

China's IP
in foreign eyes

The 2019 box office was then almost single-handedly rescued by the August arrival of an unlikely mega blockbuster: Chinese 3D animation *NeZha*. Helmed by self-taught first-time feature director Yang Yu, aka Jiaozhi, the film went on to earn an astonishing RMB 4.97 billion (\$710 million). Noting the similar success of local sci-fi *The Wandering Earth*, which brought in RMB 4.66 billion (\$665 million) over Chinese New Year in February, Maoyan's report emphasized how top-heavy and winner-take-all the Beijing film industry remains, with just these two titles alone representing nearly one-sixth of China's annual box office total to date. (*China's 2019 Box Office Hits All-Time High, The Hollywood Reporter*)

今年八月,中国3D动画电影《哪吒》大卖,让中国电影票房回升。这部由杨宇导演的电影总票房为49.7亿元人民币(约合7.10亿美元)。今年二月,有一部同样成功的中国科幻电影《流浪地球》,其获得了46.6亿元人民币(约合6.65亿美元)的票房收入。猫眼报告显示,到目前为止,这两部电影占据了将近六分之一的中国年度票房。中国电影产业保持着全赢的态势。(中国2019年电影票房创新高,好莱坞报道)

Comment:

Viewers are more willing to pay for movies with high-quality contents at a time the market is inundated with mediocre products. Premium copyrighted contents originated from the likes of *NeZha* and *The Wandering Earth* hold the key to constant growth of China's box office.

点评

如今,当影视剧正趋于泛滥,观众更愿意为优质内容买单。正因为《哪吒》《流浪地球》等电影打造的优质版权内容,助力中国电影票房持续增长。



The Konka Group, a leading digital home entertainment manufacturer and one of the top five TV brands in China, today announced a major brand expansion into the North American market. As a vertically integrated prime manufacturer with over 5,000 TV patents, Konka sells products in over 100 countries worldwide, specifically tailoring its products for each market. Named one of the "Top 10 most valuable brands in China," Konka's extensive product range includes Television, Audio, Smart Home, Appliances and Mobile. (*Konka Group, A China TV Technology Powerhouse, Announces Brand Expansion into the United States and Canada, PRNewswire*)

日前,中国领先数字家庭娱乐产品制造商、五大电视品牌之一的康佳集团宣布向北美市场进行品牌扩张。作为主要的纵向集成制造商,康佳现已拥有5000多件与电视相关的专利并向100多个国家生产销售定制产品。跻身“中国十大最具价值品牌”的康佳集团,其产品覆盖电视、音频、智能家居产品、家用电器、移动手机等领域。(中国电视技术强企业康佳宣布向北美市场进行品牌扩张,美通社)

Comment:

Konka Group has been building its brand through technical innovation for many years. The company's IP protection measures put its products on the map globally.

点评

在多年经营中,康佳集团持续以技术创新理念打造优质品牌。其注重知识产权布局的举措,也让康佳集团生产的品牌产品走向世界。

(熊花平)

CNIPA invites comments on *Criteria for Determining Trademark Infringement*

《商标侵权判断标准》公开征求意见

On December 18, the China National Intellectual Property Administration (CNIPA) published the *Criteria for Determining Trademark Infringement (For-Comment Draft)* to invite public comments.

The eight-chapter, 58-article *Draft* attempts to further prescribe a suite of rules for testing trademark infringement, including trademark use, determination of infringement, exceptions, suspension of application and conflict of rights, offering workable tools for trademark enforcement agencies to deal with trademark infringement cases.

Under the *Draft*, the first step taken by trademark enforcement agencies when determining whether a trademark is infringed is to evaluate whether the alleged infringing act constitutes the 'trademark use' as provided in the Trademark Law. Evaluating whether the trademarks in question are identical or similar is to compare the registered trademark of the right holder and the alleged infringing trademark (compare their key portions that have the function of identification) rather than the right holder's trademark in actual use and the alleged infringing trademark. When evaluating 'a trademark identical



with the registered trademark' or 'a trademark similar with the registered trademark', trademark enforcement agencies shall assume the eyes and brains of the relevant public who has general knowledge and experience toward the merchandise (service) in question and who lends a normal attention when selecting merchandise (service). The trademarks in question shall be looked at separately, compared as a whole, and compared in key portions while factoring in their pronunciations, shapes of their characters, meanings

and arrangements.

In addition, the *Draft* puts market owners, exhibition organizers, sales counter landlords and e-commerce platforms on the chopping block if they are negligent in performing their oversight duty. If they know or shall have known the respective businesses in their markets, exhibitors, counter tenants, businesses on the platforms infringe trademarks and fail to stop such acts; or they have no knowledge of the infringing acts, but fails to stop such acts after being reminded by trademark

enforcement agencies, their non-performance will be deemed as trademark infringing acts under Paragraph 6, Article 57 of the Trademark Law.

The broader intent of this document is to execute the decisions of the Party and the State Council on enhancing IP protection, bolster trademark protection, ensure the legitimate rights and interests of consumers, manufacturers, businesses and foster a sound climate to do business. Professionals and the public are invited to submit their comments via email, fax and letters prior to January 18, 2020.

(by Yang Liu)

本报讯(记者杨柳北京报道)12月18日,中国国家知识产权局发布通知,对《商标侵权判断标准(征求意见稿)》(下称《征求意见稿》)向社会公开征求意见。

据了解,《征求意见稿》共8章58条,从商标使用、侵权判断、例外情形、中止适用、权利冲突等方面对商标侵权判断标准进行进一步规划,以供商标执法部门在查处商标侵权案件时适用。

《征求意见稿》明确,在商标执法相关部门执法过程中,判断是否构成商标侵权,应当首先判断涉嫌侵权行为是否构成商标法规定的“商标的使用”;判断商标是否相同或近似,应以

权利人的注册商标与涉嫌侵权商标进行比对,尤其应以权利人注册商标的主要识别部分与涉嫌侵权商标的主要识别部分进行比对,不以权利人实际使用商标与涉嫌侵权商标进行比对。商标执法相关部门在判断“与其注册商标相同的商标”“与其注册商标近似的商标”时,应当以对相关商品(服务)具有一般性的知识、经验的相关公众在选购商品(服务)时所施加的普通注意程度为标准,采用隔离观察、整体比对和要部比对的方法,并综合考虑商标的读音、字形、含义、排列方式等构成要素进行认定。

此外,《征求意见稿》还明确,市场主办方、展会主办方、柜台出租人、电子商务平台等经营者怠于履行管理职责,明知或者应知市场内经营者、参展方、柜台承租人、平台内电子商务经营者实施商标侵权行为而不予制止;或虽然不知情,但经商标执法相关部门通知后,仍未采取必要措施阻止商标侵权行为的,构成商标法第五十七条第(六)项所规定的商标侵权行为。

据介绍,该文件旨在贯彻落实党中央、国务院关于强化知识产权保护的决策部署,全面加强商标专用权保护,保障消费者和生产、经营者合法权益,营造良好营商环境。有关单位和各界人士可于2020年1月18日前,通过电子邮件、传真、信函等方式提出修改完善意见。

Yunjin Brocade
云锦

Nanjing Yunjin (cloud pattern) brocade derives its name from the feature of being as splendid as the rosy clouds in the sky. It had always been produced exclusively for the imperial family in previous ages spanning nearly 700 years. The fabric made of silk, gold and silver threads with fine craftsmanship is exquisite, elegant and gorgeous. The superb weaving technique represents the highest level of the kind in ancient China.

The Qinhuai River in Nanjing City provides unique quality water for fabric dyeing. The water, containing Tan-

nic acid, is alkaline, which plays a catalytic role in dyeing and makes the dyed fabric silky and glossy. From the Southern and Northern Dynasties to the Ming and Qing dynasties, Yunjin brocade had been using natural dyes, which were extracted from plants and produced in Nanjing.

The traditional production was developed on the ancient jacquard technology. The hand-woven Yunjin brocade is the most precious brocade, whose craftsmanship represents the achievement of ancient weaving technology in China. The weaving technol-

ogy and unique design of the brocade is exceedingly complex and exquisite, and no modern machine has yet been able to replace the ancient looms, which is rare in the world. In the delicate production process, collaboration between a person sitting at the loom known as a thread puller and the other person sitting on the lower part of the loom called a weaver is the key. The daily output is about a five to six-centimeter piece of the material, and that is why an inch of the Yunjin brocade was said to be as valuable as an ounce of gold.

(Courtesy of the IP Protection Department of CNIPA)

云锦,图案典雅优美,色彩绚丽庄重,宛如天上的云霞,因此而得名。云锦专为历代宫廷所用,有近七百年皇家御用历史,其材质以真丝、金(银)线为主,工艺以纯手工挖花织造,是中国古代织锦工艺最高水平的代表。

南京城里的秦淮河,其独特的水质为云锦材料的染色提供了很好的条件。水中含有的单宁酸成分,呈弱碱性,能够在染色时起到天然的触媒作用,使染色后的丝织物光泽丰满。云锦从南北朝到明清一直用天然染料。其中植物染料用得最多,原料基本由



南京出产。

云锦传统生产工艺集成了中国古代织锦提花技术并有所发展。手工织造的云锦是织锦中最为珍贵的上品,其技艺可作为中国古代织造工艺的典型。其“挖花盘织”等织造工艺和“逐花异色”艺术风格所代表的流派在中国独树一帜,至今不能被现代机器代替,在世界范围也属罕见。在云锦的织造过程中,需要拽花工与织手两个人在织机上上下互相配合,一天也只能完成5至6厘米的匹料,确实称得上是“寸锦寸金”。

(中国国家知识产权局知识产权保护司供稿)

Cadbury awarded injunction, RMB 2.43 million in trademark infringement case

“怡口莲”商标案一审宣判

Recently, Beijing Haidian District People's Court concluded a trademark infringement and unfair competition case between Cadbury UK Limited and Yikoulian Xiamen Food Company. The Court in its first-instance judgment held that the act of Yikoulian Company constituted trademark infringement and unfair competition, ordering Yikoulian to cease infringing Cadbury's 怡口莲 (Note: Chinese pronunciation Yikoulian) trademarks, change its trademark name, publish a statement and remove ill effects and indemnify some 2.43 million yuan in damages and reasonable costs. As of publication, the case is open for appeal.

Cadbury argued that it is one of the largest candy companies in the world and had obtained registration for 怡口莲 trademarks in multiple classes. The defendant produced, sold and advertised sandwich rice crackers affixed with 怡口莲 trademark, which was similar to 怡口莲 trademark in fonts and design styles and would confuse the relevant public, and the 怡口莲 trademark had been declared invalid. The act of Yikoulian Company consti-

tuted trademark infringement. In addition, Yikoulian Company used 怡口莲 as its trade name and had the intention of free-riding Cadbury's good reputation, causing confusion for the public and constituting unfair competition.

Yikoulian argued that although the 怡口莲 trademark was declared invalid on September 20, the act of using the trademark during validity period was legal and it should not assume any liability. Rice crackers with the 怡口莲 trademark are products similar with candies on which the trademark 怡口莲 is used. That would neither confuse the relevant public nor damage the legal rights of Cadbury. The company has already obtained registration of 怡口莲 on classes associated with its mainstream products, rendering free-riding Cadbury's reputation groundless.

After hearing, Haidian District People's Court held that evidence indicated that sandwich rice crackers with the 怡口莲 trademark were still on sale after having been invalidated. The 怡口莲 trademark is identical with the 怡口莲 trademark in characters formation, pronunciation and meaning and both of them were certified to be used on daily



food, which was closely related. So Yikoulian infringed the Cadbury's trademark rights when using the 怡口莲 trademark on its goods after September 20 this year. Meanwhile, the sales channels of the sandwich rice crackers with 怡口莲 trademark were almost the same as that of the candies with 怡口莲 trademark, which would confuse consumers. Yikoulian's act constituted unfair competition. In this connection, the Court made the above judgment.

(by Chen Yuhuan)

日前,北京市海淀区人民法院(下称海淀法院)审结了吉百利英国有限公司(下称吉百利公司)诉怡口莲(厦门)食品有限责任公司(下称怡口莲公司)侵犯商标权及不正当竞争纠纷案,法院一审认定怡口莲公司的行为侵犯

商标权及构成不正当竞争行为,判决怡口莲公司停止侵犯吉百利公司“怡口莲”系列商标专用权的行为,变更企业名称、刊登声明及消除影响,并赔偿吉百利公司经济损失及合理开支243万余元。目前,该案仍在上诉期内。

吉百利公司诉称,其为全球最大的糖果公司之一,在中国拥有“怡口莲”系列商标的注册商标专用权。被告怡口莲公司生产、销售和宣传带有“怡口莲”商标的巧滋脆夹心糖果,该商标在字体、设计风格等方面均与吉百利公司的“怡口莲”商标高度近似,容易造成相关公众的混淆误认,且目前“怡口莲”商标已被宣告无效,怡口莲公司的行为构成商标侵权。此外,怡口莲公司将“怡口莲”作为企业名称中的字号使用,具有攀附吉百利公司良好商誉的故意,误导公众,构成不正当竞争。

怡口莲公司辩称,怡口莲公司的“怡口莲”商标虽然于今年9月20日被宣告无效,但有效期间的使用行为具有合法基础,不具有可归责性。怡口莲公司生产的带有“怡口莲”商标的糖果不属于类似商品,不会造成相关公众的混淆,未损害吉百利公司的合法权益。怡口莲公司在主营相关类别拥有已经核准注册的“怡口莲”商标,并未攀附吉百利公司的商誉。

海淀法院经审理认为,证据显示“怡口莲”标识被认定无效后,怡口莲公司的“怡口莲”巧滋脆夹心糖果产品依然在销售,该产品上突出使用了“怡口莲”标识。而“怡口莲”与“怡口莲”在文字构成、读音、呼叫以及含义上完全相同,且核定使用的商品均为日常生活食品,关联性较强,故在今年9月20日之后,怡口莲公司在其生产销售的产品上使用“怡口莲”标识侵犯了吉百利公司的注册商标专用权。同时,涉案的怡口莲公司“怡口莲”巧滋脆夹心糖果与“怡口莲”品牌糖果的销售渠道与方式等基本相同,极易使消费者误认或混淆,怡口莲公司的行为构成不正当竞争。综上,海淀法院认定怡口莲公司侵犯了吉百利公司的商标权并构成不正当竞争,遂作出前述判决。(陈昱略)



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