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卫国

Cui Weiguo

Popular reality show dragged into copyright mud

从国外高价购买节目模式版权,却因选手翻唱陷入侵权纠纷—

《中国好声音》如何发出"好声音"

nese reality talent show on the Zhejiang Satellite TV, who paid premium for the imported operational mode. Although the program format has been licensed to China, a song "You exist in my song" performed by one contestant Li Daimo took the broadcasting company to deep legal water with the song creator Qu Wanting and UNIVERSAL Music Limited (UNI-VERSAL) the company Qu belongs to. UNIVERSAL sent an attorney letter directly to Li Daimo at the official microblog on August 3, claiming Li's singing "You exist in my song" in the Voice of China and an MV has not been authorized by the copyright holder and asking the defendant to immediately stop singing the disputed song in any form and to discuss the authorization and payment with UNIVER-SAL in five days."

"The MV mentioned in the attorney letter has nothing to do with the Voice of China. Singing other's song in the talent show is a TV broadcasting behavior which does not constitute infringement. Therefore, Li's Singing a song in this entertainment program does not infringe the music copyright." said Lu Wei, publicity director of the Voice of China.

Playing cover songs was criticized

The copyright royalty is paid by program organizers when contestants sing cover songs in a talent show. "Over 99% of the songs played in the Voice of China have

been paid and other three songs including this disputed song are under discussion," said Lu Wei.

However, the reporter found that the copyright Lu claimed did not include the case of the contestant singing live cover songs. According to Lu Wei, the organizer bought the music copyright from the record companies for commercial operation. According to the measures, all the music works played on TV should be registered on the website of Music Copyright Society of China (MCSC) regularly. MCSC will receive remuneration based on the actual recording time. The annual royalty should be paid by the TV stations.

Zhou Yaping, the vice chairman of the China Audio and Video Association Record Working Committee, did not agree with Lu's opinion. A TV station may broadcast a published work created by another person without permission, but should pay remuneration to the copyright owner. The royalty the broadcasters pay every year to MCSC is used for playing published works. However, the Voice of China made an MV without the authorization of the copyright holder. According to the Copyright Law, a producer of video recordings created by others should obtain permission from the copyright owner and pay remuneration. Although the program group has approached to buy the copyright of the song, the price issue is still under fringement of its statutory rights and should pay double damages.

Copyright awareness should be enhanced

With so many music contest shows on TV, there is an overwhelming urgency to avoid such copyright disputes and enable such type of TV market to develop healthily. Chen Shaofeng, deputy dean of the Institute for Cultural Industries at Peking University, pointed out that China should perfect the system of collective management of copyright and royalty should be paid by broadcasters to MCSC for compensating the copyright owners in the previous time. Moreover, in order to improve TV shows' market, social awareness on copyright protection should be enhanced.

Payment access should be improved

"In the few program groups volunteering to pay the royalty, broadcasters are always to contact with record companies directly rather than connect with MCSC." a representative from MCSC who asked not to be named noted.

With the mistrust of MCSC from both the copyright owners and the users, both sides prefer to close a deal themselves. However, in US and Japan, where copyright protection is more developed, collective management organization could represent the interests of the copyright owners in full capacity. Chen Shaofeng suggested that China should improve the copyright collective management system and lay out specific provisions on copyright

royalty distribution to ensure the interests of copyright owners and gain their trust. (by Feng Fei)

本报实习记者 冯飞

浙江卫视大型音乐选秀节目《中国好声音》从国外高价购得节目模式版权,却因选手翻唱《我的歌声里》陷入版权纠葛。8月3日,这首歌曲的原创者曲婉婷所属的环球唱片有限公司(下称环球公司)在其官方微博上公开致《中国好声音》选手李代沫的律师函,称其在《中国好声音》及之前推出的个人MV中使用曲婉婷作词、作曲并演唱的《我的歌声里》,此举并未取得曲婉婷或环球公司关于词曲作品的书面授权,要求对方立即停止使用词曲作品,在5日内与环球公司商讨授权和付费事宜。

对于环球公司的指责,《中国好声音》节目组宣传总监陆伟在接受中国知识产权报记者采访时称,律师函中提到的 MV 与《中国好声音》没有关系,节目组并不知情。他认为,选手在节目中演唱他人歌曲属于电视播出行为,并不构成侵权。所以,李代沫在《中国好声音》节目中可以翻唱并不侵权。

歌手翻唱遭指责

据了解,在音乐类选秀节目中选 手翻唱他人歌曲,都由节目主办方支 付版权使用费。"《中国好声音》所用 到的歌曲,节目组都已与相关唱片公 司取得联系,截至目前,我们已购买 了 99%的歌曲版权,包括《我的歌声 里》在内,还有两三首歌曲的版权价 格正在治谈中。"陆伟介绍。

但记者在采访中发现,陆伟所言的歌曲的使用版权,并不包括选手在节目现场翻唱的情况。陆伟表示,向唱片公司购买版权,是为了歌曲将来商业化运作,而对于环球公司指责一

事,"凡是电视台使用的音乐作品,都会定期到中国音乐著作权协会(下称音著协)网站登记使用情况,音著协

会根据使用音乐作品的数量收取版

权使用费,电视台每年都会一次性支

付所有费用,用于电视节目的播出。"对于陆伟的解释,中国音像协会唱片工作委员会副理事长周亚平和并不认同,他认为,电视台可以处权利人许可播放他人已发表的作品,但必须向权利人支付报酬。电用于播放他人已发表的作品,他对声音》节目组是使用他人事,而《中国好声音》节目组是使用他人作品前,应对时代表规定,使用他人作品前,应对球公司虽已同意出售歌曲版权,但《中国好声音》节目组在价格未谈好的情况下擅自使用,属于恶意侵权,

版权意识待提升

应加倍赔偿。

从《花儿朵朵》到《天籁之声》, 从《激情唱响》到《完美声音》,在音 乐类选秀节目扎堆荧屏的当下,如 何避免歌曲的版权纠纷,促进电视 节目市场健康发展,成为亟需解决的问题。对此,北京大学文化产业研究院副院长陈少峰认为,应尽快完善集体管理制度,使用他人作品的,应向集体管理组织申报并缴纳版权使用费,由其分配给著作权人。同时,要进一步提升全民的版权意识,这样才能促进电视节目市场健康发

付费渠道需完善

音著协一位不愿透露姓名的负责人告诉记者,在少数主动付费的电视节目组中,多数使用者直接和唱片公司联系,只有少数使用者通过音著协缴纳版权使用费。

据悉,在中国由于存在一些权利人和作品使用者对集体管理组织不信任的情况,因此,在版权交易中,双方更倾向于直接合作,而在美国、日本等版权保护较好的国家,集体管理组织完全代表权利人的周益。对此,陈少峰建议,中国应借鉴他们的模式,尽快建立完善的集体管理制度,制定详细的版权使用费分配机制,保证权利人的收益,更好地赢得权利人的信任。

Ferrero's trademark application encountered "Waterloo"

费列罗巧克力外包装申请商标注册被驳

orld-known chocolate manufacturer Italian Ferrero Co., Ltd. encountered "Waterloo" when filing a figurative trademark application for its long-term use product package. Recently, the Beijing No.1 Intermediate People's Court upheld the decision made by the Trademark Review and Adjudication Board (TRAB) under the State Administration for Industry and Commerce (SAIC) on the ground that the trademark is lack of distinctiveness. At present, the sentence is effective.

The above trademark was registered in Italy in December 2007 on Class 30 coffee products with dark orange, light chestnut, blue, yellow, green, beige, and white as its specified color. In November 2008, based on the judgment that the trademark is short of distinctivess, the Trademark Office, also under the SAIC, dismissed Ferrero's application for territorial extension protection.

Ferrero thereafter brought the case to TRAB. In May 2011, TRAB rejected the application a-



gain, considering that the trademark can hardly distinguish the source of commodities and is lack of significance as consumers often identify the figure with a package design or publicity picture rather than a trademark.

Dissatisfied, Ferrero then brought the case to Beijing No.1 Intermediate People's Court. Recently, Beijing No.1 Intermediate People's Court upheld TRAB's decision. (by Wang Junjie)

本报讯 知名巧克力制造企业意大利费列罗有限公司(下称费列罗公司)为其长期使用的产品外包装申请注册图形商标时遭遇"滑铁卢"。近日,北京市第一中级人民法院(下称北京一中院)以申请商标不具显著性,通过使用也无法获得显著性为

由,维持了中国国家工商行政管理总局商标评审委员会(下称商评委)作出的申请商标驳回复审决定。目前,该判决已经生效。

据了解,上述申请商标基础注册 国为意大利,国际注册日为 2007 年 12 月,指定颜色为深橙、浅栗、蓝、 黄、绿、米、白色,指定使用在国际分 类第 30 类咖啡、茶等商品上。 2008 年 11 月,中国国家工商行政管 理总局商标局向费列罗公司发出商 标驳回通知书,以申请商标在指定使 用的商品上缺乏显著性为由,驳回了 该申请商标在全部指定使用商品类 别上的领土延伸保护申请。 费列罗公司此后就该商标注册 驳回案向商评委申请复审。2011年 5月,商评委作出对申请商标在第 30类咖啡等商品上在中国的领土延伸保护申请予以驳回的决定。该决定 认为:相关公众依社会通常观念易将申请商标图形作为产品的一般包装 图案或宣传图片而非商标加以识别, 难以起到区别商品来源的作用,缺乏 商标应有的显著特征。

商标应有的显著特征。 对商评委的复审决定,费列罗公司表示不服,并诉至北京一中院。近日,北京一中院经审理维持了商评委的决定,对于费列罗公司的诉讼请求,北京一中院均未支持。(王俊杰)

China's IP in foreign eyes



ith annual sales of approximately 19 million vehicles, China's auto industry is now, by far, the largest in the world. Not content to be the world's volume leader, though, government and industry leaders now share a common objective: "To make China's auto industry the innovation leader by 2020." Last

week, Wanxiang Group Corp., one of China's largest parts makers, offered a \$450 million rescue package to A123 Systems, Inc., a U.S. manufacturer of advanced batteries for electric vehicles, and in so doing, moved China one step closer to achieving its objective. (Chinese Company Offers To Acquire A Leading U.S. Battery Maker, by Forbes)

中国汽车年销售量大约为1900万辆,其汽车产业可谓世界之最。尽管如此,中国并不满足于仅仅在数量上领先,中国政府和行业领袖有着一个共同的目标:"使中国的汽车产业在2020年成为全球创新的领导者"。今年8月,中国最大的零部件制造商之一万向集团公司向美国电动汽车电池制造商A123系统公司提出了4.5亿美元的一揽子收购计划。这使得中国向实现其目标又迈进了一步。(《中国公司收购美国领先电池

制造商》,福布斯杂志)

Comment:

While some lawmakers have raised security concerns about the deal, saying that the deal will transfer important U.S. intellectual property to China, the fact is that this will be a win-win deal. Wanxiang Group Corp. is helping A123 Systems, Inc. get out of financial crisis and get back to the market, while integrating its advanced technology.

点评:

万向集团公司与 A123 系统公司的交易引起了美国一些议员有关安全的担忧,他们认为这将把美国重要的知识产权转移到中国。但事实是,这将是一个双赢的交易。万向集团公司既帮助 A123 系统公司摆脱财务危机重返市场,又获得其先

进技术发展自主汽车产业。

ames Cameron is to bring the 3D revolution to China after announcing a joint venture with two local companies. His new firm, CPG China Division, will aim to take advantage of the rapid growth in Chinese cinema audiences by working with studios in the world's most populous nation. "The future of entertainment is 3D and we believe that the future of 3D is right here in China," Cameron told the Associated Press, "This is the best place for us to create a kind of a second home." China said earlier this year that it will relax its quota, allowing an additional 14 foreign films to be screened providing they are made in 3D or for the big-screen Imax format. (James Cameron takes 3D to Chi-

na, by The Seattle Times)

随着宣布与中国两家公司成立合资企业,詹姆斯·卡梅隆即将把3D革命带到中国。他的新公司——CPG中国分公司将目标瞄向中国迅速增长的电影消费市场,并致力于与中国本土电影工作室的合作。"我们相信,3D是娱乐业的未来,而3D的未来就在中国,"卡梅隆告诉美联社记者,"这是我们打造第二个家的最好地方"。中国今年早些时候曾表示,将放宽其电影配额,增加引进14部3D或大屏幕Imax国外电影。(《詹姆斯·卡梅隆将3D带到中国》,西雅图时报)

Comment:

Last year, about \$2.1 billion movie tickets were sold in China, up 30 percent from 2010. China's booming movie-making industry has been attracting international film giants. Meanwhile, more importantly,

the emphasis and development on high technology and rapid economic growth make China the right place for generating new technolo-

点评:

去年,中国电影票房收入高达约21亿美元,同比2010年增长了30%。中国蓬勃发展的电影业一直吸引着国际电影巨头。更为重要的是,对高科技的重视以及经济的高速增长正使中国成为创造新技术的风水

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

责任编辑	柳 鹏
Executive Editor	Liu Peng
英文翻译	茹 果
Translator	Ru Guo

社址:北京市海淀区蓟门桥西土城路 6 号 邮编:100088 电邮:cipnews@vip.sina.com 记者部:82803956 编辑部:82803936 办公室:82803009 发行部:82034385 广告部:82034358 印刷:解放军报印刷厂