

China's IP in foreign eyes



Lenovo does not simply churn out cheap goods. It is spending heavily on branding, distribution, manufacturing and product development. It wants the Think brand to compete with Apple; it plans to open fancy showrooms like Apple's. The firm is strikingly unChinese in some ways. English is the official language. Many senior executives are foreigners. Top brass and important meetings rotate between two headquarters, in Beijing and Morrisville, North Carolina, and Lenovo's research hub in Japan. If Lenovo is to become China's first world-class brand, it must come up with products that consumers are passionate about. (From guard shack to global giant, by The Economist)

联想并不只是生产物美价廉的

产品, 它还在品牌建设、销售渠道、生产制造和产品研发等方面投入巨资, 联想希望其 Think 品牌能与苹果相抗衡, 并打算像苹果公司那样开设产品体验店。联想在某些方面惊人的“非中国化”, 例如, 英语是其官方语言, 许多高层管理人员是外国人, 重要会议在北京和美国北卡罗莱纳州莫里斯维尔两个总部之间轮流举行, 公司的研究中心设在日本。如果联想想成为一个世界顶级品牌, 它必须拿出令全球消费者“狂热”的产品。(《从矮子到巨人》, 经济学人杂志)

Comment:

Lenovo has to do better than it has done so far if it is to compete with the technology powerhouse like Samsung and build a global brand like Apple, as it described the task ahead for the firm and country: one day China will be more than a world factory... it will be a global centre for innovation. The firm and the whole country still have a long way to go in innovation.

点评:

如果联想的目标是超越三星这样的技术强手, 建立苹果这样的全球品牌, 并实现自己所描绘的未来前景, 有朝一日, 中国将不再仅是一个世界工厂, 更是一个全球创新中心, 那么, 联想还需要做得更多更好。在创新方面, 中国及其企业要走的路还很长。



When Iron Man 3 is released this spring, moviegoers eager to see the latest adventures of Robert Downey Jr.'s playboy superhero may catch a glimpse of a 110 in giant TV screen made by Chinese consumer electronics company TCL. The landmark, which hosts many a red-carpet premiere, has just been renamed TCL Chinese Theatre as part of a \$5m deal. TCL is one of a growing number of Chinese corporations using Hollywood's marketing machine to promote their products to a global audience. (Chinese brands tap Hollywood in quest to go global, by BBC News)

当电影观众在欣赏《钢铁侠3》中小罗伯特·唐尼最新的冒险经历时, 他们还会看到由中国消费类电子企业——TCL 制造的 110 英寸超大显示屏。作为一个地标性建筑, 中国

剧院曾举办过许多大片的首映式。不久前, TCL 花 500 万美元买下它的冠名权, 中国剧院已被重新命名为“TCL 中国剧院”。如今, 越来越多的中国企业开始运用好莱坞这一市场工具向全球观众推广自己的产品, TCL 只是他们中的一个。(《中国品牌借好莱坞谋求全球市场》, 英国广播公司)

Comment:

It is an expensive strategy but one they hope will turn Chinese consumer brands into household names that trip off the tongues of shoppers worldwide. But building a global brand is a long game and it is clear that Chinese companies are taking seriously. We are expecting to see more Chinese brands in everyday lives all over the world.

点评:

借好莱坞之名提升品牌知名度, 这虽然是一个昂贵的策略, 但中国企业却希望借此把中国消费品牌变得在全球耳熟能详。建立全球性品牌是一场长期战役, 中国企业已接受这一任务, 并做好了打好这一战役的准备。我们期待看到更多的中国品牌渗透到世界各地消费者的日常生活中。

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

McDonald's fails to scrub namesake registration 跨国快餐巨头遭遇本土快餐新秀, 引发商标近似纠纷—— “麦当劳”阻击“麦肯基”未果

Beijing No.1 Intermediate People's Court recently made its first instance verdict in the case of McDonald's Corporation's trademark dispute, approving registration of the trademark 麦肯基 MCKONKEY filed by Guangzhou Meconkey Food Company owned by a person named He Lechao, upholding the previous decision made by the Trademark Review and Adjudication Board (TRAB) under the State Administration for Industry and Commerce (SAIC) that the trademark 麦肯基 MCKONKEY constitutes no similarity with McDonald's Corporation's trademarks 麦当劳 and McDonald's.

In December 2003, He Lechao applied for registration of No. 38041030 trademark 麦肯基 MCKONKEY to the Trademark Office (TMO) under SAIC, certified to be used in services of coffee bar, fast food restaurant, restaurant on Class 43. In December 2007, McDonald's Corporation challenged the trademark in question during the publication period and sought rejection to TMO on the ground of similarity.

Denied by TMO, McDonald's Corporation then brought the case to TRAB three years later in December 2010. McDonald's held that trademarks McDonald's, Mc had gained popularity in the world and in China as well-known restaurant brands. The trademark in question copied their registered trademark McDonald's and were used on the same class, then similarity was constituted. McDonald's Corporation held that He Lechao obviously violates the principle of good faith and his registration should be rejected.

TRAB held that the evidences presented by McDonald's Corporation during the publication period failed to prove the reference trademarks McDonald's and 麦当劳 are well-known trademarks before the trademark 麦肯基 MCKONKEY in question was registered. In parallel, the two trademarks are disparity in design, pronunciation, overall appearance. Even if the two marks are used on the same class, no confusion and misleading will be caused among the consumers and the trademark in question should be registered.



Disgruntled McDonald's Corporation then brought TRAB, He Lechao and his company to the court. McDonald's Corporation questioned He Lechao's qualification in conducting catering business, and held that the trademark in question obviously copied their registered trademarks McDonald's and 麦当劳. The two marks are similar in function and appearance and He's registration should be denied.

According to Article 28 of Chinese Trademark Law, where an application for registration of a trademark is not in compliance with the relevant provisions of this law, if the trademark is identical with or similar to a trademark of another person that has been registered or accepted in respect of identical or similar goods, the TMO shall refuse to accept the application and shall not publish the same. The court held that similarity or not is the key to conclude the case.

The court held that the trademark in question is disparity with McDonald's Corporation's trademarks McDonald's and 麦当劳 in design, pronunciation, overall appearance. Even if the two marks are used on the same class, no confu-

sion and misleading will be caused among the consumers and the trademark in question should be registered. The court upheld TRAB's decision and the trademark in question was approved. According to the plaintiff's attorney, McDonald's Corporation hasn't instituted an appeal so far.

(by Wang Guohao)

本报记者 王国浩

知名快餐巨头“麦当劳”与中国本土快餐企业“麦肯基”的不期而遇, 导致了一场备受业界关注的商标纠纷。在历经商标异议、异议复审程序后, 日前针对该纠纷的行政诉讼一审判决。北京市第一中级人民法院一审判决维持中国国家工商行政管理总局商标评审委员会(下称商评委)认定广州麦肯基餐饮管理有限公司(下称麦肯基)法定代表人何乐朝申请注册的第 38041030 号“麦肯基 MCKONKEY”商标(下称被异议商标), 与麦当劳公司引证的“麦当劳”、“McDonald's”系列商标未构成近似商标的异议复审裁定。

该案源于 2003 年 12 月, 自然人何乐朝向中国国家工商行政管理总局商标局(下称商标局)提出第 38041030 号“麦肯基 MCKONKEY”商标的注册申请, 指定使用在第 43 类咖啡馆、快餐店、餐厅等服务上。2007 年 12 月, 该商标经初步审

定并公告后, 在法定期限内麦当劳公司向商标局提出异议申请。由此, 双方对被异议商标与引证商标是否构成近似商标争执不断。

关于被异议商标与引证商标是否构成近似的问题, 商标局裁定认为两者未构成近似商标, 并裁定被异议商标予以核准注册。

随后, 麦当劳公司于 2010 年 12 月向商评委提出异议复审申请, 称其“McDonald's”等“Mc”系列商标经过长期使用和宣传, 已经在中国和世界多个国家成为驰名商标, 被异议商标与引证商标构成使用在类似服务上的近似商标, 并且是对引证的在先驰名商标的明显复制, 何乐朝注册被异议商标的行为违反了诚实信用原则, 因此被异议商标不应核准注册。

据商评委作出的商标异议复审裁定书显示, 麦当劳公司提交的其“McDonald's”及“麦当劳”标识在中国的实际使用图片、互联网有关该公司的报道等在案证据, 不足以证明其引证商标在被异议商标申请注册前已在中国构成驰名商标, 被异议商标与引证商标在构成要素、呼叫、整体外观等方面均存在区别, 即便使用在类似服务上也不会引起消费者的误认, 因此两者并未构成使用在类似服务上的近似商标, 裁定被异议商标予以核准注册。

麦当劳公司随即向商评委申诉至北京市第一中级人民法院, 诉称被异议商标指定使用在餐馆等服务上, 何乐朝作为一名自然人, 麦当劳公司怀疑其没有资质生产相关产品或提供相应服务; 被异议商标是对引证的在先驰名商标“McDonald's”等“Mc”系列商标的明显复制, 申请注册被异议商标的行为违反了诚实信用原则, 两者构成使用在类似服务上的近似商标。据此, 被异议商标不应核准注册。

根据中国商标法第二十八条规定:“申请注册的商标, 凡不符合本法有关规定或者同他人在同一种商品或者类似商品上已经注册的或者初步审定的商标相同或者近似的, 由商标局驳回申请, 不予公告。”法院审理认为, 本案的争议焦点在于被异议商标与引证商标是否构成近似商标。

法院审理认为, 被异议商标与引证商标所含英文“McDonald's”、中文“麦当劳”或图形部分在构成要素、呼叫、整体外观等方面均存在明显区别, 且将被异议商标与引证商标同时使用在类似服务上并不会引起消费者的混淆误认, 因此两者未构成近似商标。据此, 法院判决维持了商评委的裁定。据麦当劳公司该案代理律师透露, 该公司未就一审判决结果提起上诉。

IP Brief

Shanghai

Latest statistics from SIPO showed that as the end of 2012, valid invention patents amounted to 40,309 in Shanghai, up 29.5%. The invention patent holdings of each 10,000 heads reached 17.2 (calculated on the base of 23.5 million permanent population), achieving the goal of 16 invention patents for each 10,000 heads.

In 2012, 37,139 inventions were filed in Shanghai, 11,379 of which were granted, up 15.5% and 24.2% respectively.

上海

根据中国国家知识产权局公布的数据显示, 截至 2012 年底, 上海

有效发明专利量为 4.0309 万件, 比 2011 年增长 29.5%, 上海每万人口发明专利拥有量为 17.2 件(按照常住人口 2350 万计算), 超额实现了上海市政府提出的“到 2012 年年底上海每万人口发明专利拥有量达到 16 件”的目标。

据统计, 2012 年上海市发明专利申请量为 3.7139 万件, 比 2011 年增长 15.5%, 其中发明专利授权量为 1.1379 万件, 比 2011 年增长 24.2%。

Guangdong

Guangdong IP Office, Guangdong Development and Reform Commission and other 7 government organs jointly released guidance on promoting IPR pledge financing in Guangdong province. According to the document, efforts will be expended to promote IPR pledge financing, and facilitate transforming of economic development.

According to the document, Guangdong will set up IPR trading platform and open fast channels for IPR pledge financing, including patent, trademark and copyright.

广东

近日, 广东省知识产权局、省发改委、省经信委等 9 部门联合发出《关于加快推进我省知识产权质押融资工作的若干意见》, 要求加快推进知识产权质押融资工作, 实现知识产权市场价值, 促进经济发展方式转变。

根据意见的部署, 广东省将建立专利、商标、版权等知识产权质押登记快速通道, 建设知识产权交易公共服务平台等。

Shandong

Shandong province recently introduced several regulations on intensifying works concerning IPR to boost core competitiveness of

enterprises. The paper points out that the quantity of invention filings by enterprises and numbers of enterprise applicants should be doubled by the end of the 12th Five Year Plan period and reach 20,000 and 10,000 respectively.

The paper highlights enterprises' role of main innovators and the importance of IPR in accelerating the change of economic growth mode. According to the paper, efforts should be exerted to improve patent service network and establish a high quality of law enforcement team.

山东

日前, 山东省政府正式出台《关于加强知识产权工作提高企业核心竞争力的意见》, 明确提出“十二五”末, 实现全省企业发明专利申请量和提交发明专利申请的企业数量“双倍增”, 即分别达到 2 万件和 1 万家的目标任务。

据介绍, 意见突出企业创新主体的地位, 突出发明专利创造, 知识产权在加快转变经济发展方式中的支撑和引领作用, 提出要健全专利信息网络, 加强执法队伍建设等。

Yunnan

Kunming Iron and Steel Holding Co., Ltd, China Southern Power Grid and other 5 Yunnan-based companies have been affirmed as enterprises with IPR advantages by Yunnan IP office. The selection is based on the documents entitled Regulations on Affirming Enterprises with IPR Advantages. Up to now, 16 enterprises have been recognized as enterprises with IPR advantages.

It is known that 22 evaluation standards including the size of enterprises, industry character, invention applications and grants in the latest 3 years were strictly referred.

Yunnan

日前, 云南省知识产权局根据《云南省知识产权优势企业认定管理办法》, 经过申报、推荐、初审、专家评审、省知识产权局审定批准等程序, 认定昆明钢铁控股有限公司、云南电网公司等 7 家企业为云南省知识产权优势企业。至此, 云南省认定的知识产权优势企业共计 16 家。

据悉, 此次优势企业认定工作根据企业规模 and 产业特点, 围绕近 3 年发明专利授权量、专利申请及授权量增幅等 22 项评价指标进行评审。

Table with 2 columns: Role and Name. Includes Executive Editor Liu Peng, Practice Editor Meng Yijun, and Translator Jiang Xu.