

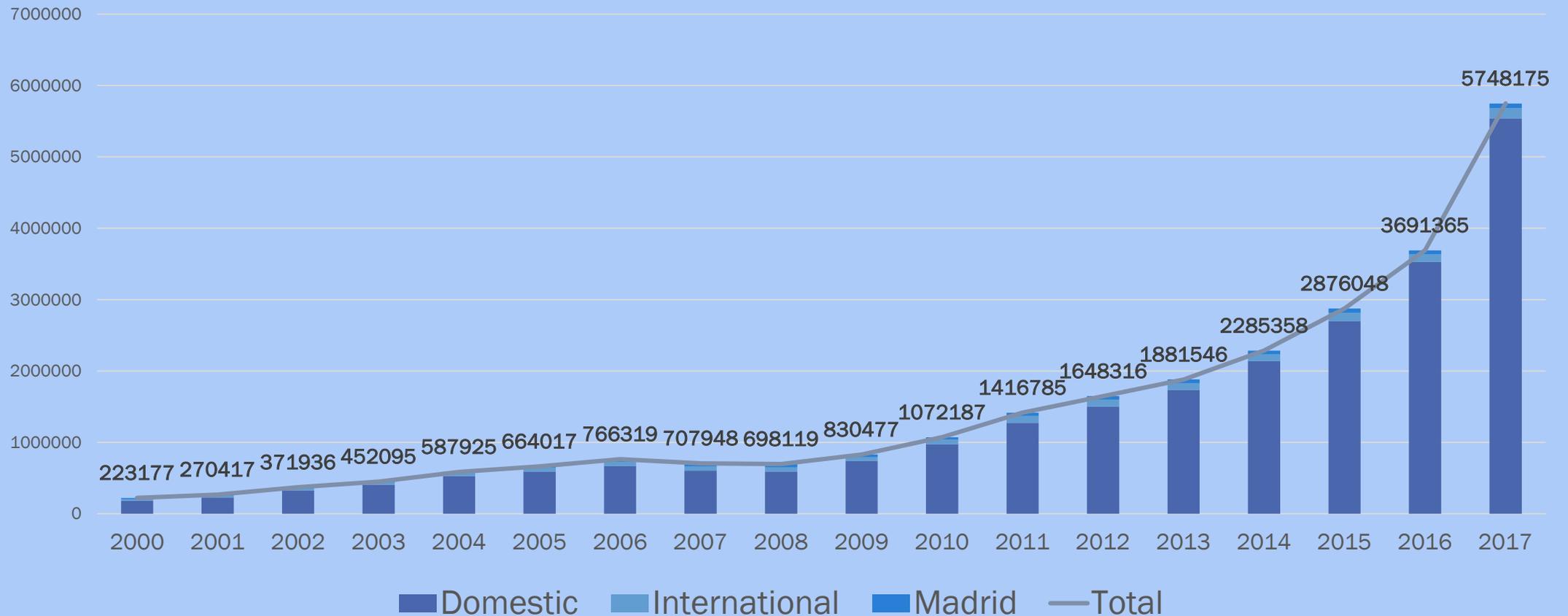


OPPOSITION INVALIDATION CANCELLATION

China Trademark Practice

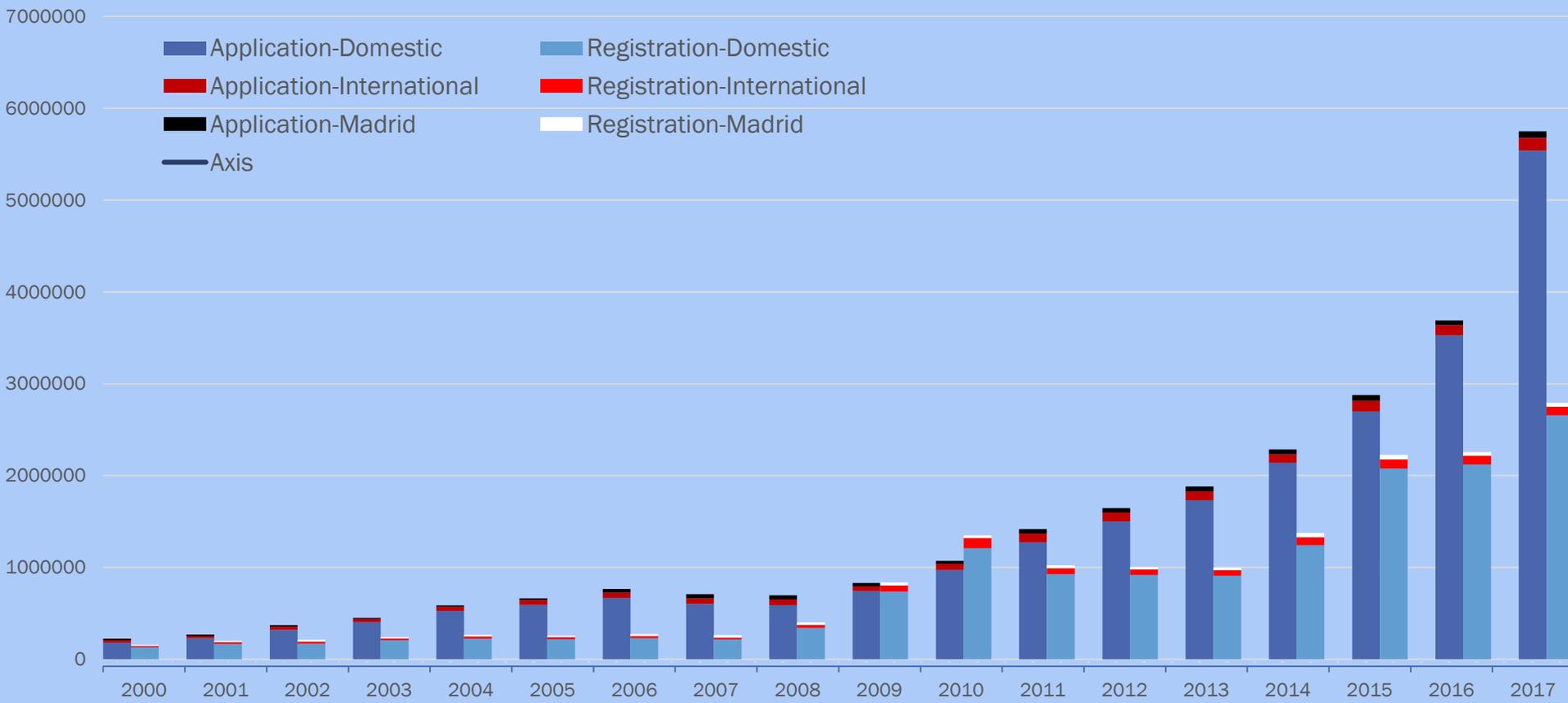
China Trademark Application

In 2017, on average 15,748 new trademark applications per day.



Trademark Application vs Registration

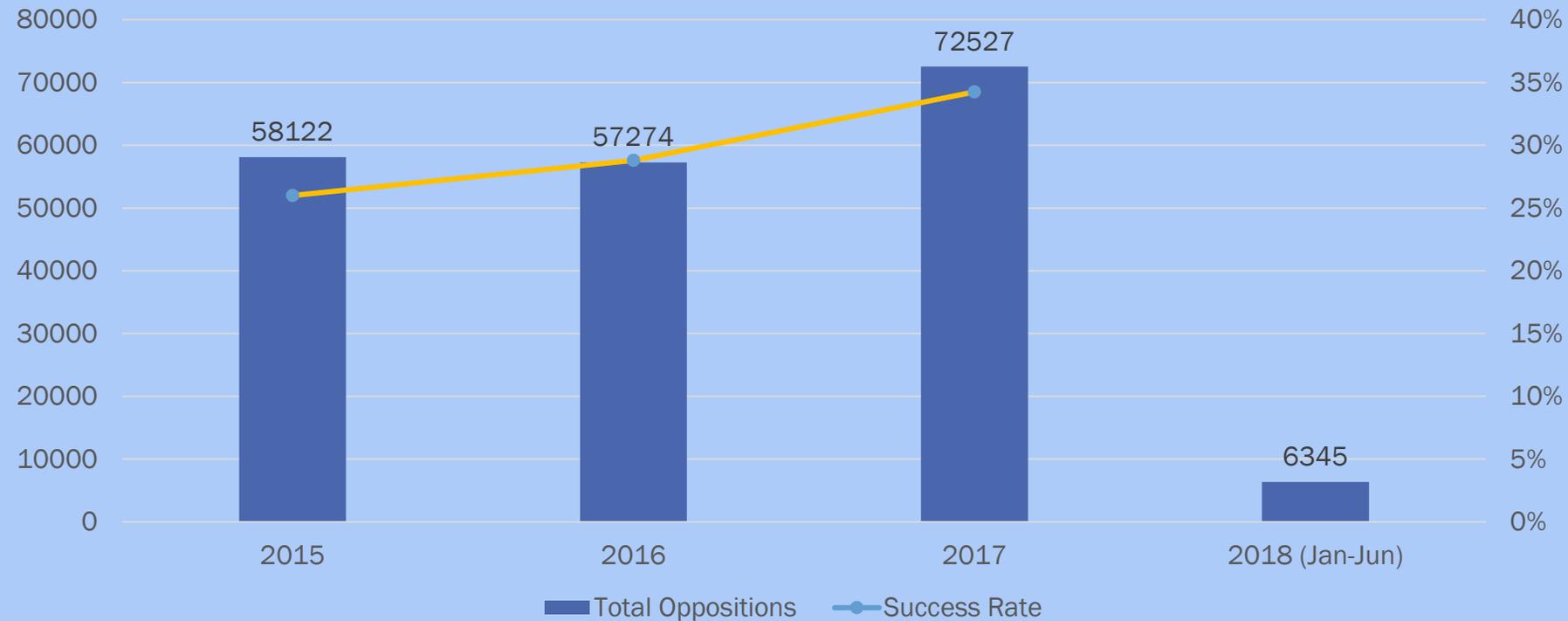
The rejection rate is high. In 2017, only 48.6% (2,792,072) trademarks registered successfully.



Trademark Opposition

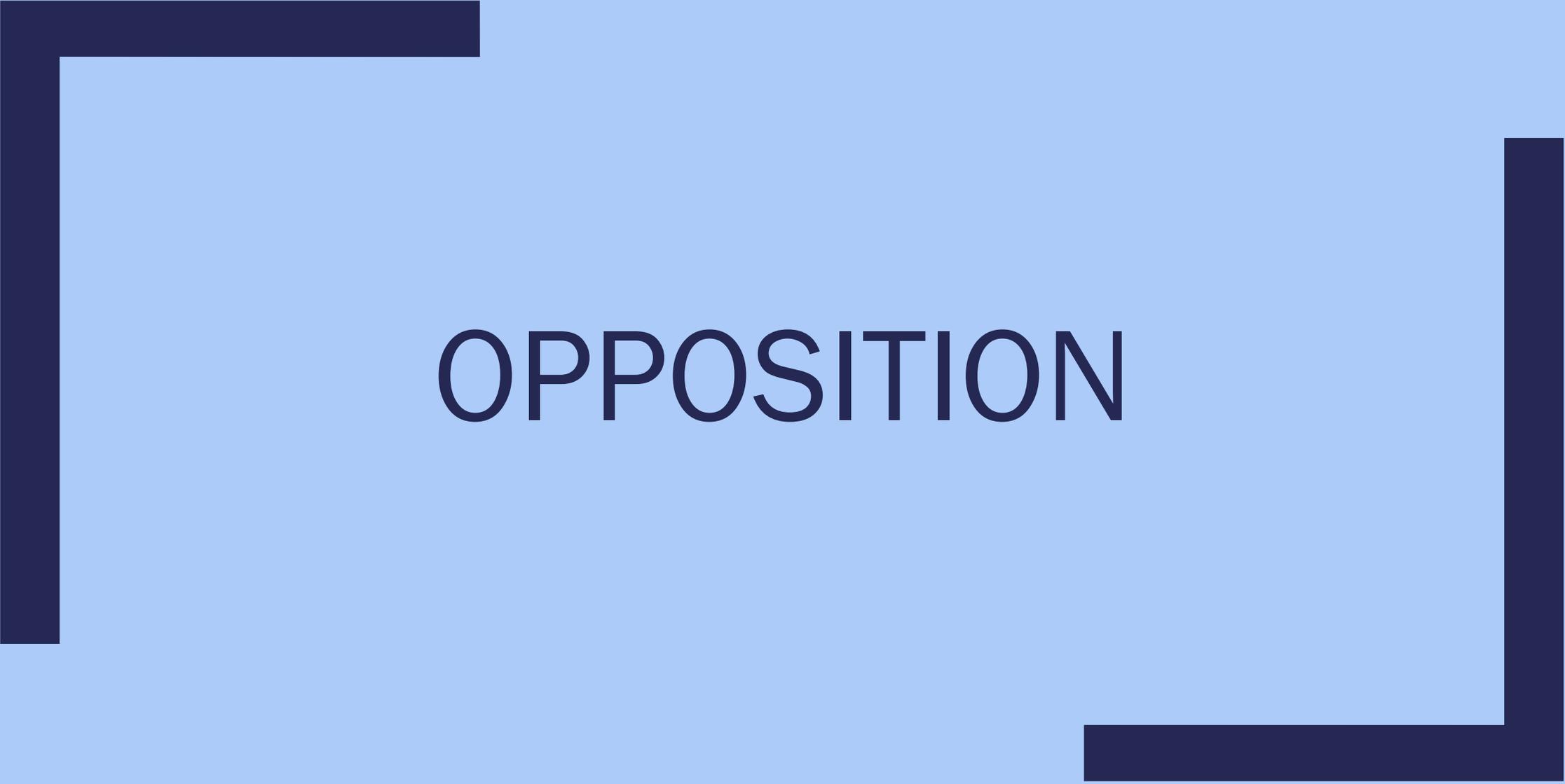
In 2017, 72,575 applications for opposition received, up 26.9%.

17,000 opposition ruled as complete constitution and 4,489 as partial constitution by CMT0. It's 34.25% of success rate combined. While it's only 28.6% in 2016.



Total Review Cases Received by TRAB during Jan – Aug 2018

	Cases
Review on rejection	134,390
Invalidation	12,213
Review on Cancelation	4,035
Review on refused trademark application	917
Review on Invalidation	39

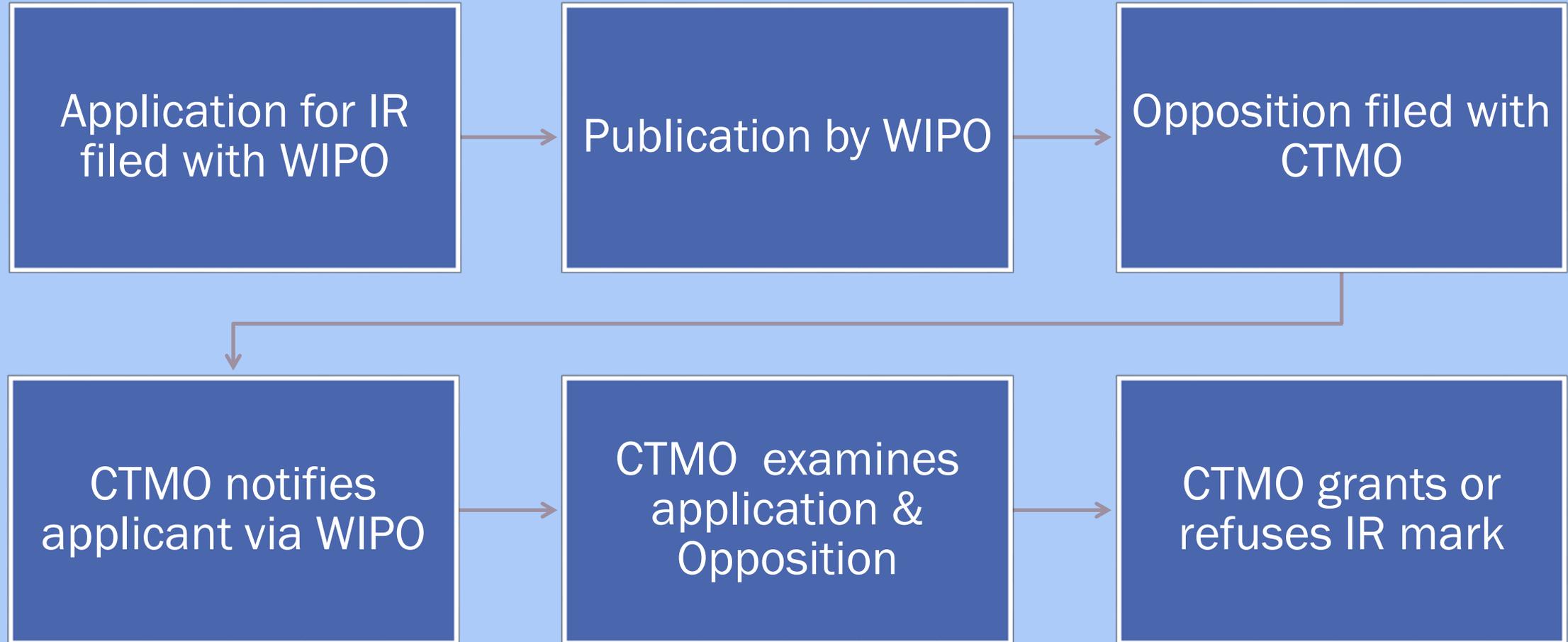


OPPOSITION

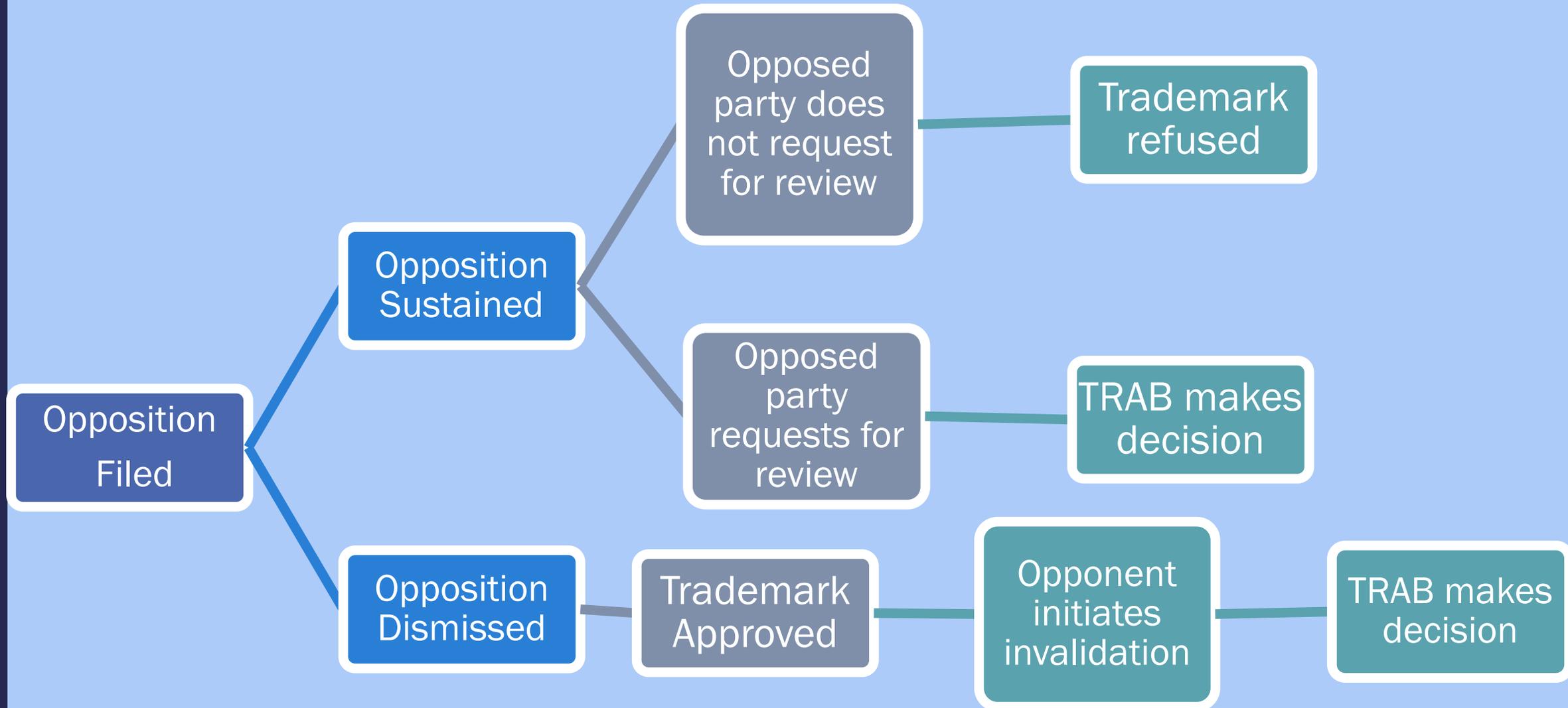
CN Trademark Application Procedure



Opposition Procedure for International Trademarks



Opposition Procedure



Grounds of Opposition – Absolute Grounds

■ Article 10

- *Identical with or similar to names, flags, emblems, etc. of China, foreign countries, and international intergovernmental organizations*
- *Identical with or similar to official signs indicating control and warranty*
- *Identical with or similar to Red Cross or the Red Crescent;*
- *Discriminative;*
- *Fraudulent or misleading on the quality or other characteristics or the origin of a product;*
- *Detrimental to socialist morals or customs or having other negative influences;*
- *Containing geographical names of the administrative divisions at or above the county level and the foreign geographical names well-known to the public*

Grounds of Opposition – Absolute Grounds

- **Articles 11 & 12**
 - *descriptive*
 - *generic*
 - *lacking distinctiveness*

Grounds of Opposition – Relative Grounds

- **Article 13:** *well-known mark*
- **Article 15:** *preemption by agent or potential / former business partner*
- **Article 16:** *misleading geographic indications*
- **Articles 30 & 31:** *prior registration / application*
- **Article 32:**
 - *other prior rights (copyright / trade name rights / personal name rights, etc.)*
 - *prior use right*

Qualified opponent

- Absolute grounds – anyone
- Relative grounds – prior trademark owner or interested party

Opposition FAQ

Is the opposed party obliged to file a response ?

No, the opposed party can choose to make no response without jeopardizing the application, and the CTMO will make decision based on facts and grounds.

Opposition FAQ

How to terminate an opposition proceeding

Opponent withdraws the opposition after certain agreement is reached by two parties;

Opposed party withdraws the application to avoid an unfavorable decision

Opposition FAQ

Can opposition be raised against part of the goods?

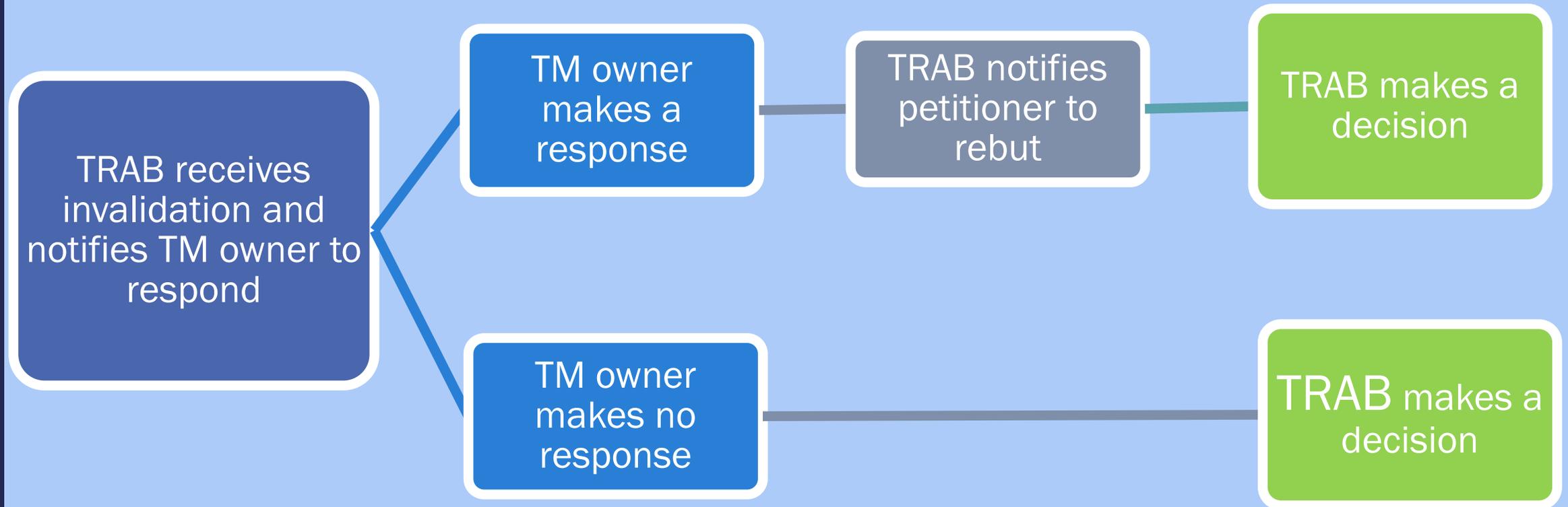
Yes, including part of multiple classes and part of the goods

! Disadvantage of multi-class application



INVALIDATION

Invalidation Procedure



Grounds of Invalidation – Absolute Grounds

■ Article 10

- *Identical with or similar to names, flags, emblems, etc. of China, foreign countries, and international intergovernmental organizations*
- *Identical with or similar to official signs indicating control and warranty*
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Grounds of Invalidation – Absolute Grounds

- Articles 11 & 12

- *descriptive*
- *generic*
- *lacking distinctiveness*

- **Registration obtained by fraud or other improper means**

Strengthened Measures against Trademark Squatting

Paragraph 1, Article 44 of China Trademark Law

Where the registration of a trademark was **acquired by fraud or any other unfair means**, the Trademark Office shall declare the registered trademark invalid; and any other organization or individual may apply to the Trademark Review and Adjudication Board for invalidation of the registered trademark.

Strengthened Measures against Trademark Squatting

Circumstances constituting “registration acquired through other improper means”

registering many trademarks which are identical with or similar to highly distinctive trademarks of others

registering many trademarks which are identical with or similar to others’ business names, entity names or the special names for well-known products

registering a large amount of trademarks with obvious lack of use intention. Further definition has been given to “obvious lack of use intention” as having neither actual use nor intention to use and merely aiming at selling the mark, seeking a royalty fee or compensation

Grounds of Invalidation – Relative Grounds

- **Article 13:** *well-known mark*
- **Article 15:** *preemption by agent or potential / former business partner*
- **Article 16:** *misleading geographic indications*
- **Articles 30 & 31:** *prior registration / application*
- **Article 32:**
 - *other prior rights (copyright / trade name rights / personal name rights, etc.)*
 - *prior use right*

Time Limit for Invalidation

Absolute grounds – no time limit

Relative grounds – 5 years from the trademark registration date

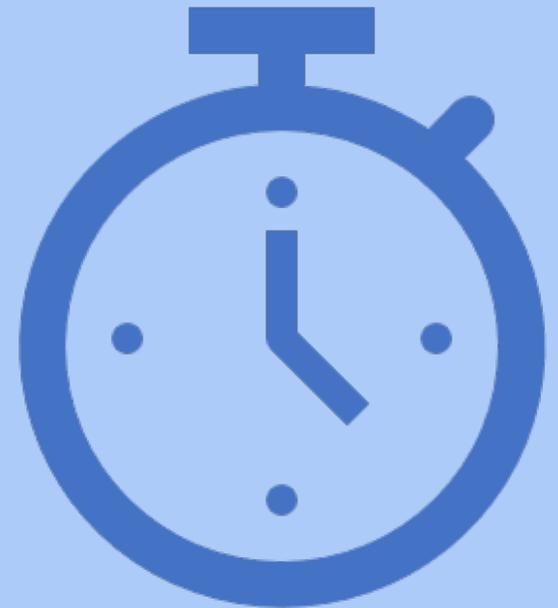
Bad faith claim + Well-known mark claim – no time limit



**CANCELLATION
(NON-USE)**

When is a trademark required for use

- No use requirement at the time of filing
exception: applications filed on the same day
- No use required at the time of registration
- Vulnerable to cancellation 3 years after registration





Tightened Requirements for Trademark Use

In the context of the Trademark Law, the Revised Standard further confines trademark use as
use of a trademark in commerce



Typical Circumstances not Constituting Trademark Use

- Publication of trademark registration information or declaration of trademark ownership;
- Use of a trademark other than in the public business field;
- Use of a trademark merely on gifts;
- Mere transfer or license of trademark rights without actual use; and
- Symbolic use of a trademark merely aiming at maintaining registration.

Thank you!

Speaker: Dan Chen
Partner
Unitalen Attorneys at Law
www.unitalen.com
Email: dan.chen@unitalen.com
Telephone: 925-789-7213