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Trademark Protection in the People's Republic of China

HEINZ DAWID*

I. SOCIALIST TRADEMARK RATIONALES

At first glance, the existence of a law on trademarks in a socialist country is bound to strike the reader as somewhat anomalous, if not as a downright abandonment of basic principles of the socialist system. After all, trademarks are used to identify and distinguish the products of individual manufacturers offered for sale side by side to the general public to foster fair and effective competition. In a socialist economy where private property rights in the means of production have been abolished and the state is the sole producer and distributor of goods, why should there be a need for trademarks? Should it not be sufficient to identify goods by their generic names? But not only do practically all socialist countries have laws on trademarks, but the majority (excluding the People's Republic of China) are also members of the Paris Convention under which they have agreed to register and accord protection to foreign trademarks.

While it took the U.S.S.R. almost twenty years to introduce its first trademark law in 1936, the People's Republic of China (PRC) has moved considerably faster. In fact, less than a year after the PRC was established in October 1949, provisional regulations governing the registration of trademarks were enacted "to assure the right of exclusive use of exclusive trade marks of industry and commerce in general."

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3. S. PIŠAR, supra note 1, at 328.

4. Provisional Regulations of Aug. 28, 1950, Concerning the Registration of Trade-
These regulations provided that "public or private factories, merchants and cooperatives" requiring the exclusive use of trademarks for merchandise which they produce, manufacture, process, or select, shall apply for registration to the Central Bureau of Privately Operated Enterprises of the Committee of Finance and Economics of the Political Affairs Yuan. The regulations in most respects contained language which differed little from the trademark laws of nonsocialist countries. Article 32 of the regulations stated that "[c]ertificates in respect of trademarks formerly registered with local people’s governments must, after the promulgation of these regulations, be exchanged for new ones." In other words, while the regulations of 1950 provided for the first nationwide registration of trademarks, they were preceded by regulations providing for registration by municipal governments that must have been in effect within the first eighteen months following the conquest of China by Communist armies.

The 1950 Regulations also took note of the existence of trademark registrations issued prior to October 1949. Article 33 stated: "A new application shall be made after the promulgation of these regulations for the registration of trade marks registered by the Trade Marks Bureau of the former Kuomintang reactionary government."

The 1950 Regulations remained in effect until April 10, 1963, when they were replaced by a new set of regulations for the control of trademarks. On April 25, 1963, the Central Administration of Industry and Commerce (CAIC), the authority in charge of trademark registration, issued the implementing rules under which trademarks are presently protected in China.

If the PRC, like most other socialist countries, recognizes trademarks, adopting a system for their registration and protection despite their capitalistic, free enterprise origin, this must be due to the fact that the trademark system offers benefits not only to private enterprise as trademark owners, but also to other groups who play a role in the economic process, such as the authorities who in socialist countries supervise the exchange of goods and the general public (or in socialist terminology, the “masses”). After all, regardless of whether a factory is privately owned or government-operated, the public has an interest in being protected against shoddy or defective merchandise, and trademarks identify-
ing the products of particular factories, or distinguishing goods of higher quality from goods of lower quality, render an important service to the customer. Therefore, a system of trademark registration and protection including a trademark law is not necessarily alien to socialist economies.

Foreign trade, of course, is another justification for the maintenance of a trademark system. No socialist country has been able, or has found it to its benefit, to cut off all foreign trade. Instead, such trade plays an important role not only among socialist countries, but also between East and West. The 1950 Regulations of the PRC took this into account and provided that trademarks consisting of foreign letters could be registered if they were applied to merchandise marketed abroad or imported from foreign countries. The regulations further provided that foreigners whose countries had concluded commercial treaties with the PRC could, within the limits laid down by such treaties, apply for registration of their trademarks.

The 1963 Trademark Regulations, to a much greater extent than the 1950 Regulations, emphasize the socialist character of the PRC's trademark policy, and at the same time make special allowances for foreigners and foreign-owned trademarks in order to promote commercial intercourse with foreign countries.

The socialist character of the 1963 Regulations is evidenced by their title, "Regulations Concerning the Control of Trade Marks," emphasizing "control" over, rather than rights in, trademarks. This principle is further developed in article 1 which proclaims that the purpose of the regulations is "to strengthen the control of trade marks and to encourage enterprises to ensure and improve the quality of their products," and in article 3 which defines a trademark as a "marking representing certain quality of a commodity." Article 3 states further that "industrial and commercial administrative authorities shall . . . exercise supervision and control of the quality of the commodity." Finally, in line with the stated purpose of the regulations and their definition of a trademark, article 11(1) provides that a registration shall be cancelled by the CAIC "where the quality of a commodity deteriorates as a result of rough and scampy work."

Article 11 contains another ground for cancellation far less clear in its meaning, unless understood as a restatement of a basic political principle that there is no definite right in a trademark for the person who obtains the registration. It provides simply that a registration may be cancelled by the CAIC "where the masses of the people, or an office or

8. 1950 Regulations, supra note 4, art. 4(iv).
9. Id. art. 5.
10. See Haia & Haun, supra note 1, at 764, 769-70.
11. 1963 Regulations, supra note 6. See also Regulations on the Verification of Trademarks, INDUS. PROP., June 1974, at 30. The word "control," however, has been asserted to be more meaningful than "verification" in the context of other regulations and rules. Butler, Trade Marks in the People's Republic of China, 17 CAN. PAT. REP. 76, 77 (1975).
association or enterprise recommend its withdrawal, which upon examination is considered appropriate." Another feature of Chinese trademark policy which, to a Westerner, is difficult to comprehend, arises out of the general structure of political power in China. The principle of division of power, especially division into legislative, administrative, and juridical authorities, is not recognized. The individual, therefore, is facing an all-powerful authority not subject to the control or supervision of any other agency. The problem is further aggravated by the lack of statutory mandates.

Applying this feature of Chinese political power to the law of trademarks, it follows that the CAIC has the sole power to determine whether a trademark is registrable, whether it is anticipated by a prior registration, or whether it should be cancelled, because of deterioration of the product bearing the trademark, because of nonuse, or because some other party has asked for the cancellation. There is no appeal from its decision. In this connection, again, the 1963 Regulations differ from the 1950 Regulations. By the latter, any decision by the authority in charge of trademark registration could be appealed to the Committee of Finance and Economics of the Political Affairs Yuan (State Administration Council),

a higher administrative authority. An appeal to a court was not possible under the 1950 Regulations except in case of infringement where the local People's Court had jurisdiction.\(^1\)

Since the 1963 prescriptions give the regulatory agency complete authority as to their application, the CAIC also appears to have the right not to apply the regulations when it deems it appropriate. For instance, article 11(3) provides that a registration shall be cancelled "where a trademark has not been in use for one full year and no permission has been granted for its reservation." However, it is generally understood that this rule does not apply to trademarks owned by foreign registrants.\(^2\) Likewise, concerning the application of article 2, requiring all trademarks used by an enterprise to be filed with the CAIC, it was intimated to a visiting foreign trademark petitioner that, in the case of a foreign applicant, if a mark were used without the benefit of filing a registration application, the owner of the trademark would be given adequate notice to correct the omission before any drastic measures would be taken.\(^3\)

II. FEATURES OF THE PRC TRADEMARK REGULATIONS

The following is a summary of the most important features of the 1963 Regulations.

1. Trademark rights depend solely on registration. Prior use is not

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12. 1950 Regulations, supra note 4, art. 28.
13. Id. art. 29.
14. See Offner, Trademark Quality Control and Compulsory Registration Requirements in the People's Republic of China, 74 Pat. & T.M. Rev. 319, 321 (1976). See also Butler, supra note 11, at 81, who simply disregards art. 11(3) as inapplicable to foreign trademark owners.
15. Butler, supra note 11, at 78.
TRADEMARK PROTECTION IN THE PRC

recognized as a basis for registration or for challenging the registration of another party. In case of conflict between two applications, the one filed first will be given preference. If it is desired to apply a registered trademark to other goods, a new application must be filed.  

2. While a trademark confusingly similar to another trademark previously registered for the same or similar goods may not be registered, there is no way for a prior registrant to oppose such an application. However, it would appear that after the trademark has been issued, cancellation may be requested under article 11(4) on several grounds.  

3. China has a classification system consisting of no less than seventy-eight classes, and an application must be limited to a single class. According to information received from the China Council for the Promotion of International Trade (CCPIT), the agency officially appointed to represent foreign applicants before the CAIC, the introduction of the International Classification System is under consideration.  

4. So far it is not possible to register service marks in the PRC, and information from the CCPIT refers only to the international classification of goods but makes no reference to service classes.  

5. The 1963 Regulations fail to indicate a definite term for a trademark registration and contain no provisions regarding renewal proceedings, allowing the conclusion that each registration has an indefinite term. In the case of registrations owned by foreign registrants, however, the CAIC takes the position that such registrations subsist for only a ten year term, another example of the discretion of the CAIC in interpreting the regulations.  

6. As previously pointed out, article 11(3), which provides for cancellation of a registration if a mark has not been used in the course of the preceding year, is not deemed applicable to foreign registrants.  

7. Trademark registrations may be freely assigned. While this is not  

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17. 1963 Regulations, supra note 6, art. 7.
19. Id. at 4.
20. Id. at 2.
21. See 1963 Rules, supra note 7, art. XV, which refers to representation by the China International Trade Advancement Committee. Evidently the name of the body representing foreign applications has been variously translated or changed as it has also been known as the Chinese Council for the Development of International Commerce. Ocrooibureau, supra note 2, § People's Republic of China 2 (1977). It is now designated as the China Council for the Promotion of International Trade (CCPIT). Hsia & Haun, supra note 1, at 769.
22. Letter from CCPIT to the present writer (Dec. 31, 1979).
23. Id.
25. The regulations explicitly give the CAIC discretion to set the period of validity. 1963 Regulations, supra note 6, art. 12.
specifically stated in any of the articles of the regulations, it would appear to follow from the 1963 Rules: "Where a registered trade mark is to be transferred to another enterprise, the transferor and transferee shall jointly make an application for the transfer of the registration."° The regulations contain no provision regarding trademark licensing, but they also contain no provision prohibiting licensing. Therefore, it would appear that this matter is really left open, and bearing in mind that trademarks may be freely assigned, it would seem logical that a trademark license should also be possible, at least as long as the quality of product is maintained. A possible argument against this theory results from the fact that the rules which provide for the recording of assignments do not provide for the recording of licenses. In response to an inquiry in May 1978, the CCPIT stated: "As you already know, at present there is no provision for trademark licensing in our Trademark Law. The registered trademark can only be used by the registered owner."° However, there may have been a slight modification of the position of the CCPIT in recent months. In response to a telex, the same authorities stated on December 19, 1979: "No provision for trademark license in our present Trademark Law. However, it can be stipulated in contract of joint venture, if U.S. companies want to use their registered marks on goods manufactured by the joint venture." The Joint Venture Law became effective on July 8, 1979,° and is thus subsequent to the 1963 Regulations, which do not mention the licensing of trademarks. It might then be argued that as a result of this Joint Venture Law the previously ignored trademark licensing problem has now been clarified in favor of the recognition of licenses. Therefore, it would follow that if, in connection with a proposed revision of the trademark regulations,° a specific provision regarding trademark licenses is introduced, this would only recognize the situation resulting from the promulgation of the Joint Venture Law and the implicit change in the official interpretation of the trademarks regulations.

8. Neither the regulations nor the rules contain any provision re-

27. 1963 Rules, supra note 7, art. X.
28. See 1963 Rules, supra note 7, art. XIX-XX.
29. Letter from CCPIT to the present writer (May 24, 1978). Several authorities had theretofore stated that trademark licenses were not allowed, that only the registered owner of the mark was entitled to the use of the mark, and that use by another enterprise could lead to cancellation. OCTROOIBUREAU, supra note 2, § People's Republic of China 3 (1977); Butler, supra note 11, at 89. Butler goes on to say, however, that amendments to permit licensing are currently under consideration. Id.
30. Telex from CCPIT to the present writer (Dec. 19, 1979).
31. The Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign Investment, done July 1, 1979, translated in 18 int'l LEGAL MAT. 1163 (1979). This law allows foreigners to make capital and technological investments in the PRC through a joint venture-limited liability company, contributing at least 25 percent of the registered capital which may be in the form of intellectual property. For a general explication of the Joint Venture as related to the PRC, see Blackshaw, Business Through Joint Ventures, XV LES NOUVELLES 26 (Mar. 1980).
32. Butler, supra note 11, at 89.
Regarding the protection of a trademark owner against an infringement. One authority takes the position that there is no need for infringement proceedings, since the trademark can only be used if it is registered and, if a mark which is confusingly similar with a previously registered mark is registered, the owner of the prior mark can institute cancellation proceedings under article 11(4).\(^3\) Presumably, this is also what the CCPIT had in mind when, in reply to an inquiry by the author, it stated: "In our country, there are no statutory provisions concerning similar marks. However, this matter will be investigated and decided by the competent authorities, as the case may be."\(^3^4\)

**III. PROTECTION OF FOREIGN TRADEMARKS**

As stated above, the PRC has from the very beginning been conscious of the problems connected with the protection of foreign-owned trademarks in China. The aforementioned article 5 of the 1950 Regulations, allowing trademark registration by nationals of countries having commercial treaties with China, has been replaced in the 1963 Regulations by article 12, which sets forth two requirements: (1) a reciprocal agreement on the registration of trademarks between the country of the applicant and the PRC must be in force; and (2) the applied-for trademark must be the subject of a prior registration in the applicant's home country.\(^3^5\)

Agreements of the kind referred to in article 12 had, in fact, been concluded between the PRC and other countries well before the 1963 Regulations came into effect. The first of these had been concluded with the United Kingdom in 1956, and Denmark and Switzerland in 1958.\(^3^6\) Subsequent to the 1963 Regulations, additional agreements were concluded with Australia, Belgium, Canada, Czechoslovakia, Finland, France, the German Democratic Republic, the Federal Republic of Germany, Greece, Hungary, Italy, Luxembourg, the Netherlands, New Zealand, Norway, and Sweden.\(^3^7\)

The absence of diplomatic relations between the PRC and the United States since 1949 constituted a special problem for American trademark owners. Although China has never been a party to the Paris Convention,\(^3^8\) American citizens had been able to protect their trademarks through registration in pre-revolutionary China as a result of treaties in effect between the two nations,\(^3^9\) the last of which became effective

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33. Id. at 90.
34. Letter from CCPIT to the present writer (Dec. 31, 1979).
35. 1963 Regulations, supra note 6, art. 12.
36. Hsia & Haun, supra note 1, at 767 n.92.
38. Note 2 supra. See Pavelic, Exporting to the People's Republic of China, 11 CASE W. RES. J. INT'L L. 337, 375 (1979), for a prediction that the PRC will join the Paris Convention in the near future.
39. The first U.S.-China treaty took effect in 1860, and the first trademark law in China was enacted on May 3, 1923, article VI of which dealt with infringements. J. Rüeg, TRADEMARK LAWS OF THE WORLD 160 (1928).
November 30, 1948.\textsuperscript{40} However, the establishment of the People's Republic in Peking in 1949 brought forth a basic change in this situation, and with the exception of the island of Taiwan, where the national government maintained its old trademark system,\textsuperscript{41} American trademark owners were unable either to maintain their trademark protection on the Chinese mainland through renewal or add to it through new registrations. Not only were they prevented from registering their trademarks by the PRC requirement for commercial treaties under the 1950 Regulations,\textsuperscript{42} replaced in 1963 with the requirement for reciprocal registration agreements,\textsuperscript{43} but also by United States Foreign Assets Control Regulations, according to which payments regarding trademark and other industrial property proceedings in China had to be made into a "blocked account" in the United States from which no payments could be made without a license.\textsuperscript{44}

The United States, however, evidenced a desire to change its relationship with the PRC with regard to payment for industrial property protection as early as 1969. In response to an inquiry by the author, the Foreign Assets Control Office advised that it was prepared to license remittances to the PRC concerning the payment of registration fees without requiring deposit into a blocked account. The Office went on to state: "Equally, we would be prepared to license such remittances by a foreign subsidiary when it secures a registration in its name."\textsuperscript{45} The only way for American trademark owners to protect their marks in the PRC at the time was, in view of the lack of any trademark agreement between the two countries, to file through one of their subsidiaries, provided the subsidiary was located in a country which had recognized the PRC and which had concluded a trademark agreement with it, and that the subsidiary had registered the trademark in question in its own name in its home country. When these conditions were met, the subsidiary was in a position to secure a valid registration, even of trademarks generally known to be American marks. Of course, this procedure was not only cumbersome

\textsuperscript{40} Treaty of Friendship, Commerce, and Navigation, with accompanying protocol, \textit{entered into force} Nov. 30, 1948, 63 Stat. 1299, T.I.A.S. No. 1871. This treaty is now applicable only to Taiwan. \textit{U.S. DEP'T OF STATE, TREATIES IN FORCE ON JANUARY 1, 1979}, at 38, 233 (1979). The late Dr. S.P. Ladas tried to persuade the authorities of the PRC to refer to this treaty as a basis for granting American applicants the right to apply for trademark registration in Peking, but failed since this would have been contrary to the policy of the PRC not to regard itself as the successor to the Nanking government. Address by S.P. Ladas, Symposium on Laws of the PRC, Georgetown University (Mar. 1973).

\textsuperscript{41} \textit{U.S. DEP'T OF STATE, TREATIES IN FORCE ON JANUARY 1, 1979}, at 38, 233 (1979).

\textsuperscript{42} 1950 Regulations, \textit{supra} note 4, art. 4(iv).

\textsuperscript{43} 1963 Regulations, \textit{supra} note 6, art. 12.

\textsuperscript{44} 31 C.F.R. §§ 500.201, 500.528 (1978). These regulations differ from the ones applicable, for instance, to Cuba, where payments in trademark and other industrial property matters could always be deposited into an open account and where there exists a general license under which such payments are permitted. 31 C.F.R. \textsection 515.527 (1978).

\textsuperscript{45} Letter from the Foreign Assets Control Office of the United States to the present writer (Aug. 11, 1969).
but also contrary to the basic trademark policy of many American corporations which prefer being the registered owners of their foreign trademarks.46

IV. UNITED STATES-CHINA TRADEMARK RELATIONS
FOLLOWING DIPLOMATIC RECOGNITION

Although full diplomatic relations between the United States and the PRC were established in December 1978,47 a basic change in United States-China trademark relations had occurred earlier, in March 1978, when the CCPIT advised the National Council for United States-China Trade in Washington, D.C. that the Chinese Government had decided to apply the principle of reciprocity under article 12 of the Trademarks Regulations.48 That is, the CCPIT stated that the PRC noted that PRC trademarks could be registered in the United States under the Lanham Act49 and, accordingly, registration of United States trademarks would be permitted beginning in January 1978.50 Further, if it were confirmed that a copy of the home registration would not be required for registering PRC trademarks in the United States, then a home registration certificate would no longer be required in the PRC.51

With this ruling, American trademark owners suddenly received not only equal treatment with other foreign applicants who could avail themselves of a specific reciprocity agreement as required by article 12, but they were freed of the second requirement of article 12, whereby the registration to be obtained in Peking was dependent on a prior registration in the applicant's home country.52 Subsequently, the Chinese authorities

46. In some countries, such as Switzerland, it was unnecessary for American corporations to transfer ownership of their Swiss trademarks to their Swiss subsidiaries. Under article 6a of the Swiss trademark law, subsidiaries were authorized to take out separate Swiss registrations for the same trademarks, which could then serve as a basis for the filing in China. See H. Dawid, Commentary to the Swiss Trademarks Law 16 (1960). Parallel filings have also been common for many years in France, Germany, and Italy, where the trademark registrar makes no examination for conflicts with prior registered marks. Octroibureau, supra note 2, § France 18 (1979), § Germany (Federal Republic) 8 (1978), § Italy 6 (1979).
51. Id.
52. Although section 1 of the Lanham Trademark Act makes no requirement of citizenship or domicile for registration of a trademark in use in commerce, under section 44, a foreigner may register a trademark not being used in commerce in the United States only if he provides a copy of the home country registration. Lanham Trademark Act, §§ 1, 44, 15 U.S.C. §§ 1051, 1126 (1976). Thus, reciprocity technically exists only with respect to trademarks actually in use. Article 2 of the Paris Convention provides that member nations will extend the same protection to foreign nationals as to their own, while article 6 quinquies provides that every trademark duly registered in the country of origin shall be protected. Countries which have interpreted article 6 quinquies as independent of article 2 have also not required copies of home country registrations, and this interpretation has been widely
granted the same privilege to numerous other countries, including West Germany.\(^{53}\)

As a result of the CCPIT’s declaration in March 1978, American applicants, prior to the establishment of full diplomatic relations with the PRC, were able to register with the CAIC any trademark they wished to protect, whether or not they had a prior United States registration. Considering the difficulties which often arise in obtaining a United States registration, the ability to file an independent application with the CAIC has been of considerable value.

At present, it is not possible to evaluate the manner in which the CAIC administers the trademark regulations. No gazette is published containing the particulars of registrations issued,\(^{54}\) despite article 9 of the 1963 Regulations which provides: “Following the approval of the registration of a trademark, the CAIC shall publish it in an official bulletin and issue a Certificate of Registration.” However, in response to inquiries, the CCPIT has definitively stated that a publication will issue “in the near future.”\(^{55}\) Because of the lack of a publication, it is practically impossible for the owner of any registered trademark to make sure that infringing marks are not registered and to proceed against them.

According to article 6 of the trademark regulations, the official examination of an application should include a check regarding conflicting prior registrations,\(^{56}\) but the author is not aware of any objections raised over the past few years on grounds of anticipation.

The trademark law of the PRC is limited to regulations consisting of fourteen articles and twenty-one implementing rules.\(^{57}\) These provisions fail to deal with many of the problems for which provisions can be found in the trademark laws of other countries. Moreover, there is no jurisprudence interpreting the Chinese trademark regulations, or at least no published decisions. Also, a considerable degree of discretion exists with which the CAIC interprets the rules and regulations. Given this, it may well turn out that the most important rules determining trademark rights of Americans in the PRC can be found in, or may be developed from, the interpretation of the Agreement on Trade Relations between the two countries concluded on July 7, 1979,\(^{58}\) which is expected to be ratified in


53. BLATT FÜR PATENT-MUSTER UND ZEICHENWESEN 75 (Jan. 19, 1979). West Germany tried for some time prior to 1978 to work out an arrangement with the PRC dispensing with the home registration requirement, but in the end had to settle for an agreement similar to those in effect between China and other countries, requiring home registration.

54. Publication of such a gazette was discontinued in 1966. Butler, supra note 11, at 81.

55. Letter from CCPIT to the present writer (Dec. 31, 1979).

56. “Trade marks under application for registration may not be confused with those trade marks of which registration has been made by other enterprises for the same or similar kind of commodities.” 1963 Regulations, supra note 6, art. 6.

57. 1963 Regulations, note 6 supra; 1963 Rules, note 7 supra.

58. Agreement on Trade Relations, Jul. 7, 1979, China-United States, reprinted in 18 INT’L LEGAL MAT. 1041 (1979) [hereinafter cited as Agreement on Trade Relations].
the near future. An analysis of the provisions of this treaty follows.

Article VI of this agreement is devoted exclusively to the protection of industrial and intellectual property rights, including the protection of trademarks. For example, whereas subparagraph 1, providing that "[b]oth Contracting Parties in their trade relations recognize the importance of effective protection of patents, trademarks and copyrights," may have only symbolic significance, subparagraphs 2 and 3 deserve serious consideration. Subparagraph 2 reads as follows: "Both Contracting Parties agree that on the basis of reciprocity legal or natural persons of either Party may apply for registration of trademarks and acquire exclusive rights thereto in the territory of the other Party in accordance with its laws and regulations." Insofar as the registration of trademarks is concerned, this provision merely confirms the existence of the right of American applicants to apply for registration, as has in fact been conceded to them by the PRC Government under the March 1978 CCPIT declaration. However, of somewhat greater significance appears to be the reference to the acquisition of "exclusive rights" to registered trademarks which are to be granted to citizens of either party. This may lead to problems not only in China but also in the United States, in view of the fact that under United States law it is not the registration of a trademark, but its actual use, which creates trademark rights.

A similar situation arises with regard to the PRC insofar as it could be argued that the recognition of "exclusive rights" in trademarks constitutes a basic change in Chinese trademark protection since, as previously pointed out, the 1963 Regulations carefully avoid any recognition of "exclusive rights" and, instead, emphasize that the purpose of a trademark is to enable the people and authorities to exercise "control" over the activities of the trademark owner. It could be argued that such a change would require an actual modification of the Chinese trademark regulations in view of the qualification, contained in subparagraph 2, that the registration of trademarks must be "in accordance with its laws and regulations."

Similar questions as to the real significance of the trademark clause in the July 7, 1979 agreement also arise with regard to subparagraph 3, which states: "Both Contracting Parties agree that each Party shall seek, under its laws and with due regard to international practice, to ensure to legal and natural persons of the other Party protection of patents and trademarks equivalent to the patent and trademark protection correspondingly accorded by the other Party." The reference to "equivalent protection" is certainly a new feature in the international law of trade-

59. Id. at 1047.
60. Id.
61. Id.
62. Note 48 supra.
63. See note 11 supra.
64. Agreement on Trade Relations, supra note 58, at 1048.
marks, which has been based in the past on the principle of "national
treatment," requiring that nations provide the same treatment to foreign
nationals as to their own. Indeed, it was the recognition of the "national
treatment" principle in 1880 which made it possible to conclude an inter-
national convention despite the fact that, at the time, there were consid-
erable differences in the degree and extent of protection which each coun-
try granted under its own laws.

However, before reading into article VI, subparagraph 3, an impor-
tant new departure in the international law of trademarks, one must bear
in mind that this provision of equivalent protection merely sets an objec-
tive for the two parties, an objective to be achieved through legislative
reform. The provision does not create rights for the citizens of either
party that might enable, for instance, American companies to demand
protection of their trademarks in China to the same degree as under
United States law. Indeed, any such theory would practically amount to
the reintroduction of extraterritorial rights! Certainly this could not have
been the intent of this agreement. It would also appear that by adhering
to the Paris Convention, the PRC might well be in a position to claim
that it has thereby fulfilled its commitments under subparagraph 3, since
it would thus grant American citizens the same degree of protection as
they are entitled to in the other eighty-nine member countries.

Considering that subparagraph 2 of article VI merely reaffirms the
existing situation and that subparagraph 3 is of no immediate signifi-
cance, it would seem that the most important part of article VI is subpar-
agraph 4, which reads as follows: "Both Contracting Parties shall permit
and facilitate enforcement of provisions concerning protection of indus-
trial property in contracts between firms, companies and corporations,
and trading organizations of their respective countries, and shall provide
means, in accordance with their respective laws, to restrict unfair compe-
tition involving unauthorized use of such rights." The second part of
this provision, dealing with the restriction of unfair competition, may also
require the Chinese Government to enact new legislation.

The first part of the provision, however, would appear to be of imme-
diate effect, and its significance results from the absence of statutes for
the protection of industrial property. The provision should enable
American companies doing business in China, by means of joint venture
agreements, by setting up factories in the PRC, or by concluding other
types of agreements providing for the delivery or distribution of products bearing trademarks, to insert into their agreements appropriate provisions giving them maximum protection. Considering the recent interpretation of the trademark regulations as not barring the licensing of trademarks under proper controls, it would follow that under article VI, subparagraph 4, compliance with the terms of a license agreement may be demanded. The same should apply to provisions under which a distributor or employee may be prohibited from using or registering confusingly similar trademarks, and it should be possible to insist that such provisions should survive the agreement itself for a reasonable period of time, in line with the interpretation of such clauses in the United States and other countries where they are recognized as part of the fair and equitable arrangements between such parties. The same should also apply to trade name agreements and to agreements regarding the preservation of trade secrets.

In connection with article VI, subparagraph 4, another provision of the Agreement on Trade Relations should also be borne in mind. This is article VIII, which deals with the settlement of disputes arising from contracts and urges "friendly consultations, conciliation, or other mutually acceptable means." This provision also urges parties who have not been able to settle their disputes through any of these means to submit them to arbitration. It further recognizes stipulations regarding arbitration as binding on the parties to an agreement; this would include stipulations naming the arbitrating authority, which may be located in China, in the United States, or in any other country. It also provides that the rules of procedure of the arbitration institution agreed upon by the parties may be followed, and specifically, it declares applicable the arbitration rules of the United Nations Commission on International Trade Law. Subparagraph 3 of article VIII permits each contracting party to ensure that arbitration awards are recognized and enforced by the competent authorities where enforcement is sought in accordance with applicable laws and regulations.

V. CONCLUSION

The People's Republic of China has long recognized trademarks as necessary to protect the public against defective merchandise and to encourage foreign trade. In order for a foreign corporation to register its trademark in the PRC, Chinese law requires a reciprocal agreement between the corporation's home country and the PRC. Through 1977, United States corporations were thus able to register their marks only in the names of foreign subsidiaries based in countries which had established such reciprocal agreements with China.

71. Telex from CCPIT to the present writer (Dec. 19, 1979).
72. Agreement on Trade Relations, supra note 58, at 1049-50.
74. Note 71 supra.
In January 1978, however, even before the establishment of full diplomatic relations between the United States and China, China expressed its willingness to accept trademark applications from United States corporations. The 1979 Agreement on Trade Relations between the two countries is expected to provide a basis for interpretation and arbitration of trademark conflicts in the PRC. Considering that, for the first twenty years following the establishment of the PRC, there had been no friendly intercourse between the United States and China, and that it has been less than two years since the normalization of relations, it would seem that substantial progress has indeed been made toward returning China to the international legal community insofar as the international law of trademarks is concerned.