

九六年商標法修正各主要國家兩罰規定

相關立法例參考資料

2007 年 3 月 14 日

議 題	國 別	相 關 立 法 例
兩罰規定	德國	<p>第 14 條第 7 項</p> <p>侵害行為係由商業團體之員工或經授權之代表人為之者，該商標專用權人得對該商業團體之負責人提請訴訟禁止是項使用，且不論該名員工或經授權之代表人為故意或疏忽者，亦得對該商業團體之負責人請求損害賠償。</p> <p>Where an employee or an authorized representative undertakes such infringing action in a business establishment, the proprietor of the business establishment may be sued by the proprietor of the trade mark to enjoin such use and, where the employee or authorized representative has undertaken such action intentionally or negligently, compensation for damages may also be claimed from the proprietor of the business establishment.</p>

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兩罰規定	日本	<p>第八十二條 兩罰規定</p> <p>法人的代表者，或法人與自然人的代理人、使用人等及其他從業者，在與該法人或與該自然人業務有關的事務上，有違反下列各款規定的行為時，除處罰行為者外，對該法人科以各款所定的罰金刑，對該自然人科以各本條的罰金刑。</p> <p>（1）第七十八條 一億五千萬日元的罰金刑；（第七十八條：侵害商標權或專用使用權者，處以五年以下的徒刑或五百萬日元以下的罰金。）</p> <p>（2）第七十九條或第八十條 各本條的罰金刑。（第七十九條：以詐欺行為進行商標註冊、防護商標註冊、或基於商標權或防護商標註冊的權利有效期限的續展註冊、註冊異議提出而受到決定或審決者，處以三年以下的徒刑或三百萬日元以下的罰金）；（第八十條：虛偽表示罪 違反第七十四條規定者，處以三年以下的徒刑或三百萬日元以下的罰金）</p>
	英國	<p>101、合夥企業和法人團體的違法行為</p> <p>（1）依本法，對聲稱是合夥企業的違法行為的訴訟應以該公司的名義</p>

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兩罰規定	英國	<p>(1) 依本法，對聲稱是合夥企業的違法行為的訴訟應以該公司的名義而不是以合夥人的名義起訴合夥企業，但不得對下面第(4)款規定的合夥人的義務有任何偏見。</p> <p>(2) 下列規定適用於法人團體有關的訴訟：</p> <p>(a) 法院有關文獻服務的任何規則；</p> <p>(b) 在英格蘭和威爾士或北愛爾蘭，1980年《地方法院法案附則》或1981年《地方法院法令（北愛爾蘭）》（指控違法行為的程式）附則4。</p> <p>(3) 在這樣的訴訟中，對合夥企業判決的罰金應從合夥企業的財產中繳付。</p> <p>(4) 如果合夥企業犯有本法所指的違法行為，除被證明不知該違法行為或已盡力阻止該行為發生的合夥人外，每一位合夥人也犯有該違法行為罪，並且應被起訴和受到相應的懲罰。</p> <p><u>(5) 當某一法人團體有本法所規定的違法行為，經證明是經董事、經理、秘書或該機構的其他類似官員或聲稱代行這種職位的權力者同意或默許的，該人和該法人團體均犯有該違法罪，並應受到相應的起訴和懲罰。</u></p> <p>101.-</p> <p>(1) Proceedings for an offence under this Act alleged to have been</p>

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兩罰規定	英國	<p>committed by a partnership shall be brought against the partnership in the name of the firm and not in that of the partners; but without prejudice to any liability of the partners under subsection (4) below.</p> <p>(2) The following provisions apply for the purposes of such proceedings as in relation to a body corporate-</p> <p>(a) any rules of court relating to the service of documents; 1980 c. 43. S.I. 1981/1675 (N.I. 26).</p> <p>(b) in England and Wales or Northern Ireland, Schedule 3 to the Magistrates' Courts Act 1980 or Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (procedure on charge of offence).</p> <p>(3) A fine imposed on a partnership on its conviction in such proceedings shall be paid out of the partnership assets.</p> <p>(4) Where a partnership is guilty of an offence under this Act, every partner, other than a partner who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, is also guilty of the offence and liable to be proceeded against and punished accordingly.</p> <p>(5) <u>Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is</u></p>

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兩罰規定	澳洲	<p><u>guilty of the offence and liable to be proceeded against and punished accordingly.</u></p> <p>160．負責人，工作人員和代理人的職責</p> <p>（1）本條適用於就下列事項提起的訴訟；</p> <p>A 本法規定的違法行為；</p> <p>B 與本法有關的《刑法》1914 中第 6 條，7 條或 7A 或 86（1）規定的違法行為；</p> <p>（2）<u>如果有必要證明某集團的思維狀態，表明以下各項足夠： A 如果該行動是由該集團的負責人，工作人員或代理人在其確切或明顯的權利範圍內進行的。</u></p> <p>B 該負責人，工作人員或代理人具有該思維狀態。</p> <p>（3）<u>任何由集團的負責人，工作人員或代理人代表該集團在其確實或明顯的權利範圍內從事的活動被視為由集團從事，除非它證明曾採取相當預防措施和花費相當努力來阻止這種行動。</u></p> <p>（4）如果有必要證明某個人在某行為中的思維狀態，表明下列各項足夠：</p>

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兩罰規定	澳洲	<p>足夠：</p> <p>A 如果該行動是由該個人的工作人員或代理人在其確切或明顯的權利範圍內進行的。</p> <p>B 該工作人員從或代理人具有該思維狀態。（5）任何由工作人員或代理人代表某個人在其確實或明顯的權利範圍內從事的活動被視為由這個人從事，除非這個人證明他或她曾採取相當預防措施和花費相當努力來阻止這種行動。</p> <p>（6）如果：</p> <p>A 某個人根據本法因違法行為受到處罰，且</p> <p>B 如果沒有第（4）、（5）段的規定，這個人不會因為該違法行為受到處罰，</p> <p>則這個人不應因該違法行為被判處監禁。</p> <p>（7）本條中：</p> <p>A 根據英聯邦、州或地區的法律以公共目的建立的機構；</p> <p>B 由一個或多個成員組成；</p> <p>該機構的負責人意味著是組成該機構的成員或成員之一。</p> <p>作為包括不作為或拒絕作為。</p> <p>就某人而言，其思維狀態包括：</p> <p>A 這個人的知識，意向，意見，信仰或意圖；</p>

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兩罰規定	澳洲	<p>A 這個人的知識，意向，意見，信仰或意圖； B 這個人意向，意見，信仰或意圖的原因</p> <p>160.-(1) This section applies for the purposes of a prosecution for:</p> <p>(a) an offence under this Act; or (b) an offence under section 6, 7 or 7A or subsection 86(1) of the Crimes Act 1914 that relates to this Act.</p> <p>(2) If it is necessary to prove the state of mind of a body corporate in relation to particular conduct, it is enough to show:</p> <p>(a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and (b) that the director, servant or agent had the state of mind.</p> <p>(3) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is taken to have been engaged in also by the body corporate, unless it proves that it took reasonable precautions and exercised due diligence to avoid the conduct.</p> <p>(4) If it is necessary to prove the state of mind of an individual in relation to particular conduct, it is enough to show:</p>

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兩罰規定	中國大陸	<p>(a) that the conduct was engaged in by a servant or agent of the individual within the scope of his or her actual or apparent authority; and</p> <p>(b) that the servant or agent had the state of mind.</p> <p>(5) Any conduct engaged in on behalf of an individual by a servant or agent of the individual within the scope of his or her actual or apparent authority is taken to have been engaged in also by the individual, unless the individual establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.</p> <p>(6) If:</p> <p>(a) an individual is convicted of an offence under this Act; and</p> <p>(b) the individual would not have been convicted of the offence if subsections (4) and (5) had not been enacted;</p> <p>the individual is not liable to be punished by imprisonment for that offence.</p> <p>(7) In this section:</p> <p><i>director</i>, in relation to a body that:</p> <p>(a) is incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory; and</p> <p>(b) is constituted by one or more members;</p> <p>means the member, or any of the members, constituting the body.</p> <p><i>engage in conduct</i> includes fail or refuse to engage in conduct.</p> <p><i>state of mind</i>, in relation to a person, includes:</p>

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		<p>(a) the person's knowledge, intention, opinion, belief or purpose; and</p> <p>(b) the person's reasons for the intention, opinion, belief or purpose.</p> <p>刑法</p> <p>第二百二十條 單位犯本節第二百一十三條至第二百一十九條規定之罪的，對單位判處罰金，並對其直接負責的主管人員和其他直接責任人員，依照本節各該條的規定處罰。</p>