

China will make the information on IPR infringement administrative penalties public 中国将公开侵犯知识产权行政处罚案件信息

China convened the State Council Executive Meeting on November 20. The meeting adopted the opinion on making publicly disclosure information on administrative penalties concerning the production and sale of counterfeit and the inferior goods and IPR infringement.

whilst it's essential to improve product quality and implement innovation-driven mechanism. Punishment to inferior is to award superior. It's a must to make offenders pay a high price for producing counterfeit goods harming life and health of public and to praise law-abiding operators and clear up the road for them.

The meeting also requested that disclosure of information on administrative penalty cases concerning production and sale of counterfeit goods and IPR infringement had to be an important part of government information disclosure. Except for those involving commercial secrets and personal privacy, the information on counterfeit administrative penalties cases applying general investigating process should be voluntarily disclosed.

The meeting noted that fair competition is the basic requirement of market economy development. At present, China is in a critical phase of reform and economic transition



specifically assigned period from the day when they make or change the punishment or penalty, including the main illegal fact, the type, the legal basis and the result of the penalty, trying to be open and transparent,

and timely responsive to social concerns. To incorporate the information on administrative punishment cases into the social credit system can constraint offenders everywhere because of their bad records. Law

enforcement agencies have to perform their duties strictly following the law. Governments at all levels should accelerate to establish management and appraisal system and strengthen supervision and inspection. The acts of not fulfill the obligation of information disclosure, failure to disclosure or updating on time as well as charging fees illegally have to be corrected seriously so that the law enforcement can be supervised by public.

(by Xiang Li)

本报讯 11月20日, 中国国务院常务会议召开。在本次会议上, 值得关注的是通过了关于依法公开制售假冒伪劣商品和侵犯知识产权行政处罚案件信息的意见。据此, 中国将依法对假冒侵权行政处罚案件实行信息公开。

依法对假冒侵权行政处罚案件的信息公开, 将有利于维护公平竞争的市场经济秩序、保护消费者权益、提高执法公信力、便于接受人民群众监督, 是促进质量提升和产业升级、增强消费者信心、保护知识产权、鼓励创新创业的一剂“良方”。

会议指出, 当前中国正处于改革发展和经济转型升级的关键时期, 提高产品质量、实施创新驱动, 至关重要。罚劣是为了奖优, 要让恶意造假制劣特别是损害人民群众生命健康的违法者付出高昂代价, 让守法经营者路路畅通、受到褒奖, 让广大科技人员大胆创新、放心创业。

会议同时要求, 要把假冒侵权行政处罚案件信息公开作为政府信息公开的重要内容。除涉及商业秘密和个人隐私外, 适用一般程序查办的假冒侵权行政处罚案件信息应当主动公开。行政机关要在做出处罚决定或处罚决定变更之日起的法定时间内, 依法公开案件信息, 包括违法违规的主要事实、处罚种类、依据和结果等, 做到公开透明, 并及时回应社会关切。将行政处罚案件信息纳入社会诚信体系, 使假冒侵权者因信用不良“处处受限”。各级政府要加快建立健全管理、考核等制度, 加强监督检查。对不履行信息公开义务、不及时公开或更新信息内容、违规收取费用等行为, 要坚决纠正并严肃问责, 让违法行为受到社会监督。

(向利)



Samsung judged to pay \$290 million to Apple

三星在美被判 赔偿苹果 2.9 亿美元

290 million US dollars! The so-called "Century War" - the lawsuit on smartphone patent between Samsung Electronics Co., Ltd. and Apple's came out some brand new results. November 22, in the new trial of Apple suing Samsung of patent infringement, the jury of the U.S. District Court ruled Samsung to pay 290 million US dollars to Apple for the damage it caused.

"Patent Wars are on fire, which represents a new trend in the market competition. It's a strong reminder for Chinese enterprises to ponder over." Professor Xu Chunming, the vice executive president in the Intellectual Property Institute of Shanghai University said in an interview with CIP News. He also addressed, that it sounded the alarm for domestic enterprises, especially those who are going overseas. Strengthening independent innovation, improving patent quality and accelerate patent portfolio is becoming imminent.

Recently, the competition on smartphone market between Samsung and Apple has become more and more intensified, finally escalated into patent war.

"Patent disputes and even lawsuits have become a common means of market competition." Cao Xinming, Executive Deputy Director of Intellectual Property Research Center of Zhongnan University, believes that Chinese enter-

prises should sum up experiences, draw lessons from the case and get prepared for the future competition.

Chinese companies that are going abroad should reflect profoundly and pay more attention to patent quality and portfolio, in order to plan ahead and win in the fierce market competition.

(by Zhao Jianguo Meng Jiawei)

本报讯 2.9 亿美元! 韩国三星电子有限公司(下称三星公司)与美国苹果公司之间关于智能手机专利的“世纪大战”又有了新的结果。11月22日, 在重新开庭审理的苹果公司诉三星公司专利侵权案中, 美国地方法院的陪审团裁定, 三星公司向苹果公司支付 2.9 亿美元的赔偿金。

“专利大战硝烟弥漫, 代表着市场竞争的新趋势, 足以令中国企业深思。”上海大学知识产权学院常务副院长许春明教授在接受中国知识产权报记者采访时认为, 这对中国企业特别是“走出去”的企业敲响了警钟, 加强自主创新, 提升专利质量和加快专利布局迫在眉睫。

据介绍, 近年来, 三星公司与苹果公司的智能手机市场之争愈演愈烈, 升级为专利之战。“专利纠纷乃至诉讼, 已经越来越多地成为企业在市场竞争中的一种常用手段。”中南财经政法大学知识产权研究中心常务副主任曹新明认为, “走出去”的中国企业应该深刻反思, 以此案为镜, 防患于未然, 要高度重视专利质量和专利布局, 才能在激烈的市场竞争中未雨绸缪, 决胜未来。

(赵建国 孟家玮)

“Tea Forte” final awarded to Shanghai Dili Croft “蒂芙特”终审判归上海蒂芙特

Tea bags, appearing in early 20th century, became popular in late 1970s. In such a good situation in 2004, Shanghai Dili Croft Tea Co., Ltd. was found at the right moment. However, after one month of the establishment, when Shanghai Dili Croft applied for registration No. 4410329 "Difute Teaforte and the logo" trademark in the tea, honey and other category of goods, they encountered objection from American company Difute. The five-year seesaw battle of trademark started.

After the Trademark Office under the State Administration for Industry and the trademark review and adjudication board (TRAB) approved "Difute Teaforte and the logo", the American Difute initiated the administrative proceeding. Recently Beijing Higher People's Court made a ruling that the "Difute Teaforte and the logo" trademark registration should be approved to Shanghai Dili Croft. Finally the dispute reached an end.

Registration triggered disputes

American Difute believes that Shanghai Dili Croft, with which it has business contact, made the application for registration "Difute Teaforte and the logo" trademark without authorization. It constituted infringement to article 15 of China Trademark Law: Agents apply for trademark registration over principle's trademark in their own names without authorization by principles; it was also an imitation of its well-known trademark, violating the right of corporate name and falling into trademark infringement.

Court of First Instance believed, that under the situation that the legal representative was the same person, Shanghai Dili Croft as a subsidiary base on an exclusive distribution agreement of Pangda Company - the exclusive distributor of American Difute in China,

knowing the "Tea Forte" trademark of American Difute, applied for registration of the involved trademark which was very similar to "Tea Forte", was against article 15 of China Trademark Law. Accordingly, the court of first instance ruled to cancel the TRAB's decision.

Shanghai Dili Croft and TRAB refused to accept the rules and appealed.

Trademark maintained by the final judge

Considering the focusing point of both sides, the Beijing Higher People's Court believed, that the exclusive distribution agreement signed between Pangda and American Difute was mainly based on distribution of tea bag product distribution, not related to the brand name as well as how to use "Tea Forte" trademark. According to the relative nature of the contract, the contract had no constraint to Shanghai Dili Croft, and the contract was ultimately canceled due to the lack of actual performance. Therefore, the existing evidences cannot prove that the direct agency relationship between Shanghai Dili Croft and American Difute existed. And the "Tea Forte" English trademark of American Difute was registered after the involved trademark application. The existing evidences cannot prove that American Difute used and protected "Tea Forte" trademark in China before.

Meanwhile, the Chinese part of the involved trademark is easier for Chinese public to recognize. It is in general different from "Tea Forte" trademark of American Difute. In the situation that "Tea Forte" is not actually used in Chinese market, the involved trademark has built good reputation, public recognition and widely using by Shanghai Dili Croft. At the same time, there is no possibility to confuse the two

trademarks in Chinese market. In the case, disapproval of the involved trademark is not conducive to the protection of the subject who contributed to the reputation and market value of the trademark.

In summary, the court ruled that the involved trademark was not the case against the Trademark Law. And the court maintained the involved trademark as a final judgement. (by Wang Guohao)

本报记者 王国浩

出现于 20 世纪初的袋泡茶, 自上世纪 70 年代末开始流行。正是在这样的利好形势下, 2004 年上海蒂芙特茶业有限公司(下称上海蒂芙特)应运而生。然而在成立 1 个月之际, 上海蒂芙特在茶、蜂蜜等商品上提出第 4410329 号“蒂芙特 Teaforte 及图”商标的注册申请后, 却遭到美国蒂芙特公司 (TEA FORTIE, inc., 下称美国蒂芙特) 的异议, 由此引发了上海“蒂芙特”与美国“蒂芙特”之间长达 5 年的商标拉锯战。

在中国国家工商行政管理总局商标局、商标评审委员会(下称商评委)裁定核准上海蒂芙特提出的“蒂芙特 Teaforte 及图”商标的注册申请后, 美国蒂芙特提起了行政诉讼。日前, 北京市高级人民法院作出终审判决, 认定应对上海蒂芙特的“蒂芙特 Teaforte 及图”商标予以核准注册。至此, 双方纠纷告一段落。

注册引纠纷

在一审中, 美国蒂芙特认为, 上海蒂芙特与其存在商业上的往来, 在未授权的情况下, 擅自申请注册“蒂芙特 Teaforte 及图”商标, 构成中国商标法第十五条规定的代理人未经授权以自己的名义将被代理人的商标进行注册的情形, 同时系对其驰名商标的复制摹仿, 侵犯其企业名称权, 属于抢注行为。

一审法院认为, 在法定代表人均为同一人的情况下, 上海蒂芙特作为美国蒂芙特在中国的独家经销商是庞达公司基于独家经销协议而成立的子公司, 在知晓美国蒂芙特“Tea Forte”商标的情况下, 未经美国蒂芙特授权擅自注册第 30 类茶等商

品上申请注册与美国蒂芙特“Tea Forte”商标极为相近的被异议商标, 违反了中国商标法第十五条的规定, 据此一审判决撤销商评委裁定。

上海蒂芙特和商评委均不服一审判决, 向北京市高级人民法院提起上诉。

终审获维持

北京市高级人民法院审理认为, 庞达公司与美国蒂芙特签订的《独家经销协议》主要基于对茶包这一产品的经销贸易, 并未约定产品的品牌及“Tea Forte”标志的使用内容。根据合同的相对性, 该约定并不对上海蒂芙特产生约束, 而且该协议因未能实际履行而最终通知解除。因此, 现有证据无法证明上海蒂芙特与美国蒂芙特存在直接的代理法律关系, 而且美国蒂芙特的“Tea Forte”英文商标在各国的申请注册时间均在涉案商标“蒂芙特 Teaforte 及图”申请之日后, 在案证据亦难以证明在系争商标申请日前, 美国蒂芙特将“Tea Forte”作为商业标志在中国使用而予以保护。

同时, 该商标整体上与美国蒂芙特的“Tea Forte”标志存在一定的差异, 在“Tea Forte”标志未在中国市场进行实际商业使用的情况下, 系争商标经上海蒂芙特的实际宣传和广泛使用, 已建立较好的市场声誉和相关公众的认知度, 在中国形成了客观稳定的市场格局。同时, 该案系争商标在中国市场上并无与“Tea Forte”标志产生实际混淆误认的可能, 在此情况下, 该案系争商标若不予核准注册, 则不利于对该商标的声誉与市场价值做出实质性贡献的主体的保护。

综上, 北京市高院认定系争商标“蒂芙特 Teaforte 及图”的申请注册不属于中国商标法第十五条规定的情形, 并据此判决维持商评委对系争商标予以核准注册裁定的终审判决。

Table with 2 columns: Role and Name. Includes English Translator (Wang Weiwei), Editor (Xiang Li), and Practice Editor (Ding Tao).