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Chinese court may compare Yi, Jordan

If China were a common law country, Michael Jordan has a good chance of winning the right to reclaim his last name in Chinese in China, because the Beijing High People's Court recently sided with another NBA basketball star who was also a victim under similar facts.

This other victim is Yi Jianlian (last name is Yi), a 7-foot NBA player with the Dallas Mavericks. He is a Chinese native from Guangdong (the province nearest to Hong Kong) and was drafted by the Milwaukee Bucks in 2007. His playing days started at the young age of 12 when, at about 6-foot-4, he was spotted by a basketball coach at a street basketball tournament in Guangdong in 1999.

Yi began playing for a professional club in the Chinese Basketball Association when he was only 15 years old. He quickly excelled over his peers and won accolades such as the rookie of the year and membership in the national youth team, among other honors in 2002. By 2005, he improved his skills to win the association's MVP award.

While he was busy sharpening his skills during the 2002-2003 season in Guangdong, a company called MingLe China Co. Ltd. in Fujian (the province nearest to Taiwan) was busy chiseling Yi's name onto a company plaque. In fact, MingLe filed two trademark applications using Yi's name, both in Chinese characters and in English, in 2003. The two trademark applications were later registered in 2005 and consequently transferred to a company called Yi Jianlian Sporting Goods Co. Ltd. in 2009.

Yi discovered this blatant violation of his name and identity in 2006 and sought to cancel both marks before the Trademark Review and Adjudication Board, alleging violations of Article 31 of the 2001 Chinese Trademark Law,

which states: "An application for the registration of a trademark shall not create any prejudice to the prior right of another person, nor unfair means be used to preemptively register the trademark of some reputation another person has used."

Yi argued, at minimum, that the right to his name is his "prior right of another person," according to the law. Yi further alleged the defendants infringed his rights under Article 13 of the law, which states, in pertinent part: "Where a trademark in respect of which the application for registration is filed for use for identical or similar goods is a reproduction, imitation or translation of another person's trademark not registered in China and likely to cause confusion, it shall be rejected for registration and prohibited from use."

On Nov. 30, 2009, the board ruled in Yi's favor and found that, by the time the two applications were filed, Yi was a well-known basketball player in the Chinese basketball world. But the board did not find infringement under

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Article 13 of the law, because Yi failed to present evidence that he filed any trademark application for his name.

Surprisingly, Yi Jianlian Sporting Goods Co. Ltd. appealed the board's decision. The company claimed that Yi was not well-known back in 2003. After losing its first appeal, the company sought a second appeal before the Beijing High People's Court. On July 30, 2010, the Beijing High People's Court affirmed the board's decision and held that Yi's right to his name is indeed his "prior right" under Article 31 and that the company had infringed this right.

Of course, China is not a common law country and the Yi decision by the Beijing High People's Court is not precedential for the Shanghai 2nd Intermediate People's Court. That court will hear Jordan's case against the company, Qiaodan Sports, that uses the transliteration of his last name in Chinese.

In addition, the facts in Jordan's case are different from that of Yi: It appears that Jordan didn't sue under the theory of trademark infringement, but a copyright infringement; Jordan doesn't have a native Chinese name as Yi; Qiaodan Sports filed the first "Qiaodan" trademark application on April 14, 1997, and Jordan didn't file his case until 2012, some 15 years later.

On the other hand, Jordan may have the law on his side as he could amend his complaint to include a trademark infringement claim under Article 31 of the law. Jordan also has other favorable factors: The Yi decision is well-reported in China; Qiaodan Sports filed the first trademark application in 1997, at the height of Jordan's popularity and the year after the Bulls won a record 72 games in a regular season; and Qiaodan Sports was more aggressive than Yi's infringer. Qiaodan Sports has filed between 100 to 150 Chinese trademark applications in Jordan's name as well as Jordan's sons' names in Chinese.

By the way, Kobe Bryant, you should start seeking legal advice soon as another Chinese company already filed a trademark application using your name in Chinese along with your old jersey number "8" on April 6, 1999: Chinese trademark registration number 1408187 with a term until June 13, 2020. Another company is using "Kobe" in Chinese characters as its company name: Fujian Kobe Sporting Goods Co. Ltd. (kobesport.com/sonhoo/company_web/index-181998.html).

Also, Steve Nash, check out this Chinese registered trademark number 4705818, filed on June 7, 2005. I assume you didn't authorize MingLe to file this application on your behalf?

Lastly, another favorable factor for Jordan is: What do Qiaodan Sports, MingLe, Yi Jianlian Sporting Goods Co. Ltd., Fujian Kobe Sporting Goods Co. Ltd. and the company that filed Kobe's trademark applications have in common? They all share the same address in their trademark applications.

So, despite being in a civil law system, not all hope is lost for Jordan and there should be plenty of facts to support his claim.