

2012 年 7 月 18 日 July 18, **20**12

星期三出版 Published on Wednesday 中文主编:吴 辉 Chinese Editor-in-Chief: Wu Hui

英文审校: 胡玉章 English Reviser: Hu Yuzhang

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Chinese firm loses copyright lawsuit over Crayon Shin-chan

将他人作品注册为商标并使用, 遭著作权人起诉后被认定侵权——

"蜡笔小新"的跨界之争

Y oshito Usui was a Japanese manga artist known for the popular manga Crayon Shin-chan. The lovely figure has become popular in China since publication debut in 1990s. A Shanghai company named Enjia, however, used the registered trademark of 蜡笔小新(Chinese translation of Crayon Shin-chan)in its products.

Shanghai No.1 Intermediate People's Court recently ordered the Shanghai Company and other companies to stop infringing upon the copyright owned by Japan's Futabasha Publishers and to pay 300,000 yuan to Futabasha in damages.

Futabasha sues Enjia infringing copyright

The case started in 2004 when Futabasha found Enjia Company produced and distributed shoes printed with Crayon Shin-chan images and Crayon Shin-chan in traditional Chinese characters, and used the trademark on relevant website as well. Futabasha argued that Enjia's use of the trademark in question infringds its copyright, and inflicted irreparable losses. The publisher then brought a lawsuit against Enjia and other companies to the court and requested 1.06 million yuan in damages.

Futabasha presented evidence

of its ownership. It signed an agreement with Yoshito Usui on April 1992 and achieved the exclusive copyright relating to Crayon Shin-chan from the creator. Meanwhile, Futabasha has also been licensed to use the graphic trademark of 蠟筆小新 from Dongli Publisher.

Enjia defends the suit with trademark roots

Enjia argued that the case is not a copyright dispute, but a right conflict between trademark and copyright. Enjia held that it legally used the No.1033450 and No. 1033444 trademark, figure, and words that had been approved for registration and it had verified the trademark's authenticity before used. Therefore it had acted with due diligence.

The above two trademarks was filed by Chengyi Company in 1996 and registered in June 1997 in Class 35, goods including clothes and shoes. In April 2004, the two trademarks were transferred to Shifu Company, which later authorized to Enjia Company with license expired on June 2007. In May 2010, the trademark in question was authorized to a party outside this case, Jiangsu Labixiaoxin Clothes Company

The court held that Enjia used the cartoon image of Crayon

Shin-chan and relevant graphics in its products and applied the copied works to the public through publication, which constituted replication and distribution in copyright law meaning. In parallel, the company used the product in question in internet propaganda also constituted communicating behavior in copyright law meaning. So the court ruled that Enjia infringing the copyright of Futabasha.

(by Xie Huandong) 本报讯 日本漫画家臼井义人 塑造的卡通人物"蜡笔小新"自上个世纪 90 年代出版发行以来,渐渐被国人所熟知。不料,上海一家名为恩嘉经贸发展有限公司(下称恩嘉公司)的企业也在使用"蜡笔小新"注册商标销售童鞋。作为《蜡笔小新》著作权人,日本双叶株式会社(下称双叶社)以侵犯著作权为由,把思嘉公司等告上法庭。

近日,上海市第一中级人民法院 (下称上海一中院)对双叶社诉恩嘉 公司等侵犯著作权案作出一审判决。 法院判决认定恩嘉公司在其销售的 相关产品上使用"蜡笔小新"相关作品,侵犯了双叶社的著作权,判令其 停止侵权并赔偿原告经济损失 30 万

双叶:凭著作权起诉

据悉,此案纷争始于 2004 年,双 叶社发现恩嘉公司生产、销售带有 "蜡笔小新"卡通图像及繁体"蜡笔小 新"文字的童鞋,并在相关网站中使 用了上述标识。双叶社认为恩嘉公司的行为构成对原告著作权的侵犯,给该公司造成难以弥补的巨大损失。为此,双叶社将恩嘉公司等诉至上海一

中院,并索赔 106 万元。 双叶社提出此番诉讼的依据是,该社在 1992 年 4 月同"蜡笔小新"创作者臼井义人签订了合同,独家受让取得"蜡笔小新"出版权以及出版权以外的著作权、著作权分支权与商品化的权力。同时,双叶社从东立出版社有限公司(下称东立公司)受让取得"蠟筆小新"变形字体作品著作权。

恩嘉:借商标权抗辩

对于双叶社指控,恩嘉公司并不

认同,该公司认为此案并非著作权纠纷,而是一起商标权与著作权的权利冲突纠纷。恩嘉公司称,其使用的"蜡笔小新"图形及文字,是经商标权利人授权合法使用的第1033450号"蜡笔小新"和第1033444号"蜡笔小新"注册商标。其是通过签订许可使用合同方式获准使用上述商标,并且在使用前已查询过商标真伪,尽到了一般注意义务。

据了解,第1033450号"蜡笔小新"商标和第1033444号"蜡笔小新"商标的原商标申请人为诚益公司,申请注册于1996年,申请核定使用商品为第25类服装、鞋等。1997年6月,上述两件商标被核准注册。

2004年4月,上述商标被转至世福公司名下,随后世福公司又将其许可给恩嘉公司使用,授权使用期限至2007年6月。2010年5月,涉案商标又被转至案外人江苏蜡笔小新服饰有限公司名下。

上海一中院重审后认为,恩嘉公司在其销售的产品上使用了蜡笔小新卡通形象及关联书法作品,并通过出售的方式向公众提供了涉案作品的副本,构成实施著作权法意义上的复制、发行行为。同时,该公司在其网络宣传中使用涉案作品,亦构成著作权法上的信息传播行为。据此,法院认定恩嘉公司行为构成侵犯双叶社著作权。 (谢环东)



China's IP in foreign eyes

op Chinese leaders have called for reforms to China's science and technology program that include innovation and integration with social and economic development. According to the state-run Xinhua news agency, the president proposed six suggestions

for R&D reform, which include promoting innovation-driven development, cultivating talented people, and expanding international cooperation. Hu also urged authorities to increase R&D investment to more than 2.5 percent of China's GDP in 2020. Premier Wen Jiabao similarly called for new policies and regulations to promote innovation. (President Hu Jintao: Chinese R&D Needs More Innovation, by Asian Scientist)

中国高层领导人呼吁中国科技体制改革,包括社会和经济发展的创新与集成。据新华社报道,中国国家主席胡锦涛在近日举行的全国科技创新大会上提出了6项深化科技体制改革的意见,其中包括进一步推进创新驱动发展、完善人才培养机制和扩大国际合作。胡锦涛还敦促有关部门加强领导,以实现2020年全社会研发经费占国内生产总值2.5%以上的目标。同样,中国国务院总理温家宝也呼吁新的政策和

法规以促进创新。 (《胡锦涛:中国研发需要更多创

新》,业州科学系)

China has very good opportunities for development, but that does not necessarily mean it will develop from a big economy to a strong economy. Scientific innovation plays an important role here. It still leaves a lot to be desired. Chinese top leaders call for innovation. It shows that Chinese government attaches considerable importance to scientific innovation.

点评:

中国有着非常好的发展机遇,但是这并不意味着它一定能从一个"大"的经济体发展为一个"强"的经济体。其间,科技创新起着举足轻重的作用。而中国在这方面仍然有待改进。党和国家领导人高度重视创新,这表明中国政府对科技发展有高度



的重视与期待。

he government has launched a new campaign targeting rampant online piracy through enhanced supervision and inter-agency coordination, according to a Wednesday statement from the four ministry-level departments. The Chinese government has been cracking down on intellectual property violations by launching frequent high-profile raids and cam-

Patent law amendment seeks advice

中国专利法修改征求意见会在京举行

paigns. In addition to government efforts, the country's internet service providers have also been making greater efforts to protect intellectual property rights in order to achieve sustainable and healthy development. (China launches campaign against online piracy, by The Times of India)

根据中国国家版权局、公安部

工信部、国家互联网信息办公室4部门近日发布的消息,中国政府已开展一项新行动,通过加强监管和机构间的协调,严厉打击猖獗的网络盗版。事实上,一直以来,中国政府频繁发起打击侵权盗版和宣传活动,力图消除知识产权侵权行为。除了政府的努力,中国的互联网服务提供商也付出了极大的努力保护知识产权,以实现可持续的健康发展。

(《中国严打网络侵权盗版》,印度时报)

Comment:

Chinese government has never

slackened its vigilance of intellectual property protection. The newly launched campaign that lasts for nearly four months is the 8th campaign against online piracy carried out by the Chinese government departments since 2005. It meets the requirements of online intellectual property protection reality, and helps to enhance the sustainable development of the Internet industry.

点评:

在保护知识产权、打击侵权盗版方面,中国政府多年来从未有丝毫放松。此次行动为期近4个月,是中国政府部门自2005年以来开展的第八次网络侵权盗版专项治理行动,这适应了网络数字环境下对知识产权保护的新要求,对促进互联网产业的健康发展具有重要意义。

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



atent Law amendment conference for advice organized by SIPO opens in Beijing recently. Delegates from the Education, Science, Culture and Public Health Committee of the National People's Congress (NPC), the Legislative Affairs Committee of the

NPC Standing Committee, the Legislative Affairs Office of the State Council, local intellectual property offices, colleges and universities, enterprises, and patent agencies attend the conference.

Latest research data shows that 30% domestic patentees have

encountered infringement dispute, but only 10% of them take measures to enforce their rights. Hence, patent right protection has become a weak link of the IP protection. To solve problems in practice and cooperatively carry out the Opinions on Further Campaign Against IP Infringement and Production and Distribution of Fake and Shoddy Products as well as establish a long-term mechanism of patent protection, SIPO starts the preparatory work of the Patent Law amendment from the end of

2011. Compared with the former

three amendments, this one is

well-targeted with "strengthening

patent protection and intensifying law enforcement" as its aim. Participants attending the conference expressed their support of the aim and offered their advice on the draft amendment of the Patent Law from different perspectives.

The event has been incorporated in the legislative plan of the State Council in 2012. SIPO has held several conferences accordingly and formulated the draft amendment of the Patent Law and the explanation. Henceforth, SIPO will continue to listen to opinions of parties to ensure a more scientific and reasonable draft amendment.

(by Xiang Li/Zhang jingyuan) 本报讯 近日,中国国家知识权 局在京组织召开专利法修改征求意 见会。来自全国人大教科文卫委员 会、全国人大常委会法工委、国务院 法制办、地方知识产权局、高校、企业 以及专利代理机构的代表参加了此 次会议。

及会议。 最新调研数据显示,国内 30%的 专利权人遭遇过侵权纠纷,其中仅有 10%的权利人采取维权措施,专利权 保护成为知识产权保护的薄弱环节。 为解决实践中存在的问题,配合落实 《关于进一步做好打击侵犯知识产权 和制售假冒伪劣商品工作的意见》, 建立健全专利保护长效机制,国家知 识产权局在 2011 年底启动了专利法 修改准备工作。较以往三次修改,此 次专利法修改的针对性强,目标是"加强专利保护、加大执法力度"。会议上,与会人员对加强专利保护的目标表示了支持,并从不同角度对专利法修改草案征求意见稿的具体内容提出了意见。

据悉,专利法修改已被列入国务院 2012 年立法工作计划。中国国家知识产权局此前已召开过数次会议,形成了专利法修改草案(征求意见稿)及其说明,今后还将继续听取各方意见,确保提出科学、合理的专利法修改草案。 (向 利 张静元)

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