

China Law Update

Posted at 8:46 AM on July 15, 2010 by Sheppard Mullin

[Opinions of the Supreme People's Court on Several Issues Relating to Trials of Administrative Cases Concerning the Grant and Confirmation of Trademark Rights](#)

The Trademark Law of the People's Republic of China (1982) has gone through two major amendments in the past two decades. The latest amendment was adopted on October 27, 2001. On April 20, 2010, the Supreme Court of the People's Republic of China issued the *Opinions of the Supreme People's Court on Several Issues Relating to Trials of Administrative Cases Concerning the Grant and Confirmation of Trademark Rights* (hereafter "the Opinion") to provide more guidance and clarification in this area.

The Opinion includes twenty numbered paragraphs, covering a wide range of issues including: trademark rejection, trademark opposition, trademark disputes, trademark cancellation and trademark registration by agents. The Opinion draws a distinction between trademarks that have been extensively used and those that have not. It seems that the former will be afforded more protection. The opinion also elaborates on the definition of a number of terms, including "exaggeration and fraud" and "distinctiveness."

Trademark in extensive use

First, the Opinion draws a distinction between trademarks that have been extensively used and those that have not. According to the Opinion, the court may employ stricter standards for granting and confirming trademark rights to trademarks that are not already extensively used. The balance will be tilted towards protecting both the interests of consumers and existing trademark users, while also prohibiting malicious registration behavior. Trademarks which have been used for a longer period of time establish a relatively high market reputation. The fact that consumers are able to distinguish a trademark from prior trademarks should be recognized and attention should be given towards the maintenance of an ordered and stable market.

"Exaggeration and Fraud"

Puffery is not exaggeration or fraud, the Opinion seems to say. "Exaggeration and fraud" appears in Item 7 of Article 10 of the Trademark Law. According to the interpretation, some marks may have been somewhat exaggerated but the public is not likely to be misled based on their life experiences or common senses. In these cases, the court shall not treat these marks as "exaggeration and fraud."

Distinctive Characteristics

According to the Opinion, in regards to granting and confirming trademarks, the courts should take into account the public's common knowledge and consider all relevant factors as a whole in determining whether a trademark has “distinctive characteristics”. Therefore, if the descriptive element(s) used in a trademark do not affect the trademark’s distinctiveness or the public's ability to identify the source of goods based on the element(s), the court should rule that the trademark has distinctive characteristics.

The Opinion has also elaborated on the meaning of other prominent terms, including “generic names”, “similar”, “proximate” and “malicious registration of trademarks.” It has certainly added more substance into the Trademark Law of the People’s Republic of China and will bring about big impacts on trademark disputes in China.

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