Newsletter

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- **China Supreme Court: Provisions on Publication of Judgments on the Internet**

During a recent press conference, China Supreme Court introduced the revised“Provisions on the Publication of Judgments on the Internet” to the public, and annouced the debut of China Judgements Online APP.

The revision features the following four measures:

1. to include a broader range of judgements that shall be published;

2. to provide more specific regulations on the conditions in which judgements are not subject to online publication;

3. to further improve the operating procedures of judgements publication;

4. to further emphasize public supervision.

According to the revision, judgements that shall be published include court verdicts, rulings, decisions, dismissal notices of petition, orders of payment, administrative bills of mediation, civil bills of mediation on public interest litigation, as well as other judgements which have the effect of suspending or terminating a litigation procedure, or have impact on the sustantive rights and interests, or significant impact on the procedural rights and interests, of the parties involved. Judgements on cases involving personal privacy shall be published online after removal of contents involving personal privacy. In addition, judgements of the first instance, which have been appealed or protested, shall also be included in the range of publication, and be connected with the second-instance judgement to present the whole picture of the cases.

As known, the daily traffic to China Judgements Online website http://wenshu.court.gov.cn/ has been over 20 million since August 2016 and the volume is growing in trend. As of September 16, there have been over 20 million judgements published online and the overall traffic has surpassed 2 billion with visitors from over 190 countries and areas, among which over 500 million visits are from overseas, with over 100 million visits from North America.

- **United Nation: China becomes the World’s Largest Internet Market**

In the recent “2016 Broadband Status Report” published by Broadband Commision of UNESCO, China is found as the largest Internet market of the world with 721 million internet users.

The data shows that, under the continuous strengthening of IP porection, E-commerce activities and related industries are growing at a fast rate in China, which has become a new source of economic growth in the country. In 2015, the E-commerce transaction in China was over 1.83 billion yuan, up 36.5% from the previous year. By UNESCO forecast, there will be 3.5 billion internet users around the world by the end of 2016, compared to 3.2 billion users of last year, which is equipvalent to 47% of the global population.

Cases in Spotlight

- **Tang Yuan Sheng Tang vs Feiyin and Qihoo - Trademark Rights vs Game’s Name**

Case Summary:

Appellant (Plaintiff of the first instance): Beijing Tang Yuan Sheng Tang Entertainment Technology Ltd. (Tang Yuan Sheng Tang)

Appellees (Defendants of the first instance): Guangzhou Feiyin Information Technology Ltd. (Feiyin); Beijing Qihoo Technology Ltd. (Qihoo)

“Gu Jian” (古剑, Ancient Swords) and “Gu Jian Qi Tan” (古剑奇谭, The Legends of Ancient Swords) are both marks in colors and registered in Class 9 for “recorded computer software” as well as in Class 41 for “online games provided through computer networks”. As licensee of both marks, Wang Yuan Sheng Tang company filed a lawsuit against Feiyin for developing and Qihoo for operating an online game named “Gu Jian Qi Xia” (古剑奇侠, The Heroes of Ancient Swords) for trademark infringement. The first instance court didn’t find the name of the alleged infringing game being identical or similar to the plaintiff’s registered trademarks and dismissed the plaintiff’s requests. In disagreement, Wang Yuan Sheng Tang appealed to Guangzhou IP Court, who believed that the name of the alleged infringing game refers to the goods/services that are identical with the designated goods/services of the plaintiff’s registered trademarks, but the alleged infringing name is distinguishable from the two cited marks in terms of typography, layout, graphic design and color combination, especially the overall visual effect achieved

by the choice of font styles, colors, layout of words and background. The court believed that the relevant public will not be confused and hence dismissed the requests of Wang Yuan Sheng Tang once again.

Comment:

In determining trademark infringement, the premise is that the infringer's conduct at issue has constituted trademark use. According to Article 76 of the Implementing Regulation of China Trademark Law, it is an act of trademark infringement to use a symbol identical with or similar to other's registered trademark as the name of product and hence mislead the public. However, there are different opinions on whether the use of trademark as the name of a product shall be determined as trademark use. The name of product is used to distinguish one kind of product from another by summarizing the characteristics of product quality, functions, usage etc. There are mainly two types of words composing a product name: one that describes the product' natures, e.g. quality, features, functions and usages, and the other being made-up words but has become a product name after repetitive use. While the first type of words is used as trademark, it involves fair use; and when the second type of words is used as trademark, there is an issue of product's generic name.

When a product name is in overlapped use with a trademark, therefore, the above-mentioned situations will have impact on the determination of trademark infringement. The Supreme People's Court, in its reply to the trademark infringement and unfair competition case of Yuanhang Tech vs. Tencent Computer System Co. Ltd., indicates that for a name of poker game, to which the relevant public of a certain territorial area are already subscribed to, so long as the party (the defendant)did not use such name as trademark to distinguish the source of goods or services, but to reflect the content and features of the games only, such use shall be considered as fair use. Generally speaking, the change in the visual factors of a game's name, e.g. the type font of Chinese character, layouts and colors, will not affect its function of distinguishing one game from another. But if the visual factors of a trademark are arranged in a unique manner, the protection scope of the trademark is actually limited. In determining this type of trademark infringement, the difference in the above-mentioned visual effects shall be given consideration, otherwise it would allow trademark owner to monopolize the word in an unfair manner in destruction to the balance of interest between trademark right owners and social public. Besides, as far as game products are concerned, the major factors for identifying different sources of games are the games' rules, the systems, the appearances etc. In the case discussed in this article, general public finds the two

games differ in all of the above-mentioned areas, therefore, it is unlikely to cause confusion among the general game players.

- **Maotai vs Hanrong and Jinzun A Case of Trademark Infringement via Advertisement**

Case Summary:

The plaintiff, Guizhou Moutai Group (Moutai), is the right owner of No. 3159143 registered trademark " (designated color)" and No. 3159141 registered trademark "贵州茅台 (Guizhou Maotai)". In the absence of the plaintiff's authorization, the two defendants, Shenzhen Hanrong Century Industrial Co. Ltd. (Hanrong) and Shenzhen Jinzun Winery Co. Ltd. (Jinzun), started a series of promotional events named "Maotai Startup Alliance" in Shenzhen, Xi'an and Chengdu etc. and used the above-mentioned registered trademarks to sell Maotai original liquor in small bottle. The events were propagated on Hanrong's official website, Shenzhen Financial Daily Channel, Shenzhen Mobile Channel and many other national mainstream websites.

The court believed that, although the defendants did not sell any counterfeit products using the registered trademarks, they did use the  logo, the wording of “Guizhou Moutai Group” and the trademark in the graphic of Guizhou Maotai Liquor extensively on the websites involved, propaganda materials, staff business cards, entrepreneur dealership agreements, as well as in the press conference and the related media reports on TV channels and mainstream websites, which are unauthorized use of the plaintiff’s trademark and constitutes trademark infringement.

Comment:

This case involves a special mode of trademark infringement conduct. According to Article 48 of the Trademark Law, “the use of trademarks as stipulated in this Law refers to the affixation of trademarks to commodities, commodity packaging or containers, as well as commodity exchange documents or the use of trademarks in advertisements, exhibitions, and for other commercial activities, in order to identify the source of the goods”. Any use of other’s trademark shall be based on the authorization or license from the right owners, otherwise, it shall constitute infringement. In this case, although the two defendants did not sell any counterfeit Maotai liquors, their conduct of taking advantage of Moutai’s reputation and using the plaintiff’s registered trademarks to propagate their so-called “Moutai Startup Program” along with sales of other products has also constituted trademark infringement, which could cause even greater damage to the society and the right owner’s business reputation.

RSMK news

➢ Establishment of Ningxia Zhong Wei intellectual property business processing center

In order to effectively handle the company's patent business, our company set up Ningxia Intellectual Property Business Processing Sub-Center in Ningxia Zhongwei on November 8, 2012, and allocated office space and staff.