

PROTECTION OF TRADEMARKS IN CHINA

*Exchange of notes at Peking December 18, 1905, and related note of
January 22, 1906*

Entered into force December 18, 1905

*Became obsolete May 20, 1943*¹

Treaty Series 482

The American Minister to the Italian Minister

PEKING, *December 18, 1905*

MR. MINISTER AND DEAR COLLEAGUE:

The Government of the United States being desirous of reaching an understanding with the Government of Italy for the reciprocal protection against infringement in China by citizens and subjects of our respective nations of trade marks duly registered in the United States and Italy, I am authorized by the Secretary of State of the United States to inform you that effectual provision exists in American Consular Courts in China for the trial and punishment² of all persons subject to the jurisdiction of the United States who may be charged with and found guilty of infringing in any way trade marks of persons subject to the jurisdiction of Italy which have been duly registered in the United States.

I beg that you will kindly inform me whether American citizens are entitled to the same legal remedies in the Consular Courts of Italy in China as regards the protection from infringement of their trade marks duly registered in Italy.

I have the honor to be,

Mr. Minister and dear Colleague,

Your obedient servant,

W. W. ROCKHILL

His Excellency, Monsieur CARLO BAROLI,

etc. etc. etc.

Italian Legation, Peking.

¹ Date on which the United States relinquished extraterritorial rights in China pursuant to treaty of Jan. 11, 1943 (TS 984, *ante*, vol. 6, p. 739, CHINA).

² See U.S. note, p. 114.

The Italian Minister to the American Minister

[TRANSLATION]

PEKING, *December 18, 1905*

MR. MINISTER:

I have the honor to acknowledge the receipt of your note of today's date by which you inform me that you have been authorized by your Government to conclude an arrangement with the Italian Legation by means of an exchange of notes, for the reciprocal protection in China of American and Italian trade marks, and that hereafter infringements of trade marks the property of Italian subjects and duly registered in the United States by persons subject to the jurisdiction of American Consular Courts in China will be tried by the latter according to law.

Having been duly authorized thereto by the Royal Government, I am pleased to inform you that hereafter infringements of trade marks of American citizens, duly registered in Italy, by persons subject to the jurisdiction of the Italian Consular Courts in China will in first instance be tried according to the law by said Courts and on appeal by the Royal Court of Appeal of Ancona.

Please accept, etc. etc.

C. BAROLI

*The American Minister to the Italian Minister*PEKING, *January 22, 1906*

MR. MINISTER AND DEAR COLLEAGUE:

In connection with the notes which I had the honor to exchange with Your Excellency on December 18, 1905, looking to the reciprocal protection from infringement by our respective nationals in China of trade marks belonging to them I duly transmitted copies of the same to my Government.

In reply the Secretary of State has called to my attention, as possibly misleading, the use made in my note to you of the word "punishment" by our Consular Courts in China of American citizens who may have infringed in China trade marks the property of persons under the jurisdiction of Italy.

In view of the fact that there is no statute in the United States making the infringement, counterfeiting, etc. of a trade mark a criminal offense, and that effectual provision exists by a civil action for damages by the owner of a trade mark, my Government is of the opinion that the word "punishment" should be understood to refer to a civil action only, and not to a criminal procedure, as might be inferred from the use of the word in question without the present explanation added thereto.

I beg leave to call Your Excellency's attention to the above provision of our law, so that nothing in my note of December 18, last, may be construed as conflicting therewith.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

W. W. ROCKHILL

To His Excellency CARLO BAROLI,
etc., etc., etc.