

Probe into the Relationship Between Sales Promotion for Others and Retail & Wholesale

Du Ying and Deng Sijie

The Table for Differentiating Similar Goods and Services (hereinafter referred to as the “Differentiating Table”) in China categorizes “sales promotion for others” in Class 35. Since the Differentiating Table does not include the retail and wholesale services separately, a great number of retail and wholesale operators select to apply for registration of service trademarks under “sales promotion for others”. In practice, however, there has been a huge controversy over whether designated items under the service of “sales promotion for others” include retail and wholesale services. The attitude towards this issue is ambiguous in judicial practice. With the development of the commodity retail and wholesale industry, enormous retail and wholesale operators designate “sales promotion for others” services for their registered trademarks in the hope of protecting their own legitimate rights and interests through registration. Under such circumstances, it is indeed necessary to explain “sales promotion for others” and clarify the relationship between retail & wholesale services and “sales promotion for others” service, in such a way to fully protect the legitimate rights and interests of operators and meanwhile provide beneficial reference for trademark registration, as well as examination and trial practices.

I. Classification change of “sales promotion for others”

The Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks (hereinafter referred to as the “Nice Classification”) has listed “sales promotion for others” in Class 35 since its sixth edition. Although the Nice Classification does not make a separate explanation to “sales promotion for others”, the explanatory note of each edition is condu-

cive to understanding the relationship between “sales promotion for others” service and retail & wholesale services. The Nice Classification (Sixth Edition) published in 1992 mentioned in the explanatory note that Class 35 does not include, in particular, activity of an enterprise the primary function of which is the sale of goods, i.e., of a so-called commercial enterprise. The Seventh Edition indicated in the explanatory note that Class 35 includes, in particular, the bringing together, for the benefit of others, of a variety of goods (excluding the transport thereof), enabling customers to conveniently view and purchase those goods. On the basis of the Seventh Edition, the Ninth Edition published in 2006 added some contents to the explanatory note: This Class includes, in particular “the bringing together, for the benefit of others, of a variety of goods (excluding the transport thereof), enabling customers to conveniently view and purchase those goods; such services may be provided by retail stores, wholesale outlets, through mail order catalogues or by means of electronic media, for example, through web sites or television shopping programmes”. Meanwhile, the following content was deleted: This Class does not include, in particular, “activity of an enterprise the primary function of which is the sale of goods, i.e., of a so-called commercial enterprise”. Retail or wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies were added to Class 35 in the Nice Classification (Tenth Edition) published in 2013, such that retail or wholesale service in the pharmaceutical and medical fields is listed as a separate item in Class 35. The explanatory note to sales promotion for others basically remained unchanged in the Nice Classification (Eleventh Edition) published in 2017, with only the “automatic vending machine” added.

Judging from the changes like the explicit exclusion of

an enterprise which sells goods in the Sixth Edition and the explicit inclusion of “the bringing together...of a variety of goods...”, enabling customers to conveniently view and purchase those goods” in the Ninth Edition, the scope of services designated by trademarks in Class 35 of the Nice Classification has suffered great variation.

China has started to formulate and amend the Differentiating Table according to the Nice Classification since 1988. The former Trademark Office of the State Administration for Industry and Commerce indicated in the Reply to the Issue of Whether Shopping Mall and Supermarket Services are Included in Class 35 (Document No. TMSZ 171/2004) that Class 35 includes mainly services with the object of “help in the working or management of a commercial undertaking” or “help in the management of the business affairs or commercial functions of an industrial or commercial enterprise”, and does not include, in particular, “activity of an enterprise the primary function of which is the sale of goods, i.e., of a commercial enterprise”. These were in line with the then Nice Classification, i.e., Class 35 does not include activity concerning the sale of goods such as retail or wholesale. The Document No. TMSZ 171/2004 was made according to the then Differentiating Table and the contents on which the Document No. TMSZ 171/2004 was based were deleted from the Differentiating Table revised in 2007. After the revision to the Nice Classification (Ninth Edition), the expression “does not include, in particular, activity of an enterprise the primary function of which is the sale of goods, i.e., of a commercial enterprise” in the explanatory note of Class 35 was deleted from the Differentiating Table (2007 edition), and meanwhile, the expression “includes, in particular, the bringing together, for the benefit of others, of a variety of goods (excluding the transport thereof), enabling customers to conveniently view and purchase those goods; such services may be provided by retail stores, wholesale outlets, through mail order catalogues or by means of electronic media, for example, through web sites or television shopping programmes” was added thereto. In 2012, according to retail and wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies added to Class 35 in the Nice Classification (Tenth Edition), the Trademark Office published the Notice on Matters Concerning the Application for the Registration of Newly Added Retail or Wholesale Service Trademarks and also established the relevant service in the Differentiating Table, indicating that the newly added service is in prin-

ciple not similar to other services, such as “sales promotion for others” in Class 35. Furthermore, in 2012, the Trademark Office indicated in the Reply to the Issue of Whether Supermarket and “Sales Promotion for Others” Services Belong to Similar Services (Document No. TMJZ 43/2012) that shopping malls and supermarkets are enterprises that sell goods, the primary activity of which is retail and wholesale, whereas the “sales promotion (for others)” in Class 35 of the Nice Classification is to provide advice, plan, publicity and consultation for others so as to sell goods (services). They do not constitute similar services.

To sum up, although the expression “does not include, in particular, activity of an enterprise the primary function of which is the sale of goods, i.e., of a commercial enterprise” in the explanatory note of Class 35 was deleted from of the Differentiating Table (2007 edition), the Trademark Office still deemed in the Document No. TMSZ 171/2004 and the Document No. TMJZ 43/2012 that sales promotion for others does not include retail or wholesale service. In this sense, although the Differentiating Table is literally consistent with the Nice Classification in terms of adjustments, it does not synchronize with the latter in practice.

II. Identification of the scope of “sales promotion for others” in China’s judicial practice

Just due to the gap between the expression and the practice, only retail and wholesale services for pharmaceutical and sanitary preparations are listed in Class 35, and whether retail or wholesale service trademarks in other fields belong to the “sales promotion for others” trademark in Class 35 has been quite controversial in practice. Early in the “GOME” case in 2005, the first-instance and second-instance courts made different judgments as to whether GOME Electrical Appliances Holding Limited (hereinafter referred to as “GOME Ltd.”) has correctly used the “国美电器 (meaning ‘GOME electrical appliances’ in Chinese)” trademark under the designated service of “sales promotion (for others)”. The first-instance court held that in the light of the explanatory note of trademarks in Class 35 of the then Differentiating Table, said service does not include, in particular, activity of an enterprise the primary function of which is the sale of goods, i.e., of a commercial enterprise. GOME Ltd.’s chain sale of household appliances in shopping

malls or household appliance supermarkets all over China belongs to the sale of goods, which is regarded as an incorrect use of registered trademark. The resulting reputation is attached to the enterprise name of Beijing GOME Corporation or an unregistered trademark, rather than obtained through use of the registered trademark under the designated service.¹ The second-instance court determined that according to Article 12 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Trademark Civil Disputes, when determining whether goods or services are similar, an overall judgment shall be made on the basis of the general knowledge of the relevant public in respect of goods or services. The Differentiating Table shall serve as a reference for making such a judgment. GOME Ltd. has used the trademark in suit in the chain sale of household appliances for eight years. The competent trademark administrative management department has never determined that Beijing GOME Corporation has used the registered trademark incorrectly. Hence, the second-instance court eventually overruled the conclusion of the first-instance court that GOME Ltd. did not use the trademark correctly.² In the judgments of two instances, the first-instance court decided that sales promotion for others does not include the sale of goods in supermarkets; however, the second-instance court made no direct reply in this regard. This dispute has not been resolved actually.

For more than a decade after the “GOME” case, similar disputes constantly appear. Though with different determinations and reasoning, these courts somewhat stood in similar positions. In the “Zhonglian” case in 2000, the Supreme People's Court pointed out that “sales promotion for others means providing advice, plan, publicity and consultation for others so as to sell goods or services. Such a service is provided to goods or services distributors (inclusive of providers), and does not include the sale of goods or services to consumers directly by means of retail or wholesale for making commercial profits based on price discrepancy.”³ In this case, the Supreme People's Court clearly stated the denotation and connotation of the sales promotion for others. As a matter of fact, in administrative trademark authorization and confirmation cases or civil trademark infringement cases, the courts generally conclude that the sale of purchased goods to make profits based on price discrepancy does not constitute the sales promotion for others. In the “Hualian” trademark authorization and confirma-

tion case in 2018, the owner of the disputed trademark is a retail supermarket. The second-instance court held that the supermarket is engaged in retail sale after purchasing goods, not sales promotion for others, and there is no fact showing that the disputed trademark is used for sale promotion for others.⁴ In the “車之翼 (meaning ‘automobile wings’ in Chinese)” case in 2020, the Beijing High People's Court made similar statements.⁵

Typical civil infringement cases are, for example, the “Jingkelong” case and the “Joy City” case. In these cases, the courts all indicated that the sale of purchased goods to make profits does not belong to sales promotion for others. But in the two cases, the courts concluded that the two services constitute similar services. In the “Jingkelong” case, the second-instance court held that although China has not yet fully accepted trademark registrations designated on sale, within the general knowledge of the relevant public, goods retail service provided by the infringer and “sales promotion (for others)” service designated by the trademark in suit are highly related in terms of the service purpose, contents and objects, and thus constitute similar services.⁶ As for the retail on the Internet, the second-instance court in the “Joy City” case of 2015 held that if shopping malls, supermarkets, etc. sold goods as the sale subjects, the service does not belong to “sales promotion for others”. But when visiting a self-operated website in relation to “Joy City”, cyber users may think that the shopping website is set up by or related to “Joy City”. If the shopping website in suit is a third party platform that provides online services for sellers, since “sales promotion for others” refers to the act of helping “others” sell goods and includes the act of providing routine services for daily sale of sellers, the service provided by the third-party online selling platform belongs to “sales promotion for others”.⁷

In addition, in some infringement cases, the judgments did not indicate the specific acts in suit, but determined that the broad concept of retail or wholesale service belongs to sales promotion for others. For instance, in the “Trust-Mart” case of 2014, the defendant run a comprehensive retail supermarket. The court held that since a great majority of retailers apply for trademarks under the service of “sales promotion for others” in Class 35 and actually use them for services provided by shopping malls or supermarkets, the services provided by shopping malls or supermarkets and “sales promotion for others” in Class 35 have been *de facto* regarded as similar services.⁸ In the “Pagado” case of

2018, the owner of the trademark in suit run a fruit retail store. The first-instance court decided that retail and promotion services shall be categorized into “sales promotion for others” in Class 35 of the Nice Classification, which was supported by the second-instance court.⁹

III. Grounds for divergence in determination of the scope of “sales promotion for others” in China’s judicial practice

Judging from the above cases, although there is a consensus in China’s judicial practice on whether retail and wholesale in some scenarios belong to “sales promotion for others”, a unified judgment has not been formed on whether sales promotion for others includes retail or wholesale service. The authors think that it may be attributed to the following reasons:

1. Different understandings on “sales promotion for others”

The fundamental reason for divergence in judicial practice lies in the different understandings on the essence of “sales promotion for others”. The view of categorizing retail and wholesale under “sales promotion for others” has been widely criticized mainly on the grounds that judging from objective conducts, retail and wholesale are related to the sale of goods, which is essentially conducted for the transfer of ownership and can hardly be called “services”; and judging from subjective intent, retailers and wholesalers are aimed to make profits for themselves, instead of others, and we cannot say retail and wholesale are conducted “for others”. Accordingly, when differentiating “sales promotion” and “sale”, some people think “sale belongs to a typical sale contract, and sales promotion belongs to a typical labor contract.”¹⁰ Based on this understanding, retail and wholesale services certainly do not constitute “sales promotion for others”.

However, in market practice, the business activities of many retailers and wholesalers are not limited to sale of goods only. Some retailers sort and display the goods of third parties, elaborately decorate business venues and demonstrate goods so as to provide consumers with wonderful and comfortable shopping experiences, and stimulate consumers’ desire to purchase, in such a way to further enhance the sales volume of the goods provided by

manufacturers and dealers. During this process, in addition to sale, the retailers have provided other services for goods providers, i.e., third parties, for the sake of their profits. It can be said that “customized services are provided by merchants during holiday and daily sales activities in order to attract consumers to purchase their products. For goods under the same brand, customers would pay more attention to the sales environment and after-sales service in the case of little price difference.”¹¹ Class 35 of the Nice Classification published in 2006 involved the addition of “...includes, in particular, the bringing together, for the benefit of others, of a variety of goods (excluding the transport thereof), enabling customers to conveniently view and purchase those goods...” and the deletion of “does not include, in particular, activity of ... a commercial enterprise”, which was actually made based on market reality.

2. Different scenarios of trademark use

The ground for different judicial judgments lies in that trademarks are used by different operators under various scenarios during retail or wholesale. The courts do not make efforts to delve into whether the patentee’s conduct belongs to the service of sales promotion for others, but focus on whether the operator’s use of trademark belongs to trademark use. In the “Zen” case, the Zen Corporation only uses the Zen logo on the restaurant door head, so the Supreme People’s Court deemed that it did not constitute the use of the trademark registered for sales promotion for others.¹² In the “Zhonglian” case, the Supreme People’s Court held that the terminal cooperation agreement, the product display agreement and the goods sales agreement provided by the Zhonglian Pharmaceutical Group did not suffice to prove that the relevant public can identify sales promoters.¹³ In the above cases, the courts all concluded that the use of trademarks by operators for sales promotion for others did not function to identify the origin of goods or services.

In contrast, in the “Pagado” case, the operator used the trademark in suit on the signboards, as well as packages and publicity posters. The court held that the operator’s use of trademark was sufficient to constitute the use indicating the origin of the service provider, and therefore constituted the use of trademark registered for sales promotion for others.¹⁴ Even if it cannot be considered as sales promotion for others, the court also deemed that the service provided by the operator was similar to sales promotion for others, as decided in the “Jingkelong” case.¹⁵

IV. Reasonable definition of the relationship between retail, wholesale and sales promotion for others

1. Feasibility of categorizing retail and wholesale into service

The authors opine that in certain scenarios, sale in the form of retail or wholesale can be categorized into service, which is in line with the nature of service, the intent of the Nice Classification and international trends.

First of all, some sales behaviours conform to the characteristics of service. From the perspective of the civil law, contracts can be divided into contracts centered on the transfer of real or property rights, contracts centered on the transfer of possession on the premise of return of property, and contracts centered on the provision of services. A service contract generally refers to a “contract in which labor is wholly or partly regarded as obligation”.¹⁶ It can be said that if sale is categorized into service, it must be differentiated from the act of transferring real or property rights only, and include the labor provided by a service provider for others.

At present, “with the marketing and promotion of various commodity brands, commodity brands often overlap in different shopping malls. In order to gain a foothold in a market, various shopping malls have started to provide differentiated services to attract consumers. In the long-term business activities, they have formed their own goodwill and gradually created values that are independent from the brands of commodities they sell and in close association with the services they provide.”¹⁷ In order to be different from other competitors, sales companies tend to provide other services, besides pure sales activities, to enhance sales volume and further satisfy the needs of commodity providers. Under such circumstances, sales activities are no longer limited to the transfer of property ownership, but are a complex of sales and labor targeted at consumers and for the benefit of commodity providers. Those who think sale does not constitute service are most likely to pay inadequate attention to the actual operating conditions of sales companies, and in particular take no account of the fact that large-scale dealers have changed from simply selling goods to providing comprehensive services.

Those who object to the registration of a sale trademark as a service trademark also deem that the service pro-

vided by a sales company goes together with the sale of goods, but is not the main business of the sales company. In addition, there is no accurate definition of such a service.¹⁸ However, “the purchase decision made by consumers is affected by not only the price and availability of goods, but also the classification and types of goods, the display of goods, service quality, advertising pictures and shop location.”¹⁹ These services that have an impact on sales volume are no longer the side business of a sales company, but the business that is mainly considered and developed thereby. As for the issue of ambiguity of the definition of sale services, registrable sale services can be clarified by analyzing the types of the judicial precedents.

Second, according to the information file of the Nice Classification, “whilst the sale of goods is not considered in itself to be a service, activities relating to the bringing together of goods enabling customers to view and purchase them are in Class 35. This can be in physical retail outlets, through mail order catalogues or by means of on-line retail stores.”²⁰ According to this interpretation, the sale of goods does not constitute the sales promotion for others. However, the bringing together of goods enabling customers to view and purchase them belongs to the service in Class 35. In practice, the services provided by many sales companies contain the above-mentioned one. As stated by the former Office for Harmonization in the Internal Market (OHIM) in the *Giacomelli* case, in comparison with the services provided by other retail stores, customers prefer the services provided by a unique store. What affects consumers’ purchase decisions may be the integration of the services provided by the store, which may be composed of different factors, such as the range (variety) of the goods provided, the display of the goods, the location, general convenience, and the staff’s work and attitude, and the consumers’ concerns.²¹ These would be sufficient to indicate that sale has the characteristics of a service.

From a comparative perspective, many countries and regions have now included sale into the service category. According to the report released by the International Trademark Association (INTA), based on the responses of associates from 51 different jurisdictions, 55% of the responses state that classifications such as “sale of goods” or “sale of [any of the goods included in Classes 1 through 34]” are plainly an indication of service. 26% of the responses state that this type of classification is permissible provided that it is (1) accompanied by additional precision; or (2) under-

stood that it does not refer specifically to the “sale of goods” alone, but rather to certain ancillary services, such as advising the purchaser in the point of sale regarding the goods offered for sale. Only 18% of the responses state that “sale of goods” is not considered as a service rendered for the benefit of third parties. Therefore, it is excluded from classification.²²

2. Necessity of incorporating retail and wholesale services into “sales promotion for others”

Although sale is a registrable service, neither the existing Nice Classification nor the Differentiating Table sets a sale category or retail and wholesale category separately. Judging from the market reality, due to lack of a specialized item, it is very difficult for sales companies to protect their own goodwill by the exclusive right of registered trademarks. It was once pointed out that “no matter whether the applicant is a comprehensive supermarket, a convenient store, a factory outlet in the ‘front shop, back factory’ model, or a second-hand product wholesale market, the only goods/service item that is closest to the business scope of them is the ‘sales promotion (for others)’ under the subgroup 3503 in Class 35 of the Differentiating Table.”²³ If a large number of services provided by retailers and wholesalers in practice are not protected by trademark law, it does not comply with the legislative intent of the trademark law for maintaining trademark reputation and safeguarding the interests of producers and operators, and substantive fairness cannot be achieved. In order to avoid protecting legitimate interests of sales companies in vain, it is quite necessary to categorize sale services under the service of “sales promotion for others”.

3. Analysis of scenarios that “sales promotion for others” includes retail and wholesale services

(1) Registration of trademarks on both “sales promotion for others” and goods is defective

Since sale services are not directed to specific products, if retail and wholesale services are categorized under “sales promotion for others”, it is likely to render the services covered by “sales promotion for others” overbroad, thereby losing certainty and becoming an “all-purpose trademark”. In this regard, the EU’s solution is to require trademark applicants to specify the goods or types of goods in relation to the service. In the Guidelines for Examination of European Union Trade Marks, the European Union Intellectual Property Office (EUIPO) has provided examples of acceptable specimens for a trademark application such

as “retail services in relation to agricultural machines”, and examples of unacceptable specimens such as “retail services connected with takeaway services”.²⁴

However, many comprehensive sales companies often sell more than one type of goods, and cannot describe their trademarks by combining a service with a specific type of goods. To be specific, if they do so, the description of the services designated by trademark under the service of “sales promotion for others” may be too lengthy and wordy. Thus, the range of “sales promotion for others” is inaccurate and the service trademark registered under the service of “sales promotion for others” is more likely to become an “all-purpose trademark”, which breaches the intent of the rule.

(2) Analysis of scenarios that constitute “sales promotion for others”

Therefore, the ultimate solution to the problem is to, judging from sale service entities, clarify what types of sale services can fall within the scope of sales promotion for others by way of a general inductive reasoning so as to delimit the scope of the sale services. Sales promotion for others is ultimately done for the sake of goods or services providers. The key to determining the connotation of sales promotion for others is to find out what services are performed “for others”, i.e., for the benefit of others.

The authors think that if, during promotion, a sales company only purchases and sells goods for its own benefit, it does not constitute sales promotion for others. A typical example is a ‘front shop, back factory’ model, under which an operator sells its own products, and a trademark only indicates the origin of the products, rather than services. More importantly, the sale of the products is not performed for the benefit of others, and essentially for its own benefit. If the operator provides services, in addition to selling, to encourage customers to buy its products and further make profits for goods providers, or even promotes certain types of goods through various advertising and publicity activities, said services are performed for the benefit of others and belong to sales promotion for others.

Specifically, according to the above-mentioned cases, the scenarios that constitute sales promotion for others may include, but are not limited to, the following circumstances: (1) Commercial cooperation with goods/services distributors (including providers) by means of, e.g., providing business venues, sales promotion posters, schemes, advertisements on newspaper and consulting services, etc. The use

of the trademark in the “Hualian” case falls under such circumstances. The Guidelines for the Trial of Administrative Trademark Grant and Validation Cases published by the Beijing High People’s Court also confirmed this point in its description about sales promotion for others in Article 19.14.²⁵ (2) Renting business venues to other distributors for the sale of goods and providing unified payment settlement services. The use of the trademark in the “Jingkelong” case falls under such circumstances. (3) On-line sale services provided by a third party platform. The use of the trademark in the “Joy City” case falls under such circumstances. In all the above three scenarios, distributors did not simply sell goods, but provided sales promotion services for the benefit of others by ways of, e.g., facilitating promotion, providing business venues and offering network platform services.

(3) The relationship between “sales promotion for others” and the act of pure purchasing and selling goods

In judicial practice, there exists a huge controversy over whether the sale of goods to make profits based on price discrepancy belongs to “sales promotion for others”. In the “Hualian” case and the “Zhonglian” case, the courts held that said sale does not belong to sales promotion for others. However, in the “Jingkelong” case and “Friendship & Apollo” case, the courts confirmed that even though said sale does not belong to sales promotion for others, they constitute similar services. The authors are of the view that the sale of goods to make profits based on price discrepancy does not belong to “sales promotion for others”, and further analysis shall be made as to whether they constitute similar services and whether different judging criteria should be adopted in trademark grant and validation cases and infringement cases.

Article 11.2 of the Interpretation of the Supreme People’s Court on Several Issues Concerning the Application of Law in the Trial of Civil Trademark Disputes reads “similar services refer to services that are identical in purpose, content, method, object, etc. or that are generally considered by the relevant public as having certain connection and being likely to cause confusion”. Judging from the literal expression, the first half of the provision is to judge the similarity of services based on the objective attributes thereof, while the second half thereof is mainly to make judgment from the perspective of the subjective cognition of the relevant public. In practice, the trademark review and adjudication department is more inclined to objective criteria when

judging the similarity of goods, that is, the similarity of goods is judged on the basis of the attributes of goods themselves according to the Differentiating Table; and the courts are more inclined to subjective criteria, that is, analysis is made on a case-by-case basis, and if necessary, the Differentiating Table may not be followed. This results from the fact that the trademark review and adjudication department is mainly in pursuit of administrative efficiency, whereas the courts are mainly aimed at fairness in each case.²⁶

This notion is also reflected in the identification of services similar to “sales promotion for others”. Since sale of goods is not included into the service entries of the Differentiating Table, in administrative trademark grant and validation cases, the courts generally do not determine that pure sale of goods and “sales promotion for others” constitute similar services; and in civil infringement cases, the courts generally find them similar if they have great relevance according to the cognition of the relevant public. In the “Friendship & Apollo” case, the court stated that “when judging whether services are similar, consideration shall be given to whether the sale of goods and ‘sales promotion for others’ are identical in terms of purpose, content, method and object, etc. from the perspective of the relevant public…… Under the current business model for goods selling of the Friendship & Apollo Commercial Co., Ltd., according to the general cognition of the public, the sale of goods provided thereby and ‘sales promotion for others’ have great relevance in terms of purpose, content and object.”²⁷ The courts had similar views in the “Jingkelong” case²⁸, the “Golden Corn” case²⁹ and the “Joy City” case³⁰.

It is noteworthy that for the purpose of preventing disputes, operators shall use trademarks for identifying the source of services. Even if the operator actually performs the service of sales promotion for others, its trademark, if not used during the service, cannot be adequately protected. The operator’s behavior shall comply with the essence of the trademark use, i.e., to identify the source of goods or services.

V. Conclusion

In certain scenarios, retail and wholesale have the characteristic of serving others’ interests, which belong to the service of sales promotion for others in Class 35. Those scenarios do not include the pure purchase and sale of goods to make profits based on price discrepancy. Through delv-

ing into the precedents, it can be known that the scenarios for sales promotion for others mainly include commercial co-operation with goods/services distributors (including providers) by means of, e.g., providing business venues, renting business venues to other distributors for the sale of goods and providing unified payment settlement services, and on-line sale services provided by a third party platform. With the development of retail and wholesale industries, providing feasible trademark registration and protection routes for retail and wholesale services within a certain range may be the future mission of the trademark system. ■

The authors: Du Ying, Professor and Ph.D. Supervisor at Law School of Central University of Finance and Economics (CUFE); Deng Sijie, Postgraduate Student of Year 2000 at Law School of CUFE

¹ See the Civil Judgment No. Wenminsanchuzi 106/2004.

² See the Civil Judgment No. Zheminsanzhongzi 244/2005.

³ See the Administrative Ruling No. Zuigaofaxingshen 1389/2020.

⁴ See the Administrative Judgment No. Jingxingzhong 5450/2018.

⁵ See the Administrative Judgment No. Jingxingzhong 3772/2020.

⁶ See the Civil Judgment No. Jing73minzhong 1602/2020.

⁷ See the Civil Judgment No. Jingzhiminzhongzi 1828/2015.

⁸ See the Civil Judgment No. Yuegaofaminsanzhongzi 123/2014.

⁹ See the Civil Judgment No. Min05minchu 265/2018.

¹⁰ Xiong Wencong (2018). How to view “sales promotion for others” (p. 82). *China Trademark*, 1.

¹¹ Yang Qiao and Zheng Shimin (2020). On Registrability of service trademark of sales company—From the perspective of “sales promotion for others” (p. 71). *China Trademark*, 2 & 3.

¹² See the Civil Judgment No. Mintizi 38/2015.

¹³ See supra note 3.

¹⁴ See supra note 9.

¹⁵ See supra note 6.

¹⁶ Zhou Jianghong (2008). Position of service contract in China’s Civil Code and its system construction (pp. 76-77). *Law Science*, 1.

¹⁷ Yao Yan (2016). Dilemma of “sale service” trademark and solutions (p. 58). *China Trademark*, 11.

¹⁸ Catherine Seville (2009). *EU Intellectual Property Law and Policy* (p.231). Cheltenham: Edward Elgar Publishing.

¹⁹ Charlotte Waelde, Graeme Laurie, Abbe Brown, Smita Kheria and Jane Cornwell (2014). *Contemporary Intellectual Property: Law and Policy* (p.585). Oxford: Oxford University Press.

²⁰ WIPO: Nice Classification, Class 35, Information File. Retrieved

from https://www.wipo.int/classifications/nice/nclpub/en/fr/?version=20200101¬ion=information_files&class_number=35&lang=en on 31 March 2021.

²¹ R0046/1998-2.

²² INTA: Nice Classification of Goods and Services—Retail and Wholesale Services in Class 35: A Study of Different Local Practices and Examination Standards. Retrieved from https://www.inta.org/wp-content/uploads/public_files/advocacy/committee_reports/INTA_Nice_Classification_Retail_Services_Report_040120.pdf on 31 March 2021.

²³ Guan Yong, Wang Yujie and Wang Xiaohong (2010). Reflections on retail (wholesale) service trademark (p. 13). *China Trademark*, 12.

²⁴ EUIPO: Guidelines for Examination of European Union Trade Marks. Retrieved from <https://guidelines.euipo.europa.eu/1922895/1925506/trade-mark-guidelines/6-57-6-58-retail-and-wholesale-services> on 31 March 2021.

²⁵ Article 19.14 of the Guidelines for the Trial of Administrative Trademark Grant and Validation Cases published by the Beijing High People’s Court reads: where the registrant of a disputed trademark is a shopping mall, supermarket, etc. which can prove that it makes commercial cooperation with distributors by means of, e.g., providing venues, and provides such services as advice, plan, publicity and consultation so as to sell goods, it can be determined that the disputed trademark is used as a trademark under the service of “sales promotion for others”.

²⁶ Du Ying. Correct understanding of the function of the Table for Differentiating Similar Goods and Services. WeChat Account: Zhichanli, 23 March 2020.

²⁷ See the Civil Judgment No. Xianggaofaminsanzhongzi 146/2014.

²⁸ See supra note 6.

²⁹ See the Civil Judgment No. Luminsanzhongzi 88/2015.

³⁰ See supra note 7.