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China's IP in foreign eyes



hinese mobile phone manufacturers—led by ZTE, their share in smartphone market to 29 percent in the first quarter of 2013 from 13.2 percent a year ago. Asia/Pacific region was the only region to show growth in mobile phone sales this quarter, with a 6.4 percent increase. In China, mobile phone sales increased 7.5 percent, representing 25.7 percent of global mobile phone sales, up nearly 2 percent. (ZTE, Huawei led Chinese smartphone makers increase market share to 29% in Q1 2013 from 13.2%, by Telecom Lead)

今年第一季度,以中兴通讯、华

为等公司为龙头的中国手机制造商, 在全球智能手机市场的份额增加至 **29**%, 比去年同期增长 **15.8** 个百分 点。亚太地区是唯一一个在该季度手 机销量实现增长的地区(增长 6.4%)。与此同时,中国的手机销量同 比增长 7.5%, 占全球手机总销量的 25.7%,同比增长近两个百分点。(《今 年第一季度中国智能手机制造商市 场份额从 13.2%增至 29%》, 印度电 信先导网站)

Comment

By offering affordable devices with optimum features, Chinese local manufacturers are gaining the game in the increasing competition. Technologies and innovation targeting the right customers are playing an important role here. In smartphone industry, there is a chance for Chinese companies to take the lead.

通过提供价格适中并具有最优功 能的智能手机产品, 中国智能手机制 造商在日益激烈的竞争中不断赢得筹 码。这其中,针对目标消费群的新技术 及创新发挥了重要作用。在智能手机 行业, 中国企业有望在将来成为行业

ne of China's top movie download Web site, Siluhd. com, has been shut down and the CEO and over 30 other employees detained by Chinese law enforcement authorities on suspicion of infringing intellectual property rights. According to Sina News report last Saturday, Siluhd.com was not the only video Web site to have been shut down. A number of other sites which are concerned in intellectual property infringment are also been shut down. (China shuts down top video piracy Web site, by

号称中国最大的电影下载网站

思路网近日被关闭, 其首席执行官 及 30 多名员工被中国执法机关以 涉嫌侵犯知识产权为由拘留。据新 浪网近日的新闻报道, 思路网并不 是唯一一家被关闭的视频网站,其 他许多涉嫌侵犯知识产权的网站也 被关闭。(《中国关闭最大视频盗版 网站》,至顶网)

Comment:

The overall intellectual property protection environment has been improving with large video websites such as Youku, Tudou and Sohu TV spending large amounts of fund to purchase film broadcast rights both domestically and abroad. These actions should not be temporal though. Tackling piracy requires long-term efforts.

随着优酷、土豆和搜狐视频等大 型视频网站纷纷斥资在国内外购买 电影播放版权,中国知识产权保护的 整体环境得到很大改善。应该看到, 这些行动绝不应该只是暂时的.打击 盗版,还需要多方长期的努力。



hina's ZTE Corp, one of the world's largest smartphone makers, has agreed to pay Microsoft Corp a royalty for devices it makes using Android and Chrome operating systems. Reaching agreement with ZTE means Microsoft now has patent deals in place with four of the five leading Android phone makers. The ZTE deal marks progress for Microsoft with companies operating in China, following last week's patent agreement with contract manufacturer Hon Hai Precision Industry Co Ltd, parent of Foxconn. (China's ZTE signs Android patent license with Microsoft, by Reuters)

作为世界上最大的智能手机制 造商之一,中国的中兴通讯公司已与 微软公司达成协议,向微软公司支付

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专利使用费用,以生产使用安卓及 Chrome 操作系统的产品。与中兴通 讯达成的协议意味着微软公司已与 全球五大安卓制造商中的 4 家达成 许可协议,也标志着微软公司与中国 公司的合作取得进一步进展。就在不 久前,微软公司同富士康母公司鸿海 集团达成了类似的专利许可协议。 (《中兴通讯与微软达成安卓专利许 可协议》,路透社)

Comment:

If every company respects the value created by others, then most of the patent issues and lawsuits can be avoided. As China is merging into the global economy, more and more Chinese enterprises are more active in international patent licensing, which will help avoid intellectual property litigation and also effectively enhance the ability of international technical cooperation.

点评:

如果企业都能够尊重他人创造 的劳动成果,那么目前大部分的专利 诉讼都是可以避免的。随着中国经济 深度融入世界经济,我们会看到更多 的中国企业签署专利许可协议,这不 仅能起到规避知识产权诉讼的作用, 而且还能有效提升中国企业的国际 技术合作能力。

(by Correspondent Wang Weiwei from Canada)

(本报通讯员汪玮玮发自加拿大)

Swarovski wins trademark dispute case 施华洛世奇"剥掉"施华洛侵权外衣

ecently, Shanghai No. 2 Intermediate People's Court rendered its first-instance decision on the trademark infringement and unfair competition case between Swarovski and Shanghai Swalro Wedding Dress Company, ordering Shanghai Swalro to cease infringement and eliminate bad effect and pay 280,000 yuan in damages and reasonable fee of 20,000 yuan.

Swarovski VS Shanghai Swalro

Swarovski was born in 1895, and the birth of this brand has made Austria a world famous crystal country. Registered in the Principality of Liechtenstein, Swarovski company was founded in 1968, and engages in manufacturing and distribution of crystal products. In the 1980s, the company registered SWAROVSKI and 施华洛世奇 trademarks in China.

Shanghai Swalro Wedding Dress Company was established in August 2004, which specializes in various kinds of dresses. Swarovski held that the Shanghai company used 施华洛, 施華洛, SWALRO labels in its wedding dress, promotional materials, website, company decoration, and also established a home page with a domine name of www.swalroweb.com. Such action has not only infringed trademark exclusive right of 施华洛世奇, but also constitutes an act of unfair competition when the company used "Swalro crystal wedding dress" and "Swalro wedding dress, together with Swarovski crystal, to lead a luxury fashion in wedding dress" in promotional materials, brought great loss to Swarovski Company's reputation and business.

The court held that since Swarovski Company entered in China in the 1990s, it has made extensive advertising by using SWAROVSKI and 施华洛世奇, and occupied sizable market share in China. It ranks the top in sales volume among other products of its kind, and enjoys good reputation among the consumers. In 2009. SWAROVSKI and 施华洛世奇 trademarks were identified as well-known trademarks by Beijing Higher People's Court.

The court also held that SWAROVSKI crystal entered the Chinese market early, and as a wedding dress manufacturer, Shanghai Swalro shall be aware of the visibility and influence of SWAROVSKI. Swalro Company, however, still registered the similarity 施华洛 as its company name, and massively used 施华洛, 施華洛 and SWALRO in business activities. Besides, it also used its website for commercial publicity. Although there are differences between simplified and traditional Chinese characters, it is difficult for public to discriminate the source of the products or makes them think that there would be some certain relationship between the two trademarks. So this may have an effect on the market share of SWAROVS-KI. The court held that Shanghai Swalro's usage of 施华洛, 施華洛 SWALRO SWAROVSKI trademark, and such expression of "Swalro crystal wedding dress" and "Swalro wedding dress, together with Swarovski crystal, to lead a luxury fashion in wedding dress" constituted unfair competition. Therefore, Shanghai Swalro shall assume civil liability of stopping infringement, making compen-



sation and eliminating ill effects.

Swarovski safeguards trademark

CIP News reporter notices that trademarks, including SWAROVSKI, 施华洛世奇, 施华洛 世奇 and SWAROVSKI. Shanghai Swalro registered No. 4633889 SWALRO trademark and No. 4633890 施华洛 trademark, both registered in Class 25 wedding dress goods. At present, the No. 4633890 施华洛 trademark has been invalid.

In fact, Swarovski is not a stranger in such cases. In 2008, the company filed a trademark infringement lawsuit similar to this one in Beijing. Beijing No. 2 Intermediate People's Court then rendered its first-instance rule on the defendant Beijing Swanrov Wedding Photo Company not allowed to use 施華洛, 施华洛, SWAROV in its services (include its website), not allowed to register a domain name with SWAROV, not allowed to use SWAROVSKI to advertise its crystal wedding dress, not allowed to use a company name similar to 施华洛 and pay 210,000 yuan to Swarovski.

"The court's decision has safeguarded the trademark right of 施华 洛世奇," said a relevant IPR expert. In this case, the defendant is a wedding dress manufacturer, which will be somewhat different from subjects in other SWAROVSKI infringement cases. Moreover, the company constituted unfair competition by not only using a company name similar to SWAROVSKI, but also using the words of "Swalro crystal wedding dress" and "Swalro wedding dress, together with Swarovski crystal, to lead a luxury fashion in wedding dress," "As a wedding dress brand, Swarovski company has launched a series of actions to safeguard its right, which defended its brand reputation and purified the market. For many companies, there is something to learn from such experience," said

(by Zhang Di/Diao Xiaolin)

本报记者 张娣 通讯员 刁效林

近日,上海市第二中级人民法院 对施华洛世奇股份公司(下称施华洛 司(下称施华洛礼服公司)侵害商标 权及不正当竞争纠纷一案作出一审 判决,判令被告上海施华洛礼服有限 公司停止侵权、消除影响,并赔偿原 告施华洛世奇股份公司经济损失 28万元、合理费用2万元。

婚纱礼服"撞名"水晶品牌

施华洛世奇 (SWAROVSKI)品 牌诞生于1895年,也正是因为这个 品牌的出现,让奥地利成为了享誉国 际的"水晶之国"。1968年,施华洛世 奇公司成立,其是一家注册在列支敦 士登公国、以切割水晶产品的制造销 售为主营业务的全球著名切割水晶 制造商。上世纪80年代,该公司在中 国注册了"SWAROVSKI"及"施华洛

施华洛礼服公司成立于 2004 年 8月,主要生产经营各类服装服饰。 施华洛世奇公司认为,施华洛礼服公 司在其公司婚纱礼服产品、宣传材 料、网页宣传、公司装潢上,使用"施 华洛""施華洛""SWALRO"等文字 标识,并以"<u>www.swalroweb.com</u>"为 域名建立了公司主页。该公司的行为 不仅侵犯了"施华洛世奇"注册商标 专用权,同时在宣传中使用的"施華 洛水晶婚纱""施华洛婚纱和施华洛 世奇水晶将一起,引领婚纱世界的奢 侈风尚"的表述属虚假宣传,构成了 不正当竞争,给施华洛世奇公司的企 业名誉、经营收入造成了严重损失, 遂将其告上法庭。

法院经审理查明,施华洛世奇公 司自上世纪90年代进入中国市场以 后,一直使用"SWAROVSKI"及"施 华洛世奇"进行广泛宣传,占有相当 大的市场份额,销售量居同类商品前 列,在消费者中享有较高的信誉; 2009年, "SWAROVSKI"及"施华洛 世奇"被北京市高级人民法院认定为 驰名商标。

法院认为,"施华洛世奇"水晶及 相关产品投放中国市场较早,施华洛 礼服公司作为主要生产婚纱礼服产 品的企业,应该知晓该商标作为驰名 商标所具有的知名度和影响力。施华 洛礼服公司仍将与该驰名商标近似 的"施华洛"文字注册为企业字号,并 在经营活动中大量使用"施华洛"、

"施華洛"、"SWALRO"文字,以及通 过使用域名为"www.swalroweb. com"的网站进行商业宣传,虽存在 文字上的简、繁之分,但难免会使相 关公众对展销商品来源产生误认,或 者认为两者之间存在某种特定的联 系,从而对"施华洛世奇"商品的市场 造成一定的影响,故应认定上海施华 洛礼服有限公司突出使用"施华洛" "施華洛""SWALRO"文字行为构成 商标侵权,包含"施華洛水晶婚纱" "施华洛婚纱和施华洛世奇水晶将一 起,引领婚纱世界的奢侈风尚"的表 述等则构成不正当竞争。因此,施华 洛礼服公司应当承担停止侵权、赔偿 损失、消除影响的民事责任。

认定侵权维护商标权利

记者通过查询了解到,目前,施 华洛世奇公司共申请注册了67件商 标,其中包括"SWAROVSKI""施华 洛世奇""施华洛世奇;SWAROVS-KI"等商标;而施华洛礼服公司共申 请注册了两件商标,分别为第 4633889 号 "SWALRO" 商标和第 4633890 号"施华洛"商标,两件商标 均申请注册在第25类婚纱商品上。 目前,第4633890号"施华洛"商标状

态显示商标已失效。 另据记者了解,早在2008年,施 华洛世奇公司就曾在北京就类似现 象提起过商标侵权诉讼,当时案件的 主审法院北京市第二中级人民法院 作出一审判决,判令当时案件被告北 京施华洛婚纱摄影有限公司在提供 婚纱摄影等服务中(包括在其网站 上),不得单独或突出使用"施崋洛"、 "施华洛"、"SWAROV"文字;不得使 用含有"SWAROV"文字的计算机网 络域名;不得使用"SWAROVSKI"文 字宣传其"水晶概念礼服"服务;不得 使用含有与原告注册商标相近似的 "施华洛"文字的企业名称;赔偿施华 洛世奇公司经济损失 21 万元。

"该案的判决有效维护了'施华洛 世奇'品牌的商标权。"相关知识产权 专家在谈及此案时对中国知识产权报 记者表示。该专家认为,在该案中,侵 权企业是礼服生产企业, 与一般假冒 "施华洛世奇"水晶的案件有所不同。 该公司不仅使用与"施华洛世奇"品牌 相近的企业名称, 更是在企业宣传中 突出使用"施华洛婚纱和施华洛世奇 水晶将一起, 引领婚纱世界的奢侈风 尚"字样,构成搭"施华洛世奇"品牌便 车的不正当竞争行为。"作为婚纱礼服 品牌, 施华洛世奇公司近年来在中国 的一系列维权行动有效捍卫了其品牌 声誉,净化了市场,这是很多企业值得 学习的地方。"该专家说。

Comment

Facing the fierce market competition, the value of a brand name has taken deep roots in the heart of many entrepreneurs. It's fine to pursue profit via brand value, but the action of selling counterfeit goods in disguise of other brands has not only cheated the consumers, but also disturbed the market order, which is absolutely not desirable. Finally, the court gave fairness to the Swarovski, and taught him a lesson to Shanghai Swalro. That is, if a company wants to gain profit by riding others' brands, it will hurt itself at last. (by Meng Yijun)

编辑点评:

面对激烈的市场竞争,"品牌有 价"已深入人心。凭借品牌追求利润 无可厚非, 但借他人品牌为自己脸 上贴金的"傍名牌"行为,既欺骗了 消费者,也扰乱了市场竞争秩序,这 是不可取的。法院的判决为施华洛 世奇公司讨回了公道, 也为施华洛 礼服公司上了一堂生动的知识产权 课: 借他人品牌为自己当垫脚石的 行为,到头来只会落得个"搬起石头 砸自己脚"的结局。