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Iowa City, IA: August 28, 2018

Kansas City, MO: August 30, 2018

Copyright in China



By Amy Hsiao

Partner at **Swanson & Bratschun**



What are the recent statistics?

How to get copyright?

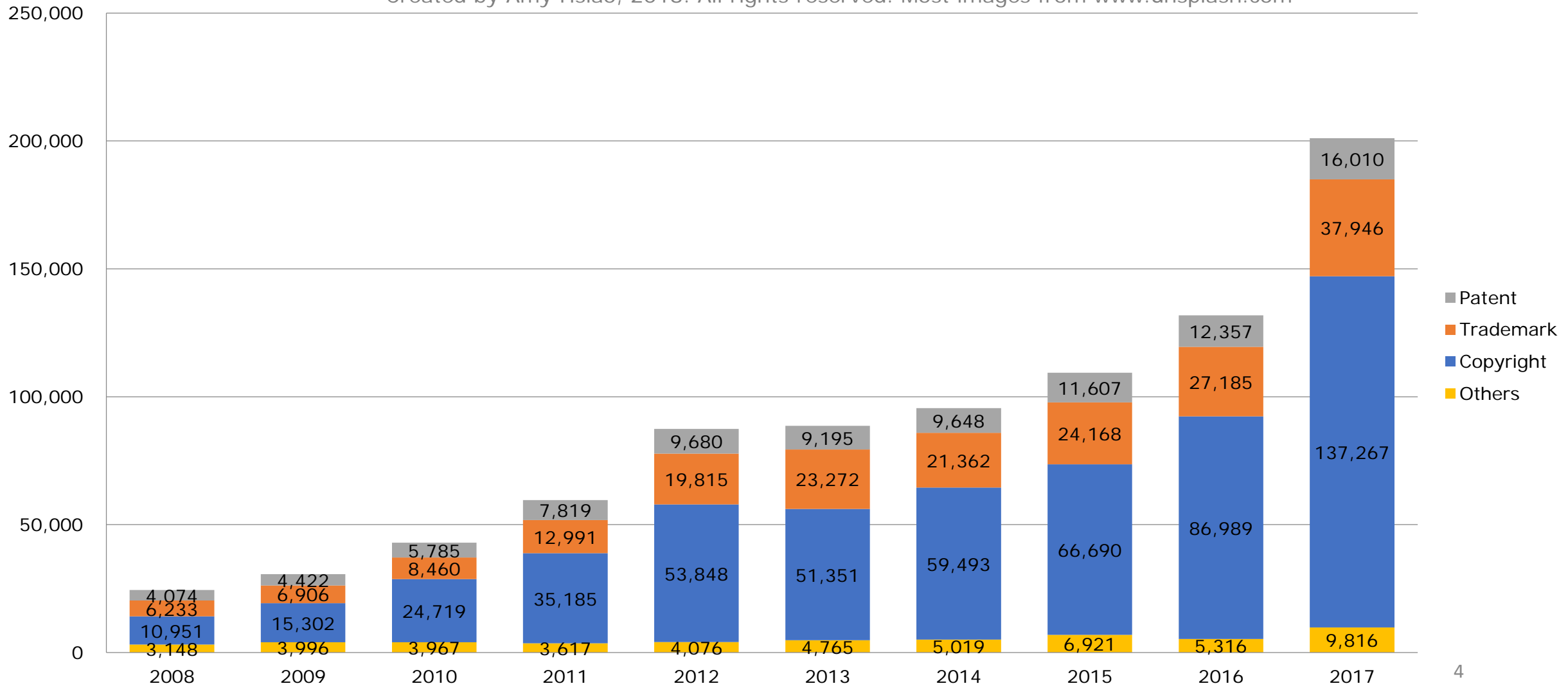
Why is it called "super trademark"?

One Story: The Most Recent Hot Topic?

Recent Copyright Statistics in China

IP civil actions (first instance) Chinese courts

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Here's the Big Picture

- 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.

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作品名称: [REDACTED]

作品类别: 美术作

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著作权人: [REDACTED]

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首次发表时间: 2014年11月

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作者: [REDACTED]

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Here's another question!

Bad faith
Invalidation

Quick Summary

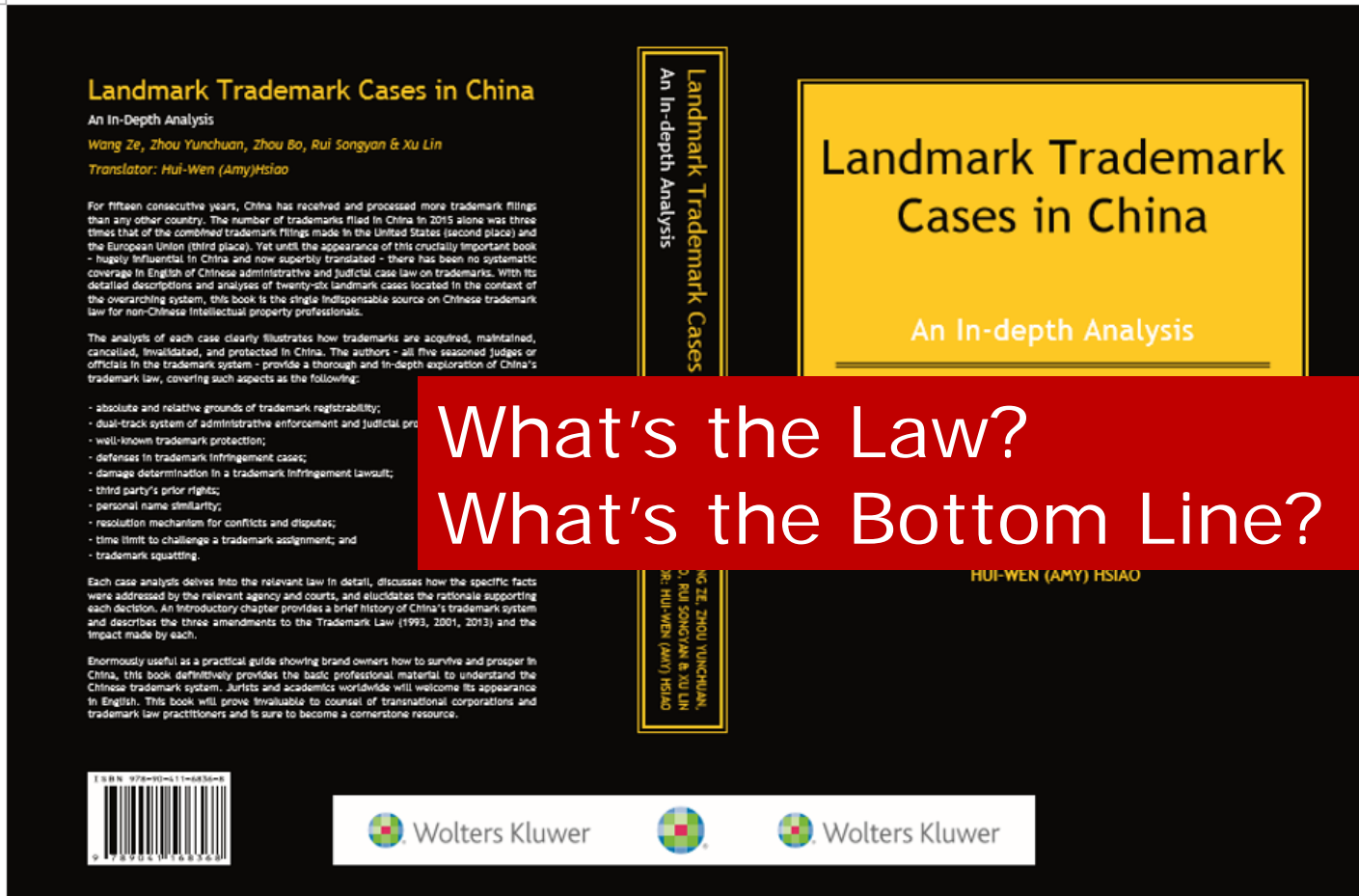
Trademark Vs. Copyright –
Substantive Examination /
Enforcement

**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?



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What's the Bottom Line?**

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Textbook -- China's Trademark System

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、损害他人先在权利审理标准 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 for registration.

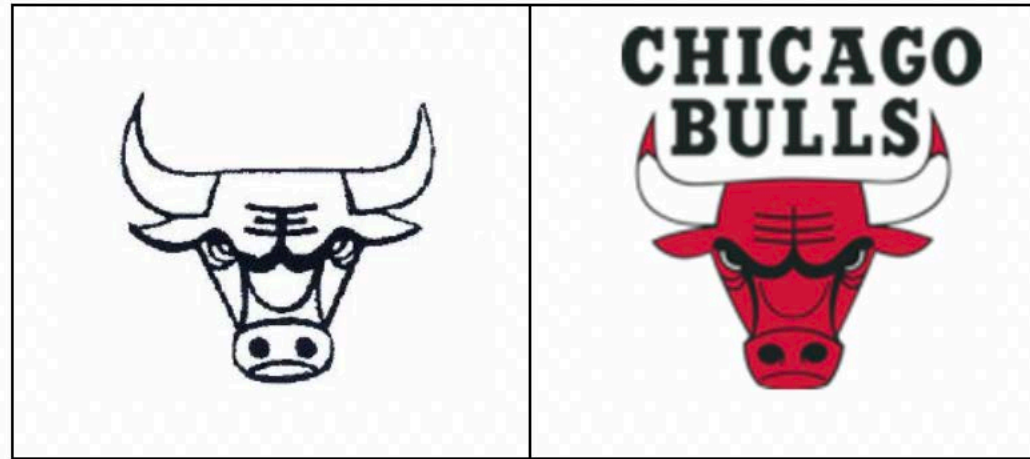
3. 在先著作权可以阻挡全类商标注册

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



Bottom Line

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 --

Familii Sangam MN

Telugu MN

Telugu Sangam MN

TH SarabunPSK

Times

✓ Times New Roman

Trattatello

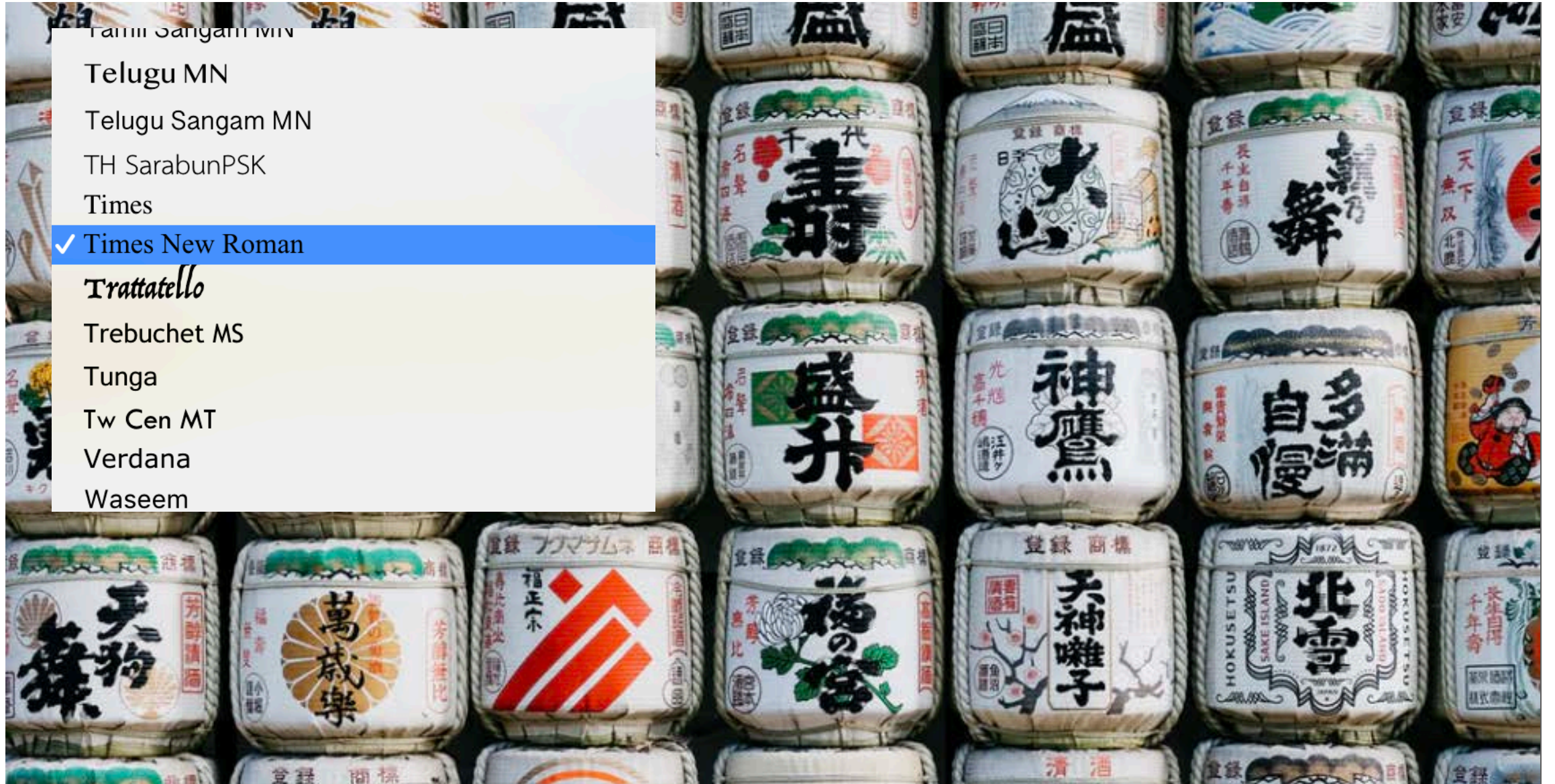
Trebuchet MS

Tunga

Tw Cen MT

Verdana

Waseem



1	北大方正电子有限公司起诉宝洁公司	飘柔 【倩体字】	/	一审法院：单字不享有著作权，不构成侵权 二审法院：属于合法使用，驳回上诉，维持原判	(2011)一中民终字第5969号
2	汉仪公司起诉笑巴喜公司	笑巴喜 【秀英体】	笑、喜	Infringement recognized; Injunction issued/damage granted.	
3	汉仪公司起诉福建双飞日化公司	城市宝贝 【秀英体】	城、市、宝、贝	Infringement recognized; Injunction issued/damage granted.	
4	北大方正诉上海跃兴旺、北京家乐福	 【方正平和体】	自、然、子	Infringement recognized; Injunction issued/damage granted.	
5	上诉人广州梦想家诉张海山	 【张海山锐谱体】	玛、雅	一审法院：侵权，判决赔偿5000元 二审法院：不侵权，	(2016)粤73
6	中易公司起诉微软公司	字库中的所有单字	/	Infringement recognized; Injunction issued/damage granted.	5362号






AMY HSIAO

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Thank you.