

How to Determine the Likelihood of Confusion at the Examination Stage

CNIPA

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What is likelihood of confusion?

A trademark applied for registration, which is identical with or similar to the prior registered or prior filed trademark of other people for the same or similar goods or services, is likely to confuse the relevant public about the source of the goods or services.

Likelihood of confusion is a relative ground for refusal of registration under the Trademark Law of the People's Republic of China.

✓ Article 30, 31&50

Factors involved in assessing likelihood of confusion

Generally, in determining whether two marks are identical or similar for the same or similar goods or services, we shall examine the likelihood of confusion, not actual confusion.

Factors involved in assessing likelihood of confusion

Similarity of goods or services

Similarity of marks

Distinctiveness of the marks

Fame of the prior trademarks

Similarity of goods or services

Criteria of identical or similar goods or services

The Nice Classification

Sub-classification System

Similarity of goods or services

Sub-classification System

- ◆ Each of the 45 classes is further divided into subclasses.
- ◆ Under most circumstances, the goods or services classified into the same subclasses are considered identical or similar, while the goods or services falling in different subclasses are not regarded as similar.

-Example:

Subclass 2111 thermally insulated utensils

vs.

Subclass 2112 hand-operated cleaning instruments for household use

Similarity of goods or services

Sub-classification System

- ◆ In certain situations, some goods or services classified into the same subclass are not regarded as similar.

-Example: Subclass 1703 rubber, resin and fiber products

- ◆ Some goods or services classified into different subclasses are regarded as something similar.

-Example: conducting guided tours (Subclass 4105)

vs.

Subclass 3911 travel tour arranging

Similarity of marks

Criteria of identical or similar marks

Appearance, sound, meaning or commercial impression

The general attention and cognition of the purchasing public

Comparing in entirety and considering the distinctive elements

Similarity of marks

➤ Case Study 1

SMS SIVIS

CROWN 皇冠

SaintAngel 赛天使  St.Angel

Vicki **VICKI·VICKI**

Marc O'Polo MACAO POLO

WOLFHAWK **HAWKWOLF**



Similarity of marks

➤ Case Study 2



HOLIDAY

VACATION



FUDA

победа



Similarity of marks

➤ Case Study 3

Parkers PARKER'S CELLAR



GUADET

“GARDET”

Thank you!

