

Chinese folk literature art works will get legal protection

民间文学艺术作品将获立法保护



“After over 20 years waiting, we finally get a specialized law to protect folk literature art works in China.” Knowing that the National Copyright Administration of China published the exposure draft of the Folk Literature Art Works Copyright Regulation, Associate Professor Zeng Tong, Director of Intellectual Property Law Institution under China Law Society, sent the text about the reporter of China Intellectual Property News.

Aimed at protecting the copyright of folk literature art works and encouraging the heritage and development of folk literature art, all the 21 rules of ex-

posure draft expresses the concept, the connotation, the ownership of rights, the rights content, the authorization mechanism, and interest distribution of folk literature art works. The exposure draft draws public attention of many folk literature artists, researchers and legal profession. The background and significance of the regulation, and some issues like ascertainment of copyright owner and management of payment are becoming burning topics.

According to the exposure draft, a folk literature art work is a literature art expression created collectively and passed from generations by a certain

nation, ethnicity, or unspecified ones in association, reflecting their traditional concept and culture value. It is included by the concept of “work” in Copyright Law literally so it should be protected by the Copyright Law. So why does it need separate legislation? According to Wang Ziqiang, Director of Policy and Legal Department under the National Copyright Administration of China, folk literature art works can not apply the Copyright Law directly for its special characteristics. For example, it is hard to ascertain a certain author of a folk dance created by a nation or ethnicity, and then a concentrate authorization would solve the problem. Besides, in most cases, the creation process of a folk literature art work is continuing developing with time. A life and plus 50 years copyright protection would go against its dynamic nature.

Wang also elucidated the method of payment management. There are certain rules about payment management in the exposure draft. For example, the payment would be distributed to the relevant nation, ethnicity, or unspecified by a specialized agency in time; the specialized agency would

build a data base, and public the collection and distribution situation to the society; payment collected but not able to distribute for copyright owner unidentified over 5 years would be contributed to encouraging the development of folk literature art. “the National Copyright Administration will devote to the management and supervision of the payment, and explore an effective supervision system.” Said Wang. (by Jiang Xu)

本报记者 姜旭

“等待了20多年,中国亟待保护的民间文学艺术作品终于有了专门的保护法律。”近日,在看到中国国家版权局在其官网上公布的《民间文学艺术作品著作权保护条例》(征求意见稿)后,四川大学法学院副教授、中国法学会知识产权研究会理事曾彤给中国知识产权报记者发来这样一条短信。

此次发布的征求意见稿旨在专门保护民间文学艺术作品著作权,鼓励民间文学艺术传承和发展。全文共有21条,对民间文学艺术作品的概念、内涵、权利归属、权利内容、授权机制、利益分配等进行了详细规定。征求意见稿的发布引起了广大民间文学艺术工作者、学者和法律界人士

的广泛关注,就此部法规成立的背景、意义,以及著作权人身份确定和支付报酬管理等焦点问题展开了热烈的讨论。

征求意见稿规定,民间文学艺术作品指的是由特定的民族、族群或者社群内不特定成员集体创作和世代传承,并体现其传统观念和文化价值的文学艺术的表达。从概念上来看,这符合著作权法对“作品”的定义,应受著作权法体系的保护。既然如此,为何还要单独立法?对此,中国国家版权局政策法规司司长王自强在接受本报记者采访时介绍,这是由于民间文学艺术作品具有来源确定性、主体群体性、创作动态性、表达差异性等特点,不能简单地直接适用著作权法。比如,有的民间舞蹈、曲艺等不是由单个人创作,而是由特定民族或群体共同创作,因而在授权使用时如果无法取得特定民族或群体的许可,就应当采用集中许可的授权方式。此外,民间文学艺术作品的创作一般不随着时间终止,而是不断进行演化和发展。如果对这些作品采用作者有生之年加死后50年的保护期限,则违背了其创作动态性规律。

对于业界关心的使用报酬支付



如何管理,王自强表示,征求意见稿有专门的规定,比如专门机构应当将其收取的民间文学艺术作品著作权报酬及时分配给相应的民族、族群或者社群,并建立数据库,每年向社会公示民间文学艺术作品著作权报酬的收取和分配等相关情况。对已收取5年因著作权人无法确认而不能分配的报酬,将用于鼓励我国民间文学艺术的传承、弘扬和发展。“版权主管部门会加强对支付报酬的透明管理和监督,探索建立一套行之有效的监督体系。”王自强表示。



Brand building activities can increase the need of consumers for innovative products, help consumers to establish a trust to the enterprise products, and then extends to the trust of the enterprise itself. The trust of consumer can motivate enterprise innovation effectively. In strengthening the construction of brand, it is important to encourage innovation, to fully respect the rule of market economy, especially the competition rules, and to handle the relationship between the government and enterprises and between the government and market correctly. The government should not make too much administrative intervention, nor make choices for market and consumers.

—Zhang Mao, Minister of the State Administration for Industry and Commerce, gave the speech above on the 20th Anniversary of the Chinese Trademark Association.

品牌建设活动可以增加消费者对创新产品的需要,帮助消费者建立对企业产品的信任,进而延伸为企业的信任,这种消费者的信任可以有效激励企业创新。在加强品牌建设中,要激励企业创新,充分尊重市场经济规律特别是竞争规律,正确处理政府与企业、政府与市场的关系。品牌的优胜劣汰由市场规律决定,政府不能过多地行政干预,代替市场和消费者选择。

——中国国家工商行政管理总局局长张茅近日在纪念中华商标协会成立二十周年暨中国品牌经济高峰论坛上发表关于品牌经济发展的讲话。

We should recognize and attach importance to copyright, and rectify incorrect thoughts to the value of copyright from the essence. Copyright is creation, culture, and the treasure as well as the basic source of the development of new media. In the era of knowledge-driven economy, new media would lose its source and root if being without copyright. Although new media has its advantages, it is often castigated

or criticized for lack of copyright. No matter how advanced the science and technology are, how mature the business model is, it is obligated to obey the legal principle of “never use without permission” while using or communicating copyrighted works.

——Yu Cike, Director of Copyright Managing Bureau under National Copyright Administration of China, said so on the 5th China International Copyright Expo.

应当认识和重视版权,从本质规律上对版权端正观念,提高认识,看重版权价值和作用。版权具有创作、文化和财产属性,是新媒体赖以生存和发展的基础资源。在知识经济时代,无视或轻视版权,新媒体就会是无源之水、无本之木。新媒体优势强、发展快,但屡屡被诟病是因为版权,常常被查处也是因为版权。无论运用多么先进的科学技术,采用多么优良的商业模式,使用和传播作品,都必须遵循“先许可后使用”的法定原则。

——中国国家版权局版权管理司司长于慈珂在第五届中国国际版权博览会上表示。

China’s adjudication of intellectual property is in an important time of strategic opportunities now. It is indispensable to insist on judicial justice and focus on the central task of the country. We should keep on working on trials and judgment documents, improving the working quality and efficiency, and making every case as a time-tested precedent.

——Tao Kaiyuan, Vice President of the Supreme People’s Court of China, talked about that during a research and consultation about adjudication of intellectual property in Haidian, Beijing.

当前,中国知识产权审判工作正处于重要战略机遇期,做好新时期的知识产权审判工作,要坚持公正司法,自觉服务大局。要以庭审和裁判文书为主要抓手,进一步提高办案质量和效率,真正把每一个案件都办得扎扎实实,办成经得起法律和历史的检验的铁案,办成引领司法潮流的精品案件。

——中国最高人民法院副院长陶凯元在北京市海淀区调研知识产权司法保护情况时表示。

China's IP in foreign eyes

Boston transport authorities awarded China CNR Corp. a \$567 million contract to supply trains for the city’s subway system, the first deal of its kind for a Chinese company in the U.S.. The deal would put CNR’s products in all of the world’s six continents, the company said in a statement. The deal breaks new ground for Chinese train makers

whose overseas push, has been mostly limited to developing markets. (Coming to a Boston Subway Near You: Made-in-China Trains, by Bloomberg)

波士顿交通运输主管部门正式批准了一项由中国北车集团为该地地铁系统提供价值5.67亿美元的地铁列车合同,这是中国公司首次在美国达成此类交易。中国北车集团表示,这项交易为中国列车制造商一直受限于发展中国家市场的海外扩张之路开辟了新天地。“中国制造列车:就在波士顿地铁站您的身边”,彭博新闻社

Brooks Brothers successfully protects Golden Fleece trademark

美国布克兄弟在华成功维护商标权

Recently, the Supreme People’s Court of China made a decision to overrule the judgments of Golden Fleece trademark lawsuit made by Beijing High People’s Court and Beijing No.1 Intermediate People’s Court. The Supreme Court made a motion to dismiss plaintiff for lack of standing.

Transferred from a Chinese nature person surnamed Yuan to a British company Whisey Bens Fashion Control Limited (hereinafter as Whisey Bens), the questioned trademark No. 3158776 Sheep logo (as Image 1) was registered to utilize on Class 25 products as clothing, shoes and socks. In the legal time limit, Retail Brand Alliance, Inc., the owner of the cited trademark (as Image 2) as well as the predecessor of Brooks Brothers Group, Inc. (hereinafter as Brooks Brothers), filed a dispute to the Trademark Review and Adjudication Board (TRAB) under the State Administration for Industry and Commerce of China (SAIC). Brooks Brothers claimed that, the cited trademark, Golden Fleece logo, had been used in China for years and had a certain reputation; the questioned trademark was similar to the cited trademark and would cause confusion of consumers. TRAB revoked the questioned trademark for the reason that Whisey Bens was dissolved and had no right to register trademark. Whisey Bens then filed a lawsuit against the decision.

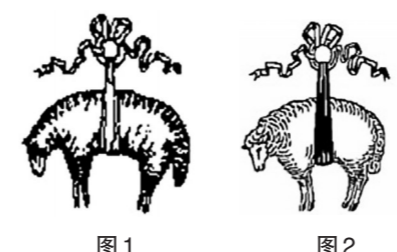


图1



图2

Whisey Bens claimed that, the reason for its dissolution was failing to pay the address fee, and it operated normally; TRAB’s revoking the trademark was beyond its jurisdiction. Both the intermediate court and the high court dismissed TRAB’s decision. Then Brooks Brothers filed an application to retrial to the Supreme People’s Court.

The Court found that there were two British companies both named Whisey Bens Fashion Control Limited involved in the case. One is No. 4668587 Whisey Bens Fashion Control Limited (hereinafter as No.587 company) dissolved in November 2004, which was the assignee of the questioned trademark. The other is No. 6611002 Whisey Bens Fashion Control Limited registered in June 2008, which is the plaintiff of the case. Brooks Brothers claimed that Whisey Bens had no relationship with No. 587 company, which meant lack of standing in the case. While Whisey Bens claimed that it inherited No. 587 company, and was absolutely able to be the plaintiff.

The Court held that, Whisey

Comment:

After upgrading from exporting auto-parts to vehicles, from low-end products to high-end products, from underdeveloped markets to developed markets, Chinese train makers for the first time landed in the U.S. market. Everything is based on the U.S. standards. As analyst says, the trade is symbolic for Chinese companies because the U.S. market is very difficult to break into.

点评:

在经历由配件出口到整车出口、由中低端产品到高端产品、由欠发达市场到发达市场的转型升级后,中国轨道交通装备企业首次登陆美国市场。一切产品检验都是采用美国标准。正如分析师所言,美国市场及其准入门槛,该交易的成功对中国制造企业“走出去”具有借鉴意义。

(by Correspondent Wang Weiwei from Canada)
(本报通讯员汪玮发自加拿大)

Bens and No. 587 company has each independent legal standing; Whisey Bens did not have an inherit relationship after No. 587 company; there is no stake of Whisey Bens in the trademark dispute; for which Whisey Bens has no legal standing to be the plaintiff. Accordingly, the court made the decision. (by Mao Ligu)

近日,中国最高人民法院作出裁定,依法撤销北京市高级人民法院和北京市第一中级人民法院对“金羊毛”商标行政诉讼案件的判决,驳回原审原告无赛本社时尚控股有限公司(下称无赛本社)的起诉,支持了商标所有人美国布克兄弟集团公司(下称布克兄弟)的再审请求。

据了解,该案争议商标为第3158776号“羊”图形商标(见图1),核定使用在第25类服装、鞋、袜等商品上,由自然人袁某转让至一家名为无赛本社时尚控股有限公司的英国企业。法定期限内,美国零售品牌联盟公司(即布克兄弟前身)针对该商标向中国国家工商行政管理总局商标评审委员会(下称商评委)提出争议申请,认为在争议商标申请注册日前,其“金羊毛”商标已经进入中国并在服装等商品上进行使用,具有一定知名度。争议商标与布克兄弟在先使用的图形商标(见图2)构成相同或近似商标,会导致消费者混淆误认。商评委以无赛本社已经注销,不具备取得注册商标专用权的条件为由,裁定争议商标予以撤销。无赛本社不服商评委裁定,向北京第一中级人民法院提出行政诉讼。

无赛本社表示,其被注销的原因

是注册地址费用没有及时缴纳,但该公司一直正常经营。商评委裁定争议商标予以撤销,属超范围审查。一审法院、二审法院均支持无赛本社的诉讼请求,判决商评委撤销原裁定并重新裁定。随后,布克兄弟向最高人民法院提起再审请求。

法院在调查中发现,该案涉及两家同名公司。注册号为4668587的无赛本社(下称587号公司)为争议商标受让人,该公司已于2004年11月注销。而本案原审原告系注册号为6611002的无赛本社,于2008年6月登记注册。布克兄弟申诉称,争议商标所有人587号公司已注销,本案诉讼主体无赛本社与587号公司不属于同一法律主体,故不具有本案诉讼主体资格。而无赛本社认为其自身是对587号公司的延续,因而具有该案诉讼主体资格。

最高人民法院经审理认为,587号公司与无赛本社各自具有相互独立的主体资格,不存在恢复登记的法律关系,且无赛本社不存在因争议商标权利人的身份或与587号公司的权利继承关系而与争议裁定产生法律上的利害关系,无权作为原告提起该案诉讼。据此,法院作出上述定。(毛立国)

EXPRESS

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