



IP NEWSLETTER

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• **337 Investigations in the U.S.**

• 337-related Commission Notice

On April 29, 2009, the U.S. International Trade Commission (ITC) voted to institute an investigation of certain wireless communication devices and components thereof, based on a complaint filed by SPH America, LLC, of Vienna, VA, on March 25, 2009. The complaint alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States and sale of certain wireless communication devices and components thereof that infringe patents asserted in the investigation. The complainant requests that the USITC issue an exclusion order and cease and desist orders.

Nine Respondents are identified in this investigation, including Kyocera Corporation of Japan.

• **IP Strategy of Enterprises**

• Judicial Interpretation on Well-Known Trademarks in

Play from May 1

Recently, the Supreme People's Court published the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law to the Trial of Cases of Civil Disputes over the Protection of Well-known Trademarks (hereinafter referred to as "Interpretation"). The Interpretation covers 5 aspects including definitions of well-known trademarks, application scope of judicial determination, elements of determination, burden of proof, and protection requirements.

The Interpretation is effective from May 1, 2009.

• **IP Cases**

· Domestic Court Rules First Trademark Parallel Import Case

Recently, Changsha Intermediate People's Court of Hunan Province ruled that two private businessmen (the "Defendants") selling tires in Changsha shall cease infringement against France Michelin Group (the "Plaintiff") and compensate the Plaintiff for economic losses equating to RMB 5,000 Yuan.

Background:

The Defendants are tire distributors dealing in "Michelin" tires in Changsha. The Plaintiff sued the Defendants for infringing upon the Plaintiff's exclusive right to use its trademark and claimed compensation of 100,000 Yuan.

It is known that France Michelin Group is a world leading tire manufacturer. The agent of the Plaintiff discovered that the Defendants were reselling tires in a certain market of Changsha in April 2008, and the Plaintiff believed that the Defendants' behavior infringed the Plaintiff's registered trademark. The Plaintiff sued the Defendants in Changsha Intermediate People's Court in January 2009. Yet, the Defendants held the opinion that there was no infringement for the products sold, which were manufactured by Japanese manufacturer authorized by the Plaintiff, and the source channel was not illegal. However, the court ruled that the Defendants

shall cease infringement and compensate the Plaintiff 5,000 Yuan for losses, for the reason that the tires sold by the Defendants were not 3C certified, which accordingly, may create a negative impact on the trademark rights enjoyed by the Plaintiff.

- **Trade News**

- China will Reinforce Intellectual Property Right Protection on Traditional Chinese Medicine

Recently, the State Council published Several Opinions of the State Council on Supporting and Promoting the Development of Traditional Chinese Medicine (“Opinions”), for the purpose of strengthening legal construction and IP protection on traditional Chinese medicine; perfecting patent examination standard for traditional Chinese medicine and protection system for varieties of traditional Chinese medicine; reinforcing the protection of origins of herbs in traditional Chinese medicine; and deepening the support and protection for well-known trademarks in the industry and traditional Chinese medicine.

- **IP Cooperation**

- USPTO and DPMA Entered Into Agreement on “PPH” Program

Recently, The United States Patent and Trademark Office and German Patent and Trade Mark Office entered into Trial Agreement on Patent Prosecution Highway pilot program (“PPH”). The PPH pilot program shall be implemented as of April 27, 2009, and will last for two years.

East Associates