

# CHINA **REPORT** INTELLECTUAL PROPERTY

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## China's IP in foreign eyes

f it is to keep growing fast, it must become more innovative. At present Chinese innovation is a mixed bag. There are some outstanding private firms. Manufacturers operating near China's coast, whether home-grown or foreign, are adept at "process innovation" - incrementally improving the way they make things. And China's internet start-ups, such as Tencent (a social-networking service) and Alibaba (an e-commerce company), have had a genius for copying Western business models and adapting them to the Chinese market. (Innovation in China, From brawn to brain, by The Economist)

如果想保持快速增长, 中国必须 更加具备创造性。目前中国有一批优 秀的民营企业。在沿海附近的制造商, 都很擅长"工艺创新",即逐步改善生产 制造的方法。而中国的互联网新秀,如

he World Intellectual Property Organization figures showed in 2011 the United States, Japan and Germany, the long-time leaders in total applications of international filings for patent protection, accounted between them for 58 per cent of total filings, but China, with a rise of 33.4 per cent on the previous year, was pushing them hard. And the Chinese telecommunications equipment giant ZTE, with 2,826 applications, pushed Japan's Panasonic. which filed 2,463, out of top place among individual company filers. Another major Chinese information technology manufacturer, Huawei was in third place, with 1,831 applications. (Patent filings at record high, China UP 33%: WIPO, by Reuter)

世界知识产权组织数据表明, 2011年美国、日本和德国的国际专 利申请量占全球申请总量的58%, 而中国以33.4%的年增长率让这些 国际专利申请的长期领导者备感压 力。中国电信设备巨头中兴通讯公 司以 2826 件国际专利申请超过日 本松下公司(2463件),成为全球国

社会网络服务商腾讯公司和电子商务 公司阿里巴巴, 都是引进西方商业模 式并推动其本土化的天才。("中国创 造,从体力到脑力",《经济学家》杂志)

From billions of dollars into research and development to the national plan that calls for "indigenous innovation", it's obvious that China is in the process of transforming from physical manufacturing to relying on brain power to create. Successful innovation doesn't mean the success in the laboratory only, but also requires new ideas to move from the laboratory to the marketplace.

靠低成本取胜的时代已经一去 不复返了。从每年数十亿美元的研发 经费投入和提倡自主创新不难看出, 中国正努力从靠体力制造向靠智力 创造过渡。但成功的创新不仅仅在实 验室里,更在于将创新成果成功运用

际专利申请量最多的企业。中国另 一主要的信息技术制造商华为公司 以 1831 件申请位居第三。("WIPO: 中国同比增长33%, 创历史新高",

#### Comment:

China's innovation plays an increasingly important role in the world. In terms of international filings for patent protection, a key indicator of technological innovation in major economies, the growth in China and other middleincome countries drives an all-time record last year. And Chinese technology companies are becoming more and more outstanding.

#### 点评:

中国创造在世界上扮演着日益重 要的角色。在 PCT 国际专利申请这一 科技发展的关键指标上,中国及其他 中等收入国家在2011年的增长,推动 创立了历史记录的新高。而中国一批 科技型企业也通过娴熟运用知识产 权,在国际舞台上一展风采。

(by Correspondent Wang Weiwei from Canada)

(本报通讯员汪玮玮发自加拿大)

## INUMBERS

2,779

Recently, the Beijing IP Office and the Beijing Administration for Industry and Commerce established a credit information file system for 2,779 patent pilot entities and 120 patent model entities, making Beijing the first in the country in monitoring and sharing information of these entities.

### 2779 家

近日,北京市知识产权局与北京 市工商行政管理局为 2779 家专利试 点单位和 120 家专利示范单位建立 诚信信息档案,在全国率先开启专利 试点示范单位诚信经营信息监管和 信息共享专项工作。

### 2,000

In 2011, only by commercializing 60 patents, Jiangsu province added 11.06 billion yuan in sales revenue. According to statistics, Jiangsu province cumulatively commercialized over 2,000 patents in the past two years. Value generated by high-tech industry represented 33% of the province's GDP in 2011.

### 2000 件

2011年, 江苏仅通过转化实施 的60件专利,就新增销售额达到 110.6亿元。据统计,近两年江苏省累 计转化 2000 多件专利,2011 年高新 技术产业产值占比达到33%。

责任编辑	肖 潇	
Executive Editor	Xiao Xiao	

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In 2011, around the construction of Yunnan Innovation Plan, Yunnan province organized and implemented 60 major projects, broke through 62 key technology, researched and developed 61 major new products with independent IPR.

2011年,围绕建设创新型云南 行动计划,云南省组织实施培育战略 性新兴产业重大项目 60 项,突破关 键核心技术 62 项,研究开发拥有自 主知识产权的重大新产品 61 个。

### 40 million

In 2011, based on their IPRs, 7 companies in Xiamen secured over 200 million yuan credit, 40 million yuan of which had already been granted.

### 4000 万元

2011年,厦门市7家企业知识 产权质押融资授信额度超过2亿元, 已发放贷款近4000万元,成为知识 产权质押融资工作中的一个亮点。

### 8,734

In 2011, Chengdu High-tech Zone filed 8,734 patent applications, up 28.31%. Invention applications accounted for 2,869, up 80.78%. Company applicants filed 6,507, up 111.47%.

### 8734 件

据了解,成都高新区 2011 年共 提交专利申请 8734 件, 同比增长 28.31%, 其中发明专利申请 2869 件, 同比增长80.78%;企业专利申请 6507件,同比增长111.47%。

# Michael Jordam

sues Chinese company for improper use of his name

# "飞人乔丹"过招"中国乔舟"雕算几何?

ormer NBA basketball legend Michael Jordan has filed a suit against a Chinese sportswear and shoe manufacturer, Qiaodan Sports Company Limited for "unauthorized use" of his name and identity, his attorney said recently. The conflict of celebrity name right and interest of enterprise trademark right again becomes the center of attention.

Michael Jordan: the company built business of my Chinese name without permission

In 1997, Jordan became its own brand under the Nike umbrella. The Bobcats owner Michael Jordan announced that he's suing Qiao Dan Sports, alleging that the company's name is a "well known" translation of Jordan's name. Jordan and his attorneys believed that the company "build a business" of Jordan's Chinese name without permission."This complaint is not about money. It's about principle and protecting my name. Any monetary awards I might receive will be invested in growing the sport of basketball in China." Jordan said in a statement.

"Inspired by Yao Ming's case here in China, we had filed suit in a Chinese court on February 21 against Qiaodan Sports," said Christine Kang, a partner of Jun He Law Offices. Shanghai's second intermediate court announced that it has accepted a lawsuit, but has yet to determine a trial date.

#### Qiaodan Sports: we have exclusive right to the Qiaodan trademark

A Qiaodan Sports spokesman said it is keeping a close eye on Jordan's litigation. "The Chinese word 'Qiaodan' is a registered trademark of Qiaodan Sports. The use of the brand has been endorsed and is thus protected by China's laws," according to a statement from Qiaodan Sports to CIP news.

As a matter of fact, Qiaodan Sports has long been questioned since it filed QIAODAN as a trademark. In 1997, Qiaodan Sports

first registered "乔丹""QIAODAN" as trademarks, but was immediately challenged by Nike. Qiaodan Sports said at the time:"We just use a Chinese translation of a common foreign family name and it cannot be identified with Michael Jordan." This statement was supported by Trademark Office of the State Administration for Industry and Commerce (SAIC) and Trademark Review and Adjudication Board (TRAB) under the SAIC. Nike's allegation was rejected and registration of the trademarks by Qiaodan Sports was approved.

Although Michael Jordan said the lawsuit was not about money, but about "principle and protecting my name." Analysts say the action may hamper the Qiaodan Sports's goal of being listed on the Shanghai stock exchange.

#### Analysis: never be a free-rider

"In the aspect of laws, what Jordan claim is not only the naming right, but refers to the right of publicity or commercialization of personality right of celebrities in the other countries, which is the right of an individual, especially of the celebrities or the public figures, to control the commercial use of his or her name, image, likeness or other unequivocal aspects of one's identity. But we don't have specific provision in protecting this right in our law system and it is usually classified as naming rights here in China. Chinese law system should be further improved." said professor Zhang Weijun from TongJi University.

"There's no doubt that Qiaodan Sports' hold the trademark legally. whether or not it violates Jordan's name right will be determined by the court. But, one thing should be noted that copying the names of famous sports players and other celebrities for product branding purposes will be discouraged and no one should be free-riders. In the long-run, a business will get more kicks than half pennies if they are the free-riders. In this case, the public

will know that Michael Jordan has nothing to do with this company and this will attract particular resentment among the consumers." Zhang Weijun said. (by Zhu Wenming)

#### 本报记者 祝文明

近日,美国 NBA 巨星迈克尔·乔 丹发表公开信称,中国乔丹体育公司 侵犯了其姓名权,并已向中国法院提 起诉讼。名人姓名权与企业商标权的 利益冲突再次成为众人关注的焦点。

#### 飞人乔丹: 意欲维权

美国篮球传奇巨星迈克尔·乔丹 创立的 "AIR JORDAN"品牌为耐 克旗下子品牌。日前,乔丹通过美联社 向各国媒体发布了一封公开信, 信中 称已在中国对一家体育服饰生产商 (即乔丹体育)提起法律诉讼,因为该 公司在未经其授权的情况下,使用了 他的姓名。乔丹在声明中称,"这项诉 讼的目的不在于经济诉求, 而是旨在 对姓名权的保护,是一个原则性问题, 我计划将诉讼有可能得到的所有经济 赔偿用于发展中国的篮球事业。"

乔丹的委托律师、北京君合律师 事务所律师康乂在接受中国知识产 权报记者采访时表示, 乔丹于 2011年年底委托该事务所代理这起 案件,经过充分准备,他们已于2月 21日向法院正式提起诉讼。据悉,日 前,上海市第二中级人民法院已正式 受理乔丹诉乔丹体育姓名权纠纷案。

### 乔丹体育:屡遭质疑

在乔丹发表声明的当天,乔丹体 育即对该事件作出了回应。在给本报 记者发来的一份公开声明中称,"乔 丹"商标为公司依法申请注册并享有 专用权。

实际上,对乔丹体育"傍名人"的 质疑一直存在。早在乔丹体育注册"乔 丹""QIAODAN"等商标之时,来自美 国的体育用品巨头耐克公司就曾先后 对乔丹体育注册的商标提出异议。但 是, 耐克公司的异议申请经国家工商 行政管理总局商标局和商标评审委员 会先后审查,均被驳回。乔丹体育当时 即主张乔丹是欧美国家常见的姓名, 耐克公司或篮球明星乔丹无权禁止他 人使用,而这一主张亦得到了国家工 商行政管理总局商标局和商标评审委 员会的认可。此后,乔丹体育的一系列

"乔丹"商标得以注册并生效。 据悉,这一次,乔丹亲自出手向乔 丹体育"宣战",正值乔丹体育准备上 市之际,这一诉讼为乔丹体育的上市 之路平添变数。

### 专家观点:莫傍名人

同济大学法学院知识产权与竞 争法中心主任张伟君在接受中国知 识产权报记者采访时表示,此案中乔 丹主张的并不是严格意义上的姓名 权,而是国外法律中所指的名人人格 商品化权或公开权,是指个人,尤其 是公众人物或知名人士对与其人身 有密切关系的各种形象要素的商业 价值所享有的权利,以控制或制止他 人的盗用。由于我国的法律尚未明确 保护这一权利,在涉及到与之相关的 案件时, 只好将其归入姓名权范畴, 这也是我国法律还有待完善的地方。

张伟君表示,目前乔丹体育持有 的"乔丹"商标合法有效,是否构成对 篮球巨星迈克尔·乔丹姓名权的侵 权,这需要法院根据事实进行判定。 但是,类似的"傍名人"的行为无疑是 不值得提倡的。"傍名人"只能让企业 获得一些短期利益,从长远来看将会 得不偿失。以此案为例,与乔丹无任 何关系这一事实被公众广泛认知后, 乔丹体育在消费者中的形象无疑会 大打折扣,其"傍名人"的行为一定程 度上会引起公众的反感。

## Microsoft awarded 410,000 yuan over copyright lawsuit WINDOWS

# 微软诉北京纽曼侵权案一审有果

Beijing No.1 Intermediate Court recently made its first-instance judgment over Microsoft's allegation against Beijing Newsmy, a renowned Chinese supplier of portable digital devices, on using 42 sets of unauthorized Microsoft products including Microsoft Windows and Microsoft Office, the first kind of lawsuit against end customers for using pirated software by Microsoft, ordered the defendant to stop infringement and indemnify 410,000 yuan in damages.

After finding Newsmy installing and using its unauthorized software in December 2009, Microsoft lodged a complaint to Beijing Executive Law Enforcement Department for Cultural Market. On January 19, 2010, the law enforcers organized a check on Newsmy, and found that Newsmy installed and used 42 sets of Microsoft software, including Windows XP professional Chinese version, Windows7 Ultimate version, Office2003 and Office2007 professional Chinese version. In July 2010, the same authority imposed administrative sanctions and penalty of 26,000 yuan on Newsmy.

Learning that the Newsmy continued further infringement after the sanction was imposed, Microsoft then took the case to the court in January 2011. Microsoft tried to negotiate with the defendant, but failed to find common ground. After 10 months of hearing, the court made the above decision.

"If the user purchase one set of genuine software, it means he can only use on one computer, otherwise, he violates license agreement and thus infringe the copyright." says Tan Ruiqiong, a legal counsel from Microsoft (by Wang Kang)

本报讯 近日,北京市第一中级 人民法院宣布了微软公司诉北京纽 曼理想数码科技有限公司(下称纽曼 公司)侵犯软件著作权一案的判决结 果。法院一审认定,被告纽曼公司非 法使用 42 套 Microsoft Windows 和 Microsoft Office 系列软件的侵 权行为成立,依法判令纽曼公司立即 停止侵权行为,并向微软公司支付经 济赔偿及诉讼费用共计41万余元。 据了解,该案是微软公司针对企业最 终用户盗版在京提起诉讼并由法院 作出判决的第一例案件。

据介绍,在 2009年12月,微软 公司就因纽曼公司使用多种微软盗 版软件的行为向北京市文化市场行 政执法总队进行投诉。2010年1月 19日,行政执法人员对纽曼公司进行 执法检查,现场检查时发现纽曼公司 经营场所内的电脑安装使用了 Windows XP中文专业版、Windows7旗

舰版、Office2003 中文专业版和 Office2007 中文专业版 4 种盗版软件, 共计42套。2010年7月,北京市文化 市场行政执法总队对纽曼公司作出 了行政处罚决定,责令其立即停止侵 权行为,并处罚金 2.6 万元。

然而此后,纽曼公司仍然拒不整 改其侵权行为,在多次磋商无效的情 况下,微软公司于2011年1月向北 京一中院提起民事诉讼。审理过程 中,微软公司曾尝试与被告沟通,但 纽曼公司拒绝通过协商方式解决侵 权纠纷。最终,经过近10个月的审 理,北京一中院于近日作出了上述一

微软(中国)有限公司法律及公 司事务部知识产权总监谈瑞琼在接 受中国知识产权报记者采访时表示, 用户购买一套正版软件,只是获得在 一台电脑上使用软件的权利,如果用 户同时在多台电脑上安装使用,该行 为就违反了许可协议,构成了对软件 著作权的侵权。 (王 康)

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