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## BNIC successfully invalidates one of the Chinese transliterations for 'Cognac'

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Pu Xiaoning, 30 September 2022

#### Background

The *Bureau National Interprofessionnel du Cognac* (BNIC) is a coordination and decision-making body for the Cognac industry, comprising an equal number of winegrowers and merchants. The primary mission of the BNIC is to represent, foster and protect the geographical indication (GI) 'Cognac' in France and abroad. The BNIC owns registrations for the GI collective trademarks COGNAC and 干邑 ('Cognac' in Chinese characters) in Class 33 in China.

On 7 April 2015 a Chinese company, Zhejiang Zhen Wine Network Technology Ltd, applied for the registration of the trademark 康涅克 ('Kang Nie Ke' in Chinese) in Class 33. The mark was registered on 28 May 2016.

On 17 December 2020 the BNIC brought an invalidation proceeding against the mark before the China National Intellectual Property Administration (CNIPA), contending that 'Cognac' is a famous foreign place name and an appellation of origin/GI for French wine. As 康涅克 is one of the Chinese translations of 'Cognac', it should thus be invalidated.

#### Decision

The CNIPA issued a ruling invalidating the registration of the disputed mark based on following reasoning:

1. The evidence furnished by the BNIC substantiated that 'Cognac' is a GI for French wines, that 康涅克 is one of its Chinese transliterations, and that 'Cognac' had acquired, prior to the application date of the disputed mark, a high reputation in Mainland China. The disputed mark is identical to 康涅克, yet the evidence adduced by the registrant was insufficient to prove that the goods bearing the mark originated from the Cognac region. Consequently, if the disputed mark was allowed to be used on wines, it is likely that the relevant public would be misled into believing that the wines to which the disputed mark is attached originate from the Cognac region or have certain characteristic features thereof, which constitutes the scenario described in Article 16.1 of the 2013 Trademark Law ("A trademark is prohibited from being registered or used if it comprises a GI component of the designated goods but the goods do not originate from the place indicated by said GI, thus misleading the public").

2. The evidence furnished by the BNIC sufficed to prove that '康涅克' is extensively perceived as the Chinese transliteration of the known foreign geographic name 'Cognac' in China. Given that the registrant had failed to prove that the disputed mark had acquired, through use, other meanings apart from that of the prior GI and known foreign place name, the disputed mark violated Article 10.2 of the 2013 Trademark Law ("[...] foreign geographic names known to the public shall not be used as trademarks unless said names have other meanings [...]").

#### Comment

It is not unusual for a single foreign trademark, GI or place name to correspond to several Chinese translations, other than the official one. Some trademark squatters have cunningly chosen to register the unofficial Chinese translation(s) to lower the risk of being challenged.

In prosecution practice, the CNIPA has been granting protection to the unregistered Chinese translation (official

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or unofficial) of foreign trademarks/GIs. Nevertheless, this is probably the first time that the agency has made it clear in writing that:

*the protection of foreign GIs includes the protection of their Chinese translations, which are not limited to a certain fixed official translation. Any Chinese translation that may be perceived by the relevant public as the Chinese counterpart of the foreign GIs could be included in the scope of protection.*

The decision will be particularly conducive to the protection of the unofficial unregistered Chinese counterparts of foreign GIs in China.