

# A Comprehensive Analysis of Adjudication of Trademark Administrative Cases

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It has been more than a decade since the courts began to receive trademark right affirmation cases. While the courts and the Trademark Review and Adjudication Board (TRAB) hold the same views on many issues in dealing with cases of the kind during the period, their views are divided in addressing some issues along with the arising of the constantly more complicated trademark cases of the type and the developments in the research of the relevant trademark law theory, with changes and variation effected in some practice. This writer wrote an article presenting an overview on the relevant issues encountered in trademark administrative cases in 2009<sup>1</sup>. In this article will be presented again a comprehensive analysis of the new circumstances and practices that have arisen in treating the administrative trademark cases even since 2009. Of course, what has been discussed here is not the convergent practice of the courts, but represents at least one view in the judicial practice, and is worth our attention.

## I. Application of the provision on “unhealthy influence” of Article 10, paragraph one (8), of the Trademark Law

Article 10, paragraph one (8), of the Trademark Law provides that “words or devices detrimental to the socialist morals or customs, or having other unhealthy influence shall not be used as marks”. Given the fact that Article 10, paragraph one (1) to (7), of the Trademark Law relates to all sorts of circumstances detrimental to the accepted social order and customs or public interests, the provision of (8) on unhealthy influence should, in principle, mainly relate to circumstances detrimental to the accepted social order and customs or public interests (e.g. the “Shaolin” (written as “少林” standing for the Shaolin Temple in Chinese) mark registered in respect of goods of alcohol<sup>2</sup>), but not to regulate circumstances detrimental to the rights and interests of a par-

ticular natural person or business.

However, considering the arising of many cases involving taking ride with renowned brands in the practice of adjudication of such cases in the recent two years, merely depending on respondent rightholders for claiming their rights in subsequent trademark opposition or dispute resolution procedure is likely to cause undesired waste of the trademark registration procedure, and, as well, confusion on the part of the relevant sector of the public, which is detrimental to the interests of consumers, so the TRAB and the courts have begun to apply, in a tentative manner, the “unhealthy influence” provision to regulate registration of marks of the kind in some cases.

For example, in the “Zhongchao” (written as “中超”, standing for the “Chinese Super Soccer Association Games” in Chinese) case<sup>3</sup>, the court noted that registration of the “Zhongchao” mark in respect of goods of alcohol was likely to cause the relevant sector of the public to believe that the goods came from, or were related to, the China Soccer Association, causing confusion about the source of the goods, and thus resultant unhealthy influence. Besides, in the cases involving “邦德”(pronounced as “bong de”) 007 BOND<sup>4</sup>, “清华” (pronounced as “qing hua” and meaning Hsinghua University in Chinese) little Doctor<sup>5</sup>, “姚明一代 YAOMING ERA”<sup>6</sup>, the courts all followed substantially the same practice.

Nonetheless, views remain divided on the practice. For one view, while it stresses the justifiability of the outcome, it ruins, to an extent, the logical relations between various law provisions, so that it would be impossible to draw a line between the application of the provision of the relative grounds and that of the absolute grounds.

For example, in the “yapping” (written as “亚平” and pronounced the same as the name of Deng Yaping, a former famous Chinese table tennis player) case<sup>7</sup>, the court concluded that registration of the mark in suit only involved the issue of whether Deng Yaping’s personal civil right and interest were infringed. That is, it involved the civil right and interest of a particular person, not the public interest or accepted social order, so Article 10, paragraph one (8), of the Trademark Law should not apply to the case.

Additionally, the TRAB and the courts have begun to apply, in a tentative manner, the “unhealthy influence” provision to regulate acts of registration of a lot of others’ well-known marks. Unlike consideration of whether “trademarks” *per se* have unhealthy influence as the preceding cases, this practice highlighted the unhealthy influence of the “acts of

registration”.

For example, in the “勞斯·萊斯 ROUSI REISI (Chinese transliteration for “Rolls-Royce”) and device” mark case<sup>8</sup>, the trademark registrant, besides registration of the mark in suit, registered it in respect of goods of several other classes. In the case, both the TRAB and the court concluded that the registration was contrary to the good-faith principle, and had unhealthy influence.

For another example, in the “芬达” (pronounced as “fen da” and Chinese transliteration for “Fonda”) mark case<sup>9</sup>, the trademark registrant not only registered the “芬达” mark in respect of coffee seasonings, but also others’ well-known marks, such as, “肯德基” (pronounced as “ken de ji” and Chinese transliteration for “Kentucky Fried Chicken”)、 “阿香婆” (pronounced as “a xiang po” in Chinese)、 “西铁城” (pronounced as “xi tie cheng” and Chinese transliteration for the “Citizen” mark). In the case, the TRAB did not challenge the legitimacy of the acts, while the court decided that the acts had unhealthy influence.

Of course, whether said practice is logical in terms of law requires further exploration, but the positive significance of the practice in prohibiting bad-faith registration is obviously doubtless.

## II. Application of Article 11 of the Trademark Law

Article 11 of the Trademark Law is a provision on distinctive character. Issues of cases involving it are mostly focused on the distinction between directly descriptive words and implicative words. In principle, if a mark in suit is a directly descriptive word, it does not have distinctive character, and should not be registered as a trademark; if it is an implicative word, it is not subject to the restriction.

For example, the “consolidated” mark registered in respect of ball bearing<sup>10</sup>, the “besttool” mark in respect of cutting tools<sup>11</sup>, the “3G 门户” (pronounced as “men hu” and meaning “portal” in Chinese) in respect of service of computer<sup>12</sup>, and “云锦” (pronounced as “yun jin” and meaning a kind of cloud-pattern brocade in China) in respect of silk (cloth)<sup>13</sup>, are all directly descriptive words; but “釀艺” (pronounced as “niang yi” and meaning “skill of brewery” in Chinese) in respect of goods of alcohol<sup>14</sup>, “骨健乐” (pronounced as “gu jian le” and meaning “healthy bone for happy life” in Chinese) in respect of meat, edible oil, and milk products<sup>15</sup>, and “骨通” (pronounced as “gu tong” in Chinese

and meaning “healy bone”) in respect of drugs for human use<sup>16</sup> were determined as implicative words.

Besides, following views and disagreements stand out in some cases in relation to application of the provision, and are worth our attention.

### 1. Issue of distinctive character of marks in foreign language

(1) Meaning of marks in foreign language and public knowledge thereof

The essence of the issue lies in whether the “meaning” of a foreign word has impact on the determination of distinctive character. The TRAB holds a relatively consistent view that the determination is made on the basis of the objective meaning of the foreign word(s) of a mark: if it is of a descriptive meaning, the mark does not have distinctive character, or vice versa. By contrast, the courts’ views are rather divided: the determination is based on the objective meaning of the foreign word(s) of the marks in foreign language in some case, and on the cognitive capability of the relevant sector of the public in others.

Regarding the matter, this writer concludes that determination of the distinctive character of a foreign word is somewhat different from that of the similarity between a Chinese and a marks in foreign language. The standard for making the latter determination is likelihood of confusion on the part of the relevant sector of the public; so more consideration of the knowledge is taken. But in determining distinctive character, to a large extent, consideration is taken of the interests of business in the same industry to avoid, as much as possible, a particular business from monopolising a descriptive word or device to affect legitimate use of it by other businesses in the same industry. On the basis of this, as regards determination of distinctive character, whether the relevant sector of the public knows about it, if a word or device is objectively descriptive, it is, in principle, not allowed to be registered as a mark.

For example, not only the English words known to the relevant sector of the public, such as “BESTTOOLS” registered in respect of goods of cutting tools, do not possess distinctive character,<sup>17</sup> but also the Japanese word not known to the public in China, such as “ひじき” is not registrable as its objective meaning “sargassum” is a generic name of goods.<sup>18</sup> Otherwise, other businesses in the same industry cannot use the word when exporting the goods to Japan, which is glaringly unfair.

(2) Meaning and degree of descriptivity of marks in for-

foreign language

While the distinctive character of a mark in foreign language should be determined with account taken of its objective meaning, this does not mean that such a mark whose objective meaning is related to some goods to whatever extent is found devoid of distinctive character. What matters is whether the objective meaning is directly descriptive.

The objective meanings of the “SCIENCE SUITES” mark relative to service of construction,<sup>19</sup> and “PERFECT PLEAT and device” mark relative to goods for hanging devices<sup>20</sup> do not reach the extent of direct descriptiveness, so the words are not directly descriptive, so should not be found lacking distinctive character.

(3) Descriptivity and correspondence of marks in foreign language

In addition, still another circumstance is worthy our attention. In practice, some trademark applicants make up words and give them certain meaning. The TRAB and the courts hold divided views on whether such words have distinctive character. For the courts, it is undue to naturally determine that words of the kind do not have intrinsic distinctive character just because they have their particular meaning for the reason that the words and the particular meaning thereof are all made up by the trademark applicants. Given that made-up words, in principle, are words having intrinsic distinctive character and words in these cases are often used by the trademark registrants, and the words and the users are associated with each other, with the former being capable of indicating the sources of goods. In case like this, it is undue to find them lacking distinctive character unless evidence shows that such words have been widely used by businesses in the same industry.

For example, in the “BAC” mark case<sup>21</sup>, “BAC” is an abbreviation of “Bituminous waterproofing sheets, Adhered by, Cementitious materials”. While it is possible to translate it into something of the same meaning, it is basically in respect of the relevant goods of the plaintiff. In the “DIABLO” case<sup>22</sup>, while “DIABLO” was the name of a game, it was produced by the plaintiff, Snowstorm, and the word was highly reputable, and the relevant sector of the public knew about its correspondence or association. The marks were found having distinctive character by the court.

### 2. Determination of distinctive character of three-dimensional marks

While Article 8 of the Trademark Law provides that any two-dimensional symbol, three-dimensional sign or combi-

nation of colours may be applied for the registration of a mark, this provision does not mean that these three forms of signs or symbols have the same degree of distinctive character. Generally speaking, three-dimensional signs are used as marks in three ways: as shape of goods *per se*, as package of goods; and as trade dress of goods or services. Except that a three-dimensional sign used as trade dress of goods or services has nothing to do with the characteristics of goods or services, for such signs used in the other two ways, the relevant sector of the public, when seeing them, would see them as the shape or package of the goods or the goods *per se*, not as marks. This shows that when used in the two ways, a three-dimensional sign shows the relevant characteristics of the goods, and does not have intrinsic distinctive character as a whole. (For the detailed comments see the decision on “Netsle Square bottle”<sup>23</sup>.)

In the judicial practice, decisions are also made in cases now by this principle. For example, the bottle-shape mark filed for registration by Coca Cola<sup>24</sup> (see Fig.1), the ice-cream shape mark by Uniliver<sup>25</sup> (see Fig.2) and the square-bottle mark by Netsle<sup>26</sup> (see Fig.3) were all found lacking distinctive character by the court.



Fig.1



Fig. 2



Fig.3

Here this writer would like to specially point out that unlike two-dimensional symbols, whether a three-dimensional sign is created originally by the user or a made-up symbol has nothing to do with the degree of its intrinsic distinctive character. A made-up word or device used in a two-dimensional symbol has a higher degree of distinctive character. This is not the case with a three-dimensional symbol. So long as a three-dimensional symbol is used as package of or shape of goods *per se*, even if it has never been used on goods of the class, the relevant sector of the public would at most consider the package or shape of the goods to be relatively “novel”, would not take it as mark therefor. For this reason, three-dimensional symbols of the kind do not have intrinsic distinctive character.

### 3. Determination of distinctive character of place marks

There exists a class of relatively special marks in practice, namely “place marks”, designs of a particular place of goods filed for registration as marks, and there are two ways to determine filings of such trademarks.

For one way, such signs do not have intrinsic distinctive character, but those having high reputation have acquired distinctive character, and are registrable.

For example, in “喷枪” (pronounced as “pen qiang” and meaning “spray gun” in Chinese) case<sup>27</sup>, the applicant requested registration of the particular colour at a particular place on the head of a spray gun (the black part in Fig.4). The court concluded that use of the symbol was not use of a mark for the part of consumers, and it was impossible for it to function as a mark to distinguish sources of goods or services, nor was there evidence showing that it had acquired its distinctive character through use; hence it was contrary to Article 11 of the Trademark Law. In the case involving the 压力表 (pronounced as “ya li biao” and meaning “pressure gauge” in Chinese) mark filed by Dwyer for registration<sup>28</sup> (see the block-line part in Fig.5) and in the case involving the Birkin bag filed by Hermes<sup>29</sup> (see the block-line part in Fig.6), the court made the decisions substantially identical with that rendered in the former case.



Fig.4



Fig.5



Fig.6

The other way removes the possibility for registration of place mark from the angle of application documents.

The way is adopted in the case<sup>30</sup> involving Adidas’s “three-stripe” mark. The mark under opposition in the case was a device of pants (see the Fig. 7). The three strips in the device were highlighted. In the case, the court did not determine that what the applicant applied for registration was a three-strip device in a particular place, but concluded that the applicant failed to state in the application that it was the three-strip symbol for which application was filed; hence the mark under opposition was obviously a device mark. The court finally found the mark lacking distinctive character according to the device of pants as a whole.



Fig.7

### 4. Determination of distinctive character of ad words

It is common to file ad words for registration as marks.

The principle by which the distinctive character of ad words is determined is by no means substantially different from that for three-dimensional marks. For the relevant sector of the public, an ad word, no matter how novel it is, is identified only as such, not as a mark. Therefore, ad words do not essentially function to distinguish the source of goods or services, and do not have intrinsic distinctive character.

For example, the “Broad base. Best solutions.” filed for registration by SGL Carbon Corporation<sup>31</sup>, the “Miracle is created right here” by the U.S. NBA Products Inc.<sup>32</sup>, the “Everyone is a director of life” by Quantudou Corporation<sup>33</sup>, and “Live life with a passion” by Satchi<sup>34</sup> are found devoid of intrinsic distinctive character by the court.

Of course, if an ad word or a three-dimensional mark that does not have intrinsic distinctive character is of high repute through use, and the relevant sector of the public, on seeing it, would certainly associate it with a particular entity, it means that it has acquired the secondary meaning, and distinctive character, so complies with Article 11, paragraph two, of the Trademark law, and may be registered as a mark.

### III. Application of Article 13 of the Trademark Law

#### 1. Formal requirement of reputation evidence

In a case involving a well-known mark, the key to determining that a mark is a well-known mark lies in whether the reputation evidence is true and sufficient. In practice, some attorneys do not have a clear idea about the requirements on the form of such evidence, which renders a lot of evidence filed unacceptable as such, and makes it impossible for some objectively reputable marks to be established as well-known marks. Generally speaking, evidence proving reputation should meet the following requirements:

1) Original. The basic evidence rule to file or present the original documents is overlooked intentionally or unintentionally by interested parties in many cases. Some interested parties furnish copies in the trademark review and adjudication phase, and even do not present the original evidence to the courts in judicial procedure with clear notice to this effect from the courts. This practice makes it obviously impossible for the courts to verify the truthfulness of evidence.

2) Evidence showing use in mainland China. It is clearly provided in the Supreme People's Court's Interpretation of Several Issues Relating to Application of Law to Adjudication of Civil Cases of Dispute over Protection of Well-known

Marks that a well-known mark refers to a mark widely known to the relevant sector of the public “within the territory of mainland China”. Therefore, only evidence showing use in mainland China can be used for establishing well-known marks. In practice, however, evidence presented in many cases is one showing sales, ranking, advertising and even registration in foreign countries, and such evidence is obviously contrary to the provision on establishment of well-known marks, and would not be accepted by the courts.

3) Evidence available before the date of filing of marks in suit. Article 13 of the Trademark Law aims at preventing a later applicant from taking advantage, in bad faith, of the reputation of a well-known mark owner to apply for registration of and use a mark. But only when a reference mark is well known before the date of filing of the mark in suit is it possible to find the later applicant of the mark in suit having acted in bad faith. Therefore, only evidence showing reputation before the date of filing of a mark in suit is actually meaningful. In some cases, however, evidence from interested parties shows fact of use after the date of filing of the mark in suit, and would be not acceptable as the evidence is not directly related to the reputation before the date of filing.

4) Try to provide evidence from a non-interested third party. Different types of evidence carry different evidential force. Evidence from an interested party himself or itself and from an interested third party is weaker in evidential force than that produced by a non-interested third party. For this reason, a reference mark owner should try, as much as possible, to present evidence from a non-interested party. But, in practice, the evidence showing reputation in many cases is that showing data of sales, number of real stores and advertising materials from the reference mark owner himself/itself. Such evidence obviously carries limited evidential force, and it is difficult for it to convincingly prove the true sales of the goods using the reference mark.

Furthermore, it should be noted that some owners of marks having relatively high-reputation often file little or no evidence with the court on the ground that Article 8 of the above judicial Interpretation provides that an owner of mark widely known to the public in mainland China may only provide the basic evidence of its well-known mark. But this practice is hard to be accepted by the courts in practice due to the special characteristics of the trademark administrative litigation.

The reason is that in trademark infringement cases, the time for hearing a case and the time of infringement is usually

not far apart. Therefore, a judge, as a consumer, can decide whether the mark in suit is a well-known mark or not according to his subjective knowledge of the practical situation of the time on the basis of the basic evidence from the interested parties. By contrast, the administrative trademark case is somewhat different in that there is a pre-examination phase in relation to both trademark opposition reexamination or cases involving trademark dispute, which often renders the date of bringing an action four to five, or even more than ten years apart from the date of filing of a mark in suit. For example, in “法拉莉” (pronounced as “fa la li” in Chinese) case<sup>35</sup>, the date of filing of the mark in suit was 1992, and the time of the first instance 2009; they are seventeen years apart. In cases involving the “沃尔玛 (pronounced as “wo er ma” and Chinese transliteration of “Walmart”) WOERMA and device” mark<sup>36</sup>, “SKII” mark<sup>37</sup>, “durex 杜蕾丝 (pronounced as “du lei si” in Chinese) and device” mark<sup>38</sup>, there was an interval of more than ten years. If a judge still decided whether a mark was well known or not several years or even a decade ago according to his subjective impression as a consumer, his judgment was obviously too subjective to be true to the fact. For this reason, in cases of the kind, it is only possible to make determination more on the basis of objective evidence.

## 2. Whether well-known mark establishment is precondition for application of Article 13 of the Trademark Law

When a case is being heard before court under Article 13 of the Trademark Law, if the mark in suit is finally found contrary to Article 13, that the prior mark is a well-known mark is obviously the precondition. However, if the mark in suit is finally found not contrary to Article 13, views are divided and practice different with regard to whether the TRAB and the court should still first determine the well-knownness of the reference mark.

For one view, whether a reference mark is a well-known mark or not is only “one” of the elements, not the “only” element, for the application of Article 13. For this reason, in the absence of any one of such elements for the facts of a case, it is possible to find the mark in suit contrary to Article 13 of the Trademark Law, and establishment of the well-knownness of the reference mark is not a must. The trial court hearing the case involving “东尼博斯 TONY BOSS and device” mark<sup>39</sup> held this view.

For another view, establishment of a well-known mark is the precondition for the application of Article 13.

For example, in hearing the case involving “东尼博斯 TONY BOSS and device” mark<sup>40</sup>, the court of appeal noted

that to apply Article 13, paragraph two, of the Trademark Law, it should, in principle, first be determined whether the prior registered mark was well known or not; and it was then determined whether the mark applied for registration constituted “a reproduction, an imitation or a translation” of the prior registered well-known mark; and it was finally determined whether the mark of “a reproduction, an imitation or a translation” was likely to confuse the relevant sector of the public and detrimental to the interests of the well-known mark registrant. The court hearing the case involving the “杏花村” (pronounced as “xing hua cun” in Chinese) mark<sup>41</sup> also held this view.

For the second view, it is mainly considered whether a reference mark is a well-known mark has substantial impact on the determination of “reproduction, imitation or translation”, “likelihood of confusion”, and “detriment”; hence, only by first determining whether a reference mark is a well-known mark or not is it possible to duly determine the subsequent elements.

The above two practices are both justifiable. Comparatively speaking, the first practice, for this writer, is more compatible with the logic of law, and more likely to save the judicial resources because, while determination in relation to elements of “reproduction, imitation or translation”, “likelihood of confusion” and “detriment” are closely related to well-knownness in many circumstances, it is no denying that in practice, there are some cases having no impact on the registration of the mark in suit no matter whether a reference mark is a well known or not.

For example, in the case involving the “德力西” (pronounced as “de li xi”) mark<sup>42</sup>, the reference mark is used in respect of goods, such as air circuit breaker, and the mark under opposition in respect of casing for sausage. As the relevant sector of the public of the two goods are different, even if the reference mark is indeed a well-known mark in respect of said goods, it is unlikely to confuse the relevant sector of the public of the goods of “casing for sausage” in respect of which the mark under opposition is used. Therefore, it is unnecessary to determine whether the reference mark is a well-known mark or not. This is also true with the case involving the “通威” (pronounced as “tong wei” in Chinese) mark<sup>43</sup>, in which the reference mark is used in respect of goods of fodder or feed, and the trademark under opposition in respect of welding equipment, confusion by the sector of the public is unlikely.

Of course, under some circumstances, different conclu-



sions in determination of whether a reference mark is a well-known mark indeed has impact on the determination of elements, such as “reproduction, imitation or translation”, “likelihood of confusion”, and “detriment”. But determining whether a reference mark is a well-known mark is not the only way to address the matter. In some cases, the courts would suppose the reference mark is a well-known mark, and then comment on the other elements. If the reference mark is supposed to be a well-known mark, other elements can still be found absent, the court may reject the reference mark owner’s claim accordingly, without the need for commenting on the well-knownness of the mark, so that the judicial policy of “making determination according to needs” can be effectively implemented.

For example, in the above case involving the “de li xi”, the court concluded that “even if the reference mark was found well known, the trademark under opposition would be unlikely to confuse the relevant sector of the public, and cause detriment to the interest of the registrant of the reference mark. The case involving the “tong wei” mark is also decided in the same way.

### 3. Determination of “cross-class confusion” with well-known marks

By “cross-class confusion” is meant that the relevant sector of the public believes that the owner of a later trademark is the same person as the owner of a prior well-known mark (namely direct confusion), or that the two are related in a special way (namely indirect confusion).

The principle for determining cross-class confusion in the protection of well-known marks by no means differs from that for finding a regular mark confusing in respect of the identical or similar goods or services. But the two are different in the process of specific determination mainly in the subject matter of adduced evidence. To find confusion in respect of the identical or similar goods or services, it suffices if the holder of the right to use a prior mark only needs to prove the presence of similar goods or services, without the need for adducing evidence to prove that the later mark, registered or used, is likely to cause confusion. But to determine cross-class confusion, the owner of a well-known mark should adduce evidence to prove the presence of “the particular fact” that an identical or similar mark, even used in respect of dissimilar goods or services, is likely to confuse the relevant sector of the public.

The reason for requiring the owner of a well-known mark to be under of the burden of proving particular contents is

that determination of cross-class confusion and that of likelihood of confusion in respect of identical or similar goods or services are different in terms of degree of difficulty. Identical or similar goods or services are usually more identical or similar in terms of function, intended use, channel of commerce and buyers. As a result, one business provides, at the same time, several identical or similar goods or services. Based on this knowledge of the objective fact, the relevant sector of the public, seeing an identical or similar mark used on identical or similar goods or services, would generally believe that they are provided by the same business or the providers thereof are specially related, and get confused about them. For this reason, to determine likelihood of confusion in respect of similar goods or services, it suffices only to prove that the goods or services are similar. But this is not the case with cross-class confusion. Circumstances where one business provides cross-class goods or services do exist, but are rare. Based on this knowledge of the objective fact, even if the relevant sector of the public, seeing an identical or similar mark used on identical or similar goods or services, it would be difficult to determine that they are provided by the same business. Hence, the owner of a prior well-known mark intends to prove trademark confusion is likely about the identical or similar goods or services, it should provide separate evidence to prove it (e.g. the owner of a prior well-known mark also uses the mark in respect of dissimilar goods or services or this is a common practice in the industry).

In the case involving the 香奈儿 (pronounced as “xiang nai er” and Chinese transliteration of “Chanel”) mark<sup>44</sup>, while the court established the reference mark “Chanel” as a well-known mark, the owner of the mark did not adduce evidence to show that there was a common practice where a manufacturer of goods of clothing or cosmetics (in respect of which the reference mark was used), made goods of ceramic tiles (in respect of which the trademark under opposition was used), or Chanel used a word identical with the reference mark in respect of goods of ceramic tiles and made it known to the relevant sector of the public; nor did it adduce evidence to show other facts that were sufficient to make the registration of trademark under opposition be likely to cause cross-class confusion with the reference mark. Accordingly, the court did not decide on cross-class confusion.

Likewise, in the case involving the “两面针” (pronounced as “liang mian zhen” in Chinese) mark<sup>45</sup>, the court concluded that the trademark under opposition used in respect of shoes and socks was unlikely to cause cross-class

confusion with the reference mark used in respect of toothpaste.

#### 4. Determination of “dilution” of well-known marks<sup>46</sup>

Views are divided in the academic community on whether Article 13, paragraph two, of the Trademark Law may apply to dilution of well-known marks, and there once were varied judicial practices in this regard. But with the introduction of the Civil Judicial Interpretation of Well-known Marks (Judicial Interpretation), the controversy in this aspect has come to an end at least in the judicial practice as Article 9 thereof clearly specifies that dilution is one of the circumstances to which Article 13, paragraph two, of the Trademark Law applies. While the Judicial Interpretation is directed to civil cases, given the fact that the same principle should obviously apply to the protection of well-known marks in civil cases of trademark infringement and those of trademark right affirmation, the principle should also apply to the latter cases. Under this circumstance, the issue to be probed into in the judicial practice is no longer whether it is possible to apply the “dilution rules”, but how the rules be applied in a specific and accurate way.

Given this, this writer, when hearing cases involving marks in 2011, such as “Apple”, “两面针” “Chanel” and “coca-cola”, tried to apply the dilution rules in detail, and worked out the following dilution determination principle: “if the relevant sector of the public of a mark in suit, on seeing the mark, may definitely associate it with a prior well-known mark, but knows that the owner of the former has nothing to do with that of the latter, then the use of the mark in suit should be determined as diluting the well-known mark”, and divided the principle into three levels of knowledge in the decisions:

The first level of knowledge: the relevant sector of the public of the goods or services in respect of which the mark in suit was used knew about the “sole association” between the “well-known mark” and its owner in respect of the “particular” goods or services. The reason for requiring the knowledge was that protection against dilution aims at protecting the “sole association” (or trademark distinction) carried by the well-known mark from being injured, and that the precondition of the presence of injury was obviously the knowledge of the relevant sector of the public about the mark in suit.

The second level of knowledge: on seeing the mark in suit, its relevant sector of the public could associate it with the prior well-known mark. In general, if the former was iden-

tical with, or highly similar to, the latter, it was easier for the relevant sector of the public to have the knowledge.

The third level of knowledge: the relevant sector of the public of the mark in suit could see that the mark had nothing to do with the prior well-known mark. In general, if the relevant sector of the public confused the former with the latter, or believe that they were “related”, it meant that the relevant sector of the public still considered that the well-known mark was solely associated with its owner, then, the distinction of the well-known mark remained unjured. Only when the relevant sector of the public could see that the mark in suit has nothing to do with the well-known mark was it possible, for a long term, for the registration and use of the mark in suit not to cause the relevant sector of the public to naturally associate it with the well-known mark on seeing the mark in suit; thus the sole association with the well-known mark was ruined and dilution was likely to arise.

According to the above rules, the court concluded that registration of “两面针 L.M.ZHEN LIANGMIANZHEN and device” mark in respect of goods of caps and socks constituted dilution of the “两面针” mark in respect of toothpaste,<sup>47</sup> registration of “香奈尔 CHANEL and device” mark in respect of ceramic tiles constituted dilution of the “Chanel” mark registered in respect of cosmetics,<sup>48</sup> and registration of the “CROCO COLA” mark in respect of bar service constituted dilution of the “COCA-COLA” mark registered in respect of non-alcoholic drinks.<sup>49</sup> However, registration of the “Apple” mark in respect of cosmetics did not constitute dilution of the “苹果 (pronounced as ‘ping guo’ the same as the Chinese transliteration of ‘Apple’) brand” mark in respect of clothing.<sup>50</sup>

## IV. Application of Article 16 of the Trademark Law

Article 16 of the Trademark Law provides that “where a trademark contains or consists of a geographical indication with respect to goods not originating from the place indicated, misleading the public as to the true place of origin, the application for registration shall be refused and the use of the mark shall be prohibited. But those marks that have obtained registration in good faith shall continue to be valid”.

The main disagreement on the application of Article 16 of the Trademark Law, in practice, is whether the protection of geographical indications should be limited to goods or services of “the identical class”, or should also be extended to “similar” goods or services.



For one view, it should be extended to “similar” goods or services.

For example, in the case involving the “杨柳青” (pronounced as “yang liu qing”) mark<sup>51</sup>, while the court noted that the word was a geographical indication in respect of goods of “paper-cut”, but since “New Year picture” and “paper-cut” were similar goods, registration of the mark applied therefor in respect of goods of “paper-cut” was refused. For another example, in the case involving the “CHAMPAIGN and device” mark<sup>52</sup>, the reason for the court to have maintained the registration of the mark in suit was that, for the court, the goods of shampoo in respect of which the mark in suit was used and the goods of alcohol in respect of which the geographical indication “CHAMPAIGN” was used were not similar goods.

For another view, the protection of geographical indication applies only to goods or services of the “identical class”.

For example, in another case involving “香宾” (pronounced as “xiang bin”) <sup>53</sup>, the courts of first and second instance both concluded that while “香槟” (pronounced the same, and Chinese transliteration of “CHAMPAIGN” and “CHAMPAIGN” were geographical indications in respect of goods of wine, the mark in suit was used in respect of service of café, not goods of wine; hence registration of a word similar to “香槟” and “CHAMPAIGN” in respect of said service was not prohibited under Article 16 of the Trademark Law.

For this writer, the latter practice is comparably more compatible with the legislative aim of Article 16 of the Trademark Law. Protection of geographical indications is put on the function of a geographical indication to indicate the quality, repute or other special characteristics of some “particular” class of goods or services, so the protection should strictly correspond to the “particular” class, not be extended to any other class. In other words, if another party uses such a geographical indication in respect of (similar and non-similar) goods or services, other than those of the “particular” class, such use is normally not detrimental to the interests of businesses of the region from the “particular” goods or services. For this reason, the rightholder of a geographical indication does not have the right to prohibit others from registering or using it. Article 16 of the Trademark Law may be literally interpreted this way.

## V. Application of Article 31 of the Trademark Law relating to “registration by unfair means of mark that others have put to use before and have certain influence”

The purpose of this provision is to prohibit registration by unfair means or in bad faith, and, in principle, covers three elements, namely “prior use”, “having certain influence” and “by unfair means”, with “by unfair means” (namely “in bad faith”) being the core element, and the first two being the specific factors to be considered in finding bad faith. Accordingly, the requirements of “use” and “having certain influence” are somewhat different from other provisions (e.g. the requirement of repute of well-known marks in Article 13, that of repute in acquired distinctive character in Article 11, and that of use in relation to non-use for three consecutive years in Article 44 of the Trademark Law). In general, as long as the use of a prior mark is sufficient to enable the registrant of a later mark to know about it, it is possible to presume that the later registrant’s registration is one “by unfair means”, so in bad faith.

In the cases in recent years, a practice is worth our attention, that is, to better curb registration by unfair means, the courts, in some cases, tend to stress the determination of “by unfair means (or in bad faith)”, and less emphasise determination of “use” and “having certain influence”. In other words, if it is possible to find the bad faith with the registrant of a later mark, the requirement on “use” and “having certain influence” would be less demanding.

In practice, besides the factor of repute, the following factors usually have effect on determination of the bad faith of a later registrant:

### 1. Degree of similarity of two marks

Generally speaking, if a mark in suit and a prior mark are exactly identical, and the later is a made up mark or a foreign word less frequently used by the public in China, it is possible to presume the presence of subjective bad faith unless the registrant of a mark in suit has reasonable explanation.

For example, in the case involving “CAPPELLETTI”<sup>54</sup>, the later mark in suit (see Fig.8) differs from the prior mark (see Fig. 9) in the addition of the Chinese



Fig.8

part only, with the other parts exactly identical. Obviously, it is possible to presume the presence of subjective bad faith with



**CAPPELLETTI**

Fig.9

the later registrant. While in the case, the registrant of the prior mark only provided rather limited evidence (over ten copies of relevant ads. in the press), the court decided that the registration of the later mark in suit was done in bad faith.

This is also true with the cases involving marks, such as “UNDER ARMOUR”<sup>55</sup>, “GATEHOUSE”<sup>56</sup> and “carter’s”<sup>57</sup>. It needs to be pointed out that unlike the made-up device in the above case involving “CAPPELLETTI”, the marks involved in the three cases were marks of words or combination of words in English, and objective coincidence is likely; but it is no denying that it is not quite likely for any members of the public in China to choose and register these marks. The registrants of the marks in these cases are mostly natural persons. They did not make observations in written form, nor appear before court to explain why they had chosen said marks. These facts proved, to an extent, their subjective bad faith. Accordingly, the court found the registration in bad faith though the evidence showing use of the prior marks was rather limited.

## 2. Geographical factors

As for Chinese trademarks, with a huge number of marks of Chinese words, it is quite probable for various registrants to choose and register marks of identical words. Unless a mark of made-up word is involved in a case, it is very difficult to presume bad faith according to the degree of similarity of marks. In this situation, if registrants of two marks are based in the same place or not far from each other, it would have some effect on the determination of subjective bad faith.

In the cases involving “广成卡” (pronounced as “guang cheng ka” in Chinese)<sup>58</sup>, both the trademark under opposition and the prior mark were of the same Chinese characters, and both used in respect of banking services. The prior user, the Gansu Pingliang Bank and the registrant of the trademark in suit were both based in Pingliang City. In the case, while the Pingliang Bank presented little evidence, considering that the two registrants were based in the same place, and the registrant of the trademark in suit failed to reasonably justify its registration of said mark, the court finally decided that the latter had registered its mark in bad faith. Of course, another fact of the case is also worth our attention that the registrant of the trademark in suit also registered

several marks such as “迪士尼” (pronounced as “di shi ni” and transliteration of “Disney”) and “同仁堂” (a mark of a famous drug store pronounced as “tong ren tang” in Chinese) identical with others’ well-known marks.

This is also the case with the case involving “蓝的” (pronounced as “lan de” and meaning “blue” in Chinese)<sup>59</sup>, in which the registrants of the two marks were based in the same city, and the registrant of the mark in suit filed application for registration of the “蓝的” mark identical with the prior mark, and, as well for registration of the prior mark user’s another mark “蓝的水” (pronounced as “lan de shui” and meaning “blue water” in Chinese). The facts showed the bad faith of the registrant of the marks in suit. Therefore, the prior mark was determined as reputable in a relatively loose manner.

But, if a prior mark and a mark in suit are used in different places, even if the two marks are relatively similar, it is difficult to find bad faith of the later mark registrant unless there is plenty of evidence proving it.

For example, in the case involving “佤家山寨” (a place name pronounced as “wa jia shan zhai” in Chinese) mark<sup>60</sup>, the prior mark was “阿瓦山寨” (also a place name pronounced as “a wa shan zhai” in Chinese), and the two marks were both used in respect of restaurant services. But the place of business with the mark in suit was in Shaanxi Province; that with the prior mark in Fujian Province far away from Shaanxi. In case like this, as the trademarks *per se* were current words in Chinese and the user of the prior mark had no evidence to prove the bad faith of taking a ride with the owner of the mark in suit, it was impossible to find bad faith in the registration of the latter.

## VI. Application of Article 31 of the Trademark Law “not infringing another party’s existing prior rights”

Article 31 of the Trademark Law provides that “no trademark application shall infringe another party’s existing prior rights.” As the aim of the provision is to prevent conflicts of rights, that is, to prevent use of a mark after its registration from infringing another party’s prior right or causing unfair competition, determination of whether the registration of a mark “is infringing” another party’s prior right should be made following the principle for finding civil infringement or unfair competition. That is, if use of a mark applied for regis-

tration causes infringement of the prior right or unfair competition, the registration thereof should be found infringing the prior right.

The prior rights involved litigation now mainly includes the right in prior trade name, prior copyright and prior right in names. Given that hearing of cases involving rights in prior trade name is not substantially different from that involving registration in bad faith, following is an account of the hearing of cases only involving prior copyright and the prior right in names.

### 1. Prior copyright

#### (1) Copyright proprietary evidence

##### 1) Trademark certificates

Trademark certificates have long been the main evidence copyright owners use to prove ownership of their rights. There has been a gradual change in the attitude of courts towards the evidential force of such evidence. In the cases of the early days, it used to be viewed as preliminary evidence. But starting from the cases involving the “Auchan little bird device” mark<sup>61</sup> and “老人城” (pronounced as “lao ren cheng” and meaning “old man’s city” in Chinese) mark<sup>62</sup>, the court made it clear that the trademark ownership evidence could not be used as proof of copyright ownership. To date, the standard is uniformly followed in such cases.

This writer tried to analyse the reason for following this standard in the case involving the “艾杜纱” (pronounced as “ai du sha” in Chinese) mark. It was pointed out in the decision made in the case that since the trademark certificate essentially functioned to indicate the ownership of a mark, not that of copyright, only when the owner of a mark was the owner of the copyright was it possible for it to serve as evidence proving the ownership of the copyright. In practice, however, the owners of these rights are not the same people. The mark its owner has registered may have a legitimate origin in his copyright, or not. That is, the trademark owner has a copyrighted work registered as a trademark without authorisation from the copyright owner. Even if with legitimate origin, there may be involved two circumstances: one, the trademark owner is also the copyright owner, and has his own work registered as a mark; and two, while not the copyright owner, the trademark owner has the work registered and uses it as a mark with authorisation from the copyright owner. Under two of the three circumstances, the trademark owner and the copyright owner are not the same person. Therefore, it is impossible to certainly conclude that trademark owner is also the copyright owner according to the

trademark registration certificate only.

In practice, trademark owners in many cases are not the original owners of their marks. For example, the reference marks in cases involving marks, such as “沃奇玛 (pronounced as “wo qi ma” in Chinese) AUCHAMO and device” mark<sup>63</sup> and “大家 (pronounced as “da jia” in Chinese) and device” mark<sup>64</sup>, were acquired by way of license. In other cases, while they were original trademark owners, the marks in suit were not created by them. For example, in the case involving the “飞狮” (pronounced as “fei shi” and meaning “flying lion” in Chinese) mark<sup>65</sup>, the mark in suit was originated from the Picture Book on Modern Trademark Words Creation, not originally created by the trademark owner.

This shows that in many cases, the copyright owners and trademark owners are not the same people. If the latter want to prove their ownership of the corresponding copyright, they should also provide other evidence showing their ownership of the copyright, such as the corresponding evidence showing the creation, evidence of publication of these works (e.g. the copy of “Yangcheng Evening News” produced in the case involving the “dragon device” mark<sup>66</sup>) and contracts of license. If they want to prove that they, though not the copyright owners, have the right to use the works, they should also present contracts of license.<sup>67</sup>

##### 2) Copyright recordal certificates

Copyright recordal certificates are also copyright ownership evidence interested parties often provide. Given the fact that the competent authorities only make the formal examination for the copyright to be recorded or registered therewith, in practice, a copyright recordal certificate serves only as preliminary evidence of copyright ownership, having no absolute evidential force to prove copyright. The evidence is understood by the standard of the reasonable knowledge of the general public, and can be rebutted with counter-evidence.

One key fact in the examination of evidence of the kind is worth our attention, that is, the time a work is created is not the time it is recorded or registered. Considering that the records of the time a work is created is based on the registrant’s own statement, and it is relatively hard to determine its truthfulness, the court, in the absence of other evidence proving the copyright, would presume that the work is created on the day of recordal (not on the day of creation as recorded). This is true with the cases involving the marks, such as “TIGER and device”<sup>68</sup> and “TRUEAIR”<sup>69</sup>. This practice not only conforms with the relevant provisions of the

Copyright Law, but also prevents affirmation of insufficient evidence of copyright recordal certificate for the reason that in some cases, interested parties, only with their trademark registration certificates, would have the copyright recorded for the purpose of litigation to have their evidence of trademark registration certificates affirmed by way of affirmation of their copyright recordal certificates.

## (2) Degree of original works

Another key issue in cases involving prior copyright is how to determine whether the word of a mark constitutes a copyrighted work. A work is determined under the relevant provision of the Copyright Law, and the most important is determination of the degree of original works, that is, the degree of intellectual creation of the word or device of a mark should reach the basic height as required in the Copyright Law, otherwise, it is impossible for it to be determined as a copyrighted work. Of course, the height of the intellectual creativity does not require it to reach a relative high degree of artistic aesthetic appeal, but requires that the intellectual creativity as embodied in a work should not be too trivial.

Here, this writer would like to stress that the required height of intellectual creativity of one word or device would not vary for different use of it. That is, whether it is used as a word or device of a mark or on the basis of the normal use of copyright, the required height of intellectual creativity is the same, and it is not required to have a higher required intellectual creativity if it is registered and used as a mark.

Application of this to specific cases shows that in practice, most words and devices of marks for which copyright protection is claimed are words written in standard font or with changes in fine details, and relatively simple devices. It is difficult to determine them as having reached the height of intellectual creativity. For example, in the cases involving marks, such as “camel”<sup>70</sup> (see Fig.10), the “triangle device”<sup>71</sup> (see Fig.11), and “DA-JIN”<sup>72</sup> (see Fig.12), the court concluded that they did not reach the basic height of intellectual creativity, so did not constitute copyrighted works.

Besides, another view is worth our attention. In practice, it is often the case that many interested parties argue that words in suit are made-up ones, and created by them, so constitute copyrighted works. For example, Coca Cola once



Fig.10



Fig.11



Fig.12

argued that “Minute Maid” was originally created by the business, so constituted a literary work.<sup>73</sup> Barroughs argued that the word “ARZAN” was originally created by the business, so constituted a literary work.<sup>74</sup> Tenwow Group claimed copyright in the word of “盐津铺子” (pronounced as “yan jin pu zi” in Chinese) and its unique arrangement.<sup>75</sup> In fact, however, whether the word of a mark is a made-up one or not is not naturally related to whether it constitutes a copyrighted work. Even if it is a made-up word, it is hard to determine its definite meaning based on the word *per se* as it is too simple to determine the specific meaning of the word *per se*, and to express something as a literary work does; hence it is impossible to determine it as constituting a literary work. Meanwhile, unless such a word is under some artistic process or treatment, its designed shape *per se* would not be of aesthetic appeal, and such word would not constitute a work of fine art. That’s why the words and devices involved in the above cases were not determined as constituting copyrighted works.

## (3) Different standards for finding substantially identical works and similar marks

Since the Copyright Law and the Trademark Law both involve the issue of determination of similarity, it is of vital importance to distinguish them in cases of the kind. The most substantial difference between the two is that the similarity of words or devices of marks are compared as a whole, while only whether the creative part of a prior work is used in an allegedly infringing work identified to find substantial identicalness, without making comparison of the whole. In case like this, contradictory outcomes would arise. That is, while the words or devices of two marks are not similar as a whole, and are not found similar under the Trademark Law, use of the creative part of the prior mark in the word or device of the later mark is likely to infringe the prior copyright.

This is true with the case involving “老人城” (pronounced as “lao ren cheng” in Chinese) mark<sup>76</sup>. The court concluded that the mark in suit (see Fig.13) and the reference mark (see Fig.14) were substantially identical though not similar under the Trademark Law.



Fig. 13



Fig.14

## 2. Prior name right

In recent years, cases involving name right are on the rise. Cases of the type should be heard under the relevant provisions of the General Principles of the Civil Law. Article 99 of the General Principles of the Civil Law provides: “a natural person shall enjoy right in his or her name, have the right to decide on, and use his or her name or change it under the law provisions.” In practice, acts of infringement of the name right include, among other things, interference with others’ use of their names, usurping others’ names and passing off as others’ names. In principle, illicit purposes should be the element of infringement of others’ name right, and it is not the case that use of another person’s name naturally constitutes an infringement.

It should be noted that protection of the name right does not take repute as an element. In principle, another person’s use of name for illicit purposes can be found infringing the name right, but whether the rightholder is known is often “one” of the factors, not the only “element”, to be considered for determining whether the user uses his or her name for illicit purposes.

Most cases that involve the name right involve the names of famous people. For example, in cases involving “Yi Jianlian” (the name of a famous Chinese basketball player)<sup>77</sup> and “averson” (the name of a famous NBA star)<sup>78</sup>, these interested parties are famous, which makes it easy to find the illicit purposes of the trademark registrants. But when less reputable natural persons in China are involved, how to find illicit purposes in trademark registration requires determination made according to the available evidence in a comprehensive manner.

In the case involving the mark “凯特·苔藓” (pronounced as “kai te tai xian and Chinese translation of “Kate Moss”)KATE MOSS”<sup>79</sup>, “KATE MOSS” was the name of a model. The interested party presented only one piece of effective evidence showing her repute, which was difficult to prove that she enjoyed high reputation in China. But the trademark registrant, a fashion business, was better known to the general public than the industry; where Kate Moss was spokesman of the PORTS brand, it was not a fixed phrase, and the trademark registrant did not explain why it had chosen and used it as trademark, the court decided that the trademark in suit was registered for profit purposes by illegally taking advantage of the name KATE MOSS, and constituted an infringement of the name right.

For another example, in the case involving the mark “ZANG TOI”<sup>80</sup>, while the evidence available could not prove

that “ZANG TOI” was highly reputable among the public in China, given the fact that the trademark registrant was involved in introducing the service brand “ZANG TOI” to the market in China before the date of filing of the mark under opposition, it was possible to determine that the trademark registrant applied for registration of the name as a mark subjectively for illicit purpose.

## VII. Application of Article 44 (4) of Trademark Law on “not used for three consecutive years”

As far as the recently closed cases are concerned, following two issues are worth our attention in relation to the application of this provision:

### 1. Whether use is one in the meaning of the Trademark Law

As a mark has an essential function to distinguish between goods or services of one undertaking from those of another, that is, a mark in use enables consumers to distinguish one provider of goods or services from another, only this distinguishing use of a mark is “the use in the meaning of the Trademark Law”. As a mark is identified mainly by consumers, who identify providers of goods or services only with accessible marks, usually only use of a mark accessible to consumers (e.g. marketing and advertising), makes it possible for a mark to function this way and this use is “the use in the meaning of the Trademark Law”. Use of a mark inaccessible to consumers (e.g. in trading documents and in making representations of marks) does not have this function; hence it is not “use in the meaning of the Trademark Law” under Article 44 (4) of the Trademark Law.

For example, in the case involving “LUCKY” mark<sup>81</sup>, the court noted that the trademark license and the ink package could not prove the goods bearing the mark under reexamination had been put on the market to function as an indication of the source of the goods; hence they could not prove the real use of the mark in suit in the three years. For another example, in the case involving “保时捷” (pronounced as “bao shi jie” and transliteration of “Porsche” in Chinese) mark<sup>82</sup>, the court noted that only the license and outer package could not prove the real commercial use of the mark under reexamination.

### 2. Whether use is real and in good faith

This writer tried to have developed this element when



hearing the case involving the mark “大桥” (pronounced as “da qiao” and meaning “great bidge” in Chinese), and the decision made accordingly in the case was upheld by the court of appeal.<sup>83</sup> The element means that the use of a mark as defined in the section on “not use for three consecutive years” must be use that is real and in good faith, not one in its symbolic sense. By “use of a mark that is real and in good faith” is meant use of the mark by its registrant to allow the mark to function to indicate different sources of goods or services; by “use in its symbolic sense” is meant use of a mark by the registrant to keep its registration valid and to avoid it from being canceled for non-use of it for three consecutive years. The purpose of such use is not for the mark to play its distinguishing or indicative function, and is against the legislative aim of Article 44 (4) of the Trademark Law.

Determination of “use of a mark that is real and in good faith” is, to a large extent, one of the subjective state of the registrant of a mark. As it is difficult to determine a subjective state by way of direct evidence, it should be presumed on account of specific evidence showing use. In general, if a mark registrant “uses a mark in the meaning of a trademark” on a certain scale, the use should be presumed to be “use of a mark that is real and in good faith”. Conversely, if a mark registrant “uses a mark in the meaning of a trademark” accidentally only and not on a certain scale, it is usually presumed, in the absence of other evidence, not to be “use that is real and in good faith”.

For example, in the case involving the mark “大桥 DAQIAO and device”<sup>84</sup>, the trademark registrant provided only a copy of advertisement in press to prove its use of the mark in the three years. The evidence obviously could not prove that the use was real and in good faith in the period. Therefore, the court finally revoked the trademark.

The above are some of the issues and ways of practice this writer has found when sorting out the administrative trademark cases adjudicated from 2009. While some practices are worth further probing into, and some rather controversial, it is no denying that the making of every court decision plays a role that must not be ignored in the adjudication and study of cases of the type, so are worth our attention. ■

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Abbreviation in the following notes:

IPCAJ: Intermediate People's Court's Administrative Judgment

<sup>1</sup> Rui Songyan, A Comprehensive Analysis of Adjudication of Trademark Administrative Cases, the China Patents & Trademarks, 2010, issue 1.

<sup>2</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 334/2010.

<sup>3</sup> The Beijing Higher People's Court's Administrative Judgment No. Gaoxingzhongzi 1382/2011.

<sup>4</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 2808/2010.

<sup>5</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 2521/2010.

<sup>6</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 1870/2010.

<sup>7</sup> The Beijing Higher People's Court's Administrative Judgment No. Gaoxingzhongzi 168/2011.

<sup>8</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 177/2012.

<sup>9</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 1121/2012.

<sup>10</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 3024/2012.

<sup>11</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 2522/2012.

<sup>12</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 30/2009.

<sup>13</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 234/2009.

<sup>14</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 2442/2012.

<sup>15</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 816/2010.

<sup>16</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 2222/2009.

<sup>17</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 2522/2012.

<sup>18</sup> The Beijing Higher People's Court's Administrative Judgment No. Gaoxingzhongzi 668/2012.

<sup>19</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 1420/2011.

<sup>20</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 3350/2010.

<sup>21</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 2428/2010.

<sup>22</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 1141/2010.

<sup>23</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 654/2012.

<sup>24</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 1081/2004.

<sup>25</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 01348/2007.

<sup>26</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 654/2012.

<sup>27</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 1716/2009.

<sup>28</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 1180/2011.

<sup>29</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 323/2008.

<sup>30</sup> The Beijing Higher People's Court's Administrative Judgment No. Gaoxingzhongzi 387/2001.

<sup>31</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 200/2012.

<sup>32</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 2051/2012.

<sup>33</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 1688/2012.

<sup>34</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 421/2009.

<sup>35</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 953/2009.

<sup>36</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 1874/2009.

<sup>37</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 574/2011.



<sup>38</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 2072/2009.

<sup>39</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 1112/2008.

<sup>40</sup> The Beijing Higher People's Court's Administrative Judgment No. Gaoxingzhongzi 390/2010.

<sup>41</sup> The Beijing Higher People's Court's Administrative Judgment No. Gaoxingzhongzi 1038/2010.

<sup>42</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 2029/2009.

<sup>43</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 2440/2012.

<sup>44</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 2546/2011.

<sup>45</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 1858/2011.

<sup>46</sup> Rui Songyan, Specific Provisions of Rules of Protection Against Dilution of Well-know Trademarks, the China Trademarks, 2012, issue 10.

<sup>47</sup> Supra note 45.

<sup>48</sup> Supra note 44.

<sup>49</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 541/2011.

<sup>50</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 2291/2010.

<sup>51</sup> The Beijing Higher People's Court's Administrative Judgment No. Gaoxingzhongzi 1437/2009.

<sup>52</sup> The Beijing Higher People's Court's Administrative Judgment No. Gaoxingzhongzi 560/2010.

<sup>53</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 1496/2010; the Beijing Higher People's Court's Administrative Judgment No. Gaoxingzhongzi 816/2011.

<sup>54</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 335/2012.

<sup>55</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 1197/2012.

<sup>56</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 2195/2012.

<sup>57</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 297/2012.

<sup>58</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 3276/2012.

<sup>59</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 1429/2012.

<sup>60</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 2508/2012.

<sup>61</sup> The Beijing Higher People's Court's Administrative Judgment No. Gaoxingzhongzi 316/2009.

<sup>62</sup> The Beijing Higher People's Court's Administrative Judgment No. Gaoxingzhongzi 1350/2009.

<sup>63</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 2738/2010.

<sup>64</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 1964/2009.

<sup>65</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 1584/2012.

<sup>66</sup> The Beijing No. 1 Intermediate People's Court's Civil Judgment No. Yizhongzhixingchuzi 1094/2010.

<sup>67</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 165/2012.

<sup>68</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 385/2012.

<sup>69</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 2365/2012.

<sup>70</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 1286/2012.

<sup>71</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 3068/2011.

<sup>72</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 603/2010.

<sup>73</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 573/2010.

<sup>74</sup> The Beijing Higher People's Court's Administrative Judgment No. Gaoxingzhongzi 515/2009.

<sup>75</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 1867/2010.

<sup>76</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 1463/2009.

<sup>77</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 707/2010.

<sup>78</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 1386/2012.

<sup>79</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 534/2010.

<sup>80</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 1954/2012.

<sup>81</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 2680/2010.

<sup>82</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 2962/2010.

<sup>83</sup> The Beijing Higher People's Court's Administrative Judgment No. Gaoxingzhongzi 294/2010.

<sup>84</sup> The Beijing No. 1 IPCAJ No.Yizhongzhixingchuzi 2131/2009.