

# Latest Developments in Adjudication of IP Cases by Beijing Higher People's Court in 2015

(Abridged Part on Trademark)

## The IP Tribunal of the Beijing Higher People's Court

### I. Administrative cases involving trademark right grant and affirmation

Whether a disputed sign has “unhealthy influences” should be determined according to general social ideas.

“Trademark” has two levels of meaning. One refers to a sign, and the other to the sign in use to identify specific goods such that the relevant public may recognise the provider of the goods. The Trademark Law<sup>1</sup> recites in Article 10.1 the expression “not be used as trademarks”, which implicitly indicates that the signs mentioned therein are not allowed to be used for identifying goods, and any such use will be against the law and shall not function as a trademark. As regards whether a sign has “unhealthy influences”, it should be determined by general social ideas, and any application of overly severe or unduly lenient criteria should be avoided.

In *Qianjin Magazine Publishing Co. (“Qianjin Co.” for short) v. Trademark Review and Adjudication Board (“TRAB”)*<sup>2</sup>, an administrative dispute over review on trademark refusal, Qianjin Co. applied for registration of three “VANITY FAIR” marks respectively on services including online subscription of goods such as publications in class 35, publication of online electronic books and magazines in class 41, and providing dress designing information over the Internet in class 42. The China Trademark Office (CTMO), TRAB, and the first-instance court all held that “VANITY FAIR”, for its translation being “a vain and frivolous society, a pompous world, a wealth and fame-seeking place”, had unhealthy influences.

In the opinions of the second-instance court, Vanity

Fair as a magazine published by Qianjin Co. enjoyed high reputation and was usually translated as “名利场” (meaning “a wealth and fame-seeking place”). The relevant public were apt to understand the said marks as carrying the meaning of “名利场”, which was an objective description of social reality. The expression was neutral in itself, neither carrying derogative connotation nor advocating a code of conduct and customs that went against good morals. Moreover, the marks of “VANITY FAIR” and “名利场” owned by Qianjin Co. had been approved for registration on goods in other classes. Considering the intrinsic meaning of the mark signs *per se* and the principle of consistency in examination criteria, the applied-for marks produced no negative and unfavourable influences on the political, economic, cultural, religious, ethnic, and other aspects of public interests and public order of the country, and therefore did not constitute signs of other unhealthy influences.

**Year digits in a trademark should not be used as the stand-alone basis for judgment of unhealthy influences.**

In judging whether a trademark has “other unhealthy influences”, the constitutive elements of the mark as a whole, rather than just a part thereof, should be examined. Similarly, when judging whether a mark containing digits of a year has unhealthy influences, the disputed mark should be judged in an overall manner, and it is generally not appropriate to use year digits in the mark as a stand-alone basis for such judgment.

In *Taiwan Tobacco and Liquor Corporation (“TTL” for short) v. TRAB*<sup>3</sup>, a dispute over review on trademark refusal, the mark “玉山台湾原窖 1950 and device” (as shown below) of No. 7574214 was applied for registration by TTL in respect of goods such as arrack, distilled alcoholic beverage.

ages, digesters (liqueurs and spirits), liquor (liqueurs), and liquor (beverages) in class 33. Both the TRAB and the first-instance court considered digits “1950” an independent distinctive portion of the applied-for mark, and concluded that the digits when used on designated goods such as ar-rack would easily lead the consumers to believe that the digits represented the year of production of the goods, which fell within the circumstances stipulated in Article 10.1 (8) of the Trademark Law.



The applied-for mark

The second - instance court held that when judging whether a mark had “other unhealthy influences”, the constitutive elements of the mark as a whole, rather than a part thereof, should be examined. The applied-for mark was a combined mark consisting of the Chinese characters “台湾原窖” (meaning “Taiwan original cellar”) and “玉山” (literally, “jade mountain”), digits “1950”, and a mountain device, wherein the characters “台湾原窖” occupied the central space of the mark in a large font, and below “台湾原窖” were the digits “1950” in a smaller font. The characters “台湾原窖” represented the distinctive portion of the applied-for mark. It was therefore groundless for the TRAB and the court of original instance to consider digits “1950” the distinctive portion of the applied-for mark and to find that the relevant public would easily mistake digits “1950” as the production year of the goods and unhealthy influences thereby resulted.

**The criteria for examination of a collective mark containing geographical indication do not automatically apply to a collective mark containing geographical name.**

A collective mark is a sign registered in the name of a collective group, an association or other organisation and used by members thereof in commercial activities to indicate membership in the organisation. While a collective mark may cover a geographical indication in the case of the latter applying for registration as a collective mark in accordance with relevant provisions of Measures for Registration and Administration of Collective Marks and Certification Marks (“the Measures”), collective marks are not limited to geographical indications, as other signs may also be applied for registration as a collective mark provided that relevant provisions are met.

In *Shandong Tourism Trade Association (“SDTTA” for short) v. TRAB*<sup>4</sup>, an administrative dispute over review on trademark refusal, the collective mark “山东 100” of No. 13271161 was applied for registration by SDTTA and designated for use on medicinal drinks, ginseng electuary, royal jelly for pharmaceutical purposes, royal jelly, cod liver oil, encapsulated pills, lycium chinensis, ginseng, Gelatinum Asini, and thermal spring water in class 5. The CTMO refused the application of the mark on the grounds that “山东” as the name of a province was not allowed to be registered as a trademark and that the trademark management rules submitted by SDTTA did not satisfy the management rules for registration as a collective mark. The TRAB after review of the case deemed that “山东” in the applied - for mark as a provincial name was not allowed to be used as a trademark. Moreover, as SDTTA had not submitted any trademark management rules during the review and adjudication process, it was inappropriate for the applied - for mark to be registered as a collective mark. The applied-for mark fell within the circumstances stipulated in Article 10.2 of the Trademark Law. Additionally, the evidence submitted by SDTTA was inadequate to prove the registrability of the applied-for mark. Accordingly, the TRAB refused the application for registration of the applied-for mark on the designated goods.

The first-instance court ruled that “山东” in the applied-for mark as the name of a province was not allowed to be used as a trademark. Despite SDTTA’s assertion that the mark should be allowed for registration as it was applied as a collective mark and such application complied with relevant provisions, for a geographical indication to be registered as a collective mark, the goods indicated by the geographical indication should possess a specific quality, reputation or other characteristic. For the quality of goods mentioned in Article 10 (2) of the Measures, it should refer to a specific quality higher than general product quality. As regards the present case, the Rules for Use and Management of Collective Marks submitted by SDTTA failed to embody the requirement for the specific quality of the goods indicated by the geographical indication, thus not satisfying Article 10 (2) of the Measures. In addition, the registrant or its entrusted agency applying for registration of a geographical indication as a collective mark should have professional technicians and specialty test equipment to monitor the specific quality of the goods to which the geographical indication applied. The Rules for Use and Management of Col-

lective Marks submitted by SDTTA did not clearly provide for the registrant's inspection and monitoring of the specific quality of goods on which the collective mark is used, which was not in compliance with Article 10 (6) of the Measures. In conclusion, the evidence on the record did not suffice to prove that the applied-for mark complied with Article 10 of the Measures, and hence it was not improper for TRAB to refuse the application for registration of the applied - for mark.

The second-instance court's views were that although “山东” in the applied-for mark was a geographical name of an administrative division above the county level, the mark was applied for registration as a collective mark, which fell within the special circumstances of a geographical name applying for registration as an element of a collective mark as stipulated in Article 10.2 of the Trademark Law. The trademark application was not in contravention of relevant provisions. Hence, the court of original instance and the TRAB were erroneous in finding that “山东” in the applied-for mark as a provincial name should not be used as a trademark.

#### **Examination on distinctiveness of certification marks.**

Examination of a certification mark application mainly covers examination of the eligibility of the applicant as well as the rules for use and management of the certification mark. Although the functions of a certification mark are somewhat different from those of a goods or service mark, and the examination criteria for registrability between a certification mark and a goods or service mark are not exactly the same, to determine whether a certification mark is registrable, examination should still be conducted pursuant to relevant basic requirements stipulated in the Trademark Law, such as whether the mark falls under the signs prohibited for use as trademark as provided for in Article 10 of the Trademark Law, whether it possesses distinctiveness for easy identification, and whether it is in conflict with any prior right or prior mark.

In *Bluetooth SIG, Inc. v. TRAB*<sup>5</sup>, an administrative dispute over review on trademark refusal, the mark “蓝牙” (meaning “bluetooth”) of No.5918202 was applied for registration by Bluetooth SIG Inc. and designated for use on goods such as telephones, satellite receivers, and radio receivers in class 9. The CTMO rejected the application for registration of the mark on 3 August 2009 on the grounds that the mark did not meet the requirements under Article 11.1(2) of the Trademark Law and Article 28 of the Trade-

mark Law (2001). The TRAB held that “蓝牙” as a mark used on goods such as telephones, satellite receivers, and radio receivers directly denoted the technical feature of the designated goods and lacked distinctiveness of a mark, and hence was unlikely to play the role of distinguishing the source of goods and unsuitable for registration as a mark. The evidence provided by Bluetooth SIG Inc. did not suffice to prove that the certification mark had obtained the distinctiveness to qualify for registration as a mark. The TRAB accordingly refused registration of the mark, and the decision was upheld by the first-instance court.

The second-instance court pointed out that registration and protection of marks should observe the principle of territoriality, and the fact that relevant marks of Bluetooth SIG Inc. had been approved for registration in other countries could not automatically serve as the basis for preliminary approval of the registration of the applied-for mark in China. Administrative cases involving trademark grant and affirmation also followed the principle of examination on an individual case basis, that is, an approval of trademark registration under other circumstances might not automatically serve as the basis for preliminary approval for registration of the applied-for mark. The sign of the applied-for mark comprised the Chinese characters “蓝牙”, a wireless technology supporting devices for short distance communication and capable of wireless data exchange between a number of devices such as mobile phones, PDAs, wireless headphones, laptops, and peripherals. As such, “蓝牙” used on goods such as telephones, satellite receivers, and radio receivers was a direct denotation of the technical feature of the designated goods, which lacked the necessary distinctiveness of a mark, and accordingly should not be registered as a mark.

#### **An enterprise name possessing distinctiveness may be registered as a trademark.**

A sign formed by words may be registered as an enterprise name provided that it meets the requirements stated in the provisions on administration of enterprise name registration, but this does not necessarily mean that the sign will be registrable as a trademark. Registrability of an enterprise name as a mark depends on whether the enterprise name possesses the characteristics of a mark and distinctiveness, and whether it assists the consumers in distinguishing the goods designated by the mark from other goods. The identifiability of an enterprise name by itself cannot replace the distinctiveness of a mark, as the two are

qualitatively different from each other.

In *Shanghai Lianya Investment Consultancy Co., Ltd. ("Lianya Co." for short) v. TRAB*<sup>6</sup>, an administrative dispute over review on trademark refusal, the disputed mark “上海聯雅投資諮詢有限公司” was applied for registration by Lianya Co. The TRAB deemed that the disputed mark should not be used as a mark on the grounds that the disputed mark as a whole possessed neither distinctiveness nor identifying function of a mark, which violated Article 11.1(3) of the Trademark Law, and accordingly decided that the application for registration of the disputed mark should be refused. The decision was upheld by the first-instance court.

The second-instance court pointed out that distinctiveness, as the capability of manifesting an intrinsic identifying attribute of a mark sign, was an essential condition for registration of the sign as a mark. A mark sign was capable of distinguishing specific goods or service from other goods or services because it possessed the identifying attribute corresponding to the specific goods or service, and such distinguishing capability manifested by the identifying attribute contributed to distinctiveness. The disputed mark was a word mark consisting of “上海聯雅投資諮詢有限公司”, which was the same as the enterprise name of Lianya Co., except that some of the words in the mark were in traditional Chinese characters. And “聯雅” in the mark was the trade name of Lianya Co. The disputed mark as a whole possessed the identifiability and distinctiveness of a mark sign.

**An applied-for mark in a trademark refusal review case may be approved for registration by means of extension of goodwill of an underlying mark.**

Where an underlying mark of a trademark registrant has won certain reputation through use, such that the relevant public tend to associate an identical or similar mark subsequently applied for registration on the same or similar goods with the underlying mark, and believe that the respective goods used by the two marks both come from the registrant or have certain association with him, the goodwill of the underlying mark may be extended to the later mark. In judging whether a later mark and a cited mark constitute similar marks used on the same or similar goods, even though the underlying mark has been cancelled due to failure to renew registration within the prescribed time limit, consideration should be given to the underlying mark's influence on the later mark, with the likelihood of confusion and misidentification among the relevant public as the core con-

cern, so as to protect the first-to-register system and adhere to the principle of overall judgment on the likelihood of confusion and misidentification.

In *Hunan Huang Jin Yuan Foodstuff Co., Ltd. ("Huang Jin Yuan Co." for short) v. TRAB*<sup>7</sup>, an administrative dispute over review on trademark refusal, the mark “黄金园 HUANG JIN YUAN and device” of No. 11477360 was applied for registration by Huang Jin Yuan Co. The TRAB deemed that the applied-for mark and the cited mark constituted similar marks used on the same or similar goods. Upon examination, it was found that Huang Jin Yuan Co. had applied for registration on 31 October 2000 of the mark “黄金园 HUANG JIN YUAN and device” (No. 1695050) and registered it for use on goods such as biscuits, vermicelli, and pastries in class 30. The mark, the sign of which was basically similar to that of the applied-for mark, was valid until 6 January 2012 and lapsed by reason of failure to renew registration within the prescribed time limit. During the appeal process, Huang Jin Yuan Co. submitted supplementary evidence, including registration particulars of Hunan Changsha Changhong Industrial Co., Ltd. and Huang Jin Yuan Co., certification issued by Huangjinyuan sub-district office of Wangcheng district in Changsha city, Hunan Province Product Standard Implementation Certificate, as well as some sales contracts and invoices, in order to prove that Huang Jin Yuan Co. and its affiliates had been using the “Huang Jin Yuan” mark on vermicelli since 2001. The mark, after being used over an extended period, had enjoyed certain reputation in the Hunan region, and as evidenced by the honour certificate issued by the organising committee of Hunan Brand Culture Festival, Huang Jin Yuan Co. was lauded as a most beloved brand among consumers in Hunan for 2011-2012. The first-instance court held that the applied-for mark and the cited mark did not constitute similar marks used on the same or similar goods as provided for in Article 30 of the Trademark Law (2013).

The second - instance court deemed that in judging whether a later mark and a cited mark constituted similar marks used on the same or similar goods, overall consideration should be given to the following factors: 1. sameness or degree of similarity between the sign of the later mark and that of the underlying mark and the cited mark; 2. degree of similarity between the goods of the later mark and those of the underlying mark and the cited mark; 3. duration of usage of the underlying mark, continuity of the usage, and reputation and sphere of influence of the underlying

mark; 4. relation between the underlying mark and the later mark in terms of usage or registrant; 5. whether the underlying mark had been cancelled or revoked, and if so, whether the reason for cancellation or revocation had an impact on the legality of the later mark; and 6. conditions of use and reputation of the cited mark. The above factors should be taken into consideration altogether, with the key concern placed on whether the co-existence of the later mark and the cited mark would cause confusion and misidentification among the relevant public. As to the present case, the judgment of whether the applied-for mark and the cited mark constituted similar marks used on the same or similar goods should take into overall consideration of the following factors: 1. the Chinese characters “黄金园” in the applied-for mark were similar to the Chinese characters “黄金田园” in the cited mark, but the images of the two marks differed considerably, and there were obvious differences between the signs of the marks as a whole, whereas the sign of the applied-for mark was basically the same as that of trademark No. 1695050; 2. the applied-for mark and trademark No. 1695050 were used on the same or similar goods; 3. Huang Jin Yuan Co. had used trademark No. 1695050, which was basically the same as the applied-for mark, for a sustained period, and trademark No. 1695050 had won certain reputation through the usage; 4. the registrant of both trademark No. 1695050 and the applied-for mark was Huang Jin Yuan Co., whereas the users of trademark No. 1695050 were Huang Jin Yuan Co. and its affiliates; and 5. although trademark No. 1695050 had been cancelled, the reason for the cancellation was failure to renew registration, indicating that the mark was not cancelled or revoked due to noncompliance with the conditions for registration as stipulated in the Trademark Law (2013). Based on overall consideration of the above factors, the co-existence of the applied-for mark and the cited mark would not cause confusion and misidentification as to the source of goods among the relevant public.

**Determination of similarity of goods in a trademark refusal review case in principle should not deviate from the Classification Table.**

Upon judgment of similarity of goods or services, account shall be taken of whether the goods or services are the same or largely parallel in terms of functions, purposes of use, producers, marketing channels, and target consumers; and whether they may easily lead the relevant public to believe that the goods or services are provided by the

same entity or that their providers have some association between them. For the purpose of such judgment, International Classification of Goods and Services for the Purposes of the Registration of Marks as well as Classification of Similar Goods and Services may serve as reference. Although the two classifications are for reference only, in principle they should be referred to for the determination of similarity of goods and services if the degree of similarity between the signs is relatively high, and there is no evidence to support that the goods or services are dissimilar in terms of functions, purposes of use, producers, marketing channels, and target consumers and that confusion and misidentification among the relevant public as to the source of goods are unlikely to occur.

In *Shanghai Yintai Paper Co., Ltd. (“Yintai Co.” for short) v. TRAB*<sup>8</sup>, an administrative dispute over review on trademark refusal, the applied-for mark was “SPP 长青 and device” of No. 10165904. The TRAB held that the applied-for mark and the cited marks 1 and 2 constituted similar marks used on the same or similar goods, which was not in compliance with Article 28 of the Trademark Law (2001). The first-instance court ruled that as Yintai Co. had explicitly abandoned its application for registration of the applied-for mark on nine types of goods of “paper, papier mache, parchment paper, wood pulp paper, calendar bowl paper (including wool paper, asbestos paper, calico paper), plate making paper, copper plate paper, asphalt saturated felt paper, flock paper”, and the applied-for mark was designated for use on “printing paper (including offset paper, newsprint paper, pamphlet paper, bond paper, gravure paper, letterpress paper)”, which fell under the category of industrial paper, whereas the cited mark 1 was approved for use on goods such as “toilet paper” under the category of household paper, and the cited mark 2 approved for use on goods such as “pamphlets” under the category of office paper, the goods designated by the applied-for mark and those approved for use by the cited marks did not constitute similar goods. Hence, the finding that the applied-for mark and the cited marks constituted similar marks was erroneous.

The second-instance court opined that the focus of dispute in the case was on whether the designated goods of the applied-for mark of “printing paper (including offset paper, newsprint paper, pamphlet paper, bond paper, gravure paper, letterpress paper)” constituted similar goods to the goods approved for use by the cited marks 1 and 2. Ac-



cording to Classification of Similar Goods and Services, “printing paper (including offset paper, newsprint paper, pamphlet paper, bond paper, gravure paper, letterpress paper)” of class 1601, as designated for use by the applied-for mark, were similar goods to “toilet paper, paper handkerchiefs, paper napkins, paper towels, grained paper” of class 1603, as approved for use by the cited mark 1, as well as to “binders, pamphlets, cards, printed matter, postal cards” of class 1605, as approved for use by the cited mark 2. These were facts supported by Classification of Similar Goods and Services (10th Edition). Besides, Yintai Co. had explicitly abandoned the application for registration of the applied-for mark on goods such as “paper, papier mache, parchment paper, wood pulp paper, calendar bowl paper (including wool paper, asbestos paper, calico paper), plate making paper, copper plate paper, asphalt saturated felt paper, flock paper”. In accordance with Classification of Similar Goods and Services, “printing paper (including offset paper, newsprint paper, pamphlet paper, bond paper, gravure paper, letterpress paper)” as designated for use by the applied-for mark constituted similar goods to “toilet paper, paper handkerchiefs, paper napkins, paper towels, grained paper” as approved for use by cited mark 1, as well as to “binders, pamphlets, cards, printed matter, postal cards” as approved for use by the cited mark 2. In the absence of any counter-evidence, the finding of the court of original instance that the above goods did not constitute similar goods lacked factual basis.

**Prior trademark owner’s views should be duly considered and respected in the determination of similarity of marks.**

A trademark right is a civil right enjoyed by the right owner according to law. Although the Trademark Law not only protects the legal rights of trademark owners but also concerns the legitimate interests of the consumers, it mainly addresses the regulation of legal relationship over trademarks. Under current Chinese legal framework, consumer interests are protected and regulated by specific laws. For the application of the Trademark Law, the focus should be on the legal relationship over trademarks. When it comes to establishment of similarity of marks, due consideration and respect should be given to the views of the prior trademark owner. In an application for registration of a similar mark on the same or similar goods or services, coexistence agreements should serve as an important basis for judging whether a mark constitutes similarity.

In *Courts Asia Limited v. TRAB*<sup>9</sup>, an administrative dispute over review on trademark refusal, the TRAB held that the applied-for mark was similar to the cited marks I and II in terms of literal composition and pronunciation, and it was not easy to differentiate the meaning of the former from that of the latter, so the applied-for mark and cited marks I and II constituted similar mark; moreover, the designated services of the applied-for mark and the services approved for use by cited marks I and II belonged to similar services, as such the coexistence of the applied-for mark with cited marks I and II was prone to cause confusion and misidentification about the source of services among consumers. The decision of the TRAB was upheld by the first-instance court.

The second-instance court deemed that when deciding whether to allow a subsequently filed mark to coexist with a prior registered mark, the following factors should be considered in combination with specific conditions of the case: 1. whether the marks were the same marks used on the same goods; 2. whether the content of the coexistence agreement was clear and specific; 3. whether the mark signs had any difference between them; 4. actual usages of relevant marks; and 5. whether significant public interests were involved. During the second-instance proceeding of the case, Courts Asia Limited supplemented relevant evidence, including: 1. a notarised Letter of Consent in relation to the coexistence of the marks issued by the registrant of the cited mark I and the Chinese translation thereof, in which the registrant clearly expressed its consent to the registration and use of the applied-for mark, and declared that it would not assert the use of the applied-for mark as infringing and would not take any action to invalidate the applied-for mark; and 2. an Assignment of Trademark issued by the CTMO for approval of the assignment of the cited mark II to Courts Asia Limited. The applied-for mark was formed by the word “COURTS”, whereas the cited mark I consisted of “COUTTS”. Although the two marks were made up of similar letters, there was still some difference between them; moreover, they had their respective meanings. Where the registrant of the cited mark I had issued the Letter of Consent, the applied-for mark and cited mark I should be determined as not constituting similar marks as stipulated in Article 28 of the Trademark Law (2001). In consideration of the status of facts when the case was in trial, upholding of the original judgment and the TRAB decision would not align with the actual situation at the time of adjudication.

Copyright assignment agreement may serve as *prima*

*facie* evidence of copyright ownership in the absence of counter-evidence.

In dealing with copyright-related issues in administrative cases involving trademark right grant and affirmation, the methods and principles for determining copyright ownership in civil copyright cases should be adopted, and the Copyright Law and relevant laws, as well as judicial interpretations, are applicable. For the determination of copyright ownership, reference should be made to the relevant provisions of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases Involving Civil Disputes over Copyright, and the principle of presumption of ownership is applicable. In the absence of any counter-evidence, a copyright assignment agreement may serve as the *prima facie* evidence of copyright ownership.

In *E. Remy Martin & Co. ("Remy Martin" for short) v. TRAB and Wang Yincai*<sup>10</sup>, an administrative dispute over review on trademark opposition, the opposed mark was “现代骑士 XIAN DAI QI SHI LIGHTING (literally, “modern knight lighting”) and device” of No. 5192942 applied for registration by Wang Yincai in respect of goods such as lighting installations for vehicles, blow torches, gas lighters, lamps, lighters, lighting apparatus and installations, electric cooking utensils, heating apparatus, ventilation (air-conditioning) installations and apparatus, and sewage disposal facility in class 11. Remy Martin filed an opposition against registration of the mark, but the CTMO found that the reasons for opposition were not tenable. The TRAB after review of the case ruled that the opposed mark should be approved for registration as Remy Martin had not provided any evidence to prove its copyright to the work at issue. The ruling was upheld by the first-instance court.



The opposed mark



The work at issue

The second-instance court deemed that: the assignment agreement submitted by Remy Martin to the court of original instance in support of its copyright to the work at issue was notarised and authenticated, and was signed between Ms. Quay of Dutch nationality as Party A and Remy Martin as Party B on 22 December 1962. According to the

assignment agreement provided by Remy Martin, Ms. Quay was the creator of the centaur statuette, i.e., the work at issue, and the work after completion along with all rights thereof including copyright was transferred to Remy Martin on 22 December 1962. After that, Remy Martin registered and actually used the device as trademark in mainland China, and these, as supported by the corroborating evidence mentioned above, occurred before the filing date of the opposed mark. The registration certificate and evidence of use of the mark as well as the assignment agreement submitted by Remy Martin in connection with the case constituted the *prima facie* evidence in support of the ownership of copyright to the work at issue. In the absence of any counter-evidence, it could be determined based on the said evidence that Remy Martin was entitled to the prior copyright to the work at issue. The opposed mark was a figurative mark also containing an image of a centaur. Despite some differences in the details between the mark and the work at issue, the two looked very much alike in overall appearance, form of expression, and composition, and hence were substantially similar. The evidence provided by Remy Martin showed that it had publicly used the work at issue before the filing date of the opposed mark, and it was for this reason that Wang Yincai was able to get access to the work. Accordingly, the application for registration of the opposed mark by Wang Yincai constituted impairment of the prior copyright of Remy Martin.

**Elements other than non-distinctive elements such as generic names and place names in marks are more significant in judging similarity of marks.**

The judgment of similarity of marks generally adheres to the principle of overall comparison and isolated observation. Where a mark contains such non-distinctive elements as generic names and place names, it is not appropriate to take these elements as the major factors for consideration in judging similarity. Instead, other elements should be compared to determine degree of sameness or similarity to arrive at the conclusion about similarity of marks.

In *Character Montessori Asia Pte Ltd. ("Montessori Asia" for short) and Singapore Character Montessori Pte Ltd. ("Singapore Montessori" for short) v. TRAB*<sup>11</sup>, an administrative dispute over review on trademark refusal, the mark “品格蒙特梭利 and device” of No.10099820 was applied for registration by Montessori Asia in respect of services such as educational services, instruction services, practical training (demonstration), amusement services, and en-

tainment in class 41, and subsequently assigned to Singapore Montessori, whereas the cited mark “蒙特梭利 and device” of No. 769201 was applied for registration by the Chinese Montessori Foundation for Early Childhood Educational Research on 16 July 1993 and approved for registration on 7 October 1994 for use on services such as correspondence courses, education, training, teaching, publication of books, rental of textbooks, and rental of videotapes in class 41 of the International Classification of Goods and Services. The CTMO refused registration of the applied-for mark, and the TRAB also refused the applied-for mark, on the grounds that it constituted similar mark to the cited mark used on the same or similar services. TRAB’s ruling was upheld by the first-instance court.



The applied-for mark



The cited mark

The second-instance court’s opinions were: the applied-for mark was a combination mark of word and figure, consisting of the Chinese characters “品格” and “蒙特梭利” and the figures of a butterfly and a pair of “S”; whereas the cited mark was composed of the Chinese characters “蒙特梭利” and the figures of “M” and two horizontal bars. Based on the evidence submitted by Montessori Asia including an introduction to Maria Montessori, reports on Montessori educational approach from researches in the National Library of China, online information on Montessori education in practice published on websites of educational institutions and kindergartens, and books related to Montessori education, it could be proved that Montessori as an early childhood educational approach had been widely adopted in the field of education in China and was well-known to the relevant public of the field. Under normal circumstances, the relevant public when encountering the word “Montessori” would recognise it as an educational approach. Hence, “Montessori” in the cited mark had weak distinctiveness when used on designated services including education. Moreover, in respect of the cited mark, other than the four Chinese characters “蒙特梭利” which occupied a small area of the overall mark, the major portion of the mark was the device formed by “M” and two horizontal bars. In

comparison with the Chinese characters “品格” and the figures of butterfly and a pair of S of the applied-for mark, the cited mark was distinctively different in meaning, composition, and overall visual effect. Accordingly, when the two marks were used in coexistence on the same or similar services, the relevant public would still be able to tell them apart with average attention, without causing confusion and misidentification. Hence, the two marks did not constitute similar marks under Article 28 of the Trademark Law (2001).

**The requirement regarding reputation of a prior trade name may be duly lowered in case of malicious squatting on the trade name.**

In respect of protection for the rights and interests of a prior trade name, the reputation of the prior trade name should be considered. Nevertheless, if there is evidence to indicate that the applicant of the disputed mark knows or should know the prior trade name of another party at the time of filing the application for registration of the mark, even though the prior trade name has not acquired a high reputation nationwide, from the perspective of inhibiting unfair competition, the registration of the disputed mark should be determined as impairing the other party’s rights and interests in the prior trade name.

In *Qufu City Confucius Family Liquor Co., Ltd. (“Confucius Liquor Co.” for short) v. TRAB and Qufu Confucius Family Liquor Brewing Co., Ltd. (“Confucius Brewing Co.” for short)*<sup>12</sup>, an administrative dispute over review on opposition against the application for registration of the mark “孔府酒坊” (meaning “Confucius family liquor workshop”), the first-instance court held that although the enterprise name “曲阜市孔府酒坊酒业有限公司” (i.e. Qufu City Confucius Family Liquor Co., Ltd.) as registered by Confucius Liquor Co. before the filing date of the opposed mark contained the trade name “孔府酒坊”, the evidence provided by Confucius Liquor Co. did not suffice to prove that the trade name had acquired a high reputation when the application for registration of the opposed mark was filed. Moreover, Confucius Brewing Co. had registered and used the mark “孔府” (meaning “Confucius family”) before the establishment of Confucius Liquor Co. The relevant consumers would readily associate the opposed mark, the distinctive portion of which was also “孔府”, with Confucius Brewing Co., rather than confuse or misidentify it as relevant to Confucius Liquor Co. Hence, it was not improper for the TRAB to find that the application for the registration of the opposed mark did not impair the rights and interests related



to the prior trade name of Confucius Liquor Co.

The second-instance court deemed that: Confucius Liquor Co. was founded in 1995 using “孔府酒坊” as its trade name, whereas the opposed mark was applied for registration in respect of goods such as liquor in class 33 in 2009 and consisted of Chinese characters “孔府酒坊”, which was identical with the prior trade name of Confucius Liquor Co. Although available evidence was inadequate to prove that the trade name of Confucius Liquor Co. had acquired a high national reputation, Confucius Brewing Co., as a peer enterprise domiciled also in Qufu city of Shandong province, should have knowledge of the enterprise name of Confucius Liquor Co. Furthermore, the evidence submitted by Confucius Liquor Co. during the original-instance proceeding proved that prior to the application for registration of the opposed mark, Confucius Brewing Co. had once been engaged in a legal dispute with Confucius Liquor Co., and as such, should know the enterprise name and business status of the latter. Under such circumstances, the application for registration of the opposed mark by Confucius Brewing Co. constituted impairment of the prior rights and interests of Confucius Liquor Co. and should not be approved according to law.

**A prior use sign asserted by the party can serve as a mark.**

For protection of a prior mark having certain influence, where the claimed mark is not registered, an immediate question is whether the prior use sign asserted by the party may serve as a mark. However, it is only when the sign meets the basic requirements for a mark and is owned by the party may we proceed to consider the issues of eligibility of the mark for protection and extent of protection accorded to the mark.

In *Nie Fuqiang v. TRAB and Sichuan Jianyang Qiankun Enterprise Group Co., Ltd.* (“Jianyang Co.” for short)<sup>13</sup>, an administrative dispute over trademark, Nie Fuqiang held a management position at Chengdu Qiankun Veterinary Pharmaceutical Co., Ltd. (“Chengdu Co.” for short), of which Jianyang Co. was once a shareholder. Jianyang Co. asserted that the mark “超极” (meaning “hyper”) applied for registration by Nie Fuqiang in respect of preparations for veterinary use and drugs for veterinary purposes in class 5 constituted squatting of the mark “超级” (meaning “super”) previously used by Jianyang Co. on veterinary medications. Evidence on the record showed that Jianyang Co. used the wording “超级兽医” (meaning “super veterinarian”) in the

First Qiankun Cup National Super Veterinary Contest. The first-instance court found that the application for registration of the disputed mark by Nie Fuqiang was obviously malicious, and hence registration of the disputed mark should be cancelled.

The second-instance court pointed out that at least two conditions needed to be satisfied before squatting of a prior mark having certain influence could be established: first, the mark, whether in itself or through use, should practically possess the identifying function, rather than just possess the likelihood of identifying the source of goods or services; secondly, the mark needs to have acquired certain influence through use to thereby gain reputation in order to qualify for legal protection. In other words, only when the prior mark was a mark capable of identifying the source of goods or services and enjoyed certain reputation might we proceed to consider the attribution of reputation of the mark. If the use failed to function as a trademark or did not amount to reputation, there would be no interests in the sense of the Trademark Law, and as such attribution of the interests was out of question. Jianyang Co. used or high-profilely used the phrase “超级兽医” in a veterinary contest. That phrase referred to the winners of the contest and represented a title of honour. Although the contest was hosted by Jianyang Co., it was still hard to establish the connection between the veterinaries who were awarded the title and Jianyang Co. in terms of the source of goods or services, or, in other words, to determine the phrase “超级兽医” as enabling the relevant public to associate the awarded veterinaries and the services with Jianyang Co., and thereby performing the function of a mark. And evidence of the present case showed that merely by the limited promotional activities and advertisements for the contest, it was not easy to ascertain that the use of the phrase had built a certain degree of reputation. Hence, registration of the disputed mark did not constitute squatting of another party’s prior mark having certain influence.

**The name of an electronic game having developed the identifying function of a trademark through use may be deemed as a prior mark having certain influence.**

A trademark application is not allowed to preemptively register by unfair means a mark that is already in use by another party and has attained certain influence. “奥拉星” is the name of an electronic game and belongs to the name of a work, which generally does not have the function of differentiating the source of goods or services as a mark does.

However, after developing an identifying function of a trademark through use, the name can be deemed as a prior mark having certain influence.

In the administrative trademark dispute of *Guangzhou Baitian Information and Technology Co., Ltd. ("Baitian Co." for short) v. TRAB and Beijing Lanxin Wangke Technology Co., Ltd. ("Lanxin Co." for short)*<sup>14</sup>, the disputed mark was “奥拉星 and device” (as shown below) of No. 8506916, which was applied for registration on 23 July 2010 by Lanxin Co. and approved for use on services in class 41 such as academies (education), nursery schools, providing on-line electronic publications (not downloadable), and on-line game services from a computer network. Baitian Co. filed a request with the TRAB for adjudication against the disputed mark on 8 February 2013. On 14 April 2014 the TRAB issued a ruling of maintaining the registration of the disputed mark. The ruling was upheld by the first-instance court.



The disputed mark

The second-instance court held that: “奥拉星” was the name of an online game developed by Baitian Co., as well as that of a computer software. By means of such usage as in Baitian Co.’s advertising and promotion, internal game testing, and game card sales agreements, the name had become connected to the provider of the computer software as the source of goods, and thereby attained an identifying function as a mark. By the effort of Baitian Co. from August 2009 to the filing date of the disputed mark, “奥拉星” had become a name having certain influence among the relevant public through such means as internet promotion, internal game testing, and signing of game card sales agreements. The users of “奥拉星” games were mostly children of school age, who sufficiently represented the relevant public of the respective services approved for use by the disputed mark. Lanxin Co. as a peer enterprise should know that “奥拉星” was an electronic game developed by Baitian Co., and the evidence submitted by Lanxin Co. did not suffice to prove that the disputed mark was differentiable from “奥拉星” of Baitian Co. Hence, the application for registration of the disputed mark by Lanxin Co. was an act of squatting on an unregistered mark having certain influence.

Article 41.1 of Trademark Law (2001) may be referred

to in administrative cases of review on trademark opposition.

Article 41.1 of the Trademark Law (2001) provides that “Where a registered trademark stands in violation of the provisions of Article 10, 11, 12 of this law, or the registration of a trademark was acquired by fraud or any other unfair means, the Trademark Office shall cancel the registered trademark in question; and any other organization or individual may request the Trademark Review and Adjudication Board to make an adjudication to cancel such a registered trademark.” The above provision embraces the legislative spirit of adhering to the principle of public order and good morals, maintaining a decent order of trademark registration and management, and building a favourable trademark market environment. According to its literal sense, the provision applies only to the cancellation proceeding of a registered mark, but not to the trademark review and approval procedures. However, if a trademark application by fraud or other unfair means is found during the trademark review and approval procedures, and no action is taken to stop it such that it is left to be regulated by initiating a cancellation proceeding until the completion of the trademark registration, it will obviously be adverse to the opportune determent of the bad-faith registration. In consideration of this, the legislative spirit mentioned above should be observed all through the trademark review, approval, and cancellation procedures. If the CTMO, the TRAB, or the court finds during the trademark review or approval procedures or corresponding litigation proceeding that an applicant applies for registration of a trademark by fraud or other unfair means, the above-cited provision may be referred to in order to stop the bad-faith trademark application. Such circumstances are, however, applicable only where no other legal provisions may be applied to regulate the registration of the trademark by unfair means.

In *Shanghai Sika Chemical Co., Ltd. ("Shanghai Sika" for short) v. TRAB and Sika AG*<sup>15</sup>, an administrative dispute over review on trademark opposition, the TRAB ruled that the opposed mark and the “Sika” mark owned by Sika AG were similar in terms of word composition and sequence of letters. In addition to the opposed mark, Shanghai Sika had also applied for registration of marks which were identical or similar to such famous marks as “VERTU” and “飞利浦 PHILIPS”. It could therefore be ascertained that Shanghai Sika’s application for registration of the opposed mark was an act of obvious intent to copy or imitate other parties’ highly reputed brands in bad faith. Such acts not only caused

confusion and misidentification, but also disturbed the normal order of trademark registration and management, undermined the market order of fair competition, and violated the principle of good faith, which fell within the circumstances provided for in Article 41.1 of the Trademark Law (2001). The first-instance court, however, held that Article 41.1 of the Trademark Law (2001) was not applicable as the opposed mark was still pending approval.

The second-instance court deemed that: Shanghai Sika had applied for registration of the “Sika” mark on goods under multiple classes, and additionally, for registration of marks which were identical or similar to such famous marks as “VERTU”, “飞利浦”, “飞利浦 PHILIPS”, and “GE and device” on goods under multiple classes. Shanghai Sika’s application for registration of the above-mentioned marks was an act of obvious intent to reproduce or copy other parties’ highly reputed marks, which disturbed the normal order of trademark registration and management, undermined the market order of fair competition, and violated the principle of public order and good morals. By reference to the legislative spirit of Article 41.1 of the Trademark Law (2001) in relation to prohibition of registration of marks by fraud or other unfair means, registration of the above-mentioned marks by Shanghai Sika should be prohibited, and hence application for registration of the opposed mark in the present case should not be approved. The TRAB should have deterred the registration of the opposed mark by reference to, and not by direct application of, Article 41.1 of the Trademark Law (2001). As such, there was inappropriateness in TRAB’s manner of application of law while the conclusion of its ruling was correct.

## II. Civil trademark cases

### Allocation of burden of proof related to network account user

In the virtual cyber environment, it is difficult for an average civil subject other than a website operator to accurately and precisely prove with evidence a party’s network account conditions. Hence, relevant facts should be ascertained by determining the probative value of evidence based on concrete situations of the case along with overall considerations of such factors as likelihood of accessibility to evidence, convenience in provision of evidence, and exhaustiveness of means of proof.

In the trademark infringement dispute of *Guilin Wood-*

*pecker Medical Instrument Co., Ltd. (“Woodpecker Co.” for short) v. Risinghongyu Medical Equipment Co., Ltd. (“Risinghongyu Co.” for short)*<sup>16</sup>, Woodpecker Co. registered with approval the mark “WOODPECKER and device” of No. 5167626, and asserted that the selling of photocuring machines using the “WOODPECKER and device” mark on eBay was performed by Risinghongyu Co. through 17 accounts including “fairbidshop668”, and hence Risinghongyu Co. should bear the corresponding civil liabilities. In respect of this, Risinghongyu Co. only accepted “fairbidshop668” as its account on eBay. Under such circumstances, Woodpecker Co. was required to prove the relation between the 16 accounts other than “fairbidshop668” and Risinghongyu Co., so as to ascertain that the relevant acts performed through the 16 accounts were conducted by Risinghongyu Co. The first-instance court pointed out that as shown by the evidence of Woodpecker Co., Risinghongyu Co. had 17 accounts selling 10,688 photocuring machines, with sales amounting to RMB2,524,988 (calculated according to the price shown on eBay). Risinghongyu Co. only accepted one of these accounts as its own account, although the MSN email addresses under the 17 accounts on eBay all contained “risingmed”, which was related to the domain name of www.risingmed.com registered by Risinghongyu Co. with the Ministry of Industry and Information Technology of China. In addition, the web pages to which these accounts corresponded saw repeated appearances of pictures of the office building and plants of Risinghongyu Co. With no counter-evidence or justifiable explanations from Risinghongyu Co., it could be ascertained that all of the 17 accounts were used by Risinghongyu Co.

The second-instance court held that: according to the evidence provided by Woodpecker Co., the MSN email addresses corresponding to the 17 eBay accounts including “fairbidshop668” all contained “risingmed”, which was closely related to the domain name of risingmed.com registered by Risinghongyu Co. with the Ministry of Industry and Information Technology of China. Woodpecker Co., unable to directly obtain relevant information in connection with the accounts, filed a request with the court for obtainment of the evidence from Shanghai eBay Network Information Services Co., Ltd. and eBay Management (Shanghai) Co., Ltd. Meanwhile, evidence collected by the court itself indicated that the accounts were not held by the two companies. As far as the facts to be proved were concerned, Woodpecker Co. had exhausted all available alternatives for collection of

relevant evidence. Risinghongyu Co., as a user of eBay, was in a better position than Woodpecker Co. to produce evidence related to the registration information of the accounts, in particular with the complete list of its accounts registered for use on eBay. However, Risinghongyu Co. did not submit any evidence in this respect. Taking into consideration the evidence provided by the parties in combination with everyday experiences, the finding of the court of original instance that the 17 accounts all belonged to Risinghongyu Co. was not improper, and Risinghongyu Co. should assume civil liabilities for the infringement of the exclusive right to the registered trademark of Woodpecker Co. through the 17 accounts on eBay.

### III. Trademark administrative proceedings and burden of proof

**Evidence of distinctiveness acquired through use is generally admissible in a trademark refusal review case.**

For a pending mark with no intrinsic distinctiveness, if it is refused merely for deficiency in distinctiveness and where the trademark applicant asserts that the mark has acquired distinctiveness through use, evidence of the use should be assessed. Giving no consideration to such evidence will deprive the applicant of the opportunity for remedy. As such, the applicant should be allowed, as an exceptional case, to supplement relevant evidence, and the evidence be used for judging whether the mark has acquired distinctiveness through use.

In *Luzhou Lao Jiao Co., Ltd. ("Lao Jiao Co." for short) v. TRAB*<sup>17</sup>, an administrative dispute over review on trademark refusal, Lao Jiao Co. applied for registration of mark "1573" in respect of alcoholic beverages in class 33. The CTMO deemed that the mark for use on the designated goods had no distinctiveness by directly describing such feature of the goods as the year of production, and accordingly refused the application for registration of the mark. Lao Jiao Co. submitted evidence to the TRAB in support of the mark's acquisition of distinctiveness through use, but the TRAB decided that the evidence was inadequate to prove that the mark "1573" had acquired the distinctiveness of a mark through publicity and use. The first-instance court held that the evidence submitted by Lao Jiao Co. was mostly related to promotional materials for "Guo Jiao 1573", which were inadequate to prove that the mark

"1573" by itself had acquired distinctiveness through use and publicity.

The second-instance court pointed out that in a case of review on trademark refusal when the registration procedure of the applied-for mark had yet to be completed, the factual status of the mark during the review process, including the litigation proceeding, was also a factor to be taken into account when considering whether the application should be refused. Lao Jiao Co. had submitted substantial evidence practically applicable to the applied-for mark during the original-instance proceeding, and the facts reflected by the evidence had an influence on the judgment of distinctiveness of the applied-for mark. If the evidence was disregarded, Lao Jiao Co. would be deprived of the opportunity for remedy. For these reasons, such evidence should be factored into when judging whether the applied-for mark possessed distinctiveness. According to the evidence submitted by Lao Jiao Co. during the original-instance proceeding and trademark review procedure, the applied-for mark, either alone or in combination with "Guo Jiao", was used on Baijiu, a Chinese liquor, in advertising and promotion, sales, as well as various honours awarded to the company. Through the extensive and long-term usage of the mark, the consumers were able to associate "1573" in its specially-designed font with Baijiu produced by Lao Jiao Co. As such, the mark had been playing the role of distinguishing different Baijiu providers, and hence had acquired distinctiveness.

**Where the evidence submitted by the parties cannot prove their respective assertions, judgment should be based on evidence-related provisions.**

In adjudicating administrative cases, the court examines whether specific administrative actions are lawful. The defendant in administrative litigation bears the burden of proof for specific administrative action, and should provide evidence for the action as well as the supporting normative documents. The administrative authority when taking an administrative action should carry out a comprehensive analysis of the evidence furnished by respective parties, in particular the party who asserts positive facts. Only when such facts asserted by the party are proved with sufficient evidence may corresponding administrative action in support of the party's claim be taken.

In *Heshan Sanliya Handicrafts Co., Ltd. ("Sanliya Co." for short) v. TRAB and Gregory Mountain Products, LLC ("Gregory LLC" for short)*<sup>18</sup>, an administrative dispute over

opposition review, the opposed mark was “GREGORY and device” of No. 5636689 applied for registration by Sanliya Co. on 28 September 2006 and designated for use on goods such as sanitizing wipes in class 5. Gregory LLC filed an opposition against the mark with the CTMO, which adjudicated that the opposed mark be approved for registration. The TRAB after review of the case deemed that the GREGORY mountain device of Gregory LLC was unique in design and original, and belonged to a work of fine art under the protection of the Copyright Law; moreover, it was created at a date earlier than the date of filing the application for registration of the opposed mark. For these reasons, Gregory LLC was entitled to prior copyright to the device. Given the strong originality of the GREGORY mountain device, the identicalness of the two devices could hardly be a coincidence. Sanliya Co.’s application for registration of the prior copyrighted work of Gregory LLC as the opposed mark without license from the copyright owner constituted infringement on the prior copyright of Gregory LLC. It was thus ruled that the opposed mark should not be approved for registration. The ruling was upheld by the first-instance court.

The second-instance court opined that the device in the opposed mark was unique in design and original, and was a work of fine art protected by the Copyright Law. The “name affixed to a work” as mentioned in Article 11 of the Copyright Law indicated the author of the work, and conveyed to the public that the name represented the creator of the work, whereas information in respect of the applicant and registrant of the mark stated in the trademark application documents and corresponding gazette indicated merely ownership of the right to the registered mark, which was not an act of authorship indicating the author in the sense of the Copyright Law. Although Gregory LLC asserted that its copyright was originally obtained through license from Bianchi International Corporation, and provided evidence in connection with the application for registration of the relevant mark in the US by Bianchi International Corporation, the evidence had not been translated and notarised, and it was inadequate to prove its entitlement to the copyright to the work at issue merely on the basis of the documents related to Bianchi International Corporation’s application for registration of the mark in the US. Gregory LLC had also submitted the Copyright Registration Certificate and relevant confirmation letters to prove its entitlement to the copyright to the work at issue, but the confirmation letters had low proba-

tive value as they were issued by Gregory LLC itself, while the Copyright Registration Certificate just proved that the copyright to the work at issue was assigned by Bianchi International Corporation to Gregory Mountain Products, Inc., from which Gregory LLC subsequently inherited the copyright. Even though Gregory LLC inherited the entirety of the rights and obligations of Gregory Mountain Products, Inc. through a merger, the copyright asserted by Gregory LLC originated from the assignment by Bianchi International Corporation. And as stated above, trademark application documents alone were inadequate to prove ownership of copyright to the work at issue. Accordingly, the evidence submitted by Gregory LLC was inadequate to prove its entitlement to the copyright to the work at issue. Although Gregory LLC had submitted the Copyright Registration Certificate to prove such entitlement, Sanliya Co. also did that to prove the same entitlement and moreover, Sanliya Co.’s certificate was formed at an obviously earlier time than Gregory LLC’s. Given that both Gregory LLC and Sanliya Co. provided the Copyright Registration Certificate in respect of the work at issue but different copyright owners were indicated on the respective certificates, it was improper to conclude that one party enjoyed the copyright while the other did not. Obviously, it was factually groundless for the TRAB to support the assertion of Gregory LLC and its finding that registration of the opposed mark infringed Gregory LLC’s prior copyright and thus violated Article 31 of the Trademark Law (2001). ■

(Written by Liu Xiaojun, reviewed by Yang Boyong)

<sup>1</sup> “Trademark Law (2001)” herein refers to the Trademark Law of the People’s Republic of China amended for the second time on 27 October 2001, and “Trademark Law (2013)” herein refers to the Trademark Law of the People’s Republic of China amended for the third time on 30 August 2013. Where a provision is the same in Trademark Law (2001) as in Trademark Law (2013), “the Trademark Law” is referred to herein.

<sup>2</sup> See the Beijing Higher People’s Court Administrative Judgments No. Gaoxing(zhi)zhongzi 1283/2015, 1295/2015, and 1296/2015 issued on 16 September 2015 (Collegial panel: Xie Zhenke, Zhong Ming, Yuan Xiangjun; handling judge: Zhong Ming) and the Beijing No.1 Intermediate People’s Court Administrative Judgments No. Yizhongxing(zhi)chuzi 8786/2014, 8785/2014, and 8784/2014.

<sup>3</sup> See the Beijing Higher People’s Court Judgment No. Gaoxing(zhi)



zhongzi 99/2015 issued on 3 February 2015 (Collegial panel: Xie Zhenke, Yuan Xiangjun, Zhong Ming; handling judge: Yuan Xiangjun) and the Beijing No.1 Intermediate People's Court Administrative Judgment No. Yizhongxing(zhi)chuzi 6136/2014.

<sup>4</sup> See the Beijing Higher People's Court Judgment No. Gaoxing(zhi)zhongzi 1980/2015 issued on 19 August 2015 (Collegial panel: Sha Rina, Zhou Bo, Yu Ye; handling judge: Zhou Bo) and the Beijing Intellectual Property Court Administrative Judgment No. Jingzhixingchuzi 375/2015.

<sup>5</sup> See the Beijing Higher People's Court Administrative Judgment No. Gaoxing(zhi)zhongzi 1928/2015 issued on 16 December 2015 (Collegial panel: Sha Rina, Zhou Bo, Yu Ye; handling judge: Sha Rina) and the Beijing No.1 Intermediate People's Court Administrative Judgment No. Yizhongxingzhichuzi 6072/2014.

<sup>6</sup> See the Beijing Higher People's Court Administrative Judgment No. Gaoxing(zhi)zhongzi 2556/2015 issued on 8 October 2015 (Collegial panel: Cen Hongyu, Ma Jun, Liu Qinghui; handling judge: Ma Jun) and the Beijing Intellectual Property Court Administrative Judgment No. Jingzhixingchuzi 852/2015.

<sup>7</sup> See the Beijing Higher People's Court Administrative Judgment No. Gaoxing(zhi)zhongzi 2069/2015 issued on 11 September 2015 (Collegial panel: Pan Wei, Shi Bisheng, Kong Qingbing; handling judge: Shi Bisheng) and the Beijing No.1 Intermediate People's Court Administrative Judgment No. Jingzhixingchuzi 400/2015.

<sup>8</sup> See the Beijing Higher People's Court Administrative Judgment No. Gaoxing(zhi)zhongzi 3025/2015 issued on 10 November 2015 (Collegial panel: Pan Wei, Shi Bisheng, Kong Qingbing; handling judge: Shi Bisheng) and the Beijing No.1 Intermediate People's Court Administrative Judgment No. Yizhongzhixingchuzi 4644/2014.

<sup>9</sup> See the Beijing Higher People's Court Administrative Judgment No. Gaoxing(zhi)zhongzi 2191/2014 issued on 20 November 2015 (Collegial panel: Sha Rina, Zheng Jie, Zhou Bo; handling judge: Zhou Bo) and the Beijing No.1 Intermediate People's Court Administrative Judgment No. Yizhongzhixingchuzi 67/2014.

<sup>10</sup> See the Beijing Higher People's Court Administrative Judgment No. Gaoxing(zhi)zhongzi 1632/2015 issued on 20 November 2015 (Collegial panel: Xie Zhenke, Yuan Xiangjun, Zhong Ming; handling judge: Xie Zhenke) and the Beijing No.1 Intermediate People's Court Administrative Judgment No. Yizhongzhixingchuzi 552/2014.

<sup>11</sup> See the Beijing Higher People's Court Administrative Judgment No. Gaoxing(zhi)zhongzi 1441/2015 issued on 1 June 2015 (Collegial panel: Xie Zhenke, Yuan Xiangjun, Zhong Ming; handling judge: Xie Zhenke) and the Beijing No.1 Intermediate People's Court Administrative Judgment No. Yizhongzhixingchuzi 4433/2014.

<sup>12</sup> See the Beijing Higher People's Court Administrative Judgment No.

Gaoxing(zhi)zhongzi 411/2015 issued on 6 March 2015 (Collegial panel: Sha Rina, Zhou Bo, Zheng Jie; handling judge: Zhou Bo) and the Beijing No.1 Intermediate People's Court Administrative Judgment No. Yizhongzhixingchuzi 6432/2014.

<sup>13</sup> See the Beijing Higher People's Court Administrative Judgment No. Gaoxing(zhi)zhongzi 3747/2014 issued on 6 January 2015 (Collegial panel: Xie Zhenke, Zhong Ming, Yuan Xiangjun; handling judge: Zhong Ming) and the Beijing No.1 Intermediate People's Court Administrative Judgment No. Yizhongzhixingchuzi 3703/2014.

<sup>14</sup> See the Beijing Higher People's Court Administrative Judgment No. Gaoxing(zhi)zhongzi 301/2015 issued on 2 March 2015 (Collegial panel: Cen Hongyu, Liu Qinghui, Ma Jun; handling judge: Cen Hongyu) and the Beijing No.1 Intermediate People's Court Administrative Judgment No. Yizhongzhixingchuzi 6319/2014.

<sup>15</sup> See the Beijing Higher People's Court Administrative Judgment No. Gaoxing(zhi)zhongzi 27/2015 issued on 18 June 2015 (Collegial panel: Sha Rina, Zhou Bo, Zheng Jie; handling judge: Zhou Bo) and the Beijing No.1 Intermediate People's Court Administrative Judgment No. Yizhongzhixingchuzi 4925/2014.

<sup>16</sup> See the Beijing Higher People's Court Civil Judgment No. Gaominzhongzi 2245/2014 issued on 14 July 2015 (Collegial panel: Sha Rina, Zhou Bo, Dai Yiting; handling judge: Zhou Bo) and the Beijing No.1 Intermediate People's Court Civil Judgment No. Yizhongminchuzi 10381/2013.

<sup>17</sup> See the Beijing Higher People's Court Administrative Judgment No. Gaoxing(zhi)zhongzi 2336/2015 issued on 16 September 2015 (Collegial panel: Xie Zhenke, Zhong Ming, Yuan Xiangjun; handling judge: Zhong Ming) and the Beijing No.1 Intermediate People's Court Administrative Judgment No. Yizhongxing(zhi)chuzi 659/2015.

<sup>18</sup> See the Beijing Higher People's Court Administrative Judgment No. Gaoxing(zhi)zhongzi 829/2015 issued on 16 November 2015 (Collegial panel: Sha Rina, Zheng Jie, Zhou Bo; handling judge: Sha Rina) and the Beijing No.1 Intermediate People's Court Administrative Judgment No. Yizhongxingzhichuzi 1637/2014.