



Question Q214

National Group: China, P.R.

Title: **Protection against the dilution of a trade mark**

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Questions

I. **Analysis of current law and case law**

The Groups are invited to answer the following questions under their national laws:

1. Do the laws of your country provide for protection against dilution of a trademark? If so, which laws?

China has not yet enacted a specific anti-dilution law for protection against dilution of a trademark. However, under the current Trademark Law that was revised in 2001, Article 13 i provides that a trademark applied for registration for identical or similar goods shall not be registered and its use shall be prohibited, if it is a reproduction, an imitation or a translation, of another party's well-known mark that is not registered in China and it is liable to create confusion; Article 13 ii provides that a trademark applied for registration for non-identical or dissimilar goods shall not be registered and its use shall be prohibited, if it is a reproduction, an imitation or a translation, of a well-known mark which is registered in China, misleads the public, and the interests of the registrant of the well-known mark are likely to be damaged by such use.

Some scholars comment that Article 13 ii provides cross-class protection for well-known marks, in that the scope of protection extends from identical and similar goods to non-identical and dissimilar goods, and the requirement for protection from “it is liable to create confusion” to “misleads the public, and the interests of the registrant of the well-known mark are likely to be damaged by such use”. Since blurring of distinctive characteristics and tarnishment of reputation of well-known mark are commonly defined as basic types of dilution of a trademark, they conclude that China has adopted the doctrine of trademark dilution. On the other hand, some scholars insist that there are no factors for trademark dilution in this Article, so China has not yet adopted the trademark dilution doctrine.

Nevertheless, Article 9 of the Judicial Interpretation concerning the Trial of Civil Cases of Protection of Well-known Marks issued by the Supreme People’s Court on May 1, 2009 (hereinafter referred to “the Judicial Interpretation”) provides that “liable to create confusion” can be defined as use of the accused marks is sufficient to mislead relative public as to the sources of goods of the well-known mark and the accused mark, or to cause a erroneous belief among the relative public that there are certain relationships between the operators of the well-known mark and the accused mark such as relationship of license of use or of affiliated companies, etc., as provided by Article 13 i of the Trademark Law; “misleads the public, and the interests of the registrant of the well-known mark are likely to be damaged by such use” can be defined as use of the accused mark is sufficient for the relative public to believe that there are associations to some extent between the accused mark and the well-known mark, so as to weaken the distinctive characteristics of the well-known mark and tarnish the reputation of the well-known mark in the market, or the accused parties can take free ride on the reputation of well-known mark by improper means, as provided by the Article 13 ii of the Trademark Law. Article 13 ii of the Trademark Law is defined as the basic type of trademark dilution; therefore, the Judicial Interpretation provides a legal basis for protection against dilution of trademark in judicial practice.

So far, there has been not a typical judicial case decided by the people’s courts or administrative case in opposition or cancellation by the trademark authorities on the grounds of protection of a well-known mark against dilution in China.

2. Is there a legal definition of dilution in your legislation or case law?

China is a country of statute law, and does not have a legislation of protection against dilution of trademark, or a legal definition of dilution. However, according to Article 9 ii of the Judicial Interpretation, “misleads the public, and the interests of the registrant of the well-known mark are likely to be damaged by such use” can be defined as use of the accused marks is sufficient for the relative public to believe that there are associations to some extent between the accused marks and the well-known marks, so as to weaken the distinctive characteristics of the well-known marks and tarnish the reputation of the well-known marks in

the market, or the accused parties can take free ride on the reputation of the well-known mark by improper means, as provided by the Article 13 ii of the Trademark Law. Article 13 ii is defined as basic type of trademark dilution; the Judicial Interpretation provides a legal basis for protection against dilution of trademark in judicial practice.

3.1. Which trademarks are afforded protection against dilution? What are the eligibility criteria? (Please only briefly list the eligibility criteria here; more detailed explanations will be required below).

It is well understood that well-known marks are afforded protection against dilution. As provided by Article 9 ii of the Judicial Interpretation, “misleads the public, and the interests of the registrant of the well-known mark are likely to be damaged by such use” can be defined as use of the accused marks is sufficient for the relative public to believe that there are associations to some extent between the accused marks and the well-known marks, so as to weaken the distinctive characteristics of the well-known marks and tarnish the reputation of the well-known marks in the market, or the accused parties can take free ride on the reputation of the well-known mark by improper means, as provided by the Article 13 ii of the Trademark Law. Article 13 ii is defined as the basic type of trademark dilution; the Judicial Interpretation provides a legal basis for protection against dilution of trademark. Accordingly, a well-known mark to some extent is afforded protection against dilution in judicial practice.

Article 4 of the Judicial Interpretation provides that when recognizing a well-known mark, the people’s court shall base on the facts of being well-known and comprehensively take into consideration the factors listed in Article 14 of the Trademark Law, unless specific conditions of the case are sufficient for recognition and do not necessarily consider all the factors. Article 5 of the Judicial Interpretation provides that when a party concerned requests for recognition of well-known mark, the party shall, based on specific conditions of the case, provide the following evidences in order to show that its mark at the case has become well-known at the time the other party’s mark is being accused or the act of unfair competition takes place:

- 1) the market share, geographical area of sales, interests and taxes, etc. of the goods bearing the mark;
- 2) the duration of use;
- 3) the manner, duration of time, degree, monetary investment and geographical range of any publicity or sales promotion of the mark;
- 4) any record of the mark being protected as a well-known mark;
- 5) goodwill and reputation of the mark;
- 6) other factors which show the mark has become well-known.

The manner, duration of time, geographical range of use of the mark, etc., includes any continuous use of the mark before the mark is approved to register.

As for evidences concerning length of time of use, ranking in the industry, market survey, market evaluation report and previous recognition of famous mark, etc., the people's court should combine other evidences of being well-known and perform an objective and comprehensive examination of the mark.

3.2. To be eligible for protection against dilution does a mark need to be distinctive? If so, does the protection depend upon the mark being inherently distinctive or are marks that have acquired distinctiveness through use also protected?

A mark should be distinctive so as to be protected against dilution. As provided by Article 10 of the Judicial Interpretation, when a plaintiff requests defendant to stop using the accused mark or enterprise name that are identical or similar to the plaintiff's well-known mark in respect of non-identical or dissimilar goods, the people's court should base on specific conditions of the case and comprehensively considers the following factors before making a judgment:

- 1) the degree of distinctiveness of the well-known mark;
- 2) ...

Therefore, a mark should bear distinctiveness in order to obtain protection against dilution. We believe that the mark should be either inherently distinctive or acquire distinctiveness through extensive use in China.

3.3.1 To be eligible for protection against dilution, does a mark need to have a reputation or be well-known or famous? If so, when does a mark have a reputation, when is it well-known or when is it famous? Are the factors mentioned in paragraph 15 and 22 above relevant for determining whether a mark has a reputation, is well known or famous? For what point in time does this have to be assessed?

Only a trademark has become a well-known mark, can the mark satisfy the requirements for being afforded protection against dilution. According to Article 9 ii of the Judicial Interpretation, "misleads the public, and the interests of the registrant of the well-known mark are likely to be damaged by such use" can be defined as use of the accused marks is sufficient for the relative public to believe that there are associations to some extent between the accused marks and the well-known marks, so as to weaken the distinctive characteristics of the well-known marks and tarnish the reputation of the well-known marks in the market, or the accused parties can take free ride on the reputation of the well-known mark by improper means, as provided by the Article 13 ii of the Trademark Law. Therefore, a mark should be recognized as well-known mark so as to be afforded protection against dilution.

Article 5 of the Judicial Interpretation provides that when a party concerned requests for recognition of well-known mark, the party shall, based on specific conditions of the case, provide the following evidences in order to show that its mark at the case has become well-known at the time the other party's mark is being accused or the act of unfair competition takes place:

- 1) the market share, geographical are of sales, interests and taxes, etc. of the goods bearing the mark;
- 2) the duration of use;
- 3) the manner, duration of time, degree, monetary investment and geographical range of any publicity or sales promotion of the mark;
- 4) any record of the mark being protected as a well-known mark;
- 5) goodwill and reputation of the mark;
- 6) other factors which show the mark has become well-known.

The manner, duration of time, geographical range of use of the mark, etc., includes any continuous use of the mark before the mark is approved to register.

As for evidences concerning length of time of use, ranking in the industry, market survey, market evaluation report and previous recognition of famous mark, etc., the people's court should combine other evidences of being well-known and perform an objective and comprehensive examination of the mark.

3.3.2 For a mark to have a reputation or to be considered well known or famous, must it meet a certain knowledge or recognition threshold? If so, what is that threshold?

What percentage of population awareness is required? How widespread must the awareness be across the country? If a mark is well known or famous in one country, what effect, if any, does this have with regard to other countries?

Definitely, a mark should reach and be recognized as well-known mark for protection against dilution. According to Article 10 of the Judicial Interpretation, when the plaintiff requests the defendant to stop using the accused mark or enterprise name that are identical with or similar to the plaintiff's well-known mark in respect of non-identical or dissimilar goods, the people's court should base on specific conditions of the case and comprehensively consider the following factors when making judgment:

- 1) ...
- 2) the degree of reputation among the relative public of the accused mark and enterprise name;

As for criteria of eligibility for recognition of a well-known mark, Article 5 of the Judicial Interpretation provides that when a party concerned requests for recognition of well-known mark, the party shall, based on the specific conditions of the case, provide the following

evidences in order to show that its mark at the case has become well-known at the time the other party's mark is being accused or the act of unfair competition takes place:

- 1) the market share, geographical area of sales, interests and taxes, etc. of the goods bearing the mark;
- 2) the duration of use;
- 3) the manner, duration of time, degree, monetary investment and geographical range of any publicity or sales promotion of the mark;
- 4) any record of the mark being protected as a well-known mark;
- 5) goodwill and reputation of the mark;
- 6) other factors which show the mark has become well-known.

The manner, duration of time, geographical range of use of the mark, etc., includes any continuous use of the mark before the mark is approved to register.

As for evidences concerning length of time of use, ranking in the industry, market survey, market evaluation report and previous recognition of famous mark, etc., the people's court should combine other evidences of being well-known and perform an objective and comprehensive examination of the mark.

There are no laws and regulations concerning proportion of population. However, according to Article 2 of the Well-known Mark Recognition and Protection, relative public is defined as consumers of the goods/services bearing the well-known mark, other market operators who produce said goods and provide said services, and distributors and relevant personnel in the sales channels, etc.. According to Article 1 of the Judicial Interpretation, a well-known mark is the mark that is well-known among relative public in China. If a mark enjoys high reputation nationwide in China, this status is helpful for recognition of well-known mark thereof.

In legal practice, if a mark is recognized as well-known mark in other countries, recognition in the other countries can be used as evidence showing the mark has ever been protected as well-known mark in support of the request for recognition as well-known mark in China. However, it is all up to the people's court to buy it or not.

3.3.3 What is the relevant population in determining the knowledge, recognition or fame of the mark, the general public at large or the relevant sector of public? Is recognition or fame in a limited product market ("niche market") sufficient?

According to Article 2 of the Well-known Mark Recognition and Protection, relative public includes consumers of the goods/services bearing the well-known mark, other market operators who produce said goods and provide said services, and distributors and relevant personnel in the sales channels, etc.. In judicial practice, status of reputation in a niche market can be taken into consideration in the context of the nature of the goods or services.

3.4. To be eligible for protection against dilution, is it required that the mark has been used in, or that the mark has been registered or that an application for registration of the mark has been filed in the country where protection is being sought?

A mark should be registered and used in China for protection against dilution.

According to Article 9 ii of the Judicial Interpretation, “misleads the public, and the interests of the registrant of the well-known mark are likely to be damaged by such use” can be defined as use of the accused marks is sufficient for the relative public to believe that there are associations to some extent between the accused marks and the well-known marks, so as to weaken the distinctive characteristics of the well-known marks and tarnish the reputation of the well-known marks in the market, or the accused parties can take free ride on the reputation of the well-known mark by improper means, as provided by the Article 13 ii of the Trademark Law. Therefore, a mark should be recognized as well-known mark for protection against dilution. As provided by Article 13 ii, a trademark applied for registration for non-identical or dissimilar goods shall not be registered and its use shall be prohibited, if it is a reproduction, an imitation or a translation, of a well-known mark which is registered in China, misleads the public, and the interests of the registrant of the well-known mark are likely to be damaged by such use.

Article 5 of the Judicial Interpretation provides that when a party concerned requests for recognition of well-known mark, the party shall, based on specific conditions of the case, provide the following evidences in order to show that its mark at the case has become well-known at the time the other party’s mark is being accused or the act of unfair competition takes place:

- 1) the market share, geographical is of sales, interests and taxes, etc. of the goods bearing the mark;
- 2) the duration of use;
- 3) the manner, duration of time, degree, monetary investment and geographical range of any publicity or sales promotion of the mark;
- 4) any record of the mark being protected as a well-known mark;
- 5) goodwill and reputation of the mark;
- 6) other factors which show the mark has become well-known.

The manner, duration of time, geographical range of use of the mark, etc., includes any continuous use of the mark before the mark is approved to register.

As for evidences concerning length of time of use, ranking in the industry, market survey, market evaluation report and previous recognition of famous mark, etc., the people’s court should combine other evidences of being well-known and perform an objective and comprehensive examinations of the mark.

Therefore, in order to obtain protection against dilution, a mark should be used

and registered in China.

3.5. Are there any other criteria a mark must comply with to be eligible for protection against dilution?

No.

3.6. Is eligibility for protection against dilution a matter of law or an issue of fact? Who bears the burden of proof regarding the eligibility criteria? How does one prove that a mark meets the eligibility criteria? Are sales and advertising figures sufficient or is survey evidence required? Which evidential standard must this proof satisfy?

It is well believed that eligibility for protection against dilution is an issue of fact. Article 4 of the Judicial Interpretation provides that when recognizing a well-known mark, the people's court shall base on the facts being well-known and comprehensively take into consideration the factors listed in Article 14 of the Trademark Law, unless specific conditions of the case are sufficient for recognition and do not necessarily consider all the factors. Article 5 of the Judicial Interpretation provides that when a party concerned requests for recognition of well-known mark, the party shall, based on the specific conditions of the case, provide the following evidences in order to show that its mark at the case has become well-known at the time the other party's mark is being accused or the act of unfair competition takes place:

- 1) the market share, geographical area of sales, interests and taxes, etc. of the goods bearing the mark;
- 2) the duration of use;
- 3) the manner, duration of time, degree, monetary investment and geographical range of any publicity or sales promotion of the mark;
- 4) any record of the mark being protected as a well-known mark;
- 5) goodwill and reputation of the mark;
- 6) other factors which show the mark has become well-known.

The manner, duration of time, geographical range of use of the mark, etc., includes any continuous use of the mark before the mark is approved to register.

As for evidences concerning length of time of use, ranking in the industry, market survey, market evaluation report and previous recognition of famous mark, etc., the people's court should combine other evidences of being well-known and perform an objective and comprehensive examination of the mark.

3.7. Is there any registry of eligible marks in your country? If so, what is the evidentiary value of registration? Can it be challenged in litigation?

There is not a registry of eligible marks in China. China implements a system of registration and only a registered trademark can enjoy legal protection under the Trademark

Law, unless it is recognized as well-known mark. China Trademark Office is responsible for trademark registration and administration.

According to Article 5 of the Implementation of the Trademark Law, where a dispute arises in the procedures of trademark registration or trademark review and adjudication, and the party concerned believes that its trademark constitutes a well-known trademark, it may, in accordance with the provisions of the Trademark Law and these Regulations, request the Trademark Office or the Trademark Review and Adjudication Board to determine whether its trademark constitutes a well-known trademark or not. The recognition of well-known mark is written in the decision of opposition or cancellation.

According to Article 2 of the Judicial Interpretation, in the following civil dispute cases, if the concerned party bases the case on the well-known mark as a factual basis, the people's court shall recognize the mark as well-known mark if the court thinks that it is necessary to make recognition in view of specific conditions of the case:

1) In the case of trademark infringement filed in accordance with Article 13 of the Trademark Law;

2) In the case of trademark infringement or unfair competition filed on the ground that the accused enterprise name is identical with or similar to its well-known mark;

3) In the case of filing counterarguments or a counter charge conforming to Article 6 of the Judicial Interpretation.

According to Article 13 of the Judicial Interpretation, in a civil case related to protection of well-known marks, the court's recognition of well-known mark is only as ascertaining of facts and reasoning as well, and is not written into the main body of judgment. If the case is settled through mediation, no recognition for well-known mark should be made in the agreement of settlement.

According to 《Notice of the Supreme People Court concerning Establishment of Recordation System for Well-known Marks by Judicial Recognition》, judgment of judicial recognition of well-known marks should be recorded at the Supreme People's Court. As provided by Article 7 of the Judicial Interpretation, at the time before the infringing act of the accused mark or the act of unfair competition, as for the well-known mark previously recognized by the people's court or the administration of industry and commerce (AIC), if the defendant does not hold opposition against the facts of the well-known mark, the people's court shall recognize the well-known mark. If the defendants propose opposition, the plaintiff still shall have to bear the burden of proof for recognition of well-known mark.

During the process of litigation, if there are any illegal dealings in recognizing a well-known mark, recognition should be cancelled.

4. Does your law require the existence of a 'mental association' or 'link' between the earlier trademark and the later trademark? If so, in which circumstances does a

'mental association' or 'link' between the earlier trademark and the later trademark exist? Are the factors mentioned in paragraph 27 and 28 above relevant for assessing the existence of such a 'mental association' or 'link'? Are there other factors to take into account? Is the assessment of a link a question of fact (so something that can be established by market surveys), or is it a question of law to be established by the courts or authorities on the basis of such factors?

In China, there are no legal requirements for "mental association" or "link", however, according to Article 9 ii of the Judicial Interpretation, "misleads the public, and the interests of the registrant of the well-known mark are likely to be damaged by such use" can be defined as use of the accused marks is sufficient for the relative public to believe that there are associations to some extent between the accused marks and the well-known marks, so as to weaken distinctive characteristics of the well-known marks and tarnish reputation of the well-known marks in the market, or the accused parties can take free ride on the reputation of the well-known marks by improper means, as provided by the Article 13 ii of the Trademark Law. It is necessary to consider that there has existed an association between the earlier mark and junior mark, i.e. the use of the accused marks is sufficient to mislead relative public as to the sources of goods of the well-known marks and the accused marks, or to cause a erroneous belief among the relative public that there are certain relationships between the operators of the well-known marks and the accused marks such as relationship of license of use and of affiliated companies, etc.. As provided by Article 10 of the Judicial Interpretation, if the plaintiff requests the defendant to stop using a trademark or enterprise name that is identical with or similar to the plaintiff's well-known mark in respect of non-identical or dissimilar goods, the people's court shall consider specific conditions of the case and comprehensively consider the following factors before making a judgment:

- 1) the degree of distinctiveness of the well-known mark;
- 2) the degree of being well-known of the well-known mark among the public in the field of the goods of the accused mark or enterprise name;
- 3) the degree of relatedness of the goods of the well-known mark and the goods of the accused mark or enterprise name;
- 4) other relevant factors.

We believe that the said paragraphs 27 and 28 factors have relevance to the assessment of existence of "links". It is an issue of fact that should be assessed by the people's court or the trademark authorities based on the factors. Apparently, as for a market survey, the people's court should consider it in combination with other evidences in order to make an objective and comprehensive examination.

5. Does such 'mental association' or 'link' between the earlier trademark and the later trademark automatically result in detriment to the earlier trademark's repute or distinctive character? Or does detriment have to be proved over and above the existence of a 'mental association' or 'link'?

If there is a link, it should be regarded as bringing damages to reputation or distinctiveness of the earlier mark. However, we believe that it is necessary to provide sufficient evidences in support of request for recognition of well-known mark, so as to make a claim that the accused mark is liable to mislead the public, and the interests of the registrant of the well-known mark are likely to be damaged by such use. According to Article 9 ii of the Judicial Interpretation, "misleads the public, and the interests of the registrant of the well-known mark are likely to be damaged by such use" can be defined as use of the accused marks is sufficient for relative public to believe that there are associations to some extent between the accused marks and the well-known marks, so as to weaken distinctive characteristics of the well-known mark and tarnish reputation of the well-known mark in the market, or the accused parties can take free ride on the reputation of the well-known mark by improper means, as provided by the Article 13 ii of the Trademark Law.

6. Are the same factors taken into consideration to assess the existence of detriment as those already discussed for the link? Are there additional ones?

We believe that the same factors should be taken into consideration.

7. Must actual dilution be proved or is a showing of likelihood of dilution sufficient? Whose burden of proof is it? How does one prove dilution or likelihood of dilution? Does detriment require evidence of a change in the economic behaviour of the average consumer or that such change in behaviour is likely? If so, what is a change in the economic behaviour of the average consumer? Is reduced willingness to buy goods sold under the earlier mark a change in the economic behaviour? How do you prove a change in the economic behaviour of the average consumer or likelihood of such change in behaviour?

We believe that likelihood of dilution is sufficient rather than actual damage. The owner of the well-known mark should bear the burden of proof. The damage primarily results in cutting off and blurring the association between the well-known mark and the particular goods it represents, so as to blur and tarnish distinctiveness and identifiable characteristics of the well-known mark. Consequently, it can be determined that there is harmful result in the case. Secondary, progressive, potential and accumulative features in the process of dilution should also be considered; dilution is justified as long as use of the mark is unauthorized, rather than there is actual dilution. In view that dilution is not easy to be seen, especially, actual damage is not a pre-requisite, evidence of change in the economic

behavior of the average consumer is not necessary, nor is the reduced willingness to buy goods sold under the earlier mark, which is one of changes in the economic behaviors.

8. What is the extent of protection afforded to marks which are eligible for dilution protection?

May the owner of the earlier trademark object

- to the registration of a later trademark?

The answer is yes.

- to the actual use of a later trademark?

The answer is yes.

- in respect of dissimilar goods only or also in respect of similar goods?

In respect of dissimilar goods.

9. What are the legal remedies? May the owner of the earlier trademark file an opposition and/or a cancellation action? May he ask for injunctive relief or preliminary injunctive relief?

Does your trademark office refuse the registration of a later trademark on grounds of likelihood of dilution?

Basically, there should be three legal remedies when understanding the Judicial Interpretation and the present Trademark Law and the Implementation Regulations of the Trademark Law:

First, the accused mark is not allowed to register or the registration of the accused mark is cancelled. The owner of the earlier trademark may file an opposition and/or a cancellation action.

Second, injunctive remedy should be available, in that the owner of well-known mark may ask for preliminary injunctive relief.

Third, remedy of compensation for damage should be available, in that the owner of well-known mark can bring a civil law suit against the party committed to dilution with an important condition of objective offence.

China Trademark Office does not automatically refuse an application for registration of a later trademark on grounds of likelihood of dilution.

II. Proposals for adoption of uniform rules

The Groups are invited to put forward proposals for adoption of uniform rules with a view to protecting trademarks against dilution. More specifically, the Groups are invited to answer the following questions:

1. Which trademarks should be eligible for protection against dilution? What should the eligibility criteria be? Should recognition or fame in a limited product market (“niche market”) be sufficient?

A well-known mark should be afforded protection against dilution, if the use of the accused mark is sufficient for relative public to believe that there are associations to some extent between the accused mark and the well-known

mark, so as to weaken distinctive characteristics of the well-known mark and tarnish reputation of the well-known mark in the market, or the accused parties can take free ride on the reputation of the well-known mark by improper means. When the party concerned requests for recognition of well-known mark, the party shall, based on specific conditions of the case, provide the following evidences in order to show that its mark at the case has become well-known at the time the other party's mark is being accused or the act of unfair competition takes place:

- 1) the market share, geographical area of sales, interests and taxes, etc. of the goods bearing the mark;
- 2) the duration of use;
- 3) the manner, duration of time, degree, monetary investment and geographical range of any publicity or sales promotion of the mark;
- 4) any record of the mark being protected as a well-known mark;
- 5) Goodwill and reputation of the mark;
- 6) other factors which show the mark has become well-known.

The manner, duration of time, geographical range of use of the mark, etc., includes any continuous use of the mark before the mark is approved to register.

As for evidences concerning length of time of use, ranking in the industry, market survey, market evaluation report and previous recognition of famous mark, etc., the people's court should combine other evidences of being well-known and perform an objective and comprehensive examination of the mark.

In judicial practice, the status of reputation in a niche market can be taken into consideration in the context of the nature of the goods or services shall be considered too.

2. Should it be a criteria for being eligible for dilution protection that the mark has been used in, or that the mark has been registered or that an application for registration of the mark has been filed in the country?

In our opinion, that the mark has been registered and used should be a criterion for being eligible for dilution protection.

3. Should there be a registry of eligible marks? If so, what should the evidentiary value of registration be? Should it be possible to challenge it in litigation?

We believe that it is not necessary to set up or designate a registry of eligible marks. Recognition of well-known mark should be performed on a case by case basis at the request of the party concerned. Well, if there is the registry of eligible marks, recordation can be used as evidence. However, if the mark is challenged, the trademark authorities or the people's court should examine the mark to decide if the mark should be protected as well-known mark.

4. Should the existence of a 'mental association' or 'link' between the earlier trademark and the later trademark be an independent requirement for a trademark dilution claim?

We believe that the existence of a 'mental association' or 'link' between the earlier trademark and the later trademark should be an independent requirement for a trademark dilution claim.

5. Should detriment to the distinctive character or reputation of the earlier mark require evidence of a change in the economic behaviour of the average consumer or that such change in behaviour is likely?

We believe that it is not necessary. As long as there is likelihood of dilution, it should be decided that there is damage to the distinctiveness and reputation of the earlier mark.

6. What should the remedies be for dilution of a mark?

There should be three legal remedies for dilution of a mark. First, the accused mark should not be approved to register or the registered mark should be cancelled. Second, injunctive remedy should be available; third, compensation for damages should be available.

In conclusion, China is a country of statute law and has not yet enacted a legislation of anti-dilution in protecting well-known mark. So the Judicial Interpretation by the Supreme People's Court on May 1, 2009 shall be used as legal basis in dealing with cases of dilution of well-known mark. A mark should be recognized as well-known mark in a case in order to seek protection against dilution, while the mark should be registered and used in China and should be either inherently distinctive or acquire distinctiveness via extensive use in China. In view of number of rampant bad-faith doers in using and registering other's well-known marks in China, implementation of the Judicial Interpretation by the people's courts in their trial practice and by the trademark authorities in their registration and administration practice has become urgently necessary, so has the legislation of anti-dilution in the Trademark Law by Chinese legislature.

National Groups are invited to comment on any additional issue concerning the protection of a mark against dilution.

Note: It will be helpful and appreciated if the Groups follow the order of the questions in their Reports and use the questions and numbers for each answer.

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