

## What's in this issue



p. 2 IP COMPLIANCE  
Authorization Letters:  
so common, yet so unknown



p. 4 IP CHINA  
TOILETPAPER: the “new”  
lack of distinctiveness



p. 6 IP CHINA  
Yipinshi Case: Copyright  
against Trademark Squatting



p. 8 IP ASIA  
GUCCI vs CUGGL: the pink  
parody kills the brand



p. 9 IP CHINA  
Penfolds wins  
with Chinese name  
at China Supreme Court



p. 10 IP ASIA  
Gems Bond vs James Bond:  
Cadbury wins in India



p. 11 IP CHINA  
PUMA vs PUMAH, the privilege  
of Well-Known Trademark



p. 12 IP ASIA  
Xu Beihong painting and  
the NFT copyright dispute

Dear readers,

This November issue starts with an article about IP compliance in China with reference to the Letter of Authorization: we explain what a LoA is, its most common use and the basic legal grounds on which it is based.

The following article touches the topic of refusal of registration issued by the Chinese Trademark Office (CNIPA) on the basis of lack of distinctiveness: TOILETPAPER has been rejected because of its similarity to the hygienic paper.

While copyright usually protects the ‘original works of authorship’, trademark protects items that distinguish or identify a specific product coming from a certain industrial source from other similar ones.

But what happens when copyright is used to fight against trademark squatting? Read the third article to discover the case!

The fourth contribution highlights the controversial decision issued by the Japanese Trademark Office which approved the trademark application for registration for “CUGGL” on clothing and footwear. As you can see from the photo, looks like the brand intentionally chose the wording.

Read then how Penfolds won against its competitor Rush Rich in China, showing that Rush Rich had registered not only their trademark, but also other known foreign brand trademarks, including that of Bentley.

Another case of IP in Asia reveals the victory of Cadbury for its Gems trademark in India, while the next case brings us back to China: Puma recognized as well-known trademark won against PuMah, with a decision that shows China’s zero tolerance for ‘knock-off’ trademark applications.

The last article focuses on a NFT copyright dispute of Xu Beihong’s artwork: at the heart of the controversy is whether the platform constitutes copyright infringement by selling the NFT collection of an artist who passed away more than 50 years ago.

Enjoy reading, stay warm and get ready for the festivities to come!

## IP COMPLIANCE

Authorization Letters:  
so common,  
yet so unknown



An Authorization Letter or Letter of Authorization or Trademark / Brand Authorization Letter (for short “LoA”) is a commonly used document in China business practice.

Although a LoA seems to be a very simple legal document, yet its role, functions and effects are not always well understood by managers, companies, entrepreneurs doing business in China.

In this article we will try to explain what a LoA is, its most common use and the basic legal grounds on which it is based.

A LoA is a confirmation issued by the owner of a trademark. It is, therefore, a “unilateral” declaration, different from a contract that (which is a document expressing an agreement executed by two or more parties).

A LoA usually states that a certain trademark is authorized to be used by a certain company (or, sometimes, individual). To this extent a LoA usually includes the name of the trademark owner, the name of the authorized party, the trademark details, the duration, the authorized use and other particulars or limitations.

In our experience, LoAs are commonly required and issued in three main circumstances:

**[Export]:** a LoA is issued in favor of a supplier that is going to export goods bearing a certain trademark;

**[Retail]:** a LoA is issued to a distributor that is going to open a retail store in a shopping mall or department store;

**[E-commerce]:** a LoA is issued in favor a distributor that is going to open an online store.

### Duration

Although possible from a legal point of view, it is unusual to issue a LoA without a term. The validity of LoAs is normally limited for a fixed time (which may be long or short) or up to a certain date. However, the validity of a LoA cannot be longer than the duration of the right granted on the trademark to which it relates.

### Revocation

Being a unilateral declaration a LoA can normally be revoked by the issuer, unless it was issued in an irrevocable form. The revocation of a LoA must be communicated to

the recipient of the letter. It can, and actually should, also be communicated to the third parties mentioned in the letter (example: the management of the store or shopping mall for which the letter was issued).

### Identification of the parties

It is important that both issuer and recipient are properly identified by using the correct name and address. We would suggest using the correct Chinese name and also attaching a business license of the relevant parties. A LoA should also bear the contact information of the issuer (which can be added in the header or footer of the LoA) for further identification of the parties involved.

### Limitations

Whilst the recipient of a LoA would tend to obtain a simple and potentially wide-open authorization stated in the letter, the issuer and owner of the relevant trademark is understandably more prone to specify the limitations to the use of the trademark in the letter.

Normally, the document in which limitations to the use of a trademark are expressed in the licensing contract, whilst the main purpose of a LoA is to give external visibility to an underlying relationship.

However, if the licensing contract does not permit any “sub-licensing” of the trademark, it may be advisable to state such limitation in the LoA to avoid risks.

Licensing contracts and LoAs are, therefore, closely connected documents, the latter being somewhat the reflection of the former (in that they confirm the authorization to use the trademark).

*Continue reading*

## **Relevant substantial contract (trademark license)**

Releasing a LoA not based on a preexisting contract is dangerous and not advisable, especially if no limitations are expressed in the letter. It is warmly recommended that a LoA be preceded by the negotiation and execution of a contract, which is usually a supply, distribution or, more often, a trademark licensing contract.

## **Trademarks registered abroad**

Usually, LoAs are based on and issued in relation to trademarks that are registered in China. However, it may also happen that an LoAs are requested in relation to trademarks registered in other countries than China. For example, this may happen in commercial relationships involving of cross-border Ecommerce.

## **Trademark Licensing Recordation**

Chinese Trademark Law also regulates the recordation on the trademark license stating that such recordation is “mandatory”. However, the Trademark Law only provides that “without (recordation) filing, the trademark licensing shall not be used against a bona fide third party”. In the practice, trademark license recordation is mostly considered as arbitrary.

Yet we noticed in recent year that local MSA starting to enforce this regulation, by issuing “Notice of Minor Illegal Behaviors” to the licensee.



## **Joint Liability on Multiple Claims**

Trademark Law imposes a supervising liability on the trademark owner for quality of commodity, and a civil claim on product quality issues might also extend to trademark owner. In such scenario, in the lack of trademark license contract and/or recordation, the Authorization Letter Trademark might constitute the evidence and/or the link between the two parties.

## **Management of LoAs**

Given the importance of LoAs, issuers and trademark owners are recommended to establish a management system of their LoAs. Such management system may include adding serial numbers on the LoAs, compiling record forms of LoAs, publishing lists of authorized parties on their official website or official wechat account to allow third-party verification. Defining coherent contents of the LoAs, together with an orderly management of the same, contribute to a better protection of trademarks in China.

**Fabio Giacopello\***  
HFG Law & Intellectual Property

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[\*] Despite the article is quite simple I wish to thank Marco Vinciguerra, Fredrick Xie and Ashely Jia for the contributions. Amazing teamwork.

## IP CHINA

### TOILETPAPER: the “new” lack of distinctiveness



The present article touches the topic of refusal of registration issued by the Chinese Trademark Office (CNIPA) on the basis of lack of distinctiveness (art. 10 Chinese Trademark Law – “TML”).

In recent times we are indeed experiencing an increase in provisional refusals of trademarks that are not only based on the usual ground of art. 30 TML (prior similar trademarks), but they are based on lack of distinctiveness (art. 10 TML).

This is the case - for example - of “TOILETPAPER”.

Founded in 2010, - as reads on the official website - TOILETPAPER is an artist’s magazine created and produced by Maurizio Cattelan, a leading figure in international contemporary art known for his fondness for humor and provocation, and Pierpaolo Ferrari, famous photographer and artistic director.

Since the first issue of TOILETPAPER was published in 2010, Cattelan and Ferrari have created a quirky and audacious universe where ambiguous stories and disturbing imagination are presented, combining commercial photography with a surrealist visual approach. Inspired by a popular culture, the world of advertising, religious iconography and art history. TOILETPAPER investigates the current phenomenon of hyperconsumption of images, all with a delicious dose of irony.



“Maurizio Cattelan: The Last Judgment” first solo exhibition in China, Beijing November 20, 2021 to February 20, 2022

Nowadays TOILETPAPER organizes art exhibitions and artistic events, but has also developed an interesting collection of lifestyle objects that are sold via the website and in retail stores worldwide.

As any operator doing business in China the company approached us and appointed HFG for the trademark registration in China. Clearance done, we optimistically filed the trademark in 2021 designating several classes in

relation to lifestyle products. Unfortunately, the trademark application were all rejected due to lack of distinctiveness.

Well, why lack of distinctiveness?

“Toilet paper / hygienic paper” (in Chinese: 卫生纸) is listed Nice Classification and in the Chinese classification in class 16, sub-class 1603, basic number 160094.

I do agree that if someone attempt to register TOILETPAPER for distinguishing the product “toilet paper / hygienic paper” the trademark is not assolving its distinctive function and shall not be registered.

However, in the present case the trademark is not use for that kind of hygienic paper used in the toilet to accomplish post-event cleaning activity, thus we don’t understand what kind of lack of distinctiveness the examiner saw missing. We did not designate class 16 and any product in relation to that hygienic toilet paper. We filed the trademark in classes 18, 20, 21, 27 and 35 (lifestyle objects).

Optimistically, we then made appeal and explained the usage of the trademark (art magazine, art events and artistic lifestyle objects) and that the lack of distinctiveness cannot simply derive from the fact that the words chosen as trademark have a meaning in English language. This is simply against the most basic principles of trademark law.

Herein the reasoning from CNIPA-TRAB:

*The applicant has filed many pieces of evidences such as brochures, relevant reports, outdoor displays, official websites, licensing agreements, orders, sales invoices, customs declarations, relevant search results, trademark registration information in foreign countries, etc.*

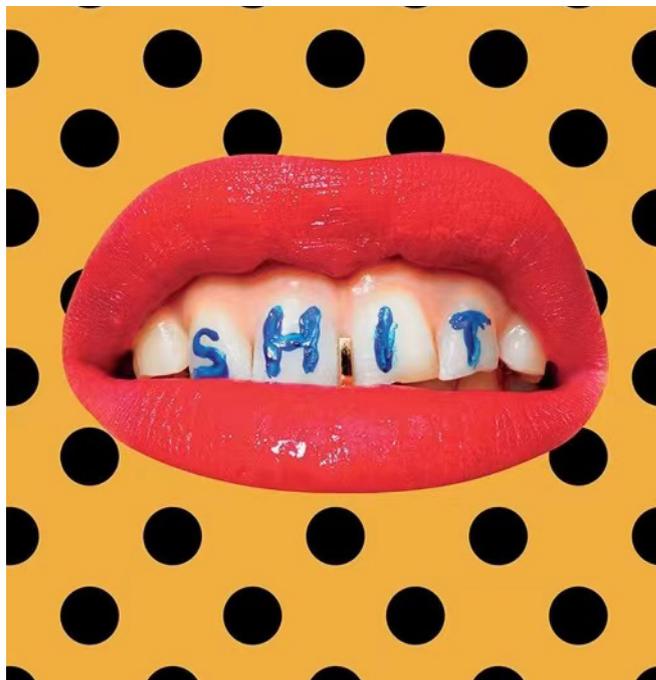
*Continue reading*

*After appeal, the CNIPA held that the applied trademark being used on designated goods cannot distinguish the origin of goods, and lacking distinctiveness as a trademark. Thus, the applied trademark has constituted the situation prescribed by Article 10.1.3 of the Trademark Law.*

We tend to believe that the Trademark Office is flooded with millions of trademark applications and the judgement of the examiners is currently very severe not only on the similarity with prior trademarks but also on the absolute ground, such as the lack of distinctiveness and/or the misleading effect.

However, we tend to - respectfully but firmly - disagree with their decision in considering TOILETPAPER lacking distinctiveness in relation to art magazine and lifestyle goods.

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## IP CHINA

### Yipinshi Case: Copyright against Trademark Squatting



When thinking to copyright we immediately link to books, videos, music, and then it is not easy to see the connection with trademark squatting. While copyright usually protects the ‘original works of authorship’, trademark protects items that distinguish or identify a specific product coming from a certain industrial source from other similar ones.

What happens when copyright is used to fight against trademark squatting? The below case could shed some light on this.

#### Background

Fuku Electronics Co Ltd. (referred as Fuku hereinafter) is a Korean company founded in 1978 and specialized in development and production of electric pressure cookers. In 2006, Fuku developed a cooker with the logo herein (“Yipinshi”) inspired by a famous Korean calligraphy artwork.



The copyright attached to this logo was later assigned to its Chinese subsidiary.

In 2007 and 2008, a Chinese natural person named Zheng Jianhong (referred as Zheng hereinafter) applied for the registrations of “Yipingshi” trademarks covering "kitchen goods" including pressure cookers. The trademarks have been put into actual use on designated goods after registrations.

In 2016, Zheng filed a lawsuit against Fuku for trademark right infringement. Fuku reacted by filing a lawsuit back for copyright infringement. The Shenzhen Intermediate Court ruled in favor of Zheng and the judgement was later upheld by the Guangdong High Court.



From left to right: Yipinshi artwork by Fuku, Yipinshi trademark No.1 and No. 2 applied by Zheng

Fuku then requested a retrial before the Supreme People’s Court.

In December 2021, the Supreme People’s Court made the decision which reversed the original two verdicts, ruling

that Zheng and his company had infringed the copyright of Fuku.

The court held that:

- ✓ Specific calligraphy characters may constitute works of art as long as it’s done by the author independently and embodies their individuality. The “Yipinshi” calligraphy meets the requirement of originality thus should be considered as a work of art and protected by the copyright law.
- ✓ The similarity between the artwork and the trademark in issue is clearly established.
- ✓ Even if the trademarks have been registered for over five years, they still infringe upon Fuku’s prior copyright and Zheng should therefore bear civil liability for copyright infringement.

**Zheng has been ordered to immediately stop infringing the copyright of ‘Yipinshi’ and make a compensation of RMB500,000 to Fuku for its economics losses.**

#### Key Take-aways

This case is of guiding significance for similar cases in the future.

First of all, the Supreme People's Court was of opinion that although the artwork involved is derived from another artwork in the public domain, it still reflects the author's original expression and should constitute a work of art within the meaning of the Copyright Law.

*Continue reading*

Then the court emphasized the principle of the protection on prior rights. Even though the trademarks in dispute have been registered and exceeded the five-year time limit for invalidation, the prior copyright owner still could prohibit the use of them.

The case also strengthens the right owners' confidence and encourages them to fight for their rights when encountering similar trademark squatting and malicious lawsuits. The court considered that the act of Zheng has violated the principle of good-faith and his litigation claims were lack of legitimate right basis.

Last but not least, it also reminds that, when entering into a new market, it is important for a brand to register their rights as soon as possible, make a comprehensive IP rights layout, plan timely and seek expertise from local IP professionals whenever needed.

**Crystal Zhang**  
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## IP ASIA

### GUCCI vs CUGGL: the pink parody kills the brand



With a controversial decision issued on 2022 July 12th, the Japanese Trademark Office (JPO) approved for registration the trademark application for registration for “CUGGL” on clothing and footwear in Class 25.

Let us see the background of the case and try to shade some light on this case.

In October 2020, Nobuaki Kurokawa, an Osaka-based entrepreneur who sells t-shirts parodying famous brands, filed the trademark application for “CUGGL” with a hand-painted line in pink, for use on clothing, footwear, headwear, and apparel in class 25. See herein the specimen.

The Italian fashion house filed an opposition with the JPO on July 26, 2021, and argued that the opposed mark shall not be approved for registration since in contravention of Article 4(1)(vii), (xv), and (xix) of the Trademark Law especially because of the similarity and likelihood of confusion with famous fashion brand “GUCCI”.

Gucci claimed that the published mark is likely to “cause damage to public order or morality” “cause confusion in connection with the goods or services pertaining to [another party’s] business;” and “is identical with, or similar to, a trademark which is well known among consumers in Japan or abroad as that indicating goods or services pertaining to a business of another person, [and is being] used for unfair purposes (referring to the purpose of gaining unfair profits, the purpose of causing damage to the other person, or any other unfair purposes).”

**GUCCI claimed the opposed trademark application was filed in bad faith to take advantages of the Gucci reputation, in a manner of hiding the lower part of the term “CUGGL” by a pink painted line to the extent consumers could recognize it as if “GUCCI”. In fact, the registrant promotes T-shirts bearing the opposed mark with the most part of the term hidden.**

The JPO Opposition Board recognized the remarkable degree of popularity and reputation of the opponent’s “GUCCI” mark. However, at the same time, JPO did not find a resemblance between “GUCCI” and “CUGGL” from visual, phonetic, and conceptual points of view.



According to the JPO, the similarity level was still too low to mislead the consumers about the source of goods, therefore the Board did not find the allegations submitted by Gucci enough convincing to confirm the applicant malicious intention to free-ride the reputation of Gucci and to constitute an unfair-competitor in the Japanese market.

On the base of the above, the JPO approved the trademark application for CUGGL.

The JPO’s decision is quite controversial and shows that the JPO criteria are not necessarily straightforward as GUCCI was expecting.

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## IP CHINA

### Penfolds wins with Chinese name at China Supreme Court



The Australian wine label Penfolds, owned by Treasury Wine Estates, has been available on the Chinese market since 1893. As Chinese consumers speak Chinese, and Penfolds in English does not lend itself well to be spoken in Chinese, the wine label is known in China under the name 奔富 (Ben Fu).

As premium Australian wine, with its own look and feel to its bottles, Penfolds had a Chinese competitor, Rush Rich, that sourced wine from Australia and bottled it in Ben Fu wine bottles. The feel of these bottles would look and feel like Penfolds bottles. This company unfortunately had registered the trademark 奔富酒园 Ben Fu Jiu Yuan (Ben Fu winery) in China.

Apart from legal actions in Australia, which Penfolds won, Penfolds naturally tried to invalidate the trademark 奔富酒园 Ben Fu Jiu Yuan (Ben Fu winery) in China. They succeeded at the Beijing Court. However, the Beijing Higher IP court overturned this decision in appeal. As such, Penfolds had to go to the China Supreme People's Court in order to finally invalidate the trademark.

#### How did Penfolds win at the China Supreme Court?

Penfolds successfully proved to the court that it is known in China under the Chinese name 奔富 (Ben Fu). Furthermore, it showed that Rush Rich had registered other known foreign brand trademarks, including that of Bentley.

After a six-year legal battle between Penfolds and Rush Rich, the Supreme Court of China ruled in favor of Penfolds, and decided that Rush Rich had acted in bad faith. As such, the trademark registration of Rush Rich, 奔富酒园 Ben Fu Jiu Yuan (Ben Fu winery) in China, will be invalidated.

#### Crucial to have a Chinese name

If a company does not have a Chinese name, the Chinese market will in practice create a name for it. Unfortunately, there are many Chinese companies taking advantage of knowledge of the market, who then register these names in bad faith. It is hard to get rid of these registrations.

In the case of Penfolds, luckily the brand had a long reputation in China, and the bad faith company also had registered other famous brands in bad faith. However, it is better to be in a pro-active situation, rather than a reactive one, by registering your Chinese name as soon as possible.

#### Ways to create a Chinese name

There are four ways to create a Chinese name for your company, product or service:

1. Translate the meaning: for example, Apple is Pingguo in China. Literally, Apple.
2. Translate the sound: Siemens is XiMenZi in Chinese. Sounds like Siemens.
3. Translate meaning and make it sound alike: Coca-Cola, KeKou KeLe, meaning delicious happiness.
4. Create a completely new name. Reinout van Malenstein, 王锐宁 (Wang Rui Ning) in Chinese.

#### Help

In case you do not have a Chinese name registered yet as a trademark, please do know that at HFG, we help many companies create a Chinese name, and then successfully register this name as trademark in China.

Reinout van Malenstein  
HFG Law & Intellectual Property

## IP ASIA

### Gems Bond vs James Bond: Cadbury wins in India



In a case that goes back as 2005, between Mondelez India Foods Pvt Ltd, better known as Cadbury, and Neeraj Food Products, the Delhi High Court has finally made its judgement, ruling in favor of the plaintiff.

Cadbury India Ltd. is the trademark owner of registration 'GEMS' for button chocolate covered with colorful candy shells. Additionally, Cadbury also has obtained the copyright registrations for 'GEMS BOND' which has been used over the years for promoting 'GEMS'.

In 2005, Cadbury filed a lawsuit in the Delhi High Court against a competitor, Neeraj Food Products, claiming the infringement of the trademark registration "Gems" in detriment of his IP rights and asking for a permanent injunction and damages.

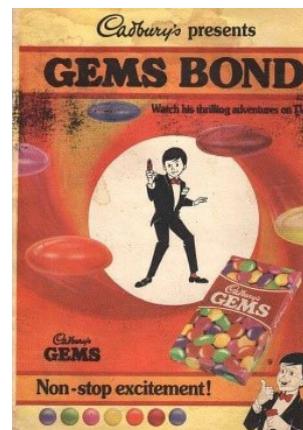
Cadbury argued that Neeraj Food Products had violated its trademark and copyright rights with the use of the mark 'James Bond' and 'Jamey Bond' with the image of chocolate buttons of similar colors as Cadbury's on its packaging.

Cadbury also claimed that they had used advertising for several years under the 'Gems Bond' name.

After the comparison between both the products, the Court recognized and affirmed the popularity and wide-known reputation of Gems when it comes to chocolate products in India. Furthermore, the Court observed not only the trademark "GEMS" but also the whole packaging with those certain colors' layout, should have been recognized as well-known among consumers which reconnect the mentioned box to the trademark of Cadbury. The court said, *"Almost everyone's childhood is associated with the consumption of the plaintiff's 'Cadbury GEMS'/'GEMS'."*

In the light of all these conclusions, the Court stated the existence of the trademark infringement made by Neeraj Food Products on detriment of Cadbury's trademark and confirmed a permanent injunction in favor of Cadbury.

Indeed, Section 11(1) of the Indian Trademarks Act, 1999 ("the Act") on relative grounds of refusal, states that if the word/mark applied for the trademark is anyhow identical or similar to any existing trademark for the same/similar good or services and for the different goods or services, then it will not be accepted as a trademark by the registry.



In the light of what above, the Court condemned Neeraj Food Products to pay an actual cost of ₹15.86 lakh worth damages to Cadbury (approximately \$18,800).

The decision is worth of note, not only because it has been long awaited by the plaintiff but especially because in his decision, the Court made it clear that the class of customers and the sort of items/products in question should be taken into consideration when applying the test of likelihood of confusion.

In the present case, since the price range of the product in question was just 1 to 5 rupees, there was an "immense likelihood of confusion" among the customers because the mark in question refers to "chocolates," for which the consumers are of all ages.

For this purpose, the Court made a solid conclusion in favor of Cadbury as the color scheme, packaging, and trademarks that were involved in the case were identical or – anyway – falsely similar.

## IP CHINA

### PUMA vs PUMAH, the Privilege of Well-Known Trademark



PUMA, known as Biao Ma (transliteration of PUMA 彪马 in Chinese) in China, enjoys great popularity amongst Chinese consumers. Its trademark, which features a jumping puma cat and “PUMA” in capital letters, is distinctive and well-recognized by the public.

In 2016, Ningbo Spark Motor Co., Ltd. (hereinafter referred as Spark) registered a trademark consisted of Chinese characters “彪马”, which is also pronounced as Biao Ma, capital letters “PUMAH” and the device of a leaping horse. The trademark is designated in class 7 for goods including mechanical engines, gasoline and diesel generator sets, water pumps, washing machines, construction machinery, agricultural machinery, etc.,

Below please find the comparison of the marks involved:

彪马 pronunciation: BIAO MA	彪马 pronunciation: BIAO MA

Although the designated goods are completely different, considering the high similarity of the trademarks, PUMA initiated an invalidation in 2019 based on early registered trademark rights in Class 25, but the request was dismissed by the CNIPA due to the dissimilar goods and unlikelihood of misleading the public.

Puma appealed to the decision and provided further evidences to prove that it is a well-known trademark and cross-class protection should be granted. However, the Beijing IP Court again concluded that, although PUMA could prove its popularity as a trademark in clothing and footwear industry, due to the different goods and target consumers groups, confusion is unlikely to happen so Spark’s disputed mark PUMAH shall be maintained.

PUMA further appealed before the Beijing High Court, and this time, it took its trophy home.

The High Court overturned the first instance decision and held that the disputed mark constitutes similar trademark with the cited trademarks in terms of composing elements,

whole appearances as well as pronunciations. It also recognized the well-known status of PUMA’s three cited trademarks.

The court concluded that the registration and use of the disputed mark should be considered as “well-known trademark dilution” as it takes advantage of the prior right holder’s reputation and weakens its distinctive quality. PUMA’s invalidation claim against the trademark “PUMAH” has finally been supported.

Key takeaways:

- ✓ When the 2 marks are designated in different classes and the possibility of confusion is low, the recognition of well-known trademark is the key in the winning journey of trademark disputes such as opposition and invalidation because cross-class protection is granted to well-known trademarks.
- ✓ The case is a good example of active practice on Article 13.3 of China’s Trademark Law.
- ✓ The final decision also shows that China’s tolerance for ‘knock-off’ trademark applications is getting lower and lower. Trademark registrations that obviously imitate others’ well-known trademarks will not be maintained even though the designated classes and goods are very different.

Crystal Zhang  
HFG Law & Intellectual Property

## IP CHINA

### Xu Beihong painting and the NFT copyright dispute



Recently, a NFT copyright dispute of Xu Beihong's 8 most representative works brought up discussion among China.

Xu is a very famous artist in the history of modern China: he passed away on September 26, 1953, at the age of 58, but his stallion drawings have been passed down, the original copies of which are worth a fortune.

On May 29, 2022, the operator of the Xu Beihong Museum of Art issued a statement alleging that the NFT collection of Xu provided for sale on the "Huanhe" platform was not authorized. At the same time, Xu Beihong Museum of Art also argued that some of those NFT works sold by Huanhe were manufactured from counterfeits, and publicly commented that only the NFT collections on platforms such as "Shu Zi Mao" and "Jing Tan" had gained its authorization.

The focus of the dispute works is whether the platform constitutes copyright infringement by selling NFT collection of an artist who have passed away more than 50 years ago. In order to give you a clear hint, we could start from the following questions:

Who has the copyright of those dispute works?

According to Chinese copyright Law, the protection period of the property rights of a work is 50 years after the death of the author. Meanwhile, the protection period of the author's personal rights of attribution, revision and protection of the integrity of the work is not limited.

Mr. Xu Beihong's death is more than 50 years, therefore, the platform distribution of the digital collection related to the work has no legal defect in copyright law. Moreover, there is no need to obtain the consent from Peon Generation (Xu Beihong Museum of Art) or Xu's descendants, as long as the platform does not violate the personal rights of the author.

However, since the original works must be used to create the digital version, it may defect the right of exhibition of the original works' owners. (Article 10.8 Copyright Law RPC), or, in another words, the right to public the original copies or reproduced copies of works of fine art and cinematographic works. Thus, if the platform didn't obtain consent from the original work owner, and distribute the digital version to others, the owner has the right to claim for the copyright infringement.

In addition, due to the original work's owner only having the right of exhibition (Article 20 Copyright Law RPC), if the NFT works are generated from counterfeiting piece of Xu's works, it is hard for the original works owners to fill a lawsuit by using the copyright infringement as an argument.

Does Xu Beihong Museum of Art have IP rights of those NFT works?

According to the Chinese copyright law, the protection period of a work is 50 years after the death of the author. The Museum is only the owner of the original work and it cannot claim the personal rights of the works. Therefore, the Museum is hard to win by claim for the copyright.

However, they mentioned that they own the trademark of "Xu Beihong", which is likely to be the entry point in the potential litigation against the NFT platform. In this case, if the original works are fake, it is an infringement of trademark law as it will lead confusion to consumers by using Xu's name according to Chinese Trademark Law.

What should be the emphasis here is that if the original works are real, it is not infringing the Xu Beihong's trademark owner as it can also be deemed as an indicative use when selling the Xu Beihong's NFT works.

In short, the NFT work is still a very controversial topic as it is not regulated by the laws in most of the countries, but if we understand the nature of intellectual property rights, it is not hard to find solutions via the current laws and regulations. In this case, it can still be protected under the current trademark law and copyright law.

## HFG NEWS

We are glad to announce the release of the new HFG website!



3 reasons why you should check it now:

- ✓ New design for a better experience
- ✓ Improved access to legal information in Asia and China
- ✓ Easier navigation to find all the information

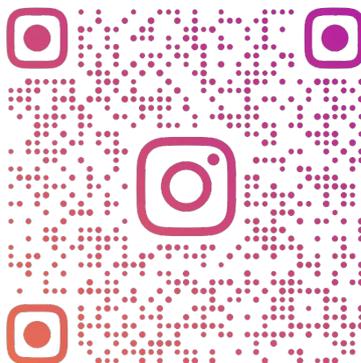
The tool we are proud of the most is XClass. This is a unique way to navigate the Chinese classification and sub-classification of goods and services.

In fact, XClass is a database designed by HFG, which contains all the goods and services that can be validly designated in a trademark application in China linked to other goods and services which are considered similar according to the similarity/dissimilarity rules issued by CNIPA. Try it [here](#)!

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