Res Judicata in Chinese Trademark Review and Adjudication Proceeding: Acceptance of New Facts

The legal principal of res judicata requires that once a matter has been adjudicated by a competent court in legitimate procedure with decisions/judgments, it should not be heard again by the court on grounds of the same facts and reasoning. The Chinese Trademark Law, particularly in Article 62 of the Implementing Regulations,[1] has specifies this legal principal. Furthermore, the Supreme People's Court's "Provisions on Certain Issues Related to Trials of Administrative Cases Involving Grant and Confirmation of Trademarks" ("the Provisions," effective March 1, 2017) introduces additional rules to this legal principle: (i) if there is a finding of new facts or new reasoning, the principle of res judicata may not be applied; and (ii) once a court judgment has become effective and the Trademark Review and Adjudication Board ("the TRAB") makes a new decision as directed by such judgment, such decision is not subject to further administrative appeals.

This short article addresses the issue of new facts—when a people's court would accept facts that presented as new facts and accordingly do not apply the res judicata principle in a Chinese trademark review and adjudication proceeding.

The TRAB Practice

In a trademark review and adjudication proceeding, the application of the principle of res judicata resides in the construction of "the same facts and reasoning," which has been specified in Article 62 of the Implementing Regulations. It is made clear in the TRAB rules and regulations that an administrative action is precluded on the same issues of a case having an earlier and effective decision provided that there do not exist new facts or new reasoning. In practice, a reasoning refers to a ground of arguments corresponding to substantive rights ascertainment clauses provided in the Chinese Trademark Law, and each clause may be related to one or more grounds of arguments in view of the TRAB rules and regulations. While few disputes arise from "new reasoning," cases have focused more on "new facts"—when the TRAB or a people's court would accept the facts that presented as new facts and accordingly do not apply the principle of res judicata.

Known to all, facts are the information on which attorneys base their arguments, and evidence is the carrier of facts. Facts in trademark review and adjudication cases are presented from supporting evidentiary materials. In other words, to determine whether the facts are the same or not is based on the presentation of evidence, to the satisfaction and acceptance from the TRAB or a people's court. In practice, the dispute over whether a fact constitutes new mainly lies in the differences in respect of (1) contents, (2) quantity and (3) types between newly presented evidence and old evidence. However, from the discussions below, we believe the determination shall be made not only on the newness but also on evidence contents as distinguished from an insignificant, trivial or unimportant detail and which presentation would reasonably affect the arguments and conclusion of the case.

The Cases: The Admissibility 0f New Evidence

In a retrial case of a dispute over the trademark "宝马" (BMW in Chinese), the Supreme People's Court held that the submitted evidence different from the evidence in the previous procedure shall not necessarily be accepted as new once there existed a judgement. The Court further elaborated that new evidence would be admissible when it was only obtainable

[1] "If an applicant withdraws its application for trademark review and adjudication, it shall not apply for review and adjudication again for the same facts and reasoning. If the Trademark Review and Adjudication Board has made a ruling or decision on the application for trademark review and adjudication, no one shall apply for review or adjudication again for the same facts and reasons."

18th Floor, Tower B, Grand Place, No 5, Huizhong Road, Chaoyang District, Beijing 100101,P.R. China
Tel: 0086-10-84891188 Fax: 0086-10-84891189
LTBJ@lungtin.com www.lungtin.com

subsequent to the trial or hearing of the case—in other words, it could not have been obtained with reasonable diligence or could not be submitted within the specified time limit in the original administrative procedure. The Court reasoned that generally allowing new evidence to be submitted and admitted at appeal would make the procedure law unenforceable, which would jeopardize the foundation of stable legal procedures. [2] In the present case, the Court rejected the admission of the "new evidence" because BMW had failed to provide a reasonable explanation for which of the above circumstances the new evidence fell under. Clearly, this case highlights the extent of the Supreme People's Court's discretion to admit new evidence—the time of formation of new evidence and the circumstances where the evidence fails to be submitted—which, in fact, sets stricter requirements for the admission of "new evidence."

In a case of dispute over the trademark "康宝" (Kangbao), Guangdong Canbo Company submitted the "Approval of Recognition of the trademark '康宝' as a Well-known Trademark" as new evidence at appeal. The Supreme People's Court accepted the evidence as fresh because: "[t]he aforesaid evidence was formed after the Trademark Office gave the ruling on the trademark dispute, and is the evidence which could not be obtained in the original administrative procedure for an objective reason; in addition, judging from the content of the aforesaid evidence, the evidence is important for proving the cited trademark is well-known. Therefore, the substantive trial by the Trademark Review and Adjudication Board regarding whether the registration of the disputed trademark violated the Trademark Law does not violate legal provisions in procedure, and it is not inappropriate for the court of first instance to deem this case within the scope of the principle of res judicata[3] ." In this case, the Court remained that the recognition of the "well-known trademark" had been available after the previous administrative procedure was the evidence which could not be obtained in the previous administrative procedure for an objective reason and therefore were admissible as "new evidence."

The Cases: The Acceptance of New Facts

Further, in the afore-mentioned Kangbao case, the Supreme People's Court also emphasized the importance of contents in new evidence in view of the Chinese Trademark Law, and accepted it as a new fact and accordingly did not apply the principle of res judicata.

In fact, the review of contents in new evidence, if admissible, would be more substantive. However, the Chinese courts have been inconsistent with respect to whether res judicata should been seen as a question of procedural or substantive law. In an invalidation case relating to the trademark "天佑德" (TianYouDe) where an opposition decision was made in 2011 in favor of the trademark registrant, Beijing High People's Court [4] clearly stated that res judicata is a procedural rule of law and accordingly applied new 2014 Implementing Regulations Article 62, supra, rather than the 2001 Trademark Law Article 42, to allow an invalidation proceeding tried on the same issue. However, given the text of "the same facts and reasoning" in Article 62, id, there would appear to be good reasons to regard res judicata as essentially a question of substantive law rather than procedural law. Accordingly, the TRAB or a people's court needs to consider a new evidence, if admissible, in relation to the relevant law and the Provisions, and to advance it as a new fact which can be said to be important and reasonably affect the arguments and conclusion of a case and the substantive rights of a party.

Specifically, the Supreme People's Court, in the afore-mentioned Kangbao case, applied the Trademark Law Article 13(2) relevant to a well-known trademark and advanced the new evidence, i.e., the recognition of Kangbo as a well-known trademark, as a new fact that would fundamentally affect the outcome of the case.

Our Comments

In view of the above cases, we may conclude that the evidence newly formed after the effective original administrative adjudication is

[2] (2014) Zhi Xing Zi No. 46

[3] (2017) Zui Gao Fa Xing Shen No. 73

[4] (2017) Jing Xing Zhong Zi No. 503

18th Floor, Tower B, Grand Place, No 5, Huizhong Road, Chaoyang District, Beijing 100101,P.R. China
Tel: 0086-10-84891188 Fax: 0086-10-84891189
LTBJ@lungtin.com www.lungtin.com

"new evidence." Furthermore, if a legal fact based on the new evidence is changed, the new evidence may be deemed to prove a "new fact." An administrative authority shall retry the substantive issues of the case based on the "new fact" and accordingly shall not apply the principle of res judicata.

The newsletter is not intended to constitute legal advice. Special legal advice should be taken before acting on any of the topics addressed here.

For further information, please contact the attorney listed below. General e-mail messages may be sent using LTBJ@lungtin.com which also can be found at www.lungtin.com

WU, Di(Deland), Partner, Senior Trademark Attorney: LTBJ@lungtin.com

WU, Di(Deland)
(Partner, Senior Trademark Attorney)

Ms. Wu is a partner and senior trademark attorney at Lung Tin, and the head of the Trademark & Copyright Department. She focuses on all trademark matters ranging from trademark registration, opposition and review, licensing and transaction, particularly in dealing procedures after trademark right affirmation, such as trademark opposition, review, litigation, etc. as well as other complicated trademark matters. She is familiar with Japanese clients and their demands, and is accomplished in Japanese. She joined Lung Tin in 2011.

18th Floor, Tower B, Grand Place, No 5, Huizhong Road, Chaoyang District, Beijing 100101,P.R. China
Tel: 0086-10-84891188 Fax: 0086-10-84891189
LTBJ@lungtin.com www.lungtin.com