I: The latest development of IP rights protection in China:

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1. CTMO targets against the trademark squatting cases to strength protection for the registered trademarks; And HFG won the trademark Invalidation case of CADINI/KA T I N I in Chinese characters.

Recently, HFG, on behalf of “GRUPPO CADINI S.R.L.”, got the favorable decision held by the CTMO, which invalided the disputed trademark CADINI/KA T I N I Chinese Character registered by GENNE BRAND MANAGEMENT LIMITED in the trademark invalidation case.

The respondent, GENNE BRAND MANAGEMENT LIMITED, is a HK company, who registered that disputed trademark in 2015 successfully, designated on goods of “bags*, rucksacks / backpacks and handbags, etc.” in class 18.

And the applicant, GRUPPO CADINI S.R.L., has prior registered “CADINI MADE IN ITALY” trademark in 2001, designated on goods of “clothing, footwear, and headgear” in class 25. The cited trademark has enjoyed high reputation and influence in the industry after being operated and promoted by the GRUPPO CADINI S.R.L. for so many years.

After examination, Trademark Review and Adjudication Board of State Administration for Industry and Commerce of the People’s Republic of China (hereinafter referred to as the “TRAB”) held that the significant part of the disputed trademark and the cited trademark are very similar. Besides, the designated goods of the two trademarks constitute similarity in terms of function, sales range and target consumers. Therefore, the disputed trademark constitutes similar trademark applied on similar goods. So the TRAB declared the disputed trademark as invalid trademark.

This case is one of a few invalidation cases decided by the TRAB to protect the prior registered trademark rights through cross-class protection.

【Comments by HFG】The chief attorney of HFG, Lanny states that the designated goods of the two registered trademarks are put into different classes in this case. According to the previous cases held by the CTMO and TRAB, only few cases successfully got cross-class protection by breaking the walls of classes during administrative examination, unless it is a well-known trademark or recognized as a well-known trademark before.

The success of this case indicates the CTMO is intensifying for restraining the trademark squatters and giving more protection for the prior IP rights owners. That attitude likes a boost for cracking down trademark squatters.
2. The US Court dismissed the charge against Alibaba Group on “boosting the sales of counterfeit goods”

On August 5, 2016, US Manhattan Local Court dismissed the charge filed by Kering SA against Alibaba Group on “boosting sales of counterfeit goods” for protecting its sub luxury brand.

In May, 2015, Kering SA filed a lawsuit against Alibaba Group. And this lawsuit in the United States is the second time that Kering SA, on behalf of its brands, Gucci, Balenciaga, BOTTEGA VENETA and YSL etc., filed a litigation against Alibaba Group on the same ground. And this time, it involves in many sellers on three online shopping websites, Alibaba store, Taobao and Alibaba Express, as well as seven subsidiaries related with those three websites under Alibaba Group.

The plaintiff claimed that the defendant Alibaba offers a series of services such as market, logistics and payment etc. to the stores of selling counterfeit goods, and then gains appropriate profits under the knowledge that those sellers are selling counterfeit products. The plaintiff further claimed that besides the counterfeits problems, “Ali-ecological circle” supported by a series of payment services on Alibaba platform promotes the counterfeits selling on line. The plaintiff also expressed “Ali-ecological circle” system finally let the Alibaba and its sellers meet the threshold of committing crimes under RICO (Racketeer Influenced and Corrupt Organizations Act).

The defendant Alibaba Group responded against that accusation that Alibaba Group is just the typical “hub-and-spoke” organization, which one action center only forms bilateral or multilateral cooperation relationship with relevant surrounding staffs, rather than the so called RICO enterprises.

After examination, the Court held that RICO organization needs to meet all the following 3 requirements: 1) the continuity of organization and staff; 2) with the common purpose; 3) distinguish with the inherent inner structure of the organized crime pattern. In the practice, most courts hold “hub-and-spoke” organization does not fill into RICO organization. Therefore, the Court held the Alibaba Group does not a RICO organization.

For another claim from Kering SA, that because more counterfeiting goods selling on the Alibaba platform would attract more buyers and then attract more buyers and sellers both join into Alibaba market, Alibaba Group would gain much more profit from such “network effect”, the Court held that the aforesaid accusation of “network benefit” would not be supported, because the plaintiff did not have the evidence to confirm the sellers selling counterfeits would get much more profit than those of selling genuine goods.
3. “Hong Huang Zhi Li (Chinese term)” swept across the internet and has been applied for trademark registration

During Rio Olympics, the hottest athlete of China must be FU Yuanhui, whose exaggerated words and funny expressions swept across China as clear stream flowing into this hot summer. As an internet instant celebrity, her classic words “I have used my Hong Huang Zhi Li (Chinese Character)” which is an interesting way to say “I drained all the energy that I could” swept across the whole country and become the hottest term right now.

In the era of hot words on the internet are insanely rush-registered as trademarks, whether this one has been registered a trademark? According to trademark database, I am afraid this term, Hong Huang Zhi Li (Chinese Character), has been filed by more than one application for the trademark registration.

【Comments by HFG】This is the another case drawing attention from the whole world after the International anti-counterfeiting coalition (IACC) membership of Alibaba being suspended. In May 2016, under the boycott of a series of famous brands such as MK, Tiffany, Gucci and Longchamp, Alibaba’s membership of IACC was suspended just after getting it for 1 month. The above two events are the signal that the international brands are dissatisfied with the anti-counterfeit action of Alibaba. Even Alibaba won this case, it has caused more people to pay attention to its anti-counterfeit action. If Alibaba cannot get rid of this notorious reputation and win the trust back, its development and expansion seems not going to happen.

The term, Hong Huang Zhi Li (Chinese Character), is not a set-phrase in Chinese vocabulary, which firstly appeared in the lines of a TV soap which adapted from a online novel and played in 2015. However, back at that time, this phrase did not catch people’s eyes. However, some speculators applied the term for trademark registration in 2015 and the CTMO also accepted those applications. Now there is one application has entered into publication stage. This year, because of FU Yuanhui’s interview in Rio, the term, Hong Huang Zhi Li in Chinese Character, is really pushed to the hot spot.
Recently, Beijing Haidian Court accepted a case filed by TOEI ANIMATION CO., LTD. and KABUSHIKI KAISHA BANDAI NAMCO ENTERTAINMENT (ALSO TRADING AS BANDAI NAMCO ENTERTAINMENT INC.) (hereinafter referred to as the Plaintiff) against Beijing Youai Huyu Technology Co., Ltd. (hereinafter referred to as the Defendant) on copyright infringement of One Piece and unfair competition. The Plaintiff requested the Defendant to stop infringement immediately and apologize through all major websites to eliminate the bad influence, as well as 5 million RMB compensate for economic loss plus another RMB300, 000 of reasonable expenses. “One Piece” as a classic cartoon has serialized for more than ten years and is loved deeply by hundreds of millions of Chinese fans who were born between 1970s and 1980s. With the more and more popularity of the mobile games, many classic cartoon characters are adapted into the characters of mobile games. Cao Mao Captain (formerly known as Dream One Piece) in this case was sued to use 214 graphs of artwork from One Piece as the its game characters without any authorization.

The plaintiff further claimed that Cao Mao Captain game is downloaded by a surprisingly large numbers on the 360 platform, which is almost equal of downloads of the authorized “One Piece Sail” game.

Now, this case has been officially accepted by the court.

【Comments by HFG】 The chief attorney of HFG, Lanny comments that, applying the hot word as a trademark is a kind of commercial action. However, to be clarified that the successful registration does not mean it would gain the benefit from the market, nor guarantee profitable business. The reputation from a trademark more depends on the good quality of the products, as well as the good management and operation of the enterprise. And of course, a outstanding trademark absolutely can promote the business.

【Comments by HFG】 Classic characters and background stories in mobile games adapted by other classic cartoon, film or TV images appear all the time in these days. One purpose of doing this is to attract users and easier enter into the market. In the past one year, Beijing local courts received an abundance of cases asking for compensation because of copyright infringements by the mobile games, which such cases also turn out to be the leading IP compensation cases after trademark infringement cases.
II. New trend in China IP industry

5. Interpretation of Interim Measures on management of Internet Advertising

Interim Measures on management of Internet Advertising (hereinafter referred to as the Measures) was released by the CTMO on July 8, 2016, which shall enter into force on September 1, 2016. The articles in the Measures specify the rules for some hot and hard issues in managing internet advertisement. The main content as followings:

1. **Buying rank is identified as internet advertisement:** Article 3 of the Measures points out the “buying ranks for promoting goods or services on the internet” is recognized as internet advertising. Therefore, search engine such as Baidu, shall be defined as advertising publisher when providing ranks buying service. At the same time, the merchant or individual who paid for the ranks shall be defined as advertiser.

2. **Specifying the relevant restricted terms and respective responsibility of internet advertisement:** The Measures regulate that internet advertisement should mark “advertisement” clearly instead of “business promotion”, which is also not acceptable. “Pop-out” advertisement could be closed with one button.

The internet advertisers should be responsible for the authenticity of the content of the advertisement. Meanwhile, advertisements published by enterprises or companies on their own websites or other legal used internet media (such as Weibo account or Wechat public account) shall also be identified as internet advertisement.

Internet information service providers such as e-commerce platforms, wechat and weibo etc., which are not involved in advertisement activities and only provide internet information service has responsibility to stop others publishing illegal advertisements on the platforms when they know or should have known that situation.

3. **Regulating the programmatic process of buying advertisement:** “Programmatic buying” is one operation model specialized in internet advertisement industry, which is called “advertisement union”. It connects advertisers to many small and medium websites and applications, which brings benefits for both parties. However, their inner legal relationship is complicated. The articles 13, 14 and 15 of the Measures specify the relevant party and respective obligation of this programmatic buying advertisement.

4. **Against unfair competition among internet advertisements:** The Measures forbid the unfair competitions such as shield others legal
advertisements, flowing hijack, date hijack, and inducing wrong quote with false statistic data, etc. In juridical practice, the aforesaid unfair competition has been decided as infringement by the court.

6. COC released relevant Rules and Statements for protecting Olympic IP

In this August, nothing is hotter than the Rio Olympic Games. Meanwhile, some merchants in China are trying to take advantage of the Olympics to promote their products. Li Yanjun, Director of Legal Affairs Bureau of the COC’s Marketing Department, also said in an interview that the Bureau was handing more than dozens of cases concerning Olympics free-riding promotion issues now, which involved seven or eight enterprises.

The Statement of urging relevant enterprises to immediately stop the unfair Olympics marketing & promotion (hereafter referred to as the “Statement”) issued on August 3rd by the COC stated that now there had been many cases of infringing the IP rights of Rio Olympic Games for improper marketing in China.

According to the Statement, commercial promotion involving cheering for Olympic athletes, using the count down, medal tally and special reports of the Olympics, applying Olympic landscape elements and data information, or developing/selling Olympics version products by offering the Olympics entrance tickets, providing match-watching and TV Guide are all illegitimate marketing behaviors.

The abovementioned improper marketing behaviors have violated Advertisement Law, Trademark Law, Copyright Law and Olympic symbols protection Law and relevant rules and also broken the rules settled by the Olympic Charter and Contact for the Host City of Olympic Games, which damages the interest of the legal IP right of the authorized sponsors, etc..

【Comments by HFG】HFG comments that, in the view of legislation, the Measures is very positive for advertisement industry especially for internet advertisement, which is in accordance with the basic attitude and basic principle of the Advertisement Law and makes many innovations in specific provisions. Of course, in the practice of the Measures, some articles need to be further clarified. HFG will continue to pay attention to the new issues and challenges in intellectual property field and internet areas after the Measures being implemented.

(Infringement Poster)
For this Rio Olympic Games in 2016, COC issued several statements such as *Appeal to relevant enterprises of observing the service regulations of Olympic marketing and IP rights*, and *Statement on jointly maintaining the marketing order for Olympic IP rights products*, to call on the general public and enterprises to pay attention to protect Olympics IP rights and eradicate any infringements.

【Comments by HFG】Event marketing is one of the most popular ways and behaviors among the merchants. The feature is to connect the enterprise to the certain hot issue in a certain time, in order to draw attention from the public. When conducting such event marketing, relevant laws and regulations should be abided to avoid the infringement. For example, during the Beijing Olympic Games in 2008, a total of 1721 cases concerning the illegitimate use of Olympic Symbols and 5858 cases of infringing the exclusive rights of Olympic Symbols were investigated and prosecuted. Relevant departments have also intensified to crack down such infringements during this Rio Olympic Games. Friendly reminder from HFG: Never ignore the Olympics IP rights and beware of legal risks.

Shanghai HFG Law Firm
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ABOUT HFG

HFG since found in 2003, as a firm uniquely integrated and co-managed by multi-national professionals, persists in providing clients with service of the highest standard and quality all the time. By profound understanding for the commercial requirements of clients from all walks of life all over the world, we do our best to obtain the largest business interests for clients. At the moment, HFG consists of three entities: HFG Law Firm, HFG Intellectual Property Consulting Co. Ltd and HFG Intellectual Property Agency Co. Ltd. and sets up two offices in Beijing and Shanghai.

HFG collects an abundant and diversified knowledge base and multi-lingual communication capability through a long-term practical experience, and does all kinds of intellectual property business for clients in administrative and judicial authorities at various levels at provinces, municipalities directly under the central government and autonomous regions of the country.

HFG integrates the commercial and corporate law services of IP contentious and non-contentious practices, providing a one stop solution to companies whose intangible assets out value the tangibles. Service scope of HFG includes IT communication, petrochemistry, wine such as grape wine, fashion cosmetics, retail and e-commerce trade, food and pharmaceuticals standard, the acquirement of certificate and the earnings of patent technology etc.

Cases completed by HFG are evaluated as the top ten representative criminal cases and top five classic cases by Ministry of Public Security for several continuous years, in addition, the top ten best cases claimed by high quality brand protection committee of CAEFI and the classical lawsuit in that every year by many medium and high courts at many main provinces. HFG has been awarded as the best IP service provider by many international clients for several continuous years.

HFG is recommended by Legal 500 as the No.1 in terms of IP business in Shanghai since 2010 and by MIP ranked in Chambers and Partners and WRT 1000.
Please feel comfort to contact us if you have any advices or opinions for IP news of food industry in this season.

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