



## **Chofn Intellectual Property**

#703, 7th Floor, Glory Star Financial Tower,  
Building 3, No.16 Lize Road, Fengtai District,  
Beijing 100073, P.R. China

Tel: +86-10-6213 9699

Fax: +86-10-6213 1230

Email: [trademark@chofn.cn](mailto:trademark@chofn.cn); [mail@chofn.cn](mailto:mail@chofn.cn)

Web: [www.chofn.com](http://www.chofn.com)

## **Tricky and Malicious IP Infringers Punished**

By Ms. Haiyu Li, Lawyer and Partner of Chofn IP

The Chinese Courts recently made some rulings in favor of the legitimate intellectual property holders against tricky and malicious infringers. I would like to summarize two typical cases and the relevant principles to help understand the Chinese courts' latest practices in the application of the Chinese Trademark Law and Anti-Unfair Competition Law.

### **● Case 1: High damage against continued trademark use after expiration of license**

On August 17, 2022, Jiangsu High People's Court made its final judgment No. 2021SuMinZhong2636 on the trademark infringement and unfair competition dispute between the three plaintiffs Raumplus Besitz-Und Entwicklungs-GMBH&CO.KG, Raumplus GMBH and Raumplus (Taicang) Furniture Technology Co., Ltd., and the three defendants Delu Furniture (Shanghai) Co., Ltd., Delu Furniture (Nantong) Co., Ltd. and Zhu Peijun (actual controller of the other two defendants).

The plaintiffs are the holder or its legitimate licensees of the registered Chinese trademarks "raumplus" and "德禄" (DELU, Chinese equivalent for raumplus), highly famous on the designated goods "furniture, etc." The parties concerned had cooperated, but according to their agreement, the defendants shall stop using the marks and change the trade name after the termination of cooperation.

Nevertheless, after cooperation, the defendants applied for the marks and domain name relevant to DELU, opened furniture chain stores, made promotion and undertook bulk engineering projects with the DELU brand. Furthermore, the defendants turned deaf ears to the plaintiffs' C&D letters and committed even more serious infringement. The defendants also tried to delay the lawsuit examination by maliciously challenging the plaintiffs' valid trademark registrations. During the course, the plaintiffs filed preliminary evidence to prove the profit earned by the defendants from the infringement, whereas the defendants failed to follow the courts' order to submit the true and complete accounting materials. Accordingly,

the courts sustained the plaintiff's damage calculation.

On the basis of the foregoing verified facts, the courts confirmed the defendants' trademark infringement and unfair competition, granted a punitive damage, and awarded the plaintiff an all-inclusive damage of CNY50 million (about USD7 million).

- **Case 2: Unfairly utilizing Häagen-Dazs' famous mooncake designs in gift exchanging cards and promotional webpages**

On August 30, 2022, Shanghai IP Court concluded the lawsuit No. 2021Hu73MinZhong688 between the plaintiff General Mills Trading (Shanghai) Co., Ltd. and the defendants Beijing Kunyuan Jiuzhou Agricultural Science And Technology Development Co., Ltd. and Beijing Diancheng Zhihe Trade Development Co., Ltd. The final Court partially upheld the first-instance ruling No. 2020Hu0115MinChu11826 made by Shanghai Pudong New Area People's Court by reaffirming that the defendants' acts constitute unfair competition but clarifying that the disputed designs shall not be deemed as unregistered trademarks used to distinguish the source of goods.

The defendants are engaged in gift exchange business, and they used the identical or very similar Häagen-Dazs mooncake designs to decorate their gift cards and online promotional webpages. Although Häagen-Dazs mooncake box is one of the gifts available in the defendants' gift cards, their service staff intend to skillfully lead the consumers to exchange other gifts. When any customer insists on exchanging the mooncakes, the defendants will order the same from the plaintiff and served them to the customer, which means the Häagen-Dazs mooncakes sold by the defendants are authentic. Nevertheless, the main profit of the defendants comes from the exchange of other gifts.

The two courts ruled that the defendants' malicious use of the disputed designs reduced the plaintiff's opportunities of business and has constituted unfair competition, granted a damage of CNY80,000 (around USD11,500), and ordered the defendants to stop the unfair competition and make declaration in the webpages they operate to eliminate the influence.