

It may be hard for NIKE to stride the hurdle of “刘翔牌” 耐克恐难迈过“刘翔牌”这道栏

Chinese flying man Liu Xiang, a famous hurdle runner who enjoys world prestige, failed to register a trademark used on clothing in his name...

was named “Liu Xiang”. In 1986, the garment factory used “刘翔牌” added with a graph to register its trademark for use on the goods of Class 25.

Nike Company wished to refuse the refusal decision made by the TMO and applied to the TRAB for a review. However the application for a review of trademark registration was rejected...

Nike was rejected when it applied for registering trademark “刘翔”

In May 2006, Nike Company, with Liu Xiang's authorization, applied to the Since then, the Trademark Office (TMO) for registering “刘翔” series textual, Pinyin and graphic trademarks for use on the goods of Class 25 (clothing, shoes and hats)...

In refusal of the decision on trademark review, Nike sued the TRAB

Nike Company then brought an administrative action against the TRAB to the Beijing No.1 Intermediate People's Court. On November 27, 2012, the No.1 Intermediate People's Court held a public hearing on the case.

In court, Li Xiaohong, Nike Company's attorney-in-fact and lawyer of Beijing ZY Partners, held that the trademark in the style of Liu Xiang's signature which Nike Company intended to apply for registration was significantly different from trademark “刘翔牌及图”, thus would not cause confusion or misidentification in the consumers concerned.

According to Li Yonghong, Nike Company, when cooperating with well-known athletes to popularize its brand, generally used, on related products, the trademarks relating to the athletes concerned along with its own trademark so as to allow the public concerned to identify that the products were produced by Nike Company, and avoid causing any confusion in the public concerned as to the origin of the products.

When interviewed by the re-



porter from CIP News, Prof. Sun Guorui from the Law School of Beihang University expressed that though the trademark in the style of Liu Xiang's signature which was applied for registration by Nike Company was different from trademark “刘翔及图” in appearance, another significant identifying element of a trademark was its pronunciation. Seen from the pronunciation of these two trademarks, the two Chinese characters “刘翔” were the core element. Hence if the two trademarks were registered for use on the goods of the same class, it would undoubtedly confuse the consumers. Sun held that Nike Company stood a slim chance of being approved to register the trademark in the style of Liu Xiang's signature.

(by Zhu Wenming)

本报记者 祝文明

享誉世界的“中国飞人”、中国著名跨栏运动员刘翔,不能在服装类别上以自己的名字注册商标,因为有一家企业在26年前已经注册了“刘翔牌”商标。2012年,获得刘翔合法授权的耐克国际有限公司(下称耐克公

司)因在中国申请注册“刘翔”商标被驳,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)申请复审仍被驳回,故将商评委告上了法庭。日前,该案由北京市第一中级人民法院开庭审理。

耐克申请“刘翔”商标被驳

2006年5月,耐克公司经刘翔授权,向中国国家工商行政管理总局商标局(下称商标局)申请在第25类(服装,鞋,帽)上注册“刘翔”系列文字、拼音、图形商标,其中包括一个刘翔签名体文字商标。此后,商标局陆续核准了部分以“刘翔”为核心元素的商标,但文字商标“刘翔”的注册申请被驳回,不予注册。

原来,早在1986年,上海一家名为刘翔服装厂的企业,就已经注册了一个“飞鹰图形+刘翔牌”(商标注册号第281835号,下称刘翔牌及图商标)组合商标。彼时,如今享誉世界的刘翔还是一个3岁孩童。据了解,刘翔服装厂一直延续至今,并已更名为上海刘翔实业有限公司。

上海刘翔实业有限公司负责人刘建中告诉中国知识产权报记者,他父亲刘丁初在1984年的时候成立了一家服装厂,因服装厂位于上海市宝山区刘行镇毅翔村,再加上本身又姓刘,就取了“刘翔”两字作为企业名

称。1986年,服装厂在第25类上进行商标注册,选择了“刘翔牌”,只是又添加了一个图形。“刘建中表示,和运动员刘翔同名,只是一个巧合。

耐克公司对于商标局的驳回决定不服,向商评委申请复审,但是,该复审申请依然被驳回。商评委认为,耐克公司申请注册的刘翔签名体商标和“刘翔牌及图”商标中构成使用在同一商品上的近似商标。

耐克不服复审决定起诉

于是耐克公司提起了行政诉讼,将商评委起诉至北京一中院。2012年11月27日,此案在北京一中院公开开庭审理。

在庭审中,耐克公司代理人、北京正见永申律师事务所律师李晓红认为,耐克公司申请注册的刘翔签名体商标与“刘翔牌及图”商标存在明显差异,不会造成相

关消费者的混淆和误认。

李永红还表示,耐克公司在与知名运动员合作推广品牌的时候,一般都是将与运动员相关的商标,和耐克公司自己的商标同时使用在相关产品上,这种使用方式更能使相关公众明确该产品的来源是耐克公司,不会造成相关公众对产品来源的混淆。

北京航空航天大学法学院教授孙国瑞在接受中国知识产权报记者采访时表示,虽然耐克公司主张其申请注册的刘翔签名体商标与“刘翔及图”商标在外观上有所不同,但是,商标的另一个显著识别要素是其呼叫,从这两个商标的呼叫部分来看,“刘翔”两个汉字是它们的核心部分。所以,这两个商标如果用在相同类别上,无疑会造成消费者混淆。孙国瑞认为,耐克公司获准注册刘翔签名体商标的可能性较小。

Link 相关链接

Shanghai Liu Xiang Garment Factory was opened in 1984 before being approved to register trademark “刘翔牌及图” in 1986.

In May 2006, an agreement was signed between Liu Xiang and Nike Company, in which Nike Company was authorized to put Liu Xiang's name and image for commercial use as trademarks and to apply for registering Liu Xiang as a trademark.

In July 2009, the TMO rejected the application, made by Nike Company, for registering the trademark in the style of Liu Xiang's signature for use on clothing. Nike Company soon applied to the TRAB for a review.

In April 2012, the TRAB made a decision to reject Nike Company's application for a review of trademark registration. That is, Nike Company was rejected to register the trademark in the style of Liu Xiang's name for use on clothing. Nike Company then brought an administrative ac-

tion against the TRAB to the First Intermediate People's Court of Beijing Municipality.

In November 2012, the Beijing No.1 Intermediate People's Court held a hearing over the case in which Nike Company sued the Trademark Appeal Board for rejecting its application for trademark registration.

1984年 上海刘翔服装厂成立,并于1986年申请注册“刘翔牌及图”商标。

2006年5月 刘翔与耐克公司签订协议,耐克公司获得授权将刘翔的姓名、形象作为商标进行商业性使用,将其姓名申请注册为商标。

2009年7月 中国国家工商行政管理总局商标局驳回耐克公司在服装类别上注册刘翔签名体文字商标的注册申请。耐克公司随即向中国国家工商行政管理总局商标评审委员会申请复审。

2012年4月 商评委作出决定,驳回了耐克公司的复审申请,即耐克公司在服装类别上申请的刘翔签名体文字商标不予注册。耐克公司提起行政诉讼,将商评委起诉至北京市第一中级人民法院。

2012年11月 北京一中院开庭审理耐克公司诉商评委驳回其注册申请一案。

NUMBERS

3.09

As of the end of October this year, the number of invention patents owned per 10 thousand heads in China has reached 3.09, up 30.4% compared with 2.37 in the last year.

3.09

截至今年10月底,中国每万人口发明专利拥有量已达3.09件,较去年年底的2.37件增长了30.4%。

35.7 million yuan

On December 1, the High-Level Forum on IPR Value Transformation, one of the activities during the 6th China (Nanjing) Patent Week, is held on schedule, with 35.7 million yuan patent licensing agreement signed.

3570 万元

12月1日,作为第六届中国专利周南京主会场系列活动之一,知识产权价值实现高层论坛现场签署专利运用协议金额3570万元。

30 billion yuan

Up to now, Chinese SME IPR pledge financing has amounted to

more than 30 billion yuan, which greatly promotes the innovation and transformation of these SMEs.

300 亿元

截至目前,中国中小企业知识产权质押融资金额已累计超过300亿元,有力推动了这些中小企业创新和转型工作的开展。

20,347

From January to October this year, Heilongjiang Province filed 20,347 patents, 4,814 of which were from colleges and universities, up 66.9%.

2.0347 万

据了解,今年1月至10月,黑龙江省专利申请量2.0347万件,其中高校提交了4814件专利申请,同比增长66.9%。

34,182

From January to October this year, 34,182 patents were granted in Sichuan Province, up 50.03%, 18,706 of which were from the enterprises, up 50.95%.

3.4182 万

据了解,今年1月至10月,四川省专利授权量为3.4182万件,同比增长50.03%,其中企业专利授权1.8706万件,同比增长50.95%。

China's IP in foreign eyes



Currently, the country's six nuclear power plants and 15 operating reactors have a capacity of around 12.5 GW. The country's ambitious plans for nuclear power generation was intended to reduce the rapidly growing economy's reliance on fossil fuel based power plants. The plan will involve application of some of the world's most advanced technologies from the US through Westinghouse. Over the years, China has become largely self-sufficient in nuclear reactor design and construction and other related aspects. (China's nuclear power capacity to hit 42 GW by 2015, by Power Engineering)

目前,中国的6家核电站和15个运行中的核电机组共具有约1250万千瓦装机容量。中国制定雄心勃勃的核电发电计划,目的在于减

少快速增长的经济发展对化石燃料发电厂的依赖。这个计划涉及到应用来自于美国西屋公司的一些世界上最先进的技术。多年来,中国在核电机组设计和施工等相关方面已经在很大程度上实现了自给自足。(2015年中国核电装机容量将达4200万千瓦),能源工程网站

Comment:

As a responsible country, China has reaffirmed its commitment to nuclear power. As well as investing in nuclear safety, China also pledged to invest more in nuclear power technological innovations, promote application of advanced technology, improve the equipment level, and attach great importance to personnel training. Chinese government is taking more responsibility to support the industry.

点评:

作为一个负责任的大国,中国已经重申了其发展核能的承诺。除了增加对核安全方面的投资,中国还承诺将更多地投资于核电技术创新、推广应用先进技术、提高装备水平,并高度重视人员培训。中国政府正在采取更多的措施以支持核能行业未来发展。

China has been added to the growing list of countries choosing to sign rail sector partnership agreements with India.

A Memorandum of Understanding (MoU) has now been signed between the two countries, following partnerships with Spain, Austria, Belgium, Switzerland. Under the MoU, both the countries will enhance mutual cooperation across various areas of rail technology including high-speed rail, heavy haulage and station development.



Both the sides will undertake exchange of information on policies, training and exchange programmes, site visits, joint symposiums etc. (Indian and China sign rail sector partnership, by www.rail.co)

中国已被列入不断扩大的与印度铁路部门签署合作伙伴关系协议的国家名单。继西班牙、奥地利、比利时和瑞士之后,印中两国近日签署了一份建立合作伙伴关系的谅解备忘录。根据该谅解备忘录,两国将共同加强高速铁路、重载运输及车站系统发展等铁道技术各个领域的互利合作。双方将进行在政策、培训与交流

项目、实地考察、联合研讨会等方面的合作。(《印中建立铁道合作伙伴关系》,英国铁路网)

Comment:

Unlike Japan and France, China is a relatively new entrant in the world of high-speed trains, starting its operations only in 2007. But within a few years, it has developed the world's largest bullet train network. India who needs the technical know-how, especially Chinese technology on heavy haulage in dedicated freight corridors, has found a good partner this time.

点评:

中国高速铁路相关业务始于2007年,与日本和法国相比只是新手。但就在短短几年之内,中国已经建成了世界上最大的高速铁路网络。印度,这个急需掌握技术诀窍特别是中国重载运输技术的国家,这回算是找到了一个绝佳的合作伙伴。

(by Correspondent Wang Weiwei from Canada)

(本报通讯员汪玮发自加拿大)

Table with 2 columns: Role and Name. Roles include 责任编辑, Executive Editor, 英文翻译, Translator. Names include 柳 鹏, Liu Peng, 茹 果, Ru Guo.