

Chicago Daily Law Bulletin

Volume 158, No. 40

Jordan challenges Chinese company over name use

Case shows vast divide in intellectual property rights legislation between the U.S. and China

BY ROY STROM
Law Bulletin staff writer

Educator Arthur Yuan said the Chinese company Michael Jordan sued last week intentionally used Jordan's name without his permission to sell its sports clothes and shoes.

"There's no doubt about it," said Yuan, executive director at The John Marshall Law School's Chinese Intellectual Property Resource Center.

Yuan said it might sound "strange, or appalling, even," to an American that the Chinese company used "Qiaodan," the well-known phonetic spelling of Jordan's name in Chinese, to sell sporting goods products.

The company also marked its products with Jordan's No. 23 and his famous brand logo of his legs stretched out and arm extended going up for a dunk — pictures show on a website Jordan set up to discuss the lawsuit.

"In America, nobody would open up a sports equipment shop (called), 'Jordan Equipment,' or 'Jordan Sports,'" Yuan said.

Local lawyers said the "blatant" stealing of Jordan's name demonstrates the gulf in intellectual property right protections between China and the U.S. They said the countries' rules and punishments differ greatly, but as China grows into an economic power it will want to get its laws in-line with other developed nations.

"In terms of the Chinese IP protection, there is indeed a cultural component that more

education is needed as to what are the proper protections or the extent of trademark, copyright, patent and trade secrets protections," Yuan said. "The scope of it is not as solid and fundamental to the Chinese yet. That is an issue."

Yuan said some Chinese companies see the opportunity to trademark a famous brand or name in China as a way to "make a quick buck," and might not see it as illegal.

"They don't realize that legal issues can come so quickly and the laws in China are not strong enough to say those things are not allowed," Yuan said.

Jordan sued under a Chinese civil law based on a personal right to protect a name, not the more typical trademark lawsuits seen in the U.S., said Thomas I. Ross, a partner at Marshall, Gerstein & Borun LLP who handled Chinese IP cases.

"The cause of action in China is something that is more of a personal cause of action whereas here we would recognize it as a commercial cause of action," Ross said. "It's this individual, personal right that they say is being transgressed."

Under a similar case in the U.S., Jordan likely could recover any profit the Chinese company made from using his name without permission, Ross said.

But that probably will not occur in China, Yuan said. Many similar Chinese cases he read involved the infringer issuing a public apology.

"There will be damages of that



Pedestrians walked past sportswear shop Qiaodan Sports in Fuzhou city in southeast China's Fujian province this month. Michael Jordan sued a Chinese company last week for using "Qiaodan," which is the phonetic spelling of Jordan's name in Chinese. *The Associated Press*

sort," Yuan said. "The monetary damages will be very minimal in comparison to some of the huge verdicts we've seen in the U.S. on these types of issues."

Ross said the differences in Chinese and American IP rights comes down to separate beliefs of justice held by the two countries.

"In China, the goal of justice is more of a societal justice, whereas here in the U.S., we focus on individual justice," he said.

For example, the Chinese court could consider the employment Qiaodan offers workers as being a "social good" that outweighs any damage the brand inflicts on Jordan's image, Ross said.

"The reason this would be a close case at all is that the company is doing pretty well and might be a good employer," Ross said.

Perhaps because of that view held by the court, Ross said, Jordan's lawyers say on a website that Jordan will donate any money granted to him to "growing the sport of basketball in China."

Ross and Yuan both said they expect the court to rule in favor of Jordan. Ross said he expects to see the company stopped from selling sporting goods under the name Qiaodan and stripped of the

trademarks it registered.

Marc E. Fineman, an IP partner at Levenfeld, Pearlstein LLC, said if the court stops Qiaodan from using Jordan's name, the case could act as an example of China starting to give IP rights more respect.

"It's kind of happened in part almost organically because China's become such a significant global market and economy," Fineman said. "But it's also a result of pressure from a lot of other countries that do have very robust IP enforcement laws and procedures."

Yuan said China's IP right protections should develop along with the country's economy as the Chinese people realize, "they need to respect IP for their own business, their own innovations."

Yuan said America went through a similar learning process.

"I'm sure you probably remember Napster," said Yuan, referring to the former file-sharing network widely used to take unauthorized copyrighted music.

"Both sides are learning," Yuan said. "Here, we got rid of Napster. Now we have iTunes. Who knows, maybe 10 years from now (China) will not have these activities."