

China's IP  
in foreign eyes



China brought 12.89 million rural people out of poverty in 2017, cutting its overall poverty rate to 3.1 percent (down 1.4 percent), the official Xinhua news agency said late on Thursday, citing government data. China's ruling Communist Party has been making efforts to tackle deep-rooted poverty in its countryside, and aims to raise the annual income of all its residents above the official poverty line of 2,300 yuan (\$365.26) by 2020. (China brings nearly 13 million people out of poverty in 2017, by Reuters)

据介绍,2017年中国农村贫困人口比上年末减少1289万,贫困发生率降至3.1%,比上年末下降1.4%。中国一直在努力解决农村的贫困问题,并力求在2020年使农村贫困人口全部脱贫。(2017年中国使1300万人口脱贫,路透社)

#### Comment

As the basic guarantee of innovation, IPR provides new impetus for economic development and improvement of people's livelihood in poverty-stricken areas. IPR plays an irreplaceable role in targeted poverty alleviation.

#### 点评

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A few short weeks after its release, a Japanese mobile game featuring a traveling frog has become a hit in China. The game is called Tabikaeru, or Travel Frog. It was created by Hit-Point, the Japanese company that released the popular game Neko Atsume, or Kitty Collector, in 2014. It is played like this: A frog sits in its stone hut, eating and reading, while you collect clover from the front yard. The clover is used to buy food, which the frog takes on a journey. (China Embraces a Game About a Traveling Frog, by The New York Times)

发布短短几周后,一款讲述一只旅行青蛙的日本手机游戏在中国大受欢迎。这款游戏其实很简单。一只青蛙住在石屋里吃饭和读书,用户需要在前院里收集三叶草给它买食物,青蛙会每隔一段时间去旅行。回来后,它会提供在旅行过程中的照片和购买的纪念品。(旅行青蛙在中国爆红,纽约时报)

#### Comment

Behind any successful game, there is tremendous power of innovation. Any game developer should launch IP protection on names, contents and technology in time in order to avoid potential disputes.

#### 点评

任何一款成功游戏的背后,都蕴藏着巨大的创新力,而游戏开发者应对游戏的创新成果等及时进行保护,增强创新主体的核心竞争力。

(李倩)

## Christian Archambeau: Works to Develop a Transparent and Fair IPR Protection Environment

### 共同营造透明、公平的国际知识产权环境

——访欧盟知识产权局副局长克里斯蒂安·阿尔尚博

"In the past 2017, IP is a core part of China-EU trade, and also plays a vital role in the continuous development of trade between two sides. In recent years, China has been maintaining a strong growth in receiving patent and trademark applications, and the raising of its IP creation and service is impressive," said European Union Intellectual Property Office (EUIPO) Deputy Executive Director Christian Archambeau. He spoke warmly of the achievements made by China in IP in recent years during an interview by our reporter in China on January 17.

"EUIPO is a decentralized agency of the EU, and manage the registration of European Union trademark and the Registered Community Design, formulation and implementation of EU IP strategy, exchanging and training of IP enforcement and running of EU IP infringement inspector. Besides, EUIPO also cooperates with the national and regional IP offices in the EU to provide services across those countries. Enhancing IPR protection environment is one of the major tasks of EUIPO. It bolsters cooperation with EU member states and countries outside EU to crack down upon on IP infringement and counterfeit by beefing up IP popularization, education and monitoring. In parallel, EUIPO joined hands with countries outside EU like China in IPR protection," Archambeau said.

Archambeau highly appraised the progresses that China has made in IPR protection. "In recent years, China has taken a series of effective measures to



protect IPRs and some companies like Tencent, Jingdong and Alibaba also participated in this event," said Archambeau, "China has become EU's largest of source of imports and second largest exporter with trade volume exceeding one billion euros every day. As China continues to strengthen IPR protection environment, the cooperation between the two sides has provided a strong support for economic development of China and EU."

Since as early as 1996, the two sides have successfully collaborated in EU-China Projects on IPR Protection: IPR1 with a focus on legislation and IPR2 on enforcement. Archambeau highlighted the coming project jointly conducted by China and EUIPO. In a bid to establish a cooperation platform between the two partners, the IP Key China will create a transparent and fair

international IP environment for companies of two sides. Such project will promote the unification of legislative and enforcement standard of IPR protection. In terms of serving companies, the project will provide IP information for the companies of two sides and facilitate the sharing of innovation tools, database, IP registration and enforcement system. Currently, the TMview and Designview developed by EUIPO have covered all the different EU countries. So they provide a quick and easy way for Chinese IP users to search information and file design and trademark registration application online.

"Throughout the years, we have seen China's knowledge of IPR protection and related laws, regulations and systems continue to update, so EUIPO is willing to further bolster cooperation between two sides. That is a good

way to build a sound international IPR protection environment," Archambeau added.

(by Liu Peng/Li Qian)

"在刚刚过去的2017年,知识产权是中欧经贸关系的重要议题,也是中欧贸易投资持续增长的关键因素。无独有偶,近年来,中国在专利、商标等知识产权领域的申请量始终保持较高的增长速度,其知识产权创造质量与服务能力的提升也同样令人印象深刻。"1月17日,在中国进行访问的欧盟知识产权局副局长克里斯蒂安·阿尔尚博接受了我国知识产权报记者的专访,对中国近年来在知识产权领域取得的成绩以及双方的合作给予了高度评价。

克里斯蒂安·阿尔尚博介绍,欧盟知识产权局是欧盟独立的、自负盈亏的非盈利性官方机构。目前,欧盟知识产权局主要履行欧盟外观设计和商标的注册与审查、欧盟知识产权战略规划的制定与实施、知识产权执法相关法律法规的交流培训、欧盟知识产权侵权观察站的管理等职责。欧盟知识产权局与欧盟28个成员国的知识产权机构开展合作,为客户提供良好的知识产权服务。优化知识产权保护环境也是欧盟知识产权局的重要工作之一,通过加强知识产权宣传、教育、监督等方式,与欧盟各国合作,共同打击侵犯知识产权以及假冒劣劣的行为。同时,在知识产权保护领域,欧盟知识产权局也与包括中国在内的欧盟以外的国家开展了务实合作。

克里斯蒂安·阿尔尚博对中国在保护知识产权方面取得的进步给予了高度评价。"近年来,中国政府在知识产权保护方面采取了一系列有力措施,以腾讯、京东、阿里巴巴为代表的

电子商务企业也积极参与打击在线假冒劣劣行为,取得了显著成效。"克里斯蒂安·阿尔尚博表示,"中国是欧盟最大的进口来源国和第二大出口国,中欧贸易额每天超过10亿欧元。随着中国知识产权保护环境的日益改善,中欧在知识产权方面的合作对推动两地经济发展提供了有效支撑。"

早在1996年开始实施的中国-欧盟知识产权项目一期(IPR1)聚焦知识产权立法层面,二期(IPR2)聚焦知识产权执法层面,都取得了丰硕成果。克里斯蒂安·阿尔尚博特别强调了即将准备实施的新的中国与欧盟知识产权合作项目。该项目旨在为欧盟及中国提供合作平台,为双方企业营造一个透明、公平的知识产权环境。该项目将努力推动中欧知识产权保护在立法、执法标准方面的沟通与协调;对企业而言,该项目还将提供信息服务,促进创新工具、数据库、知识产权注册和执法信息的分享。目前,欧盟知识产权局的外观设计和商标数据库涵盖了所有的欧盟成员国,对中国知识产权权利人来说,他们可以方便快捷地在网上检索信息,提交外观设计专利和商标等申请。

"多年来,我们看到中国社会公众的知识产权意识不断提高,相关知识产权法律、政策也在不断完善。"克里斯蒂安·阿尔尚博表示,进一步深化双方合作,将是构建良好国际知识产权保护环境的一项重要举措。

(柳鹏 李倩)



## Mobil Kicks Off Free Rider of Its Esso Trademark

### 两“埃索”相争,美孚公司获胜

Around a registered trademark "埃索黄金眼" (Note: Though its spelling is ASSO Golden Eyes in English, Chinese spelling of ASSO is exactly the same with ESSO) certified on products of synthetic rubber, renowned oil and gas manufacturing, ExxonMobil (Mobil) was involved in a trademark dispute with ASOO Technology Co., Ltd. (ASOO) based in Guilin, Guangxi.

Recently, Beijing High People's Court made a final decision to revoke the ruling made by the Trademark Review and Adjudication Board (TRAB) under the State Administration for Industry and Commerce (SAIC) on the ground that ASOO had filed for registration of No.9945806 trademark "埃索黄金眼" (trademark in dispute) by deception or other illegal means, and ordered TRAB to take a new look.

Mobil was the world-renowned oil and gas manufacturer in possession of producing facilities and selling products globally. ASOO was established in 2003 with business in producing rubbers, lubricants and vehicles accessories and providing vehicles maintenance and auto decoration.

The trademark in dispute was filed in September 2011 by ASOO to the Trademark Office (TMO) under SAIC and was registered in November 2012, certified on the products of Class 17 such as synthetic rubber, clutch cush-

ion, and organic glasses.

In October 2015, Mobil lodged an invalidation request to TRAB citing the registered trademark "埃索" or "ESSO" (cited trademark) certified on products of rubber, oil and petroleum, claiming that the trademark in dispute and cited trademark had constituted similarity on the same or similar products.

In May 2016, TRAB made a ruling to uphold the trademark in dispute. The disgruntled Mobil brought the case to Beijing IP court. Beijing IP court held that the trademark in dispute and cited trademark had constituted similarity and revoked the ruling in the first instance and ordered TRAB to take a *de novo* look. Then TRAB and ASOO appealed to Beijing High.

After hearing, Beijing High held that the products of synthetic rubber and plastic board certified by trademark in dispute were the same or similar with the products of rubber and industrial plastics certified by cited trademark in function, use, production units, distribution channels and consumers, constituting same or similar products.

In addition, Beijing High held that the trademark "埃索" in Chinese and "ESSO" in English were corresponding to each other as "埃索" and "ESSO" had been used tightly together by Mobil for a long time. The trademark

in dispute was formed by characters "埃索黄金眼", which were similar in spelling with cited trademark, constituting similarity. In this case, the public would easily misunderstand that the two trademarks originated from the same market player or had special links, causing confusion and mistake in the origin of the products.

In this connection, Beijing High finally rejected the appeal from TRAB and ASSO and sided with the first-instance decision. (by Shu Tianchu)

#### 实习记者 舒天楚

因一件注册使用在合成橡胶等商品上的"埃索黄金眼"商标,知名石油天然气生产商美国埃克森美孚公司(下称美孚公司)与广西桂林埃索技术有限公司(下称埃索公司),在华展开了一场商标权属纠纷。

近日,北京市高级人民法院终审认定,埃索公司系以欺骗手段或者其他不正当手段申请注册第9945806号"埃索黄金眼"商标(下称诉争商标),据此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)对诉争商标予以维持的裁定,并判令商评委重新作出裁定。

据了解,美孚公司是知名的石油天然气生产商,在全球多个国家和地区拥有生产设施并销售产品。埃索公司于2003年成立,主要经营范围为生产销售橡胶制品、润滑油、汽车配件等产品及提供汽车养护及美容服务等。

诉争商标由埃索公司于2011年



9月向中国国家工商行政管理总局商标局(下称商标局)提出注册申请,2012年11月被核准注册,核定使用在合成橡胶、离合器垫、有机玻璃等第17类商品上。

2015年10月,美孚公司引证其在先核准注册于橡胶、石油、汽油等商品上的"埃索"及"ESSO"等商标(下称引证商标),针对诉争商标向商评委提出无效宣告请求。

2016年5月,商评委作出裁定,对诉争商标予以维持。美孚公司不服被诉裁定,向北京知识产权法院提起行政诉讼。北京知识产权法院经审理认为,诉争商标与引证商标构成近似商标,北京知识产权法院一审判决撤销商评委被诉裁定,并判令商评委重新作出裁定。商评委与埃索公司均不服一审判决,继而向北京市高级人民法院提起上诉。

北京市高级人民法院经审理认为,诉争商标指定使用的合成橡胶、塑料板等商品,与引证商标核定使用的橡胶、工业用塑料制品等商品在功能、用途、生产部门、销售渠道、消费对象等方面相同或近似,构成相同或类似商品。

法院还认为,美孚公司长期将中文译名"埃索"与"ESSO"固定对应使用,中文"埃索"与引证商标中的"ESSO"已经形成了对应关系。诉争商标由文字"埃索黄金眼"组成,其与引证商标在呼叫方面相近似,构成近似商标。在诉争商标与引证商标指定使用的商品构成类似商品的情况下,易使相关公众认为两者来源于同一主体或者其提供者之间具有特定联系,从而对商品来源产生混淆、误认。

综上,北京市高级人民法院终审判决驳回商评委与埃索公司的上诉,维持一审判决。



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