

# A Comparative Study on the Trademark Legal System between China and Mongolia

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**Abstract:** This original research and commentary article provides a comprehensive comparative study of the trademark legal systems of China and Mongolia. The analysis covers various aspects of the trademark laws of both countries, including their historical development, main characteristics, and the acquisition and protection of trademark rights. The article also emphasizes the differences and similarities between these two legal frameworks, revealing the impact of each system on the other. Trademark is one of the important forms of intellectual property in the international economy, which not only reflects a country's economic strength to a certain extent, but also has a direct impact on the country's status in the international community. Therefore, studying the development and implementation of trademark law is crucial for understanding a country's comprehensive national strength and legal system. This article aims to summarize and compare the development process and current situation of China's trademark law and Mongolia's trademark law, in order to reveal the similarities and differences in the field of trademark law between the two countries.

**Keywords:** Comparative research, trademark legal system, China, Mongolia, trademark law, intellectual property, comparative analysis, trademark registration, trademark infringement, intellectual property, international trade relations, legal framework, brand identification.

## I. Study

From a general social perspective, a trademark refers to all expressions used in goods or services to indicate the source of a specific product and distinguish oneself from others' goods. The concept of this trademark is a relative concept that changes with the actual situation of economic transactions. If a symbol has symbolic meaning, can convey its meaning, can serve as a symbol of the source of goods, or distinguish itself from others' goods, then it does not need to be limited to specific constituent elements. Therefore, except for visual symbols, all sensory symbols or dynamic components that can be perceived through hearing, smell, taste, touch, etc., as long as they can be used to identify their own and others' goods, can be considered trademarks.

The implementation of the Trademark Law was the beginning of China's intellectual property legislation. It took about ten years for the country to successively formulate laws such as the Patent Law and the Copyright Law, establish China's intellectual property legal system, and modify these laws ten years later. In the past twenty years, with the emergence of the Internet and the development of information technology, the world has undergone tremendous changes, which has brought us into a new era. Despite more than 20 years of training, the intellectual property awareness, especially trademark awareness, of most enterprises is very weak, and even some well-known large enterprises have encountered trademark "Waterloo". This has also led to continuous setbacks in China's foreign trade. Therefore, the urgent task is to enhance the awareness of intellectual property rights and formulate intellectual property countermeasures from the perspective of enterprise development strategy.

China's intellectual property system construction has completed the 200 year journey of developed countries within 20 years, and many aspects have been passively made under the influence of external forces. Therefore, there is no doubt that China's intellectual property system needs to be learned and improved. Mongolia's intellectual property legislation can be traced back to the 19th century. In recent years, many universities in China have established research centers in Mongolia, but there is relatively little research on the

introduction of Mongolia's trademark law. However, this study has important practical significance and plays an important role in improving China's trademark legislation and formulating intellectual property strategies. This article introduces the content of the trademark laws of China and Mongolia, with a focus on the trademark laws of Mongolia. By comparing, we can identify some similarities and differences between the two, which may be areas that we should focus on and learn from.

A trademark is the "business card" of a country's economic development and a symbol of a country's economic strength. Since modern times, trademark disputes have emerged one after another, leading to the emergence of laws related to trademark protection. As early as 1904, the Qing government promulgated the first modern Chinese trademark law, the "Trademark Registration Regulations". Afterwards, academic achievements related to trademark law research emerged one after another. This article aims to summarize the research results of trademark law since modern times and analyze the trademark laws of China and Mongolia. Pointed out the historical evolution and differences in characteristics of trademark laws between the two countries, with a focus on analyzing the differences in trademark laws between the two countries.

Firstly, during my graduate studies, my major was Civil and Commercial Law, which is related to the topic of trademark law research. I have taken courses in civil law, economic law, and tort liability law. The study of these courses and the reading of related books have provided me with a certain theoretical foundation for my research.

Secondly, during my graduate studies, I completed some papers, participated in competitions, and participated in essay solicitation activities, mastering the basic methods of paper writing, laying the foundation for completing the paper.

## **Part 1: Overview of the Development of China's Trademark Law**

The development of China's trademark law can be divided into two stages: the first half of the last century and after the reform and opening up.

### (1) A Review of Trademark Law in the First Half of the Last Century

In the first half of the last century, the development of China's trademark law was accompanied by the formulation of early trademark regulations. However, most studies focus on the interpretation of trademark law itself and trademark registration procedures, and there is less in-depth exploration of the theory of trademark law.

It began with the birth of early trademark laws and regulations in China. The research content of early trademark theory in China was relatively single, mostly focusing on the trademark law itself, with introductory discussions on regulatory provisions, registration procedures, patterns, trademark approval, litigation cases, and other aspects. There is little in-depth exploration of theory.

In addition, the Beijing government issued the "Trademark Gazette" after the promulgation of the "Trademark Law" in 1923, the "National Trademark Exchange" issued by the Trademark Office of the Ministry of Industry and Commerce in 1929, and the "East Asian Trademark Exchange" issued by the Ministry of Industry and Commerce in 1934 all explained the provisions, registration, litigation, and establishment of trademark offices from an official perspective, and research on trademark theory was extremely scarce[1].

During this period, Mr. Xu Guanqun conducted relatively in-depth research on trademark law from a theoretical perspective. His monograph "Theory and Practice of Trademark Law" is divided into 12 parts. The first article provides an overview of the emergence and evolution of China's trademark law, while the second to fifth articles introduce various registration procedures and dispute procedures. The remaining few articles provide a multi-level analysis of the difficult issues in the provisions of the Trademark Law, and also cite a large number of judicial interpretations of difficult trademark issues by the administrative courts of the National Government, striving to provide readers with evidence even when encountering various difficult issues. This book has a rigorous structure, rigorous argumentation, and strong practicality in reality. However, due to the limitations of the author's era, many issues in trademark theory cannot be thoroughly discussed in a systematic and detailed manner[2].

During the Republic of China period, another scholar who conducted in-depth research on the Trademark Law, Mr. He Zhuoxian's article "Review and Prospects of China's Trademark Administration" provides a detailed discussion of the process of trademark legislation and trademark administration construction in various Chinese governments from the early 20th century to the 1930s. However, strictly speaking, it is not a historical research achievement.

From the above papers and works, we can see that before the 1950s, China's research on trademark law was still at the level of interpretation of trademark law, explanation of trademark registration, interpretation of articles, and discussion of the development

process of trademark legislation. It is still tightly limited to the trademark law itself, and there is very little involvement in the reasons for the emergence, promulgation process, implementation effects, and modifications of the trademark law. It can be said that this stage is the embryonic stage of China's trademark law research.

## (2) A Review of Trademark Law after the Reform and Opening up

After the reform and opening up, China's trademark law has made significant progress. The research results began to cover the reasons for the emergence of trademark law, the promulgation process, and the competition between the government and major powers. Some scholars have also analyzed trademark law from the perspective of extraterritorial conflicts. Notable research achievements include Zhang Lihong's "Analysis of the Social Conditions of the Trademark Law Issued by the Beiyang Government", Li Minling's "Trademark Protection and Trademark Legislation in the Late Qing and Early Republic of China", and Zhao Yukun's "Trademark Legislation and Trademark Protection during the Republic of China"[3].

The trademark law after the reform and opening up has an important position in the development of China. Firstly, the 1982 Trademark Law of the People's Republic of China laid the foundation for China's trademark system. With the rapid development of China's economy and the strengthening of international economic and trade relations, trademark protection is becoming increasingly important, and the Trademark Law is constantly being revised and improved. The following are the main stages of the development of trademark law after the reform and opening up:

### 1. The Preliminary Formation and Practice of Trademark Law (1982-1992)

The promulgation of the Trademark Law of the People's Republic of China in 1982 marked the formal establishment of China's trademark system. Afterwards, the trademark registration system was improved, and trademark management agencies were also established. During this period, China's theoretical research and practical application of trademark law were in the initial stage, and the protection of trademarks was limited.

### 2. Gradual Improvement and Strengthening of Trademark Law (1993-2000)

In 1993, the Trademark Law underwent significant revisions, increasing the scope of trademark protection and the investigation of trademark infringement. Afterwards, the Trademark Law continued to improve, adding content such as classification protection for trademarks, protection for well-known trademarks, and joint protection, thereby improving the level of trademark protection. At the same time, the role of trademark management agencies is increasingly prominent.

### 3. Further Revision and Improvement of the Trademark Law (2001-2013)

In 2001 and 2003, the Trademark Law was revised again to strengthen the protection and management of trademarks. Among them, the revision in 2001 was the most important since the implementation of the Trademark Law, which clearly stipulated the scope and intensity of trademark protection, and also added norms for trademark agents and trademark examiners. The revision in 2003 strengthened the crackdown on trademark infringement. In 2013, the Trademark Law underwent another important revision, adding provisions on trademark opposition, invalidation, and trademark administrative litigation, further improving the trademark system[4].

### 4. Comprehensive Upgrade and Internationalization Development of Trademark Law (Since 2014)

In 2014, the Trademark Law of the People's Republic of China underwent another important revision, strengthening the protection and management standards of trademarks, and achieving a comprehensive upgrade of the Trademark Law. In 2019, the Trademark Law of the People's Republic of China was revised for the fourth time, adding provisions for malicious registration and trademark agency agencies, improving the efficiency and quality of trademark protection[5].

Overall, research on China's trademark law has gradually diversified since the reform and opening up, but it still focuses on the trademark law itself as the main research object, with relatively few studies involving other issues.

## **Part 2: Overview of the Development of Mongolian Trademark Law**

The development of trademark law in Mongolia is relatively new, mainly going through the following stages:

### (1) The Development of Trademark Protection in Mongolia

Before the 1990s, Mongolia's trade and production were strictly controlled by state monopolies, and trademark enforcement was a national matter. In 1997, the promulgation of the Mongolian Trademark Law marked the official emergence of the Trademark Law. Subsequently, Mongolia carried out judicial reforms to make trademarks enforceable in civil courts.

1. The first stage: monopolistic economy period (1950s-1990s)

During this period, trade and production in Mongolia were monopolized by the state, and profit-making activities and non-state-owned sales and production channels were prohibited. Trademark enforcement is a national matter, and private enterprises cannot exist in an officially recognized position. The trademark legal system did not receive practical application during this period.

2. The second stage: the period of market economy reform (1990s-2000s)

During this period, Mongolia transitioned to a market economy and joined the World Trade Organization in 1997. In 1997, the first market-oriented trademark law was promulgated - "Product Marks, Name Information for Trademark Registration" (TML). With the reform of judicial independence and the formulation of modern commercial law, trademark enforcement has begun to receive legal protection. The modern Civil Code and Civil Procedure Law, which came into effect in 2002, provide for the prohibition of trademarks and compensation for damages. However, at this stage, the trademark is mainly enforced by IPOM in administrative review procedures, and the remedies of civil courts have not been applied in practice[6].

3. The third stage: Strengthening law enforcement and reform period (2010s to present)

Over time, Mongolia has gradually strengthened trademark law enforcement and implemented stricter penalties for trademark infringement. In 2010, TML revised and further authorized IPOM to confiscate and destroy infringing goods, confiscate "illegal income", and increase fines. However, during this period, the overall trend of government agencies gaining extensive law enforcement power was criticized. In order to address the reported human rights violations and discriminatory enforcement by government agencies, the Trademark Law of Mongolia was revised in 2015. In 2021, Mongolia's trademark law underwent its first significant revision.

The revised Trademark Law has added many new provisions and provisions to better protect the rights of trademark holders and further strengthen the punishment for trademark infringement. In addition, the new trademark law also introduces some new concepts, such as "trademark authorization certificate" and "collective trademark", and clarifies the legal status of trademark agents.

(2) Current laws regarding IPOM permissions

The Mongolian Intellectual Property Office (IPOM) has extensive powers in trademark enforcement, including enforcement, confiscation of infringing goods, fines, etc. However, in recent years, people have begun to oppose the arbitrary behavior of government agencies, leading to legal reforms to monitor administrative enforcement actions.

Trademark law has undergone three stages of development in Mongolia. In the first stage, the state monopolized trade and production, and the trademark legal system was not effectively applied. In the second stage, Mongolia transitioned to a market economy and promulgated the first market-oriented trademark law. Trademark enforcement began to receive legal protection, but was mainly enforced by IPOM in administrative review procedures. In the third stage, trademark enforcement has been further strengthened and reformed. The revised Trademark Law came into effect on May 6, 2021, adding many new provisions and provisions to better protect the rights of trademark holders and strengthening the punishment for trademark infringement[7].

Overall, Mongolian trademark law has gone through a development process from the initial stage to the reform stage, then to the expansion stage and legal reform stage. The power of Mongolian trademark law enforcement agencies continues to expand and gradually realizes the establishment of a modern trademark law enforcement system. Mongolia's trademark law has undergone a transformation from a state monopoly to a market-oriented economy, and has gradually improved its trademark enforcement system and strengthened intellectual property protection. At the same time, the continuous expansion of law enforcement power by government agencies has also attracted people's attention and opposition. In order to address related issues, legal reforms have further improved trademark enforcement procedures.

**Part 3: Comparison between Chinese Trademark Law and Mongolian Trademark Law**

There are some similarities and differences in the development process and implementation of China's trademark law and Mongolia's trademark law. Both countries have experienced legislation and reform of trademark laws, but there are differences in specific enforcement agencies and procedures.

As an indispensable part of the commercial field, trademarks play a crucial role in protecting consumer rights, promoting market competition, and maintaining brand value. Each country has established its own trademark law system to ensure the protection and management of trademark rights. This paper aims to compare and analyze the trademark laws of China and Mongolia, exploring the similarities and differences in the field of trademark law between these two countries, as well as the impact of these legal systems on the business and legal environment.

#### 1. Overview of China's Trademark Law:

As one of the largest trademark registration systems in the world, China's trademark law has undergone multiple revisions and reforms to adapt to the constantly evolving business environment. The core of China's trademark law includes the definition, classification, registration procedures, protection of trademark rights, and dispute resolution mechanisms of trademarks. Trademarks are considered an important component of corporate brands in China, therefore trademark protection is of great significance in China.

#### 2. Overview of Mongolian Trademark Law:

Mongolia, as a country in the Asian region, also has its own legal system in the field of trademark law. The Mongolian Trademark Law stipulates the definition, classification, registration procedures, and protection of trademark rights and dispute resolution mechanisms. Although Mongolia's trademark system is relatively small in scale, it is equally important for protecting domestic and international brands.

#### 3. Comparison of trademark registration and management:

The trademark registration systems of China and Mongolia have similarities in some aspects, but there are also significant differences. There are different regulations and requirements in terms of trademark registration conditions, application procedures, review processes, and trademark protection period between the two countries. In addition, the cost and time of trademark registration may also vary between the two countries.

#### 4. Comparison of trademark protection:

The protection of trademark rights is one of the core objectives of the trademark law system. There are differences between China and Mongolia in the scope of trademark rights, infringement determination, and dispute resolution mechanisms. This includes the requirements for the use of trademarks, the legal consequences of trademark infringement, and the invalidation procedures for trademark rights.

#### 5. International Trademark Registration:

International trademark registration is crucial for enterprises to enter the international market. The participation and cooperation between China and Mongolia in the international trademark registration system will be compared in the paper, including their international trademark registration policies, membership of international trademark organizations, and the procedures and requirements for international trademark registration.

#### 6. The latest developments in trademark law:

The trademark law system is constantly developing and evolving to adapt to new commercial and technological trends. The paper will explore the latest revisions and changes in the trademark laws of China and Mongolia, as well as their impact on the business and legal environment.

#### 7. The impact of trademark law:

Trademark law has a profound impact on the country's business environment, brand management, and market competition. The paper will analyze the impact of trademark law on the economic and legal systems of China and Mongolia, as well as its role in protecting consumer rights and encouraging innovation.

In the conclusion section, the comparison results between China's trademark law and Mongolia's trademark law will be summarized, emphasizing their similarities and differences, and discussing the impact of these legal systems on the business and legal environment. Finally, suggestions and prospects are proposed to showcase the future development trends of trademark laws in both countries. The research on trademark law in China is relatively early, but mainly focuses on the trademark law itself. The trademark law of Mongolia is relatively new, but it has undergone rapid development, especially after the reform and opening up.

### Conclusion

The trademark laws of China and Mongolia are important components of international trade and intellectual property protection. Although there are differences in the development process of trademark laws between the two countries, studying the development and implementation of trademark laws in these two countries can help to better understand their legal systems and international economic status. Future research can delve deeper into the legislative background, principles, and impact of trademark law, in order to promote the further development of intellectual property protection.

### References:

1. Dong Xinkai Trademark Law, Value and Implementation of Consumer Cognition in Application, Northern Law, 2023;
2. Zhu Dong and Zhang Ling, Reflection and Reconstruction of Intellectual Property Rights in Article 58 of the Trademark Law, 2023;
3. Tang Lei, Understanding and Application of Article 15 Trademark Law - Taking the Case of Invalidation of the "Jufengyuan" Trademark as an Example, Zhonghua Trademark, 2023;
4. Wang Taiping and Shen Wenli, Commentary on Article 11 (2) of the Trademark Law on the "System of Obtaining Notability of Trademarks", Electronic Intellectual Property, 2023;
5. Li Hao's Understanding and Judgment of "Trademark Use" in the Trademark Law: A Multidimensional Perspective Based on Communication Behavior, Process, and System, Electronic Intellectual Property, 2022;
6. Dashkhuu Tsolmon, Intellectual Property, Ulaanbaatar, 2016;
7. Kherlenchimeg.B, Trade names and its legal framework, Ulaanbaatar, 2021.