

China's IP
in foreign eyes

Nintendo Co. Shares Jumped after China's Tencent Holdings Ltd. Won approval to distribute one of the company's games for its Switch console, a sign the Japanese company may benefit from growth in the world's largest games market. Tencent received approval for the test version of New Super Mario Bros. U Deluxe for the handheld device, according to a notice on the website of China's Guangdong provincial culture and tourism department. (Nintendo Soars as Tencent Wins Switch Game Approval in China, Bloomberg)

腾讯获准代理 Switch 游戏后,近日,日本知名电子游戏巨头任天堂股价暴涨,这也意味着任天堂或将从中国这个最大游戏市场的发展中分一杯羹。据中国广东省文化和旅游厅消息,腾讯确认代理任天堂的新超级马里奥兄弟 U 豪华版(体验版)Switch 游戏机。(腾讯获准代理 Switch 游戏任天堂股价暴涨,彭博社)

Comment:

In a bid to meet more users' game demand, Tencent has been devoted to developing new technologies as a gaming giant in China. Tencent's innovative ideas and its emphasis on game copyrights protection are important for the company to participate in international market.

点评

作为中国游戏巨头,腾讯一直致力于开发新的技术来满足越来越多玩家的游戏体验。腾讯创新的精神以及对游戏版权保护的重视,对于促进其不断开拓国内外市场有重要作用。



Chinese coffee start-up Luckin has raised \$150m from investors including US asset manager BlackRock in a funding round which values the company at \$2.9bn, as it pushes to overtake Starbucks by number of outlets in China. A private equity fund managed by BlackRock led the funding with \$125 million, Luckin said. The company said last year it plans to open 200 to 300 outlets a month, putting it on track to overtake Starbucks, which has over 3,300 locations in China, by the end of this year. (China's Luckin coffee raises \$150m in push to overtake Starbucks, Financial Times)

日前,中国初创企业瑞幸咖啡获得美国投资人贝莱德等投资者的1.5亿美元融资,该公司估值已达29亿美元。其在国内开设门店数量正赶超星巴克。瑞幸咖啡表示,领投人贝莱德的私募股权基金投资数额高达1.25亿美元。该公司去年表示,在2019年年底前其计划每月在国内开设门店200到300家,使其超过星巴克在中国的开店数量。(瑞幸咖啡获1.5亿美元融资正赶超星巴克,金融时报)

Comment:

In order to build a distinctive brand in coffee market, Luckin has been committed to creating new marketing patterns and experiences. The innovative business ideas of Luckin are of significance to reshape coffee culture in China and attract many young customers as well.

点评:

为打造具有特色的咖啡品牌,瑞幸咖啡以新的营销模式与营销体验不断开拓市场。瑞幸咖啡创新的经营理念,使其收获了许许多多年轻消费者的喜爱,也正在重塑国内的咖啡文化。

(熊花平)

IP-Related Government Fees to Be Reduced, Welcomed by Enterprises

中国将出台政策扩大减缴知识产权收费

An executive meeting of the State Council of China held recently has determined the measures to reduce government fees and service charges, including further reduction of patent filing fee and annual fee from July 1. Significant dip is required, for example, a plunge of fee for trademark registration renewal from 1,000 yuan to 500 yuan.

"Further reduction of patent filing fee, annual fee, and trademark registration renewal fee is of significance to lower innovation costs and invigorate development of enterprises, inspire businesses and the general public to file patent and trademark applications, and encourage shift of the focus from quantity to quality in terms of IP creations," said Peng Xuelong, professor of School of Intellectual Property, Zhongnan University of Economics and Law.

"The reduction in patent application fee and patent annual fee will help enterprises cut some costs, relieving our pressure in innovation. Before that, enterprises really had to live with the pressure from those," said Yang Dong, chairman of Zhengzhou Chunquan Energy-Saving Company when he was informed of the policy. As a small and specialized high-tech private company, it owns more than 200 patents. Yang also hopes the government can provide



appropriate support to enterprises based on the quality of their patents and actual use of patents, allowing more companies to grow on their own innovations.

Wu Yuetao, executive director of Red Woods Agriculture and Husbandry Marine Products Company, gives his opinion that the reduction in government fees is an act to benefit enterprises, especially for stable and sound development of small and medium enterprises. Wu is keen on building his own brand. He filed the application for "红树林" (Note: Chinese for Red Woods) trademark when the company was still prepared for launch. "Many companies often encounter problems such as trademark infringement and counterfeiting.

Last year, when I attended an IP training course organized by China National Intellectual Property Administration, I was informed that damages for trademark infringement in China is lower than other countries, sometimes massively lower. Counterfeit products will continue their presence and original brands will have difficulty to grow if the government does not increase damages for infringement," said Wu.

Wu noticed that this executive meeting of the State Council adopted the draft amendment of the Trademark Law, which addresses issues such as intensifying sanctions against trademark infringement and significantly increasing damages.

"Invoking more severe sanctions

against trademark infringement is to implement the requirements of this year's government work report, specifically those of 'Comprehensively strengthening IPR protection and cracking down on the production and sale of fake and inferior commodities', helping better safeguard the rights and interests of enterprises and the public, creating a sound business environment, practicing a brand strategy of our country and promoting China to become a trademark power," said Peng Xuelong. (by Li Qian)

本报记者 李倩

近日召开的国务院常务会议确定了今年降低政府性收费和服务性收费的措施,其中包括,从7月1日起,扩大减缴专利申请费、年费,并要求必须有明显降费,比如商标续展注册费收费标准由1000元降为500元。

"扩大减缴专利申请费、年费,降低商标续展注册费收费标准,对于降低企业的创新成本,激发企业发展活力有重要意义,能够提高企业和群众提交专利申请及商标注册申请的积极性,推动知识产权创造从数量增长到质量提升的转变。"中南财经政法大学知识产权学院教授彭学龙表示。

"减缴专利申请费、年费将为企业削减不少成本,让企业能'轻装上阵'搞创新。"得知政府将要减缴专利申请费、年费的消息后,郑州春泉节能股份有限公司(下称春泉节能)董

事长杨东表示,此前企业确实承受了一些来自专利申请费、年费的压力。作为一家"小而精、小而专"的科技型民营企业,截至目前,春泉节能拥有200余件专利。杨东还希望政府能够根据企业专利质量和实际运用情况给予相应支持,让更多企业凭借自主创新获得发展。

红树林农牧海产有限公司的创始人吴月涛认为,降低政府性收费是政府惠民惠企之举,特别是有利于中小企业稳步健康发展。吴月涛十分重视商标品牌建设,公司还在筹备过程中,便提交了"红树林"商标注册申请。他告诉记者,企业经常遇到商标侵权、假冒等问题。"去年我参加国家知识产权局组织的知识产权培训时了解到,中国侵犯商标专用权赔偿数额与国外相比整体偏低,甚至有很大差距。如果政府不大幅提高侵权赔偿数额,山寨将层出不穷,原创品牌成长艰难,难以打造出百年品牌。"

吴月涛注意到,此次国务院常务会议通过了商标法等一批法律修正案草案,修改建议包括加大对侵犯商标专用权行为惩罚力度,大幅提高侵权赔偿数额等内容。

"加大对商标侵权行为的惩罚力度,是落实今年政府工作报告'全面加强知识产权保护'、依法打击制售假冒伪劣商品等违法行为"的具体要求,有助于更好地维护企业和群众的商标权益,营造良好的营商环境,践行国家品牌战略,推动中国由商标大国走向商标强国。"彭学龙说。

Lu'an Guapian Tea

六安瓜片



Lu'an Guapian Tea is a green tea produced in Lu'an City of Anhui Province, which is made from the leaves of Dushan small-leaved species and Qitoushan middle-leaved species tea trees by unique process. It is a kind of tea featuring flat and oval tea leaf resembling a melon seed, green color and without bud stalks. The brewed beverage is clear with soft green color, and gives strong aroma and long last-

ing refreshing taste.

Lu'an City is located in the west of Anhui Province, between the Yangtze River and the Huaihe River, at the northern foot of the Dabie Mountains. The latitude of Lu'an Guapian production area is 300 to 800 meters. The soil type is yellow brown soil with the layer thickness more than 70 cm and the organic matter content more than 1.5%.

Lu'an Guapian Tea is a kind of

baked green tea through a complex processing method that the most unique one is the repeated baking process. Large baking basket filled with tea leaves are baked over charcoal fire. The baking temperature is 160-180°C. It is rotated every 2 to 3 seconds, after 120 to 160 times of repetition when some leaves develop fragrance and turn pale, the process is completed with desired color, flavor, taste and shape.

(Courtesy of the IP Protection Department of CNIPA)

六安瓜片产于安徽省六安市,选用独山小叶种和齐头山中叶种的茶树鲜叶为原料,经传统工艺制成。单片形似瓜子、色泽翠绿、不带芽梗,汤色清澈明亮,香气清香、高长、有花香,滋味鲜爽回甘。

六安市位于安徽省西部,处于长江与淮河之间,大别山北麓。六安瓜片产区海拔高度300至800米,土壤类



别为黄棕壤,土层厚度大于70厘米,有机质含量大于1.5%。

六安瓜片制作工艺复杂,最为独特的是"拉老火"工序。装满毛茶的大号烘笼装在特制木炭上烘制,烘顶温度160°C至180°C,每2至3秒翻一次,烘翻120至160次,直至叶片起白上霜,形成特殊的色、香、味、形。

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Beijing High: Trademark Use on Export Products Passes Test of Actual Use

江苏企业用于出口的“CRESTON”商标险遭撤销

Does it fall into the scope of trademark use required in the Chinese Trademark Law when the trademark is marked on export products? Centering on the question, a German firm called Aldi GmbH & Co. KG had a rift with Yijia Import and Export Trade Co.Ltd. from Zhangjiagang, Jiangsu Province.

No. 6261353 trademark "CRESTON" (trademark in dispute) was filed for registration by Yijia Company on September, 2007 and would be approved on March, 2010, certified to be used on Class 9 products such as gauges. In March 2015, Aldi filed for revocation of the trademark in dispute to the former Trademark Office (TMO) on the ground that the trademark was not in actual use for three consecutive years from March, 2012 to March, 2015 (the designated period). After examination, TMO rejected Aldi's request. In January 2016, Aldi took the issue to the former Trademark Review and Adjudication Board (TRAB).

In response, Yijia furnished evidences of trade transactions, supplier contracts, customs declaration documents and exhibition attendance documents

to prove actual use of the trademark in dispute in the designated period. TRAB held that the materials submitted by Yijia has formed a chain of evidences, which can prove that it has used the trademark in dispute on the approved products in the designated period. In November 2016, TRAB decided to uphold the trademark in dispute.

The disgruntled Aldi then brought the case to Beijing IP Court and would be denied later. The company then appealed to Beijing High People's Court, claiming that the materials submitted by Yijia Company could only prove it produced products with "CRESTON" trademark outsourced for manufacturing by foreign clients and could not prove the products marked with the trademark in dispute were sold at home.

After hearing, Beijing High held that, although the documented evidences reveal the products marked with the trademark in dispute were for export eventually, Yijia had true intent to use the trademark in dispute and it made the trademark known by the public through advertisement, meeting the requirement of trademark use for publici-

ty. Meanwhile, setting up the system of revocation of the trademark not used for three consecutive years is to activate trademark resources and refresh idle trademarks. The ultimate purpose is to push the owners to actively use trademarks instead of punishing the trademark owners. Based on nature of export trade, Yijia's relevant products cannot be exported if the trademark in dispute is revoked, which will make the trademark in dispute fail to be maintained though the company's real use of the trademark. The result will run counter to the policy of trade encouragement and the purpose of setting up the system of revocation of the trademark not used for three consecutive years.

In this connection, Beijing High rejected Aldi's appeal and affirmed the IP court judgment.

(by Wang Guohao)

在出口的商品上标注商标,是否属于中国商标法意义上的商标使用?围绕该问题,德国爱尔多有限公司(下称爱尔多公司)与江苏省张家港市亿嘉进出口贸易有限公司(下称亿嘉公司)在法庭上展开激辩。

第6261353号“CRESTON”商标

(下称诉争商标)由亿嘉公司于2007年9月提出注册申请,2010年3月被核准注册使用在量具等第9类商品上。2015年3月,爱尔多公司以亿嘉公司于2012年3月至2015年3月期间(下称指定期间)未对诉争商标进行实际使用为由,向商标局提出撤销诉争商标的申请。经审查,商标局决定对诉争商标不予撤销。2016年1月,爱尔多公司向原商标评审委员会(下称商评委)提出复审申请。

亿嘉公司向原商评委提交了贸易往来证明材料、供货合同、报关单、展会资料等证据,用以证明其在指定期间内对诉争商标进行了使用。原商评委认为,亿嘉公司提交的证据,能够证明诉争商标于指定期间在核定商品上进行了商标法意义上的使用。2016年11月,原商评委决定对诉争商标予以维持。

爱尔多公司随后向北京知识产权法院提起行政诉讼,但诉讼请求被法院判决驳回,因此继而向北京市高级人民法院提起上诉,主张亿嘉公司提交的证据仅能证明其受国外客户委托生产了标识“CRESTON”商标的商品,不能证明标识诉争商标的商品在国内进行了销售。

北京市高级人民法院经审理认为,虽然在案证据显示标识诉争商标

的商品最终用于出口,但亿嘉公司具有使用诉争商标的真实意图,且通过广告宣传等方式使诉争商标为市场流通中的相关公众所知悉,符合商标使用对公开的要求;同时,中国商标法设立“连续三年停止使用撤销”制度的目的在于激活商标资源,清理闲置商标,旨在督促权利人积极使用商标,而非以此惩戒商标权人。基于出口贸易的行业特性,如果诉争商标被撤销,则亿嘉公司的相关商品无法完成出口,这将出现虽然亿嘉公司在生产经营中积极使用了诉争商标,但仍然不能维持诉争商标注册的结果。该结果无疑有违鼓励贸易的政策,成为对亿嘉公司的惩戒,亦不符合“连续三年停止使用撤销”制度的目的。

综上,法院认为诉争商标在指定期间进行了实际使用,据此驳回爱尔多公司的上诉,维持一审判决。

(王国浩)



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