Grounds of Objection of Trademark Applications	5.018
2.2 Distinctiveness	5.019
2.2.1 TRAB Decision [2000] No. 712	5.023
2.2.2 TRAB Decision [2001] No. 4264	5.025
2.2.3 TRAB Decision [2001] No. 2985	5.028
2.2.4 “Opencloud” Mark in Class 9 <i>Opencloud</i> – Trademark Invalidity	5.030
2.3 Descriptiveness	5.031
2.3.1 TRAB Decision [2000] No. 1949	5.033
2.3.2 TRAB Decision [2000] No. 4830	5.035
2.3.3 “Six Walnuts” Mark in Class 32 <small>坚果</small>	5.038
2.4 Other Specific Statutory Prohibitions	5.041
2.4.1 Qijiu (in Chinese) and Device Mark in Class 5 	5.043
2.4.2 The “竹家庄避风塘 (Zhujiashuang Pifengtang in Chinese) & Device” Case – One of the Top 10 Intellectual Property Cases of The Supreme People’s Court in 2014	5.046
2.4.3 Conflict with Prior Identical or Similar Marks	5.047
2.4.4 Same-day filing	5.048
2.4.5 Identical or similar marks?	5.049
2.4.6 Identical or similar goods/services?	5.050
2.4.7 Effect of Coexistence agreements	5.055
2.4.8 Advice on Coexistence Agreements	5.058
2.4.9 GRANDIOSE Mark in Class 3 GRANDIOSE	5.061
3. Pre-Filing Considerations	5.064
3.1 Thinking Ahead – Important Issues to be Considered	5.064
3.2 Trademarks to be Protected	5.066
3.2.1 Chinese-language marks	5.066
3.2.2 Composite marks	5.070
3.3 Pre-filing Availability Search	5.074
3.4 Inherent Registrability	5.077
3.4.1 Secondary meaning	5.078
3.4.2 Addition of a more distinctive element	5.079
3.4.3 Disclaimers	5.080
3.5 Classes and Specification	5.083
3.6 Form of the Mark	5.088




3.7 Applicant	5.095
3.8 Administrative Requirements of Trademark Applications	5.098
3.8.1 B & M Bo Mei Mark in Class 19 B&M 柏美	5.103
3.8.2 AOWEISI Mark in Class 12 	5.106
3.9 Priority Applications	5.109
3.10 International Registration	5.112
3.11 Application for Collective and Certification Marks	5.114
4. Preliminary Examination by the TMO	5.119
4.1 Objections to Specifications by the TMO	5.119
4.2 In the Case of an Approval	5.121
4.3 In the Case of a Rejection	5.124
4.3.1 TRAB Decision [2000] No. 1206	5.130
4.4 In the Case of a Partial Rejection	5.133
5. Maintenance of a Registered Mark	5.136
5.1 Renewal	5.136
5.2 Change of a Name or Address Applications	5.141
5.3 Loss of or Damage to Registration Certificate	5.144
5.4 Use of Registered Trademarks and Non-Use Cancellations	5.147
5.5 Voluntary Cancellation of a Registered Mark	5.149

CHAPTER 6 TRADEMARK OPPOSITIONS

1. Overview	6.001
1.1 General Remarks	6.001
1.2 Possible Outcome of an Opposition	6.004
2. Grounds of Opposition	6.006
2.1 Possible Grounds of Oppositions	6.006
2.2 Conflict with Prior Registrations or Applications	6.008
2.2.1 TMO Opposition Decision, No. 2687 of 2001	6.010
2.2.2 TMO Opposition Decision, No. 2163 of 2001	6.013
2.2.3 "BAILEYS" Mark in Class 32 BAILEYS – Opposition Appeal	6.015
2.2.4 "UP ZARA XDUDU" S KIDS" Mark in Class 25 UP ZARA XDUDU" S KIDS	6.018
2.2.5 "稻香村 (Daoxiangcun in Chinese)" Case – One of the Top Ten Intellectual Property Cases of The Supreme People's Court in 2014	6.021
2.2.6 Whirlpool Opposition against "Whirlpool & Ring/Star Logo" Mark in Class 10	6.022
2.2.7 Applicant's Mark Is Inherently not Registrable	6.023
2.3 Conflict with Well-Known Trademarks	6.025
2.4 Conflict with Prior Lawful Rights of Others	6.027
2.4.1 "Lu Sanguo (in Chinese)" Mark in Class 29 陆三国	6.034
2.4.2 "广本GUANGBEN" Mark in Class 12	6.037
2.5 Bad Faith	6.040
2.5.1 Nautica Apparel – Successful Opposition on the Ground of Good Faith (Article 7)	6.041
2.5.2 Emirates Airlines - Successful Opposition against "EMIRATES" Mark in Class 12	6.042

2.6 Pre-Emptive Registration of a Third-Party's Unregistered Mark	6.044
2.6.1 "PPR" Mark in Class 25 PPR	6.047
2.7 Partial Oppositions	6.050
3. Important Statutory Time Limits	6.052
3.1 Filing of Defense against an Opposition Raised	6.053
3.2 Filing of Supplementary Evidence	6.055
3.3 Filing of Appeal	6.057
3.4 Trademark Watch Service	6.063

CHAPTER 7 TRADEMARK CANCELLATIONS AND INVALIDATIONS

1. Overview	7.001
1.1 General Overview	7.001
2. Grounds of Cancellation and Invalidation	7.006
2.1 Improperly Registered Trademark	7.008
2.1.1 Violation of Articles 10-12 of the 2014 Trademark Law	7.008
2.1.2 "Jinjian (in Chinese) and Device" Mark in Class 30  - Trademark Invalidation	7.010
2.1.3 "YIHONG (in Chinese) / YI HONG and Device" Mark in Class 30  - Trademark Invalidation	7.013
2.1.4 The Miu Miu Case  - Trademark Invalidation	7.016
2.1.5 "JINJUNMEI (in Chinese)" Case - One of the Top 10 Intellectual Property Cases of The Supreme People's Court in 2013	7.019
2.2 Registration by Deceptive or Other Improper Means	7.021
2.3 Violation of Articles 13, 15, 16, and 32 of the 2014 Trademark Law	7.023
2.3.1 He Xiangjian - An Example of a Prior Personal Name Right Winning Out - Model 2015 TRAB Case	7.027
2.3.2 The "Feng Tian Feng (in Chinese)" Mark in Class 11  - Opposition Appeal	7.029
2.3.3 "MAYER & BOCH MB" Mark in Class 21  - Opposition Appeal	7.032
2.3.4 The "Tang Han Fu Te (in Chinese) / TOMFUTE" Mark  - Trademark Invalidation	7.035
2.3.5 The "Device" Mark in Class 36  - Trademark Invalidation	7.038
2.3.6 The "X-static" Mark in Class 23 X-static - Trademark Invalidation	7.040
2.4 Conflicting with Prior Registrations or Applications	7.043
2.4.1 Vitasoy – Successful Invalidation against "V-SOY Original" ()	7.045
2.5 Procedural Rules	7.046
2.6 Filing of Response against an Invalidation	7.048
2.7 Filing of Supplementary Evidence	7.049
2.8 Filing of Appeal	7.051
3. Three Years' Continuous Non-Use of a Registered Mark	7.052
3.1 General Procedure for Non-Use Cancellations	7.052

3.2 Filing a Non-Use Cancellation	7.054
3.3 Defending against a Non-Use Cancellation	7.058
3.3.1 The “LOXON” Mark in Class 2 LOXON - Non-use Cancellation Appeal	7.062
3.3.2 The Castel Case / The “Ka Si Te (in Chinese)” Mark 卡斯特 - One of the Top 10 Intellectual Property Cases of the Supreme People’s Court in 2011	7.065
3.3.3 Guangzhou Guda Plastic Craft and Packaging v TRAB (Supreme People’s Court [2014] No. 30)	7.069
3.3.4 The Cobra Case (Reg. No. 3002468) - A 2015 Model TRAB Case	7.070
3.4 Difference in Evaluation of “USE”	7.071
3.5 Filing of Appeal	7.072
4. Death or Termination of Trademark Registrant	7.073
5. Cancellations by the TMO on Administrative Grounds	7.079
5.1 Filing of Appeal	7.080
6. Consequences of Invalidations and Cancellation	7.081
6.1 On Grounds of Improper Registration	7.081
6.2 On Other Grounds	7.082
6.3 Consequences of a Successful Cancellation or Invalidation	7.083

CHAPTER 8 TRADEMARK LICENSING AND ASSIGNMENT

1. Trademark Rights	8.001
1.1 Trademarks as Valuable Property Rights	8.001
1.1.1 Categories of Trademark License	8.003
1.2 Trademark Licensing Agreement and Recordal Procedures	8.006
1.3 Trademark Assignment and Registration Procedures	8.015
1.4 Franchising Issues	8.025
1.4.1 The “Bao Qing (in Chinese)” Case – One of Top 10 Intellectual Property Cases of the Supreme People’s Court in 2014	8.034
1.5 Valuation and Capital Contribution	8.035

CHAPTER 9 TRADEMARK INFRINGEMENT

1. Overview	9.001
1.1 What is Trademark Infringement?	9.001
1.2 The Scope of Trademark Infringement Under the Current Trademark Law	9.003
1.2.1 Taobao Trademark Infringement Case - One of the Top 10 Intellectual Property Cases of the Supreme People’s Court in 2011	9.011
2. Common Forms of Trademark Infringement	9.013
2.1 Overview	9.013
2.2 Pirate Applications of Existing Trademarks	9.014
2.3 Unauthorised Use	9.016
2.4 Producing Counterfeit Goods	9.018
3. Non-Infringement Defence	9.030
4. OEM Production	9.034
5. The Controversy over Parallel Imports	9.043
6. Unfair Competition and Passing Off	9.049

6.1 Applicability of Unfair Competition Laws	9.049
6.1.1 “Weiji (in Chinese)” Case- “威极”- One of the Top 10 Intellectual Property Cases of The Supreme People’s Court in 2013	9.058
6.1.2 Volvo Trademark Holding AB v Shandong Weidong New Energy Automobile Co. Ltd. 沃尔沃商标控股有限公司 v. 山东维动新能源汽车有限公司	9.060
6.1.3 Gillette Unfair Competition Litigation	9.063
6.2 The Role of the AICs	9.066
7. Product Quality Violations	9.069
7.1 Applicability of Product Quality Law	9.069

CHAPTER 10 TRADEMARK COUNTERFEITING

1. Overview	10.001
1.1 Introduction	10.001
1.2 Legislative Developments	10.002
2. Administrative Enforcement	10.003
2.1 The Administrative Parties in Charge of Anti-Trademark Counterfeiting	10.003
2.2 Confiscation and Destruction	10.007
2.3 Basis for Calculating Fines	10.008
2.4 Minimum Fines	10.010
2.5 Statutory Fines	10.011
2.6 Note on The New SAIC Blacklist System	10.012
3. Criminal Liability for Counterfeiting	10.017
3.1 Standards for Criminal Enforcement	10.017
3.2 Articles 213 to 215 of the Criminal Code	10.018
3.2.1 Criminal Thresholds for Using a Counterfeit Registered Trademark	10.023
3.2.2 Regulations on Transfer of Cases to Police	10.028
3.2.3 Private Prosecutions	10.029
3.2.4 Repeat Offenders	10.030
3.3 Counterfeit Labels and Packages	10.031
3.4 Judicial Interpretation of Articles 140 to 149 of the Criminal Code	10.033
3.5 Gaps in Enforcement	10.038

CHAPTER 11 ENFORCEMENT OF TRADEMARK RIGHTS

1. Overview	11.001
1.1 General Enforcement Concerns	11.001
1.2 Small Steps Forward: Recent Efforts to Address Enforcement Concerns in the PRC	11.003
2. Informal Actions	11.007
2.1 When and Why?	11.007
2.2 Informal Actions in Perspective	11.008
2.3 Strategic Publicity	11.010
3. Administrative Actions	11.011
3.1 General Overview	11.011
3.2 Investigations of Infringing Activities	11.013

3.3 Submission of a Formal Complaint	11.015
3.4 AIC Investigations	11.016
3.5 AIC Enforcement Powers	11.018
4. Civil Actions and Criminal Proceedings	11.022
4.1 Civil Actions before the 2001 Trademark Law	11.022
4.2 The 2001 Trademark Law – A Turning Point	11.023
4.3 Criminal And Civil Enforcement	11.025
4.3.1 Intellectual Property Courts	11.026
4.3.1.1 General grant of jurisdiction	11.028
4.3.1.2 Grant of cross-region jurisdiction	11.030
4.3.1.3 Grant of exclusive jurisdiction	11.031
4.3.1.4 Appeals to and from the IP courts	11.032
4.3.1.5 Transitional provisions	11.034
5. Customs Proceedings	11.035
5.1 Recordal of Rights	11.037
5.2 Administrative or Judicial Determination	11.038
5.3 Seizure Bonds	11.041
5.4 Deadline for Customs Determinations	11.045
5.5 Disposal of Offending Products	11.046
5.6 Administrative Penalties	11.049
5.7 Criminal Enforcement	11.052
5.8 Selling Counterfeit Spirits and Tobacco: Chengdu Court and the Sichuan Court -One of the top 10 cases of Intellectual Property Cases of 2015	11.055
5.9 Crime of Counterfeiting Registered Trademarks: Henan High People's Court in a criminal case, (2013) Yu Fa Zhi Xing Zhong Zi No. 2 – One of the Top 10 Intellectual Property Cases of the Supreme People's Court in 2013	11.058
5.10 Access to Information	11.060
5.11 Scope of Enforcement	11.062

CHAPTER 12 TRADEMARK LITIGATION

1. Civil Proceedings	12.001
1.1 Primary Procedural Laws and Actions	12.001
2. Types of Actions	12.003
2.1 Trademark Infringement	12.003
2.1.1 Infringing Acts Defined	12.004
2.2 Unfair Competition	12.005
2.3 Contractual Disputes	12.006
3. Specific Procedures for Foreign-Related Cases	12.007
3.1 Foreign-Related Cases Defined	12.007
3.2 Same Rights and Obligations	12.008
3.3 Legal Representation	12.009
3.4 Certification Formalities	12.011
4. Commencement of a Civil Action	12.013
4.1 Filing a Legally Sufficient Complaint	12.013
4.2 Statute of Limitations	12.015

4.3 Jurisdiction	12.017
4.4 Service of Process	12.021
4.5 Case Acceptance Fee	12.025
5. Pretrial Procedure	12.027
5.1 No Regularised Evidence Discovery Process	12.027
5.2 Evidence Collection	12.030
5.3 Notarised Trap Purchases	12.032
5.4 Evidence Produced by Government Agencies	12.034
5.5 Evidence Preservation	12.036
5.6 Preliminary Injunctions	12.040
5.7 The Zhi Zheng Process (质证过程)	12.043
6. Court of First Instance	12.047
6.1 Trial Procedure	12.047
6.2 Judgement	12.051
6.3 Damages: Three Formulas	12.054
6.4 Expense Awards	12.060
7. Court of Second Instance	12.061
7.1 Case Review Preferred Over Case Finality	12.061
7.2 Period For Filing An Appeal	12.062
7.3 Scope of Trial	12.063
7.4 Procedure	12.066
7.5 Judgement	12.068
8. Trial Supervision Procedure	12.069
8.1 Application for a Retrial by a Party	12.069
8.2 Retrial Initiated by the Court or Procuratorates' Office	12.073
8.3 Debates	12.074
9. Enforcement of Judgements	12.075
9.1 Time Period and Responsible Authority	12.075
9.2 Settlement Agreement During Execution	12.077
9.3 Non-Party's Objection	12.078
9.4 Compulsory Measures	12.079
10. Judicial Review	12.080
10.1 Judicial Review of TRAB Decisions	12.080
10.2 Parties Involved	12.081
10.3 Jurisdiction	12.082
10.4 Judgement	12.083

CHAPTER 13 IP ISSUES IN 3D PRINTING

1.1 General Overview	13.001
1.2 Potential Legal Issues with 3D Printing	13.006
1.2.1 IPR and 3D Printing	13.011
1.2.2 Copyright	13.012
1.2.3 3D Open Source Software	13.023
1.2.4 Invention Patent	13.024

1.2.5 Design Patent	13.027
1.2.6 Trademark	13.029
1.2.7 Final Thoughts on 3D Printing	13.031

CHAPTER 14 DOMAIN NAMES AND THE INTERNET

1. Defining Domain Names	14.001
1.1 Overview	14.001
1.2 What is a Domain Name?	14.006
1.3 PRC Domain Names	14.008
1.4 Chinese-Language Domain Names	14.011
1.5 Well-Known Marks and Names	14.015
1.5.1 CNNIC ccTLD Domain Name Dispute Resolution Policy (“CNDRP”)	14.018
2. Registration	14.022
2.1 Framework	14.022
2.2 Registrars	14.025
2.3 Application for Domain Name Registration	14.027
2.4 Registration Issues	14.039
2.5 Can Domain Names be Assigned?	14.040
2.6 Trademark Versus Domain Names	14.041
3. Cybersquatting	14.043
3.1 Definition	14.043
3.2 Identifying Cybersquatters	14.046
3.3 Remedies for Cybersquatting	14.048
3.4 Pending Application	14.050
3.5 After Registration	14.051
3.6 Investigation	14.053
3.7 Enforcement	14.060
3.8 Consultation	14.061
3.9 What can be Done if a Domain Name is Pirated?	14.062
4. Domain Name Dispute Resolution	14.064
4.1 Applicable Rules	14.064
4.2 Complaints Reviewed by a Panel of Experts	14.066
4.3 Criteria for Complainant’s Success	14.070
4.4 The Ruling	14.074
4.5 Amendments to Dispute Resolution Rules	14.077
5. Domain Name Litigation	14.078
5.1 Disputes Acceptable for Litigation	14.078
5.2 Criteria for Infringement or Unfair Competition	14.082
5.3 Domain Name Judicial Interpretation	14.088
6. Framing, Linking, and Caching	14.089
6.1 Definitions	14.089
6.2 Issues	14.092
7. Internet Keywords	14.096
7.1 Defining Internet Keywords	14.096

8. Domain Name Cases	14.099
8.1 Introduction	14.099
8.2 <i>The Kelon Case</i>	14.100
8.3 <i>The IKEA Cases</i>	14.103
8.4 Effect of <i>IKEA Cases</i>	14.109
8.5 Well-Known Mark Determination	14.110
8.6 <i>The “PDA” Case</i>	14.120
8.6.1 <i>Shijiazhuang Fulande Development Co v Beijing Mitian Jiaye Technology & Trade Co Ltd</i>	14.120
8.7 <i>The Dupont Case</i>	14.121
8.8 <i>The TIDE Case</i>	14.126
8.9 <i>The Whisper Case</i>	14.130
8.9.1 <i>The Procter & Gamble Company v Beijing Cinet Information Co Ltd</i>	14.130
8.10 <i>The Safeguard Case</i>	14.132
8.10.1 <i>The Procter & Gamble Company v Shanghai Chengxuan Intelligence Technology Development Co Ltd</i>	14.132
8.11 <i>The Wuliangye Case</i>	14.134
8.11.1 <i>Sichuan Yibin Wuliangye Group Co Ltd v Canada Tibin Goldennet Science & Technology Development Co Ltd 五粮液股份有限公司 “wuliangye.com” 中国国际经济贸易仲裁委员会域名解决中心域名争议案裁决书</i>	14.134
8.12 <i>The Outblaze Case</i>	14.136
8.12.1 <i>Outblaze Ltd v Wah Cheung Leatherware Co Ltd 网炫公司 “www.outblaze.com.hk” 香港国际仲裁中心.hk域名争议案裁决书 0106-0001</i>	14.136
8.13 Retrial	14.138

CHAPTER 15 TRADE SECRETS

1. General Trade Secret Concerns	15.001
2. Legal Basis	15.003
3. What Qualifies as a Trade Secret	15.004
4. What Qualifies as Trade Secret Infringement	15.007
5. Status of Trade Secret Enforcement in China	15.009
6. Administrative Action	15.010
7. Criminal Action	15.011
8. Civil Action	15.014
9. Calculation of Damages	15.015
10. Features of Trade Secret Litigation in China	15.018
11. Proof of Ownership of Trade Secret	15.019
12. Proof of Trade Secret Infringement	15.023
13. Forum Shopping	15.025
14. Use of Technical Expert and Judicial Appraisal	15.027
15. Evidence Preservation Order	15.030

16. Preliminary Injunction	15.032
17. Property Preservation Order	15.035
18. Protective Measures to Prevent Secondary Leakage in Lawsuits	15.036
19. Impact on Trade Secret Owner	15.037
20. Confidentiality Policy	15.038
21. Contractual Protection	15.040
22. Business Co-operations	15.044
23. Conclusion	15.045

**CHAPTER 16 OTHER INTELLECTUAL PROPERTY RIGHTS AND
RELATED AREAS OF LAW**

1. Overview	16.001
2. Copyright	16.005
2.1 Legal Framework	16.005
2.2 Scope of Application	16.007
2.2.1 Article 3 of the Copyright Law	16.007
2.2.2 Article 5 of the Copyright Law	16.009
2.2.3 Article 10 of Copyright Law	16.011
2.2.4 Clarification of the Rights of Co-authors	16.013
2.2.5 Extended Protection for Foreign Works	16.015
2.3 Term of Protection	16.017
2.4 International Conventions	16.020
2.5 Registration	16.022
2.6 Ownership	16.027
2.7 Infringement	16.030
2.7.1 Copyright Infringements under Article 47	16.031
2.7.2 Copyright Infringements under Article 48	16.032
2.8 Enforcement and Penalties	16.034
2.9 Administrative Authorities	16.040
2.10 Complementary Roles of the NCA and Administration for Industry and Commerce	16.042
2.11 Criminal Sanctions Against Copyright Infringement	16.044
2.11.1 Article 217 of the Criminal Code	16.045
3. Copyright Reform	16.056
4. Computer Software Rights	16.059
4.1 Legal Framework	16.059
4.2 Scope of application	16.060
4.3 Exclusive Rights	16.062
4.4 Term of Protection	16.065
4.5 Ownership	16.069
4.6 Registration	16.071
4.7 Fair Use	16.072

4.8 Infringement, Enforcement and Penalties	16.075
4.8.1 Reproduction	16.080
4.8.2 Distribution	16.081
4.8.3 End-user Liability	16.082
4.9 Administrative Enforcement	16.083
4.10 Internet	16.086
5. Patents	16.093
5.1 Legal Framework	16.093
5.2 Scope of Protection	16.097
5.3 Patentability	16.099
5.4 Ownership	16.105
5.5 First-to-File and first filing in China	16.109
5.6 Patent Agents	16.111
5.7 Application, Examination and Timing	16.112
5.7.1 Inventions and Utility Models	16.113
5.7.2 Designs	16.122
5.8 Re-examination	16.125
5.9 Invalidation	16.126
5.10 Design Patent and Trademark Protections	16.130
5.11 Compulsory Licensing	16.131
5.12 Parallel Imports	16.139
5.13 Infringement, Enforcement and Penalties	16.140
5.13.1 Commencement of Action	16.145
5.13.2 Defences and Exemptions	16.149
5.13.3 Damages	16.151
5.13.4 Preliminary Injunctions and Evidence Preservation	16.155
5.13.5 Limitation Period	16.160
5.13.6 Passing off of Patents	16.162
6. Enterprise Names	16.165
6.1 Enterprise Name Registration	16.165
6.2 Registration and Registrable Names	16.170
6.3 Infringement	16.172
6.4 Disputes Over Registration	16.173
6.5 Trademark Versus Enterprise Name	16.174
7. Unfair Competition	16.179
7.1 Definitions	16.179
7.2 Acts of Unfair Competition	16.181
7.2.1 Article 5 of the Anti-Unfair Competition Law	16.181
7.2.2 Articles 6 and 7 of the Anti-Unfair Competition Law	16.185
7.2.3 Article 8 of the Anti-Unfair Competition Law	16.188
7.2.4 Article 9 of the Anti-Unfair Competition Law	16.189
7.2.5 Article 11 of the Anti-Unfair Competition Law	16.190
7.2.6 Articles 12–15 of the Anti-Unfair Competition Law	16.191
7.3 Supervision and Examination	16.194
7.3.1 Supervision	16.194
7.3.2 Powers	16.195

7.4 Legal Liability 16.196

7.4.1 Article 20 of the Anti-Unfair Competition Law 16.196

7.4.2 Article 21 of the Anti-Unfair Competition Law 16.197

7.4.3 Article 22 of the Anti-Unfair Competition Law 16.199

7.4.4 Article 23 of the Anti-Unfair Competition Law 16.200

7.4.5 Article 24 of the Anti-Unfair Competition Law 16.201

7.4.6 Articles 25–28 of the Anti-Unfair Competition Law 16.202

7.4.7 Article 30 of the Anti-Unfair Competition Law 16.206

7.5 Reconsideration 16.207

8. Consumer and Product Quality Law 16.208

8.1 Overview 16.208

8.2 Civil Remedies 16.212

8.3 Penalties 16.220

8.4 Administrative Complaints 16.226

8.5 Three Guarantees 16.229

8.6 Products Quality (Compulsory Certification) 16.232

9. Advertising Law 16.235

9.1 Introduction 16.235

9.2 Marks in Television Advertisements and Programmes 16.236

9.3 Use of Registered Trademarks in Advertisements 16.237

9.4 Comparative Advertising 16.239

9.4.1 The Trademark Law 16.239

9.4.2 The Revised Advertising Law 16.240

9.4.3 Endorsements Subject to Tighter Regulation 16.243

9.4.4 More Stringent Controls on Advertisements for Specific Products 16.246

9.4.5 Prohibitions on Advertisements Targeting Minors 16.247

9.4.6 Definition of False Advertising Broadened with Hefty Sanctions 16.248

9.4.7 Civil liability 16.249

9.4.8 Administrative liability 16.251

9.4.9 Use of Superlatives Forbidden 16.256

9.4.10 More Restrictions on Advertising through the Internet 16.258

9.4.11 Increased Enforcement Powers of the AIC 16.261

9.4.12 Final Notes on the Revised Advertising Law 16.262

10. Customs Recordal of Intellectual Property Rights 16.263

10.1 Detainment of Trademark-Infringing Goods 16.263

10.2 How the Scheme Works 16.265

10.2.1 Recordal 16.266

10.2.2 Enforcement 16.267

CHAPTER 17 CONCLUSION

1.1 Overview 17.001

1.2 Localisation of Foreign Trademarks 17.002

1.3 Well-Known Trademarks: A Well-Known Issue 17.003

1.4 Administrative and Enforcement Networks 17.005

1.5 Future Challenges 17.007

Appendix A Trademark Law of the People’s Republic of China 349

Appendix B Implementing Regulations for the Trademark Law of the People’s Republic of China 367

Appendix C Trademark Licensing Contract Recordal Measures 389

Appendix D Regulations on the Recognition and Protection of Well-Known Trademarks 393

Appendix E The China Trademark Application Process 399

Appendix F 2015 Significant Cases of the Trademark Review and Adjudication Board (TRAB) 401

Appendix G Copyright Law of the People’s Republic of China 435

Appendix H Law of the People’s Republic of China against Unfair Competition 451

Appendix I 2016 Draft PRC Anti-Unfair Competition Law 461

Appendix J Interpretation of the Supreme Court on Some Issues Concerning the Application of Law in the Trial of Civil Cases of Unfair Competition 469

Appendix K China Internet Domain Name Regulations 475

Appendix L CNNIC CCTLD Dispute Resolution Policy 485

Index 489

Special Thank You List 511