



“IPR-intensive industries have contributed much to the development of the US economy. The two sides should discuss and exchange views on the issues of IP legal system and experience and challenges.”

Chinese International Trade Representative from the Ministry of Commerce, Chong Quan stresses at 2012 China-the U.S. Law Exchange Forum.

“知识产权密集型行业为美国经济的发展贡献了较大力量,美国在知识产权法律制度制定与实践中的经验和值得中美双方共同交流与探讨。”

——中国商务部国际贸易谈判副代表崇泉近日在2012年度中美法律交流研讨会上表示。

“Innovation in combination with IP protection is equivalent to competitiveness.” Cameron F. Kerry, General Counsel U.S. Department of Commerce, pointed out that based on the principle of equality and mutual benefit, the two sides will deepen the exchanges and cooperation in IPR protection.

“创新加上知识产权保护才等于竞争力。两国要继续加强知识产权保护的国际合作,建立伙伴关系,在互利、互惠的基础上不断加强经济联系。”

——美国商务部法律总顾问卡梅隆·克里提出。

“Chinese enterprises are stepping up its understanding in IPR protection. China issued a series of industrial development plans during the 12th Five-Year Plan Period and lays out some specific rules on the R&D expenses. China intended to

develop its own technological innovations centered around strategic emerging industries and large enterprises. After the ball is rolling, the constitutive requirements of IP dispute may have major transformation.”

An article in newspaper by Saito, an expert from economics research department of Japan company.

“中国企业对技术提升及知识产权保护的认识,可能从内部发生变化。中国各项产业‘十二五’规划相继发布并对研发经费支出作出规定。中国在有意积累以战略新兴产业和大型企业为中心的自主技术,一旦进入正轨,知识产权纠纷或将发生重大变化。”

——日本大和综研株式会社负责中国课题的资深经济学家斋藤高发表相关文章,作了如上表示。

“China will gain its goal of spending more than 2.5% of GDP on R&D in 2020 to make China an innovative country and China's technical innovation capability will be greatly enhanced.”

Yu Xingou, an expert from Institute for Technology of University of Sao Paulo said.

“中国要在2020年达到全社会研发经费占GDP的2.5%以上,建设成为创新型国家,这是一个了不起的目标,必将大大提高中国的科技创新能力。”

——巴西圣保罗大学技术研究所专家于醒鸥如是说。



BASF's four-year trademark seesaw pending final judgment call “狮马”紧咬“红狮玛”

The trademarks case between “Horse and Lion” and “Hong Shi Ma” (Chinese literal meaning Red Lion Horse) has made new progress recently. Disgruntled with the ruling by the Beijing No.1 Intermediate Court, BASF, a European chemical company exhausted the legal avenue by appealing to the Beijing High People's Court recently.

The battle for the trademark of “Hong Shi Ma” dated back to 1987 when BASF, a global chemical giant, filed “Horse and Lion” for trademark registration, certified to be used on products of fertilizer. In November of 2003, Xiangyun Chemical Co Ltd (Xiangyun), a Chinese chemical enterprise, applied for registration of the trademark “Hong Shi Ma” in words and relevant figure (trademark in question) and would obtain the registration in August, 2005, certified to be used on the same products of fertilizer.

On July 10, 2008, BASF challenged the trademark and sought reversal at the Trademark Review and Adjudication Board (TRAB) under the State Administration for Industry and Commerce (SAIC) on the ground that the two marks “Hong Shi Ma” and “Horse and Lion” were similar in composition and both were certified on the same class of products. BASF claimed that the trademark of “Horse and Lion” had enjoyed high reputations and the dispute trademark of “Hong Shi Ma” would

cause confusion among customs.

TRAB held that similarity between the two trademarks was constituted and the registered trademark of “Hong Shi Ma” violated the ruling of trademark laws. TRAB then rendered its ruling and denied the disputed trademark registration on April 6, 2010. However, unhappy with the ruling by the TRAB over the registration of “Hong Shi Ma” trademark, Xiangyun then brought the TRAB to the Beijing No.1 Intermediate Court. Xiangyun argued that the disputed trademark “Hong Shi Ma” was original and distinctive and did not have the same features as BASF's trademark “Horse and Lion”.

The Beijing No.1 Intermediate Court made the first instance judgment and reversed TRAB's decision on the trademark in question. Then the TRAB brought the case to the Beijing High People's Court and stressed its position on similarity. BASF chose to be passive this time.

Beijing High People's Court ruled against the TRAB decision as well. Consequently, the TRAB was forced to validate registration of Xiangyun's disputed trademark “Hong Shi Ma” on September 20, 2011.

Obviously seeing the result differently, BASF fought back by challenging the TRAB decision in an administrative tribunal at the Beijing No.1 Intermediate Court. The court, however, insisted on its support to the TRAB decision. (by Yang Qiang)



本报记者 杨强

历时4年,因是否构成近似商标而备受业界关注的“红狮玛”商标争议案日前又有新进展。近日,因不服北京市第一中级人民法院作出的一审判决,欧方巴斯夫欧洲公司(下称巴斯夫公司)向北京市高级人民法院提起上诉。

“红狮玛”之争最早可追溯至1987年。当年,作为世界化工企业巨头,巴斯夫公司在中国提交了“狮马牌”商标注册申请,指定使用在肥料商品上。2003年11月,同为化工企业的中国祥云公司提出争议商标“红狮玛及图”的注册申请,并于2005年8月获准注册,核定使用商品同样为肥料等。

2008年7月10日,巴斯夫公司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)提出撤销祥云公司“红狮玛”商标的申请,理由为“红狮玛”商标与其“狮马牌”商标构成使用在类似商品上的近似商标,基于其“狮马牌”商标享有的较高知名度,“红狮玛”商标的使用易在市场上造成消费者混淆。

商评委于2010年4月6日作出裁定,认为两商标文字部分相近,而且核定使用商品构成类似商品,因此“红狮玛”商标的注册违反了商标法的规定,依法应予撤销。于是,祥云公司遂向北京市第一中级人民法院称其“红狮玛”商标不仅有独特创意,与巴斯夫公司“狮马牌”商标不构成近似商标。

北京市第一中级人民法院受理后,认可了祥云公司上述观点,并判决商评委重新作出裁定。商评委随后提起上诉,并坚持两商标构成近似,“红狮玛”商标依法应予撤销的观点。

经北京市高级人民法院终审,判决“驳回上诉,维持原判”。根据该判决,商评委于2011年9月20日作出“红狮玛”商标争议的终审裁定,维持了祥云公司“红狮玛”商标的注册。

针对这样的裁定结果,巴斯夫公司亦发起行政诉讼,将商评委诉至北京市第一中级人民法院,请求法院判决撤销商评委的终审裁定。2012年5月底,北京市第一中级人民法院已就案作出一审判决:巴斯夫公司主张不成立,商评委终审裁定应予维持。日前,巴斯夫公司已提起上诉。

Trademark penalty hikes to 1M yuan tops

遏制商标侵权行为 加大处罚力度

中国拟将商标侵权行为赔偿上限提高至100万元

On September 3, at the 2012 China Trademark Annual Meeting in Kunming in order to further curb the trademark infringement, the third revision to the Chinese Trademark Law will increase the penalty for trademark infringement, vaulting the max damages from 500,000 yuan to one million yuan.

At the 2012 China Trademark Annual Meeting, an official from the Education, Science, Culture and

Health Department of the Legislative Affairs Office of the State Council, said at the meeting that a series of measures are in place to solidify efforts in dishing out heavier penalties and to strengthen protection of the exclusive right in trademark use. The third revision to the Trademark Law refiles in more kinds of acts into infringement scope demanding liability, such as using other's trademark as enterprise name or the

name of commodity without permission, helping others to implement trademark infringement which were expected to be adopted as trademark infringement; it increases the legal compensation to the trademark infringement, and the ceiling of compensation is expected to be increased from half a million yuan to one million yuan; enhancing punishment on the repeated violations that the violation over two times

will face heavier punishment; lightening the burden of proof of infringement by the infringer, when necessary, the infringers are ordered to provide relevant information, such as account, material, etc.

(by Zhang Haizhi / Liang Dandan)

本报讯 9月3日,记者在昆明举行的2012中国商标年会上获悉,为进一步遏制商标侵权行为,第三次商标法修改拟加大对商标侵权行为的处罚力度,商标侵权行为的赔偿上

限有望从50万元提高到100万元。

在2012中国商标年会上,国务院法制办教科文卫司有关负责人在介绍目前正在进行的第三次商标法修改的主要内容时表示,为加大对商标侵权行为的处罚力度,加强对商标专用权的保护,拟采取多项举措形成合力。据了解,第三次商标法修改将增加应承担法律责任的侵权种类,如未经许可将他人商标作为企业字号或商品名称、帮助他人实施商标侵权等,有望被纳入商标侵权行为;提高

法定侵权赔偿数额,侵权行为的赔偿上限有望从50万元提高到100万元;加大对重复侵权的处罚力度,如对实施两次以上商标侵权的,予以从重处罚;减轻被侵权人的举证负担,必要时可责令侵权人提供相关账目、资料等。(张海志 梁丹丹)

责任编辑	曹可欣
Executive Editor	Cao Kexin
英文翻译	茹果
Translator	Ru Guo

榮華月餅 聲明

香港 东莞

榮華 作为首例港澳商标2007年被司法认定为中国驰名商标
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