

7th Meeting of the Asia-Pacific Foreign
Direct Investment (FDI) Network
United Nations Conference Centre
Bangkok, Thailand, 2-3 November 2017

Protection of Intellectual Property Rights Online – New Developments in China and Implications for FDI

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Dot Trademark TLD Holding Company Limited



IP Protection and FDI in China

Protection of Intellectual Property and FDI

The general principle:

The stronger IP protection, the higher amount of FDI

But, CHINA has been an exception to the principle, because of its local advantages:

- Market size and growth
- Transportation cost and distance to markets
- Labour productivity and cost

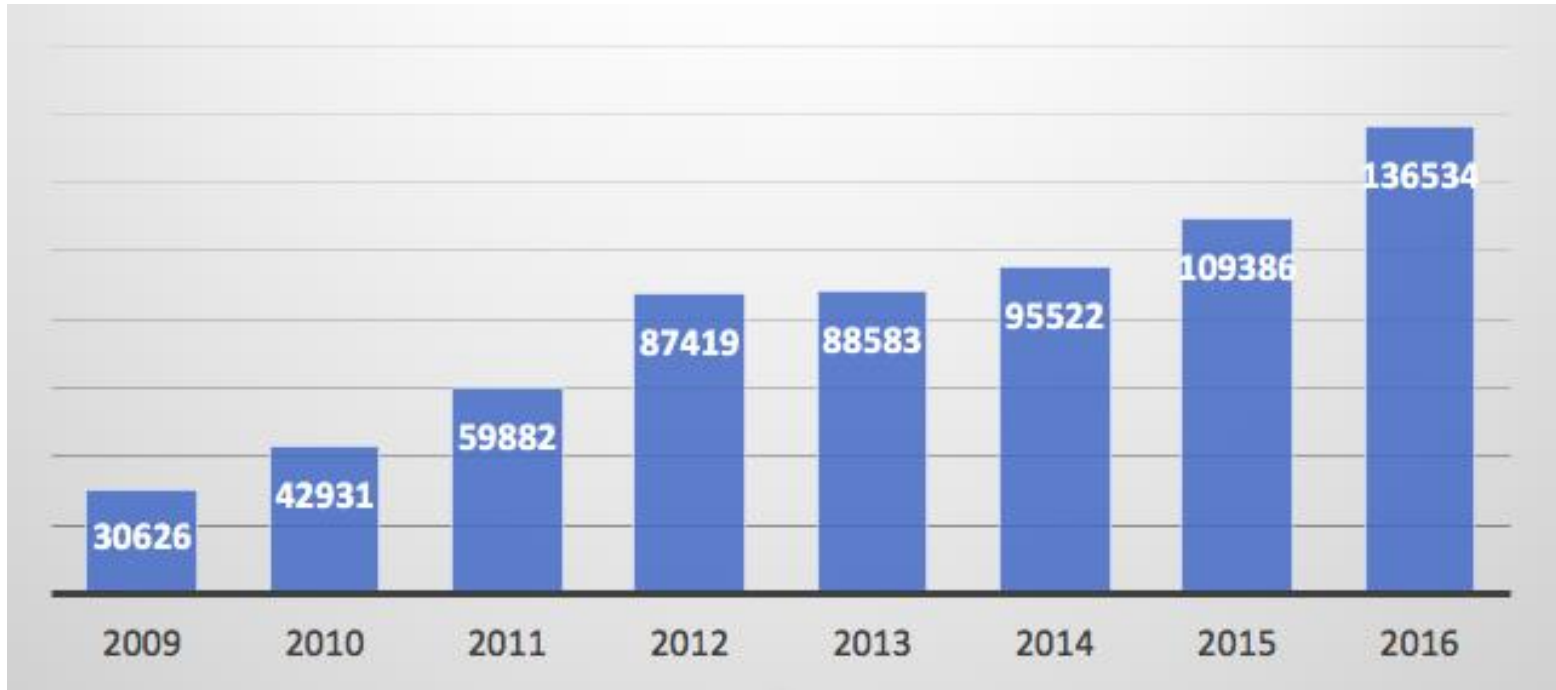
... ..

Trends of Protection of Intellectual Property in China

- Applications for Registering IP rights in China are on the Rise;
- New IP Courts in Beijing, Shanghai, and Guangzhou;
- Increasing number of IP litigation cases;
- New Trademark Law (2015);
- New Digital Court set up in Hangzhou(June 2017).



Number of First Instance IP Cases Accepted by Chinese Courts



Source: The Supreme Court of PRC (www.court.gov.cn)

Reasons for China to Strengthen IP rights Protection

- Treaties obligations
 - WIPO / Paris Convention / WTO /
- Internal drive
 - Economics developments
- “Internet Plus” strategy – included into the country’s 13th five-year plan
(2016-2020)



Problems and
Challenges of IP
Counterfeiting
online in China

The Booming of E-commerce in China



Internet Development in China

As of December 2016:-

- There were **731 million Internet users**, with a yearly increase of 42.99 million;
- The number of mobile Internet users in China reached 695 million, an increase of 75.50 million from the end of 2015. Mobile netizens accounted for 95.1% of the total netizen population, while this percentage was 90.1% in 2015 ;
- China had a total of **42.28 million domain names**, and a total of **4.82 million websites**;
- 99.0% of **Chinese companies** used computers for their office work and 95.6% were Internet users; **45.3% of them** were engaged in **online sales** and 45.6% in online purchase, and **38.7% launched online marketing and promotional activities**.

Source: CNNIC 39th Statistical Report on Internet Development in China

The Major Resources of Internet in China

Table 1 Comparison - Basic Internet Resources in China from December 2015 to December 2016

	December 2015	December 2016	Annual increment	Annual growth rate
IPv4	336,519,680	338,102,784	1,583,104	0.5%
IPv6 (block/32)	20,594	21,188	594	2.9%
Domain name	31,020,514	42,275,702	11,255,188	36.3%
Wherein, .CN Domain name	16,363,594	20,608,428	4,244,834	25.9%
Website	4,229,293	4,823,918	594,625	14.1%
Wherein, .CN website	2,130,791	2,587,365	456,574	21.4%
International Internet bandwidth (Mbps)	5,392,116	6,640,291	2,521,628	23.1%

Source: China Internet Network Information Centre

The Dark Side of Digital Economy - Online IP Infringement in Different Online Platforms

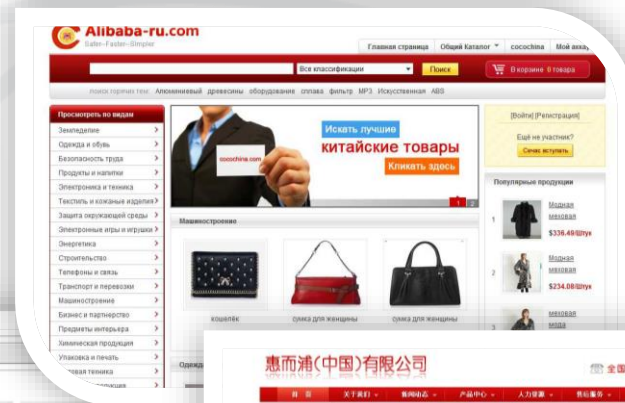
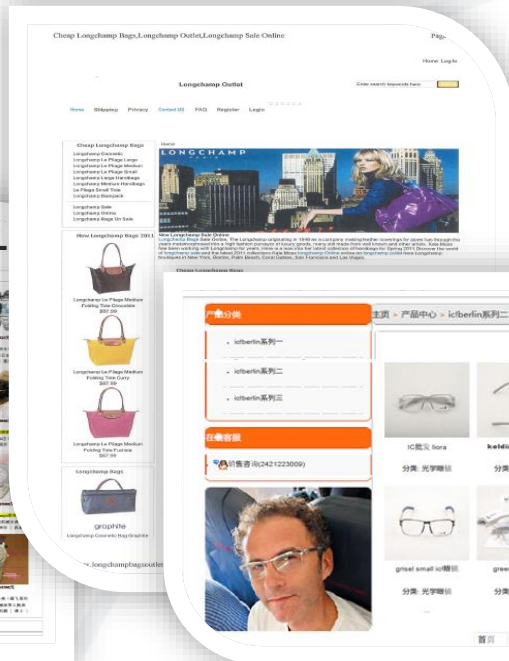
1. Domain names
2. Social media
3. Online shops in e-commerce platforms
4. Mobile app name
5. Search engine key words

Internet users and consumers to search for brand information online via the above means

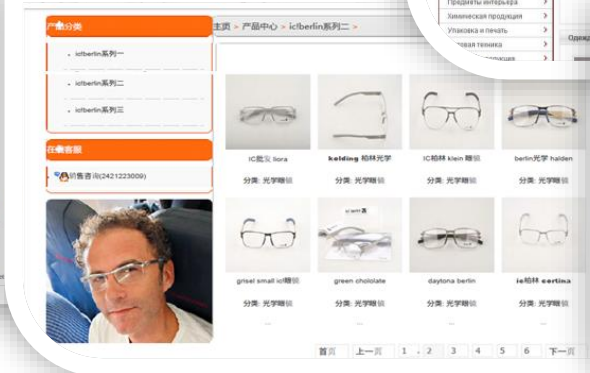
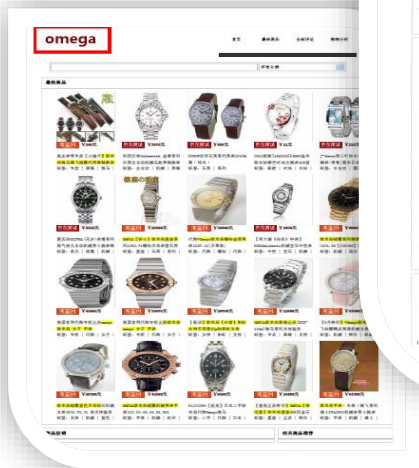
However, lack of trademark rights verification and protection mechanism in the above systems/platforms gives rise to disputes concerning online trademark rights infringement.

Domain Name Infringements

Longchambagoutlets.com



Omegaguanwang.cn



Confusing and Misleading Search Engine Results – “Disneyland hotel”

On 7 June 2016

It was reported that **Fraudulent booking websites** for the Disneyland Hotel in Shanghai **ranked even higher** than the official booking website.

When customers book hotel rooms through these fraudulent websites, they are asked to provide their credit card details and **pay a price which is a few times higher** than the official price.

别被“山寨”迪士尼酒店网站忽悠了

2016年06月07日 02:22
来源：新闻晨报

0人参与

0评论



原标题：别被“山寨”迪士尼酒店网站忽悠了

上海迪士尼乐园开园在即，在吸引了越来越多关注的同时，网上哄骗、欺诈、哄抬价格的情况也时有发生。日前就有市民发现，在百度搜索引擎上有“山寨”迪士尼酒店网站通过竞价，排名竟然比官方网站还高，而点进该网站通过其客服电话预订时，竟然还被要求提供具体信用卡信息进行授权。记者调查发现，“山寨”网站的酒店报价竟然比官网高出了数倍，不过，截至记者发稿前，该“山寨”网站已无法打开。

据了解，目前迪士尼乐园酒店及玩具总动员酒店在6月已全部预订满，个别特殊套房甚至到了8月、9月也“一房难求”。而截至9月30日，乐园门票除了6月16日和6月18日两天外，均由余票可供预订。

2000元房间报价7670元

http://news.ifeng.com/a/20160607/48929355_0.shtml

Confusing and Misleading Search Engine Results – “Xiaomi phone”



The **top search result** of “Xiaomi phone” in Chinese is a **shopping mall website** irrelevant to the brand “xiaomi phone”).

Customers who wanted to buy Xiaomi phone through its official website would be **easily misled by search results**.

Confusing and Misleading Search Engine Results – “Zara”



百度一下

网页 新闻 贴吧 知道 音乐 图片 视频 地图 文库 更多»

百度为您找到相关结果约26,800,000个

您可以仅查看：[英文结果](#)

Z ZARA 中国官方网站-2016年盛夏新品已上线 [官网](#)

 儿童节快乐!凡在6月1日前购买童装商品,将有机会获得惊喜礼物!畅享最新女装,男装和童装时尚资讯。在线发现ZARA本周新品,更多每周动向。
www.zara.cn 2016-06 [V2](#) - 评价 - [商业推广](#)

Gap官网,精选商品低至5折,夏季大减价!

Gap, 精选男女装&婴童装低至5折!夏季大减价!新人首单享9折免邮+双倍积分!Gap源自1969,美国潮流休闲服饰品牌,全新一季,精彩出击!
流行女装: 徽标系列 | T恤 | 衬衫 | 裙装 | 潮流男装: 徽标系列 | T恤 | 衬衫 | 短裤
www.gap.cn 2016-06 [V3](#) - 评价 - [商业推广](#)

zara断码零利疯抢, 仅限36小时

zara36小时干货疯抢, 5件79元, 新货分波补充, 抢到就下手!美特斯邦威唯一官方商城, 100%正品保证!
www.banggo.com 2016-06 [V3](#) - 94条评价 - [商业推广](#)

A website which **does not sell “Zara” products** came up among the **top search results** when customers search for “Zara” in Baidu.

Such fraudulent websites include misleading keywords in order to attract traffic.



banggo 邦购

zara 搜索

首页 潮流特卖 **HOT** 领券中心 **NEW** 新客专享 **HOT** 断码零利

期间首页 > 所有分类: zara

亲,很抱歉,没有找到 zara 相关的宝贝

您是不是要找:

建议您:

1. 看看输入的文字是否有误。
2. 去掉可能不必要的字,如“的”、“什么”等。

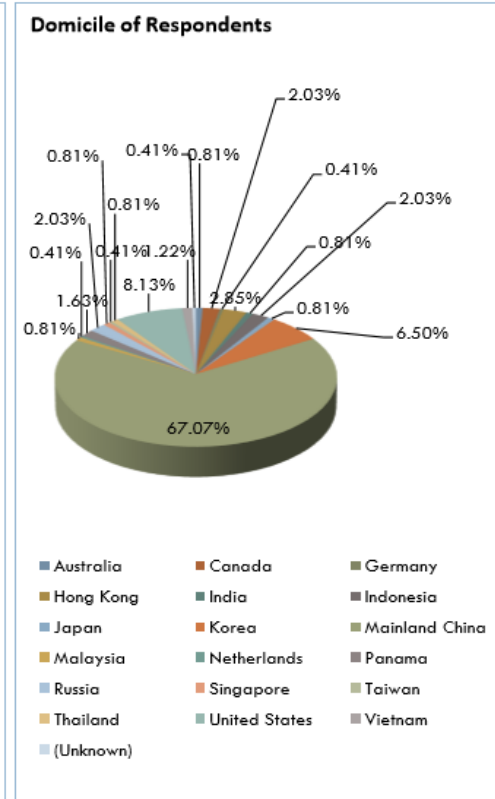
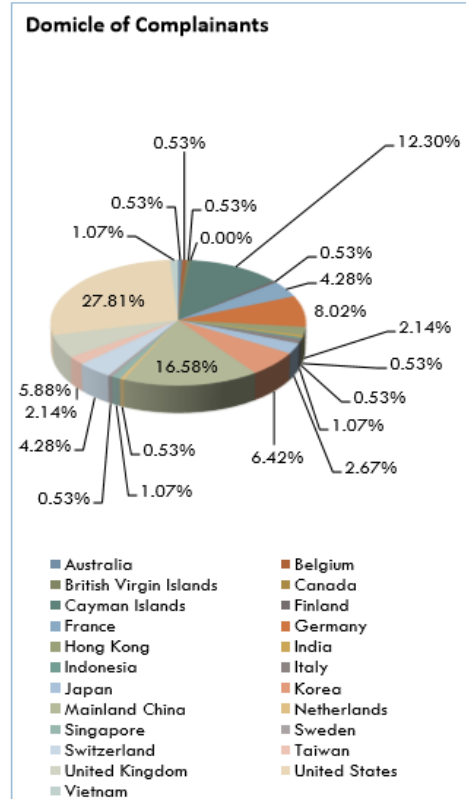
HKIAC Domain Name Dispute

	ADNDRC (Hong Kong Office)			HKIAC			Total
	UDRP	URS	TDRP	CNDRP	HKDRP	IKDRP	
2016 (September)	83	2	NIL	39	8	NIL	132
2015	148	11	Nil	59	9	Nil	227
2014	121	19	Nil	47	14	Nil	201
2013	94	Nil	Nil	58	17	1	170
2012	56	Nil	Nil	44	15	Nil	115
2011	88	Nil	3	26	8	2	127
2010	50	Nil	Nil	47	10	Nil	107
2009	42	Nil	1	85	12	Nil	140
2008	84	Nil	Nil	128	14	3	229
2007	39	Nil	Nil	76	17	3	135
2006	23	Nil	Nil	67	3	Nil	93
2005	16	Nil	Nil	8	7	Nil	31
2004	20	Nil	Nil	13	8	Nil	41
2003	17	Nil	Nil	10	5	Nil	32
2002	12	Nil	Nil	Nil	3	Nil	15
2001	Nil	Nil	Nil	Nil	2	Nil	2
Total	893	32	4	707	152	9	1780

Source: HKIAC website, 2016-10

Parties to Domain Name Disputes

- Most of Complainants were from United States (27.8%), Mainland China (16.58%), Korea (6.42%) and European countries, such as Germany (8.02%) and France (4.28%).
- Respondents were mainly from **Mainland China (67.07%)**, United States (8.13%) and Korea (6.50%).



Source: ADNDRC Annual Report 2014

https://www.adndrc.org/diy/module/img/event_pdf/ADNDRC_Annual_Report_2014.pdf

Reasons for Online Infringement?

- **First-come, First-served**
- **No verification or audit mechanism**

These mechanisms allow **confusingly similar domain name registration**, which is the underlying reason for the domain name related online infringement, **damaging legitimate rights** of trademark holders.

Resolutions for Domain Name Disputes

- Litigation
- Arbitration
- Negotiation
- Administrative Dispute Resolution Procedures by ICANN and Registry - effective way to resolve domain name disputes at a low cost:
 - The domain name is identical or confusingly similar to a trademark/service mark
 - The Registrant has no rights or legitimate interests in respect of the domain name
 - Registration and use bad-faith

New gTLD Programme

Impact and Implications

- **1194** new gTLDs* are being introduced
(as of 31 October 2016)
- Greater diversity in representation of individuals and businesses online
- Providing consumers with greater choice, but exaggerating the impact of online infringement



**Source: ICANN website*

New Right Protection Mechanisms (RPMs)

The **Internet Corporation for Assigned Names and Numbers** (ICANN) has established right protection mechanisms for the resolution of domain name disputes:

- The **Uniform Domain-Name Dispute-Resolution Policy** (UDRP)
- The **Uniform Rapid Suspension System** (URS)
- The **Trademark Clearing House** (TMCH)
- Pre-delegation Objections
- Post-delegation Objections
- Additional RPMs implemented by new gTLD Registry Operators, .i.e the, Sunrise Dispute Resolution Policies and Charter Eligibility Dispute Resolution Policy for <.商标 >



➔ **New RPM for new gTLDs**

Where to file a domain name dispute?

UDRP (applicable to all gTLDs)


- Asian Domain Name Dispute Resolution Centre (ADNDRC) (HK, Beijing, Seoul, & KL)
- National Arbitration Forum (NAF)
- World Intellectual Property Organisation (WIPO)
- The Czech Arbitration Court Arbitration Center for Internet Disputes (CAC)
- Arab Center for Domain Name Dispute Resolution (ACDR)

CNDRP (applicable to .cn domain names)

- HKIAC & CIETAC

HKDRP (applicable to .hk domain names)

- HKIAC



The Chinese Dot
Trademark' Rights
Verification and
Protection System

“.商标” (Dot Trademark)

- Verification Based on Trademark Rights

- Domain registry for the generic Top-Level-Domain (gTLD) extension **-.商标** (Pronounced as “Shangbiao” in Chinese Pinyin, meaning Trademark in English)
- Established under the law of Hong Kong
- Authorized by the **Internet Corporation for Assigned Names and Numbers (ICANN)**
- Member of the **vTLD Consortium** – a global association of registry operators founded in the United States, sharing commitment in enhancing public safety and increase th awareness of vTLDs



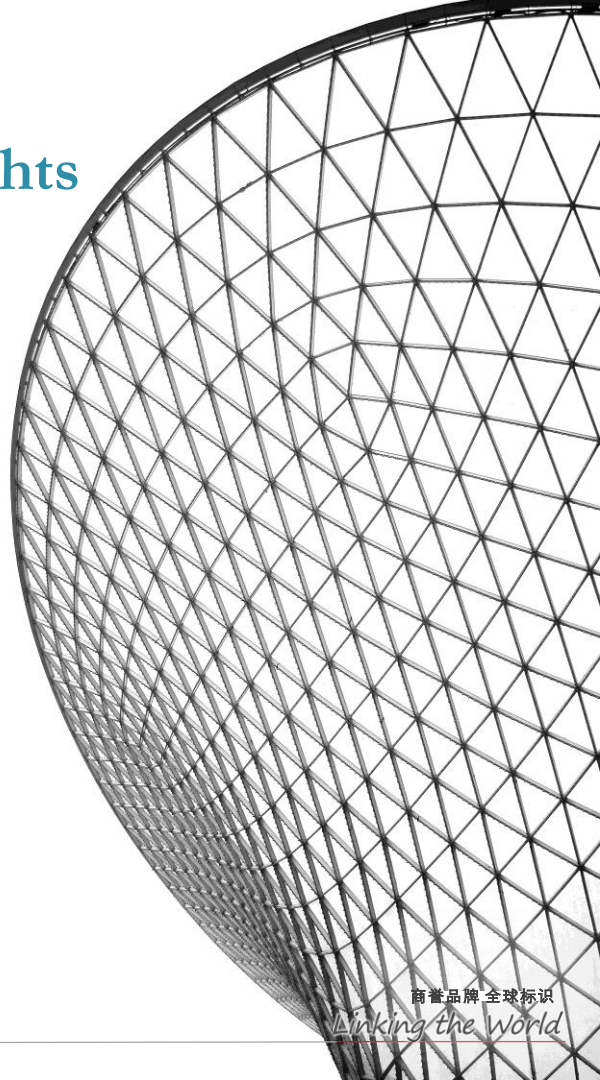
New Generic Top-Level
Domains



“.商标” (Dot Trademark) - Verification Based on Trademark Rights

- The *first and only* registry implements **trademark verification** and **protection** regimes in domain name registration
- License for operating in China granted by the **Ministry of Industry and Information Technology** of the PRC (MIIT) on January 2015
- Designated as the Vice-chair organization of the **Chinese Trademark Association (CTA)** in 2016
- Over 300 major law firms, trademark agents and online brand protection service providers have already partnered with us

The core principle of Dot Trademark is to uphold trademark rights, prevent online infringement and cybersquatting under its domain.



Trademark Rights Verification

- Trademark(s) **undergoing application process** is **not accepted**.
- Both **registered trademark rights** and **common law trademark rights** from any recognised jurisdictions are accepted.
- **“First-come, first-served”** rules are adopted if there are more than one legitimate rights holders to the **same trademark name**.

Systematic Naming Methods

Dot Trademark registration follows the 4 naming methods/categories below:

- A. (Trademark name)
- B. (Trademark name + Goods / services name)
- C. (Designated place + Trademark name)
- D. (Designated place + Trademark name + Goods / services name)

Trademark Rights Protection

- Classifications systems based on trademark rights are adopted for protection of registered Dot Trademark names;
- Third parties are not allowed to register names that are confusingly similar to existing registered names;
- Names that are phonetically or visually similar to the existing registered Dot Trademarks are not allowed to be registered, unless they belong to different classifications in trademark registration and adopts different Dot Trademark naming methods.

Verification of Website Content

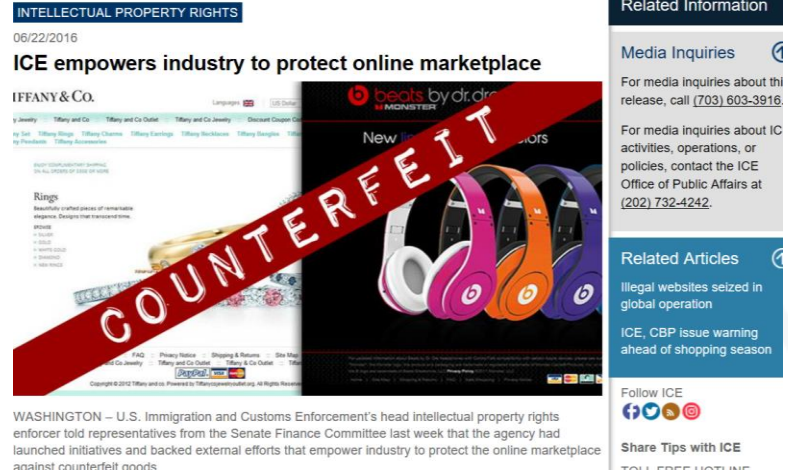
- Dot Trademark names must be linked to an active website within 3 months after registration;
- The Dot Trademark Registration Rules requires that contents in the official websites of Dot Trademarks must be consistent with the information of the verified trademark classification;
- The Dot Trademark Domain Name Registry has the discretion to take down website and take back the Dot Trademark names if any violation of the rules.

Verified Top-Level Domain Name

“U.S. Immigration and Customs Enforcement’s head intellectual property rights enforcer told representatives from the Senate Finance Committee last week that the agency had launched initiatives and backed external efforts that empower industry to protect the online marketplace against counterfeit goods.”

Online pharmacies, banks and medical-service websites can register and receive verification from the organization, which essentially informs shoppers that the website only sells legit goods. The online sellers would be provided a unique domain name, which currently include .pharmacy, .bank and .med.”

Source: “ICE empowers industry to protect online marketplace”
<https://www.ice.gov/news/releases/ice-empowers-industry-protect-online-marketplace#wcm-survey-target-id>



INTELLECTUAL PROPERTY RIGHTS
 06/22/2016
ICE empowers industry to protect online marketplace

IFFANY & CO.

Related Information

Media Inquiries

For media inquiries about this release, call (703) 603-3916.

For media inquiries about ICE activities, operations, or policies, contact the ICE Office of Public Affairs at (202) 732-4242.

Related Articles

Illegal websites seized in global operation

ICE, CBP issue warning ahead of shopping season

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WASHINGTON – U.S. Immigration and Customs Enforcement’s head intellectual property rights enforcer told representatives from the Senate Finance Committee last week that the agency had launched initiatives and backed external efforts that empower industry to protect the online marketplace against counterfeit goods.

PART III: COMMERCIAL VIABILITY

Our customers – over 13,000 brands worldwide

Multinational brands

Automobile



- BMW
- Volkswagen
- Mercedes- Benz
- Jeep
- Toyota

Banking & Finance



- EFG Bank
- KPMG

Beverage



- Starbucks
- Coca-Cola
- Pepsi



- Microsoft
- Apple
- IBM
- Facebook
- Acer
- Yahoo
- Amazon
- Google

IT, Social Media & Media



- Rolex
- Chanel
- Tudor
- Gucci
- P&G
- Lacoste
- Shishedo
- Kappa
- Montagut

Wholesale & Retail



- Marco Polo Hotels
- Deloitte (德勤)

Other Services

Use of Dot Trademark?

Number of Internet users using Dot Trademark Domain as a portal to access MNC brands official websites:

Brand	Dot Trademark domain	No. of Internet users (from /01/01/2017 – 06/07/2017)
YAHOO!	yahoo.商标	104,255
Dot Trademark Registry	注册局.商标	86,015
Instagram	instagram.商标	55,884
Twitter	twitter.商标	49,372
Google Chrome	chrome.商标	46,572
Apple	apple.商标	45,312
Facebook	facebook.商标	44,712

Why Dot Trademark? – Brand Protection

- **Based on trademark rights** - ensure “.商标” domains are registered and used by legitimate trademark rights owners only
- **Rights protection mechanism** – confusing names are protected and cannot be registered
- **“Your brand name.商标”** – increasingly recognised by Chinese consumers as trusted online portals to official websites

The core principle of Dot Trademark is to uphold trademark rights, prevent online infringement and cybersquatting under its domain.

Inception of The Dot Trademark Policy Committee

Jointly chaired by **Mr. Peter Cheung** (Silver Bauhinia Star holder and Former Director of the Intellectual Property Department) and **Professor Christopher To** (Former Secretary-General of HKIAC and ADNDRC; Former Nomination Committee Member of ICANN and Former Chairman of HKIRC), the DTPC comprises 20 members from 9 different jurisdictions.

<http://www.政策委员会.商标>

The Dot Trademark Policy Committee

CO-CHAIRMAN



Peter CHEUNG
Hong Kong



Christopher TO
Hong Kong

MEMBERS

(The current members are listed (in alphabetical order) below; (please note that all members, unless indicated otherwise, serve in their personal capacity and that current and previous affiliations are provided for identification purpose only)



The Hon Neil Brown QC



Julien CHAISSE



Jacob CHEN



Shaojie CHI



Peter MALANCZUK



Ho Hyun NAHM



Anthony ROGERS



Gary SOO



Scott DONAHEY



Ike EHIRIBE



Gabriela KENNEDY



Lewis LUK



Timothy SZE



Jacques de WERRA



Jerry ZHANG



Yun ZHAO



Dennis CAI
Secretary General
Hong Kong



Eric CHEN
Assistant Secretary General
Hong Kong

Functions of The Dot Trademark Policy Committee

The DTPC normally meets twice a year to perform the following functions:

- (i) To consult the best practice in policy setting for online trademark rights protection;
- (ii) To regularly review and revamp existing rules and policies for the Dot Trademark;
- (iii) To interpret provisions of Dot Trademark policies;
- (iv) To participate in events for promotion of the policies of Dot Trademark.

Dot Trademark Policy Committee Launch Event in April 2017



Conclusions

1. The current naming systems of many internet platforms lack of IP rights protection mechanisms, which allows infringing activities to happen easily;
2. The cross-border nature of digital economy creates a lot of difficulties in enforcing IP rights online under national laws in China;
3. Domain name system plays a vital role in navigating websites and controlling online portals, the current registration system which is based on “first-come, first-served without verification” needs to be reviewed and modified to meet the needs for better protection of IP rights online, so as to further facilitate the development of IP rights;
4. The Chinese Dot Trademark’s rights verification and protection system sets a new standard for registration and use of names in various Internet platforms.

Thank you!

Website: www.trademarkdomain.com
<http://注册管理机构.商标>

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