中国外商投资企业协会
优质品牌保护工作委员会
QUALITY BRANDS PROTECTION COMMITTEE OF CHINA ASSOCIATION OF ENTERPRISES WITH FOREIGN INVESTMENT

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2022-2023年度
品保委十佳案例手册

2022-2023 QBPC Annual Top Ten Cases

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前言

中国外商投资企业协会优质品牌保护工作委员会（以下简称“品保委”）成立于2000年，隶属于商务部主管的中国外商投资企业协会。品保委目前拥有近200家会员，多为知名外商投资企业。

自成立以来，品保委秉承“与中国中央和地方政府、相关部门、机构、学术界、企业、媒体及国际社会合作，为促进中国知识产权行政执法和司法保护工作的持续进步，发挥可预期且具有判决一致性的司法保护指引作用，完善中国知识产权相关政策、法律法规，营造公平有序法治化的经济发展环境，推动形成深度融合的开放创新局面，做出积极的贡献。”的宗旨。品保委积极主办、合办研讨会、论坛和培训；积极向全国人大、最高人民法院、最高人民检察院及国务院各部委提交知识产权法律、法规的修订意见和建议；积极普及知识产权知识；积极搭建中国与国际社会交流知识产权的平台。通过全体会员企业、领导团队与办公室专职人员二十多年来持续的努力与健康的发展，品保委在中国及国际社会建立了良好的声誉与公信力，不仅成为会员企业与中国政府、司法、执法部门之间，更成为中国政府、国际组织、国内外执法部门、内外资企业、学术界以及新闻媒体关于知识产权交流、合作的有效桥梁和纽带。

品保委设有最佳案例/执法、海关、政府事务和公共政策、法律、专利与创新和互联网共六个工作组，负责品保委各个工作项目的开展；品保委成立了农业、人工智能与数字、自动化及电气、汽车、化工、食品饮料和酒业、家电、信息技术、照明和智能家居、高档品牌、个人护理品、制药与医疗器材、打印、运动、时尚与生活、玩具及授权产品和无线与集成电路共16个行业小组，以关注、研究会员企业所涉及的行业知识产权保护问题。

品保委年度知识产权保护十佳案例评选活动是品保委也是知识产权业界的重要活动。历年评选出的年度案例具有广泛的代表性和国际影响力。案例被多次选入全国或地方的知识产权保护年度案例；典型案例曾被商务部选用，作为向国际社会介绍中国保护知识产权进展的报告材料；有的案例还曾呈报给有关国家领导人参阅。品保委年度案例评选活动，不仅受到会员企业的积极响应，推荐的优秀案例越来越多，专业性越来越强，同

时还受到国家有关部委、司法机关和各地执法部门的高度认可。许多案例成为会员企业知识产权保护案例中的标杆！通过分享办理这些案件的经验，可以帮助会员提高办案质量，为知识产权法律制度改革提供重要的参考资料。

自 2002 年开始，品保委每年组织开展一次“知识产权保护十佳案例”的评选活动，以此对会员企业提名的年度知识产权案件进行回顾与总结，对各地执法部门在知识产权保护方面所做出的努力表示感谢，并与会员企业分享案例经验，以帮助会员企业办理更多更好的案件。为了适应知识产权司法保护的新发展和新变化，品保委于 2022 年更新了评选规则，将案件类别设置为刑事及刑事程序、民事及民事程序、行政及行政程序三大知识产权保护类别。今年已是十佳案例评审活动的第 22 年。

此次参评的案例由会员企业自主提名，办公室初审以后，由案例评审工作组审核，共有 57 件候选案件进入本年度评选环节。最终经过符合投票资格的会员投票分别产生了 11 件（含并列）刑事及刑事程序类十佳案例、10 件民事及民事程序类十佳案例，以及 10 件行政及行政程序类十佳案例。品保委邀请获选案例办案单位代表莅临品保委举办的“年度知识产权保护十佳案例发布交流会”，与国家市场监督管理总局、国家知识产权局、香港海关、中国外商投资企业协会等部门的嘉宾，以及驻华使领馆、有关国际组织、商协会、平台等代表一起，见证“知识产权保护十佳案例”的诞生和向执法单位代表的致谢。

中国正深入贯彻创新驱动发展战略，大力推进经济结构优化升级。品保委将推动会员企业积极参与这一历史进程。我们谨此向年度知识产权保护十佳案例办案单位表示祝贺！向为中国知识产权发展进步事业不懈努力和辛勤耕耘的人士表示敬意！向多年来给予品保委及会员企业工作关心、支持和帮助的朋友表示感谢！

让我们携起手来，加强互信合作，为知识产权保护与创新战略的全面实施，继续努力奋斗。

Preface

Founded in 2000, the Quality Brands Protection Committee of China Association of Enterprises with Foreign Investment (QBPC) is subordinate to the China Association of Enterprises with Foreign Investment (CAEFI) under the Ministry of Commerce. QBPC is currently comprised of nearly 200 members, most of which are well-known foreign invested companies.

Since QBPC's founding, it has been working to make contributions to facilitate and promote the continuous improvements of administrative and judicial protection for intellectual property in China; to enable the judiciary in order to better serve as a guide for predictable and consistent judicial protection for intellectual property; to perfect related policies and the legal framework; to construct a fair and orderly environment based on the rule of law for economic growth; and to foster an open innovative environment for the development of science and technology through strengthening cooperation with China's central and local governments, relevant agencies, institutions, academia, media, enterprises, and the international community. QBPC has been actively hosting and co-organizing various seminars, forums, and training workshops, providing opinions and suggestions on amending the IPR laws and regulations to National People's Congress, Supreme People's Court, Supreme People's Procuratorate as well as Ministries and Commissions of the State Council. Through the approach, QBPC has been promoting public education on IPR, and proactively building a platform for exchanges between China and the international community. With the relentless efforts of all member companies, leadership team members and the office staff, QBPC has achieved sound development throughout the past 23 years and built up a good reputation and credibility within China and the international community. QBPC has evolved itself into an effective bridge among not only the Chinese governments, judiciary, law enforcement agencies and member companies but also international organizations, Chinese and foreign judiciaries and law enforcement agencies, domestic and foreign enterprises, academia and media in terms of IPR communication and collaboration.

QBPC has six committees to carry out the organization's activities, namely, Best Practices/ Enforcement, Customs, Government Affairs and Public Policy, Internet, Legal and Patent and Innovation. QBPC has set up 16 Industry Working Groups (IWGs) which are responsible for the study of IPR protection issues in specific industries concerning member companies. The IWGs include Agricultural, Artificial Intelligence & Digital, Automation & Electric, Automotive, Chemical, Food Beverage & Alcohol, Home Appliances, IT, Lighting and Smart Home, Luxury Goods, Personal Care, Pharmaceutical & Medical Devices, Printing, Sports, Fashion & Lifestyle, Toys & Licensed Goods and Wireless & Integrated Circuit.

The selection of QBPC Annual Top Ten Cases in IP Protection is an important event for both QBPC and the IPR industry. The selected cases in the past years have the influence within the international IP community. Some cases were selected as the country-wide or local annual cases; some were selected by the Ministry of Commerce as typical documents to be introduced to the world about China's progress on the protection of intellectual property rights; some were also reported to relevant state leaders for reference. The QBPC Annual Top Ten Cases Announcement is well received by QBPC members. QBPC Annual Top Ten Cases are highly recognized by relevant ministries,

judicial organs and local law enforcement departments. Many of the cases became the benchmark for QBPC members. It aims to help QBPC members improve the quality of handling cases, and provide reference for the legal system reform of intellectual property.

Since 2002, QBPC has been annually undertaking the selection of the "Top 10 Cases", in order to review and learn from IPR-related cases nominated by member companies, express appreciation for local enforcement agencies for their contribution to IPR protection, share our practical experiences with the law enforcement, the academia, and the members of the industry, and help member companies to better protect their rights. This is the 22nd year of the top ten case review and selection activities. In order to adapt to the latest development of IP judicial protection, QBPC revised the selection guidelines in 2022 and will continue to set up three case categories of IPR protection: criminal case and/or criminal procedure, civil case and/or civil procedure, and administrative case and/or administrative procedure.

A total of 57 cases were nominated by member companies and reviewed by the Review Committee and QBPC Office. 11 cases (including two tied cases for the tenth place) in the category of Criminal Case and/or Criminal Procedure, 10 cases in the category of Civil Case and/or Civil Procedure and 10 Cases of Administrative Case and/or Administrative Procedure were elected by eligible voters. QBPC has invited the enforcement agencies and judicial branch handling the selected cases to attend the "QBPC Annual Top Ten Cases in IP Protection". Officials from government agencies, such as, the State Administration for Market Regulation, China National Intellectual Property Administration (CNIPA), Hongkong Customs, the China Association of Enterprises with Foreign Investment (CAEFI), joined by representatives from embassies, relevant international organizations, chambers of commerce, and representatives from e-platforms, will attend the Announcement and celebrate the occasion.

China is thoroughly implementing the Innovation-Driven Development Strategy and vigorously pushing for an optimized and upgraded economic structure. QBPC will encourage member companies to actively participate in this historic moment. We would like to congratulate all the winning agencies and branches who handled the "QBPC Annual Top Ten Cases in IP Protection". We would like to show our respects to the individuals who have been working tirelessly in order to progress IPR protection in China. And we would also like to express our appreciation to the friends of QBPC who have been generously supporting the committee and its member companies over the years.

The ever-growing integration of the new "normal" Chinese economy along with the global innovation culture has brought about new opportunities and challenges for the development of QBPC. QBPC will begin a new journey at a new starting point with a new image, insisting on the principle of "mutual trust, cooperation, service, and progress" and guided by the doctrine of "member-driven, professionally led, internationally integrated, and cooperatively propelled". Progressing together with colleagues who have devoted themselves to IPR protection and innovation, QBPC will continue to strengthen mutual trust and cooperation and continue to work diligently towards the thorough implementation of IPR protection and the development of innovation!

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A 刑事诉讼及司法程序案件
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山东青岛“4.12”特大制售假冒高档品牌服装箱包案

推荐机关：山东省公安厅食品药品与环境犯罪侦查总队；青岛市公安局食品药品与环境犯罪侦查支队

会员公司：博柏利有限公司、开云投资管理集团有限公司、特丽思控股公司、蔻驰贸易（上海）有限公司

案情简介

2020 年 12 月 18 日山东省公安厅食品药品与环境犯罪侦查总队同品保委交流会议成功举办后，高档品牌行业小组部分会员公司积极响应、跟进该合作项目，向省厅食药环总队输送与本案有关的“境外海淘店铺涉嫌售假”的线索。随后，青岛市公安局食品药品与环境犯罪侦查支队（下称“青岛食药环支队”）迅速成立专案组，针对王某帅等人利用网络购物平台向全国销售假冒多个高档品牌注册商标的箱包、服饰开展调查。

青岛食药环侦支队依托“山东（青岛）知识产权刑事保护战略支撑中心”数据研判优势，先后调取涉案人员物流、支付宝、微信、资金交易在内的 589 万条数据，搭建 4.12 专案数据库，针对不同层级犯罪嫌疑人的交易习惯和特点，动态总结犯罪规律，研发“物流 + 知识产权侵权线索推送模型”（该模型荣获当年全省建模大赛金模奖），经过近 4 个月的研判攻坚，成功拓展四个涉及 20 余省市的特大制售假冒箱包、服饰的犯罪网络。并于 2021 年 4 月至 11 月期间成功开展收网行动，打掉侵权犯罪团伙 20 个，捣毁侵权生产、销售、仓储窝点 47 个，抓获犯罪嫌疑人 104 人，移送审查起诉 76 人，缴获假冒 36 个国内外知名品牌注册商标的箱包、服饰 7.69 万件，商标标识 33.96 万件，涉案金额 3 亿余元，取得了数据导侦的显著成果。

处理结果

1. 王某帅犯销售假冒注册商标的商品罪，判处有期徒刑三年六个月，并处罚金人民币八十万元；

2. 郑某项犯销售假冒注册商标的商品罪，判处有期徒刑三年十个月，并处罚金人民币六十万元；

3. 杨某良犯销售假冒注册商标的商品罪，判处有期徒刑三年，并处罚金人民币二十万元；

孙某、曹某、王某燕、安某、高某民、吕某、肖某林等涉案嫌疑人犯销售假冒注册商标的商品罪，判处有期徒刑一年到三年不等，缓刑六个月到四年不等，并处罚金人民币四到二十五万元不等。此外，部分案件仍在审理过程中，此外，包括团伙主犯多名被告被法院禁止自刑罚执行完毕之日或假释之日起从事与服装销售经营相关的活动，期限为三年。

推荐理由

1. 犯罪形式呈现新特点，制售假团伙规避打击增加侦办难度。假货真进口，消费者真假难辨；挂羊头、卖狗肉，查证难、打击难。

2. 数据导侦研判机制发挥重要作用，充分发挥数据优势，精准指引破案；创新数据建模，衍生情报拓线，使批量生成线索实现集约打击成为可能。

3. 该案以数据织网，真正实现多维度、全链条、全环节精准打击。

4. 本案青岛市公安机关敢为人先，开创数据建模新形式，再创数据导侦新高度，对新型制售假犯罪活动开展集中、持续治理，以雷霆万钧之势，降假冒侵权之恶，更以利剑出鞘之快，遏假冒侵权之势。

Shandong Qingdao “4.12” case of manufacturing and selling counterfeit luxury goods

Recommended Agencies: Food and Drug and Environmental Crime Investigation Department of Shandong Public Security Bureau, Food and Drug and Environmental Crime Investigation Detachment of Qingdao Public Security Bureau

Member Company: Burberry Limited, Kering Investment Management Group Co., Ltd, Trias Holding AG, Coach Shanghai Limited

Overall introduction

After the successful exchange meeting between the Shandong FDECID and the QPPC on 18 December 2020, members from luxury IWG responded positively sent clues regarding an “overseas seafood shops suspected of selling counterfeits”. Subsequently, Qingdao FDECID quickly set up a task force to investigate. Relying on the data research and judgment advantages of the “Shandong (Qingdao) IP Criminal Protection Strategy Support Center", they successively retrieved 5.89 million pieces of data including logistics, Alipay, WeChat and capital transactions of the persons involved in the case, built the 4.12 special case database. After nearly 4 months of analysis, the case successfully expanded into 4 criminal networks involving over 20 provinces and cities for the manufacture and sale of counterfeit bags and apparel. And during the period from April to November 2021, the raid actions were successfully taken, 20 criminal gangs, 47 production, sales and storage dens were destroyed, 104 suspects were arrested, 76,900 pieces of bags and apparel counterfeiting 36 domestic and foreign famous brands were seized, 339,600 pieces of trademark logos, and the amount involved was over RMB 300 million.

Results

The suspects involved in the case, including Wang, Zheng and Yang committed the crime of selling counterfeit registered trademark and were sentenced to prison terms ranging from 3 years to 3 years and 6 months, and fined between RMB 200,000 and 800,000.

The suspects involved in the case, including Sun, Cao, Wang, An, Gao, Lv and Xiao, committed the crime of selling counterfeit registered trademark and were sentenced to prison terms ranging from 6 months to 3 years, suspended for 1 to 4 years, and fined between RMB 40,000 and 250,000.

Some of the cases are still in the process of trial. In addition, a number of defendants, including the ringleaders, were banned by the court from engaging in activities related to clothing sales operations for a period of three years from the date of completion of their sentences or the date of their parole.

Summary of Recommendation Reasons

1. New features in the form of crime, counterfeit gangs evade crackdown to make investigation more difficult

2. The data-guided research mechanism plays an important role, making it possible to generate leads in bulk to achieve intensive raids

3. Truly achieve destroying multi-dimensional, full chain and full link precision

4. The concentrated and sustained control of new types of counterfeit criminal activities has achieved very good social and legal effects

周某秋、朱某军、曾某凯犯罪集团特大制售假冒轩尼诗洋酒案

推荐机关：广东省深圳市公安局南山分局，广东省深圳市南山区人民检察院，广东省深圳市南山区人民法院

会员公司：酩悦轩尼诗

案情简介

2021 年初，深圳市公安局南山分局针对某平台上销售假冒轩尼诗洋酒的线索，在不到一个月的时间内迅速立案并捣毁线下灌装窝点，破获了一宗以周某秋、朱某军等人为首的特大制售假冒轩尼诗等品牌洋酒案。同时，公安机关通过排查某平台的已售信息，摸清庞大的销售网络，将全部售假者追踪归案，案件所涉假冒产品销售额超过人民币 400 万元。最终成功对整个犯罪集团提起公诉追究其刑事责任，最高刑罚判处有期徒刑三年四个月，并处罚金人民币五十万元。

处理结果

广东省深圳市南山区人民检察院经审查，对涉案的周某秋、黄某雄、赵某槟、朱某军等多名被告人提起公诉，以销售假冒注册商标的商品罪及假冒注册商标罪起诉至广东省深圳市南山区人民法院。迄今，广东省深圳市南山区人民法院、广东省深圳市中级人民法院已对 20 名被告人作出了判决，还有 2 名被告人在等待判决。其中，被判处三年或三年以上有期徒刑 4 人，三年以下有期徒刑 16 人，仅 1 人适用缓刑。所有被告人被判处罚金共计 291.2 万元。缴获的假冒注册商标的商品由扣押机关依法予以没收并销毁。

推荐理由

1. 本案通过对终端售假者的大力追踪和判罚，极大震慑了售假者，杜绝其继续售假和重复售假的可能性。

2. 公安机关、检察机关、审判机关恪尽职守，高效、快速摸清犯罪链条，有力打击酒类行业制售假产业。

3. 公安机关、检察机关、审判机关在过渡时期较好地实现了《刑法修正案十一》的适用问题，既能将犯罪嫌疑人绳之以法，又兼顾公平，符合罪责刑相适应原则。

4. 该案涉案金额特别巨大、涉案人数众多，涉案假冒品牌众多，案情复杂，社会危害性远超同类一般案件。

Combat against Large-scale Network of Manufacturing and Selling Counterfeit Hennessy Spirits

Recommended Agencies: Nanshan District Branch of Shenzhen PSB; The People's Procuratorate of Nanshan District, Shenzhen City; The People's Court of Nanshan District, Shenzhen City.

Member Company: Moet Hennessy

Overall introduction

In early 2021, Nanshan District Branch of Shenzhen PSB quickly filed a case and raided the underground manufacturing site within less than a month based on clues about the sale of counterfeit Hennessy products on an online platform, successfully uncovered a large-scale case of manufacturing and selling counterfeit Hennessy products led by ZHOU Mouqiu, ZHU Moujun and others. In the meantime, the PSB investigated all the sales information on the platform, mapped out the whole sales network and tracked down all the downstream retailers selling counterfeit spirits products, with sales amount over CNY 4 million. Eventually the whole network including all the downstream retailers were also successfully prosecuted and sentenced for criminal liability, with the highest sentence up to 3 years and 4 months fix-term imprisonment and criminal fine up to CNY 0.5 million.

Results

The People's Procuratorate of Nanshan District prosecuted a number of defendants involved in the case, including ZHOU Mouqiu, HUANG Mouxiong, ZHAO Moubin, ZHU Moujun and so on, for the crime of selling commodities bearing counterfeit registered trademarks as well as the crime of counterfeiting registered trademarks, to the People's Court of Nanshan District, Shenzhen City. Up to date, the People's Court of Nanshan District, Shenzhen City and Shenzhen Intermediate People's Court have sentenced 20 criminals, with 2 more pending for judgement. Of these, 4 criminals are sentenced to 3 years or more in prison and 16 criminals to less than 3 years in prison, only 1 of whom is on probation. All criminals are imposed criminal fines up to CNY 2,912,000 in total. The seized counterfeit products were confiscated and destroyed by the enforcement authorities according to law.

Summary of Recommendation Reasons

1. By vigorously tracking and punishing the end-retailers of counterfeit products in this case, the possibility of further counterfeiting and repeated selling of counterfeit products have been greatly deterred.

2. The public security, procuratorial and judicial authorities cooperated with collaborative efforts, efficiently and quickly mapping out the criminal chain and vigorously combating the counterfeit spirits industry.

3. The public security, procuratorial and judicial authorities have better achieved the application of Amendment (XI) to the Criminal Law of the People's Republic of China during the transitional period, bringing criminals to justice while taking fairness into account, in line with the principle of proportionality between crime and punishment.

4. The case involved an exceptionally big sales amount, a large number of criminals and many brands counterfeited, and the case is complex and the social harm far exceeds that of similar general cases.

广东省冯某犯罪集团及关联犯罪团伙假冒爱普生注册商标商品及销售非法制造的注册商标标识案

推荐机关：广东省江门市公安局新会分局食品药品与环境犯罪侦查大队，广东省江门市新会区人民检察院，广东省江门市新会区人民法院

会员公司：爱普生（中国）有限公司

案情简介

2021 年 1-6 月，爱普生公司通过电商平台数据监测、批量样品测买、数据分析及物流监控，初步锁定售假嫌疑人何某华。通过深入调查，进一步锁定与何某华有交易往来的冯某求，陈某钏等人；2021 年 7 月，爱普生公司向江门市公安局新会分局食品药品与环境犯罪侦查大队汇报了此案，新会公安非常重视并立即成立专案组对涉案嫌疑人进行深入侦查，并锁定 5 个关联犯罪团伙。

2021 年 7 月 21 日，新会公安组织 100 多名警力，组成 9 个行动小组，分别前往阳春市、恩平市、江门新会区三地同时开展收网行动，捣毁了 4 个生产窝点、3 个销售窝点，抓获犯罪嫌疑人 30 名，现场缴获 5 万多支涉嫌假冒的墨水成品以及一批生产设备及大量的假冒品零部件。

处理结果

2022 年 7 月，江门市新会区人民法院认定本案犯罪集团非法经营数额为人民币 12846826 元，并对 14 名被告人做出如下判决：

犯罪集团首要分子冯某均，犯假冒注册商标罪，判处有期徒刑五年九个月，并处罚金人民币 594 万元；

另 7 名被告分别被判处 2 年以上有期徒刑，并处罚金。其余 6 名被告则被判处 1-2 年有期徒，缓期执行，并处罚金。

本案累计罚金 653.6 万元

推荐理由

1. O2O：本案前期调查阶段，通过大数据分析从线上到线下锁定目标。侦查阶段，公安机关利用了“智慧新警务”平台并结合“净网 2021”行动开展工作；

2. 涉及内销和出口的制售假全链条打击：现场查扣的海量假冒品中还包含数千待出口的假冒墨水成品及数十万用于制造出口假冒墨水的各种原材料；

3. 涉案人员众多、涉案金额巨大：现场抓获嫌疑人 30 名，涉案价值 500 多万元

4. 销售记录的认定：微信、支付宝交易记录及聊天记录、被告备忘录、网上交易记录等关于销量及销售价格的证据被采用，最终认定的 1284 万余元的非法经营数额，在近年喷墨打印机耗材刑案中实属不易且罕见

5. 判决结果：14 人被定罪其中 8 人被判 2 年以上实刑、累计超 6 百万的高额罚金；

6. 宣传教育：中国报道，中国长安网等网络媒体及相关电视台都就此案进行了报道，并被广泛转载。

Guangdong Feng Criminal Group and Related Criminals Infringing Registered Trademarks of Seiko Epson Corporation and Selling illegally-Made Registered Trademark Representation

Recommended Agencies: Food, Drug and Environmental Crime Investigation Brigade, Xinhui Branch, Jiangmen PSB, Guangdong Province, The People's Procuratorate of Xinhui District, Jiangmen City, Guangdong Province , The People's Court of Xinhui District, Jiangmen City, Guangdong Province

Member Company: Epson (China) Co., Ltd.

Overall introduction

From January to June, 2021, through e-platforms surveillance, test purchases, data analysis and logistics monitoring, a suspect He JH was identified of selling counterfeit EPSON product. Other suspects Feng JQ and Chen SC were caught during the investigation. In July, 2021, EPSON reported the case to Food, Drug and Environmental Crime Investigation Brigade, Xinhui Branch, Jiangmen PSB. Xinhui PSB paid closely attention and set up a task force to conduct further investigation, and locked 5 related criminal gangs. On July 21, 2021, Xinhui PSB called up more than 100 policemen and divided into 9 squads that went ahead to Yangchun City, Engping City and Xihui District, Jiangmen City for the criminal raid actions. 4 manufacturing dens and 3 sales dens were cracked down with the capture of 30 suspects and the seizure of more than 500,000 pcs of finished EPSON ink bottles and quantities of counterfeits parts and production equipment.

Results

In July, 2022, the People's Court of Xinhui District, Jiangmen City ruled that the illegal turnover of the case is more than CNY 12.84 million and the 14 accused were sentenced to: the ringleader Feng JJ was sentenced to 5 years and 9 months in prison and a fine of CNY 5.94 million for the crime of counterfeit registered trademark; Another 7 criminals were sentenced to more than 2 years in prison with the fine. The other 6 were sentenced to prison terms ranging from 1 year to 2 years but suspended with a fined. The accumulative panalty is CNY 6.53 million.

Summary of Recommendation Reasons

1. O2O: The target was identified from online to offline through big data analysis in the preliminary investigation. PSB used the New Intelligent Policing platform during their investigation and combined the case with "Clean Up the Internet" campaign 2021.

2. Crackdown the supply chain of producing and selling counterfeits involving domestic sales and exports: thousands of counterfeit ink bottles intended for export and hundreds of thousands of counterfeit parts for export goods were seized amongst the huge onsite seizure.

3. A large number of people and huge amount of money involved: 30 suspects captured onsite and the involved value exceeds CNY 5 million.

4. The recognition of sales records: adapted and recognized the sales volume and sales prices from Wechat's and Alipay's trade records and messages, the accussed's mobile memos, e-shops' sales records, etc;high recgonized illegal turnover is hard-won and really rare to criminal cases on ink-jet printer consumables in recent years.

5. The results of the judgment: 14 people convicted and 8 sentenced to over 2 years in prison, hefty penalties of over CNY 6 million in total.

6. Publicity and education: The media like China Report, chinapeace.gov.cn, related TV station, etc. reported and widely shared the case.

黑龙江齐齐哈尔“5•10”荆某国等人假冒注册商标案

推荐机关：黑龙江省公安厅食品药品和环境犯罪侦查总队；黑龙江省齐齐哈尔市公安局食品药品和环境犯罪侦查支队；黑龙江省齐齐哈尔市公安局建华分局；黑龙江省高级人民法院知识产权审判庭

会员公司：迪尔公司

案情简介

2020 年 6 月，迪尔公司发现齐齐哈尔宝华农业机械有限公司通过抖音、快手等平台推销假冒的 JOHN DEERE 玉米割台。经过初步调查得知，宝华公司向位于河北省霸州市的工厂下单仿造 JOHN DEERE 玉米割台，并销售给黑龙江、新疆等地的用户。鉴于玉米割台单价高且涉案假冒商品数量大，迪尔公司于 2022 年 9 月向黑龙江省公安厅食药环侦总队报案。总队接报后高度重视，相关负责同志亲自到齐齐哈尔现场调查了解情况，并指派齐齐哈尔市公安局食药环侦支队及齐齐哈尔市公安局建华分局办理案件。公安机关立案后，在齐齐哈尔、佳木斯等地核实到部分已销售的假冒产品，将宝华公司及其负责人李某移送审查起诉。

本案一审判决后，总队与齐齐哈尔公安局对案件进行了梳理和回顾，认为案件有关事实尚未完全查清，涉案人员并未全部到位，还需要开展进一步调查。经查，2019 年至 2020 年期间，宝华公司负责人李某与荆某国、荆某东、朱某军等人共同商议在霸州千舜永合公司生产仿冒的 JOHN DEERE 玉米割台。公安机关根据犯罪嫌疑人供述和销售记录，在黑龙江、新疆等地农场联系有关农户，逐台寻找涉案产品，最终又核实到 20 余台假冒 JOHN DEERE 玉米割台，涉案金额 500 余万元。在查明涉案嫌疑人全部犯罪事实后，公安机关将案件再次移送齐齐哈尔市检察院审查起诉，同时，黑龙江省高院将上诉中的原审案件发回重审，齐齐哈尔中院再次审理、判决，被告不服判决再次上诉后，黑龙江省高院经审理维持了原审判决。

处理结果

1. 被告单位宝华公司犯假冒注册商标罪，判处罚金人民币二百五十一万五千四百元；

2. 被告人李某犯假冒注册商标罪，判处有期徒刑六年，并处罚金人民币二百五十一万五千四百元；

3. 被告人荆某国犯假冒注册商标罪，判处有期徒刑四年六个月，并处罚金人民币一百零三万九千元；

4. 被告人荆某东犯假冒注册商标罪，判处有期徒刑二年六个月，并处罚金人民币十一万；

5. 被告人朱某军犯假冒注册商标罪，判处有期徒刑七个月，并处罚金人民币三万元；

6. 被告人杜某勤犯销售假冒注册商标的商品罪，判处有期徒刑二年十个月，并处罚金人民币二十二万五千元；

7. 被告人于某波犯帮助毁灭证据罪，判处有期徒刑一年，缓刑一年六个月。

推荐理由

1. 公安机关对本案的高度重视及组织有力是该案成功侦破的根基

2. 办案机关勇于“回头查”的务实精神是案件成功侦破的前提条件

3. 办案机关精确细致的办案态度是案件取胜的关键因素

4. 本案的成功清除了农机市场的毒瘤

5. 本案对被告单位和相关人员处以了高刑期和罚金，有效的震慑了相关的犯罪分子

本案被公安部食品药品犯罪侦查局评为“昆仑 2021”3 号行动的典型案例之一。“昆仑 2021”3 号行动系全国公安机关针对打击侵犯知识产权犯罪行为开展的专项行动，公安部本次共评选出九起典型案例。

"5•10" Jing Zhanguo et al. committing the crime of counterfeiting registered trademark in Qiqihar, Heilongjiang

Recommended Agencies: The Food, Drug and Environmental Crime Investigation Division of Heilongjiang Provincial Public Security Department; The Food, Drug and Environmental Crime Investigation Division of Qiqihar Public Security Bureau, Heilongjiang Province; The Qiqihar Public Security Bureau Jianhua Branch; The Intellectual Property Division of Heilongjiang High People's Court.

Member Company: Deere & Company

Overall introduction

In June 2020, Deere & Company discovered that Baohua Company was marketing counterfeit John Deere corn headers on platforms like TikTok and Kuaishou. Deere & Company reported the issue to the Food, Drug and Environmental Crime Investigation Corps of Public Security Department of Heilongjiang Province, who assigned the Food, Drug and Environmental Crime Investigation Division and Jianhua Branch of Qiqihar Public Security Bureau to investigate. After discovering counterfeit products sold in Qiqihar and Jiamusi, the PSB transferred this case to the Procuratorate for prosecution.

After the first instance, the police reviewed the case and realized that the facts were not completely clear, and not all persons involved had been fully investigated, therefore, they decided to conduct further investigations. Following the suspects' confessions and sales records, the police contacted farmers concerned in Heilongjiang, Xinjiang, and other places to locate the products sold one by one. Eventually, they discovered over 20 sets of counterfeit corn headers sold and more suspects involved. The suspects' illegal turnover amounted to more than RMB 5,000,000. Later, the PSB transferred the new suspects and evidence to the Procuratorate. Meanwhile, the Heilongjiang High Court overturned the original judgment and remand it to the first court for a retrial. The defendants appealed again after the retrial, but the Heilongjiang High Court upheld the judgment of the retrial.

Results

1. The defendant, Baohua Company, for the commitment of the crime of counterfeiting registered trademarks, was imposed a fine of RMB 2,515,400; 2. The defendant Li Changrong, for the commitment of the crime of counterfeiting registered trademarks, was sentenced to fixed-term imprisonment of six years, and imposed a fine of RMB 2,515,400; 3. The defendant Jing Zhanguo, for the commitment of the crime of counterfeiting registered trademarks, was sentenced to fixed-term imprisonment of four years and six months, and imposed a fine of RMB 1,039,000; 4. The defendant Jing Zhandong, for the commitment of the crime of counterfeiting registered trademarks, was sentenced to fixed-term imprisonment of two years and six months, and imposed a fine of RMB 110,000; 5. The defendant Zhu Yijun, for the commitment of the crime of counterfeiting registered trademarks, was sentenced to fixed-term imprisonment of seven months, and imposed a fine of RMB 30,000; 6. The defendant Du Yongqin, for the commitment of the crime of selling commodities bearing counterfeit registered trademarks, was sentenced to fixed-term imprisonment of two years and ten months, and imposed a fine of RMB 225,000; 7. The defendant Yu Hongbo, for the commitment of the crime of assistance in destroying evidence, was sentenced to fixed-term imprisonment of one year with a probation of one year and six months.

Summary of Recommendation Reasons

1.This case was awarded as one of the 9 exemplary cases of "Kunlun 2021" No. 3 Operation which was launched by the Ministry of Public Security of China to combat crimes related to intellectual property infringement;

2. Through this case, the relevant authorities successfully removed the "cancer" in the agricultural machinery market, and the defendants received serious punishments and high fines, which effectively deterred other potential criminals;

3. The police departments involved attached great importance to this case and conducted well-organized investigations, which demonstrated their pragmatic spirit and meticulous attitude.

绥化“4.11”特大生产、销售假药案

推荐机关： 黑龙江省公安厅食品药品和环境犯罪侦查总队、绥化市公安局食品药品和环境犯罪侦查支队、绥化市人民检察院第三检察部、绥化市中级人民法院刑事审判第二庭

会员公司： 北京诺华制药有限公司、赛诺菲（中国）投资有限公司、拜耳（中国）有限公司、阿斯利康投资（中国）有限公司、施维雅（天津）制药有限公司、诺和诺德（中国）制药有限公司

案情简介

2018 年 8 月 18 日，经公安部统一部署，在黑龙江省食药环侦总队的指导和诺华、赛诺菲、诺和诺德等药企权利人的支持下，绥化市公安局食药环侦支队组织了 400 余名公安干警奔赴五省九市对一条庞大的生产、销售假药的网络进行了集中收网，后公安部发起了全国集群战役，一举摧毁了一条涉及全国 28 个省份的特大跨地域制售假药供应链。集中收网行动成功查处生产假药窝点 4 个、存储假药窝点 15 个，查扣用于生产假药的各类机器 70 余台，车辆 16 台，假药成品、半成品及原材料 10 余吨，抓获犯罪嫌疑人 62 人，查明的涉案金额近 2 亿元。

处理结果

后续，本案的刑事诉讼分为四个案件提起公诉，共 55 名犯罪嫌疑人被成功追究刑事责任。

本案主犯的刑事诉讼，经一审、发回重审、再审一审、二审，历时近 4 年终于于 2022 年 6 月 30 日由黑龙江省高级人民法院作出终审裁定，四名主犯均犯生产、销售假药罪，其中，李 * 和被判处无期徒刑，剥夺政治权利终身，并处没收个人全部财产；王 * 明被判处有期徒刑 13 年，并处罚金 1300 万元；乔 * 新被判处有期徒刑 12 年 6 个月，并处罚金 700 万元；邓 * 宝被判处有期徒刑 12 年，并处罚金 500 万元。

其余 51 名犯罪嫌疑人也分别被判处有期徒刑，并处罚金。

推荐理由

1. 案情重大：本案系公安部督办案件，集中收网后再发全国集群战役，一举摧毁了一条庞大的跨 28 省假冒知名药企心血管类疾病用药的假药生产、销售供应链，实现了全链条、全过程打击，案情十分复杂，战果极其丰硕，社会影响重大。

2. 意义深远：本案中的犯罪行为极其恶劣，假冒侵权众多知名药企，使用淀粉和染色剂生产无任何药物活性成分的心血管类疾病用药且假药种类繁多。该案的成功查处和对 55 名犯罪分子的刑事追责影响深远，对保护患者用药安全和公众健康意义重大。

3. 重刑震慑：本案四名主犯经一审、发回重审、再审一审、二审，历时近 4 年均被判以重刑，其余 51 名犯罪分子均罚当其罪。这一方面显示了中国政府重拳治理药品犯罪的坚定决心，另一方面也对其他犯罪分子和食药类犯罪活动形成了极大的震慑。

4. 司法创新：本案刑事诉讼中创新地引入了具有司法鉴定资质的价格评估机构，针对本案中查扣的种类繁多、数量不一、总数巨大的假药药片的货值金额出具了《价格评估结论书》，确保了刑事诉讼的顺利进行，可为实践中处理货值金额认定困难或复杂的其他案件所借鉴。

5. 共治典范：本案是一起社会共治假药的典型案例，既有公安机关部、省厅和市局战略战役的部署贯彻和高效执行，也有公安、市监、检察院和法院的有效衔接，还有司法鉴定机构的参与，更有医药行业药企权利人的携手并肩。

Suihua "4.11"Big Operation against Large-scale Production and Sale of Counterfeit drugs

Recommended Agencies: Heilongjiang FDECID, Suihua FDECID, Suihua City People's Procuratorate; Suihua City Intermediate People's Court.

Member Company: Beijing Novartis Pharmaceutical Co., Ltd., Sanofi (China) Investment Co. Ltd., Bayer (China) Co. Ltd., Astrazeneca Investment (China) Co., Ltd. Servier (Tianjin) Pharmaceutical Co., Ltd., Novo Nordisk (China) Pharmaceuticals Co., Ltd.

Overall introduction

On August 18, 2018, under the guidance of the MPS & Heilongjiang FDECID and with the support of Novartis, Sanofi, Novo Nordisk and other pharma companies, Suihua FDECID organized more than 400 police officers to go to 9 cities of 5 provinces to crack down a huge network of counterfeit drugs. Later, the MPS initiated a nationwide cluster operation to destroy a huge trans-regional supply chain of counterfeit drugs across 28 provinces. In the operation, PSB successfully raided dozens of underground plants and warehouses, confiscating a large amount of finished and semi-finished counterfeit drugs, raw materials and machines used for production, arresting 62 suspects, and identified case value reaches nearly 200 million RMB.

Results

Subsequently, the criminal proceedings were divided into four prosecutions, and a total of 55 suspects were criminally punished.

The prosecution of the main criminals in this case lasted nearly 4 years after the first instance, retrial, retrial of first instance and second instance, and finally on June 30, 2022, the High People's Court of Heilongjiang Province issued a final ruling. The four main criminals were all convicted of producing and selling fake drugs, and Li * He was sentenced to life imprisonment, deprived of political rights for life, and all personal property was confiscated. Wang * Ming, Qiao * Xin and Deng *Bao were sentenced to 12-13 years imprisonment and fined 5-13 million RMB separately. The rest 51 suspects were also sentenced to imprisonment and fined.

Summary of Recommendation Reasons

1. The case was very complicated and resulted in remarkable fruits and significant social influence. The operation destroyed a huge production and sales supply chain of fake drugs concerning well-known pharmaceutical brands for cardiovascular diseases across 28 provinces at one stroke.

2. The case has far-reaching significance. The criminal punishment imposed to the involved 55 criminals producing and selling counterfeit medicines without any APIs which made far-reaching impact on the protection of drug safety and public health.

3. Severe criminal penalty gives great deterrent to the counterfeiters. On one hand, it shows the firm determination of the Chinese government to crack down drug crimes. On the other hand, it also gives great deterrent to other criminals and food or drug crimes.

4. Judicial innovation in this case. A price assessment institution with the qualification of judicial appraisal was entrusted innovatively in the criminal procedure of this case, and issued the Conclusion of Price Assessment on the value amount of the seized counterfeit pills of various kinds, quantities and huge amounts, which smoothed the criminal procedure.

5. It is a paragon of co-governance. This case is a typical case of social co-governance for fighting counterfeit drugs.

阿格若公司等特大跨境制售假农药案

推荐机关： 上海市公安局食药环侦总队、上海市公安局经侦总队三支队、上海市公安局虹口分局经侦支队

会员公司： 巴斯夫（中国）有限公司、拜耳作物科学（中国）有限公司、科迪华（中国）投资有限公司、富美实公司、先正达（中国）投资有限公司

案情简介

本案为 5 家品牌公司跨境售假案件。阿格若公司及关联外贸公司主要通过海外参展、社交媒体、国际行业网站向境外宣传销售，以虚假报关、走私等方式，向亚欧非美等 42 个国家销售大量假冒 5 家权利人等品牌的农药产品。在掌握了目标外贸公司、关联公司、生产加工、包材供应、物流中转仓库等制售假全产业链信息后，于 2021 年 7 月 28 日，上海市公安局食药环侦总队、上海市公安局经侦总队、上海市公安局虹口分局，在新疆、河北警方的大力配合下，同时于两省四市多地开展统一行动，对涉石家庄阿格若公司等进行收网打击，抓获犯罪嫌疑人 22 名，捣毁生产、销售、包材、仓储窝点 10 处，查获各类假冒品牌农药 3 万 6 千余瓶（约 50 吨）、空瓶 5.1 万瓶、标识 6.2 万张，及大量制假模具、制假原料，总涉案金额逾 5000 万元。

处理结果

阿格若公司法定代表人梁成玉被判处有期徒刑四年六个月，并处罚金三百万元，其他 5 名员工分别被判处一年至二年二个月，罚金一万元至二十二万元不等，另有 2 名员工因哺乳期待判决。关联外贸公司 2 人被判处有期徒刑四年六个月和四年，并处罚金人民币二百万元和一百六十万元。

生产加工厂、包材供应商、物流仓储 6 人分别被判处有期徒刑一年至一年六个月，处罚金五万元至三十万元。

违法所得予以追缴，查获的假冒农药、制假原材料、标签、模具、包材及犯罪工具、供犯罪所用的本人财物均予以没收。

推荐理由

1. 本案为农药行业史上最大的一起跨境制售假案件，销售范围极广且影响深远。犯罪组织者通过海外长期经营，在全球多地拥有众多稳定的大客户资源，假货产品通过多个境外中转仓库销售至亚非欧美多个地区至少 42 个国家，涉及多个一带一路国家，影响极为恶劣。

2. 本案是农药行业第一起假冒十多种语言上百种产品的案件。犯罪团伙制售的假冒农药产品，完全复制权力人海外各国不同版本标签、包装及防伪细节，全面覆盖 5 家权利人全球市场。除主要销售权利人假冒农药产品，也假冒权利人种子产品，并涉及专利侵权。

3. 上海警方克服重重困难，在新疆、河北警方配合下，出动230 余名警力，在两省四地对 2 家组织犯罪的外贸公司，3 家生产工厂，2 家包材厂及物流公司仓库进行打击。查获了假冒产品，制假原料，假冒包材及模具，彻底捣毁了整个制售假产业链。

4. 公安机关及审计单位详实的司法审计工作，为公诉提供了宝贵的证据材料。由于客户全在国外，交易全是线下，上海公安在现场查扣了包括电脑、手机、移动硬盘等供犯罪用设备，并安排了第三方审计介入。通过对不同语言文件的翻译，经过对细致对比发货单、购销合同、包装细节确认单、银行回单、托运单、送货单等历史销售文件，从而成功认定了近四千万的假货已销售记录。

5. 本案在行业内及对权利人全球业务影响深远。权利人在海外市场已追踪目标贸易公司的下线多年，但一直未能切断源头。本案的成功，从根本上彻底摧毁其货源组织，体现了中国在知识产权保护上大国的担当和负责的态度。通过公安打击调查梳理出大量制售假线索并摸清了假货出口线路，与多个国外售假目标关联，权利人在全球多国展开了针对性打击行动，取得巨大成功。

Ageruo company and others extra-large cross-border production and sales fake pesticide Case

Recommended Agencies: Shanghai PSB Food Drug and Environment Investigation Department, Shanghai PSB Economic Investigation Department Third Detachment, Shanghai PSB Hongkou District Branch Economic Investigation Detachment

Member Company: BASF (China) Co., Ltd/ Bayer Cropscience (China) Co.,Ltd/Covteva(China) Holding Co.,Ltd/FMC Corporation/Syngenta(China) Investment Co.,Ltd

Overall introduction

This is a case of cross-border counterfeit sales. Ageruo Company and its affiliated foreign trade companies mainly promote and sell counterfeit pesticide overseas by false declaration and smuggling. After identifying the whole industrial chain of the target, Shanghai PSB, cooperated with Xinjiang and Hebei police, carried out unified actions in two provinces and four cities, arrested 22 suspects and destroyed 10 sites, seized more than 36,000 bottles of various fake pesticides (about 50 tons), 51,000 empty bottles, 62,000 labels, and a large number of counterfeit molds and raw materials. The total amount was more than 50 million yuan.

Results

Liang chengyu, the company's legal representative, was sentenced to four years and six months in prisonand fined RMB 3million,other 11defentences were sentenced between one year and four years and six months in prison, fined between RMB10thousand and RMB2million. Two other employees are waiting for sentencing by pregnant. All illegal gains/ counterfeit pesticide/materials are confiscated.

Summary of Recommendation Reasons

1. This case is the largest cross-border counterfeiting case in the history of pesticide industry. Counterfeit pesticide was sold to at least 42 countries in Asia, Africa and America through a number of overseas transit warehouses, involving a number of Belt and Road Initiative countries.

2. This case is the first case of hundreds of counterfeit brands in more than 10 languages in the pesticide industry.

3. The Shanghai police coordinated more than 230 PSB to crack down on 2 foreign trade companies, 3 production plants, 2 packaging suppliers and warehouses of logistics companies. Counterfeit pesticide, raw materials, packaging materials and molds were seized, and the whole industry chain of manufacturing and selling counterfeit products was destroyed.

4. Detailed judicial audit by police and audit firm have provided valuable evidences for prosecution, nearly 40 million counterfeit sales records were successfully identified according to audit.

5. This case has far-reaching influence on the industry and the global business of the right holder. The success of this case has fundamentally destroyed the source, which reflects China's responsibility and attitude as a major country in intellectual property protection. The right holders took many actions for downstream in many countries around the world and achieved great success according to this case's intelligence.

特大跨区域网络犯罪团伙制售假冒奔富红酒案件

推荐机关：广西北海市公安局治安警察支队食品药品犯罪侦查大队

会员公司：富邑葡萄酒集团

案情简介

2021 年 9 月底，奔富权利人发现微信朋友圈出现一个小程序广告，可跳转到一个不属于任何电子商务平台的欺骗性销售网站，其装潢突出使用权利人“Penfolds”商标图案及官网图片，以此销售假冒奔富红酒，并通过微信朋友圈广告迅速走红。扫描瓶身上的假冒二维码，会跳转到假冒的真伪验证网站，该网站全面复制权利人官网的设计与逻辑，消费者难辨真假。

北海市公安局在接到消费者举报该网站销售假冒奔富红酒后，立即联系权利人对涉案奔富红酒进行真伪鉴定并立案侦查。

为查明案情，北海市公安局通过实地侦查摸排、异地调取物流发货数据、向当地银行查询目标网站的资金流向、统计嫌疑人的代收货款银行账户交易明细、向 800 多名案件受害人逐个联系收集嫌疑人犯罪证据等侦查手段，确认嫌疑人在短时间内达成近千笔交易、将假冒奔富红酒销往全国 21 个省市、使用通过购买公民信息在不同银行开具的 10 多个账户收取货款等违法犯罪事实，获取嫌疑人销售数量及销售利润的准确数据。北海市公安局行动迅速，在立案后的短短 17 天内，对目标网站运营者、网站提供方、假冒红酒存储仓库、嫌疑人用于发货收款的数个物流点实施集中打击，成功查扣近 3,000 瓶假冒奔富红酒，抓获目标网站交易主要运营负责人 3 名。

从 2021 年 9 月至 2021 年 12 月，北海市公安局与高邮市公安局、上海市公安局协同配合、通力合作，从通过微信朋友圈发布广告的售假网站入手侦查，最终实现对整个制售假网络的全面打击，共计打击包括制假工厂、售假批发仓库、售假中间商、售假淘宝网店、售假网站等 9 个目标，共查获假冒奔富红酒成品近 10,000 瓶，涉案价值高达人民币 1,000 万元，刑拘 15 人，取保候审 10 人，逮捕 7 人，截至目前判决 8 人。欺骗性售假网站和验证网站也通过向域名注册方逐一投诉全部删除。

处理结果

2022 年 7 月 7 日，广西壮族自治区北海市银海区人民法院对陈某甲等 3 人做出一审判决，最高判处有期徒刑五年，并处罚金四十万元。

2022 年 10 月 28 日，上海市松江区人民法院对张某甲等 5 人做出一审判决，最高判处有期徒刑三年九个月，并处罚金人民币四十万元。

推荐理由

1. 在新推广模式、销售模式的配合下，欺骗性独立售假网站销售量在短时间内迅猛增长，短短三个月时间内，成交近千笔，2 千多箱假冒奔富红酒销往全国 21 省市。仅欺骗性售假网站的受害者就多达 800 余人。

2. 为确认嫌疑人违法所得，北海市公安局向物流公司调取发货数据及收货信息，查找出 800 多名售假网站的受害人，并与受害人逐个联系，收集嫌疑人犯罪证据、核实受害人退货退款金额，同时向银行调取嫌疑人的收款银行账户信息，最后经互相对比印证及排除退款金额，确认 3 名主要嫌疑人各自的销售数量及销售利润的准确数据。

Case of Large Cross-Regional Network Criminal Gang Manufacturing and Selling Counterfeit Penfolds Wine

Recommended Agencies: Food and Drug Crime Investigation Brigade of Police Detachment of Guangxi Beihai PSB

Member Company: Treasury Wine Estates

Overall introduction

In Sep 2021, Penfolds found an applet on WeChat Moments directing to a fraudulent sales website with highlighted trademark of "Penfolds" and pictures of its official website, which does not belong to any e-commerce platform for selling fake Penfolds wine. It quickly became popular by advertising on WeChat Moments. A fake authenticity verification website shows via scanning the fake QR code on the wine bottle, which fully copies the design and logic of Penfolds' official website, making it difficult for consumers to distinguish between real or fake.

Beihai PSB filed the case after receiving report about the fraudulent website from consumers. Within 17-day period, Beihai PSB raided trade operator, domain name provider, warehouses storing fake Penfolds, multiple logistics stations for delivering products, seizing 3,000 bottles of fake Penfolds wine with 3 main suspects behind the website captured.

Beihai PSB cooperated with Gaoyou PSB and Shanghai PSB to investigate into websites selling fake Penfolds through WeChat Moments, and finally cracked down the entire network of producing and selling fake Penfolds including 9 targets in total. Nearly 10,000 bottles of counterfeit Penfolds were seized with a value of up to RMB 10 million. 15 suspects were detained, 10 on bail, 7 arrested and 8 sentenced so far. Fraudulent websites and verification websites were also removed by complaining to the domain registrar one by one.

Results

On Jul 7, 2022, The People's Court of Yinhai District, Beihai City, Guangxi Zhuang Autonomous Region made the first instance judgment on 3 main suspects with up to five-year sentence and a fine of RMB 400,000.

On Oct 28, 2022, People's Court of Songjiang District, Shanghai made the first instance judgment on 5 suspects with up to three-year-and-nine-month sentence and a fine of RMB 400,000.

Summary of Recommendation Reasons

1. The fraudulent independent counterfeit websites arise, which is a new trend for counterfeit.

2. In order to find out the real identity of the operators of fraudulent independent counterfeit selling websites, Beihai PSB reached numbers of victims and made a statistical analysis of the transaction details and records of logistics stations.

东莞李某、曾某某等特大生产、销售假冒耐克运动鞋案

推荐机关：江苏省淮安市公安局、江苏省淮安市人民检察院、江苏省淮安市中级人民法院

会员公司：耐克体育（中国）有限公司

案情简介

2015 年以来，李某、曾某某等人在东莞市大肆生产假冒耐克运动鞋，形成庞大的研、产、销售假网络。

2017 年淮安市公安局治安警察支队在接到权利人投诉后，随即对该目标展开侦查。经过不懈努力警方最终掌握该犯罪团伙的全部组织架构。2018 年淮安市公安局治安警察支队出动近百警力，同时打击该团伙工厂、仓库、办公点，并契而不舍追查分布在 7 个省份超 30 个上下游目标。最终涉案主犯均落网。主犯之一曾某某在 2019 年取保期间仍顶风作案，伙同其他不法分子重操旧业，继续生产假冒耐克运动鞋。2020 年再次被警方成功抓获。

本案警方共查获 12 万 5 千多双假冒耐克鞋、半成品、配件以及大量非法生产设备，检察院对 31 人提起公诉，查明非法经营数额高达 6708 万元。

处理结果

本案涉及产供销犯罪链条的主犯共 31 人，被判处有期徒刑累计 62 年 11 个月，以及共计 3107 万元的罚款。

其中负责生产环节的主犯李某等人判决如下：

被告人李某犯假冒注册商标罪，判处有期徒刑四年六个月，并处罚金 1,100 万元

被告人曾某某犯假冒注册商标罪，判处有期徒刑四年，并处罚金 280 万元；

被告人唐某某犯假冒注册商标罪，判处有期徒刑四年，并处罚金 280 万元。

推荐理由

1. 本案彻底摧毁一个盘踞多年的覆盖线上、线下，产供销全环节的售假团伙，极大挽回了权利人的损失。

该团伙通过不断模仿耐克某经典高价值的篮球鞋，形成庞大的供应、生产、销售网络。主犯在取保期间公然继续实施犯罪行为，主观恶意性极大。淮安公安的高效执法，使得 2018 年之后东莞地区再无出现生产假冒耐克篮球鞋的大型工厂，该案取得了显著的法治效果。

2. 江苏省淮安市公安局跨省执法，办案高效严明、调查细致入微，实现全链条全方位打击

淮安市公安局先后端掉该团伙三十多个目标，既抓牢李某团伙的线下生产证据又固定其线上团伙的销售证据，线上线下并举，充分体现了淮安公安全方位打击知识产权犯罪的办案理念，为后续对李某等人定罪量刑打牢证据基础。

3. 江苏省淮安市人民检察院严格依法提起控诉，坚持对主犯适用实刑的量刑建议

淮安市人民检察院慎密办案，实事求是依法对主要犯罪分子适用实刑不得适用缓刑的量刑建议，最终主要犯罪分子均判处三年以上实刑及巨额罚金，得到了法律的严惩。

4. 江苏省淮安市中级人民法院加强对驰名商标保护，自由刑与财产刑并举，对侵犯知识产权违法犯罪行为形成了有效震慑。

淮安市中级人民法院公正审理，在全面梳理了各被告人在案件中的地位、作用和涉案金额后，依法对生产者李某判处四年六个月有期徒刑并处罚金 1,100 万元，对其上下游侵权者均判处刑事处罚。

Dongguan, Li X, Zeng XX cases of manufacturing and selling goods with counterfeit registered trademarks

Recommended Agencies: Jiangsu Huai'an Public Security Bureau, Jiangsu Huai'an People's Procuratorate, Jiangsu Huai'an Intermediate People's Court

Member Company: Nike Sports (China) Co., Ltd.

Overall introduction

Since 2015, the counterfeit gang led by Li X and Zeng XX has produced counterfeit Nike footwear in Dongguan, forming a huge R&D, production and sales network. In 2017, the Jiangsu Huai'an PSB Security Police Detachment conducted investigation after receiving Nike's complaint and finally mastered the gang's entire network. In 2018, nearly 100 policemen from Huai'an PSB took actions against the gang's offices, factories, warehouses in Dongguan, and closely pursued more than 30 upstream and downstream targets around seven provinces. All the main infringers were arrested. Especially while Zeng XX was out on bail in 2019, he continued to produce counterfeit Nike footwear with other suspects. They were successfully arrested by the police again in 2020.

In this case, more than 125,000 pairs/units of counterfeit Nike shoes, semi-finished products, components and production tools were seized. 31 suspects were prosecuted, with an illegal amount exceeding 67 million yuan.

Results

A total of 31 suspects were sentenced to a total fixed-term imprisonment of 62 years and 11 months, as well as a fine of 31.07 million yuan.

Li X, was sentenced to fixed-term imprisonment of 4 years and 6 months and a fine of 11 million yuan;

Zeng XX, was sentenced to fixed-term imprisonment of 4 years and a fine of 2.8 million yuan;

Tang XX, was sentenced to fixed-term imprisonment of 4 years and a fine of 2.8 million yuan;

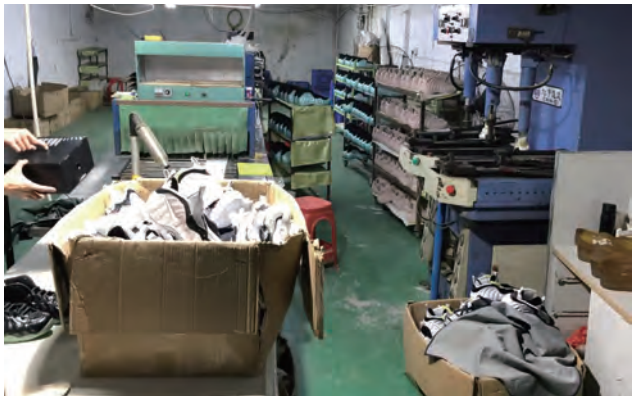
Summary of Recommendation Reasons

1.This case completely destroyed the large counterfeit gang which had online, offline, production and sales operation. Its big deterrence was reflected by the fact that no large factories producing counterfeit Nike shoes in Dongguan after 2018 and achieved remarkable effect of the rule of law.

2. Jiangsu Huai'an PSB handled the case efficiently and paid attention to both physical and electronic evidence to crack down on the whole counterfeit network in multiple provinces and cities.

3. Huai'an Municipal People's Procuratorate insisted on imprisonment without probation for the main suspects in the prosecution.

4. Huai'an Intermediate People's Court strengthened the protection of well-known trademarks, and imposed both freedom penalty and property penalty, which effectively deterred the criminal acts of infringing intellectual property rights.



吴某某跨区域销售翻新假冒“ABB”、“SIEMENS”产品案

推荐机关： 福建省厦门市公安局海沧分局，福建省厦门市思明区人民检察院，福建省厦门市思明区人民法院

会员公司： ABB 阿西亚·布朗·勃法瑞有限公司，西门子（中国）有限公司

案情简介

2020 年 4 月，ABB 公司收到河南洛阳一买家关于 6 台翻新“ABB”定位器的举报。经过产品鉴定、实地调查、行政举报，一场针对上游供应商的行政执法行动在福建厦门展开。行动时发现大量“ABB”和“SIEMENS”二手、翻新产品的库存，以及假冒的“ABB”和“SIEMENS”包装材料和翻新工具。2020 年 9 月，该案移送给福建省厦门市公安局海沧分局立案侦查后，福建省厦门市思明区人民检察院作为集中管辖全市知识产权刑事犯罪案件的检察院，对该案给予高度关注并依法提前介入，积极引导公安局的侦查取证工作。公安局在侦查过程中远赴省外对购入假货的终端用户办案取证，查明了嫌疑人的售假情况，保护了消费者和权利人的权益。价格认定最终确认翻新的假冒“ABB”和“SIEMENS”产品价值约 100 万元。2021 年 9 月，福建省厦门市思明区人民检察院指控被告人吴某某犯销售假冒注册商标的商品罪向福建省厦门市思明区人民法院提起公诉。

处理结果

2022 年 7 月，福建省厦门市思明区人民法院认定被告人吴某某犯销售假冒注册商标的商品罪，判处有期徒刑二年三个月，并处罚金人民币五十万元。

推荐理由

1. 该案对于被告人销售二手翻新的假冒注册商标商品的犯罪行为作出了正确的事实认定及法律适用，作为福建厦门首例涉及翻新假冒的刑事案件起到了示范作用。

2. 公安机关在侦查中的证据收集、产品鉴定以及查明其他已销售假冒产品的工作，不仅有力支持了该案后续的查办工作，更进一步保护了消费者和权利人的权益。

3. 该案案情复杂，福建省厦门市思明区人民检察院在刑事侦查及诉讼程序中积极提供全方位的引导，为法院审判奠定坚实基础，凸显了其集中管辖全市知识产权刑事犯罪案件的优势。

4. 权利人参与刑事诉讼的活动充分体现了知识产权刑事案件权利人诉讼权利义务告知制度的有效性，是继续深化我国刑事司法改革和知识产权保护的必由之路。

Criminal Case against Wu's Cross-regional Sale of Refurbished "ABB", "SIEMENS" Counterfeits

Recommended Agencies: Fujian Xiamen Public Security Bureau Haicang Branch, Fujian Xiamen Siming People's Procuratorate, Fujian Xiamen Siming People's Court

Member Company: ABB Asea Brown Boveri Ltd, Siemens Ltd., China

Overall introduction

In April 2020, a buyer's report of 6 refurbished "ABB" positioners in Luoyang City, Henan Province led to an administrative raid action against the upstream supplier in Xiamen City, Fujian Province after product verification, onsite investigation and complaint filing by ABB, when a massive stockpile of second-hand and refurbished "ABB" and "SIEMENS" products, fake packaging materials and tools were located. After case transfer to the PSB in September 2020, the PP with centralized jurisdiction attached great importance and intervened early by law to provide guidance in criminal investigation during which the PSB tracked an end user having purchased counterfeits located far outside of its jurisdiction, thus further confirming the suspect's illegal sales and protecting the rights and interests of the consumer and brand owners. The refurbished products determined as counterfeits were officially evaluated at around RMB 1 million. In September 2021, the PP filed the public prosecution against the defendant Wu suspected of selling counterfeit trademark goods with the Court.

Results

In July 2022, the Xiamen Siming People's Court found the defendant guilty of selling counterfeit trademark goods, with a sentence of 2 years and 3 months in prison, and a fine of RMB 500,000.

Summary of Recommendation Reasons

1. The correct fact determination and law application regarding the defendant's illegal behavior of selling refurbished counterfeits serves an exemplary criminal case as the first of its kind in Xiamen City, Fujian Province.

2. The PSB's work on evidence preservation, product verification and tracking counterfeits sold has supported the further case handling and protected the rights and interests of the consumer and brand owners.

3. The complicated case has had the path paved for the criminal judgment thanks to the PP's all-round guidance throughout the criminal investigation and proceedings, highlighting the advantages of the PP with centralized jurisdiction over all IP-related criminal cases.

4. The participation of the brand owners throughout the criminal proceedings is a living testament to the effective system of notifying IP owners to exercise and fulfill their rights and obligations, the way to go to improve the criminal justice system and strengthening IP protection in China.

河北省高碑店市于某辉等 4 人假冒维密注册商标案

推荐机关： 河北省高碑店市公安局，河北省高碑店市人民检察院，河北省高碑店市人民法院，河北省保定市中级人民法院

会员公司： 维多利亚的秘密有限责任公司

案情简介

2021 年 4 月权利人根据另案的判决线索找到上游商家，进行测买并鉴定产品为假货。由于未掌握对方当事人的详细地址，权利人向高碑店市公安局报案。该局立案后进行了侦查。通过警方的技术侦查，实地摸排，对当事人的身份信息等分析调查，最终锁定了嫌疑人的活动范围及其仓库和工厂的真实地址。 2021 年 9 月，高碑店市公安局对嫌疑人的仓库和工厂进行突击检查。公安机关查明，自 2017 年 5 月至 2021 年 9 月，被告人于某辉伙同其妻子罗某艳在高碑店市东马营镇东一村的住处生产假冒的假冒箱包 50 余款，并通过微信、阿里巴巴及淘宝店铺进行销售。现场查获假冒维密品牌包袋共计 1.8 万个，认定的价值为 79.5 万元。

公安机关实行全链路打击，将包材标签制造商全部抓获并查明，被告人郝某顺为于某辉印制维密假冒商标标识 10 万余个，价值 8 万元；被告人王青为于某辉提供拉链、吊牌、布标等商标标识 9 种，共计 233500 个，价值 1.9 万元。

处理结果

2022 年 3 月 14 日，高碑店市人民检察院向河北省高碑店市人民法院提起了公诉。2022 年经过一审二审，法院综合考虑被告人的犯罪情节、非法经营数额、违法所得、侵权假冒物品数量及社会危害性等因素，依法判处 2 名被告人 4 年以上有期徒刑，1 名被告人 3 年有期徒刑，1 名被告人缓刑。

推荐理由

1. 公安机关从线上到线下全链条打击制假售假，有效维护权利人和消费者的合法权益

本案中，侵权人利用网络进行售假，隐匿其真实地址，逃避追踪和打击。收到权利人报案后，高碑店市公安局高度重视，最终将嫌疑人抓捕归案、绳之以法。公安机关的高效、专业、秉公执法是此次行动成功的关键因素。

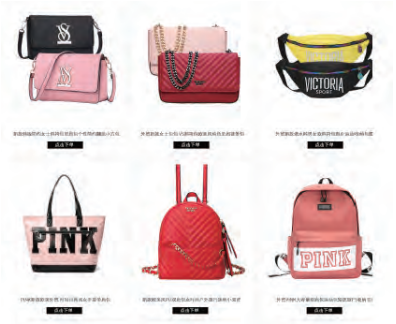
2. 司法机关加强与权利人的沟通渠道，确保司法公正与公平

本案中，检察院向权利人寄送了“委托诉讼代理人告知书”和“被害人诉讼权利义务告知书”、对权利人进行了充分的权利义务告知，并听取了权利人及其代理律师对案件的分析和建议，将郝某顺的罪名更正为“非法制造、销售非法制造的注册商标标识罪”，将被告人从犯认定为主犯，做到了不枉不纵。

3. 加大对侵犯知识产权犯罪打击力度

法院关于被告人辩称网络销售记录存在刷单的不真实交易的辩解，不予采信。本案中，法院综合考虑被告人的犯罪情节、非法经营数额、违法所得、侵权假冒物品数量及社会危害性等因素，依法判处 2 名被告人 4 年以上有期徒刑，1 名被告人 3 年有期徒刑，1 名被告人缓刑。同时，依法判处罚金数额共计高达 320 万。

知识产权刑事案件判处缓刑的较多，但本案 4 名被告人中 3 人被判处较高刑期的实刑。此判决结果具有较大示范意义，极大增强了权利人的维权信心，震慑了侵犯知识产权犯罪的不法分子。



侵权者网店销售的假冒品


侵权者的仓库

Yu Ronghui and three others counterfeiting the registered trademarks "Victoria's Secret" and "PINK" in Gaobeidian City, Hebei Province

Recommended Agencies: Gaobeidian Public Security Bureau, Gaobeidian People's Procuratorate, Gaobeidian People's Court, Baoding Intermediate People's Court

Member Company: VICTORIA'S SECRET &Co.

Overall introduction

In April, 2021 we bought some of the goods as samples from these shops identified from a court verdict of another case and our identification showed all these samples were counterfeits. Because we had no idea of the detailed address of the infringers, we reported the case to the police, Gaobeidian Public Security Bureau (PSB). The PSB located the area of infringers' activities and the real site of their warehouse and factory after technical detection, field investigation, and analysis of the infringers' identities. In September, 2021, Gaobeidian PSB officers raided the infringers' warehouse and factory, seizing 18,000 bags bearing the marks "Victoria's Secret" and "PINK" which were valued at CNY 795,249 (USD115,000).The PSB found that from May 2017 to September 2021 the defendant Yu Ronghui and his wife Luo Chunyan manufactured more than 50 patterns of counterfeit "Victoria's Secret" and "PINK" bags at their dwelling place at Dongyi Village, Dongmaying Town, Gaobeidian City and sold them via Wechat, Alibaba and Taobao with the sales of CNY 4,586,566.33 (USD665,000). The PSB also found that the defendant Hao Zhoushun printed for Yu Ronghui more than 100,000 pieces of representations of the trademarks "Victoria's Secret" and "PINK" to the value of CNY 81,361.48 (USD11,800) and the defendant Wang Huaqing provided Yu Ronghui with 9 kinds, including zip, tag and label, and 233,500 pieces of representations of the trademarks "Victoria's Secret" and "PINK" to the value of CNY 19,250 (USD2,800).

Results

On March 14, 2022, Gaobeidian People's Procuratorate brought a public prosecution for the case to Gaobeidian People's Court. The courts, taking account of the defendants' crime level, illegal turnover, illegal gains, the amount of infringing goods, and social harm, sentenced 2 defendants to over 4 years in prison and 1 defendant to 3 years in prison, and put 1 defendant on probation. In the meantime, the defendants were fined up to CNY 3.2 million (USD464,000) altogether and each of the two principals was fined CNY 1.5 million (USD217,000).

Summary of Recommendation Reasons

1. The PSB combats both online and offline the crime of manufacturing and selling counterfeits to effectively protect the legal interests of right holders and consumers.

2. The judicial organs improve communication with the right holder to ensure justice.

In the case, the procuratorate sent to the right holder (us) the Notification of Entrusted Attorney in a Lawsuit and the Notification of Victim's Rights and Obligations in a Lawsuit to inform us about our rights and obligations and listened to the advice of us. The court kept in touch with us and listened to the analysis of the case we carried out. Furthermore, the court took our advice to change the name of Hao Zhoushun and Wang Huaqing's crime to the crime of illegally manufacturing representations of registered trademarks and selling illegally manufactured representations of registered trademarks and recognize the accessory as a principal.

3. The Chinese authorities are intensifying the fight against IPR infringement.

Most infringers are placed on probation in criminal IPR cases. In this case, however, 3 of the 4 defendants were incarcerated with relatively long years. This ruling is demonstratively significant, enhancing right holders' confidence about IPR protection and deterring possible IPR infringers.

广东江门吴某平团伙制售假冒注册商标的商品案

推荐机关： 广东省江门市公安局蓬江分局、广东省江门市蓬江区人民检察院、广东省江门市蓬江区人民法院

会员公司： 宝洁(中国)有限公司、强生消费者健康公司、上海贝德玛化妆品贸易有限公司、高露洁棕榄公司、资生堂（中国）投资有限公司、维多利亚的秘密有限责任公司、欧莱雅（中国）有限公司、联合利华（中国）有限公司、拜尔斯道夫股份有限公司

案情简介

2021 年 7 月，广东省江门市公安局食品药品与环境犯罪侦查支队（以下简称“江门食药环侦支队”）获悉当地一生产、销售假冒化妆品线索，涉及多个品牌，执法人员高度重视并迅速成立专案组开展侦查工作。经过前期严密布控和调查，江门食药环侦支队于 8 月 17 日，组织江门市公安局蓬江分局和江门市公安局杜阮派出所，出动共计 130 名警力，对目标进行打击。办案人员分为 7 组，历时 2 天成功捣毁该制售假团伙的 3 个制假工厂和 6 个假货存储仓库，抓捕吴某平等 12 名犯罪嫌疑人，现场查获超过 100 万件带有 SK-II、兰蔻、资生堂、城野医生、贝德玛、EltaMD、AHC、莱珀妮、维多利亚的秘密等注册商标的产品、生产原材料、包装材料和生产机器等，折合正品总价值超过人民币 6000 万元。

处理结果

刑事判决：

1. 主犯吴某被判处有期徒刑 4 年 6 个月，并处罚金人民币 165 万元；

2. 另有三名涉案人员被判刑，其中两人被判处实刑，一人被判处缓刑，三人累计罚金 180 万元；

3. 全部作案工具、设备予以没收，假冒注册商标产品予以销毁。

销毁结果：

1. 所有被查扣产品、生产原材料、包装材料等均在江门食药环侦支队主持下被销毁。

推荐理由

1. 产销全链条打击，规模巨大，具有极大的社会影响力和震慑力

2. 公安机关通过情报导侦，迅速厘清犯罪网络，统一部署行动，成功捣毁整个犯罪集团

3. 司法机关结合证据链，充分采用电子证据，多名被告被判处有期徒刑实刑，体现罪责刑相适应

4. 多家权利人通力协作，配合执法，充分保障自身权益

行动照片：

Wu X Ping et al for Manufacturing and Selling Goods with Counterfeit Registered Trademarks in Jiangmen, Guangdong

Recommended Agencies: Pengjiang Branch of Guangdong Jiangmen PSB, Pengjiang District People's Procuratorate of Guangdong Jiangmen, Pengjiang District People's Court of Guangdong Jiangmen

Member Company: P&G (China) Co., Ltd., Johnson & Johnson Consumer Health Company, Shanghai Bioderma Cosmetics Trading Co., Ltd., Colgate-Palmolive Company, Shiseido China Co., Ltd., Victoria's Secret &Co., L'Oreal (China) Co., Ltd., Unilever (China) Co., Ltd., Beiersdorf AG

Overall introduction

In July 2021, Food, Drug and Environmental Crime Investigation Department of Guangdong Jiangmen PSB (hereinafter referred to as Jiangmen FDE PSB) learned of a local clue about producing and selling counterfeit cosmetics, involving multiple brands, to which the law enforcement officers attached great importance and quickly set up a special team to carry out investigation. After rigorous investigation, on August 17, Jiangmen FDE PSB organized Pengjiang Branch of Guangdong Jiangmen PSB and Duruan Police Station and dispatched a total of 130 police officers to conduct raid actions against the target. The officers were divided into 7 groups. After 2 days, the PSB successfully cracked down 3 factories and 6 warehouses, caught 12 suspects including Wu X Ping, and seized more than 1 million pcs of cosmetic products with SK-II, Lancome, Shiseido, Dr.Ci. Labo, Bioderma, EltaMD, AHC, La Prairie, Victoria's Secret et al. registered trademarks, as well as production raw materials, packaging materials and production machines on site, which were equivalent to a total value of more than RMB 60 million based on price of genuine products.

Results

1. The major offender Wu was sentenced to fixed-term imprisonment of 4 years and 6 months and fined RMB 1.65 million.

2. Two offenders were sentenced to fixed term imprisonment, with one suspension, and a total fine of 1.8 million.

3. All production tools and equipment would be confiscated, and counterfeit products of registered trademark would be destroyed.

4. All seized products, raw materials and packaging materials etc. were destroyed under the supervision of Jiangmen PSB.

Summary of Recommendation Reasons

1. The entire large-scale chain were cracked down, which had a great social influence and deterrence to the market.

2. The PSB quickly clarified the criminal network and successfully cracked down the entire gang through intelligence investigation.

3. Defendants were sentenced to fixed-term imprisonment, reflecting the principles of criminal culpability adaptation.

4. Multiple rights holders worked together, cooperated with the law enforcement officers to fully protect their own rights.

B 民事诉讼及司法程序案件
Civil Cases and Civil Procedures

乐高博士有限公司（LEGO JURIS A/S）诉深圳市森德贸易有限公司侵害商标权纠纷案

推荐机关：广东省深圳市宝安区人民法院

会员公司：乐高玩具（上海）有限公司

案情简介

本案中，乐高集团就被告未经授权在其天猫网店销售商品的标题及商品详情页面中使用“樂高”、“legao”字样的侵权行为提起商标权侵权诉讼。被告所使用的“樂高”、“legao”字样与乐高集团的多件注册商标在字形、字体、读音、含义上均基本一致，构成近似。该案件涉及的侵权商品销量极高，仅根据原告前后两次公证证据保全到的网页显示，按照侵权链接展示产品的最低售价计算的销售额已将近300万元。被告抗辩称，其在商品介绍中使用的“樂高”、“legao”字样不属于商标性使用，而是说明该商品可以兼容乐高积木的功能性使用，不构成商标侵权。

处理结果

法院认定被告在商品的标题及商品详情页面中使用“樂高”、“legao”字样的行为，具有识别商品来源的作用，属于商标性使用，被告非商标性使用的抗辩不能成立。法院判决被告停止侵害乐高集团注册商标专用权的行为，并赔偿乐高集团的经济损失和合理费用共计人民币15万元。双方未提起上诉。法院审结时间为2022年4月。

推荐理由

互联网环境下，商标使用的表现形式呈现多元化特征。大量侵权者在自身商品标题或页面中使用与他人注册商标相同或近似的文字，使其出现在以他人商标为关键字的检索结果中，使消费者产生混淆，严重损害了商标权利人的利益。在本案起诉时，对于侵权者的此类行为是否属于商标性使用，中国法院尚无明确判例。法院在本案判决中指出，原告乐高集团所拥有的“乐高”、“LEGO”商标具有广泛的市场知名度，被告同为玩具行业的经营者，对此理应知晓，却仍然在同类商品的名称和链接标题上使用。被告的使用方式使得消费者在输入“乐高”关键词进行搜索后，得到被告商品作为搜索结果，容易使消费者误以为被控侵权产品来源于原告，产生混淆。因此被告关于使用“樂高”字样的目的在于说明该商品可以兼容乐高积木的非商标性使用抗辩不能成立，被告行为构成商标侵权。这一判决明确指出了网络销售环境下对商标进行商标性使用的判断标准，即使用与他人知名商标近似的文字作为商品标题或描述性文字的行为同样构成商标性使用，对于法院和行政执法机关此后处理类似情况的商标侵权案件具有先例性和指导性意义。

LEGO JURIS A/S v. Shenzhen Sende Trading Co., Ltd trademark infringement civil actions

Recommended Agencies: Guangdong Province Shenzhen Bao'an District People's Court

Member Company: LEGO Toy (Shanghai) Co., Ltd.

Overall introduction

The LEGO Group initiated a trademark infringement lawsuit against the defendant for unauthorized use of the words " 樂 高 " and "legao" on its Tmall online shop's titles and product description pages. These words are basically the same to the LEGO Group's multiple registered trademarks in terms of form, font, pronunciation and meaning, constituting similar trademarks. The case involved a high infringing sales amount of at least nearly RMB 3 million according to the plaintiff's notarized infringing webpages based on the calculation of the defendant's lowest sales prices. The defendant argued that its use of the words " 樂 高 " and "legao" was not a trademarked use, but rather an indication that the goods were compatible with the LEGO bricks and did not constitute trademark infringement.

Results

The court dismissed defendant's argument and found its use of the " 樂高 " and "legao" trademarks indicates source of goods and constitutes trademark use. The court ruled that the defendant should stop infringing the LEGO Group's trademark and compensate the LEGO Group for its economic losses and reasonable costs totaling RMB 150,000. The parties did not file an appeal, and the case was concluded in April 2022.

Summary of Recommendation Reasons

In the online environment, trademark use has become diverse, and numerous infringers use words identical or similar to others' registered trademarks in their product titles or pages for online sales. This leads to the appearance of their products in search results when others' trademarks are used as keywords, causing confusion among consumers and severely harming the interests of trademark rights holders. At the time of filing this case, there was no clear legal precedent in Chinese courts as to whether such actions constituted trademark use or infringement. In its judgment, the court noted that the defendant's use of the marks led consumers to locate the defendant's products while searching using the keyword "LEGO," which could easily mislead consumers into believing that the infringing products originated from the plaintiff and cause confusion. As such, the defendant's conduct constituted trademark infringement and its arguments of non-trademark use indicating the product function of "compatible with LEGO bricks" shall be dismissed. This decision sets clear criteria for judging trademark use in the context of online sales, and is of significant precedential and guiding value for courts and administrative enforcement authorities in the future for dealing with trademark infringement cases of similar situations.

联合利华诉忆丝芸弹力素不正当竞争纠纷

推荐机关：四川省成都市中级人民法院、四川省高级人民法院

会员公司：联合利华（中国）有限公司

案情简介

“体吉贝赫丰盈动感造型乳”（“TIGI 弹力素”）是联合利华旗下知名的弹力素产品，至晚从 2008 年起进入中国市场并持续销售，联合利华服务（合肥）有限公司（“联合利华公司”）是该产品在中国的总代理。该产品采用独特的“紫色球状瓶身 + 绿色泵头”设计，具有极强的显著性和知名度。

自 2018 年起，成都忆丝芸商贸有限公司（“成都忆丝芸公司”）、成都微美化妆品有限公司（“成都微美公司”）、成都市妍丽化妆品有限公司（“成都妍丽公司”）未经联合利华公司许可，擅自分工合作、共同委托广州市高爵化妆品有限公司（“广州高爵公司”）生产“忆丝芸弹力素”产品，并通过各大电商平台开设店铺共同广泛销售。“忆丝芸弹力素”的包装装潢和“TIGI 弹力素”的包装装潢基本相同，均为紫色球形瓶身 + 绿色泵头，已经造成相关公众对产品的来源产生混淆误认。2021 年 7 月，联合利华向成都市中级人民法院起诉，请求法院判令被告立即停止侵权行为，赔偿经济损失并消除影响。

处理结果

成都市中级人民法院于 2022 年 2 月 25 日作出一审判决，认定 TIGI 弹力素紫色球状瓶身 + 绿色泵头的包装装潢属于反不正当竞争法第六条第（一）项规定的具有一定影响的商品包装装潢，成都微美公司、成都忆丝芸公司、成都妍丽公司、广州高爵公司共同制造被诉侵权产品，成都微美公司、成都忆丝芸公司、成都妍丽公司共同制造、销售被诉侵权产品，构成不正当竞争。法院判令被告立即停止制造、销售“忆丝芸弹力素”的行为，赔偿联合利华公司经济损失和合理开支共计 3,141,410.3 元，在涉案网络店铺首页最上方以醒目方式连续 30 日刊登声明及《中国市场监督报》上以不小于 1/8 版面连续 30 日刊登声明，消除影响。

四被告不服一审判决，向四川省高级人民法院提起上诉。经开庭审理，四川省高级人民法院于 2022 年 12 月 30 日作出二审判决，驳回上诉，维持原判。

推荐理由

TIGI 弹力素是全球沙龙级护发产品的权威品牌，在中国消费者中具有较高的知名度，被消费者美谈为“明星御用”产品。市面上存在诸多仿冒 TIGI 弹力素的产品，不少消费者因为基本相同的包装装潢而购买到山寨产品，不但对联合利华的品牌声誉和经济利益造成了严重损害，更可能损害消费者的财产权益和身体健康。其中涉案忆丝芸弹力素是其中仿冒最为猖獗的产品，其侵权产品销售数量超过 20 万件，销售金额达到 1022 万元，侵权规模极大，必须对其进行有力打击。而包装装潢作为非注册商业标识，相对于注册商标的保护力度较弱，高额赔偿案件较少，如何取得令人满意的打击结果存在较高难度。

本案权利人精准选择包装装潢权利基础，最大范围保障了打击仿冒产品的范围；穷尽式收集权利产品知名度证据、显著性证据、相关公众混淆证据，夯实侵权定性；多维度举证论述，赢得法官判赔心证；多维度调查举证和质证，使得全部被告承担连带责任；提供所有被告可查的财产线索，充分运用诉中财产保全阶段的网络查控手段调查、冻结被告所有电商店铺的账户，为足额执行打下坚实基础。权利人在本案每一个环节都付出了巨大努力，最终获得高额判赔（四川法院系统可查的包装装潢侵权案件判赔额最高的案件），为包装装潢侵权案件，特别是快消品类产品的包装装潢侵权案件定性、获得高额赔偿并保障执行给出了范例。

Unfair Competition Dispute - Unilever v. Yisiyun Elastin

Recommended Agencies: The Intermediate People's Court of Chengdu City of Sichuan Province, The High People's Court of Sichuan Province

Member Company: Unilever (China) Co., Ltd.

Overall introduction

"TIGI BED HEAD HAIR THICKENING DYNAMIC STYLIZING CREAM" ("TIGI Elastin") is a well-known elastin product under Unilever. The product bears a unique "spherical purple bottle body with green pump head" design, which has strong distinctiveness and popularity. Since 2018, without Unilever's permission, Chengdu Yisiyun Trading Co., Ltd. ("Chengdu Yisiyun Company") and other companies produce and sell "Yisiyun Elastin" products. The packaging decoration of "Yisiyun Elastin" is basically the same as that of "TIGI Elastin", In July 2021, Unilever filed a lawsuit with the Chengdu Intermediate People's Court, asking the court to order the defendant to immediately stop the infringement, compensate for economic losses and eliminate the impact.

Results

On February 25, 2022, the Chengdu Intermediate People's Court rendered a first-instance judgment, the defendants' said acts constitute unfair competition. The court ordered the defendants to stop manufacturing and selling "Yisiyun Elastin", compensate Unilever for economic losses and reasonable expenses totaling RMB3,141,410.3, and publish a statement in a conspicuous manner at the top of the homepage of the online store in question for 30 consecutive days and a statement on the China Market Monitor Daily with a coverage of not less than 1/8 page for 30 consecutive days to eliminate the impact. On December 30, 2022,the Sichuan Provincial Supreme People's Court rendered a second-instance judgment rejecting the appeal and upholding the original judgment.

Summary of Recommendation Reasons

In this case, the right holder accurately identified scope of packaging and decoration rights with selected elements, and guaranteed the scope of combating copycat products to the greatest extent; full collection of evidence of the popularity of the protected product, evidence of conspicuous distinctiveness, and evidence of relevant public confusion, to consolidate the characterization of infringement; multi-dimensional evidence arguments, winning judges' judgments to order compensation; multi-dimensional investigation of evidence and cross-examination, making all defendants jointly and severally liable; provide all trackable property clues of the defendants, and make full use of the internet investigation methods in the property preservation stage during the litigation to get support from the court to investigate and freeze the accounts of all the defendant's e-commerce stores, laying a solid foundation for full enforcement. The case wins the highest award in the packaging and decoration infringement cases that are available in the public database of Sichuan courts.

FMC 与永太公司诉前停止侵害专利权行为保全案

推荐机关：浙江省宁波市中级人民法院

会员公司：富美实公司（FMC）

案情简介

FMC 公司与 FMC 农业新加坡私人有限公司（以下合称“FMC”）系化合物“氯虫苯甲酰胺”的专利权人，该专利化合物系农业杀虫剂“康宽®”产品的主要活性成分。FMC 发现，浙江永太科技股份有限公司（“永太公司”）未经许可，在多个大型农药博览会上宣传推广氯虫苯甲酰胺农药，并在展会后继续向潜在的客户进行许诺销售。FMC 在收集永太公司侵权行为证据后，于 2022 年 1 月 27 日向浙江省宁波市中级人民法院（“宁波中院”）提出诉前行为保全申请。宁波中院在综合审查案件管辖、专利权的稳定性、侵权可能性、行为紧迫性以及社会公共利益等因素后，对永太公司作出禁止许诺销售涉案氯虫苯甲酰胺产品的裁定。

处理结果

2022 年 4 月 19 日，宁波中院就 FMC 申请的诉前行为保全作出（2022）浙 02 证保 1 号裁定，禁止永太公司许诺销售涉嫌侵害 FMC 享有发明专利权（ZL02815924.1）的被控侵权产品，直至本案判决作出并生效为止或该专利权保护期届满之日。FMC 与永太公司均未上诉。

推荐理由

由于“情况紧急”“损害难以弥补”等要件举证要求高、说理难度大，诉前行为保全申请（尤其是专利侵权案件）在我国一般很难得到法院的支持，本案是非常难得的我国法院就专利侵权行为作出诉前行为保全裁定的案件。在本案中，宁波中院结合化合物侵权比对的特殊性、涉案侵权行为的发生时间以及展会后被控侵权人与潜在客户进行持续而隐性的商业往来对 FMC 造成的持续损害等具体案件事实，正确理解并适用《民事诉讼法》以及相关司法解释对诉前行为保全制度的规定，为即将到期的专利给予了及时的保护，同时彰显了我国法院在涉外案件中公平公正且及時有效地保障国外权利人的合法权利。

FMC v. Yongtai: Pre-suit Injunction to Stop Patent Infringement

Recommended Agencies: Ningbo Intermediate People's Court of Zhejiang Province

Member Company: FMC Corporation

Overall introduction

FMC Corporation and FMC Agro Singapore Pte. Ltd. (hereinafter collectively referred to as "FMC") are the patentees of the compound Chlorantraniliprole ("CTPR"), the core active ingredient of the CORAGEN ® agricultural pesticide product. FMC found that Zhejiang Yongtai Technology Co., Ltd. ("Yongtai") promoted CTPR pesticide at several major pesticide exhibitions without permission and continued to offer to sell the same to potential customers after the exhibitions. After collecting evidence of Yongtai's infringement, FMC filed an application for pre-suit injunction before Ningbo Intermediate People's Court of Zhejiang Province ("Ningbo Intermediate Court") on 27 January 2022. After a comprehensive review of the jurisdiction of the case, the stability of the patent right, the possibility of infringement, the urgency of the case and the public interest, the Ningbo Intermediate Court issued a ruling against Yongtai prohibiting it from offering to sell the CTPR products at issue.

Results

On 19 April 2022, the Ningbo Intermediate Court issued a ruling No. (2022) Zhe 02 Zheng Bao 1 on FMC's application for pre-suit injunction, prohibiting Yongtai from offering to sell the alleged infringing products until the formal judgment of the case is rendered and becomes effective or until the expiry of the patent right. Neither FMC nor Yongtai has appealed.

Summary of Recommendation Reasons

Due to the high threshold to fulfill the burden of proof and the difficulty of reasoning regarding the requirements of "urgency" and "irreparable harm", it is generally difficult to obtain the support from the courts for pre-suit injunction (especially patent infringement cases) in China. This case is a rare case in which the court in China has ruled on pre-suit injunction for patent infringement. In this case, the Ningbo Intermediate Court, taking into account the specific nature of chemical compound for infringement comparison, the timing of the infringement and the continuing damages caused to FMC by continuous and implicit commercial dealings with potential customers after trade fairs, correctly understood and applied the provisions of the *Civil Procedure Law* and the relevant judicial interpretations on the pre-suit injunction, which provided timely protection for the patent whose exclusive rights were about to expire, and at the same time demonstrated the fairness and effectiveness of China's courts in safeguarding the legal rights of foreign rights holders.

迈克尔·杰弗里·乔丹诉中乔体育股份有限公司（原名称乔丹体育股份有限公司）及上海百仞贸易有限公司侵害姓名权纠纷一案

推荐机关： 上海市第二中级人民法院，上海市高级人民法院

会员公司： 耐克创新有限合伙公司

案情简介

原告：迈克尔·杰弗里·乔丹（乔丹先生）

被告：中乔体育股份有限公司（原名称乔丹体育股份有限公司）、上海百仞贸易有限公司

被告中乔体育股份有限公司未经原告授权将“乔丹”作为其商号和商标在商业活动中使用，并且恶意注册了大量与乔丹先生有关的商标。最高人民法院此前已认定被告的相关“乔丹”商标侵犯乔丹先生的姓名权，除了部分注册已满五年的商标外，乔丹先生对被告“乔丹”相关商标的无效请求获得支持。本案另一被告上海百仞贸易有限公司在店招上使用“乔丹”并销售带有“乔丹”商标的商品。本案的焦点在于被告对于“乔丹”的使用是否侵犯乔丹先生的姓名权，中乔体育是否应当停止使用其注册满五年的“乔丹”商标。

处理结果

上海市第二中级人民法院和上海市高级人民法院确认被告对于“乔丹”商标的使用侵犯乔丹先生的姓名权。对于注册已满五年的“乔丹”商标，被告应当添加区分标识以阻断“乔丹”商标与乔丹先生的联系，形式和内容需经法院审核。

推荐理由

本案是世界最知名的 NBA 球星和中国运动品厂商的法律纠纷，国内外影响广泛。在本案中，上海法院在最高人民法院此前判决的基础上更进一步，判令被告在使用其注册满五年的商标时亦须添加区分标识。本案也促进了我国对于公众人物中文译名的保护立法，为姓名权和其他权利冲突的法律纠纷提供解决途径。

Dispute over Infringement of Naming Right of Michael Jeffrey Jordan against Zhongqiao Sports Co., Ltd. (Origin Name: Qiaodan Sports), and Shanghai Bairen Trading Co., Ltd.

Recommended Agencies: Shanghai Second Intermediate People's Court; Shanghai High People's Court

Member Company: Nike Innovate, Inc.

Overall introduction

Plaintiff: Michael Jeffrey Jordan (Mr. Jordan)

Defendant: Zhongqiao Sports Co., Ltd. (Origin Name: Qiaodan Sports), Shanghai Bairen Trading Co., Ltd.

The Defendant, Zhongqiao Sports Co., Ltd. (Zhongqiao Sports), used " 乔 丹 " as its trade name and trademarks on its products and in commercial activities without authorization of the plaintiff. It also registered a large number of trademarks related to Mr. Jordan in bad faith. The SPC affirmed that the Defendant's " 乔丹 "-related marks infringed upon Mr. Jordan's naming right and supported Mr. Jordan's retrial petitions, except for those 'over 5-year registrations. The other Defendant, Shanghai Bairen Trading Co., Ltd. operated " 乔丹 " stores in Shanghai, which used " 乔丹 " on store signage and products. The focal issues of this case are whether the Defendants' use of " 乔 丹 " infringed upon Mr. Jordan's naming right, and whether Zhongqiao Sports should stop using its over 5-year " 乔丹 " registrations.

Results

Shanghai Second Intermediate People's Court and Shanghai High People's Court affirmed that the Defendants' use of " 乔丹 " mark infringed upon Mr. Jordan's naming right. For these over 5-year trademark registrations, the Defendants shall add qualifiers which are pre-approved by Court in its formats and can serve to block the connection between " 乔丹 " mark and Mr. Jordan.

Summary of Recommendation Reasons

It is a legal battle between the world's most valuable NBA star and a Chinese sportswear maker, which attracts worldwide public attention. In this case, the Shanghai Courts made one-step further based on the SPC's ruling, extending their rulings to over 5-year registrations by requesting the Defendants to add qualifiers. This case also pushed the improvement of the PRC laws to render protection on the translations of a public figure's name, and provided solutions on how to deal with conflicts of rights.

“带锁髓内钉”侵害发明专利权纠纷

推荐机关：湖南省长沙市中级人民法院、最高人民法院知识产权法庭

会员公司：强生（中国）投资有限公司

案情简介

强生（中国）投资有限公司的海外关联公司、原告斯恩蒂斯有限公司，享有 ZL03827088.9、名称为“用于治疗股骨骨折的装置” 的中国发明专利权。被告大博医疗科技股份有限公司等三家公司涉及生产、销售、许诺销售与涉案专利相关的防旋股骨近端髓内钉等产品，原告提出停止侵权、赔偿 2000 万元经济损失和 10 万元合理开支等诉讼请求。审理中，原告提出了三种侵权获利的计算方法，大于诉讼请求金额，被告在庭审回应时拒不提交财务账册及资料。2021 年 11 月 3 日，最高人民法院做出二审判决，全额支持原告经济损失和合理开支的诉讼请求。2022 年 7 月 7 日，最高人民法院做出再审裁定，驳回被告的再审请求。

处理结果

2022 年 7 月 7 日，最高人民法院作出再审裁定，驳回大博公司的再审请求，全额支持专利权人 2000 万元损失赔偿和 10 万元合理开支的诉讼请求。

推荐理由

本案中，侵权人拒不提交账册，最高人民法院全额支持权利人主张的 2000 万元损失赔偿和 10 万元合理开支的诉讼请求。本案以具体案例分析了侵权获利中的举证责任，对侵权人拒不提供自己掌握证据的情形形成有利震慑，本案被收录进最高人民法院的多个报告中。

"Interlocking intramedullary nail" invention patent infringement dispute

Recommended Agencies: The Intermediate People's Court of Changsha City, Hunan Province; The Intellectual Property Court of the Supreme People's Court

Member Company: Johnson & Johnson (China) Investment Ltd.

Overall introduction

The overseas affiliated company of Johnson & Johnson (China) Investment Ltd., Synthes GmBH owns Chinese invention patent of ZL03827088.9, titled "Device for treating femoral fractures". The defendants Double Medical Technology Co., Ltd. and other two companies are suited for manufacturing, selling, and offering for sales of products related to the patent for anti-rotation proximal femoral intramedullary nails. The plaintiff has claimed stopping the infringement, the compensation for economic losses of 20 million RMB and reasonable expenses of 0.1 million RMB. During the trial, the plaintiff introduced three calculation methods for infringement profits, which were higher than the amount claimed. The defendant refused to submit financial books and materials during the trial. On November 3, 2021, the Supreme People's Court made the judgment of second instance, fully supporting the plaintiff's claim for economic losses and reasonable expenses. On July 7, 2022, the Supreme People's Court made the retrial ruling rejecting the defendant's request for retrial.

Results

On July 7, 2022, the Supreme People's Court made the retrial ruling, rejecting DM's retrial request, fully support the patentee's request of 20 million RMB for damage compensation and 0.1 million RMB for reasonable expenses.

Summary of Recommendation Reasons

In this case, the infringer refused to submit financial books and materials, and the Supreme People's Court fully supported the plaintiff's claim for compensation for economic losses of 20 million RMB and reasonable expenses of 0.1 million RMB. This case analyzes the burden of proof in infringement profits through specific case, which serves as a favorable deterrent to the infringer's refusal to provide evidence in their possession. This case has been included in multiple reports of the Supreme People's Court.

爱宝工业有限公司与台州恒固胶业有限公司侵害商标权及不正当竞争纠纷一案

推荐机关：浙江省高级人民法院、浙江省台州市中级人民法院

会员公司：爱宝工业有限公司

案情简介

爱宝工业有限公司（ABRO INDUSTRIES,INC.）（以下简称：爱宝公司）享有第 29975377 号、第 34803985 号“  ”商标专用权。台州市市场监督管理局对台州恒固胶业有限公司（以下简称：恒固公司）进行执法检查时，发现恒固公司在未获得爱宝公司许可的情况下，大量生产假冒“  ”商标的强力胶及包装卡纸。恒固公司以其具有“胶水包装卡”外观设计专利为由进行抗辩，台州市市场监督管理局在暂时无法做出处罚决定的情况下，爱宝公司向台州市中级人民法院提起侵害商标权及不正当竞争纠纷一案。

处理结果

一审法院判决：恒固公司立即停止侵害爱宝公司第 29975377 号、第 34803985 号注册商标专用权的行为；恒固公司于判决生效之日起十日内赔偿爱宝公司经济损失 20 万元及为制止侵权支付的合理维权费用 3 万元，两项合计 23 万元，二审维持一审判决。

推荐理由

本案是一起典型的具有隐蔽性的商标侵权案件。攀附他人商标及商品美誉度的方式往往较为巧妙含蓄，对消费者更有欺骗性，因为商标侵权人不会明目张胆地假冒他人注册商标，而是通过先获得商标权以外的权利，以此作为将来抗辩理由，但不管其形式如何千变万化，其实质仍然是利用他人注册商标美誉度来达到牟取不当利益的目的，从而也不可避免地侵犯他人注册商标专用权，损害商标注册人的合法权益。

另外，在司法实践当中，对证据的真实性、合法性及关联性这三性的审查，是民事诉讼中必要的质证环节，这其中，“合法性”包含了证据本身的合法性以及证据获取手段的合法性两方面。只有两方面均属合法的证据才能被认定为有效。在目前互联网大环境下，对在国内无法通过正常手段获取，而是要通过一定技术手段（如翻墙等）获取的证据，虽然其形式上是合法的，但是如何将证据取得的手段实现合法化，成为目前调查取证工作中值得关注及探讨的问题。在本案中，爱宝公司提交的互联网档案馆抓取证据，其获取的方式是通过香港服务器对当地可以正常登录的网络页面进行证据保全，而后通过香港证据公证专递方式，将证据送至国内法院进行提交，在形式上做到了合法、公证、真实。本案的证据提取方式也给了同类案件一定的参考及借鉴意义。

ABRO Industries, Inc.and Taizhou Henco-glue Co.,Ltd infringement of trademark rights and unfair competition dispute

Recommended Agencies: The High People's Court of Zhejiang Provincial, The Intermediate People's Court of Taizhou City of Zhejiang Province

Member Company: ABRO Industries, Inc.

Overall introduction

ABRO Industries, Inc.(hereinafter referred to as: ABRO) has exclusive rights to the trademarks "[illegible]"No. 29975377 and No. 34803985 for .The Taizhou Municipal Bureau of Market Supervision conducted an enforcement inspection of Taizhou Henco-glue Co.,Ltd(hereinafter referred to as:Taizhou Henco-glue) , it was found that Taizhou Henco-glue was producing a large quantity of counterfeit "[illegible]" trademark strong glue and packaging cardboard without obtaining permission from ABRO.Taizhou Henco-glue defended on the grounds that it had a design patent for "glue packaging card". Taizhou Municipal Administration of Market Supervision was temporarily unable to make a penalty decision, and ABRO filed a case of infringement of trademark rights and unfair competition dispute in the Intermediate People's Court of Taizhou City of Zhejiang Province.

Results

The court of first instance ruled that: Taizhou Henco-glue immediately stop infringing the exclusive right of ABRO No. 29975377 and No. 34803985 registered trademarks; Taizhou Henco-glue compensated ABRO 200,000 yuan for economic loss and 30,000 yuan for reasonable maintenance costs to stop the infringement within ten days from the effective date of the judgment, totaling 230,000 yuan. The first-instance judgment was upheld in the second instance.

Summary of Recommendation Reasons

This case is a typical trademark infringement case with concealed nature.The way of faking others' trademarks and goods is often more subtle and deceptive to consumers, because trademark infringers will not blatantly counterfeit others' registered trademarks, but obtain rights other than trademark rights firstly as a defense in the future. However, no matter how varied its form, the essence is still to use others' registered trademarks reputation to achieve the purpose of making improper profits, thus inevitably infringing others' exclusive right to register trademarks and damaging the legitimate rights and interests of trademark registrants.

In addition, in judicial practice, the examination of the authenticity, legality, and relevance of evidence is a necessary cross examination process in civil litigation. Among them, "legality" includes the legitimacy of the evidence itself and the legitimacy of the means of obtaining evidence. Only evidence that is legal on both sides can be considered valid. In the current Internet environment, although the evidence that cannot be obtained by normal means in China but needs to be obtained by certain technical means (such as climbing over a wall) is legal in form, how to legalize the means of obtaining evidence has become a problem worthy of attention and discussion in the current investigation and evidence collection work. In this case, the internet archives submitted by Aibao Company captured evidence by using a Hong Kong server to preserve the evidence on the local network pages that can be logged in normally. Then, the evidence was sent to the domestic court for submission through the Hong Kong evidence notarization delivery method, achieving legality, notarization, and authenticity in form. The evidence extraction method in this case also provides certain reference and reference significance for similar cases.

New Balance 诉纽巴伦（中国）有限公司、上海世仪商贸有限公司等商标侵权及不正当竞争纠纷案件

推荐机关：上海市黄浦区人民法院 / 上海知识产权法院

会员公司：新平衡体育运动公司

案情简介

纽巴伦（中国）有限公司是国内规模最大的“N”字鞋山寨品牌之一，将其持有的“”和“”两个商标用于山寨“N”字运动鞋的制造和销售。基于在先的“N”字母装潢权，New Balance 分别对纽巴伦的上述两个产品线发起民事诉讼，要求确认纽巴伦的行为构成侵犯知名商品特有装潢的不正当竞争，并在两案中各索赔人民币 3000 万元。

其中针对“”标识侵权运动鞋的民事诉讼于 2016 年 7 月被上海市黄浦区人民法院正式立案受理。在一审审理期间，New Balance 成功无效对方的“”商标，遂向法院主张纽巴伦的行为同时构成商标侵权及擅自使用知名商品特有装潢的不正当竞争。经两审审理，上海知产法院于 2022 年 3 月 12 日作出终审判决，确认纽巴伦和世仪公司侵犯 New Balance 的“”注册商标专用权，并全额维持一审判决确定的赔偿人民币 2500 万元。

处理结果

上海市黄浦区人民法院于 2020 年 12 月 30 日作出一审判决，认定纽巴伦等被告生产销售带有“”标识的运动鞋构成商标侵权，判令被告赔偿经济损失及合理费用人民币 2500 万元，上海知识产权法院于 2022 年 3 月 12 日作出终审判决，全部维持一审判决。现本案正在强制执行程序中，目前已执行到位 230 多万元，同时法院正在对被告名下被保全的商标进行评估和拍卖。在此之前，纽巴伦及其关联公司通过不断进行商标转让方式进行金蝉脱壳，逃避生效判决，反复实施相同的侵权行为。其名下商标被执行后，纽巴伦终将失去其赖以寄生的权利基础。

与本案密切相关的同一被告的“”案件也于 2022 年 2 月终审，New Balance 获赔 1080 万元。同时，纽巴伦恶意提起的商标侵权诉讼，也被法院依法驳回。至此，New Balance 在对纽巴伦的维权诉讼中获得全面胜利。

推荐理由

本案是我国知识产权发展史上的经典之战，不但在于纽巴伦公司背景之复杂、侵权历史之久及其在“N”字运动鞋山寨历史上的鼻祖地位，也在于人民法院明辨事实真相及审理精要，对案件涉及的多个法律问题展开深入阐述和厘清，最终正本清源，进一步明确了保护在先权利和恶意商标申请 / 使用人的可归责性原则，充分维护了权利人的合法权益。在本案中，权利人多方收集证据，对被告线上线下侵权规模及侵权获利进行充分论证和精细计算，终获法院支持，突破法定赔偿额上限，获得 New Balance 在中国知产维权诉讼的最高额赔偿。本案中对商标无效裁定的溯及力问题、侵权恶意推定方式、商品装潢和注册商标专用权之间的竞合问题等方面的论证，对同类案件具有典型性意义。同时，权利人和人民法院在本案中使用了财产保全、证据保全、临时禁令等多种权利救济手段，在积极探索民事诉讼的诉中救济程序方面也对其他权利人有示范性作用。

New Balance 运动鞋正面

New Barlun 运动鞋正面

New Balance vs. NEW BARLUN for trademark infringement and unfair competition

Recommended Agencies: Shanghai Huangpu District People’s Court/ Shanghai IP Court

Member Company: New Balance Athletics, Inc.

Overall introduction

The infringer NEW BARLUN (China) Co., Ltd. (hereinafter referred to as “NEW BARLUN”) had been one of the largest manufacturers of parasite “N” marked shoes in China. It acquired the two trademarks “”and “”, and had been using them to manufacture and distribute sporting shoes resembling New Balance.

New Balance filed the civil litigation against “” marked shoes before Shanghai Huangpu Court, and the case was officially accepted in July 2016. In this case, New Balance requested to affirm its prior right over “N” decoration, and claimed RMB 30 million as damages for NEW BARLUN’s unfair competition acts. During the 1st instance trial, NEW BARLUN’s “” mark was invalidated by CNIPA. The Court held that NEW BARLUN constituted trademark infringement against New Balance and awarded a total compensation of RMB 25 million.

Results

The final judgment by Shanghai IP Court was rendered on March 12th, 2022, fully upholding the 1st instance judgment made by Shanghai Huangpu Court and the damages award of RMB 25 million. The judgment is now effective and is under compulsory enforcement. RMB 2.3 million cash was successfully enforced and trademarks owned by NEW BARLUN are being evaluated and auctioned by Court.

Summary of Recommendation Reasons

The battle between NEW BARLUN and New Balance is a legendary IP campaign, not only because of NEW BARLUN’s influence and position as the originator of parasite “N” marked sporting shoes as well as the long infringement history, but also because of the professionalism and exemplary standards demonstrated by the Courts during the trials. Through careful investigations into the evidential facts and detailed elaborations, the Courts restored the truthful fact that NEW BARLUN was a malicious infringer under the cover of legitimate trademark owner. The case set up rules for multiple sophisticated IP legal issues, including the retrospective effect of trademark invalidation decisions, liabilities of bad-faith infringement during gap period between trademark publication date and registration date, the reasoning to confirm infringer’s malice, principle of protecting prior-rights, the concurrence of anti-unfair decoration right and trademark right, etc. It will provide illustrative examples for similar infringement cases. Furthermore, New Balance and Courts explored and almost exhausted remedy procedures in civil proceedings, including asset preservations, evidence preservation, injunction order, which also encouraged other IP right holders to cease infringement and protect their legitimate rights.

New Balance 运动鞋侧面

New Barlun 运动鞋侧面

环球公司诉广州市彩琳公司等侵害著作权及不正当竞争纠纷案

推荐机关：江苏省南京市中级人民法院

会员公司：NBC 环球

案情简介

小黄人系列电影是电影史上票房最高的动画电影之一，无论是“小黄人”系列电影还是其衍生品在市场上均具有极高的知名度。Universal City Studios LLC 尤尼维瑟城电影制片厂有限责任公司（下称“环球公司”）在多个商品和服务类别注册了“小黄人”相关商标，同时也是“小黄人”卡通形象的著作权人。然而，一家广州当地的企业，即本案被告之一，于 2014 年在第 3 类化妆品等商品上恶意抢注了“小黄人”中文商标，并一度出价 1000 万进行售卖。虽然在商标确权争议程序未能异议该注册，但环球公司持续监控该企业对“小黄人”商标的使用。随后发现本案被告等在未获得授权的情况下，在其线上 / 线下产品的生产、销售及宣传推广中使用“小黄人”抢注商标及与“小黄人”形象近似的卡通形象，同时伴随其他误导性的虚假宣传行为，涉嫌构成著作权侵权及不正当竞争。环球公司授权其关联公司环球影画（上海）商贸有限公司，于 2021 年 5 月 7 日向南京中院提起了民事诉讼，主张被告侵犯著作权、擅自使用“小黄人（minions）”标识的混淆行为及虚假宣传不正当竞争，要求两被告立即停止侵权行为，消除影响，赔偿经济损失及合理费用等共 500 万元。

处理结果

2022 年 4 月 25 日，南京中院一审认定被告构成对环球公司“小黄人”美术作品著作权的侵权，同时构成擅自使用原告有一定影响的商品名称【“小黄人（minions）” 角色名称】、及虚假宣传其为“小黄人中国唯一商标持有人”的不正当竞争行为，判令被告立即停止侵权、消除影响并全额支持判赔法定赔偿最高额 500 万元。

推荐理由

1. 本案是反法下商品化权和注册商标权利冲突情况下突破性的案例。被告抢先注册商标并不影响，“小黄人”的角色名称被认定为有一定影响的商品名称，受反法保护。

本案主要难点在于，被告彩琳公司拥有有效的“小黄人”注册商标，且注册商标的申请日较早，这也是其借以开展大规模侵权的“权利外衣”，针对被告的打击具有特殊性和极大难度。但其并未严格规范性使用其注册商标，同时通过著作权侵权、虚假宣传等多种方式的行为恶意制造相关公众的混淆误认。南京中院经审理认定，尽管环球公司的相关电影在被告注册商标申请日前并未在中国上映，但“小黄人（minions）” 角色名称通过环球公司的大量实际使用、宣传，已经在中国具有较高的知名度，具有区别商品来源的作用，应当认定为有一定影响的标识，受《反不正当竞争法》所保护，限制了被告恶意抢注商标的引人误解的使用方式，很大程度上使得恶意抢注人的抢注目的落空。

2. 认定严谨缜密又直击要害，遏制了仅抄袭作品中具体独创性的局部的著作权侵权行为。

被告试图通过抢注商标和对“小黄人”形象作出调整等手段混淆公众的同时刻意规避侵权责任。其抄袭、模仿“小黄人”卡通形象并进行一定程度的改变。但南京中院法官经过对大量证据的研判，在确认双方作品完成时间先后、被告确有接触环球电影作品的情形下，着眼在被告与小黄人最具独创性的设计元素进行侵权对比、最终认定双方作品构成实质性近似，对于“小黄人”卡通形象整体及眼睛局部造型著作权均予以保护，规制了构成实质性近似但又试图通过局部改动逃避法律责任的著作权侵权行为。

3. 优化诉讼策略，另辟蹊径解决注册时间早的恶意抢注商标的又一次有效探索。

较早注册的恶意抢注，一直是困扰品牌权利人的难题。本案权利人充分运用法律赋予的救济手段，通过开拓性的方式——结合反法和著作权法途径的救济，并得到了南京中院有震慑力的判赔，最终顺利解决一例在先注册长达近十年的恶意抢注商标，为在华品牌权利人解决注册时间较早的恶意抢注提供了有益的尝试和探索。

Copyright infringement and unfair competition civil litigation, Universal against Guangzhou Cailin Daily Chemical Co., Ltd. and other entities

Recommended Agencies: Nanjing Intermediate People's Court of Jiangsu Province

Member Company: NBCUniversal

Overall introduction

The Minions franchise is one of the most popular animations in the film history. Minions and related characters in the franchise have high reputations in the market. Universal City Studios LLC. ("Universal") has registered the trademarks "Xiao Huang Ren (in Chinese)/Minions" under several goods and services, and is also the copyright owner of the "Minions" character. However, in 2014, a Guangzhou local company, Guangzhou Cailin Daily Chemical Co., Ltd ("Cailin"), pre-emptively registered the Chinese trademark " Xiao Huang Ren (in Chinese)" in Class 3 cosmetics, facial cleansers, etc., and offered RMB 10 million to sell the trademark. Although Universal's opposition and other attempts had not supported by the CTMO, Cailin's use of the trademark has been close monitored by Universal, which had obtained Cailin engaged in mass-production, sales and promotion of the dairy products which used cartoon images similar to Universal's copyrighted Minions artworks and "Minions" trademark, it had a few false advertisements to deceive and mislead consumers. According to notarized evidence, Cailin had promoted and sold the infringing products on a large scale online and offline with distributors in many cities across the country, and claimed that "the number of Minions' offline stores has surpassed the number of 6000". With authorization from Universal, the plaintiff, Universal Shanghai entity filed civil litigation against the above copyright infringement and unfair competition with Nanjing Intermediate People's Court on May 7, 2021, claiming that the two defendants had infringed Universal's copyrights and the influential Minions character name, and the conducted false advertisements, and the defendants should immediately stop the infringement conducts, eliminate the impacts and compensate Universal for economic losses and reasonable expenses in a total of 5 million CNY.

Results

On April 25, 2022, the Nanjing Intermediate Court found that the defendants had infringed on the copyright of Universal's Minions artwork, and had used the plaintiff's influential Minions character name without authorization, and had falsely advertised itself as the "sole trademark holder of Xiao Huang Ren in China". The defendants were ordered to immediately stop the infringement, eliminate the impact and total maximum amount of statutory compensation of RMB 5 million was fully supported.

Summary of Recommendation Reasons

1. This is a groundbreaking case under the situation of conflicts between the merchandising right under the Anti-unfair competition law and the registered trademark right. The character name " Xiao Huang Ren(in Chinese)"is regarded a trade name with certain influence, and was protected by Anti-Unfair Competition Law, regardless of trademark registration status.

2. The judgment is meticulously phrased that using even a part of originality expression of the work, would still constitute infringment of copyright.

3. This case explored an alternative way to solve bad-faith trademark registration via optimizing litigation strategies.

雷某、涂某某销售假冒“Honeywell”扫码枪民事诉讼案件

推荐机关：上海市浦东新区人民法院

会员公司：霍尼韦尔国际公司

案情简介

两被告未经原告霍尼韦尔公司授权许可，自 2016 年起在浙江省杭州市余杭区经营假冒“Honeywell”品牌的扫码枪产品，并通过开设 5 家淘宝网店公开销售前述假冒产品。

2017 年 9 月 20 日，经权利人报案，两被告被当地公安查处。

2019 年 7 月 30 日，经审理，余杭区人民法院判决两人构成销售假冒注册商标的商品罪，分别获刑 5 年并处罚金人民币 170 万元和 4 年并处罚金人民币 130 万元。

霍尼韦尔据此先后向杭州市余杭区人民法院和上海市浦东新区人民法院提起诉讼，要求赔偿经济损失人民币 100 万元。

处理结果

判决被告雷某、涂某某于本判决生效之日起十日内连带赔偿原告霍尼韦尔经济损失人民币 1,000,000 元

推荐理由

1、本案侵权事实涉案销售金额特别巨大，公安调取的销售数据显示假货扫码枪的销售数额高达千万元（有多个品牌，以假冒 Honeywell 产品居多），仅判决确定销售金额就达人民币 500 余万元。一方面证明了网络售假的严重性和对品牌所有者的艰巨挑战；另一方面，对该制售假窝点的成功捣毁，并继续采取民事诉讼主张侵权责任，表明了品牌方对打击假冒行为的坚决立场。

2、网络销售平台在证据收集层面提供的帮助也为类似打击网络售假行为提供了有益借鉴。虽然刑事认定层面有较大概率会考虑到刷单的情况而对销售数额进行部分剔除，但对于查清犯罪事实仍然有着显著的作用。

3、翻新产品侵权得到了法院的认定。工业品翻新产品侵权认定在司法实践中一直是一个难点，侵权人往往利用二手回收产品进行改头换面的翻新，并重新加贴标签、包装成新品，以接近或略低于正品市场售价的价格进行出售，其行为实质已经是假冒侵权，但在司法实践中对翻新侵权认定往往没有定论。本案中，民事判决直接认可并引述刑事判决对翻新产品构成侵权的认定，从而支持了原告的诉请。

4、本案原告并不是商标权利人，而是作为商标被许可人的霍尼韦尔（中国）有限公司。主要有两方面考虑，一方面是原被告均为国内主体，法院的审限上有较为明确的要求，可以一定程度上避免涉外因素导致的审限不确定性。另一方面，本案立案之初是以商标权利人作为原告并向侵权行为地法院（余杭法院）起诉的，由于两被告在刑事程序中被判处实刑且尚在服刑，故余杭法院要求到原告住所地法院起诉，主要适用了《民事诉讼法》第 23 条第 4 款的管辖规定。最终，原告向上海市浦东新区人民法院起诉，并成功获得受理。

5、本案的赔偿判罚体现了司法政策的宽严相济。刑事程序中，公安查明网店的销售额高达千万元，但是检察院和法院根据排除合理怀疑的原则指控和认定了 500 余万元的犯罪数额。在本案的审理中，浦东法院也是认可了该事实，并让代理人重新统计了与“Honeywell”品牌侵权产品有关的销售数据（高达 400 万元）。最终，法院以法定赔偿为据全额支持了原告诉请赔偿 100 万元。故而在刑事程序中虽然以刷单等事由剔除了较多存疑销售数额，但是在民事赔偿认定中仍然充分支持了原告诉请。

Civil action against Lei X , Tu XX for selling counterfeit “Honeywell” scanner

Recommended Agencies: Shanghai Pudong New Area People’s Court

Member Company: Honeywell International Inc.

Overall introduction

Without authorization of Honeywell, the defendants selling counterfeit “Honeywell” scanners through 5 Taobao stores in Hangzhou from 2016.On September 20th, 2017, Honeywell reported the case to the local PSB, and the two defendants were arrested by the PSB.On July 30th, 2019, Yuhang District People’s Court sentenced the two defendants to be guilty of crime for selling goods counterfeiting registered trademarks.After that, Honeywell filed a lawsuit with Yuhang District People’s Court in Hangzhou City and Pudong New Area People’s Court in Shanghai City, demanding compensation of RMB1 million for economic losses.

Results

The court judgement decided the defendants TU XX and Lei X shall jointly compensate the plaintiff Honeywell for the economic loss of RMB 1 million within ten days after the effective date of the judgment

Summary of Recommendation Reasons

1. The infringement facts in this case involved a huge sales amount. The sales data obtained by the public security showed that the sales amount of fake scanner was up to RMB 10 million. On the one hand, it demonstrates the seriousness of online counterfeit sales and the formidable challenge to brand owners. On the other hand, the successful destruction of the counterfeiting facility and the continued use of civil litigation to claim liability for infringement demonstrate the brand’s resolute stance in the fight against counterfeiting.

2. The online sales platforms also provided a useful reference in process of evidence collection for similar crackdown on online counterfeiting. Although there is a high probability that the sales amount will be partially excluded because of the bogus transaction, it still has a significant effect on the investigation of criminal facts.

3. The plaintiff in this case is not the trademark owner, but Honeywell (China) Co., Ltd., as the trademark licensee. There are mainly two considerations: 1) the litigant participant are all domestic subjects, and the court has clear requirements on the trial limit, which can avoid the uncertainty on the trial limit caused by foreign factors; and 2) Yuhang Court requested the plaintiff to file a case in the local court, which mainly applied the jurisdiction provisions of Article 23, Paragraph 4 of the Civil Procedure Law.

4. The judgment of compensation in this case reflects the judicial policy of tempering leniency with severity. In criminal proceedings, the police found that the online stores had sales of up to RMB10 million. However, the procuratorate charged and the court determined the crime amount to be RMB5 million according to the principle of beyond reasonable doubt. In civil case, Pudong Court also recognized this fact and request the agent to recount the sales data related to “Honeywell” (Up to 4 million yuan). In the end, the court upheld the plaintiff’s claim for RMB1 million with statutory compensation. Although the amount of doubtful sales was eliminated in criminal proceedings, the plaintiff’s claim is still fully support in civil case.

施耐德电气（中国）有限公司与宿州晟润电气科技有限公司等商标侵权与不正当竞争案

推荐机关：浙江省高级人民法院

会员公司：施耐德电气（中国）有限公司

案情简介

晟润公司原名宿州施耐德电气有限公司。该公司曾申请“Schdianer”商标，但因施耐德电气公司提起异议而未能注册。2019 年，施耐德中国公司发现，晟润公司在其官方网站上多处使用含有“施耐德”的企业名称进行经营活动；2020 年，行政查处活动发现，晟润公司在断路器等商品上使用 “Schdianer Electric 及图”等侵权标识。同时，3C 查询显示，浙江华昌电气有限公司为晟润公司生产断路器产品。因此，施耐德中国公司在温州针对晟润公司、华昌公司等侵权人提起侵害商标权和不正当竞争之诉。

处理结果

2022 年 10 月 12 日，浙江省高级人民法院终审判决认定，宿州晟润公司构成对施耐德中国的商标侵权及不正当竞争，且浙江华昌公司与其构成共同侵权。为给予权利人以充分的司法救济，体现对源头侵权、长期侵权、恶意侵权行为的惩罚力度，浙江高院酌情将宿州晟润公司应承担的损害赔偿额从高调整为 500 万元，并要求华昌公司对其中的 50 万元承担连带责任。

推荐理由

1. 案件严重性：源头侵权、长期侵权、恶意侵权
2. 案件创新性
（1）有效申请律师调查令，查明侵权人侵权所得情况
（2）依据中国强制产品认证规则，成功证明共同侵权
（3）积极应对，克服赔偿时效抗辩
（4）诉前保全、灵活沟通，切实解决执行问题
3. 社会影响：给予权利人以充分的司法救济，体现对源头侵权、长期侵权、恶意侵权行为的惩罚力度，体现了司法机关对知识产权大力保护的决心。

Trademark infringement and unfair competition action against Suzhou Shengrun

Recommended Agencies: Zhejiang High People's Court

Member Company: Schneider Electric (China) Co., Ltd.

Overall introduction

Shengrun used to be called Suzhou Schneider Electric Co., Ltd., and SESE successfully filed an opposition against its trademark application "Schdianer". In 2019, SEC further discovered that Shengrun was using "Schneider" as corporate name to promote on its official website. In 2020, Shengrun was imposed on an administrative penalty for using infringing marks on circuit breakers and other goods. Meanwhile, according to the CCC certificates, it was Zhejiang Huachang Electric Co., Ltd. that manufactured circuit breakers for Shengrun. Therefore, SEC sued them for trademark infringement and unfair competition.

Results

On 12 October 2022, the Zhejiang High People's Court held in final judgment that Shengrun constituted trademark infringement and unfair competition against SEC, and that Huachang constituted joint infringement with Shengrun. Considering the seriousness and clear bad faith of Shengrun, the court raised the compensation up to the maximum amount of CNY 5,000,000 and held that Huachang should be jointly liable for CNY 500,000.

Summary of Recommendation Reasons

1. Seriousness: infringement at source, long-term infringement, and bad faith.

2. Innovativeness of the case

(1) Effectively used the lawyer's investigation order to identify the infringer's profit.

(2) Successfully proved joint infringement with strict compliance requirement of the CCC Certificates.

(3) Actively responded and overcame the defense of statute of limitations.

(4) Resolved enforcement issues with pre-action property preservation and constant communication.

3. Social impact: Granted adequate judicial remedies to the right holder, punished serious infringement, and reflected the determination of the judiciary to vigorously protect intellectual property rights.

C 行政诉讼及司法程序案件
Administrative Cases and Administrative Procedures

无懈可击系列商标行政纠纷案件

推荐机关：北京知识产权法院、北京市高级人民法院

会员公司：联合利华（中国）有限公司

案情简介

联合利华（中国）有限公司（“联合利华公司”）将“无懈可击”用于旗下知名洗发水“清扬 Clear”的广告宣传中。中科联社（北京）网络技术研究院（“中科联社研究院”）是第 8327863 号“无懈可击 WUXIEKEJI”、第 13118044 号“无懈可击”商标（合称“无懈可击商标”）的专用权人，前述两商标获准注册在第 3 类洗发露等商品上。从 2013 年 -2018 年期间中科联社研究院不间断地先后两次对联合利华公司使用“无懈可击”的行为提起侵害商标权纠纷诉讼、行政投诉、行政诉讼，虽然各法院、行政机关均认定联合利华公司的使用行为不构成商标侵权，但是中科联社研究院从未停止所谓“维权行动”。2018 年、2019 年中科联社研究院分别第三次、第四次起诉联合利华公司商标侵权，并散布诋毁联合利华公司的言论，这些行为干扰了联合利华公司正常经营。联合利华公司针对对方的恶意维权行动重新制定策略，除了应对商标侵权诉讼，更决定充分运用商标无效宣告、连续三年不使用撤销商标的行政程序来彻底消除中科联社研究院的商标权利基础，并且对中科联社研究院商业诋毁行为在提起不正当竞争诉讼，对其恶意提起知识产权诉讼的行为提起损害责任纠纷诉讼，作为对其恶意维权行为的反制。

处理结果

1. 经过国家知识产权局行政阶段，北京知识产权法院一审、北京市高级人民法院二审、再审阶段，法院最终支持无懈可击商标应当被宣告无效。

2. 北京市海淀区人民法院一审判决联合利华公司不构成侵权。中科联社不服，上诉于北京知识产权法院，目前正在审理中。

3. 安徽省合肥高新技术产业开发区人民法院认定中科联社研究院构成对联合利华公司的商业诋毁，判决其立即停止侵权行为，赔偿联合利华公司经济损失及合理开支共计 353,500 元，在中科联社研究院的微博“中国积金汇”上连续刊登声明 60 日，消除影响。

推荐理由

本案中商标权人的恶意滋扰给联合利华公司乃至人民法院带来了严重的不良影响。针对重复的恶意商标维权行动，联合利华公司果断调整应对策略，除被动抗辩不构成商标侵权外，借助所有可行的法律途径，包括提起商标无效宣告和连续三年不使用撤销请求、提起恶意提起知识产权诉讼损害责任纠纷和商业诋毁之诉，其中将商标无效、撤三程序和恶意诉讼损害赔偿民事程序相结合，不仅彻底消除了对方恶意“维权”的权利基础，终结长达 10 年的商标侵权恶意滋扰，也为后续赢得恶意诉讼损害赔偿案件奠定基础，发挥攻防双重作用；通过商业诋毁诉讼，使得恶意滋扰者先行付出实质性代价。

Administrative Disputes of Wuxiekeji Trademark Series

Recommended Agencies: Beijing Intellectual Property Court, The High People's Court of Beijing Municipality

Member Company: Unilever (China) Co., Ltd.

Overall introduction

Unilever (China) Co., Ltd. ("Unilever") used "wuxiekeji" ('impeccable' in Chinese) in the advertising of its famous shampoo "Clear". The China Association of Science and Technology (Beijing) Network Technology Research Institute ("China Association of Science and Technology Research Institute") is the exclusive right holder of the No. 8327863 "wuxiekeji" and No. 13118044 "wuxiekeji" trademarks (collectively referred to as "wuxiekeji Trademarks"). The above-mentioned two trademarks have been approved to be registered on class 3 shampoo and other products. From 2013 to 2018, the target company has repeatedly filed trademark infringement disputes, administrative complaints and administrative litigations against Unilever for the use of "wuxiekeji". Although all courts and administrative organs have determined that the use of Unilever does not constitute trademark infringement, it has never stopped the so-called "rights protection action". In 2018 and 2019, it sued Unilever for trademark infringement for the third time and the fourth time respectively, and spread slanders against Unilever, which interfered with the normal operation of Unilever. In addition to responding to trademark infringement litigation, Unilever has also decided to make full use of the administrative procedure of trademark invalidation and file 3-year non-use cancellation against the other party's trademarks to completely eliminate the its trademark right base.

Results

After the administrative stage of the State Intellectual Property Office, the first instance of the Beijing Intellectual Property Court, the second instance and the retrial stage of the Beijing Municipal High People's Court, the court finally supported that the "wuxiekeji" trademark should be declared invalid. Beijing High People's Court ruled that No. 8327863 " 无懈可击 (Impeccable in Chinese) WUXIEKEJI" trademark was invalid on August 31, 2022, and No. 13118044 " 无 懈 可 击 (Impeccable in Chinese) " trademark was invalid on July 29, 2022.

Summary of Recommendation Reasons

In response to repeated malicious trademark rights protection actions, Unilever adjusted its strategy decisively. In addition to that Unilever does not constitute trademark infringement in the passive defense way, it resorted to all feasible legal means, including filing a trademark invalidation and 3-year non-use cancellation, filing the litigation against malicious intellectual property litigation damage liability dispute and the commercial defamation lawsuit, in which the trademark invalidation, 3-year non-use cancellation procedures and the malicious litigation damage compensation civil procedure are combined, it not only completely eliminated the right basis of malicious "rights protection" of the other party, ended the malicious nuisance of trademark infringement for 10 years, but also laid the foundation for the subsequent winning of the malicious litigation of damage compensation case, and played a dual role in attack and defense; through the commercial defamation lawsuit, the malicious harasser pays the substantive price.

第 32830287 号 “Phoenix Venturi Valve” 商标无效宣告案

推荐机关： 国家知识产权局商标局

会员公司： 霍尼韦尔国际公司

案情简介

“Phoenix Controls”是霍尼韦尔国际公司（以下简称“霍尼韦尔公司”）旗下品牌，于 2009 年 5 月 15 日在第 7 类上被申请注册为第 7398558 号“Phoenix Controls”商标（以下简称“引证商标”），核定使用商品包括“进气阀、放气阀”。经过长期地使用和宣传，“Phoenix Controls”品牌在精准气流等环境控制行业领域中有着极高知名度和优良口碑。

申请人李勇于 2018 年 8 月 10 日在第 7 类上申请注册了第 32830287 号“Phoenix Venturi Valve”商标（以下简称“争议商标”，核定使用商品包括“阀门、机器”等。2019 年李勇将该商标转让给“菲尼克斯文丘裏美國自動控制系统有限公司”（以下简称“菲尼克斯公司”。该公司及其关联公司在其阀门类产品上使用上述商标。

2021 年 10 月 29 日，霍尼韦尔公司对上述争议商标申请宣告无效。

处理结果

国家知识产权局认定争议商标与引证商标构成近似，争议商标的注册存在恶意和不正当性，于 2022 年 11 月 17 日裁定争议商标予以宣告无效。

推荐理由

1. 本案对于商标近似的认定，突破了单从商标外观上对比进行的认定。“Phoenix Controls”与“Phoenix Venturi Valve”在字母单词、读音上虽然略有差异，但争议商标“Phoenix Venturi Valve”的首要及显著识别部分“Phoenix”与引证商标“Phoenix Controls”的首词完全相同，皆为“Phoenix”，且争议商标所含“Venturi Valve”一词的中文含义为“文丘里阀”，是通用名称，正是霍尼韦尔公司赖以驰名的商品，加之菲尼克斯公司的中英文名称均明显抄袭自霍尼韦尔公司在精准气流等环境控制领域极其知名的“Phoenix Controls”标识，二者同样使用在阀门类产品上，必然会导致相关公众对商品来源的混淆、误认。国家知识产权局认定二者在字母构成、呼叫、含义上均较为相近，构成近似商标。

2. 本案是打击恶意注册又一典型案例。国家知识产权局在审理争议商标是否应宣告无效时，还考虑了商标近似程度之外的因素，例如李勇摹仿“Phoenix Controls”品牌的主观恶意、商标注册的不正当性和“Phoenix Controls”商标的知名度。霍尼韦尔公司在申请本案争议商标无效的同时，也提出了针对李勇名下与“Phoenix Controls”系列商标近似的另外 6 件商标的无效申请，以便商评委全面审查李勇注册商标的恶意性。目前，该 6 件商标均已被无效。

3. 国家知识产权局认为，争议商标原注册人名下商标 26 件，其中多件商标与霍尼韦尔在先商标高度相近，这些恶意摹仿“Phoenix Controls”的系列注册商标也均已被驳回或无效或在无效程序中，或因与霍尼韦尔享有著作权保护的作品构成实质性近似被商评委宣告无效。此外，商标的申请注册是否具有恶意，基于商标申请注册时的状态进行审查，同时与原申请人申请商标时的主观意图和申请行为密切相关。因此，本案争议商标虽已转让至本案被申请人，但仍无法说明其具备注册商标应有的正当性。因此，争议商标的申请注册已构成 2013 年《商标法》第四十四条第一款所指“以其他不正当手段”取得商标注册之情形。

Invalidation action against the "Phoenix Venturi Valve" trademark No. 32830287 in Class 7

Recommended Agencies: Trademark Office of China National Intellectual Property Administration

Member Company: Honeywell International Inc.

Overall introduction

"Phoenix Controls" is a brand of Honeywell International Inc. (hereinafter referred to as "Honeywell").

It has been registered as a trademark on May 15th, 2009 under No. 7398558 "Phoenix Controls" in Class 7 (hereinafter referred to as "the Cited Trademark"), being approved for registration on the goods of intake valves and deflation valves. Through long-term use and publicity, the brand "Phoenix Controls" has enjoyed a high fame and good reputation in the precision air flow and other environmental control industries.

The applicant Li Yong applied for registration of "Phoenix Venturi Valve" trademark No. 32830287 in Class 7 on August 10th, 2018 (hereinafter referred to as "the Disputed Trademark"), in respect of the goods valves, machines and etc. In 2019, Li Yong assigned the Disputed Trademark to Phoenix Venturi American Automatic Control System Limited (hereinafter referred to as "Phoenix Venturi Company"). The company and its affiliates kept using the above Disputed Trademark on their valve products.

Honeywell filed invalidation against the above Disputed Trademark on October 29th, 2021.

Results

The CNIPA has determined that the Disputed Trademark is similar to the Cited Trademark, and that the registration of the Disputed Trademark has bad faith and it is unfair. The Disputed Trademark was declared to be invalid on November 17th, 2022.

Summary of Recommendation Reasons

1. The recognition of trademark similarity in this case is not only based on the comparison of trademark appearance. Although "Phoenix Controls"and "Phoenix Venturi Valve" are slightly different in letter words and pronunciation, however, "Phoenix", as the first and distinctive part of the Disputed Trademark "Phoenix Venturi Valve", is exactly the same as the first word of the Cited Trademark "Phoenix Controls", which are both "Phoenix". Besides, "Venturi Valve", included in the Disputed Trademark, is a generic name, which is a kind of product that "Phoenix Controls" is known for. In addition, the Phoenix Venturi Company's English and Chinese names are obviously copied from Honeywell's extremely well-known "Phoenix Controls" logo in the field of precision air flow and other environmental controls. The Disputed Trademark and Cited Trademark are both used on valve products, which will inevitably result in a likelihood of confusion among the relevant public as to the source of goods. The CNIPA determined that the two trademarks were similar in letter composition, pronunciation and meaning, constituting similar trademarks.

2. This case is another typical case of cracking down on malicious registration. The CNIPA considered factors other than the degree of similarity of the two trademarks when deciding whether a disputed trademark should be declared invalid. For example, Li Yong's subjective bad-faith of imitating the brand "Phoenix Controls", the impropriety of trademark registration and the popularity of the brand "Phoenix Controls". While filing the invalidation against the Disputed Trademark in this case, Honeywell also filed the invalidation against other 6 trademarks which are similar to the "Phoenix Controls" under Li Yong, so that the CNIPA could comprehensively examine the bad faith of Li Yong's registration. At present, the 6 trademarks have all been invalidated.

3. According to CNIPA, the 26 pieces of trademarks under Li Yong are highly similar to the Honeywell's previous trademarks, which have either been rejected, been in the process of invalidation, or been declared invalid for the reason that they are substantially similar to Honeywell's copyrights. In addition, whether the application of Disputed Trademark is malicious or not is examined based on the status of the trademark application and registration, and is closely related to the original applicant's subjective intention and application behavior when applying for the trademark. Therefore, although the Disputed Trademark in this case has been assigned to the respondent of this case, it still cannot explain that it has the legitimacy to register this trademark. Therefore, the application for registration of the Disputed Trademark has constituted the situation of obtaining trademark registration "by other improper means" referred to in the first paragraph of Article 44 of the Trademark Law of 2013.

广州迅力贸易有限公司跨境商标侵权案

推荐机关：广州市市场监督管理局、广州市南沙区综合行政执法局、香港特别行政区香港海关

会员公司：苹果公司、博柏利有限公司、路易威登马利蒂、开云投资管理集团有限公司

案情简介

假货制售者通常对涉及司法管辖和边界问题比较放松警惕，并在不的同司法管辖区之间“自由”运输非法货物。本案是内地和香港两地行政执法紧密合作，证据互认，成功追溯内地假货制售者的首案，意义重大。

2021 年 1 月 25 日，本案当事人广州迅力贸易有限公司（下称“迅力公司”）在广州市场组织货源，出口整柜侵权商品经香港转运印度尼西亚。2021 年 1 月 27 日，该货柜在香港特别行政区被香港海关查获并立案调查，经查证该货柜中有 17 种假冒多个品牌的商品，各类假冒商品共计 230 箱 30975 件。香港海关认定涉案侵权商品货值按同日汇率中间价计算为人民币 1468959.94 元。

香港海关在调查期间，向海关总署广东分署及广州海关通报本案案件线索。广州海关于 2021 年 3 月 17 日根据广州市双打办相关工作制度及广州海关与广州市市场监督管理局《加强知识产权保护合作协议》的规定，将案件信息移交广州市市场监督管理局处理。

广州市市场监督管理局统筹、指导广州市南沙区综合行政执法局对本案展开调查，突破“粤港两地不同法律体系及办理知识产权案件地域制约”等等多个难题，协同粤港两地多个执法部门，经过长达一年多艰苦卓绝的调查核实，完善认定侵权事实的证据链，于 2022 年 3 月 19 日向迅力公司送达行政处罚听证告知书，并最终于 2022 年 3 月 30 日对本案作出了行政处罚决定书。

处理结果

行政处罚：责令当事人立即停止侵权行为，并按其违法经营额二倍罚款人民币 2937919.88 元。

行刑衔接：本案经广州市市场监督管理部门提请，由广州市南沙区人民检察院建议，广州市公安局南沙区分局于 2022 年 6 月 7 日正式对本案立案侦查。

推荐理由

1. 本案开创了内地与香港不同法律体系下知识产权保护协作的先例

2. 本案开启粤港两地不同法律体系下证据互认的先河，对处理跨境知识产权侵权案件有重要参考意义

3. 本案结合事实和法律，为跨境知识产权侵权案件中解决“复杂外贸关系中当事人的确认”、“两地涉案侵权商品同一性”、“商标侵权客体的确认”等多个难题提供解决思路

4. 多区域多部门高效联动，彰显广州知识产权保护高地的作用

5. 本案当事人被处以高额罚款，涉案犯罪线索由公安机关进一步立案侦查，形成知识产权跨境侵权行为综合打击合力

Cross-border Trademark Infringement Case of Guangzhou Xunli Trading Limited

Recommended Agencies: Guangzhou Municipal Market Regulatory Administration、Guangzhou Nansha District Comprehensive Administrative Law Enforcement Bureau、Hong Kong Customs and Excise Department

Member Company: Apple Inc., Burberry Limited, Louis Vuitton Malletier, Kering Investment Management Group Co., Ltd

Overall introduction

This case is significant because it marks the first instance of successful coordination between Mainland and Hong Kong to successfully trace and punish the distributor of counterfeit products. On 25 January 2021, Guangzhou Xunli Trading Limited declared to export a full container of infringing goods purchased from the Guangzhou market transferring from Hong Kong to Indonesia. On 27 Jan 2021, the container was seized by Hong Kong Customs and the case was filed. The container was found containing 230 cartons of 17 kinds of counterfeit goods and in total 30,975 pcs. The value was determined by Hong Kong Customs to be RMB1468,959.94 based on the exchange rate. During the investigation, Hong Kong Customs informed Guangdong Sub-Administration of GACC and Guangzhou Customs of the clues. Guangzhou Customs transferred the case information to Guangzhou MRA on 17 March 2021 in accordance with relevant working system of Guangzhou Leading Group Office and agreement signed between Guangzhou Customs and Guangzhou MRA. Guangzhou MRA instructed and coordinated with the Guangzhou Nansha District Comprehensive Administrative Law Enforcement Bureau to investigate the case, breaking through many difficulties like “different legal systems of Guangdong and Hong Kong and the geographical constraints in handling IPR cases” etc. After more than a year of investigation, the hearing notice was served on Xunli Company on 19 March 2022, and the penalty decision was finally issued on 30 March 2022.

Results

Administrative penalty: The party was ordered to immediately stop the infringement and fined RMB2937919.88 which is two times of the amount of its illegal turnover.

Criminal prosecution: Nansha District Branch of Guangzhou PSB formally filed the criminal case on 7 June 2022.

Summary of Recommendation Reasons

1. Setting a precedent for collaboration in the protection of intellectual property rights under the different legal systems of the Mainland and Hong Kong

2. The mutual recognition of evidence under the different legal systems of Guangdong and Hong Kong was initiated, which is an important reference for handling cross-border intellectual property infringement cases

3. This case combines facts and law, and provides ideas for solving various problems in cross-border intellectual property infringement cases, such as “identification of parties in complex foreign trade relations”, “identicality of infringing goods involved in two places” and “identification of the object of trademark infringement”

4. Efficient multi-regional and multi-departmental cooperation, highlighting the role of Guangzhou as a highland of intellectual property protection

5. The party involved in this case was fined a high amount of forfeit and the criminal clues involved in the case were further investigated by the Public Security Bureau, forming a comprehensive force to combat cross-border infringement of intellectual property rights

镇江施耐德电器有限公司诉国家知识产权局、施耐德电气（中国）有限公司无效宣告请求行政纠纷

推荐机关：北京知识产权法院、北京市高级人民法院

会员公司：施耐德电气（中国）有限公司

案情简介

2020 年 11 月 12 日，施耐德电气（中国）有限公司（下称“施耐德公司”）对镇江施耐德电器有限公司（下称“镇江施耐德公司”）注册第 19960066 号“Suoyde electric”商标（以下称“诉争商标”）提出无效宣告请求，国家知识产权局经审理认为诉争商标与施耐德公司在先申请的第 G715395 号“Schneider Electric”商标（下称“引证商标一”）和第 G715396 号“Schneider Electric”商标（下称“引证商标二”）构成类似商品上的近似商标，因此裁定诉争商标予以无效宣告。

镇江施耐德公司不服上述裁定，向北京知识产权法院提起行政诉讼，施耐德公司作为第三人参加诉讼。北京知识产权法院经审理认定，诉争商标与引证商标一和引证商标二构成相同或类似商品上的近似商标，易使相关公众认为商品具有相同的来源或其来源之间具有密切的联系，从而产生混淆误认，因此诉争商标的注册违反了《商标法》第三十条的规定，并驳回镇江施耐德公司的诉讼请求。

镇江施耐德公司不服一审判决，向北京市高级人民法院提起上诉。北京市高级人民法院经审理后，驳回其上诉，维持原判。

处理结果

北京市高级人民法院于 2022 年 9 月 28 日作出（2022）京行终 4371 号行政判决书，认定诉争商标与引证商标一和引证商标二已构成使用在同一种或类似商品上的近似商标，原审判决对此认定正确，镇江施耐德公司的上诉理由不能成立，并判决驳回上诉，维持原判。国家知识产权局已于 2022 年 10 月 20 日刊登了诉争商标的无效公告。

推荐理由

1. 诉争商标与施耐德公司的商标在标识本身上有一定差异，仅基于此争辩商标不近似有一定难度。法院从商标知名度及镇江施耐德公司的恶意入手，通过其商号的使用、域名和网页上的使用，认定诉争商标与施耐德公司的商标构成近似，两者的共存易使相关公众认为商品具有相同的来源或其来源之间具有密切的联系，从而产生混淆误认，最终支持了施耐德公司的主张，驳回了镇江施耐德公司的诉讼请求。

2. 法院对施耐德公司主张的支持不仅维护了施耐德公司的权益，使施耐德公司在对镇江施耐德公司采取的民事诉讼中处于更加主动的地位，更是充分体现了国家严厉打击恶意商标注册行为的力度，有助于引导全社会进一步树立正确的商标注册意识。

Zhenjiang Shinaide Appliance Co., Ltd. vs. CNIPA and Schneider Electric

Recommended Agencies: Beijing Intellectual Property Court, Beijing High People's Court

Member Company: Schneider Electric (China) Co., Ltd.

Overall introduction

On 12 November 2020, Schneider Electric (China) Co., Ltd. (hereinafter referred to as "Schneider Electric") filed an invalidation against the trademark No. 19960066 " " (hereinafter referred to as the "disputed trademark") registered by Zhenjiang Shinaide Appliances Co., Ltd. (hereinafter referred to as "Zhenjiang Shinaide"). Through the invalidation examination, the CNIPA held that the disputed trademark, together with trademark No. G715395 "Schneider Electric" (hereinafter referred to as "Cited Trademark I") and trademark No. G715396 "Schneider" (hereinafter referred to as "Cited Trademark II") previously applied by Schneider Electric, constituted similar trademarks used on similar goods, and therefore ruled that the disputed trademark shall be declared invalid.

Zhenjiang Shinaide initiated an administrative lawsuit with Beijing Intellectual Property Court. Schneider Electric participated in the lawsuit as a third party. After examination, Beijing IP Court ruled that the disputed trademark constituted similar marks to Cited Trademark I and II on identical or similar goods. The use of the disputed mark would easily cause confusion among the public in terms of the origins of the goods. Therefore, registration of the disputed trademark violated Article 30 of the Trademark Law, and the litigation filed by Zhenjiang Shinaide was rejected. Zhenjiang Shinaide appealed to Beijing High People's Court. Beijing High People's Court rejected the appeal and upheld the original judgment.

Results

Beijing High People's Court issued the administrative judgment (2022) Jing Xing Zhong No. 4371 on 28 September 2022, affirming that the disputed trademark and Cited Trademark I and Cited Trademark II constituted similar trademarks on the same or similar goods. The original judgment was correct and the grounds of appeal of Zhenjiang Shinaide were not established. The appeal was rejected, and the original judgment was upheld. The CNIPA has published the invalidation of the disputed trademark on 20 October 2022.

Summary of Recommendation Reasons

1. In this case, the overall appearance of the disputed mark and the cited marks of Schneider Electric is somewhat distinguishable. It is not easy to overcome the disputed mark by merely arguing the similarities between the marks.

2. The court not only protected the rights and interests of Schneider Electric, placing Schneider Electric in a more active position in the civil lawsuit against Zhenjiang Shinaide, but also fully demonstrated the efforts in cracking down on malicious trademark registration.

特大农机产品商标侵权行政查处案件

推荐机关：浙江省新昌县市场监督管理局；浙江省绍兴市市场监督管理局

会员公司：迪尔公司

案情简介

2019 年，迪尔公司发现浙江中野有限公司在海外展会上展示了带有与迪尔公司注册商标“”相近似的“”标识的拖拉机。随后，迪尔公司对涉案企业展开了调查。在确认侵权事实后，迪尔公司向绍兴市市场监督管理局及新昌县市场监督管理局发起行政投诉。当地市监部门对案件高度重视，成立专案组开展调查工作。

执法机关在行政查处现场仅发现和查扣了 1 台侵权拖拉机，但查扣到了侵权人的销售记录和财务账册。为了查明涉案金额，专案组多次派人北上前往辽宁、吉林、内蒙古等十余个县市，走访当地的农机市场，寻找和联系下游销售商逐一调查核实购买销售侵权拖拉机的情况。通过办案人员的不懈努力，最终核实到了 86 台侵权拖拉机，认定的涉案金额达 370 余万元。

在案件办理过程中，侵权人利用商标申请程序规则反复提起行政诉讼，以期拖延阻挠调查工作的进行。权利人及执法单位密切关注商标权利的状态，并及时与执法机关研讨对策。在行政处罚决定作出前，执法机关还就案件举行了听证，充分给予了侵权人辩解的机会，并对侵权人提出的多项辩解一一予以回应。最终，新昌县市场监督管理局依法作出行政处罚，认定涉案企业的行为构成商标侵权，没收侵权产品及违法所得，并处罚款人民币 1055 万元。

在行政机关作出行政处罚后，侵权人不服该行政处罚决定提起行政诉讼及针对一审判决的上诉，新昌县人民法院及绍兴市中级人民法院分别就案件作出了驳回侵权人诉讼请求维持的判决，不但维持了新昌县市场监督管理局作出的行政处罚决定，亦维护了商标权利人和消费者的合法权益。

处理结果

《行政处罚决定书》：1. 没收库存的标注图形标识的拖拉机 1 台；2. 没收违法所得 46000 元，罚款 10550000 元。

一审判决：驳回原告浙江中野农机装备有限公司要求撤销被告新昌县市场监督管理局作出的新市监案字 [2021]220 号行政处罚决定书的诉讼请求。

二审判决：驳回上诉，维持原判。

推荐理由

– 案件涉案范围广，金额大，调查难度大

本案的难度在于初始侵权证据来自境外，且现场执法检查过程中查到的侵权拖拉机较少，案件非法经营额几乎都是通过对 4 个省 13 个县（市）经销商的销售情况及农户的使用情况逐一核实进行查实的，涉及范围广，涉案金额大，调查难度大。

– 本案的成功办理还涉及对另案的密切关注和评估

为了对抗调查，侵权企业不断提起商标授权行政诉讼，使其申请商标一直处于有效状态。市场监督管理局在做好案件本身调查的基础上，还要密切关注和评估另案的处理，为案件最终办成铁案排除了障碍。

– 本案被评为国家市场监督管理总局 2021 年度知识产权执法典型案件第一名

本案是近年来商标行政执法领域被处以最高罚款金额的案件之一。本案除商标近似性判断外，还涉及到侵权商品销售证据的有效性、申请中商标的效力等问题。案件的成功办理不仅保护了知名跨国企业在华合法权益，亦为在侵权人申请注册近似商标有效情况下认定商标侵权提供了有利于保护商标权人的成功案例。此外，国家市场监督管理总局于 2022 年 4 月 21 日公布的 2021 年度知识产权执法典型案件中将本案列为第一名。

A significant administrative raid action against trademark infringement of agricultural machinery

Recommended Agencies: Market Supervision Administration of Xinchang County, Zhejiang Province; Market Supervision Administration of Shaoxing Municipality, Zhejiang Province.

Member Company: Deere & Company

Overall introduction

In 2019, Deere & Company discovered at an overseas exhibition that Zhejiang Nakano Farm Machinery Equipment Co., Ltd. was displaying tractors bearing a trademark that was similar to one of Deere & Company's registered trademarks. Thus, Deere & Company filed a complaint to the Shaoxing City Market Supervision Administration and Xinchang County Market Supervision Administration. The MSA attached great importance to this case and formed a task force to investigate. During the raid, the MSA only found one infringing tractor on site. However, they discovered the sales records and financial books of Nakano Company.

To determine the amount of illegal turnover, the MSA visited multiple agricultural machinery markets in 13 cities across 4 provinces, including Liaoning, Jilin, and Inner Mongolia. Through unremitting efforts, the MSA finally affirmed that Nakano Company had sold 86 infringing tractors, and its illegal turnover amounted to more than RMB 3,700,000. Meanwhile, Nakano Company filed several administrative lawsuits regarding the application of the similar trademark involved in this case to obstruct the investigation. The MSA and Deere & Company paid close attention to the related cases and discussed countermeasures timely. Finally, the Xinchang County MSA made a penalty decision against Nakano company after holding a hearing on the case. After the penalty decision was made, Nakano Company filed an administrative lawsuit against it. Then, they were dissatisfied with the judgment of first instance and filed an appeal. Both the Xinchang County Primary People's Court and the Shaoxing City Intermediate People's Court dismissed all the claims of Nakano Company, not only affirming the penalty decision involved but also upholding the legitimate rights and interests of the trademark holder and consumers.

Results

The Xinchang MSA has decided on the following penalty:

1. To confiscate the seized tractor bearing the trademark of "  ";

2. To confiscate the illegal gains amounting to RMB 46,000, and impose a fine of RMB 10,550,000.

The court of first instance ruled as follows:

1. To dismiss Zhejiang Nakano Farm Machinery Equipment Co., Ltd.'s request to rescind the XSJAZ (2021) No. 220 administrative penalty decision made by the defendant, Xinchang County Market Supervision Administration.

The court of second instance upheld the original judgment.

Summary of Recommendation Reasons

1. The challenging aspect of this case is that the initial evidence of infringement was discovered at an overseas exhibition, and during the raid, only one infringing tractor was found by the MSA. Therefore, in order to verify the illegal turnover of the infringer, the MSA had to contact and visit dealers and farmers in 13 cities across 4 provinces one by one.

2. During the investigation, the MSA also has to paid close attention to and actively assessed other related cases regarding the application of the similar trademark involved in this case. The successful resolution of this case not only protected the legitimate rights and interests of multinational enterprises in China, but also established a precedent for determining trademark infringement when the infringer's applications for registration of similar trademarks were valid.

3. This case was ranked first on the list of IPR Enforcement Typical Cases of 2021 by the State Administration for Market Regulation of China. The fine imposed in this case is among the highest in the field of trademark administrative enforcement in recent years.

第 11157214 号“奔富酒园”商标（33 类）无效宣告请求行政纠纷再审案

推荐机关：最高人民法院民事审判第三庭（知识产权审判庭）

会员公司：富邑葡萄酒集团

案情简介

南社布兰兹有限公司（“南社布兰兹公司”）隶属于富邑葡萄酒集团，系富邑葡萄酒集团的 Penfolds/ 奔富等品牌的知识产权持有人。诉争商标“奔富酒园”是由一家晋江公司（“东方明日公司”）于 2012 年 7 月 3 日提出申请，指定使用在第 33 类葡萄酒等商品上。诉争商标于 2015 年 12 月 13 日获得注册公告。南社布兰兹公司对其提出无效宣告，获得商标评审委员会（现国家知识产权局）的支持，即认定诉争商标的注册构成《商标法》第四十四条第一款“以其他不正当手段取得注册”的情形，应予以无效宣告。东方明日公司不服被诉裁定，向北京知识产权法院起诉，未获得支持。东方明日公司不服一审判决，向北京市高级人民法院上诉，获得了支持。二审法院认定东方明日公司的证据可以证明“奔富酒园”已形成一定的市场格局，应予以维持注册，判决撤销一审判决和被诉裁定。南社布兰兹公司不服二审判决，向最高人民法院申请再审。最高人民法院经审理支持了南社布兰兹公司的再审请求。

处理结果

2022 年 7 月 11 日，最高人民法院作出再审判决书，判决撤销二审判决，维持一审判决。最高人民法院在再审判决中认定：1）在诉争商标申请注册前，汉字“奔富”标志指向“Penfolds”的现象在较长时间持续存在；2）根据民事判决的认定，可以认定东方明日公司具有攀附“Penfolds”葡萄酒生产者商誉的故意，谋取不正当利益；3）东方明日及其关联公司在第 33 类、第 35 类等多个商品或服务类别上大量注册包含“奔富酒园”、“宾利”等 250 余件商标，难谓正常经营活动所需；4）至于东方明日公司提交的“奔富酒园”商标注册后的使用证据，由于“以欺骗手段或者其他不正当手段取得注册”主要是指注册手段而不是指注册目的的不正当性，东方明日公司相关使用“奔富酒园”商标的证据不足以证明其注册手段具有正当性。

推荐理由

本案既肯定了富邑葡萄酒集团对于“奔富”所享有的权利，又有力打击了经营者恶意抢注知名商标的行为。最高人民法院在本案中充分考虑了此前相关民事判决中认定的东方明日公司在宣传“奔富酒园”葡萄酒的过程中的商标侵权及不正当竞争的事实，以及东方明日公司等主体大量申请注册含有“奔富”、“宾利”等知名品牌的情况，从而认定“奔富酒园”的注册构成“其他不正当手段取得注册”的情形。这是民事程序与行政程序、诉讼程序与非诉程序互相配合、互相支持并最终取得的成功，无论在司法实践还是对于权利人 IP 保护工作均具有重要意义。

最高人民法院还在判决中指出“以欺骗手段或者其他不正当手段取得注册”主要是指注册手段而不是指注册目的的不正当性，这进一步明确了商标法第四十四条第一款“以其他不正当手段取得注册”的适用条件，即不能以诉争商标进行了大量使用就能证明其注册手段具有正当性。本案的处理策略及法院判决中的法律适用，对今后类似案件的处理具有借鉴意义。

Invalidation Action against Registration 11157214 for 奔富酒园 in Class 33

Recommended Agencies: Supreme People's Court Civil Adjudication Tribunal No.3 (IPR Division)

Member Company: Treasury Wine Estates

Overall introduction

Southcorp is a subsidiary company of TWE and rightsholder of Penfolds/ 奔 富 etc. The disputed mark was applied by East Bright Sunshine company in 2012, covering the goods in Class 33. The disputed mark was approved for registration in 2015. Southcorp filed the invalidation against it and was supported by the TRAB (currently CNIPA) and Beijing IP Court, which found the registration of the disputed mark constituted "the registration was acquired by any other illicit means" and should be invalidated. However, their appeal was supported by Beijing High People's Court, which held that the evidence submitted by East Bright Sunshine could prove that " 奔富酒园 " had formed the certain market share and should be maintained. Finally, The Supreme People's Court (SPC) supported the claims of Southcorp after the retrial.

Results

On 11 July 2022, the SPC made final judgment in favor of Southcorp, which held 1) For the relevant public, Chinese characters " 奔富 " continuously corresponded to the "Penfolds" for a long time on wines; 2) East Bright Sunshine had the intention to free-ride the good fame of "Penfolds" to obtain illicit interests; 3) East Bright Sunshine and its related entities applied more than 250 trademarks which cannot be explained as the needs for normal business operations; 4) East Bright Sunshine's evidence of using 奔 富 酒 园 was not sufficient to prove the legitimacy of registration means of 奔富酒园 .

Summary of Recommendation Reasons

A Ten-year case not only confirmed TWE's legitimate rights on " 奔 富 " trademark, but also effectively cracked down the malicious pre-emptive registration. The SPC took previous civil judgments into account to identify the bad faith of East Bright Sunshine, which is success achieved through combination of civil and administrative procedures.

The SPC clarified that the registration of the concerned trademark could not be justified as legitimate by extensive use of it under Article 44.1 of Trademark Law. The applicable rules in the SPC's judgment could be used as reference for handling similar cases in the future.

百威商标行政诉讼认驰案（（2022）京行终 4303 号）

推荐机关：北京市高级人民法院民事审判第三庭

会员公司：百威（中国）销售有限公司

案情简介

百威公司系上世纪 90 年代首批进入中国市场的啤酒公司之一，1994 年中山市百威食品有限公司（以下简称“百威食品”）成立，其成立后便开始陆续在 30 类（食品类）上注册“百威”相关商标。2015 年，中山市日威食品有限公司（以下简称“日威食品”）从百威食品处受让第 3474356 号“百威月饼”商标（该商标于 2003 年 3 月 4 日申请注册）。在 2014 年至 2016 年期间，日威食品在第 29 类、30 类商品上申请“百威啤酒搭档”“啤酒搭档”“百威伴侣”“啤酒派对”等商标。自 2013 年开始，在各大主流媒体平台上已先后有消费者对“百威啤酒”和“百威月饼”产品混淆，认为二者存在关联关系。2020 年 11 月 26 日，百威公司对第 3474356 号“百威月饼”向国家知识产权局提出无效宣告申请。鉴于该案纠纷形成时间早、证据繁多的特点，经国家知识产权局裁定，北京市知识产权法院一审，北京市高级人民法院二审，认定“百威”自 2003 年 3 月 4 日构成驰名商标，“百威月饼”应予无效宣告。

处理结果

该案历时两年有余，经国家知识产权局、北京知识产权法院审理，鉴于该案事实复杂，庭审中经过多次证据交换，最终北京市高级人民法院二审改判如下：一、认定第 1221628 号“百威”商标在 2003 年 3 月 4 日前已达到驰名状态；二、撤销原一审判决及裁定，指令国家知识产权局重新作出裁定。

推荐理由

该案历时多年，涉及中国知识产权保护的不同发展阶段，最终经北京市高级人民法院二审认定为驰名，起到了定分止争的作用，解决了 20 多年前“百威”商标历史遗留问题。该案主要争议焦点在于：1. 争议商标是否属于恶意注册；2. 争议商标与引证商标的知名度比较；3. 消费者对争议商标与引证商标是否产生了混淆。百威公司通过搜集早期的知名度证据，研究第三人商标、专利历史申请情况、取证大众媒体上消费者的混淆证据，使二审法院在查清以上事实的基础上，支持了百威公司的诉求。该案是进入中国以来，“百威”商标第一次在司法行政程序中获得驰名商标认定的案件，也是集团内部首个通过全部商标程序，最后获得成功并获得驰名的案件，尤其该案件实现了百威的首次跨类保护。该案反映了中国知识产权的保护力度，也反映了日臻完善的法治营商环境，为各级法院处理中国改革开放早期商标权利纠纷问题提供了参考案例，也对早期进入中国市场的外商企业如何进行商标保护具有指导性意义。

Budweiser administrative litigation for well-known trademark （2022） Jing Xing Zhong No.4303

Recommended Agencies: The Third Civil Division of Beijing High People's Court

Member Company: Anheuser-Busch InBev (China) Sales Co., LTD ("Budweiser China")

Overall introduction

Budweiser is one of the pioneering foreign beer companies that entered the Chinese market since 1990s. From 1994, Zhongshan Baiwei Food Co., LTD. ("Baiwei Food"), a non-Budweiser company, began to register "Baiwei"(百威) related trademarks in Class 30 (food). In 2015, Zhongshan Riwei Food Co., LTD. ("Riwei Food"), another non-Budweiser company, acquired the trademark No. 3474356 of " Baiwei Mooncake " (百威月饼) from Baiwei Food. During2014 to 2016, Riwei Food applied for trademarks such as "Baiwei Beer Partner" (百威啤酒搭档) " BeerPartner" (啤酒搭档) " Baiwei mate" (百威伴侣) and " Beer Party" (啤酒排队) in Class 29 and 30. It had been lasting for some time since 2013 that the confusion of consumers betweenBudweiser beer and Baiwei Mooncake products as shown on major mainstream media platforms. Customers started to believe that the two products are closely related. In November 2020, Budweiser China filed an invalid declaration application against No. 3474356 "Baiwei Mooncake" (百威月饼). The case was complicated with numerous evidences. It was firstly ruled by the National Intellectual Property Office, then appealed by two-tie courts in Beijing. Finally, the trademark No.1221628 of "Budweiser" (百 威) was decided as a well-known trademark and "Baiwei Mooncake"(百威月饼) was declared invalid.

Results

The case lasted more than two years and was heard by the National Intellectual Property Office and the Beijing Intellectual Property Court. In view of the complexity of the facts, after many rounds of evidence exchange, the Beijing High People's Court ruled as follows:

1. It is recognized that Trademark No. 1221628 of " 百威 " has reached well-known status before March 4, 2003;
2. The original judgment and written order of first instance shall be cancelled and the National Intellectual Property Office shall be ordered to make a new ruling.

Summary of Recommendation Reasons

The case involved different developing stages of intellectual property protection in China, and was finally recognized by the Beijing High People's Court in the second instance. It played an important role in settling disputes and resolved the historical problems of Budweiser trademark left over 20 years ago. The main disputes in this case are: 1. Whether the disputed trademark was registered in a bad faith; 2. Popularity comparison between the disputed trademark and the cited trademark; 3. Whether consumers were confused with the disputed trademark and the cited trademark. By collecting evidence of popularity, studying the third party's historical applications for trademarks and patents, and collecting evidence of consumers' confusion in mainstream media, Budweiser convinced the court of second instance to rule in favor of Budweiser on the above facts. The case reflects China's strong protection of IP rights. It is the first time that Budweiser trademark has been recognized as a well-known trademark in judicial administrative procedures. Especially, it is also the first time that Budweiser Brand got cross-class trademark protection. This case improved a better business environment for foreign enterprises under the rule of law, being a guiding case for courts at all levels to deal with trademark rights disputes in the early stage of China's reform and opening up, and for foreign enterprises to deal with trademark protection issues.

第 19051535 号“sweet puma”商标无效宣告请求行政诉讼二审案

推荐机关：北京市高级人民法院

会员公司：彪马欧洲公司

案情简介

北京甜心豹网络科技有限公司（“第三人”）在 2016 年 2 月申请了第 19051535 号 sweet puma 商标（以下简称“诉争商标”）。彪马欧洲公司（以下简称“彪马公司”）对其提出的异议和无效宣告申请均未被国知局支持。在一审判决维持国知局评审裁定之后，彪马公司上诉至北京市高级人民法院。

在二审中，彪马公司在评审阶段和一审阶段已经提交大量证据材料证明 PUMA 商标极高知名度的基础上，又补充提交了若干新证据，包括 PUMA 社交俱乐部相关报告、其他品牌跨界经营的相关报道、PUMA 等词条的释义、PUMA 商标在新近案件中被认定为驰名商标的记录等。

2022 年 10 月，北京高院在审理了大量翔实有力的证据材料后做出终审判决，认定引证商标于诉争商标申请日前为相关公众所熟知，构成在先驰名商标，诉争商标构成对彪马公司第 25 类第 76554 号 PUMA 商标（“引证商标”）的摹仿。虽然诉争商标核定使用的服务与引证商标核定使用的商品不属于类似，但由于“运动衣、运动裤、运动鞋”商品的消费对象、销售渠道、使用场景广泛，其在日常宣传推广中有可能与“咖啡馆、酒吧服务”等服务产生一定关联，相关公众存在一定的重合度。在引证商标具有极高知名度的情况下，二者在市场上共存容易使相关公众认为诉争商标与引证商标具有相当程度的联系，从而误导公众，损害彪马公司的合法利益，因此诉争商标违反了 2013 年商标法第十三条第三款之规定。

处理结果

二审判决撤销了一审判决和国知局维持争议商标的裁定，判定国知局重新做出裁定。

推荐理由

1. 商标授权确权行政纠纷中二审新证据的提交至关重要，尤其在主张驰名的案件中，针对一审判决和被诉裁定的认定、多角度举证证明诉争商标核定服务与引证商标赖以驰名的商品之间的关联性尤为重要。

2. 本案是中国法院首次在针对服务上注册的诉争商标认定 PUMA 为驰名商标，并给予跨类保护，拓宽了 PUMA 驰名商标的保护范围，对以后意图抄袭模仿彪马公司商标的不法企业和个人有较强的震慑作用。

3. 本案的判决书一经做出就由知产宝公众号在 2022 年 11 月进行了报道“二审改判！北京高院认定彪马构成驰名商标，予以跨类保护”；同月隆安知识产权公众号也就此案发布了“隆安捷报”；麦仕奇知识产权公众号还在 2023 年 1 月发文“中国：PUMA 诉 Sweet Puma 商标无效宣告案”对本案进行了介绍。通过各专业媒体的宣传报道，本案产生了较好的社会效果。

Appeal of Administrative Litigation Regarding PUMA SE's Invalidation Request against trademark No. 19051535 for "sweet puma"

Recommended Agencies: Beijing High People's Court

Member Company: PUMA SE

Overall introduction

Beijing Tianxinbao Network Technology Co., Ltd. ("Tianxinbao") applied for "sweet puma" No. 19051535 ("the disputed mark") in February 2016 on services "café, etc." in class 43. PUMA SE ("PUMA") lodged an opposition and invalidation action against it, but both failed. After the failure of first instance of administrative litigation, PUMA appealed to the Beijing High People's Court ("High Court").

In the second proceedings, PUMA submitted a number of new evidence, in addition to the extensive evidence submitted during the administrative stage and the first instance stage to prove the high popularity of the PUMA trademark.

In October 2022, the Beijing High Court issued a final judgment after reviewing a large amount of informative and powerful evidential materials, finding that the cited mark was known to the relevant public before the filing date of the disputed mark and constituted a prior well-known trademark, and that the disputed mark constituted a copy of the cited mark. Although the services of the disputed mark are not similar to the goods of the cited mark, the coexistence of the two in the market may easily make the relevant public think that the disputed mark has a considerable degree of connection with the cited mark, thus misleading the public and harming the legitimate interests of PUMA, and therefore the dispute mark violates Article 13(iii) of the Trademark Law of 2013.

Results

The second instance judgment reversed the first instance judgment and the decision of the CNIPA, and ruled the CNIPA to make a new decision.

Summary of Recommendation Reasons

1. The submission of new evidence in the second instance of administrative disputes over trademarks is crucial, especially in cases claiming well-known marks.

2. This case is the first time that a Chinese court has recognized PUMA as a well-known trademark to grant cross-class protection against a trademark registered for services (rather than goods), which further broadens the scope of protection for PUMA as a well-known trademark in China and has a strong deterrent effect on unlawful trademark copycat.

3. The verdict of this case was reported by IPHOUSE, Longan IPR, Maersky IP Public, etc. Through the publicity and coverage of various professional medias, the case has produced a good social effect.

对浦江县某日用品有限公司生产侵犯 AVENT 商标的母婴产品的行政执法

推荐机关：浙江省金华市浦江县市场监督管理局

会员公司：飞利浦（中国）投资有限公司

案情简介

案件背景：

自 2018 年，飞利浦在多个国家 / 地区发现带有“AVEAT”/“AVAET”标识的侵权母婴产品，我司对“AVENT”商标在全球及重灾区的备案部署及海关线上线下培训。通过海关布控对进口和出口，两头掐住侵权产品的流通路线，并借此收集积累溯源信息。通过各地海关积极主动查扣侵权产品进行溯源。自 2020 年至今，宁波海关隶属北仑海关查扣了 6 批出口的侵权“AVEAT”母婴产品并提供溯源协助。2022 年 6 月 1 日，宁波海关隶属梅山海关查扣了一批假冒“AVENT”奶嘴产品，“浦江县某日用品有限公司”名字显示在产品包装箱上。2022 年 7 月，上海海关隶属洋山海关查扣到一批“AVEAT”奶瓶并协助提供产品图片及现场勘察核实，最终从奶瓶包装盒上的条形码关联到一家“浦江县某日用品有限公司”，结合梅山海关的查扣信息，进一步确认了侵权源头。

经实地调查，浦江县某日用品有限公司内生产并存有大量侵权成品及包装彩盒及生产工具。鉴于工厂内的侵权品多、日出货量大、等候时间过长可能会有货物并运走的情况，我司进行了现场公证以固定侵权证据并立即向浙江省金华市浦江县市场监督管理局投诉，请求行政执法。浦江县市场监督管理局了解案件情况后高度重视，于 2022 年 9 月 22 日，由该局所长带队进行行政查处，现场共查获了 22948 件侵权“AVEAT”产品、672 件假冒“AVENT”产品以及上万件侵权彩色包装盒，涉案金额高达两百万元人民币。

处理结果

浦江县市监局出具了处罚决定书，没收所有扣押在案的侵权产品，对侵权工厂处以十万元罚款。

推荐理由

一、通过海关主动查扣侵权产品，成功溯源到侵权产品的生产厂家

通常，海关查扣侵犯权利人商标权货物的案件中，一般只能处罚进出口公司而非侵权源头；且大部分进出口公司规模小，极易注销，较难通过此信息挖掘出侵权源头。本案操作另辟蹊径，从查扣的侵权产品细节处入手，通过扫描产品包装盒上的条形码，结合其他细节，通过工商内档查询，深入调查等方式，成功溯源到侵权产品生产商。宁波及上海上下级海关对侵权产品的积极主动查扣以及向权利人提供的产品拍照核实起到了产品溯源的重要作用，为找到最终侵权生产厂家奠定了基础。

二、侵权人大量生产并销售侵权和假冒的飞利浦奶瓶产品，并多次出口海外，涉案产品货值大，侵权规模广，情节严重，海关起到主动防控和查扣的积极作用。

三、在调查现场成功予以现场公证，成功固定侵权证据

在调查侵权产品生产商时，及时对现场的侵权证据予以固定，为后期行政执法行动与民事诉讼做好准备，同时也避免了因出货迅速，而无法予以及时打击的困境。

四、宁波和上海两地上下级海关积极查扣出口产品抑制侵权产品出口，浦江县市监局采取行政行动打击了侵权生产商，对当地其他的假货生产商造成一定震慑力。

Administrative raid against a Pujiang XX Daily Necessities Co., Ltd. Manufacturing mother and childcare products infringing AVENT trademark

Recommended Agencies: Pujiang County Administration for Market Regulation, Jinhua City, Zhejiang Province

Member Company: PHILIPS (China) Investment Co., Ltd

Overall introduction

Since 2018, Philips has identified infringing mother and childcare products with the "AVEAT" / "AVAET" logo in several countries/regions. We deployed Customs monitor globally and especially in the most affected areas for protecting "AVENT" trademark, via Customs training online and offline and Customs recordal. Through this, we are able to pinpoint the spread routes of the infringing products at both ends and use them to collect and accumulate traceability information, through proactive seizure of infringing products by local Customs. Since 2020, Beilun Customs has seized six batches of infringing "AVEAT" products and provided traceability assistance. In July 2022, a shipment of "AVEAT" milk bottles was seized by Yangshan Customs, who assisted in providing pictures of the products and on-site inspection for verification, and eventually linked the barcode on the packaging box of the infringing bottles to a Pujiang XX Daily Necessities Co., Ltd.. In July, 2022, Yangshan Customs seized a batch of "AVEAT" feeding bottles. According to the photos of bar code on the package of the seized goods, a company named Pujiang XX Daily Necessities Co., Ltd. is found. Together with the information from the seizure by Meishan Customs, the source of the infringing product was verified.

Through in-depth investigations, a large number of infringing finished products, packaging and production tools were found in Pujiang XX Daily Necessities Co., Ltd.. Considering the possibility of the infringing goods being shipped away, an on-site notarization to fix infringement evidence was conducted and an immediate administrative complaint was filed with Pujiang MSA for administrative enforcement. Pujiang MSA paid much attention to the case. On Sep. 22, 2022, the chief of Pujiang MSA led the administrative enforcement with a seizure of 22,948 pcs of infringing "AVEAT" products and 672 pcs of counterfeit "AVENT" products and tens of thousands of infringing packaging, a total amount of RMB 2 million.

Results

Pujiang MSA issued penalty decision and seized all counterfeit and infringing goods, with a fine of CNY 100,000.

Summary of Recommendation Reasons

1. Proactive seizure by the Shanghai and Ningbo Customs and its subordinate Customs laid important and successful foundation on the identification and trace to the ultimate manufacturer of the infringing/counterfeit products.

2. The infringer produced and sold large amount of infringing and counterfeit PHILIPS feeding bottles to foreign countries. The case involved large value of goods, scale of infringement and was of serious circumstances. The Customs involved in this case played an important role of proactive monitor and seizure.

3. Immediate notarization to fix infringement evidence onsite the investigation to help the administrative enforcement and future civil action.

4. Shanghai and Ningbo Customs and its subordinate Customs proactive and diligent monitor and seize exporting infringing goods, which successfully suppress the trading of infringing products. Pujiang MSA conducted administrative enforcement to effectively crack down on the infringing manufacturers and deterred the local counterfeit manufacturers.

第 527802 号“POLO”商标权撤销复审行政纠纷案

推荐机关：北京市高级人民法院

会员公司：拉夫劳伦亚太有限公司

案情简介

诉争商标第 527802 号“POLO”商标，于 1990 年 8 月 30 日获准注册，核定使用在第 25 类“衣服”商品上。2017 年，爱驰公司以连续三年未使用为由对诉争商标提起撤销申请。北京知识产权法院作出一审判决认为，证据显示的实际使用商标均为“POLO RALPH LAUREN”“POLO 及图”等标识，指向拉夫劳伦的其他注册商标，而非本案诉争商标；单独使用“POLO”标识的情形在上千页证据中仅零星出现了几处，且几乎均存在指向境外店铺销售、无法证明在中国境内使用的情形，故诉争商标应予撤销。拉夫劳伦对一审判决不服，向北京市高级人民法院提起上诉。

处理结果

北京市高级人民法院作出二审判决认为，诉争商标被完整展示于专卖店中待售的和公众号宣传图文中的服装商品上，上述证据中虽存在与案外商标共同显示在同一商品上的情形，但其能够证明诉争商标权利人对诉争商标在服装商品上的商业使用行为，且该行为已使得诉争商标实际发挥了标识商品来源的作用；诉争商标应当予以维持，并判令国知局重新做出裁定。

推荐理由

1. “POLO”作为拉夫劳伦的核心商标之一，诉争商标一旦被撤销，可能对拉夫劳伦的商誉及中国大陆的发展带来极大的威胁。

2. 在撤销复审及一审结果均不利的情况下，我们在二审中补充了大量证据，并对使用证据进行了详细的梳理，最终推翻了此前的不利一审判决和复审决定。

3. 本案诉争商标的维持稳固了拉夫劳伦对“POLO”享有的权利，也有利于拉夫劳伦对山寨品牌进行维权。

The Non-Use Cancellation Administrative Litigation Against the Mark for "POLO" under Reg. No. 527802

Recommended Agencies: Beijing High People's Court

Member Company: RALPH LAUREN ASIA PACIFIC LIMITED

Overall introduction

The Disputed Mark No. 527802 for "POLO" was applied by Ralph Lauren and approved for registration on August 30, 1990 for "Clothing" in Class 25. Aichi applied to cancel the Disputed Mark on the basis that this mark had not been used for 3 consecutive years. On first instance, the Beijing IP Court held that the evidence showed that the marks used were "POLO RALPH LAUREN", "POLO & devices", or other logos, which pointed to other registered marks under the name of Ralph Lauren, rather than the Disputed Mark; and there was only limited evidence on the use of "POLO" alone, and almost all pointed to the sales of foreign stores and could not prove the use in Mainland China. Therefore, the Beijing IP Court ruled that the Disputed Mark should be cancelled. Ralph Lauren filed an appealed to the Beijing High Court.

Results

The Beijing High Court held that some notary deeds showed that the Disputed Mark was fully displayed on clothes in the physical stores and advertising articles, and the evidence provided by Ralph Lauren could prove the actual commercial use of the Disputed Mark on clothes. The Disputed Mark could identify the source of goods, although in some circumstances it appeared with other marks on the same product simultaneously. Accordingly, the Beijing High Court decided that the Disputed Mark should be maintained and ordered the CNIPA to re-issue a ruling.

Summary of Recommendation Reasons

(1) As a core mark of Ralph Lauren, if the Disputed Mark were revoked, it would pose a great threat to the operation and development of Ralph Lauren in China. (2) Although both the review decision and the first instance judgement were unfavorable, we submitted a large amount of evidence in the second instance, and prepared detailed charts summarizing the effective evidence of use, which finally overturned the above-mentioned unfavorable decisions. (3) The maintenance of the Disputed Mark safeguarded Ralph Lauren's rights to the "POLO" mark, and further pave the path for future right-defending actions against copycats.

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