

# China hails signing of WIPO Audiovisual Treaty

## 《视听表演北京条约》正式签署

The diplomatic conference to finalize a new treaty for audiovisual performances was successfully concluded on June 26, 2012 as negotiators from WIPO's member states signed the Beijing Treaty on Audiovisual Performances so-named in recognition of the city that hosted the final round of negotiations.

WIPO Director General Francis Gurry thanked the Chinese government and the Municipality of Beijing for the outstanding organization of the Diplomatic Conference on the Protection of Audiovisual Performances. Mr. Gurry hailed this major development in the history of international copyright as a success of the multilateral system. "The conclusion of the Beijing Treaty is an important milestone toward closing the gap in the international rights system for audiovisual performers and reflects the collaborative nature of the multilateral process," He said. He expressed hope that member states would continue to build on the excellent "spirit of Beijing" to take forward the work of the Organization in other key areas.

The conference met from June 20 to 26, 2012, bring an end to over 12 years of negotiations held under WIPO auspices. The event was attended by 721 delegates from 202 delegations.

As a new and the first international IPR treaty born in China, the Beijing Treaty on Audiovisual Performances (BTAP) would extend the protection for audiovisual performers,

granting them both economic and moral rights similar to those already recognized for music performers. Such an instrument would also contribute to safeguarding the rights of performers against the unauthorized use of their performances in audiovisual media, such as television, film and video. National Copyright Administration of China (NCAC) Minister Liu Binjie, who presided over the Diplomatic Conference, praised the constructive climate, spirit of cooperation, flexibility and pragmatism demonstrated by all the delegations. He said he believes that the finalization of BTAP will greatly boost international cooperation on the protection of IPR and will balance the interests of the performers, producers and scriptwriters.

Mr. Gurry said he was impressed by China's remarkable achievements made in IPR system construction at the time when China transferred from an agricultural country to an industrial country over the past 30 years. Mr. Liu Binjie said that in hosting the conference and contributing to the signing of the treaty, it will further advance the development of China's IPR protection and China will grasp this opportunity to further strengthen IPR protection and make contributions to the international IPR protection.

According to Deputy Mayor of Beijing Lu Wei, BTAP is of great significance to promoting cultural development in Beijing and the city will continue to improve the regula-

tions in protecting IPR and protecting rights of performers, so that greater fortune will be created by the intangible assets and economic structure will be optimized.

Welcoming the excellent atmosphere that characterized the talks, the international actors and representatives from other international associations expressed their warm congratulations to signing BTAP. As the treaty will shore up the rights of audiovisual performers, it will inspire their enthusiasm to create, promote spread of the art works and advance progress of cultural and creative industry.

(by Liu Ren/Jiang Xu)  
本报讯 6月26日,世界知识产权组织保护音像表演外交会议在北京闭幕,《视听表演北京条约》(下称《北京条约》)正式签署。世界知识产权组织总干事弗朗西斯·高锐代表世界知识产权组织盛赞中国政府为举办此次外交会议作出的贡献。他表示,这是知识产权领域多边合作的重要成果,世界知识产权组织将秉承富有开放性、建设性的北京精神,继续推进国际知识产权合作。他坦承,视听表演知识产权保护是知识产权保护工作中的难点和空白点。《北京条约》的成功缔结,既是国际社会对视听表演知识产权保护里程碑的重大进步,也是对中国、北京成功举办此次外交会议的最高褒奖和最好回报。

在为期7天的会议中,202个代表团的721名代表通过紧张磋商,使保护视听表演者权利的国际条约经过十余年的谈判终成正果。

作为首个在中国诞生的国际知识产权条约,该条约赋予了电影等视听作品的表演者依法享有许可或



Chinese delegation signing the treaty.

图为会上中国代表团签署《视听表演北京条约》。

(by Yang Shen)

本报记者 杨申摄

禁止他人使用其表演活动的权利。此后,词曲作者和歌手等声音表演者享有的复制、发行等权利,电影演员等视听作品的表演者也将享有。中国新闻出版总署署长、国家版权局局长柳斌杰表示,《北京条约》首次较为全面地解决了世界范围内视听表演知识产权保护工作的基础性、原则性、系统性问题,充分考虑到了视听表演创作分工合作的复杂性,较好地协调了制片人、演员、编剧等各方的利益。

从农业大国向工业化国家的转变中,知识产权基础制度的建设令人印象深刻。柳斌杰表示,我国首次举办知识产权外交大会,表明了世界知识产权组织和国际社会对我国知识产权工作的关注和肯定,中国将坚持履行国际承诺和义务,在国际知识产权事务中做出更大贡献。北京则以《北京条约》的签署为契机,努力营造知识产权保护的良好氛围。

北京市有关负责人表示,《北京条约》对于北京文化发展具有重要意义。北京将不断完善知识产权

保护的相关法律法规,保护好全体表演者的知识产权,让无形资产创造出更加丰厚的物质财富,推动首都经济结构的调整。

在闭幕会上,国内外电影艺术家以及国际表演者协会代表以阵阵掌声和欢呼表达了对此条约签订的祝贺。电影艺术家代表们高度评价该条约全面保护电影表演者,必将激发表演者的创造热情,促进表演作品的创作和广泛传播,推动文化创意产业的发展。

(刘仁 姜旭)



China's IP in foreign eyes

China's Huawei Technologies is taking a campaign to transform itself into a global brand and leading smartphone maker to a major telecoms fair which opened in Singapore this week. The Chinese tech behemoth is the biggest exhibitor at the four-day CommunicAsia expo which it sees as a launchpad for its ambition to challenge Apple and Samsung and target itself at consumers and not just businesses. The company is a prime example of leading Chinese firms who are working aggressively to make the transition from being the world's workshop to becoming top brands. China's Huawei takes rebranding bid to telecoms fair, by AFP)

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在近日于新加坡举行的一场电信展览会上,中国的华为公司正努力将自己塑造为一个全球性的品牌和领先的智能手机制造商。作为中国高科技巨头的代表,华为显露出挑战苹果和三星并将目标瞄准消费市场而不再限于商业市场的雄心。这是中国主流企业非常努力地让世界工厂向顶级品牌转变的一个典型例子。《中国华为在电信展览会上重塑品牌形象》,法新社)

Comment:

As a leading technological Chinese brand, Huawei has made itself the major force in the global telecoms industry through lots of efforts. However, since it sets its sights at industry leaders Apple and Samsung who are well-established brands, it faces a difficult task to be accepted by customers all over the world.

点评:

作为中国主要的科技品牌,华为公司通过大量努力已成为全球电信业的主流力量。然而,由于华为公司的目标是具有广泛品牌影响力的产业领导者苹果和三星,它仍面临着被全球消费者接受的艰巨任务。



## P&G triumphs in trademark dispute

### “帮宝适”、“安宝适”引发商标纠纷

Beijing No.1 Intermediate Court recently ruled in favor of Procter & Gamble (P&G) in a trademark dispute. The first instance made by the court reversed the decision by the Trademark Review and Adjudication Board (TRAB) under the State Administration for Industry and Commerce (SAIC) and approved registration of the trademark of “安宝适 AnbaoShi” and its figure.

Pampers is a famous baby products brand owned by P&G. In April 1999, P&G filed Pampers to Trademark Office (TMO) under SAIC as a trademark and then acquired the registration of in July 2000, certified for use on Class 16, goods of disposable nappies.

In August 2003, a Shanghai maternity & child articles company namely Shanghai Xinran filed “安宝适 AnbaoShi” and its figure as a trademark to be used on Class 16, products of disposable diapers. The trademark was then challenged by P&G, and would be upheld by TMO.

The disgruntled P&G sought reversal at TRAB on the ground that Pampers has been registered as a trademark earlier than AnbaoShi, the trademark in question and enjoyed high reputations and popularity among the consumers and the public. It should be recognized as a

well-known trademark. P&G claimed that the two marks were similar in composition and both were certified on the same class of products, as a result, similarity was constituted. However, P&G's claim was not accepted by TMO and AnbaoShi was approved to be registered.

P&G then brought the case to the court. The court held that the P&G trademark was constituted with three Chinese characters in 帮宝适, which has no special meaning, but enjoys high popularity among the public and the consumers. The trademark in question was constituted with the another three Chinese characters in 安宝适, AnbaoShi and the background figure, highlighting 安宝适 in its trademark. It is similar in typeface and composition of 帮宝适 and 安宝适, both were certified on same class of products. It might cause confusion among the consumers, and similarity was constituted.

The court then reversed TRAB's decision and cancelled registration of 安宝适.

(by Wang Junjie)

本报讯 同样用于纸尿裤商品,当“帮宝适”遇见了“安宝适”,是否构成近似商标,日前北京市第一中级人民法院(下称北京一中院)做出了一审判决,判决撤销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)对“安宝适 AnbaoShi及图”商



标(下称被异议商标)予以核准注册的裁定。

据了解,“帮宝适”是宝洁公司于1961年正式推向市场的著名婴儿卫生系列产品。1999年4月宝洁公司向中国国家工商行政管理局商标局(下称商标局)申请注册“帮宝适”商标(下称引证商标),并于2000年7月核准注册,核定使用商品为第16类纸制婴儿尿布(一次性)等。

2003年8月,上海欣然妇幼用品有限公司(下称欣然公司)向商标局提出注册申请被异议商标,指定使用商品为第16类纸制和纤维制婴儿尿裤(一次性)等。宝洁公司向商标局提起异议申请,但未获支持。

宝洁公司不服,向商评委申请复审,其认为引证商标早已取得注册,该商标经过使用已为相关公众所熟知,并享有极高的市场声誉,应被认定为驰名商标。被异议商标与引证商标文字构成及显著部分相同或近似,且指定使用在同一类商品上,已构成相同或类似商品上的近似商标。然而商评委并未采纳其理由,经审理后于

2011年5月作出异议商标予以核准注册的裁定。

针对该复审结果,宝洁公司向北京一中院提起行政诉讼。法院经审理后认为,引证商标由无固定含义的文字“帮宝适”臆造而成,显著性较高,经过宝洁公司的宣传和推广,已具有一定的知名度。被异议商标由中文“安宝适”、汉语拼音“AnbaoShi”及简单背景图案组成,其中文字部分为被异议商标的显著识别部分,其与被异议商标相比,俩商标在字体、文字构成上相近,分别注册在纸制婴儿尿布(一次性)等相同或类似商品上,易使相关消费者认为俩商标为系列商标或经营主体之间存在某种联系,从而对商品来源发生混淆误认。

据此,北京一中院认为被异议商标与引证商标已构成使用在相同或类似商品上的近似商标。商评委作出的裁定主要证据不足,法院予以撤销,并要求商评委针对宝洁公司提出的异议申请重新作出裁定。

(王俊杰)