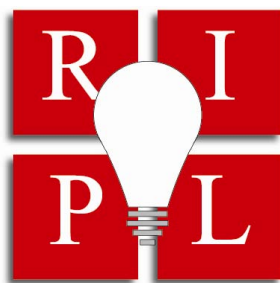


THE JOHN MARSHALL REVIEW OF INTELLECTUAL PROPERTY LAW



CHINESE NATIONAL WELL-KNOWN TRADEMARKS AND LOCAL FAMOUS TRADEMARKS IN LIGHT OF THE 2013 TRADEMARK LAW: STATUS, EFFECT, AND ADEQUACY

PAUL KOSSOF

ABSTRACT

Chinese national well-known trademarks (中国驰名商标) and local famous trademarks (本地著名商标) are two distinct unique intellectual property rights in the People's Republic of China ("PRC"). Intellectual property attorneys in the PRC, especially foreign consultants, often encounter challenges in understanding these trademark rights including various legislative, administrative, and judicial documents, differences between local regulations, and the general lack of information and translations. The third revision to the Trademark Law, which takes effect on May 1, 2014, will bring widespread domestic attention to this subject because the new law bans the use of national well-known trademarks on products, packaging, and advertising. The author believes this restriction will cause a shift toward the use of local famous trademark designations. In addition to explaining these trademark rights, this article also provides and compares translations of local regulations that are otherwise unavailable, reflects on how the 2013 Trademark Law will interact with local famous trademarks, and suggests improvements to the laws and regulations that affect national well-known trademarks and local famous trademarks.

Copyright © 2013 The John Marshall Law School



Cite as Paul Kossof, Chinese National Well-known Trademarks and Local Famous Trademarks in Light of the 2013 Trademark Law: Status, Effect, and Adequacy, 13 J. MARSHALL REV. INTEL. PROP. L. 225 (2013).

CHINESE NATIONAL WELL-KNOWN TRADEMARKS AND LOCAL FAMOUS
TRADEMARKS IN LIGHT OF THE 2013 TRADEMARK LAW: STATUS, EFFECT,
AND ADEQUACY

PAUL KOSSOF

INTRODUCTION	226
I. BACKGROUND.....	228
A. History of the Trademark Law and International Treaties.....	228
B. Trademark Registration and Protests Against Infringement and Trademark Office Actions.....	232
C. Domestic Well-Known Trademarks, the Trademark Review and Adjudication Board, and People’s Courts	234
D. Trademark Law Protections of Domestic Well-Known Trademarks.....	237
E. Domestic Trademarks and Local Governments.....	237
1. National People’s Congress Regulations	237
2. Government Orders.....	239
3. Normative Documents of Administrations of Industry and Commerce	240
II. ANALYSIS	241
A. Effect of International Treaties and the Trademark Law on Domestic Well-Known Trademarks.....	241
B. Lack of SAIC Regulations on Domestic Well-Known Trademarks.....	242
C. Differences between Local Government Regulations of Local Famous Trademarks	243
D. Effects of Local Government Regulations	244
III. PROPOSAL.....	246
A. Changes to Current National Guidelines.....	246
1. Trademark Law: Lack of Definitions	246
2. Trademark Office: Revisions for Local Guidelines	247
3. People’s Courts: Strengthening Court Protections	247
B. Proposed Changes to Local Regulations.....	248
1. Conformity	248
2. Restrictions of Cash Incentives	249
3. Deference to People’s Courts.....	249
CONCLUSION	249

CHINESE NATIONAL WELL-KNOWN TRADEMARKS AND LOCAL FAMOUS
TRADEMARKS IN LIGHT OF THE 2013 TRADEMARK LAW: STATUS, EFFECT,
AND ADEQUACY

PAUL KOSSOF*

INTRODUCTION

Wong Lo Kat Herbal Tea, a domestic well-known trademark in the People's Republic of China ("PRC"),¹ traces back 175 years to the Qing Dynasty.² Its red can with the symbols 王老吉 running down the side is widely recognized in the PRC and many other countries.³ Wong Lo Kat, along with many of the owners of other domestic well-known trademarks such as Huawei and Mao Tai, has encountered complex judicial proceedings arising out of trademark disputes.⁴

* © Paul Kossow 2013. JD Candidate, May 2014, The John Marshall Law School; International Business and Trade LLM Candidate, Dec. 2014, The John Marshall Law School. I focus on Chinese law, specifically intellectual property and business law, and anti-corruption compliance. I would like to thank George Chan, Rachel Tan, and August Zhang from Rouse & Co. for their guidance and advice. I would also like to thank The John Marshall Review of Intellectual Property Law for its assistance throughout the creation of this article.

¹ *Search Results From Query on Term "Wanglaoji,"* TRADEMARK OFF. ST. ADMIN. INDUS. & COM. P.R.C. (last visited Sept. 5, 2013) (on file with author); IP Channel, *Wong Lo Kat Trademark Battle Updated*, PEOPLE'S DAILY ONLINE (Apr. 15, 2011, 2:42 PM), <http://ip.people.com.cn/GB/152255/14508160.html>.

² *From Millions to Billions: Wong Lo Kat Herbal Tea in China*, ACHIEVE MKTG. CONSULTATION LTD., <http://www.chengmei-trout.com/en/achieve-4.asp> (last visited Oct. 4, 2013).

³ *See id.*

⁴ *See* TRADEMARK OFFICE/TRADEMARK REVIEW & ADJUDICATION BD. OF THE STATE ADMIN. FOR INDUS. & COMMERCE, ANNUAL DEVELOPMENT REPORT ON CHINA'S TRADEMARK STRATEGY 2011, 45 (2011), available at <http://www.saic.gov.cn/zwgk/ndbg/201205/P020120507585844728024.pdf> [hereinafter ANNUAL REPORT] (reporting that local AICs approved or declared 7,641 famous trademarks, bringing the number of the PRC's valid famous trademarks to 32,893). The State Administration for Industry & Commerce (SAIC) determined 396 well-known trademarks in May 2011, and determined 478 in November 2011. *Id.* The Trademark Review and Adjudication Board (TRAB) vigorously enforced domestic well-known trademarks in 2011. *Id.*; *Search Results From Query on Term 'Huawei,'* TRADEMARK OFF. ST. ADMIN. INDUS. & COM. P.R.C. (last visited Sept. 5, 2013) (on file with author); *Search Results From Query on Term 'Mao Tai,'* TRADEMARK OFF. ST. ADMIN. INDUS. & COM. P.R.C. (last visited Sept. 5, 2013) (on file with author); *see also Trademark Infringement Continues Despite Crackdown*, CHINA DAILY (July 29, 2011, 10:50:37 AM), http://www.chinaipr.gov.cn/newsarticle/news/government/201107/1241989_1.html (asserting that Huawei is the world's second-largest telecom solution provider, and has faced preregistration issues in Africa); *Moutai Sues an Upscale Restaurant for Selling Counterfeit Liquor*, UNITALEN, <http://www.unitalen.com/html/report/38387-1.htm> (last visited Oct. 4, 2013) (reporting that Kweichow Moutai Co., Ltd., the owner of the Mao Tai trademark, sued an upscale restaurant in Beijing for the sale of counterfeit Mao Tai, and Moutai recovered 120,000 RMB (approximately \$19,600) in damages); Shaoxing Xingji Jiudian Mai Jiaomaotai Shean Jine Gaoda 20 Duoyi (绍兴星级酒店卖假茅台涉案金额高达20多亿) [Shaoxing Luxury Hotel Sold Fake Mao Tai Worth Over Two Billion RMB], MZSITES.COM (Mar. 30, 2011, 12:00 AM), <http://www.mzsites.com/content/shaoxing-maotai-selling-fake-star-hotel-involving-billion.html> (reporting on the sales of counterfeit Mao Tai in hotels located in Zhejiang province).

The PRC has exhibited great deference to domestic well-known trademarks throughout the registration process,⁵ trademark enforcement,⁶ and judicial proceedings.⁷ Its protections of domestic well-known trademarks are unique from those of many other countries.⁸

Recent developments for Wong Lo Kat are not related to its rich history. The Wong Lo Kat trademark was the subject of a heated dispute between its original owner and a company with limited rights to the Wong Lo Kat trademark.⁹ The companies sought arbitration outside of the original owner's province, which resulted in a determination by the China International Economic and Trade Arbitration Commission ("CIETAC") that the original owner had exclusive rights to Wong Lo Kat.¹⁰ The Beijing First Intermediate People's Court rejected the appeal of the CIETAC's ruling.¹¹ This case has received widespread attention from IP practitioners in the PRC because the Wong Lo Kat trademark rights returned to the original owner even though the other company created the mark's reputation.¹² Chinese practitioners have referred to the Wong Lo Kat mark as the other company's "child," and many believe that the other company should have exclusive rights to the mark.¹³

The Wong Lo Kat trademark dispute is one of many disputes that have influenced how the PRC reevaluates and increases the importance of the domestic well-known trademark class in determinations made by the Trademark Review and Adjudication Board ("TRAB").¹⁴ People's courts also have the power to establish

⁵ See ANNUAL REPORT, *supra* note 4, at 37.

⁶ *Id.* at 46.

⁷ See, e.g., Interpretations of the Supreme People's Court Concerning the Application of Laws in the Trial of Cases of Civil Disputes Arising from Trademarks (promulgated by the Supreme People's Court, Oct. 12, 2002, effective Oct. 16, 2002), art. 2 (China) [hereinafter SPC Interpretations].

⁸ See Grace Li, *Well-Known Trademark Protection in China*, CHINA INTELL. PROP. MAG. (Dec. 2006), <http://www.chinaipmagazine.com/en/journal-show.asp?id=380> (writing that in countries other than the PRC, the courts identify well-known trademarks on a case-by-case basis). The PRC allows the China Trademark Office (CTMO), the TRAB, and people's courts to identify domestic well-known trademarks. *Id.*

⁹ Wang Xinyuan, *Wang Lo Kat Dispute Ends*, GLOBAL TIMES (July 17, 2012, 12:25 AM), <http://www.globaltimes.cn/content/721476.shtml> (explaining that the original trademark owner, Guangzhou Pharmaceutical, initially granted limited Wong Lo Kat trademark rights to JDP Group, later determined that the rights had expired, and the China International Economic and Trade Arbitration Commission (CIETAC) determined that Guangzhou Pharmaceutical has exclusive rights to Wong Lo Kat); Qin Dexing *Tea Wars*, GLOBAL TIMES (Aug. 30, 2012, 10:43 AM), <http://www.ecns.cn/business/2012/08-30/24167.shtml> (showing that JDB Group claimed to have invested thirty billion RMB into marketing Wong Lo Kat, Guangzhou Pharmaceutical signed new production agreements with other companies, and large supermarkets such as Wal-Mart sell Wong Lo Kat).

¹⁰ Xinyuan, *supra* note 9.

¹¹ *Id.*

¹² Chen Jiyong & Xie Ying, *Tea Thieves?*, NEWS CHINA MAG. (Nov. 2012), <http://www.newschinamag.com/magazine/tea-thieves>.

¹³ *Id.*

¹⁴ See ANNUAL REPORT, *supra* note 4, at 26–32 (providing a detailed table of the regulations and guidelines that dictate domestic well-known trademarks which constitute orders from the National People's Congress (NPC), provincial orders, and the normative documents originating from local AICs).

domestic well-known trademarks.¹⁵ Each province, centrally administered municipality, and autonomous region has issued its own guidelines for local famous trademarks.¹⁶

On August 30, 2013, the PRC promulgated its new Trademark Law which bans the use of the “China Well-known Trademark” (中国驰名商标) designation in labeling and advertising.¹⁷ Chinese companies that hold national well-known trademarks will be required to phase out their current labeling and to change business practices revolving around the promotion of their trademarks as well-known. The author anticipates that these companies will pursue alternatives such as the use of local famous trademark (本地著名商标) status on labels, packaging, and promotions, and that this will substantially change how these companies interact with local famous trademarks.

Section I of this article begins by providing the history of the PRC’s Trademark Law (“Trademark Law”) that relates to domestic well-known trademarks, exploring associated government agencies, and illustrating the related articles in the current Trademark Law. Section II shows that current regulations do not adequately address the consequences of local protectionism by analyzing how the PRC has dealt with well-known and famous trademarks, including its legislative orders, department guidelines, and judicial interpretations. Finally, Section III proposes specific reforms on both national and local levels that would improve the balance between domestic well-known trademark protection and the general enforcement of trademarks.

I. BACKGROUND

This section begins with the history of Chinese well-known trademarks and then provides an explanation of the interrelated laws and institutions. Part A portrays the history and international treaties that are relevant to well-known trademarks in the PRC. Part B illustrates trademark registrations and protests related to trademarks. Part C explains how domestic well-known and famous trademarks interact with the TRAB and people’s courts. Part D provides the connection between the Trademark Law and well-known trademarks. Part E presents an example of each type of government regulation on provincial famous trademarks.

A. History of the Trademark Law and International Treaties

Recognition of internationally well-known trademarks in the PRC began in 1985 with its accession to the Paris Convention for the Protection of Industrial Property

¹⁵ *Id.*

¹⁶ *See id.* The term “centrally administered municipality” (直辖市) refers to cities that have both municipal and provincial powers, and the PRC has four centrally administered municipalities which are Beijing, Chongqing, Tianjin, and Shanghai. Paul Kossof, *Business Franchise Compliance in Mainland China*, 2 J. TRANSNAT’L LEGAL ISSUES 131, 140 n.66 (2013).

¹⁷ Xinhua, *China Passes New Trademark Law*, CHINA DAILY EUROPE (Aug. 30, 2013, 2:07 PM), http://europe.chinadaily.com.cn/business/2013-08/30/content_16932795.htm.

(“Paris Convention”).¹⁸ The Paris Convention provided the PRC with its first international guidelines for the protection of well-known trademarks.¹⁹

In 1996, the PRC entered into another treaty for the regulation of international trademarks called the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS”).²⁰ TRIPS requires member countries to provide a reasonable opportunity for the cancellation of a registration,²¹ and to also provide relief when a

¹⁸ WIPO, *Accession by the People’s Republic of China*, Paris Notification No. 114 (Dec. 19, 1984).

¹⁹ See Xia Yu, *China and Well-Known Trademark Protection*, MMLC GROUP (Dec. 13, 2011), <http://www.hg.org/article.asp?id=24264> (stating that “China joined the Paris Convention and TRIPS on March 19, 1985 and December 11, 2001 respectively. In order to fulfill its international obligation and to promote the development of its own economy and prosperity, it has established a protection system of well-known marks.”); Paris Convention for the Protection of Industrial Property, Mar. 20, 1883, as last revised at Stockholm on July 14, 1967, 21 U.S.T. 1629, art. 6bis [hereinafter Paris Convention]:

- (1) The countries of the Union undertake, ex officio if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration, and to prohibit the use, of a trademark which constitutes a reproduction, an imitation, or a translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well known in that country as being already the mark of a person entitled to the benefits of this Convention and used for identical or similar goods. These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion therewith.
- (2) A period of at least five years from the date of registration shall be allowed for requesting the cancellation of such a mark. The countries of the Union may provide for a period within which the prohibition of use must be requested.
- (3) No time limit shall be fixed for requesting the cancellation or the prohibition of the use of marks registered or used in bad faith.

Id.

²⁰ Edward Eugene Lehman et al., *Well-Known Trademark Protection in the People’s Republic of China—Evolution of the System*, 26 FORDHAM INT’L L.J. 257, 258 (2003) (reporting that China signed the Paris Convention in 1985 and joined TRIPS in 1996); Agreement on Trade-Related Aspects of Intellectual Property Rights, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, Legal Instruments—Results of the Uruguay Round, arts. 15–16, Apr. 15, 1994, 33 I.L.M. 1125, 1869 U.N.T.S. 299 [hereinafter TRIPS].

Members shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, Members may afford an opportunity for the registration of a trademark to be opposed. . . . Article 6bis of the Paris Convention (1967) shall apply, *mutatis mutandis*, to services. In determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark.

Id.

²¹ TRIPS, *supra* note 20, arts. 15–16.

trademark registration is likely to cause damage to a pre-existing trademark because of the connection between the two marks.²²

In 2003, the State Administration for Industry and Commerce (“SAIC”) issued the Provisions for the Determination and Protection of Well-known Trademarks (“Determination and Protection Provisions”) which govern the Trademark Office of the State Administration for Industry & Commerce (“CTMO”) and local administrations for industry and commerce (“AICs”).²³ These provisions offer explicit protection for well-known trademarks,²⁴ inform applicants how to register for well-known trademarks,²⁵ and refer to the Trademark Law when determining violations of well-known trademarks.²⁶ The Determination and Protection Provisions also provide the extent to which the domestic well-known trademark status protects a trademark.²⁷

Protection for domestic well-known trademarks extends beyond governmental agency regulations into judicial guidelines.²⁸ The Supreme People’s Court (“SPC”)

²² *Id.*

²³ *See* Determination and Protection Provisions (promulgated by the State Admin. for Indus. & Commerce, Apr. 17, 2003, effective June 1, 2003) (China).

²⁴ *Id.* art. 5 (providing that if an involved party thinks there is a violation of Article 13 of the Trademark Law, it may apply to the local AIC, and plead the local AIC to ban the use of the trademark). At the same time, it must submit relevant materials to show that the trademark is well-known, and must report the application to the provincial AIC. *Id.*

²⁵ *Id.* art. 3 (illustrating that the applicant for a well-known trademark may provide the following as certification materials: relevant materials showing the extent of knowledge of the trademark by the relevant general public; relevant materials showing the duration of the trademark; relevant materials showing the duration, extent, and geographic scope of any publicity work; relevant materials showing that this trademark has been protected as a famous trademark either in China or in other countries; other evidential materials including evidence of the output of the last three years, sales revenue, profit and taxes, and sales territory of the principal commodities that use the trademark).

²⁶ Trademark Law of the People’s Republic of China (2001 Amendment) (promulgated by the Standing Comm. Ninth Nat’l People’s Cong., Aug. 23, 1982), art. 13 [hereinafter 2001 PRC Trademark Amendment];

If a trademark, for which an application for registration is filed, of the same or similar commodity is the copy, imitation or translation of a well-known trademark of others which hasn’t been registered in China, and is likely to cause confusion, it shall not be registered and shall be prohibited from use. If a trademark, for which an application for registration is filed, of a different or dissimilar commodity is the copy, imitation or translation of a well-known trademark of others which has been registered in China, and misleads the public and leads to possible damage to the interests of the registrant of that well-known trademark, it shall not be registered and shall be prohibited from use.

Id.

²⁷ Determination and Protection Provisions, *supra* note 23, art. 11 (providing that when protecting a well-known trademark, the trademark office, Trademark Review and Adjudication Board, and local administrative department of industry and commerce shall take the distinction and level of fame of the trademark into consideration).

²⁸ *See* Interpretation Concerning Trademark Disputes (promulgated by the Supreme People’s Court, Oct. 12, 2002, effective Oct. 16, 2002), art. 22 (China) [hereinafter Dispute Interpretation] (stating that for trademark disputes in the people’s courts, people’s courts may decide whether the registered mark in dispute is a well-known trademark); Interpretation of the Supreme People’s Court on the Application of Laws in the Trial of Civil Disputes Over Domain Names of Computer

promulgated the Interpretation of the SPC Concerning the Application of Laws in the Trial of Cases of Civil Disputes Arising from Trademarks (“Interpretation Concerning Trademark Disputes”) only a few months before the Standing Committee,²⁹ which created the original Trademark Law,³⁰ founded the SAIC and the issuance of the Determination and Protection Provisions.³¹ These guidelines inform the judiciary how to evaluate domestic well-known trademarks.³²

The PRC founded the SAIC in 1978 in order to supervise and regulate the market through administrative means, including the registration and protection of trademarks,³³ and instituted the Trademark Law four years later.³⁴ The Trademark Law established the CTMO,³⁵ and provided nationwide guidelines for trademark registration and enforcement.³⁶ The PRC proposed revisions to the Trademark Law in 2011,³⁷ which marked twenty-six years since the PRC entered the Paris

Networks (promulgated by the Supreme People’s Court, July 17, 2001, effective July, 24, 2001) (China); Yun Zhao, *Reflection on the Finality of Panel’s Decisions in Domain Name Dispute Resolution Process, with Reference to China’s Practice*, 26 J. MARSHALL J. COMPUTER & INFO. L. 395, 402 (2009).

²⁹ The Standing Committee is a committee under the Central Committee of the Communist Party of China and is the PRC’s highest legislative body. See *Functions and Powers of the Standing Committee*, NAT’L PEOPLE’S CONG., http://www.npc.gov.cn/englishnpc/Organization/2007-11/15/content_1373018.htm (last visited Oct. 4, 2013) (showing that the Standing Committee is a committee under the Central Committee of the Communist Party of China and is the PRC’s highest legislative body).

³⁰ See Li Mingde, *The Establishment and Development of the Intellectual Property System in China*, INST. INT’L LAW CHINESE ACAD. SOC. SCI., <http://www.iolaw.org.cn/global/EN/showNews.asp?id=26404> (last visited Sept. 6, 2013) (writing that in 1950, the Provisional Regulations on Trademark Registration laid the foundation of the PRC’s trademark system); GUO SHOUKANG & HUANG HUI, *CHINA TRADEMARK LAWS & CASES: A SUMMARY OF THE TRADEMARK SYSTEM AND COMMENTS AND ANALYSIS OF TRADEMARK AND UNFAIR COMPETITION CASES IN CHINA* 10 (2010) (explaining the State Council’s decision regarding trademark registration as well as showing that the Regulations Governing Trademarks issued by the State Council in 1963 confirmed the universal registration principle and simplified the procedure for the examination of trademark registration applications). The Standing Committee amended the Trademark Law in 1993 and implemented further amendments in 2001. *Id.* at 11. Originally, the Trademark Law required a domestic applicant (defined as domestic companies, institutions, and industrial and commercial households) to apply with the local county AIC and, after a preliminary examination, the county AIC would submit the application to the provincial AIC for review. *Id.* at 30. Under the 1993 revision, applicants could file directly to the CTMO or through a trademark agency recognized by the SAIC. *Id.* at 10. The 2001 amendment enacted several changes such as the creation of joint ownership for trademarks and the expansion of the scope of trademarks. *Id.* at 11.

³¹ See *Dispute Interpretation*, *supra* note 28.

³² See *id.* arts. 1–2, 22.

³³ *About Us*, CHINESE TRADEMARK OFF., http://www.saic.gov.cn/sbjenglish/zjzg1_1/sbjjj/ (last visited Oct. 4, 2013); *Mission*, ST. ADMIN. INDUS. & COM. P.R.C., <http://www.saic.gov.cn/english/aboutus/Mission/index.html> (last visited Oct. 4, 2013).

³⁴ *About Us*, CHINESE TRADEMARK OFF., *supra* note 33.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Draft of the Chinese Trademark Law Third Amendment Released for Public Comment*, FOLEY & LARDNER LLP (Sept. 14, 2011), <http://www.foley.com/intelligence/detail.aspx?int=7841> (reporting that the Chinese State Council’s Legislative Affairs Office released the draft of the third amendment to the Trademark Law on Sept. 2, 2011).

Convention in 1985.³⁸ The third revision to the Trademark Law was promulgated on August 30, 2013 and will take effect on May 1, 2014.³⁹

Article 6bis of the Paris Convention provides that a member country will refuse or cancel the registration of, and prohibit the use of, a trademark that is a reproduction, imitation, or translation of a well-known mark.⁴⁰ It also establishes that there shall be no time limit for requests for the cancellation or prohibition of bad faith registrations.⁴¹ The Paris Convention grants additional rights to well-known trademarks in order to protect well-known trademarks from the registration of other marks.⁴² Well-known trademarks are also protected by TRIPS,⁴³ which extends the protection of well-known trademarks provided by Article 6bis of the Paris Convention to services.⁴⁴ It also clarifies the term “well-known” through factors including the extent of the public’s knowledge of the trademark and whether that knowledge resulted from the promotion of the trademark.⁴⁵ Although the Paris Convention and TRIPS influence legislation, they also affect the government agencies associated with trademarks.

B. Trademark Registration and Protests Against Infringement and Trademark Office Actions

The government agencies that oversee intellectual property are the State Intellectual Property Office (“SIPO”) for patents, the CTMO for trademarks, and the National Copyright Administration (“NCAC”) for copyrights.⁴⁶ Trademark applicants must submit their applications to the CTMO which handles the various functions

³⁸ Jing Luo & Shubha Ghosh, *Protection and Enforcement of Well-Known Mark Rights in China: History, Theory and Future*, 7 NW. J. TECH. & INTELL. PROP. 119, at *19 (2009).

³⁹ *China Passes New Trademark Law*, ASESORES LEGALES EN PROPIEDAD INDUSTRIAL (ALPI), <http://alpilaw.com/blog/2013/09/03/china-passes-new-trademark-law/> (last visited Oct. 4, 2013) (listing changes to the PRC’s trademark laws); Zhang Zhao, *After Three Reviews and Two Years, a New Trademark Law*, CHINA DAILY USA, (last updated Sept. 4, 2013, 07:45 AM), http://usa.chinadaily.com.cn/epaper/2013-09/04/content_16943622.htm (explaining that new PRC Trademark Law will take effect on May 1, 2014).

⁴⁰ See Paris Convention, *supra* note 19, art. 6bis.

⁴¹ *Id.*

⁴² *Id.* (asserting that well-known trademarks have extensive rights when compared to regular trademarks); Lisa P. Ramsey, *Free Speech and International Obligations to Protect Trademarks*, 35 YALE J. INT’L L 405, 430 (2010) (explaining that Article 6bis is meant to provide the owners of unregistered but well-known trademarks with a measure of protection against later registrations).

⁴³ Ramsey, *supra* note 42, at 429.

⁴⁴ See TRIPS, *supra* note 20, art 16(2) (extending protection for unregistered well-known trademarks to service marks); Ramsey, *supra* note 42, at 430.

⁴⁵ TRIPS, *supra* note 20, art. 16.

⁴⁶ See *Protecting Your Intellectual Property Rights (IPR) in China: A Practical Guide for U.S. Companies*, U.S. DEP’T OF COMMERCE, INT’L TRADE COMM’N (Jan. 2003), <http://www.mac.doc.gov/china/docs/businessguides/intellectualpropertyrights.htm>; ST. INTELLECTUAL PROP. OFF. P.R.C., <http://www.sipo.gov.cn/> (last visited Sept. 5, 2013); ST. ADMIN. INDUS. & COM. P.R.C., <http://www.saic.gov.cn/> (last visited Oct. 4, 2013); TRADEMARK OFF. ST. ADMIN. INDUS. & COM. P.R.C., <http://sbj.saic.gov.cn/> (last visited Oct. 4, 2013); National Copyright Administration of the People’s Republic of China, <http://www.ncac.gov.cn/> (last visited Oct. 5, 2013).

associated with trademarks.⁴⁷ The CTMO prohibits the registration of a trademark if it determines that an application is for a copy, imitation, or translation of a well-known trademark.⁴⁸ The CTMO will approve a trademark application if it passes substantive evaluation, unless a third party files an opposition, in which case the trademark examiner hands the application to the TRAB for deliberation.⁴⁹

The TRAB may grant the review of six distinct trademark issues⁵⁰ including the appeal of a refusal, adjudication or cancellation.⁵¹ TRAB procedures clearly indicate what information to include in TRAB determination applications,⁵² the requirements necessary before a party may apply to the TRAB,⁵³ and the procedures that guide the TRAB's determinations.⁵⁴ Local AICs can also hear protests regarding trademark infringement.⁵⁵

The Determination and Protection Provisions include detailed instructions for protesting trademark infringement with local AICs.⁵⁶ Trademark owners may apply

⁴⁷ *Online Application*, CHINESE TRADEMARK OFF., http://www.saic.gov.cn/sbjEnglish/wssq_1/ (last visited Oct. 5, 2013); *About Us*, CHINESE TRADEMARK OFF., *supra* note 33 (explaining that the trademark office is composed of twenty-four divisions and is in charge of trademark registration and administration, and performs the following functions: registering and administering trademarks; protecting trademark rights and handling trademark infringement and counterfeiting cases; handling trademark disputes; strengthening the recognition and protection of well-known trademarks; registering, recording and protecting special signs and official signs; researching, analyzing and releasing trademark registration information; providing information for government decision-making and to the public).

⁴⁸ 2001 PRC Trademark Amendment, *supra* note 26 art. 13.

⁴⁹ See *Registration Flow Chart*, CHINESE TRADEMARK OFF., http://www.saic.gov.cn/sbjEnglish/sbsq_1/zclct/ (last visited Oct. 5, 2013) (showing that after the Trademark Office accepts the application, the trademark application undergoes a formality check to verify whether the application conforms to relevant requirements). If it does not conform, then it is either refused or the applicant is allowed to make changes to the application. *Id.* If it does conform then the Trademark Office will examine the trademark application. *Id.*

⁵⁰ See *The Procedures the Trademark Review and Adjudication Board Accept and Hear Trademark Reexamination Case*, MINISTRY COM. PRC, art.1 (July 23, 2009 2:37 PM), http://www.chinaipr.gov.cn/guidestradecarticle/guides/agtrademark/cpguidance/200907/284900_1.html (illustrating that the TRAB will review a trademark issue if the party is dissatisfied with the Trademark Office's refusal of an application: during trademark registration; for the assignment of a registered trademark; for the renewal of a registered trademark; or if the party is dissatisfied with the Trademark Office's opposition adjudication, cancellation of a registered mark, or improper registration of a mark).

⁵¹ *Id.* art. 2; 2001 PRC Trademark Amendment, *supra* note 26 art. 33 ("Where an opposition is filed against a trademark published after preliminary examination, the Trademark Office shall hear the facts and grounds submitted by the opposer and the opposed and shall make a decision after investigation and verification."). Where a party is dissatisfied with the decision, it may, within 15 days from the receipt of notification, apply in writing to the Trademark Review and Adjudication Board for a review. *Id.* The Trademark Review and Adjudication Board shall rule on the case and shall notify both the opposer and the applicant in writing accordingly. *Id.* The TRAB may extend the time period to thirty days if it determines that there are special circumstances. *Id.*

⁵² See *Rules for Trademark Review and Adjudication* (2002) (promulgated by the State Admin. for Indus. & Commerce, Sept. 17, 2002, effective Oct. 17, 2002), art. 18 (China) [hereinafter *Trademark Review Rules*].

⁵³ See *id.* art. 16.

⁵⁴ See *generally id.* (listing the requirements for applications to the TRAB such as conformity to the statute of limitations and the submission of relevant evidence).

⁵⁵ *Id.* arts. 5–8.

⁵⁶ *Id.*

to the local AIC that oversees the area where the infringement originates.⁵⁷ It will then determine whether there has been a violation of the Trademark Law, and, if it concludes that there has been a violation, will send the dispute to the provincial AIC which then forwards it to the CTMO.⁵⁸ The CTMO then makes a determination and sends its ruling to the local AIC and the provincial AIC.⁵⁹

These regulations further state that “administrative departments of industry and commerce of all levels shall strengthen the protection of famous trademarks,”⁶⁰ and that AICs must submit cases of counterfeit trademarks to relevant departments in a timely fashion.⁶¹ These regulations also state that all AICs must create a supervision system for well-known trademarks.⁶²

C. Domestic Well-Known Trademarks, the Trademark Review and Adjudication Board, and People’s Courts

In 2009, the SAIC issued the Working Instructions of the State Administration for Industry and Commerce for the Determination of Famous Trademarks (“Working

⁵⁷ Trademark Review Rules, *supra* note 52 art. 5.

⁵⁸ Determination and Protection Provisions, *supra* note 23, art. 6. The article provides:

Having received an application for the protection of a famous trademark in the administration of marks, the administrative department for industry and commerce shall examine whether the case falls within the following circumstances as provided in Article 13 of the Trademark Law:

1. Where a well-known trademark that hasn’t been registered in China is used on identical or similar commodities of others without permission, and it is likely to cause confusion;
2. Where a trademark identical or similar to a well-known trademark that has been registered in China is used on the different or dissimilar commodities without permission, and it is likely to mislead the public and to cause damages to the interests of the registrant of the well-known trademark.

As to a case of either of the above-mentioned circumstances, the administrative department at the city (prefecture, region) level shall submit the complete set of materials of this case to the administrative department of this province (autonomous region, municipality directly under the Central Government) within 15 days as of the acceptance of the application, and shall issue a case acceptance notice to the parties involved. Within 15 days as of the acceptance of the application, the administrative department of this province (autonomous region, municipality directly under the Central Government) shall submit the complete set of materials of this case to the trademark office.

Id. (translated from original).

⁵⁹ *Id.* art. 8 (stating that after deciding whether a trademark is well-known, the Trademark Office will inform the provincial AIC of where the case originates and send a copy to the provincial AICs of where the parties are located).

⁶⁰ *Id.* art. 14.

⁶¹ *See id.*

⁶² *See* Determination and Protection Provisions, *supra* note 23 art. 16.

Instructions”) in order to “regulate the determination of famous trademarks”⁶³ and ensure “procedural compliance and legality of the determination of famous trademarks.”⁶⁴ The Working Instructions also explain the policies behind the establishment of domestic well-known trademarks,⁶⁵ and specify how the TRAB determines a domestic well-known trademark.⁶⁶

The number of well-known trademarks in the PRC is rising rapidly. The SAIC and the TRAB have issued well over 1600 domestic well-known trademarks,⁶⁷ 500 of which were determined between May and November of 2011.⁶⁸ Specific information on the PRC’s domestic well-known trademarks can be found on the SAIC website.⁶⁹

People’s courts may review trademark issues and determine domestic well-known trademarks regardless of whether the issue originates from a TRAB

⁶³ See Notice of the State Administration for Industry and Commerce on Issuing the Working Instructions of the State Administration for Industry and Commerce for the Determination of Famous Trademarks (2009) (promulgated by the State Admin. for Indus. & Commerce, Apr. 21, 2009, effective Apr. 21, 2009), art. 1 (China) [hereinafter Notice of SAIC Working Instructions].

⁶⁴ *Id.*

⁶⁵ See *id.* art. 3 (providing that the purpose of well-known trademark recognition is to guide enterprises in implementing trademark strategies, “enrich[] the meanings of trademarks, attach[] importance to the innovation and protection of trademarks as intellectual property,” create superior enterprises that own independent intellectual property rights, promote well-known brands with stronger international competitiveness, develop enterprises, the “economy and society, and boost the building of an innovative country”).

⁶⁶ *Id.* art. 17 (explaining that the TRAB first forms a collegial panel of three or more trademark examiners); *Id.* art. 7 (explaining that the TRAB will consider the factors in Article 14 of the Trademark Law during the determination of well-known trademarks, but a well-known trademark does not have to meet all of the factors in Article 14). If the panel decides that the applicant has basically met the factors, it then submits the information to a vice-chairman. *Id.* He or she then passes it on to the chairman of the TRAB for approval. *Id.* Lastly, the chairman submits it to the executive meeting, and the executive meeting deliberates and issues its ruling. *Id.* art. 18. It also submits an opinion to the Famous Trademark Determination Board for deliberation. *Id.* art. 22. The SAIC Famous Trademark Determination board is comprised of the director, chairman, deputy directors, vice-chairmen, inspectors and associate inspectors of the CTMO and the TRAB, and the chief members are the director and chairman of the CTMO and the TRAB. *Id.* art. 5. The board is responsible for accepting, organizing, and examining the application materials for the determination of well-known trademarks. *Id.* art. 6. If the Famous Trademark Determination Board finds that the trademark is a domestic well-known trademark, it publishes the trademark as a well-known trademark. *Id.* art. 24.

⁶⁷ See Bonnie So, *Time-honoured Brands: Tradition, Time and Trademarks and the Difficulties of Their Intellectual Property Rights Protection in the Modern Chinese Legal System*, GLOBE-LAW 2 (2012), <http://www.globe-law.com/uploads/Time%20Honoured%20Brands--BonnieSo.pdf> (reporting that the PRC recognizes around 1600 famous brands); Yi Zhou, *Legal Protection of Well-known Trademarks in China*, RAYYIN & PARTNERS P.R.C. LAW. (Mar. 2011), http://www.rayyinlawyer.com/publications/publications_110.aspx?typeid=11 ; SAIC Determines 296 New Well-Known Marks, CHINA REPORT: INTELL. PROP., <http://www.cipnews.com.cn/showArticle.asp?Articleid=17422> (last visited Oct. 5, 2013).

⁶⁸ See *Trade Mark: China Recognises Record Number of Well-Known Marks*, MANAGING INTELL. PROP. (Jan. 26, 2012) <http://www.managingip.com/Article/2968039/Trade-mark-China-recognises-record-number-of-well-known-marks.html> (illustrating that the PRC recognized 478 well-known trademarks between May and November of 2011). This exhibits a rapid increase from previous years. *Id.*

⁶⁹ See *Well-known Trademarks*, CHINESE TRADEMARK OFF., http://www.saic.gov.cn/sbjenglish/cmsb_1/ (last visited Oct. 5, 2013).

decision.⁷⁰ If a party is dissatisfied with a TRAB decision, it may challenge the decision in the Beijing First Intermediate People's Court.⁷¹

The Beijing First Intermediate People's Court may re-determine an issue decided by the TRAB if it finds that there was: "a. inadequacy of essential evidence; b. erroneous application of the law or regulations; c. violation of legal procedure; d. [the TRAB] exceed[ed its] authority; or e. [the TRAB] abuse[d its] . . . powers."⁷² If one of these issues arises, the people's court will uphold the TRAB decision, cancel the decision, and order the TRAB to make a new decision, or uphold part of the decision.⁷³

A party that chooses to appeal a decision of the Beijing First Intermediate People's Court may file an appeal with the Beijing High People's Court.⁷⁴ A decision made by the Beijing High People's Court is almost always final, although the SPC has examined cases originating from TRAB determinations.⁷⁵

The Interpretation Concerning Trademark Disputes provides that damages may arise out of the copying, imitating, or translating of a registered well-known trademark.⁷⁶ It states that the infringing party of a well-known trademark incurs the civil liability of stopping the infringement.⁷⁷ It further states that a people's court will use the factors in Article 14 of the Trademark Law when determining a well-known trademark.⁷⁸

The interpretation also states that in the hearing of cases involving trademark disputes, the people's court may, according to the request of the parties concerned and the particular "situations of the cases concerned, decide by law whether the registered trademark involved is a well-known one or not."⁷⁹ It is unclear whether the "particular situations" in this article exclusively apply to cases where the people's court could only protect the trademark if it is well-known.⁸⁰

⁷⁰ Dispute Interpretation, *supra* note 28, art. 22.

⁷¹ Grace Li & George Chan, *Suing the Trademark Review and Adjudication Board*, MANAGING INTEL. PROP. (Apr. 1, 2008), <http://www.managingip.com/Article/1915267/Suing-the-Trademark-Review-and-Adjudication-Board.html>; *Registration Flow Chart*, *supra* note 49 (showing that a dissatisfied decision with a TRAB decision leads to the Beijing First Intermediate People's Court); 2001 PRC Trademark Amendment, *supra* note 26, art. 32 (explaining that an applicant that is dissatisfied with a TRAB decision may appeal to a people's court within thirty days after receiving notification); Administrative Procedure Law of the People's Republic of China (1990) (promulgated by the Nat'l People's Cong., Apr. 4, 1989, effective Oct. 1, 1990), art. 39 [hereinafter PRC Procedure] (stating that the statute of limitations for lawsuits arising out of administrative acts is three months and begins with notice, except otherwise provided by law).

⁷² PRC Procedure, *supra* note 71, art. 54.

⁷³ Li & Chan, *supra* note 71; *see also* PRC Procedure, *supra* note 71, art. 39.

⁷⁴ *See Registration Flow Chart*, *supra* note 49 (showing that the appeal process of a decision made by the Beijing First Intermediate People's Court leads to the Beijing High People's Court); Li & Chan, *supra* note 71; PRC Procedure, *supra* note 71 art. 58; Han Yuanyuan, *Court Actions for Intellectual Property Infringement in China*, MMLC GROUP (Nov. 28, 2011), <http://www.hg.org/article.asp?id=24094>.

⁷⁵ *See* Li & Chan, *supra* note 71; Han, *supra* note 74.

⁷⁶ *See* SPC Interpretations, *supra* note 7, art. 1.

⁷⁷ *Id.* art. 2.

⁷⁸ *See id.* art. 22.

⁷⁹ *Id.*

⁸⁰ Xia Yu, *supra* note 19 (explaining that according to a speech made by Jiang Zhipei, who was an SPC chief judge at the time, "particular situations" refers to instances when a people's court can only protect a trademark after determining that the mark is well-known).

D. Trademark Law Protections of Domestic Well-Known Trademarks

The Trademark Law prevents trademark registration if the application is for a copy, imitation, or translation of a domestic well-known trademark.⁸¹ Article 13 provides that well-known trademarks will receive broader protection than other trademarks.⁸² Trademark owners are ordinarily limited to five years for revocation requests of bad faith registrations.⁸³ However, well-known trademark owners are not subject to the five-year limitation for requesting the revocation of bad-faith registrations.⁸⁴

Both the TRAB and the people's courts consider the factors in Article 14 of the Trademark Law when determining whether a domestic trademark is well-known.⁸⁵ These factors include: the history of a trademark,⁸⁶ the amount of recognition it has with the public,⁸⁷ and the extent that it has been protected as a well-known trademark in the past.⁸⁸

E. Domestic Trademarks and Local Governments

In addition to treaties, legislation, administrative regulations, and SPC interpretations, every local government also has its own regulations on local famous trademarks that embody its policies such as local protectionism or openness to outside enterprises and investment.⁸⁹ These regulations allow local governments to determine their regions' trademark agendas. However, they may also discriminate against outside companies or contain language that differs from the regulations of other regions. These local regulations take the form of National People's Congress⁹⁰ ("NPC") regulations, government orders, or AIC normative documents.⁹¹

1. National People's Congress Regulations

There are six NPC regulations for the recognition and protection of famous trademarks.⁹² The most recent NPC regulation for local famous trademarks is the

⁸¹ 2001 PRC Trademark Amendment, *supra* note 26 art. 13.

⁸² *See* 2001 PRC Trademark Amendment, *supra* note 26 art. 13.

⁸³ *See* 2001 PRC Trademark Amendment, *supra* note 26 art. 41.

⁸⁴ *Id.*

⁸⁵ *See id.* art. 14.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *See* Annual Report, *supra* note 4, at 26–32.

⁹⁰ *See State Structure of the People's Republic of China*, NAT'L PEOPLE'S CONG., http://www.npc.gov.cn/englishnpc/stateStructure/node_3826.htm (last visited Oct. 5, 2013) (showing that the National People's Congress is the PRC's only legislative assembly).

⁹¹ *See* Annual Report, *supra* note 4, at 26–32 (separating local regulations into three columns: NPC Regulations, Government Orders, and AIC Normative Documents).

⁹² *See id.* (providing in the column labeled "NPC Regulations" that the following provinces, municipalities or autonomous regions have NPC regulations on local famous trademarks: Anhui, Hebei, Jilin, Zhejiang, Chongqing, Sichuan, and Gansu).

Measures of Chongqing Municipality on Famous Trademark Recognition and Protection (“Chongqing Measures”).⁹³

The Chongqing Measures create requirements for the applicants of Chongqing Municipality Famous Trademarks (“CMFT”).⁹⁴ The measures require that applicants live within the area under the administrative control of the Chongqing municipal government, and that applicants have continuously used the trademark for three years.⁹⁵ The trademarked product must also be the frontrunner in the local industry, and the trademark owner must not have committed a serious breach of trademark-related duties in the preceding three years.⁹⁶ The Chongqing Measures require that the trademark owner apply for a CMFT with the local AIC that administers the area where the owner resides.⁹⁷ However, any person who shares trademark rights with the trademark owner may apply for a CMFT with his or her local AIC.⁹⁸

The Chongqing Measures provide that a CMFT has a validity period of three years that begins with the issuance of the CMFT certificate.⁹⁹ They allow the owners of CMFTs to apply for an extension of three additional years as long as they do so six months before the expiration date.¹⁰⁰

The Chongqing Measures state that Chongqing’s local AICs should strengthen and protect CMFTs.¹⁰¹ They also state that the registrant of a CMFT may ask the local AIC for assistance regarding the infringement of the registrant’s rights even if that infringement occurs outside of the local AIC’s administrative region.¹⁰² The measures further explain that the local government should support the advancement

⁹³ See Chongqingshi Zhuming Shangbiao Rending He Baohu Tiaoli (重庆市著名商标认定和保护条例) [Measures of Chongqing Municipality on Famous Trademark Recognition and Protection] (promulgated by the Standing Comm. People’s Cong. Chongqing Municipality, Sept. 22, 2011, effective June 1, 2012) (China) [hereinafter Chongqing Measures].

⁹⁴ *Id.* art. 7 (requiring that a Chongqing famous trademark must be a registered trademark that is not in dispute; the trademark applicant must reside within the city’s administrative area; the trademark must have been in continuous use for three years; the commodity that uses the trademark must be a first-class good with high public recognition and trust; the output, total income, profits, taxes, market share, and other principal indicators of economic success of the commodity that uses the trademark must be frontrunners of the commodity’s industry for approximately three years; the trademark owner must have a robust system of trademark supervision and must not have committed a serious violation of trademark duties within the last three years).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.* art. 8.

⁹⁸ *Id.*

⁹⁹ *Id.* art. 15.

¹⁰⁰ *Id.* (stating that within six months before the fulfillment of the period of validity, the applicant for the famous trademark may submit a renewal application with the local AIC). The local AIC will make a determination regarding the renewal application according to the certification procedures. *Id.* The original famous trademark determination will still be effective before the promulgation of the decision regarding the renewal. *Id.* A renewal is valid for a period of three years that begins with the expiration of the previous validity period. *Id.*

¹⁰¹ *Id.* art. 18 (providing that the local AICs should create a file supervision system for famous trademarks, strengthen the protection of famous trademarks, inspect the use of famous trademarks, protect the state of affairs, and investigate tortious behavior that harms famous trademarks).

¹⁰² *Id.* (showing that if harm comes to the legitimate rights of the registrant of a famous trademark outside of this city’s administrative area, the registrant may ask the local AIC for assistance, and the local AIC should provide aid to the registrant).

of companies that hold CMFTs,¹⁰³ and that the owner of a CMFT may request that the local AIC stop another company from causing confusion or harm to the owner's trademark.¹⁰⁴

2. Government Orders

The PRC currently has seventeen government orders for the recognition and protection of famous trademarks.¹⁰⁵ One of the more recent government orders is the Measures of Yunnan Province on Famous Trademark Recognition and Protection ("Yunnan Measures").¹⁰⁶

Unlike the Chongqing Measures, the Yunnan Measures only require that the applicant use a trademark for two years before applying for a Yunnan Province Famous Trademark ("YPFT").¹⁰⁷ The Yunnan Measures contain different standards than the Chongqing Measures such as the requirement that the trademark owner provide flawless after-sales services.¹⁰⁸ The Yunnan Measures, much like the Chongqing Measures, provide that a trademark owner may apply to the local AIC for a YPFT.¹⁰⁹ However, the Yunnan Measures state that an enterprise that has registered with the local AIC may directly apply for a YPFT,¹¹⁰ and explicitly state which application form to use.¹¹¹

¹⁰³ *Id.* art. 21 (illustrating that the municipal and district governments should encourage and support enterprises with Chongqing famous trademarks to develop technological innovations, arrange scientific projects in accordance with those innovations, and develop new products).

¹⁰⁴ *Id.* art. 22 (explaining that if other commodities use the same or similar characters, graphics or packaging as the Chongqing famous trademark, and create public confusion that would result in possible harm to the registrant of the famous trademark, the registrant may request that the local AIC stop the infringement).

¹⁰⁵ See Annual Report, *supra* note 4, at 26–32 (providing in the column labeled "Government Order" that the following provinces, municipalities or autonomous regions have government orders on local famous trademarks: Tianjin, Inner Mongolia, Liaoning, Jiangsu, Fujian, Jiangxi, Shandong, Henan, Hubei, Hunan, Guangdong, Guangxi, Hainan, Yunnan, Qinghai, Ningxia, and Xinjiang).

¹⁰⁶ Yunnansheng Zhuming Shangbiao Rending He Baohu Banfa (云南省著名商标认定和保护办法) [Measures of Yunnan Province on Famous Trademark Recognition and Protection] (promulgated by the Yunnan Provincial People's Gov't, June 13, 2010, effective June 13, 2010) (China) [hereinafter Yunnan Measures].

¹⁰⁷ *Id.* art. 5 (listing that a Yunnan famous trademark: must be a registered trademark that belongs to an owner of a company, institution or store in Yunnan; must have more than two years of use; the commodity that uses the trademark must be a first-class compared to similar commodities; the commodity that uses the trademark must be a frontrunner in its industry according to principal economic indicators such as market share; the company's after-sale services must leave nothing to be desired and have good public reputation; and the owner of the trademark implements strict trademark usage and supervisions measures).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* art. 6 (providing that an applicant for a Yunnan famous trademark may apply with the local AIC that administers the area where the trademark owner lives; any enterprises that have registered with the local AIC may directly apply for a Yunnan famous trademark to that AIC). The applicant must fill out a Yunnan Famous Trademark Application Form while applying. *Id.*

¹¹⁰ *Id.* art. 6.

¹¹¹ *Id.*

The Yunnan Measures are also different from the Chongqing Measures in that they provide a validity period of five years for a YPFT,¹¹² state that an applicant should apply for a renewal within three months before the expiration date of the famous trademark,¹¹³ and also give trademark owners a three-month grace period.¹¹⁴

3. Normative Documents of Administrations of Industry and Commerce

There are seven normative documents promulgated by local AICs.¹¹⁵ One of the normative documents is the Measures of Beijing Municipality on Famous Trademark Recognition and Protection (“Beijing Measures”).¹¹⁶

The Beijing Measures create requirements for the establishment of Beijing Municipality Famous Trademarks (“BMFT”) that differ from the Chongqing Measures and the Yunnan Measures.¹¹⁷ These measures state that: the trademark owner must be from Beijing;¹¹⁸ the trademark owner must have used the trademark for at least three years;¹¹⁹ and the commodity that uses the trademark must maintain a steady quality.¹²⁰

Unlike the Chongqing Measures, the Beijing Measures notify trademark owners which form correlates with BMFT applications.¹²¹ These measures only provide a

¹¹² *Id.* art. 9 (stating that a Yunnan famous trademark has a validity period of five years that begins when the Yunnan famous trademark becomes effective). A trademark owner must renew a famous trademark, and should apply with the local AIC for a renewal within three months before the expiration of the famous trademark. *Id.* If the trademark owner is unable to apply during that period, the trademark owner will be given a three month grace period. *Id.* If the trademark owner does not apply for the renewal during the grace period, then the Yunnan famous trademark will cease to be a famous trademark. *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ See Annual Report, *supra* note 4, at 26–32 (providing in the column labeled “AIC Normative Documents” that the following provinces, municipalities or autonomous regions have AIC normative documents on famous trademarks: Beijing, Shanxi, Heilongjiang, Shanghai, Tibet, Shaanxi, and Guizhou).

¹¹⁶ Beijingshi Zhuming Shangbiao Rending He Baohu Banfa (北京市著名商标认定和保护办法) [Measures of Beijing Municipality on Famous Trademark Recognition and Protection] (promulgated by the Beijing Admin. For Industry & Com., Jan. 1, 2001, effective Jan. 1, 2001) [hereinafter Beijing Measures].

¹¹⁷ *Id.* art. 5 (listing that a Beijing famous trademark: must be a valid registered trademark that is not in dispute; the trademark owner must be a natural person, legal person or economic institution that is from Beijing; there must be at least three years of continuous use of the registered trademark, the commodity that uses the trademark has a steady quality and is in accordance with related national standards; the commodity must be an industry frontrunner as indicated by principal economic indicators for the last three years including total income from sales, taxes, interest, and high market share; the trademark must be widely known by consumers and have high recognition in related markets; and the trademark owner must have strong awareness of trademark use, supervision, and protection standards, and not behave illegally towards trademarks).

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.* art. 6 (providing that a trademark owner should fill out a Beijing Municipality Famous Trademark Determination Application Form when applying for a Beijing famous trademark).

validity period of three years,¹²² state that the owner of a BMFT must apply for a renewal within three months of its expiration,¹²³ and do not provide a grace period.¹²⁴ These measures also state that a trademark automatically loses its BMFT status if the trademark owner transfers the trademark rights.¹²⁵

II. ANALYSIS

This section investigates and critiques the institutions and regulations mentioned above. It also shows a disjunction between the Paris Convention and TRIPS, the aforementioned laws and regulations, and the practices of local governments. Part A determines how the Paris Convention and TRIPS provide the PRC with guidelines concerning domestic well-known trademarks as well as discusses the adequacy of the related articles in the Trademark Law. Part B illustrates the extent that SAIC regulations represent domestic well-known trademarks. Part C analyzes the differences between the Chongqing, Yunnan, and Beijing regulations. Part D shows how local protectionism encourages the promotion of local famous trademarks, and reflects on the consequences of the practice of giving cash rewards for local famous trademark determinations.

A. Effect of International Treaties and the Trademark Law on Domestic Well-Known Trademarks

Chinese laws generally comport with the Paris Convention and TRIPS.¹²⁶ However, unlike most Paris Convention countries, the PRC usually limits the scope of recognition to within its own borders.¹²⁷ This differs from the international trend of recognizing a trademark as well-known if it is well-known on an international

¹²² *Id.* art. 11 (stating that a Beijing famous trademark has a validity period of three years that begins when the Beijing famous trademark becomes effective, and trademark owners must apply for a renewal within three months of the expiration of the Beijing famous trademark in order to maintain the trademark).

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.* art. 13 (explaining that if a trademark owner transfers a Beijing famous trademark, the Beijing famous trademark automatically loses its famous classification).

¹²⁶ *See, e.g.,* Determination and Protection Provisions, *supra* note 23; Nadine F. Johnson, *Pursuing Trademark Reform in China: Who Will Benefit—and Are the Proposed Changes Enough?*, 3 LANDSLIDE 6, 8 (2011).

¹²⁷ Johnson, *supra* note 126, at 8. Johnson explains that

[L]anguage in the other well-known trademarks provision indicates that whether a mark is well-known is evaluated in terms of being so in China. This is troublesome in terms of both international standards and the rights of would-be trademark holders. The international trend recognizes that a mark may be well-known globally without being so known in a particular state; it also acknowledges that a “spillover effect” may develop as awareness grows.

Id. (citations omitted).

scale.¹²⁸ The limitation of well-known trademark recognition to the PRC's borders creates a disadvantage for foreign companies participating in the Chinese market because they may be internationally renowned but are not widely recognized in the PRC, and, as a result, may not receive well-known trademark protection.¹²⁹

The Trademark Law protects well-known trademarks partially due to the PRC's adherence to the Paris Convention.¹³⁰ However, the Paris Convention and TRIPS only provide minimum standards of protection for well-known trademarks,¹³¹ and member countries such as the PRC often elect to offer greater protection through legislation.¹³² These treaties are only a starting point for the regulations of well-known trademarks.¹³³ Although Article 14 of the Trademark Law sets out the factors that the CTMO, the TRAB, and the people's courts consider when determining well-known trademarks,¹³⁴ the Trademark Law does not actually define any of the terms in Article 14.¹³⁵ This allows the CTMO, the TRAB, and the people's courts to read their own opinions into the law.¹³⁶ Some intellectual property practitioners have even questioned whether the legislature purposely omitted definitions in order to benefit Chinese trademarks.¹³⁷

B. Lack of SAIC Regulations on Domestic Well-Known Trademarks

The Determination and Protection Provisions differ from the Trademark Law wherein they include definitions and liabilities that are not present in the Trademark Law.¹³⁸ However, they still only place vague and limited requirements on local AICs regarding the supervision of local famous trademarks.¹³⁹

¹²⁸ *Id.*

¹²⁹ *See id.* (illustrating that foreign companies face disadvantages when Chinese nationals apply for the trademarks corresponding to the foreign companies' products before the foreign companies apply for trademarks in the PRC).

¹³⁰ Luo & Ghosh, *supra* note 38, at *12.

¹³¹ *See id.* at *19–23; Cahan, *supra* note 19, at 228 (writing that the Paris Convention did not outline the criteria for well-known trademark recognition, TRIPS builds on the Paris Convention and provides a clearer framework to the PRC for the treatment of well-known trademarks, and TRIPS contains minimum standards of domestic intellectual property protection).

¹³² Cahan, *supra* note 19, at 228.

¹³³ *See id.*

¹³⁴ *See* 2001 PRC Trademark Amendment, *supra* note 26, art. 14.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *See* Determination and Protection Provisions, *supra* note 23, art. 2 (defining the scope of "relevant public," providing that the relevant public includes the consumers of the commodities indicated by the trademark, the manufacturers of the commodities, the sellers of the commodities, and other related people).

¹³⁹ *Id.* art. 14 (providing that the administrative departments of industry and commerce of all levels shall strengthen the protection of famous trademarks, and shall transfer the suspected cases of crimes of counterfeit trademark to the relevant departments in time). These guidelines do not explain how a local AIC would strengthen the protection of well-known trademarks. *Id.*

These provisions do not explain how to establish and regulate local famous trademarks,¹⁴⁰ leaving the local governments and AICs with inadequate guidance in this regard. This results in different standards throughout the PRC for the supervision of local famous trademarks. Finally, these provisions also do not incorporate sufficient criminal penalties for negligence and corruption associated with famous trademarks.¹⁴¹ Although the PRC is increasingly attempting to reduce corruption on a national level, its lack of guidelines concerning corruption for specific issues such as local famous trademarks impedes its attempts to identify corruption.

C. Differences between Local Government Regulations of Local Famous Trademarks

The differences between the Chongqing, Yunnan, and Beijing regulations on local famous trademarks result from local demographics and culture. Chongqing is a very highly populated city¹⁴² and, as a result, the Chongqing Measures are relatively stringent.¹⁴³ This is shown through the three-year prior use requirement, and the requirement that the trademark owner must submit a renewal application within six months before the expiration date of the local famous trademark.¹⁴⁴

Yunnan is less populated than many other provinces and does not have the amount of famous local companies that some other provinces have.¹⁴⁵ It also does not contain a city with a high level of service industries such as Chongqing or Beijing.¹⁴⁶ The Yunnan Measures show the difference between Yunnan and areas with higher populations through the five-year validity period, the two-year use requirement, and the three-month grace period.¹⁴⁷

Beijing is known for its high level of bureaucracy. This explains why the Beijing Measures provide more details to applicants of Beijing famous trademarks.¹⁴⁸ Chinese who live in Beijing also typically value Beijing residency status, which is difficult to obtain for people whose parents are not from Beijing.¹⁴⁹ The value of

¹⁴⁰ See Determination and Protection Provisions, *supra* note 23, art. 16 (refraining from further developing the assertion that “[w]here the case is so serious as to constitute a crime, the person involved shall be prosecuted, according to law, for his or her criminal liabilities.”).

¹⁴¹ See *id.*

¹⁴² See, e.g., *China: Chongqing*, CITY POPULATION (July 30, 2011), <http://www.citypopulation.de/China-Chongqing.html> (providing statistical data on cities in the PRC and showing that Chongqing had a population of approximately 30 million people in 2010).

¹⁴³ See Chongqing Measures, *supra* note 93, art. 7.

¹⁴⁴ See *id.*

¹⁴⁵ Compare *China: Yunnan*, CITY POPULATION (July 30, 2011), <http://www.citypopulation.de/China-Yunnan.html> (showing that Yunnan Province had a population of approximately 45 million people in 2010), with *China: Guangdong*, CITY POPULATION DE (July 30, 2011), <http://www.citypopulation.de/China-Guangdong.html> (showing that Guangdong Province had a population of approximately 104 million people in 2010).

¹⁴⁶ See, e.g., *Kunming*, CHINA PERSP., <http://www.thechinaperspective.com/topics/city/kunming/> (last visited Oct. 5, 2013) (reporting that the major industries of Kunming, the capital of Yunnan Province, are manufacturing, produce, tobacco, and tourism).

¹⁴⁷ See Yunnan Measures, *supra* note 106, art. 9.

¹⁴⁸ See Beijing Measures, *supra* note 116, art. 6.

¹⁴⁹ See, e.g., *Residence Status and Housing in Urban China—the Case of Beijing*, SPACE POPULATIONS SOCIETIES (Mar. 2009), <http://eps.revues.org/index4434.html> (showing that a large fraction of the population in Beijing is marginalized due to its status as migrants).

Beijing residency status may be the reason why Beijing does not want to transfer its famous trademarks to people without Beijing residency status.

D. Effects of Local Government Regulations

The provincial and municipal regulations for local famous trademarks originate from different legislative and administrative bodies.¹⁵⁰ These regulations are significantly different from each other wherein they provide: inconsistent periods of validity,¹⁵¹ dissimilar standards for local famous trademarks,¹⁵² distinct application procedures,¹⁵³ and varied standards for the cancellation of a local famous trademark status.¹⁵⁴

Provincial and municipal governments consider the number of famous trademarks to be an indicator of economic strength.¹⁵⁵ Since the strength of the local economy reflects on the competency of local officials,¹⁵⁶ local governments provide

¹⁵⁰ See Annual Report, *supra* note 4, at 26; Chongqing Measures, *supra* note 93 (illustrating that the People's National Congress promulgated the Chongqing Measures); Yunnan Measures, *supra* note 106; Beijing Measures, *supra* note 116 (providing that a Beijing administrative agency (the Beijing AIC) promulgated the Beijing Measures).

¹⁵¹ Compare Yunnan Measures, *supra* note 106, art. 9 (stating that a Yunnan famous trademark has a validity period of five years), with Beijing Measures, *supra* note 116, art. 11 (illustrating that a Beijing famous trademark has a validity period of three years).

¹⁵² See, e.g., Chongqing Measures, *supra* note 93, art. 7 (explaining that the trademark must have been in continuous use for three years in order to qualify as a Chongqing famous trademark); Yunnan Measures, *supra* note 106, art. 5 (requiring that a Yunnan famous trademark have more than two years of use); Beijing Measures, *supra* note 116, art. 5 (requiring that in order to be a Beijing famous trademark, the commodity that uses the trademark must have a steady quality and be in accordance with related national standards).

¹⁵³ See, e.g., Yunnan Measures, *supra* note 106 (explaining that any enterprises that have registered with the local AIC may directly apply for a Yunnan famous trademark from that AIC).

¹⁵⁴ See, e.g., Beijing Measures, *supra* note 116, art. 13 (stating that if a trademark owner transfers a Beijing famous trademark, the Beijing famous trademark automatically loses its famous classification).

¹⁵⁵ Ai Guo Zhang, *The Judicial Determination and Protection of Well-known Marks in China in the 21st Century*, 48 U. LOUISVILLE L. REV. 959, 970 (2010).

¹⁵⁶ *Id.*; Yiqiang Li, *Evaluation of the Sino-American Intellectual Property Agreements: A Judicial Approach to Solving the Local Protectionism Problem*, 10 COLUM. J. ASIAN L. 391, 395 (1996) (“[L]ocal governments are often indifferent to infringement complaints if official intervention would damage the economic interests of their region, especially when the region is less-developed.”); Kate C. Hunter, *Here There Be Pirates: How China is Meeting its IP Enforcement Obligations Under TRIPS*, 8 SAN DIEGO INT’L L.J. 523, 531 (2007). Hunter explains that:

[M]any of China’s local officials are biased. They have been known to resist enforcing IP laws if such enforcement could injure the local region’s important sources of income and employment. As one Chinese customs director said, “We have to strike the right balance between enforcing anti-piracy regulations and encouraging economic development.” Further, local governments occasionally go so far as to tell local citizens how to beat claims of infringement. Not even the judiciary is independent; the local governments control their finances and personnel allocations.

Id. (citations omitted).

financial incentives to companies that possess local famous trademarks.¹⁵⁷ This practice floods local AICs and people's courts with meritless local famous trademark applications¹⁵⁸ and creates a large number of questionable famous trademarks.¹⁵⁹

Local regulations currently do not prevent local governments from giving cash rewards to companies that have obtained local famous trademarks. Cash rewards originate from local taxpayers that do not have a chance to decide how the government uses their taxes. Local companies that receive these rewards may use

¹⁵⁷ Hunter, *supra* note 156.

¹⁵⁸ See Zhang, *supra* note 155, at 969 (showing that Chinese companies may promote lawsuits in order to determine a famous trademark and to catch the public attention). Once a judge determines a famous trademark, the local company will capitalize on the commercial opportunities brought by the local famous trademark. *Id.*

¹⁵⁹ See Annual Report, *supra* note 4, at 33. The statistics have been reproduced below:

Local Statistics of Approved Famous Trademarks

Province	Approved in 2011	Total
Beijing	85	517
Tianjin	112	810
Hebei	397	2162
Shanxi	270	906
Inner Mongolia	58	330
Liaoning	238	1541
Jilin	176	740
Heilongjiang	123	609
Shanghai	337	917
Jiangsu	396	2652
Zhejiang	339	2786
Anhui	324	1131
Fujian	481	2665
Jiangxi	268	1045
Shandong	838	2350
Henan	335	1546
Hubei	124	828
Hunan	658	1612
Guangdong	336	933
Guangxi	86	367
Hainan	72	176
Chongqing	188	811
Sichuan	130	919
Guizhou	186	521
Yunnan	235	1177
Tibet	8	53
Shaanxi	648	1434
Gansu	115	612
Qinghai	30	76
Ningxia	0	287
Xinjiang	48	380
Total	7641	32893

Id.

them inappropriately. This practice also changes the local economy, wherein only larger companies have access to funding from cash.

Local companies sometimes bring trademark infringement cases to people's courts even if the cases are meritless. They file meritless claims because the process takes less time than applying for a local famous trademark with an AIC.¹⁶⁰ Local companies, such as those in a recent case in Henan province, will go so far as to file a fake case in order to determine a local famous trademark.¹⁶¹ In Henan, an attorney was given 1,000,000 RMB (approximately \$163,400) to file a fake claim.¹⁶² To put these frivolous claims into perspective, infringement and counterfeit cases increased over forty-one percent between 2010 and 2011, totaling 68,836 cases in 2011.¹⁶³

III. PROPOSAL

This proposal begins by considering reform on a national level and then explores changes to local regulations. Part A proposes certain national reforms to laws and interpretations concerning domestic well-known trademarks. Part B suggests methods of accomplishing local reform, recommends a change to local regulations concerning cash rewards, and proposes deferential language to people's courts. Although this proposal focuses on local reform, it also demonstrates that national change is the best method of ensuring conformity and equality.

A. Changes to Current National Guidelines

1. Trademark Law: Lack of Definitions

The Trademark Law adequately protects well-known trademarks¹⁶⁴ and does not explicitly discriminate against foreign trademarks.¹⁶⁵ However, its lack of definitions

¹⁶⁰ *The Price of Fame in China*, BRAND PROTECTION BLOG (Sept. 28, 2012), <http://fulbrightbrandprotection.blogspot.com/2012/09/the-price-of-fame-in-china.html> (“[A] company may seek approval from a series of local and national trademark authorities—an often long (up to three years), onerous and expensive process.”). Companies can also seek a famous trademark determination with a people's court. *Id.* Companies usually seek a determination by a people's court because it is faster. *Id.*

¹⁶¹ Wang Heyan, *Fake Lawsuits Behind China's 'Famous' Brands*, MARKETWATCH (July 23, 2012), http://articles.marketwatch.com/2012-07-23/economy/32805196_1_judges-intellectual-property-lawyers (illustrating that Chinese executives may file trademark infringement lawsuits against “fake” defendants). A company will allege that the defendant is damaging its brand name, its attorneys are aware that the lawsuit is meritless, and the company will pay off at least one judge. *Id.* In Luoyang, Henan province, the police arrested at least six judges and three lawyers. *Id.*

¹⁶² *See id.*

¹⁶³ *See Annual Report*, *supra* note 4, at 123 (providing that infringement and counterfeiting cases increased from 48,548 in 2010 to 68,835 in 2011, which is an increase of 20,288 cases).

¹⁶⁴ *See* 2001 PRC Trademark Amendment, *supra* note 26, art. 13 (providing protection of well-known trademarks from infringement); *id.* art. 41 (removing the five-year limitation for requests for the cancellation of a bad faith filing).

¹⁶⁵ *See id.* art. 14.

still gives substantial leeway to judges and administrative officials.¹⁶⁶ An addition of definitions to the Trademark Law would reduce or eliminate this discretion.

Despite the benefits of providing definitions in the Trademark Law, the PRC should begin by clarifying these terms through the regulations of AICs, because an incremental approach would allow the PRC to evaluate the definitions before establishing a strict national standard.

2. Trademark Office: Revisions for Local Guidelines

The CTMO implements a sufficient hierarchy for local famous trademark applications that originate with local AICs.¹⁶⁷ It would be in the best interest of national conformity for the CTMO to revise its regulations in accordance with the proposals found below for local guidelines.

This revision would increase national recognition of local famous trademark regulations. Since the CTMO is the head administrative body for trademark issues, it would be the best government body to revise regulations. It could easily promulgate the regulations because AICS share their local famous trademark information with the CTMO and because they directly communicate with the CTMO regarding trademark issues.

3. People's Courts: Strengthening Court Protections

People's courts are in a good position to address the negligence and corruption that originates from local famous trademark determinations of people's courts.¹⁶⁸ The SPC could issue an interpretation that explains the interests that a people's court should follow when determining a local famous trademark. It could also reiterate that judges should deliberate by considering related legislative documents, SPC interpretations, and the merits of the issue.

Unlike an amendment to the Trademark Law, which might have adverse effects on government agencies and the TRAB,¹⁶⁹ this interpretation would only apply to the people's courts. An interpretation from the SPC may have an effect on corruption. However, local reform would be more effective. Therefore, reforms should originate from local AICs instead of the SPC. This interpretation would not address the behavior or the guidelines of local AICs nor would it directly curtail enterprises from seeking to bribe judges. Furthermore, judges may view the interpretation as another warning against corruption that does not have any practical effect.

¹⁶⁶ See 2001 PRC Trademark Amendment, *supra* note 26, art. 14.

¹⁶⁷ Determination and Protection Provisions, *supra* note 23, art. 5 (requiring that the applicant must file a written application to the local AIC, and that the applicant must also report to the provincial AIC); *id.* art. 6 (explaining that the local AIC will, after determining that there may be infringement, submit the case to the provincial AIC which will then submit it to the CTMO).

¹⁶⁸ See Hunter, *supra* note 156, at 531.

¹⁶⁹ See 2001 PRC Trademark Amendment, *supra* note 26, art. 14.

B. Proposed Changes to Local Regulations

1. Conformity

The PRC should reform its local famous trademark regulations in order to develop a higher level of conformity. This would promote fairness between municipalities and provinces, increase corporate confidence regarding applications for local famous trademarks in multiple regions, and raise awareness of corruption. This would also provide trademark owners of well-known trademarks, such as Wong Lo Kat, better protection. Their companies are located throughout the PRC, yet similarly to what happened during the Wong Lo Kat dispute, Beijing typically becomes the final venue for well-known trademark disputes. Local governments will be better prepared to deal with trademark issues if their local trademark guidelines conform to the guidelines that govern the courts they are most likely to appear in. Finally, the PRC should also stop allowing local governments to promote local famous trademarks to benefit the private interests of government officials.

Although local governments would argue that they are in the best position to determine the amount of recognition and protection that their region provides to local famous trademarks, their current practices create high numbers of questionable well-known trademarks.¹⁷⁰ There are several ways to reform the local regulations, though all of them likely would encounter resistance from the local governments.

The NPC could promulgate a mandate that requires local governments to conform to certain minimum standards. This mandate would allow local governments to amend their own regulations and require that the amendments meet the mandate's standards. It is likely that local governments would resist this mandate because they would not be able to determine the standards. Problems may also arise during the implementation of the mandate's standards such as resistance from local governments, failure to amend regulations, or misunderstandings arising from the mandate.

These are not the only methods of reforming local regulations. Another method is that the NPC could ask local governments what they believe would be the best national standard for local famous trademarks. Afterwards, the NPC would draft and promulgate a national standard to replace local regulations. This method, as opposed to the previous method, would reduce the chance of resistance from local governments, because the NPC would consider their opinions while drafting the national standard. It would also eliminate the chance of the failure to reform local regulations because the national standard would be a replacement instead of a threshold that local governments would have to meet.

¹⁷⁰ See Annual Report, *supra* note 4, at 33. This graph illustrates the disproportionality between the local famous trademarks of provinces and municipalities. *Id.* For example, Tianjin, an autonomous municipality that is much smaller than Beijing in both size and population, has almost 300 more famous trademarks than Beijing. *Id.* Guangdong, an advanced province with a high population, only has 933 famous trademarks while Shaanxi, a less developed province with about a third of Guangdong's population size, has 1434 famous trademarks. *Id.* Yunnan, a relatively rural province with a population less than half the population of Guangdong, has 1177 famous trademarks. *Id.*

Perhaps the most effective way of reducing resistance to reformation while establishing a national standard would be an order from the SAIC. The SAIC would establish an overall standard that applies to all of the local AICs. This standard would be more inclusive than the minimum standards proposed in the first method, but would not replace local regulations. The SAIC would solicit opinions from the local AICs and, after considering their input along with advice from the CTMO, create a standard for the AICs. This would appeal to the local AICs more than a blanket national regulation because it would allow the local AICs to both provide their input as well as amend their own regulations.

2. Restrictions of Cash Incentives

The PRC should ban the practice of providing cash rewards for achieving local famous status because they only provide benefits to large companies and promote corruption within both local AICs and the court system. Afterwards, local governments should reevaluate pre-existing famous trademarks in order to ascertain whether the local AIC or people's court approved the trademark due to an outside influence such as the local promotion of the trademark through a reward.

3. Deference to People's Courts

Chinese companies use people's courts to establish local famous trademarks.¹⁷¹ However, the three previously discussed local regulations do not mention the people's courts.¹⁷²

Local regulations must contain language that promotes deference to the people's courts. Municipal and provincial regulations should explicitly state that people's courts might choose to grant a local famous trademark, decide whether the region would prefer the local AICs or the people's courts to determine well-known trademarks, and set penalties for meritless applications, for which a reasonable applicant would have known that an application was meritless.

Local governments should encourage companies to discuss whether their trademarks may obtain local famous trademark status with AICs rather than bring claims to people's courts. Local AICs, unlike the people's courts, communicate with the CTMO and the TRAB. They are also more informed regarding the status of their respective region's well-known trademarks, and subsequently, are more efficient than the people's courts.

CONCLUSION

The PRC has made significant efforts to protect international and national well-known trademarks through its membership in the Paris Convention and TRIPS,¹⁷³

¹⁷¹ Zhang, *supra* note 155, at 969.

¹⁷² See generally Chongqing Municipality Measures, *supra* note 93; Yunnan Province Measures, *supra* note 106; Beijing Municipality Measures, *supra* note 116.

the Trademark Law,¹⁷⁴ and the SAIC's guidelines.¹⁷⁵ The SPC also effectively provides the Chinese judiciary with the procedures and factors for determining local famous trademarks.¹⁷⁶

The PRC's legislative documents, administrative orders, and SPC interpretations provide guidance to the entirety of Mainland China. However, the absence of national legislation on local famous trademarks leads to inconsistent guidelines.¹⁷⁷ The differing criteria for local famous trademarks partially originate from companies' private interests and local protectionism on municipal and provincial levels.¹⁷⁸

A more transparent and consistent balance should be established between the development of local economies and furtherance of national intellectual property policy. The analysis in this article explains the inconsistencies within provincial guidelines on local famous trademarks. These discrepancies and related policies have negative consequences, including an undue amount of local protectionism, frivolous claims, the corruption of local officials and judges, and confusion between provinces.

The proposed changes to these local guidelines do not reflect every manner in which the PRC could resolve the aforementioned consequences of the current local legislation and administrative regulations. However, the foregoing proposals demonstrate that there are several realistic ways that the PRC could increase conformity, decrease local protectionism in consideration of national and international concerns, and diminish the influence of undesired political and economic factors.

The 2013 Trademark Law ushers in substantial changes such as an increase in damages to three million RMB (approximately \$490,200), CTMO time restrictions, guidelines for trademark agency practices, and extended protections for internationally renowned trademarks.¹⁷⁹ In addition, the limitations placed on national well-known trademark labeling and promotions will substantially affect how large Chinese companies market their products beginning in the summer of 2014. An understanding of the relationship between related PRC laws and national well-known trademarks, and how provincial regulations establish local famous trademarks, provides useful insight for interacting with domestic well-known trademark holders in light of the new restrictions.

¹⁷³ See Paris Convention, *supra* note 19, art. 6bis; TRIPS, *supra* note 20, arts. 15–16; Luo & Ghosh, *supra* note 38, at 59.

¹⁷⁴ See generally 2001 PRC Trademark Amendment, *supra* note 26, art. 13 (creating the factors for domestic well-known trademark recognition).

¹⁷⁵ See generally Trademark Review Rules, *supra* note 52; Notice of SAIC Working Instructions, *supra* note 63, art. 1 (promulgating the general policies behind the SAIC's promotion of trademarks).

¹⁷⁶ See Dispute Interpretation, *supra* note 28, arts. 1–2, 22; Interpretation Concerning Domain Names (promulgated by the Supreme People's Court, July 17, 2001, effective July 24, 2001), arts. 4–5 (China).

¹⁷⁷ See *supra* note 151 (comparing the periods of validity for provincial famous trademarks); *supra* note 152 (comparing municipal standards for local famous trademark registration).

¹⁷⁸ See Zhang, *supra* note 155, at 969–70.

¹⁷⁹ Xinhua, *supra* note 17.