

HOW TO PROTECT THE LOOK OF PRODUCTS IN CHINA

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Webinar
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7.8+ Million
(2019)



China is now the
most litigious IP
society in the
world



What
brand is
this?





- [Source: Dior China Website
https://www.dior.com/zh-tw/%E9%A6%99%E6%B0%9B/%E5%A5%B3%E6%80%A7%E9%A6%99%E6%B0%9B/jadore](https://www.dior.com/zh-tw/%E9%A6%99%E6%B0%9B/%E5%A5%B3%E6%80%A7%E9%A6%99%E6%B0%9B/jadore)

WHY and HOW?

- Why is it so difficult?
- What are the primary ways to protect product look?
- Design patent?
- 3D Trademark?
- Copyright?
- Unfair Competition Law?



3D Trademark

- GRANT: Article 8 of the China Trademark Law
- LIMITATION: Article 12 of the China Trademark Law

NOT allowed for 3D Trademark



- The design is functional
- The design is driven by technology needs
- The design lacks distinctiveness
- The design is compromised of the product's own shape

正面视图




俯视图



仰视图



WIPO Madrid Monitor	
Current Status	
180	Expected expiration date of the registration/renewal 08.08.2024
151	Date of the registration 08.08.2014
270	Language of the application French
732	Name and address of the holder of the registration PARFUMS CHRISTIAN DIOR 33 avenue Hoche F-75008 PARIS (FR)
812	Contracting State or Contracting Organization in the territory of which the holder has a real and effective industrial or commercial establishment FR
842	Legal nature of the holder (legal entity) and State, and, where applicable, territory within that State where the legal entity is organized Société Anonyme, France
750	Address for correspondence Parfums Christian Dior - Direction Juridique 33 avenue Hoche F-75008 Paris (FR)
540	Mark 
550	Indication relating to the nature or kind of mark <u>Three-dimensional mark</u>
531	International Classification of the Figurative Elements of Marks (Vienna Classification) - VCL(7) 19.07.01 ; 29.01.02
571	Description of the mark The mark is the form of fine and long " 8 ",for top with small a globe; the lower end is oval shape; of the circles. Long ornament <u>gold</u> .
511	International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Classification) - NCL(10-2014) 03 Perfumery, perfumes, eau de parfum, eau de toilette, eau-de-cologne, perfume extracts, scented body milks, scented oils and lotions for the body, shower perfumed lotions, perfumed shower gels, bath lotions, scented gels for the bath, scented





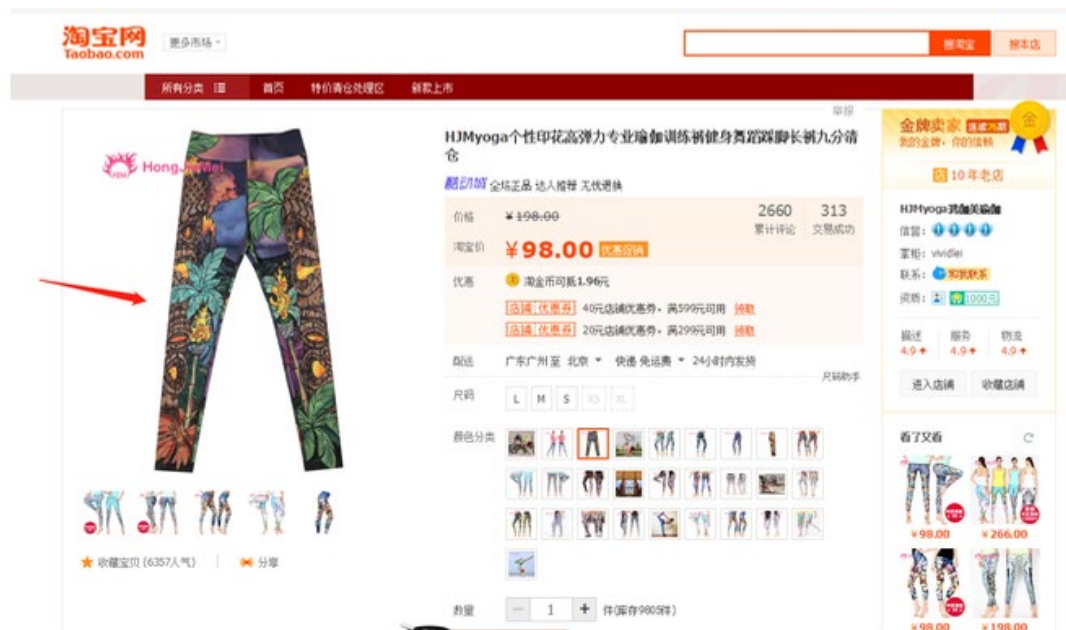
- Selected as one of the top 10 cases by China Supreme People's Court in 2018
- Decision unfavorable to Dior in the 1st and 2nd court decisions.
- Televised review on 4/26/2018 (World's IP Day) Justice Ms. Tao



Copyright

- Super-Trademark?
- Strength & Limitations
- Key benefits?

Example



The screenshot shows a Taobao.com product page for HJMyoga leggings. The main image is a pair of leggings with a vibrant, colorful pattern featuring a couple kissing, green leaves, and yellow flowers. A red arrow points to the main image. The page includes a search bar, navigation tabs, and a detailed product description. The price is listed as ¥98.00. The seller is identified as a 'Gold Medal Seller' with a 10-year history. The page also features a '看了又看' (Looked at again) section with other product recommendations.

淘宝网 Taobao.com

更多市场

所有分类 首页 商品 特价清仓处理区 新款上市

Hongmyoga

HJMyoga个性印花高弹力专业瑜伽训练健身舞蹈深脚长袜九分裤

翻印必究 全场正品 达人推荐 无忧退换

金牌卖家 诚信通 10年老店

HJMyoga瑜伽瑜伽服

信誉: 4.9 4.9 4.9

掌柜: viviGei

联系: 咨询购买

资质: 10000

描述: 4.9+ 服务: 4.9+ 物流: 4.9+

进入店铺 收藏店铺

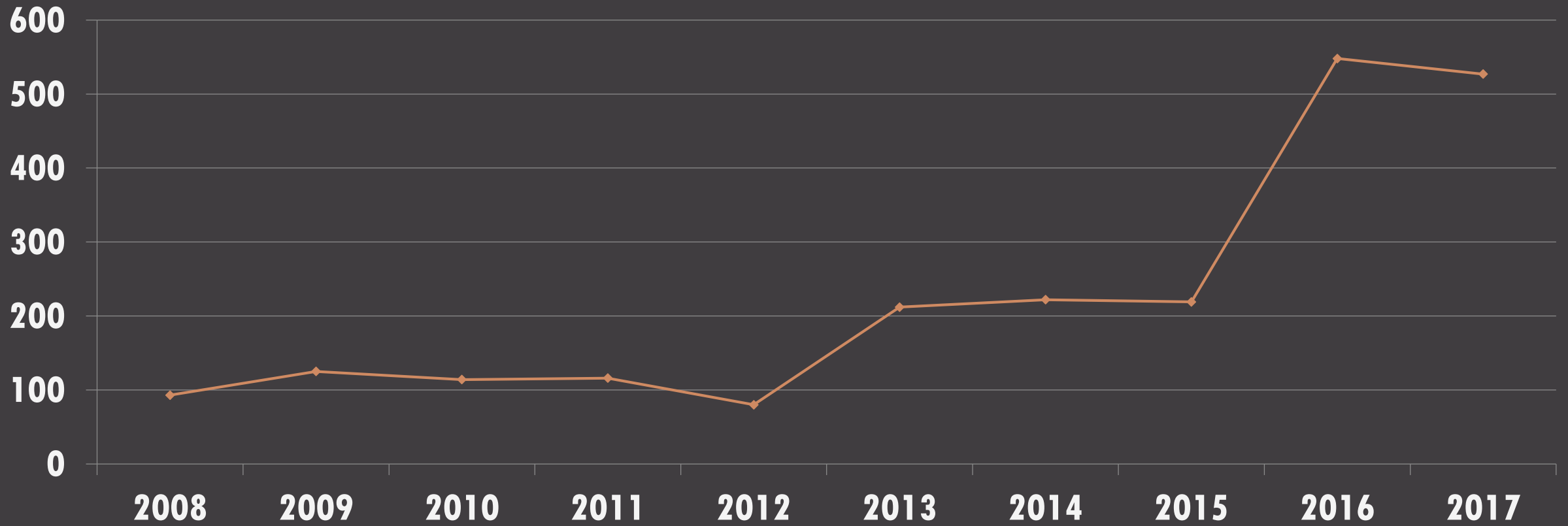
看了又看

¥98.00 ¥266.00

¥98.00 ¥198.00

数量: 1 件(库存9809件)





Customs Recordal Based on Copyright





What if there's
no registered
rights in China?



Key Provision (Article 6(2))

*"A business operator shall not harm its competitors.... By using any of the following through unfair means.... Using a **unique** name, **packaging** or **decoration** of another's **famous** products, or using a name, packaging, or decoration that is **similar** to that of another's **famous** products"*



Product Packaging





Product Design

(Grooved Design)



◇ DESIGNED FOR 4-6 DAYS



CLASSIC

Check-In L

\$1,260.00

www.weibo.com/rimowa ▾ Translate this page

[RIMOWA日默瓦的微博_微博 - Weibo](#)

叫上小波我们三人组团去某某医院割包皮吧！结果小明，小波还有你就

www.haitao.co/share ▾ Translate this page

新低3180元【爸爸去哪儿同款】Rimowa 日默瓦S

网易考拉最新降价商品：【爸爸去哪儿同款】Rimowa 日默瓦SALSA A1箱。此前记录最低价3180元，最高4119元，现价3180元。本店商品支！

www.dw.com ▾ 德国品牌百褶不挠... ▾ Translate this page

德国品牌：“百褶”不挠的RIMOWA | 非常德国之五：

Jan 30, 2016 - 因为市场太小，反倒没有企业想到会和RIMOWA展开竞：是：“我们是鲨鱼池里的小金鱼，因为我们太小，鲨鱼们根本不屑于去 ..

zhuanlan.zhihu.com ▾ ... ▾ Translate this page

[从RIMOWA看奢侈品营销策略- 知乎](#)

Oct 10, 2019 - 的确，有一个在LVMH当CEO的爸爸——伯纳德·阿尔诺有两个原因：首先，RIMOWA是我对行李箱的选择，我很在乎这个品牌



Four-Prong Test

- The characteristics at issue has gained a high level of **fame in China**
- The characteristics at issue is **not** a **common** design in the industry
- The characteristics at issue is **not functional** in nature
- The characteristics at issue, as employed by the junior product, is **identical** or **similar** to that of the famous product which has resulted in consumer **confusion**.



20

ONE Question

Protecting the looks of products in China

Infringers are getting smarter in China – they no longer copy trademarks directly but target a product's look. So how can rights holders best protect unique packaging, creative shapes or innovative designs in the world's biggest market?



Ten years ago, the hottest IP question in China was: "How do you protect a western brand?" Discussions relating to China's sub-class system were an inevitable topic in almost every international trademark conference.

Five years ago, the rise of ecommerce platforms such as Taobao, Alibaba and JD helped to move the focus away from sub-classes and on to the subject of online counterfeiting.

While this is still a big issue – particularly where infringers either copy or invent similar marks clearly based on famous brands (JUST DO IT versus JUST DID IT) – around three years ago the spotlight shifted again as infringers started to develop new marketing methods for fake goods. Rather than simply using a word mark or a logo as a source identifier, companies began to

AUTHORS
AMY HSIAO AND
CHRISTOPHER
SHEN

situations trademark registrations are permitted for traditional elements, such as word marks or logo design only. The law has not (yet) evolved to the point where a product's unique characteristics can also be recognised and protected as trademarks. For example, China has not yet allowed the famous red soles of Christian Louboutin-branded high heels to be registered as a trademark (the application was appealed at the time of writing). Under the current system in China there is nothing to stop any shoe manufacturer from manufacturing, selling or distributing high heels with soles which are exactly the same shade of red, provided that they do not explicitly include the Christian Louboutin logo or brand.

When a product's creative marketing features cannot





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- China TM Blog: www.chinatizeit.com





Thank you.

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