

China's IP  
in foreign eyes

Rural live-streaming had existed before but hadn't truly taken off. Farmers were desperate to try new sales channels, and consumers were being forced to shop online. Taobao now has over 50,000 rural live-streamers and aims for at least 200,000 more within the year. Growers who had once sold 90% of their products offline have now flipped to selling 90% online. Live-streaming has not only helped the industry weather the crisis—it's forged an entirely new way of business that is likely to continue long after the pandemic is over. (Live-streaming helped China's farmers survive the pandemic, by MIT Technology Review)

几年前,农民通过网络直播就已存在,但并未真正发展起来。受疫情影响,农民需要尝试新的销售渠道,而越来越多的消费者倾向于网上购物。如今,在淘宝平台上有5万多名农民直播,并计划在年内再增加至少20万。网络直播不仅已帮助中国农民度过了危机,还开创了一种疫情结束后会持续很长一段时间的全新商业模式。(网络直播帮助中国农民应对疫情带来的影响,麻省理工科技评论)

## Comment:

The live-streaming has helped the farmers sell their farm goods. Especially to deserve to be mentioned, we should improve the quality of agricultural products and create a number of GI brands with local characteristics.

## 点评

网络直播让农产品搭上了互联网的“快车”,帮助农民解决销售难题。值得一提的是,在直播带货的同时,要提升农产品质量,打造一批具有地方特色的地理标志品牌。



ByteDance was founded by a Chinese computer scientist, Zhang Yiming, in 2011, it is now the world's biggest unlisted technology "unicorn", recently valued at between \$90bn and \$100bn. ByteDance has built its empire by making products that appeal beyond China. It is China's first global software giant. It has also courted foreign investors. (ByteDance attracts American attention, by The Economist)

字节跳动由中国计算机科学家张一鸣于2011年创立,目前是全球最大的未上市的科技“独角兽”,最近估值在900亿美元至1000亿美元之间。该公司通过生产具有国际吸引力的产品来建立自己的帝国。如今,字节跳动是中国第一个全球软件巨头,还吸引了外国投资者。(字节跳动吸引美国关注,经济学家)

## Comment:

Only by paying attention to IPRs and doing well in the creation and protection of IPRs, can ByteDance develop continuously and healthily, and go to the global market, winning a place in the fierce market competition.

## 点评

作为互联网科技企业,字节跳动想要持续健康发展,只有重视知识产权,做好知识产权创造、保护等各项工作,才能走向全球市场,在激烈的市场竞争中获得一席之地。(李倩)

## Beijing Treaty on Audiovisual Performances in effect

## 《视听表演北京条约》正式生效

The Beijing Treaty on Audiovisual Performances, first ever international IP treaty signed in China and named after a Chinese city since the founding of the people's republic, has come into effect on April 28. The implementation of the treaty will upgrade protection for performers in the international community, fully guarantee the rights of audiovisual performers, further inspire their creativity, enrich spiritual and cultural products, facilitate the healthy development of the audiovisual industry, protect traditional culture and folklore, and promote the development of cultural diversity. WIPO Director-General Francis Gurry applauded the treaty as an important milestone in international IP protection.

The Beijing Treaty was concluded in Beijing on June 26, 2012. It is an international copyright treaty administered by the United Nations specialized agency - the World Intellectual Property Organization, to protect the rights of performers. According to the relevant provisions of the treaty, it will take effect three months after ratification and accession by 30 member states. As Indonesia, the key 30th party ratified the treaty on January 28, this high-profile international copyright treaty rolled into action on April 28.

In the sphere of performing arts, two major types of copyrights are under protection of the copyright law - one targets performance right which entitled the copyright holder to "publicly perform the works and publicly broadcast the works by various means" enjoyed by the copyright holder; the other focuses on performers' rights which entitled the performers (such as singers, actors, etc.) to license or prohibit others from using their images, actions, sounds and other performances in performing works including live broadcast, recording, producing audiovisual products and distribution and disseminating through the Internet.

The Beijing Treaty, an international treaty on the protection of performers' rights, will further improve international IP system. China will continuously improve the copyright protection system and propel high-quality development of the copyright industry including audiovisual performances.

(by Dou Xinying)

本报讯 新中国成立以来第一个在中国缔结、以中国城市命名的国际知识产权条约——《视听表演北京条约》已于4月28日生效。该条约的缔结和生效,将全面提升国际社会对表演者权利保护的水平和,从而充分保障视听表演者的权利,进一步激发其创造热情,丰富精神文化产品,推动视听产业健康发展,保护传统文化和民间文艺,促进文化多样性发展。世界知识产权组织总干事高锐高度评价《视听表演北京条约》,称其为国际知识产权保护的一个重要里程碑。

《视听表演北京条约》于2012年6月26日在北京缔结,是联合国专门机构——世界知识产权组织管理的一项旨在保护表演者权利的国际版权条约。根据条约生效条款,其将在30个成员国批准,加入3个月生效。今年1月28日,印度尼西亚成为该条约关键的第30名成员,这一备受瞩目的国际版权条约得以在4月28日生效。

在表演领域,著作权法的保护范畴主要包括两种类型的著作权:一是表演权,即著作权人依法享有的“公



开表演作品,以及用各种手段公开播送作品的表演的权利”;二是表演者权,即表演者(如歌手、演员等)依法享有的许可或禁止他人使用其在表演作品时的形象、动作、声音等一系列表演活动的权利,包括对其表演进行现场直播、录制、制作音像制品发

行,以及通过网络进行传播的权利。《视听表演北京条约》即关于表演者权保护的条约,将进一步完善国际知识产权体系。中国将不断完善版权保护体系,推动包括视听表演在内的版权产业的高质量发展。(实新颖)



Enshi Yulu is a kind of steamed needle shaped green tea with fresh scent fragrance. Enshi Yulu is made from fresh leaves of local variety "Enshi Zao" or the suitable clone variety under the unique natural ecological environment conditions in the geographical indication product protection area.

The scope of the Enshi Yulu protection area is Enshi City of Hubei Province.

Enshi City is located in the hinterland of Wuling mountain area with fertile soil and rich vegetation. The annual average temperature is 16.4°C, the annual frost free period is 282 days, the annual rainfall is about 1525mm, and the relative humidity is 82%. It is the ideal place for high quality tea production.

Enshi Yulu is made of one bud one leaf or one bud two leaf fresh leaves

## Enshi Yulu Tea

## 恩施玉露

by tea green removing with steaming. Picking requirements are strict, for example, the buds and leaves must be even, straight, pine needle shaped, pekoe exposed, verdant and green. It has the characteristics of clear and bright tea soup, long lasting fragrance, fresh mellow taste, and green leaf as jade.

(Courtesy of the IP Protection Department of CNIPA)

恩施玉露是在地理标志产品保

护地域范围内特有的自然生态环境条件下,选用地方优良品种“恩苔早”或适宜恩施玉露的无性系良种茶种鲜叶,经特定工艺加工而成的形似松针、清香型的蒸青绿茶。

恩施玉露的保护地域范围是湖北省恩施市。恩施市地处武陵山区腹地,土壤肥沃,植被丰富,年平均气温16.4°C,年无霜期282天,年降雨量1525毫米左右,相对湿度82%,终年云雾缭绕,是出产名优茶之地。



恩施玉露选用叶色浓绿的一芽一叶或一芽二叶鲜叶经蒸青汽制而成。采制要求严格,芽叶须匀齐挺直,状如松针,白毫显露,苍翠润绿。茶汤清澈明亮,香气清高持久,滋味鲜爽甘醇,叶底色绿如玉。

(中国国家知识产权局知识产权保护司供稿)

## Court supports BOBDOG China's prior copyright claim

## 巴布豆中国赢得商标案

In 1988, the cartoon image of "巴布豆(BOBDOG)" originated in Japan. As the Shanghai BOBDOG Children's Products Co., Ltd. was established in China, the company officially entered the Chinese market in 1994. Later the company changed its name to BOBDOG (China) Children's Products Co., Ltd. (BOBDOG China). In February 2001, Quanzhou Babudou Children's Products Co., Ltd. (Quanzhou Babudou) (Note: Chinese name same with Chinese translation of BOBDOG verbatim) was established, and two "Babudou" companies fiercely engaged in the dispute over "BABUDOG and its figure" trademark. Recently, Beijing High People's Court made a final judgment on the dispute.

In November 2000, Fujian Jinjiang Wantaisheng Shoes and Clothing Co., Ltd. (Wantaisheng) submitted an application for registration of No. 1708658 trademark "BABUDOG and its figure" (the trademark in dispute), requesting certified to be used on Class 18 goods such as cow hides and school bags, umbrellas, sausage casings. BOBDOG China lodged an opposition request over the trademark application in January 2002. The Trademark Office (the former TMO) of the former State Administration for Industry and Commerce (SAIC) decided not to approve the registration of the trademark in dispute. Subsequently, Wantaisheng Company applied to the former SAIC's Trademark Review and Adjudication Board (the former TRAB) for review. In February 2012, the former TRAB approved the registration of the

trademark in dispute. In 2015, the trademark in dispute was approved to be transferred to Quanzhou Babudou.

In February 2017, BOBDOG China filed an invalidation request over the trademark in dispute, claiming that the trademark in dispute together with its No. 3387370 "巴布豆 and its own figure" trademark (reference mark 1) and No. 1434725 "LITTLEBOBDOG and its figure"(reference mark 2) registered by its affiliated company BOBDOG Holdings constitute similar trademarks used on the same or similar goods; the trademark in dispute is highly similar with BOBDOG China's prior copyrighted cartoon puppy work (hereinafter referred to as the work involved in the case), infringing its prior copyright.

In March 2018, the former TRAB rejected the registration of the trademark in dispute on schoolbags and umbrella products, and upheld the registration on cow hides and other commodities.

Disgruntled with the TRAB ruling, BOBDOG China brought the case to Beijing IP Court.

Beijing IP Court held that the application for registration of the trademark in dispute harmed BOBDOG China's prior copyright and revoked the ruling of the former TRAB and ordered China National Intellectual Property Administration (CNIPA) (according to governmental structure overhaul, NIPA inherited the missions of the former TRAB) to make a new decision.

Both NIPA and Quanzhou Babudou refused to accept the first-instance judgment and appealed to Beijing

High People's Court.

Beijing High held that the cartoon puppy graphics in the work involved in the case had a certain degree of artistic beauty, which met the requirements of the originality of the copyright law and constituted an art work protected by the copyright law. Xiangyang Co., Ltd. is the original copyright owner of the work involved in the case. Although the time that BOBDOG China was assigned to obtain the work involved in the case was later than the registration date of the trademark, as the current owner of the work involved in the case, it has the right to make this claim. As the work involved in the case had been open to public before the registration date of the trademark in dispute, the original applicant of the trademark in dispute had an opportunity to contact the work involved before the registration date of the trademark in dispute. After comparison, the design and layout of the cartoon puppy graphics in the trademark in dispute are basically the same as the works involved in terms of ears, eyes and face shape, so the two constitute substantially similar trademarks. Therefore, the registration of the trademark in dispute infringed BOBDOG China's prior copyright in the work involved in the case. In this connection, the court rejected the appeal of NIPA and Quanzhou Babudou and upheld the first-instance judgment. (by Wang Jing)

本报实习记者 王晶

1988年,“巴布豆(BOBDOG)”卡

通形象在日本诞生,1994年正式进入中国市场,上海巴布豆儿童用品有限公司成立,后变更为巴布豆(中国)儿童用品有限公司(下称巴布豆中国)。2001年2月,泉州市巴布豆儿童用品有限公司(下称泉州巴布豆)成立,两家“巴布豆”因“BABUDOG及图”商标展开激烈纷争。近日,北京市高级人民法院作出终审判决。

据悉,2000年11月,福建晋江万泰盛鞋服有限公司(下称万泰盛公司)提交了第1708658号“BABUDOG及图”商标(下称诉争商标)的注册申请,指定使用在牛皮、书包、伞、香肠肠衣等第18类商品上。巴布豆中国于2002年1月提出异议,原国家工商行政管理总局商标局(下称原商标局)经审理决定对诉争商标不予核准注册。随后,万泰盛公司向原国家工商行政管理总局商标评审委员会(下称原商标评审委)申请复审。2012年2月,原商标评审委作出复审决定,对诉争商标予以核准注册。2015年,诉争商标经核准转让至泉州巴布豆。

2017年2月,巴布豆中国针对诉争商标提出无效宣告请求,主张诉争商标与其第3387370号“巴布豆及图”商标(下称引证商标一)及关联公司巴布豆控股公司的第1434725号“LITTLEBOBDOG及图”商标(下称引证商标二)构成使用在同一种或类似商品上的近似商标;诉争商标与巴布豆中国在先享有著作权的卡通小狗作品(下称涉案作品)构成实质性近似,侵犯了其在先著作权。

原商标评审委于2018年3月裁定对诉争商标在书包、伞商品上予以无效宣告,在牛皮等其他商品上予以维持。

巴布豆中国不服,随后向北京知识产权法院提起行政诉讼。

北京知识产权法院经审理认为,诉争商标的申请注册损害了巴布豆中国的在先著作权,判决撤销原商标评审委所作裁定,并判令国家知识产权局(根据中央机构改革部署,原商标评审委的相关职责由国家知识产权局行使)重新作出审查裁定。

国家知识产权局与泉州巴布豆不服,随后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认为,涉案作品中的卡通小狗图形具有一定的艺术美感,符合著作权法关于作品独创性的要求,已构成著作权法所保护的美术作品。向阳株式会社系涉案作品的原始著作权人,虽然巴布豆中国受让取得涉案作品的时间晚于诉争商标申请注册日,但其作为涉案作品的现权利人,有权提出该项主张。涉案作品在诉争商标申请注册日前已经公之于众,诉争商标原申请人在诉争商标申请注册日前,有机会接触到涉案作品。经比对,诉争商标中的卡通小狗图形在耳朵、眼睛及脸型等方面的设计、布局与涉案作品基本相同,故二者构成实质性相似。因此,诉争商标的注册损害了巴布豆中国对涉案作品享有的在先著作权。综上,法院判决驳回国家知识产权局与泉州巴布豆的上诉请求,维持一审判决。



|                  |             |
|------------------|-------------|
| 英文翻译             | 孙芳华         |
| Translator       | Sun Fanghua |
| 责任编辑             | 李倩          |
| Executive Editor | Li Qian     |