

Trademarks:  
“Chengshi” and Confusion – What  
can be learned from Practice

商标：诚实及相同或近似商标 -  
可以学到什么

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# 简介 - Introduction

- The National IP Strategy – “strictly crackdown on counterfeiting activities and safeguard fair competition”
- Many foreigners believe that their intellectual property cannot be protected in China
- Consequently they are reluctant to register their IP rights in China

# 简介- Introduction

- China has IP laws that meet international standards
- Chinese courts do enforce IP rights, and particularly IP rights held by foreign parties
- To a large extent the threat to IP from counterfeiters can be costed and managed

# 法院及知识产权的实施

## Courts & IP Enforcement

Lego Case - 英特莱格公司 (INTERLEGO. AG) v. 可高 (天津) 玩具有限公司, Beijing 2002

Lego was successful under design patent and copyright law

Beijing Higher People's Court stated:

可高公司的产品确有抄袭之嫌，但同时也应看到英特莱格公司的上述玩具积木块艺术创作程度确实不是很高，与典型的实用艺术作品在艺术创作程度上尚有一定差距，一审法院出于平衡利益关系的考虑，作出上述认定是合理的，本院予以支持。

(While the Kegao Company's products really have the **smell of plagiarism**, we should also consider that the **level of artistic creation** in the English Interlego Company's products **is not really very high** and there is a certain disparity between it and typical practical works of art. The court of first instance struck a balance a reasonable balance of the interests and we will support it.)

# 法院及知识产权的实施

## Courts & IP Enforcement

- Learn from Practice: the cases
  - Application of 诚实 (civil law good faith)
  - Confusion as to the source of the goods

# 诚实 - Civil Law Good Faith

- 中华人民共和国民法通则
  - 第四条 民事活动应当遵循自愿、公平、等价有偿、**诚实信用**的原则。
- General Principles of the Civil Law
  - Article 4 In civil activities the principles of voluntariness, fairness, making compensation for equal value, **honesty and credibility** shall be observed.

# 诚实 - Civil Law Good Faith

## Proposed Amendment to Trademark Law

- 第七条 申请注册和使用商标，应当遵循诚实信用原则。
- Article 7 The principle of honesty and creditworthiness shall be followed when an application for registration is filed or when a trademark is used.

# 诚实 - Civil Law Good Faith

Russia – Статья 10, Гражданский Кодекс Российской Федерации (Article 10, Russian Civil Code)

1. Не допускаются действия граждан и юридических лиц, осуществляемые исключительно с намерением причинить вред другому лицу, а также злоупотребление правом в иных формах.

Не допускается использование гражданских прав в целях ограничения конкуренции, а также злоупотребление доминирующим положением на рынке.

1. Individual and juridical persons shall not exercise their rights exclusively with the intention of causing harm to the other party, or abuse their rights in any manner.

Civil rights shall not be used with the object of restricting competition, or abusing a dominant position in the market.



# 诚实 - Civil Law Good Faith

## Sony Ericsson Case - July 2008– Bad Faith Registrations

- Sony Corporation is well-known in China as 索尼
- Ericsson also well-known under the name 爱立信
- In 2001 they formed a joint venture to manufacture and sell mobile phones
- Joint venture incorporated in China as 索尼爱立信移动通信产品（中国）有限公司

# 诚实 - Civil Law Good Faith

- Businessman in 广州 applied to register the mark 索爱 on March 19, 2003 – Sony opposed, but lost twice

北京市第一高级人民法 – Beijing No. 1  
Intermediate People's Court

- Applied Article 31 of the Trade-mark Law

# 诚实 - Civil Law Good Faith

- Purpose of Article 31 – to prevent violations of the principle of good faith – 诚实
- Court said the joint venture was widely reported in the press
- so businessman is presumed to have known about it
- his actions不正当性 – do have clear legitimacy

# 诚实 - Civil Law Good Faith

## Proposed Article 32

未经授权，代理人或者代表人以自己的名义将商标所有人的商标进行注册的，不得注册，但是，**代理人或者代表人**能够证明其行为正当的除外。

Where any agent or representative registers, in its or his own name, the trademark of the trademark owner without authorization therefrom, the trademark shall not be registered, except that the **agent or representative** can prove otherwise that its act is justified.

# 诚实 - Civil Law Good Faith

重庆正通药业有限公司 诉国家工商行政管理总局商标评审委员会 和四川华蜀动物药业有限公司 ( Chongqing Zhengtong Pharmaceuticals Ltd. v. State Administration for Industry & Commerce Trademark Review Board and Sichuan Animal Pharmaceutical Ltd) 最高人民法院, (2007) 行提字第2号, 二〇〇七年八月三十一日

available at:

[http://ipr.chinacourt.org/public/detail\\_sfws.php?id=11423](http://ipr.chinacourt.org/public/detail_sfws.php?id=11423)

# 相同或近似商标 – Same or Similar Marks

## Proposed Article 83

商标相同，是指两商标在视觉上相同或者基本无差别，使用在同一种或者类似商品或者服务上易使相关公众对商品或者服务的来源产生误认。

By saying that two trademarks are identical, it is meant that they are identical or there are essentially no differences in vision, and that if they are used on the same or a similar category of goods or services, the public concerned are likely to be confused as to the true source of the goods or services in question.

# 相同或近似商标 – Same or Similar Marks

## 《类似商品和服务区分表》 Nice Classification System

可以作为判断商品或者服务是否类似的参考，但不是判断类似的唯一参考标准

It may serve as reference for judging whether goods or services are similar. But, it is not the only reference criterion for judging similarities.

# 相同或近似商标 – Same or Similar Marks

重庆顺顺达石油化工有限公司 诉宗申产业集团有限公司, 重庆市高级人民法院 (2005)渝高法民终字第194号

Chongqing Shun Shunda Petrochemical Co., Ltd. v. Zongshen Industrial Group Co., Ltd., Chongqing Higher People's Court

- “motorcycles” and “motorcycle lubricants” – in different classes – but use of similar mark would cause confusion as to source



# 摘要 - Summary

- Learn from the cases; learn from practice
- Expand provisions on “诚实”
- Expand provisions on “相同或近似商标”
- Provide model cases
- Focus on training in the concepts

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