

Newsletter



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2017 年刊

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In this issue

➤ **Latest Guiding Cases issued by the Supreme People's Court Involving Infringement on New Plant Variety Rights**

Recently, the Supreme People's Court released the 17th batch of five guiding cases, including one related to intellectual property rights.

Guiding Case No. 92 "Laizhou Jinhai Seeds Co., Ltd. vs. Zhangye Fukai Agricultural Science and Technology Co., Ltd. Dispute over infringement of New Plant Variety Rights " aims to define the determination of approximate varieties. According to the agricultural industry standard NY/T1432-2007 "Maize Variety Identification Molecular Techniques", when the number of different loci between two varieties is 1, they shall be considered as approximate varieties; greater than or equal to 2, different varieties. If the number of different loci equals 1, it is insufficient to determine whether they are the same varieties. For those with number of different loci below 2, other factors shall be taken into consideration to determine whether they are different varieties, such as conducting test on expanded range of loci, or submitting validated sample for testing. The burden of proof is borne by the party who are alleged as infringing. It is of great value in guiding the people's courts in proper application of the burden of proof rules, and the trial of similar cases in the field of new plant variety rights. (Source: Supreme People's Court)

➤ **Revised "Anti-Unfair Competition Law" Enters into Force on Jan 1, 2018**

On November 4, 2017, the revision to the Anti-Unfair Competition Law of People's Republic of China ("AUCL"), which came into effect on December 1, 1993, was passed at the 30th meeting of the 12th NPC Standing Committee, and came into force on January 1, 2018.

The newly revised AUCL focuses on regulating unfair competition in the Internet, in particular against false propaganda such as fraudulent transactions and exploitation of reviews in the field of electronic commerce. The revised AUCL clearly stipulates that operators should not make any false or misleading commercial propaganda about the "sales status" or "user rating" of their products, nor can any

operators conduct false or misleading commercial propaganda through such means as fraudulent transactions, otherwise they will face a fine of up to 2 million yuan.

Commercial bribery to seek trading opportunities or competitive advantage, is also one of the acts the new AUCL aims to regulate. The amendment further clarifies the targets of commercial bribery, including the employees of counterparty and the entities and individuals entrusted by the counterparties of the transaction, the organizations and individuals that use their power and influence to influence the transaction. It also stipulates that if an employee of a business operator bribes somebody, it shall be regarded as bribing conducted by the business operator as well, unless he/she can prove that the employee's act of bribing has nothing to do with the business conduct.

The revised AUCL also defines unfair competition conducts in the Internet field such as "malicious implementation of incompatibilities with other network products or services".

➤ **China-Brazil Will Soon Launch PPH Pilot Project**

On November 13, 2017 Director of China Intellectual Property Office, met with Director of Brazilian Industrial Property Office, in Beijing. The two sides conducted in-depth exchanges on further deepening bilateral cooperation and signed a Memorandum of Understanding on Cooperation between the two offices and a Patent Prosecution Highway (PPH) cooperation agreement.

It is reported that the two offices will launch the PPH pilot project on February 1, 2018 to help China and Brazilian patent applications be granted in each other's countries as soon as possible.

Cases in Spotlight

➤ Case Study – Determination of similarity between goods and services

 <p>Disputed Mark in Class 44 covering beauty salon</p>	 <p>引证商标 1、2 第 3 类化妆品等 Cited Marks 1) and 2) in Class 3 covering cosmetics</p>
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DHC, owner of the cited marks, believing the disputed mark constitutes similar with the cited marks in respect of similar goods / services and infringes upon the prior business name rights of DHS and its affiliate company, applied for invalidation of the disputed mark. After receiving the TRAB decision to maintain the registration of the disputed mark, DHC initiated an administrative litigation.

After hearing, the court held that the disputed trademark and the cited marks do constitute similar marks. In addition, the services covered by the disputed mark, namely, beauty salon, manicure, barber shops, etc. in Class 44 and cosmetics products covered by citations overlap in terms of function, usage and target consumer, and constitute similar products and services. The court further affirmed that the disputed mark infringed upon the prior business name of DHC and its affiliate company, and made a ruling to revoke the TRAB decision.

Typical Significance

The court broke through the conventional standard of similar goods / services set forth by the “Guide for Similar Goods and Services”, and affirmed the similarity between cosmetics products in Class 3 and beauty salon services in Class 44, by taking into consideration of the lawyer’s opinions with sufficient evidences and giving attention to the public’s knowledge. On the other hand, the reputation of the cited marks played a vital role in this case.

RSMK news

- **Our company has successfully won an inventions patent for Xin Dayang, Beijing.**

Beijing Xin Dayang Company invention patent named a rapid method to determine the temperature resistance of phytase received a decision rejected by the Patent Office on August 28, 2014, Xin Dayang Company entrusted our company to handle the case of patent review on behalf of the company, after a plea, the State Patent Office Re-examination Committee issued on August 26, 2015 to revoke the original rejection decision 95315. A written decision is made in the decision that the patent can be authorized.