

J. Y. Interpretation No.492 (October 29, 1999) *

ISSUE: Does the directive issued by the Ministry of Economic Affairs, which states that an entity whose business registration has been dissolved or revoked under the Company Act is deemed as a “terminated business,” violate the people’s property rights protected under Article 15 of the Constitution?

RELEVANT LAWS:

Article 15 of the Constitution (憲法第十五條) ; Article 33, Subparagraph 1 of the Trademark Act (商標法第三十三條第一款) ; Articles 25 and 26 of the Company Act (公司法第二十五條、第二十六條) .

KEYWORDS:

right to the exclusive use of trademark (商標專用權) , dissolved company (解散之公司) , liquidation proceedings (清算程序) , termination of business (廢止營業) .**

HOLDING: Article 15 of the Constitution provides the protection of the people’s property rights. Since the right to the exclusive use of a trademark is a property right, it falls under the protection of the Constitution. When the trademark pro-

解釋文：人民之財產權應予保障，為憲法第十五條所明定。商標專用權屬於人民財產權之一種，亦在憲法保障之列。惟商標專用權人結束營業，且並無於結束營業前或其後就同一商標專用權授權他人使用或移轉他人繼續營業

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** Contents within frame, not part of the original text, are added for reference purpose only.

prietor terminates business and there is no likelihood that another party will be authorized to use the same exclusive trademark right before or after the termination of business or that the exclusive trademark right will be assigned to another party to continue the business, since the exclusive trademark right has lost its purpose, there is no need to continue the protection. Article 33, Subparagraph 1, of the Trademark Act amended and promulgated on January 26, 1983, prescribed that the right to exclusive use of a trademark shall lapse where the proprietor terminates business before the expiration of the duration of registration. Article 25 of the Company Act prescribes that: "A dissolved company shall not be deemed dissolved to the extent that liquidation proceedings are concerned"; Article 26 of the same Act prescribes that: "The dissolved company referred to in the preceding Article may, during the liquidation proceedings, temporarily operate its business for the purpose of closing and facilitating the liquidation." Therefore, a dissolved company that in fact operates its business and continues its original business activities shall not be deemed dissolved.

之可能時，因其已喪失存在之目的，自無再予保障之必要。中華民國七十二年一月二十六日修正公布之商標法第三十三條第一款規定，商標專用權人於商標專用期間內廢止營業者，其商標專用權當然消滅，即係本此意旨所為對人民財產權之限制；商標專用權人倘僅係暫時停止營業；或權利人本人雖結束營業，而仍有移轉他人繼續營業之可能時，其商標既有繼續使用之價值，即難謂與廢止營業相同，而使其商標專用權當然消滅。公司法第二十五條規定，解散之公司於清算範圍內，視為尚未解散，即法人尚未消滅；同法第二十六條規定，解散之公司在清算時期，得為了結現務及便利清算之目的，暫時經營業務。故解散之公司事實上據此規定倘尚在經營業務中，且係繼續原有之營業者，既不能認已廢止營業，從而其享有之商標專用權，要亦不能認為已當然消滅。於此，其為了結現務及便利清算之目的，自得將商標專用權與其商品經營一併移轉他人。經濟部七十四年八月二十日經（七四）商字第36110號關於「依公司法為解散登記或撤銷登記者」即係「廢止營業」之函釋部分，其對於人民財產權之限制，顯已逾越上述商標法第三十三條第一款所定之限度，與憲法保障人

Similarly, the trademark of said company cannot be considered to have lapsed naturally. As such, the exclusive trademark right along with its product profile owned by the dissolved company may certainly be transferred to others for the purpose of closing its business and facilitating the liquidation. The restriction applied to the people's property rights by stating that "an entity with business registration dissolved or revoked under the Company Act" is deemed as a "terminated business" in the directive of the Ministry of Economic Affairs No. (74) Shang-Tzi-361110 dated August 20, 1985, apparently exceeds the bounds set forth in Article 33 (1) of the Trademark Act and runs counter to the intent of the Constitution in protection of the people's property rights and hence, it should no longer be applied.

REASONING: Article 15 of the Constitution provides for the protection of the people's property rights. Since the right to exclusive use of a trademark is a property right, it falls under the protection of the Constitution. A trademark right lasts ten years from the date of registra-

民財產權之意旨有違，應不予援用。

解釋理由書：人民之財產權應予保障，為憲法第十五條所明定；商標專用權既屬人民財產權之一種，當亦在憲法保障之列。商標專用期間為十年，自註冊之日起算，屆期並得依法申請延展註冊；其有授權他人使用或移轉他人者，雖未向商標主管機關登記，亦非無

tion, which may be extended by renewing the registration before its expiration. The authorization of use of a trademark or assignment of a trademark right to another party is valid even if the action is not registered with the trademark authority as prescribed in the first and second paragraphs of Article 24, the second paragraph of Article 26, and the first paragraph of Article 28 of the same Act. The natural lapse of an exclusive trademark right occurs when the trademark proprietor terminates business and there is no likelihood that another party will be authorized to use the same exclusive trademark right before or after the termination of business or that the exclusive trademark right will be assigned to another party to continue the business, for the exclusive trademark right has lost its purpose, so there is no need to continue the protection. Article 33, Subparagraph 1, of the Trademark Act amended and promulgated on January 26, 1983, prescribed that the right to exclusive use of the trademark shall lapse where the proprietor terminates business before the expiration of the duration of registration (this clause became Article

效，此觀商標法第二十四條第一項、第二項、第二十六條第二項、第二十八條第一項之規定即明。商標專用權之當然消滅，係指商標專用權人結束營業，且並無於結束營業前或其後就同一商標專用權授權他人使用或移轉他人繼續營業之可能時，因其已喪失存在之目的，自無再予保障之必要。中華民國七十二年一月二十六日修正公布之商標法第三十三條第一款規定，商標專用權人於商標專用期間內廢止營業者，其商標專用權當然消滅（八十二年十二月二十二日修正移為第三十四條第二款，然文字修正為：「商標專用權人為法人，經解散或主管機關撤銷登記者。但於清算程序或破產程序終結前，其專用權視為存續」；八十六年五月七日修正現行商標法則刪除該款規定），固係本於上述之意旨所為對人民財產權之限制；惟如上之說明，商標專用權人倘僅係暫時停止營業；或權利人本人雖結束營業，而仍有移轉他人繼續營業之可能時，其商標既有繼續使用之價值，即難謂係與廢止營業相同，而使其商標專用權當然消滅。民法第四十條第二項：「法人至清算終結止，在清算之必要範圍內，視為存續。」公司法第二十五條：「解散之公司，於清算範圍內，視為尚未解

34, Subparagraph 2, when the Trademark Act was again amended on December 22, 1993, and its language was also modified to: “the trademark proprietor is a juristic person whose business has been dissolved or who has had his/her business registration revoked by the competent authority. Notwithstanding the foregoing provision, the trademark right is deemed to continue to exist until the conclusion of the liquidation proceeding or bankruptcy procedure”; the aforesaid clause was deleted from the current version of the Trademark Act amended on May 7, 1997), and intended to restrict the people’s property rights. But as described above, if the trademark proprietor only suspends his/her business temporarily or even if the proprietor terminates business, but there is a possibility that he/she will assign the same exclusive trademark right to another party to continue the business, the trademark has the value of continuing use, and hence, this is different from the termination of business that will cause lapse of an exclusive trademark right. Article 40, Paragraph 2, of the Civil Code prescribes that: “Until the liquidation is completed, the dissolved juristic

散。」同法第二十六條：「前條解散之公司，在清算時期中，得為了結現務及便利清算之目的，暫時經營業務。」同法第一百十三條準用第八十四條第二項：「清算人執行前項職務，有代表公司為訴訟上或訴訟外一切行為之權；但將公司營業包括資產負債轉讓於他人時，應得全體股東之同意。」等之規定，或係就法人、公司於解散登記後、清算程序中，仍享有一定範圍之權利能力；或係對解散之公司於清算程序中，仍得為必要之營業行為，且亦得將公司之營業、包含資產或負債移轉於他人之事項予以規範。似此情形，解散之公司既仍享有一定範圍之權利能力，復得將其營業移轉於他人，則該公司之商標即有繼續使用之價值，而非屬前述商標法第三十三條第一款所稱「廢止營業」，其商標專用權並不當然消滅。

tic person is deemed to continue to exist in so far as is necessary for the purpose of the liquidation.” Article 25 of the Company Act prescribes that: “A dissolved company shall not be deemed dissolved to the extent that liquidation proceedings are concerned”; Article 26 of the same Act prescribes that: “A dissolved company referred to in the preceding Article may, during the liquidation proceedings, temporarily operate its business for the purpose of closing its business and facilitating the liquidation”; and Article 113 of the same Act where Article 84, Paragraph 2, applies *mutatis mutandis* prescribes that: “the liquidator has the right to represent the company in all litigious or non-litigious actions when performing the duties described in the preceding Paragraph; but the consent of all shareholders is required in assigning company business, including company assets and liabilities to another party.” The aforesaid clauses prescribe that a juristic person or corporation is still entitled to certain rights during the liquidation proceedings after filing dissolution, and stipulate the continuation of necessary business activities by a dis-

solved company yin the process of liquidation, and that a dissolved company may assign its business, including assets and liabilities to another party. Similarly since a dissolved company is still entitled to certain rights and is allowed to assign its business to another party, the trademark of said company retains the value of continuing use and the situation does not coincide with “termination of business” as stated in Article 33, Subparagraph 1, of the Trademark Act, upon which the trademark right lapses.

The directive of the Ministry of Economic Affairs, explanations 3(2) of the letter No. (74) Shang-Tzi-‘361110 dated August 20, 1985, stated that “an entity with business registration dissolved or revoked under the Company Act” is deemed as a “terminated business” as prescribed in Article 33, Subparagraph 1, of the Trademark Act. Its interpretation runs counter to the provisions in the Civil Code and Corporate Act described above, and denies the exclusive trademark right of a dissolved juristic person having the value of continuing existence. Such inter-

經濟部七十四年八月二十日經（七四）商字第三六一一〇號函釋，說明三.竟以「依公司法為解散登記或撤銷登記者」認係上述商標法第三十三條第一款所稱「廢止營業」，否定上開民法、公司法之規定，致仍有存續價值之已解散法人之商標專用權，由是當然消滅，其對於人民財產權之限制，顯係逾越上述商標法第三十三條第一款所定之限度，與憲法保障人民財產權之意旨有違，應不予援用。

pretation apparently exceeds the bounds set forth in Article 33, Subparagraph 1, of the Trademark Act and runs counter to the intent of the Constitution in protection of the people's property rights, and hence, should no longer be applied.