

J. Y. Interpretation No.370 (January 6, 1995) *

ISSUE: Does the statute of limitations on a petition to invalidate an already registered trademark constitute deprivation of property right protection, thus violating Article 15 of the Constitution?

RELEVANT LAWS:

Article 15 of the Constitution (憲法第十五條) ; Articles 25, Paragraph 2, Subparagraph 1, 37, Paragraph 1, Subparagraph 12, and 52, Paragraph 1, of the Trademark Act (商標法第二十五條第二項第一款、第三十七條第一項第十二款、第五十二條第一項) .

KEYWORDS:

likelihood of confusion (商品近似造成混淆) , statute of limitations (時效期間) , trademark (商標) .**

HOLDING: In accordance with Article 52, Paragraph 1, and Article 37, Paragraph 1, Subparagraph 12, of the Trademark Act, an interested party may request the competent authority in charge of trademark matters to conduct a review and invalidate a trademark registration, if a design is identical with or similar to an

解釋文：依商標法第五十二條第一項、第三十七條第一項第十二款規定，商標圖樣相同或近似於他人同一商品或類似商品之註冊商標者，利害關係人得申請商標主管機關評定其註冊為無效，係為維持市場商品交易秩序，保障商標專用權人之權益及避免消費大眾對於不同廠商之商品發生誤認致受損害而

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other person's registered trademark. The purposes of this statute are to maintain the order of transactions, to protect the interests of the holder of the right to the exclusive use of trademark, and to avoid petitions for damages that might result from public consumers' confusion in identifying goods by different merchants. With regard to the time limit within which a petition for review and invalidation must be filed, by reference to the meaning and purpose of Article 52, Paragraph 3, and Article 25, Paragraph 2, Subparagraph 1, of the same Act, clearly the limitation that no petition may be filed ten years after the registration protects both the general public and private interests, and hence, does not contradict Article 15 of the Constitution for the protection of people's private property.

REASONING: A trademark right is one type of property right that must be protected in accordance with Article 15 of the Constitution. Yet it can be limited by law for the sake and necessity of enhancing the public interest. An interested party may, in accordance with Arti-

設。關於其申請評定期間，參諸同法第五十二條第三項及第二十五條第二項第一款規定之意旨，可知其須受註冊滿十年即不得申請之限制，已兼顧公益與私益之保障，與憲法第十五條保障人民財產權之規定並無牴觸。

解釋理由書：商標權為財產權之一種，依憲法第十五條規定，固應予保障，惟為增進公共利益之必要，自得以法律限制之。商標圖樣相同或近似於他人同一商品或類似商品之註冊商標者，利害關係人得依商標法第五十二條、第三十七條第一項第十二款規定，

cle 52, Paragraph 1, and Article 37, Paragraph 1, Subparagraph 12, of the Trademark Act, request the competent authority in charge of trademark matters to conduct a review and invalidate a trademark registration, if a design is identical with or similar to another person's registered trademark. This is to maintain the order of transactions, to protect the interests of the holder of the right to the exclusive use of trademark, and to avoid petitions for damages that might result from public consumers' confusion in identifying goods by different merchants. Note that Article 37, Paragraph 1, Subparagraph 12, involves the determination of facts regarding identical or similar trademarks and goods, and it is inevitable that certain registrations are erroneously permitted as a matter of fact. Thus, without any remedy, the public interest may be affected because either the rights and interests of the prior trademark registrants will be jeopardized or consumers may be confused. Therefore, Article 52 concerning review and invalidation is designed to redress these situations. However, for an erroneously registered mark that has been used for several years, the

申請商標主管機關評定其註冊為無效，係為維持市場商品交易秩序，保障商標專用權人之權益及避免消費大眾對於不同廠商之商品發生誤認致受損害而設。顧第三十七條第一項第十二款情形，因涉及商標相同或近似，及商品相同或類似之事實認定，其誤准註冊者，事實上在所難免。若無救濟措施，將損及先註冊之商標專用權人權益，或造成消費者混淆影響公益，故有商標法第五十二條評定註冊無效之規定。惟違反本款被誤准註冊之商標，於註冊後已使用多年，其因持續使用所建立之商譽，亦應予保護。基於對既有法律狀態之尊重及維持，此種誤准註冊之商標，已經過相當期間者，其註冊之瑕疵應視為已治癒，不得復申請評定之。關於此項期間，參諸同法第二十五條第二項第一款及第五十二條第三項規定之意旨為十年，已兼顧公益私益之保障，與憲法第十五條保障人民財產權之規定並無牴觸。至其除斥期間之長短，是否妥適，係屬立法裁量之範圍；又評定註冊之商標為近似而無效，涉及註冊之信賴利益，仍應依誠實及信用方法為之，併此說明。

good reputation established by the continuous use of the mark by the holder should also be protected. As a matter of respect for and maintenance of the status quo of a certain legal relationship, the mistake of allowing the erroneously registered trademark is deemed redressed after a certain period of time and is no longer subject to review and invalidation. Article 25, Paragraph 2, Subparagraph 1, and Article 52, Paragraph 3, of the same [Trademark] Act has set forth a ten-year period that protects both the public and private interests and does not contradict Article 15 of the Constitution. Whether such a statute of limitation is proper is within the Legislature's scope of discretion. Furthermore, it should also be pointed out that invalidating a registered trademark concerns the credibility of the registration itself and should be reviewed with honesty and equity.

Justice Young-Mou Lin filed dissenting opinion in part.

本號解釋林大法官永謀提出部分不同意見書。