

INAO triumphs in invalidating copycat trademarks before Beijing IP Court

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The Beijing IP Court has held up the China National IP Administration (CNIPA)'s decision to invalidate the marks of a Chinese agricultural company due to its piggybacking on the reputation of a French sign used to certify high-quality products.

The National Institute of Origin and Quality (INAO) is a public administrative institution in France and is responsible for the implementation of French policy on officially identifying the origin and quality of agricultural and food products, including protected designations of origin, the Label Rouge sign, geographical indications (GIs) and organic farming, among others.

Label Rouge ('Red Label' in English) is a national sign that refers to products that, due to their production or manufacturing processes, have a higher level of quality compared to other similar products. Label Rouge is open to all products regardless of their geographical origin (including outside the European Union), but they must meet the INAO's requirements defined in the specification to bear the sign.

Case background

In February 2011, Chinese company Nanjing New Concept Agriculture Technology (New Concept) filed for and obtained registration of the trademark 红标 ('Red Label' in Chinese), designating live animals and breeding poultry in Class 31. It then filed two more of the same marks in 2012 and 2016 in Class 29, designating "eggs" and "meat jellies; dried meat; sausages; ham; poultry, not live; meat; broth concentrates; broth". The marks were granted for registration in 2015 and 2018, respectively.

On 22 April 2022, the INAO brought invalidation proceedings against these marks before the CNIPA, citing Articles 4, 7, 10(1)(7) and 10(1)(8) of China's Trademark Law. It contended that Label Rouge, which has been used since 1965, enjoys a strong reputation in China. The disputed marks are identical to the Chinese translation of 'Label Rouge', and thus their registration and use would be likely to cause confusion among consumers as to the origin and quality of goods. Further, the INAO argued that bad faith could be established, as New Concept not only filed and registered a slew of trademarks incorporating the 'Label Rouge' or '红标' component but also deliberately included the French Label Rouge sign in its promotional materials, trying to

piggyback on its reputation.

In 2023, the CNIPA invalidated the disputed marks based on the finding that Label Rouge is an official French sign used to certify the quality and origin of agricultural products. It ruled that the registration and use of the disputed mark 红标 is likely to create confusion or misidentification among consumers and therefore breaches Article 10(1)(7) of the Trademark Law.

Beijing IP Court upholds CNIPA decision in appeal

New Concept appealed before the Beijing IP Court. It denied bad faith and argued that the disputed marks' reputation was acquired through use and promotion over the years.

On 22 October 2024, the Beijing IP Court decided to maintain the CNIPA's decision. It ruled that:

- recorded evidence could prove that Label Rouge was known to the Chinese public before the application date of the marks;
- the disputed marks are similar to Label Rouge in terms of meaning; and
- their registration and use are likely to cause misidentification among the public, which violates Article 10(1)(7).

The case is now once again under appeal as New Concept has challenged this first-instance decision before the Beijing High Court.

Key takeaways

Like foreign GIs, quality signs and their Chinese translations are used to identify the origin of high-quality agricultural and food products and should thus not be owned by private entities. This judgment highlights that institutions or organisations that control such signs can leverage Article 10(1)(7) to challenge copycat trademarks, even if the marks are registered and extensively used in China.

These cases are live examples that the CNIPA and courts prioritise public interest and grant protection over these signs, regardless of whether or not they are registered in China.