



Chofn Intellectual Property

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SPC Releases Top 10 IP Cases of 2022

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On April 20, 2023, the Supreme People's Court (SPC) of China held a press conference for the IP Promotional Week and released the *Chinese Courts' IP Protection in 2022* and Top 10 IP Cases and 50 Typical IP Cases of 2022. I would like to summarize the two trademark-related cases as follows.

Case 4: Dispute over the infringement of trademark “青花椒” (Qing-hua-jiao, green prickly pepper), #2021 Chuanzhiminzhong 2152

The plaintiff Shanghai Wancuitang Food & Beverage Management Co., Ltd., the owner of three validly registered “青花椒” series trademarks #12046607, #17320763 and #23986528 in respect of restaurants and canteens in class 43, found the defendant Wenjiang Wuapo Green Prickly Pepper Fish Hotpot Restaurant using “青花椒鱼火锅” (green prickly pepper fish hotpot) in its signboard on May 21, 2021 and lodged a lawsuit for trademark infringement, petitioning for the defendant's stopping infringement and claiming a damage of CNY50,000, with loss and reasonable expenses included.

The first-instance Court ruled that the defendant infringed the trademarks and granted a damage of CNY30,000. The dissatisfied defendant appealed to the Sichuan High People's Court.

The second-instance Court ruled that green prickly pepper is a well-known flavoring in Sichuan Cuisine. Due to the natural connection between restaurant services and the flavorings, the relevant trademarks and the dish names containing the terms green prickly pepper are associated with each other in identification, which largely lowered the distinctiveness of the trademarks. As a result of the weakly distinctive trademarks, the protection scope should not be overly broad, or the other market entities' proper use might be hindered and the market order of fair competition might be affected. The defendant objectively describes its dish and flavoring and does not separately and outstandingly use the terms, which is unlikely to cause confusion or misidentification by the relevant public. The defendant's proper use has not constituted trademark infringement. The first-instance ruling was overthrown

and the plaintiff's petitions were all rejected. **Chofn proudly and successfully represented the defendant.**

In the second-instance ruling, the criteria to determine the proper use of trademarks have been clarified. The "big principle" has been spoken that "a right has its boundary and should be exercised honestly and creditably".

Case 10: Eight persons' (Luo X-Zhou, Ma X-Hua, etc.) offense of counterfeiting registered trademarks, #2022 Yue 03 Xingzhong 514

Apple owns the trademarks "AIRPODS" and "AIRPODS PRO" in respect of earphones, etc. The defendants produced and sold bluetooth earphones counterfeiting Apple's registered trademarks. When connected to Apple mobile phones through Bluetooth, windows showing "AIRPODS" and "AIRPODS PRO" pop up, whether the bluetooth earphones and packaging are printed with Apple's registered trademarks or not. The first-instance Court ruled that the defendants have committed crime of counterfeiting registered trademarks, sentenced the defendants to imprisonment of two to six years and imposed fines.

Some of the defendants appealed to the Shenzhen Intermediate People's Court, who upheld the original ruling. The second-instance Court reasoned that the use in the crime of counterfeiting registered trademarks shall not be limited to the use on goods, goods packagings, containers, and other tangible carriers. Any use in commercial activities to identify the source of goods shall belong to trademark use. The consumers of earphones search and match device through bluetooth. The infringing bluetooth earphones produced by the defendants, when activated to connect to mobile phone terminals, pops up windows showing "AIRPODS" and "AIRPODS PRO" to the consumers, which causes the consumers' misbelief that the used products are made by Apple and confusion on the source of the goods.

This is a typically new form of trademark crime under the environment of digital economy. The ruling has grasped the essence of crime, correctly defined trademark use, and heavily cracked down on the new-tech IP crime.