

CHINA LEGAL BRIEFING* 184

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Provisions of the Supreme People's Court on Issues Concerning the Trial of Cases of Civil Disputes over Conflicts Involving Registered Trademark or Enterprise Name and Prior Right

最高人民法院关于审理注册商标、企业名称与在先权利冲突的
民事纠纷案件若干问题的规定

Issued By	Supreme Peoples Court
Subject	Registered Trademark, Enterprise Name, and Prior Right
Promulgated on	February 18th 2008
Effective from	March 1st 2008
Source	www.court.gov.cn

The People's Court shall accept the lawsuit filed by the plaintiff on the ground that the character or graphic used in the registered trademark of the defendant infringes upon the plaintiff's copyright, patent for exterior design, right to enterprise name or other prior rights, if such filing conforms to the provision of Article 108 of the Civil Procedure Law (which provides four basic requirements for accepting a lawsuit),.

If the lawsuit is filed on the ground that a registered trademark used by the defendant on approved goods is identical or similar to the prior registered trademark of the plaintiff, the People's Court shall, according to the provision of Article 111 (3) of the Civil Procedure Law (which provides that, if a dispute shall be accepted by other competent organs according to related laws, then the People's Court shall not accept such case), notify the plaintiff to resort to the competent administrative organ for settling the dispute. However, in case the lawsuit is filed on the following ground, the court shall accept the filing:

1. the defendant used his (i.e. the defendant's) registered trademark on goods other than those for which his trademark is registered, or the defendant changed the dominant features of his registered trademark, split it or combined it with other trademarks; and
2. due to such act, the defendant's trademark conflicts the plaintiff's registered trademark.

Where a plaintiff files a lawsuit on the ground that the enterprise name of the defendant is identical or similar to the plaintiff's prior registered enterprise name, which may cause confusions among the public about the source of the goods, and thus violate the provision of Article 5 (3) of the Anti-unfair Competition Law (which provides that a business operator shall not harm his competitors by using without authorization the name of another enterprise), the People's Court shall accept such filing, if it conforms to the provision of Article 108 of the Civil Procedure Law (see above).

The People's Court shall, considering the plaintiff's claims and the nature of the civil legal relationship involved in the dispute, determine the cause of action for filed dispute, which involves the conflict between registered trademark or enterprise name and prior right, in accordance with the Trial Provisions on the Cause of Action of Civil Cases.

Where the enterprise name of the defendant infringes upon the plaintiff's right to the exclusive use of a trademark or constitutes unfair competition, the People's Court may, considering the claims of the plaintiff and the specific situation of the case, order the defendant to stop or rectify the use of the enterprise name and impose corresponding civil responsibilities.

Circular of the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and China Securities Regulatory Commission on Some Issues concerning the Inquiry, Freezing and Deduction of Securities and Securities Transaction Settlement Funds

最高人民法院、最高人民检察院、公安部、中国证券监督管理委员会关于查询、冻结、扣划证券和证券交易结算资金有关问题的通知

Issued By	Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, and China Securities Regulatory Commission
Subject	Securities
Promulgated on	January 10th 2008
Effective From	March 1st 2008
Source	www.csrc.gov.cn

When handling a case, people's court, people's procuratorate or public security organ (police) is entitled to inquire about, freeze or deduct securities or securities transaction settlement funds through a securities depository & clearing institution or securities company according to the statutory scope of power, and the securities depository & clearing institution or the securities company shall provide assistance according to law. The "securities depository & clearing institutions" as mentioned in this Circular means China Securities Depository & Clearing Corporation Limited and its branch companies.

The aforesaid authorities may, according to law, inquire of a securities depository & clearing institution about the balance after the settlement and delivery process has been completed in the securities account, the securities delivery account and the capital delivery account of a client or a securities company, as well as changes in the balance and the account information.

They may according to law, inquire of a securities company about the balance in the securities account, capital account, securities delivery account or capital delivery account of a client, as well as changes in the balance, securities and capital flows, account information and etc..

When one of the aforesaid authorities freezes or deducts the related securities or funds in light of the statutory scope of power, it shall specify the name and number of the account of securities or funds to be frozen or deducted, term of freezing, as well as the name and quantity of securities or amount of funds that have been frozen or deducted; and at the time of deduction, it shall also specify the name and number of the account into which the securities or funds will be transferred.

As for freezing securities or securities transaction settlement funds, the scope of freezing and whether the yields are included shall be specified. Any type of special settlement and delivery accounts opened in the name of a securities depository & clearing institution according to this Circular may not be frozen as a whole.

The term for freezing of securities may not exceed 2 years, and that for freezing of securities transaction settlement funds may not exceed 6 months.

The four authorities who jointly promulgated this Circular believe that the Circular will contribute to maintain a normal securities transaction settlement order, protect the legitimate rights and interests of the parties concerned and especially ensure the lawful execution of public affairs by law enforcement organs.

Catalogue on the Solid Wastes Prohibited from Imports, the Catalogue on the Solid Wastes Restricted from Imports which may be used as Raw Materials, and the Catalogue on the Solid Wastes Automatically Permitted for Imports which may be used as Raw Materials

《禁止进口固体废物目录》、《限制进口类可用作原料的固体废物目录》和《自动许可进口类可用作原料的固体废物目录》

Issued By State Environmental Protection Administration, Ministry of Commerce, National Development and Reform Commission, General Administration of Customs, and General Administration of Quality Supervision, Inspection and Quarantine

Subject Solid Wastes

Promulgated on January 29th 2008

Effective from March 1st 2008

Source www.aqsiq.gov.cn

These three catalogues replaced all the relevant regulations published previously regarding the imports of solid wastes. The catalogues are formulated based on the Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and Their Disposal (“Basel Convention”) and the Law of the People's Republic of China on Prevention of Environmental Pollution Caused by Solid Waste.

Wasted animal products, vegetable oil or tallow, wasted mineral products, slag (except those containing certain percentage of metal), mineral oil, asphaltum, wasted medicine, other chemical wastes, wasted rubber and leather, wasted special papers, certain wasted textile raw materials and products, wasted glass products, certain metal wastes or wastes containing metal etc. are classified as wastes prohibited from imports. Furthermore, wastes produced due to the following circumstances shall be managed as wastes prohibited from imports:

1. the products prohibited from imports by the State become solid wastes due to the lost of value in use or the abandonment even though there is still value in use;
2. other wastes classified according to the Basel Convention and the National List of Dangerous Wastes and the Discrimination Standards of Dangerous Wastes of PRC.

Wastes of sugar and sweet food, slag containing certain percentage of metal, smashed plastics, smashed rubber, certain recycled paper and paper board, certain wasted textile raw materials, certain smashed metal and metal alloy wastes are classified as wastes restricted from imports.

The solid wastes permitted for imports include wood and wood scrap, certain recycled paper and paper board, certain smashed metal and metal alloy wastes.

Each waste mentioned in these catalogues is referred to a customs serial number which helps to locate the details of the wastes.

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