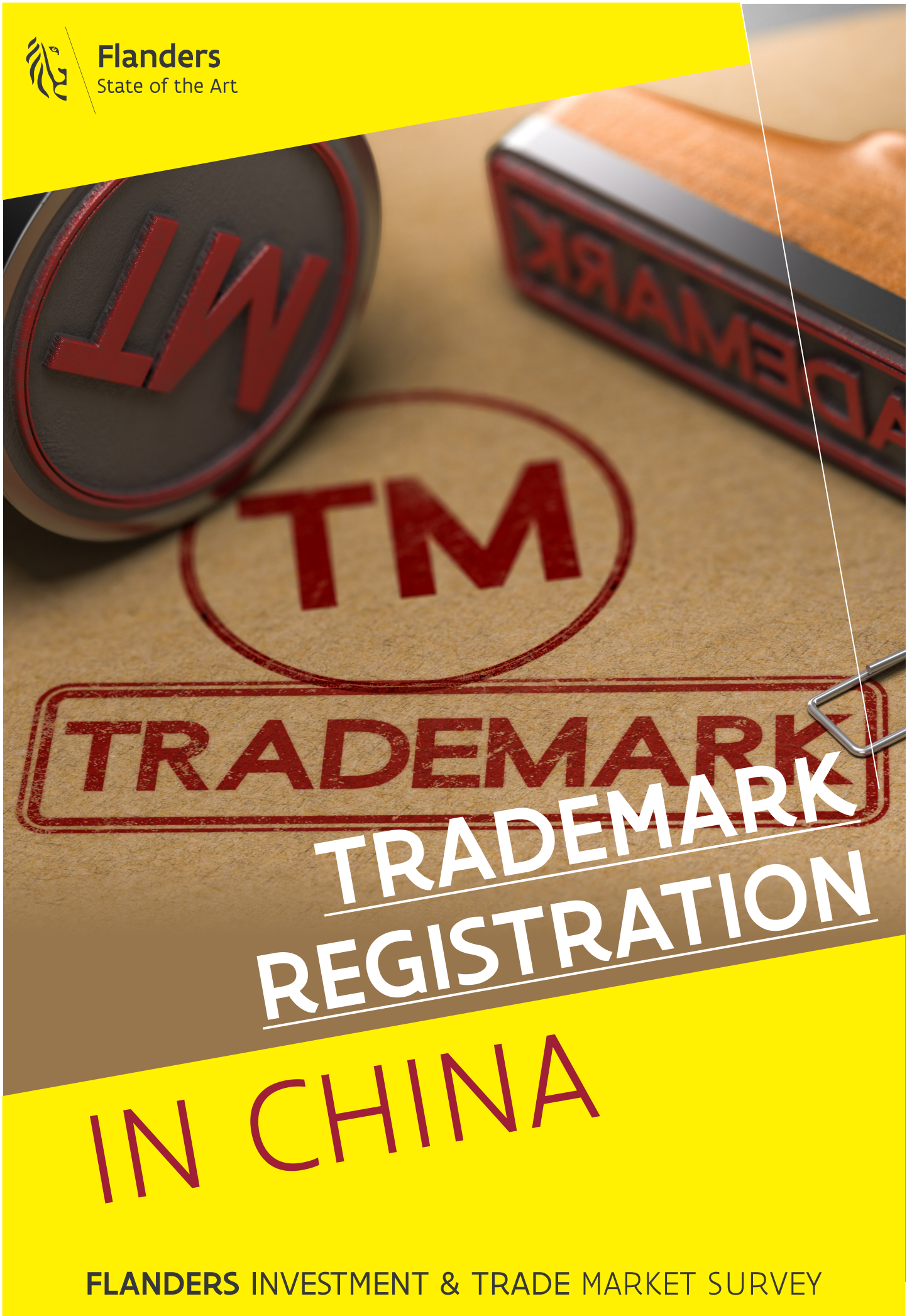




Flanders
State of the Art



TRADEMARK REGISTRATION

IN CHINA

FLANDERS INVESTMENT & TRADE MARKET SURVEY



TRADEMARK REGISTRATION IN CHINA

March '2022



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1. CHINA TRADEMARK REGISTRATION SYSTEM

Chinese trademark law operates on a First to File system. Meaning that whoever files a trademark in a particular category as FIRST, gets the rights. Under current Chinese law, a company can “swoop in” and register your trademark, even if you are the first to use your brand name. This can indicate you as a trademark infringement violator.

The First principle says that where two or more applicants apply for the registration of identical or similar trademarks for the same or similar goods, the Trademark Office will approve the trademark application which is first filed. Where applications are filed on the same day, the preliminary approval shall be given to the trademark which was the earliest used, and the applications of the others shall be rejected, and their trademarks shall not be published.

Apparently, where the registration of a trademark which has been applied for is identical with or similar to the trademark of another person that has, in respect of the same or similar goods, been registered or, after examination, preliminarily approved, the Trademark Office shall refuse the application and shall not publish the said trademark.

Given that trademarks are critical business assets, the best way to protect these assets are to register them in China as early as you can before you start your business in China.

2. IMPORTANT TRADEMARK AUTHORITY IN CHINA

The China Trademark Office (CTMO), the Trademark Review and Adjudication Board (TRAB) and Cooperation Center of Trademark Examination (TECC) have been merged into the Trademark Office of the China National Intellectual Property Administration (CNIPA) in 2018.

Website: <http://sbj.cnipa.gov.cn/>

3. MADRID INTERNATIONAL REGISTRATION OR SUBMIT THE TRADEMARK REGISTRATION IN CHINA

There are two ways for foreign companies to submit the application:

1. submit an application directly with the China Trademark Office or
2. submit the application through the World Intellectual Property Organization (WIPO) under the Madrid Protocol for international registration of the mark designating China. When you use this system, application should be filed in English, French or Spanish.

If you choose to submit an application directly with Trademark Office of the China National Intellectual Property Administration, you are recommended to entrust an experienced Chinese trademark agency to help you register a Chinese trademark.

Madrid international registration of the trademark is more suitable for applying for multi-national trademarks at one time. If you submit the Madrid international trademark application designating China through the international department of Belgian trademark authority, you still



9. THE MINIMUM FILING REQUIREMENTS

9.1 FOR OBTAINMENT OF THE DATE OF FILING, YOUR TRADEMARK APPLICATION SHOULD CONTAIN:

- A representation of the trademark
- A list of goods and services
- The applicant (s) details
- Power of Attorney (Note: The signed Power of Attorney is sufficient. The copy of the form should be provided simultaneously with the filing of the trademark application in China)

9.2 YOUR TRADEMARK REGISTRATION PROVIDED TO CNIPA SHOULD ALSO CONTAIN:

- A copy of your company's certificate of incorporation
- A company name and address (both in English and Chinese)
- A Signature by your company's director (or the applicant)
- A printed or digital version of the proposed trademark
- A category of the proposed trade mark (can choose 10 subcategories)

10. THE COST OF REGISTERING A TRADEMARK IN CHINA

10.1 OFFICIAL EXPENSE

The trademark registration fee is 300 RMB (limited to 10 commodities in this category. For more than 10 commodities, 30 RMB will be charged for each commodity.

For more details, please refer to CNIPA's official website : [关于调整商标注册收费标准的公告 \(cnipa.gov.cn\)](http://www.cnipa.gov.cn)

10.2 SERVICE FEE (DEPENDS ON DIFFERENT AGENCIES)

Filing a trademark application in Mainland China generally costs € 500 – 700 and upwards, depending on the lawyer/agent fees.



11. VALIDATION OF TRADEMARK REGISTRATION

A national trademark registration and international trademark registration are both valid for a period of 10 years.

You need to apply for a renewal at least 6 months before expiration, The trademark will be renewed for additionally 10 years. If you don't renew your trademark registration in time, it will be cancelled.

Keep in mind that if you don't use the products for commercial purposes within time of 3 years, you might lose the trademark.

12. PROCEDURE OF REJECTION OF THE APPLICATION

If you are refused to use the trademark for some reasons, you or your trademark agency needs to contact CNIPA and submit an opposition. CNIPA will handle the opposition during a period of 9-12 months.

13. TIPS OF NAMING THE CHINESE TRADEMARK

Although it is not required by Chinese laws, it's useful that you choose a Chinese trademark that translates well and appeals well to the Chinese customers. Once it's out there, it's difficult to change.

Two options of choosing a trademark in Chinese, sometimes you can use a combination of the two:

- *Phonetic translations*

Phonetic translations mean that you compose characters in a way to make the Chinese name sound like the original name.

- *Literal translations*

This simply means that you choose a Chinese name that's corresponding well to your brand in written text

Note that registrations in Chinese characters and in Western scripts are 2 separate registrations.



14. TRADEMARK INFRINGEMENTS

The following acts shall constitute an infringement:

- To use a trademark that is identical with or similar to a registered trademark in respect of the identical or similar goods without the authorization from the trademark registrant
- To sell goods that was known bearing a counterfeited registered trademark
- To counterfeit, or to make, without authorization, representations of a registered trademark of another person, or to sell such representations of a registered trademark as were counterfeited, or made without authorization
- To replace, without the consent of the trademark registrant, its registered trademark and re-sale the goods bearing the replaced trademark
- To cause, in other respects, prejudice to the exclusive right of another person to use a registered trademark

15. DEALING WITH TRADEMARK INFRINGEMENTS

In case of infringement, first, you can resolve the dispute through consultation; if you are reluctant to resolve the matter through consultation. If the consultation fails, second, you may institute legal proceedings in the People's Court or request the administrative authority for actions.

State Administration for Market Regulation(SAMR) plays an extremely important role in China to assist business and individuals in resolving trademark disputes and infringement claims. It operates on national, provincial, county, and municipal levels, and is the key government agency that is responsible for corporation registration, fair competition, trademark administration, market supervision, and exercises other important functions. State Administration for Market Regulation has the administrative authority to investigate and handle any acts of infringement of the exclusive rights to use a registered trademark according to law.

When an infringing act is constituted, SAMR shall order the infringer to immediately stop the infringing act, confiscate and destroy the infringed goods and tools specially used for the manufacture of the infringing goods and for counterfeiting the representations of the registered trademark, and impose a fine.



16. EU IPR SME HELPDESK IN CHINA

The China IPR SME Helpdesk supports European Union small and medium sized enterprises to both protect and enforce their Intellectual Property Rights (IPR) in or relating to China, through the provision of free information and services. In case you need any further information, you can contact them for more support.

<https://www.iprhelpdesk.eu/china-helpdesk>

<http://www.ipr-hub.eu/contact>

<http://china-iprhelpdesk.eu>

The China IPR SME Helpdesk can be reached:

T: 02/4631333

E: info@china-iprhelpdesk.eu

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