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Chinese Trademark Office backs Xiaomi in its opposition against a copycat of its “MI” logo (2020)

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Mingming Yang, 18 June 2020

On 3 September 2020, the Chinese smartphone giant Xiaomi prevailed in an opposition action, against “” (Chinese characters of “Orange Mi” + cnmi). *The case was selected as one of the “CTMO’s Exemplary Trademark Opposition and Adjudication Cases in 2020”.*

Case Brief

Xiaomi registered on 7 July 2012 its iconic “” device in class 9. Xiaomi later registered the “” logo as a work of fine arts with the National Copyright Administration in July 2012. Xiaomi expanded its trademark portfolio by registered the logo in class 7, on 21 February 2018 and 14 April 2019.

A Chinese company, Quanzhou Guangyu E-commerce Ltd, applied to register the trademark No.33255177 “” on 31 August 2018, in respect of “blender; ironing machines; washing machines [laundry]; household soybean milk maker; electric shoe polishers; 3D printers; vacuum cleaners, among others” in Class 7.

The application was published on 13 March 2019. Xiaomi filed on 13 June 2019 an opposition action citing *inter alia* its prior trademark registrations in class 7 and its copyright.

The examiner found the arguments tenable and decided to uphold the opposition.

Wanhuida IP represented Xiaomi in this case.

Comments

The examiner adopted a methodical approach in analysing the case:

In assessing the similarity of the marks, the following facts were taken into account:

- The Chinese characters of the opposed trademark is semantically correlative to the trade name and Chinese trademark of Xiaomi;
- The goods of the opposed trademark and those of the cited trademarks are closely associated; and
- The opposed party had the intention to imitate the cited trademark, taking undue advantage of the goodwill of the opponent.

In ascertaining damages to Xiaomi’s prior copyright, the examiner focuses on the below parameters:

- Proof of prior proprietary copyright: The fact that prior to the application of the opposed trademark, the opponent has secured its own trademark registration of the “” device corroborates that Xiaomi is the copyright owner of the said work of fine arts.
- Substantial similarity: The assessment of substantial similarity in the sense of the Copyright Law hinges on whether the opposed trademark incorporates the original features of the copyrighted work. This may be limited to a part of the opposed trademark.
- Likelihood of contact: the fact that the cited trademark was extensively used as its main commercial sign of the Opponent established that the Opposed party had been in contact with such device and had intentionally tried to create confusion.

In practice, the originality of a sign consisting of stylized letters could be questioned by authorities. Since the registration of copyright does not need to go through substantial examination, a sign whose originality is questioned may be denied copyright protection, even if a copyright registration certification has been acquired. It is therefore very welcome that the Trademark Office seems to be open to utilize all available measure to curb bad faith filings. This case illustrates further that the authorities are more and more taking into account the intentions of the trademark applicants.

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