



Chofn Intellectual Property

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Max fine on TM agency assisting bad faith trademark applications relating to COVID-19 battle

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On March 11, 2020, Beijing Chaoyang District Administration for Market Regulation (AMR) imposed a fine of CNY100,000 on Beijing Yijie Shunda International IP Agency Co., the trademark agency who represented two applicants Guangzhou Yizi Hairdressing and Beauty Products Co. Ltd. and Lao-en-si Construction Material Industry Hubei Co., Ltd. to apply for the trademarks 火神山 (Vulcan Mountain in Chinese) and 雷神山 (Raytheon Mountain in Chinese), which are the names of the newly built hospitals for the heavily sick COVID-19 patients in Wuhan.

As is well-known in China and the world, the two trademarks 火神山 (Vulcan Mountain in Chinese) and 雷神山 (Raytheon Mountain in Chinese) are the names of the two hospitals in Wuhan which were swiftly built within around ten days during the peak of the COVID-19 outbreak. The construction was live broadcasted to the whole world and tens of millions of netizens witnessed and were shocked by the “speed of China”. The two hospitals played an important role in containing the virus in Wuhan, the epidemic center. They are symbols of the unity and determination of the Chinese people in the battle with the epidemic.

The applicants speculated in the heroic hospitals' names and filed trademark applications in their own names in classes 1, 2, 3, 5, 16, 19, etc. The agency should have advised the applicants and refused the representation as the applicants' bad faith was obvious. On March 2nd, the Trademark Office rejected three applications in classes 5, 16 and 19 based on the reason that they will cause big unhealthy social effect if they are registered as trademarks by parties other than the two hospitals. On March 11, 2020, Beijing Chaoyang AMR fined the agency in maximum according to Articles 19 and 68 of Chinese Trademark Law.

The two applicants shall also be punished in a separate procedure by the AMRs of their jurisdictions in the forms of warning, fine, and/or credit penalty.

Some more applications were filed in bad faith, similarly speculating in names relating to the COVID-19 battle. The corresponding applicants and agencies are likely to be punished soon by different local AMRs. Certainly, all such marks have been or will be rejected by the Trademark Office.

Source of the news:

<https://mp.weixin.qq.com/s/X-Fp7Mflm1nMd6whfld8NA>

Relevant Articles of Chinese Trademark law:

Article 19

Trademark agencies shall uphold the principle of good faith, comply with laws and administrative regulations, apply for trademark registration or handle other trademark-related matters according to the entrustment of principals, and keep confidential the principals' trade secrets that come to their knowledge during the agency process.

A trademark agency shall clearly inform a principal of the fact that the trademark entrusted by the principal for registration application may fall under the circumstances prescribed by this Law under which registration is not allowed.

A trademark agency shall not accept the entrustment of a principal if it knows or should have known that the trademark entrusted by the principal for registration application falls under any of the circumstances prescribed by Article 15 and Article 32 of this Law.

A trademark agency shall not apply for registration of trademarks other than the trademark for its agency services.

Article 68

*A trademark agency that commits any of the following acts shall be ordered to make correction within the prescribed time period by the relevant administration for industry and commerce, be **given a warning, and be subject to a fine of not less than RMB 10,000 but not more than RMB 100,000**; its primary person-in-charge subject to direct liabilities and other personnel subject to direct liabilities shall be given a warning and be subject to a fine of not less than RMB 5,000 but not more than RMB 50,000; where criminal offenses are constituted, criminal liabilities shall be investigated for in accordance with the law:*

- 1) Fabricating or altering legal instruments, seals or signatures, or using fabricated or altered legal instruments, seals or signatures during the handling of trademark-related matters;*
- 2) Soliciting trademark agency business by defaming other trademark agencies, or disrupting the order of the trademark agency market by improper means; or*
- 3) Violating Paragraph 3 or Paragraph 4 of Article 19 of this Law.**

Any acts under the preceding Paragraph as committed by the trademark agency shall be recorded in its credit files by the administration for industry and commerce; under grave circumstances, the Trademark Office or the Trademark Review and Adjudication Board may concurrently decide to stop accepting the trademark agency business handled by the trademark agency, and shall make an announcement thereon.

The trademark agency shall bear civil liabilities in accordance with the law if it violates the principle of good faith to the detriment of the legitimate rights and interests of a principal, and

shall be given disciplinary sanctions by the trademark agency industry association pursuant to its articles of association.