



# Beijing RisingMark

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2017 年刊

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## In this issue

### ➤ Trademark Office Allows Change of Trademark Opponents

On Jul 4, 2017, China Trademark Office announced a new procedure for changing opponents in trademark opposition cases. According to the Notice, the procedure of changing opponent applies when the trademark right based on which an opposition has been filed is transferred to a third party before an opposition decision is made, and the third party wishes to inherit the opponent position, participate in the follow-up opposition procedure and bear the corresponding consequences. The transfer of trademark right includes voluntary transfers between the opposition applicant and the third party, as well as the statutory transfers resulting from merger, inheritance, litigation and other causes.

### ➤ Chinese Government Strengthens IP protection on Belt & Road

The State Administration for Industry and Commerce (SAIC) recently published the Major Tasks for Crackdown of IPR infringement and Counterfeits, which stresses focus on the Belt & Road countries and regions, with highlights in imports and exports, major professional markets, cross-border E-commerce activities and other key areas. In order to meet the needs of Chinese companies for overseas development, SAIC proposed for the very first time to establish information platform for Chinese companies' trademark enforcement abroad, and to amplify governmental assistance in overseas enforcement actions via multilateral and bilateral talks mechanism.

### ➤ Chinese IP Infringement Cases Withdrawal Rate Released

On July 5, 2017, the Supreme People's Court issued "Judicial Data Report on Intellectual Property Infringement", which shows that from 2015 to 2016, IP infringement cases are mainly closed by withdrawal, accounting for 50.88% of the total.

According to statistics, the number of IP infringement cases nationwide shows an upward trend, the number of 2016 is up 41.34% from that of 2015. Among the cases of 2016, copyright infringement, trademark infringement and patent infringement accounted for 50.20%, 34.17% and 15.63% respectively. Guangdong, Beijing and Zhejiang concluded the

largest number of cases. 28 countries are found involved in the IPR infringement cases, among which, US, France and Germany are with the most cases.

The Report also shows that the average trial cycle for IP infringement cases is 105 days, and only 7.93% of the IP infringement cases had the plaintiff's claim all supported.

## Cases in Spotlight

### ➤ Trademark Opposition involving Well-Known TV Program Name

Opponent : Zhejiang Blue Star International Media Co., Ltd

Opposed party: Rakeno Trading Co., Ltd

奔跑吧兄弟 ( "Run bros!" in English) is the original name of a TV program introduced and produced by the opponent, and the program's episodes are broadcasted in Zhejiang TV in a rolling manner. The opposed party applied for trademark registration of 奔跑吧兄弟 for goods in Class 18. The opponent believed that the opposed mark has infringed upon the opponent's prior right to the well-known name of the TV program as well as the opponent's copyright, and filed an opposition based on Article 32 of China Trademark Law.

The Trademark Office supported the opponent's claim that "奔跑吧兄弟", as a prior well-known name for TV program, shall be protected as a prior right under Article 32 of the Trademark Law, and that the opposed trademark shall not approved for registration.

The typical significance of this case lies in acknowledging well-known names for films and TV programs as a kind of prior rights and granting the same protection as to copyright and other prior rights provided in Article 32 of China Trademark Law. The name of a well-known film or TV work is of great commercial value and influence, which have called for protection against trademark squatters for years. To bring a solution to this issue, it's a significant breakthrough to include well-known film and TV program name into the scope of prior rights provided in Article 32 of the Trademark Law so as to extend protection over it.

### ➤ CCTV "Big Head Son" Copyright Dispute Case

Hangzhou Intermediate People's Court (2015) No. 356 Civil Verdict on the appeal of copyright infringement dispute between Hangzhou Big Head Son Cultural Development Co., Ltd. and CCTV Animation Co., Ltd.

#### Case Summary

In 1994, Shiyu Cui, director of cartoon "big head son and little head father" (1995 edition, hereinafter referred to as "the 95 version"), and others visited Zedai Liu's home inviting him to create character images for the upcoming 95 version of the cartoon series. Immediately on the spot, Zedai Liu outlined the front view portraits of three characters "big head son", "little head father" and "apron mother" with a pencil, and gave the draft to Shiyu Cui, without concluding a written agreement on the copyright of the works.

After Shiyu Cui brought back the draft, the creation team for the 95 version made further design and re-creation based on Zedai Liu's draft. Although Zedai Liu no longer participated in the creation since, he was listed as the character designer when the 95 version was co-produced by the CCTV and Oriental TV and broadcasted in 1995.

December 14, 2012, Zedai Liu transferred the copyright of his art work images of "big head son", "little head father" and "apron mother" to Liang Hong, who further transferred the copyright to Hangzhou Big Head Son Culture Development Co., Ltd. (hereinafter as "Big Head Son Company"). When CCTV Animation Co., Ltd. (hereinafter as "CCTV Animation") produced the cartoon named "New big head son and small head father" (hereinafter as "the 2013 version") and broadcasted on CCTV, local TV stations, and CCTV online, Big Head Son company sued CCTV Animation for infringing on their copyright by readapting the above-mentioned art work images to new characters without the copyright owner's permission and corresponding payment, and asked the court to order CCTV Animation stop infringement, announce apology on newspaper, eliminate the impact, and compensate for its economic losses and reasonable costs.

Hangzhou Binjiang District Court found that, Zedai Liu as the commissioned party shall enjoy the integral copyright of the three art works he created; Big Head Son company has acquired the copyright of the above-mentioned art works, except for the personal right thereto, through

transfer; without the right owner's permission, CCTV Animation used the related works through adaption in the 2013 version of cartoon and the related exhibitions and propagandas to earn profit, which has infringed upon the Big Head Son company's copyright, and shall bear the corresponding liability. In view of the actual situation of the case, the court held that an increased amount of indemnity shall be rendered to replace an injunction. Accordingly, CCTV Animation was ordered to pay 400,000 yuan for each character image. The first instance verdict was later maintained by Hangzhou Intermediate People's Court, and Zhejiang Higher People's Court also rejected CCTV Animation's request for retrial.

#### Typical Significance

This case involves the ownership of cartoon character image copyright and disputes arisen in subsequent use. In this case, due to the lack of clear understanding by all parties, including the investing studio, the television stations, as well as the creation staff, on their rights and obligations and a clear agreement, after many years, the court had to apply the rules of law to determine the ownership of rights reasonable and legally. Meanwhile, under the premise of affirmed infringement, the court increased the amount of indemnity to replace an injunction order, taking into account the background of creation and the actual situation, balancing the protection of copyright owners and the public policy to encourage the creation and broadcast of works. How this case was handled has provided certain guiding significance to the similar cases.

## **RSMK news**

In order to popularize intellectual property knowledge, our company will regularly explain relevant intellectual property knowledge through network lectures, including patents, trademarks, intellectual property standards and high-tech enterprise identification and other aspects of knowledge, the lecture invites the relevant person in charge of the company, patent agents, content close to production, life, etc. Those who welcome you will be welcome to register.

主题名称	计划讲座时间	人员
中国专利申请流程	7月20日 15: 00	Peter
实用新型专利挖掘	7月27日 15: 00	Carl
实用新型专利说明书撰写要求	8月03日 15: 00	Carl
从说明书公开充分角度谈化学领域专利申请撰写	8月10日 15: 00	Tesia
浅析试验数据在化学领域专利申请中的重要性	8月17日 15: 00	Tesia
专利初级检索分析	8月24日 15: 00	VE-mirror
专利数据库检索案例及分析	8月31日 15: 00	VE-mirror
微生物专利问题及规则	9月07日 15: 00	Peter
商标注册流程	9月14日 15: 00	Ailas
外观设计侵权案例分析及保护客体简介	9月21日 15: 00	Ailas
知识产权贯标	9月28日 15: 00	Grace
高新技术企业认定政策解读	10月12日 15: 00	Vicky
国外专利申请途径	10月19日 15: 00	Peter
快速申请国外专利的工具pph	10月26日 15: 00	Peter
跨国公司高质量专利构架方法	11月02日 15: 00	Peter
从青蒿素思考海外专利申请	11月09日 15: 00	Athena
柬埔寨专利申请途径介绍	11月16日 15: 00	Athena
荷兰专利申请途径介绍	11月23日 15: 00	Athena
中美专利申请差异	11月30日 15: 00	Athena
美国加速审查途径简介	12月07日 15: 00	Athena

QQ group: 552790653 every Friday at 15:00. Interested parties please sign up in advance.

#### Part of the keynote speaker

##### Ji LI (peter)

※master in biology※patent attorney※senior engineer※External Auditor of Standards Implementation

Peter has 8 years of experience in development of biology technology, and 15 years of experience in practical issue of IP. He has 9 papers published in Chinese Invention & Patent which is headed by the State Intellectual Property Office and serves for the country's knowledge economy, and has lectured more than 200 times in seminars on enzyme preparations.

##### Hong ZHANG (Athena)

※master in chemical engineering and technology ※patent attorney

Athena has been engaged in patent agency for 6 years. She is especially skilled at patent affairs in the field of chemical industry and medicine, and application affairs in foreign country. More than 450 cases have been processed.

**Ying LIU (Tesia)**

✕master in chemistry ✕patent attorney

Tesia is especially skilled at application affairs in foreign country, such as translation of application documents and filing of application. More than 200 cases have been processed.