Copyright in China

By Amy Hsiao
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What are the recent statistics?

How to get copyright?

Why is it called “super trademark”?

One Story: The Most Recent Hot Topic?
Recent Copyright Statistics in China
IP civil actions (first instance) Chinese courts

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There were 1090 copyright cases in 2016 and 2352 cases in 2017, this is a **115.8% increase** within one year.

In 2017, there was a total of 573 copyright cases which accounted for **24.4% of the total cases**. Overall the court made judgments in the plaintiff’s **favour 88.1% of the time**.

- **Criminal** copyright case: around 70 in 2017; 115 arrested
- Top products seized for copyright issue: **books/magazines**
How to obtain copyright in China?
Four Primary Options

- **Most Direct** → “Legal Entity Work”
- **Work Made by Hire** → Ad agency (created by the outside)
- **Work Made by Employee** → The employee is the author, the employer is the copyright owner (created by the inside)
- **Assignment** → The assignee is the copyright owner
Question:

- Berne Convention?
- Primary Facie evidence for ownership
- Especially for enforcement.
Here’s another question!

Bad faith
Invalidation
Quick Summary

Trademark Vs. Copyright – Substantive Examination / Enforcement

Chinese Copyright vs. US Copyright
- Originality
- Enforcement – AIC can impose fines injunctions and confiscate products

Biggest Advantage of Copyright
Why copyright is “Super Trademark” in China?
1. 商标法第32条“在先权利”
第三十二条 申请商标注册不得损害他人现有的在先权利，也不得以不正当手段抢先注册他人已经使用并有一定影响的商标。
No applicant for trademark application may infringe upon another person's existing prior rights, nor may he, by illegitimate means, rush to register a trademark that is already in use by another person and has certain influence.

2. 著作权是在先权利
《商标审查及审理标准》四、损害他人在先权利审理标准 2.2 著作权 2.2.1 未经著作权人的许可，将他人享有著作权的作品申请注册商标，应认定为对他人在先著作权的损害，系争商标应当不予核准注册或者予以无效宣告。
Trademark examination guideline: Trademark application that deemed to infringed upon copyright of another person without permission shall not be approved for registration.

3. 在先著作权可以阻挡全类商标注册
For the purposes of Trademark Law, the protection granted to a registered trademark is usually limited to the certain class and certain designated goods or services of such trademark. However, if resorting to copyright as a prior right to oppose the application or invalidate the registration of a trademark, class, goods or services
Examples

Class 30

First Instance: Beijing No. 1 Intermediate People’s Court (No. 3818; 2012) – Decided on December 4, 2012

Second Instance: Beijing High People’s Court (No. 343; 2013) – Decided on September 5, 2013
Question: Will a WKTM be sufficient to block this mark?

Class 38, 41, 29, 30, 32, 33
Dried Fruit? Beverage?
The Most Recent
Copyright Hot Topic

-- One Story --
<table>
<thead>
<tr>
<th>No.</th>
<th>Company</th>
<th>Font Style</th>
<th>Description</th>
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<th>Conclusion</th>
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<td>北大方正电子有限公司起诉宝洁公司</td>
<td>飘柔【体字】</td>
<td>/</td>
<td>一审法院，单字不享有著作权，不构成侵权。二审法院：合法使用，驳回上诉，维持原判。</td>
<td>Infringement recognized; Injunction issued/damage granted.</td>
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<td>2</td>
<td>汉仪公司起诉笑巴喜公司</td>
<td>笑巴喜【体字】</td>
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<td>/</td>
<td>Infringement recognized; Injunction issued/damage granted.</td>
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<tr>
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<td>城市宝贝【体字】</td>
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<td>Infringement recognized; Injunction issued/damage granted.</td>
</tr>
<tr>
<td>4</td>
<td>北大方正诉上海跃兴致旺、北京家乐福</td>
<td>自然子【体字】</td>
<td>/</td>
<td>/</td>
<td>Infringement recognized; Injunction issued/damage granted.</td>
</tr>
<tr>
<td>5</td>
<td>上诉人广州梦想家诉张海山</td>
<td>玛雅【体字】</td>
<td>/</td>
<td>一审法院：侵权，判决赔偿5000元。二审法院：不侵权，维持原判，驳回上诉。</td>
<td>Infringement recognized; Injunction issued/damage granted.</td>
</tr>
<tr>
<td>6</td>
<td>中易公司起诉微软公司</td>
<td>字库中的所有字库</td>
<td>/</td>
<td>/</td>
<td>Infringement recognized; Injunction issued/damage granted.</td>
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Thank you.