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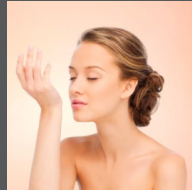
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Dear readers,

What's better than cheer the new month with a glass of wine?

Brunello di Montalcino is one of the most well-known and good wines of Italy, and we must say that its fame has gone beyond the borders of Europe and reached Asia, where it's very popular, and is considered to enjoying "good reputation".

And this is one of the reasons why Brunello recently succeeded in invalidating 3 trademarks, registered in China in 2017. Big hurrray for Brunello (and HFG for winning the case).

Not wine but liquor is the protagonist of another victory, against the call for "generization" (a black beast for all the

famous trademarks). Cognac cannot be considered a generic name for brandy: read why in the second article.

The France-based international company L'Occitane was launched in 2005 across China and is today following its success story in Asia by winning a lawsuit for trademark infringement and unfair competition in China, with an award of 9 million RMB.

The next article covers the release of new Measures for the Supervision and Administration of Online Transactions, aimed at regulating the collection and storage of personal information and protect companies and clients involved in E-Commerce.

Surgery, injections, cosmetics are not the only way to stay young: regular

exercise and a balanced diet can also make you feel, and maybe appear, younger.

But what about hyaluronic acid skin care health food? Are they reliable? Read the article before trying them!

Stay cool, stay informed, read GossIP!

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IP Law

Brunello di Montalcino cancels 3 bad faith trademarks



In May 2021 the Chinese Trademark Office (“CNIPA”) issued three favorable decisions in favor of Consorzio del Vino Brunello di Montalcino (“Consorzio”) granting the invalidations of the trademarks No. 19499293, No. 19478661 and No. 19480760 “Brunello di Montalcino” in classes 21, 18 and 35 on the ground of bad faith by the applicant.

Brunello di Montalcino is a prestigious Italian wine obtained from the vinification of a variety of Sangiovese vine called “Brunello” or “Brunellino”.


Brunello di Montalcino has been granted the Protected Denomination of Origin (“PDO” or “Doc” in Italian) in 1966 and furtherly in 1980 has been selected as the first Italian wine to obtain the Controlled and Guarantee Denomination of Origin (“DOCG”).


The DOCG is exclusively reserved to DOC wines from at least ten years, which are distinguished with particular quality, in relation to the intrinsic qualitative characteristics.


Going back to cases at issue, once aware of the presence of these trademarks in the Chinese Trademark Registry, the Consorzio appointed Studio Tonon - Lo Vetro & Partners and HFG Law & Intellectual Property for obtaining protection against the blatant squatting case.

On September 2, 2020, Consorzio, represented by its attorneys, filed the three invalidation actions against the trademarks No. 19478661, No. 19499293 and No. 19480760 owned by J.C. BOUTIQUE LIMITED.

The decisions were issued timely in only 8 months and are all favorable to the Consorzio. Reading through the decisions we can learn many important elements.

 Consorzio is the owner of a registered trademark granted for protection in China on the date prior to application date of disputed trademarks and designated on the goods of “wine” in Class 33.

 The disputed trademarks were applied in 2016 and the registration was granted in 2017.

 They all designate goods and services (class 18, 21 and 35) which are not similar to those designated under the prior trademark owned by Consorzio (class 33).

Considering that the registration date of disputed trademarks is earlier than November 1, 2019, according to the principle of non-retroactivity, the Trademark Law of 2013 shall apply to substantive issues of the present cases, and the Trademark Law of 2019 shall apply to procedural issues of the cases.

The decision recognize that Brunello di Montalcino enjoys certain reputation China due to use and advertising within the territory.

However, the goods designated under the disputed trademarks are not similar and not relevant to wine, therefore there is not likely hood to mislead the relevant public.

Thus, the registration and use of disputed trademarks is not a violation of Article 16.1 of Trademark Law which protects the Geographical Indications (See Note 1 for the all text of art. 16).

In a similar way the decisions **exclude the violation of Article 32 of Trademark Law** (Note 2) which provides that protection is granted to trademark that are in use and enjoy certain reputation, Article 10.1.7 of Trademark Law (Note 3) which prohibits the registration and use of trademark that mislead the public about the characteristics of the goods such as the quality or the place of origin; and Article 10.1.8 of Trademark Law refers to the trademark that is inherently detrimental to political system, religion, customs, etc.

However, as we said above, the three trademarks were declared invalid. Indeed, the Re-Examination Board of CNIPA recognized that the three trademarks filed by J.C. BOUTIQUE LIMITED all stand in violation of art. 44 of The Trademark Law (2013).

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Let us read the words of the decision on this point.

“In this case, the evidence submitted by Applicant is sufficient to prove the reputation of “Brunello di Montalcino” on wines on the date prior to Application date of Disputed Trademark.

The identical trademark filed by Respondent could not be simply deemed as coincidence. The Respondent also filed large numbers of trademarks in Classes 9, 14, 18, 21, 25 and other classes, including “Oliver Peoples”, “TOMMASI”, “pradalupo”, “普拉达露波”, “Costa Rossa”, “FILIPPO GABRIELE”, “RICCARDO TISCI”, “di San Leonarda” that are similar to some famous brands or fashion designers.

However, Respondent failed to make explanation on these trademarks. Such behavior of Respondent cannot be recognized as justified behavior based on good faith.

Based on the above, the Office holds the aforesaid behavior is obviously beyond the normal production and operation needs, and take free ride on famous brands for improper interests, which violates the principle of good faith, disturbs the trademark administration order, and impairs the fair competition market.

The registration of Disputed Trademark has violated the Article 44.1 of Trademark Law of 2013.”



Fabio Giacobello
HFG Law&Intellectual Property

Note 1 Article 16. A trademark shall not be registered and its use shall be prohibited if it consists of or contains a geographical indication in respect of goods not originating in the region indicated, to such an extent as to mislead the public; however, registrations made in good faith shall continue to be valid. A geographical indication referred to in the preceding paragraph is a sign which indicates a good as originating in certain region, where a given quality, reputation or other characteristic of the good is essentially attributable to the natural or human factors of the region.

Note 2 Article 32. An application for registration of a trademark shall not be of such a nature as to infringe the existing earlier right of another person. An application shall not be made with intent to register a trademark which is used by another person and enjoys certain reputation.

Note 3 Article 10. The following signs shall not be used as trademarks: (7) those having the nature of fraud, being liable to mislead the public about the characteristics of the goods such as the quality or the place of origin; or (8) those detrimental to socialist morality or customs, or having other unhealthy influences.

IP Law

Cognac succeeds against genericization attack



When you take an aspirin or you use the cellophane, you probably think that these are the common names used to refer to such goods. That's not entirely true. At the beginning, these were trademarks which, after being used to define the products, became generic. So, they lost their trademark protection.

When this happens, it is called generization. Indeed, since generic terms define a product, so they cannot be registered as trademarks.

This is what reported by the Article 11 of the Trademark Law, establishing that, among others, Marks that only bear the generic names, devices, or model numbers of the goods, shall not be registered as trademarks.

The risk of becoming generic is also actual for Geographic Indications.

Briefly, as defined by the Article 16 of China Trademark Law, the geographical indication refers to a sign indicating the place of origin of the goods of which the special quality, reputation or other characteristics are primarily determined by the natural conditions or other humanistic conditions of the location involved.

This kind of trademark indicates the origin, specific quality, prestige or other features of the goods.

It's immediately clear that the danger of identification of a generic name with the product itself, it's quite high.


The Bureau National Interprofessionnel Du Cognac (BNIC) is well aware about it. Indeed, recently, a French interprofessional organization developing the famous brandy and representing the collective interests of professional wine growers and merchants, has faced a case of genericide.


The BNIC filed the applications for registration of the geographical indication collective trademark for "Cognac" and "干邑" (Chinese characters of Cognac) in Class 33 in 2016.

Both the applications were preliminarily approved and published in 2018.

The entities ZHOU Liangbo and Guangzhou Liu Fa Wine Co., Ltd. filed oppositions against the two trademarks, arguing that the applied trademarks have become generic names for brandy, thus are unregistrable.

Refuting the claims of the two Opponents, among all, the BNIC mainly argued that:

 "Cognac/干邑" is an appellation of origin/geographical indication for French wine, not the common name for brandy wine, so they are distinctive.

 As famous foreign place names, "Cognac/干邑" enjoys high reputation in China, which strengthens their distinctiveness.

 The opposition proceeding was instituted in bad faith.

The CNIPA dismissed the opposition filed by the third party on March 26, 2020 establishing that they did not submit enough evidence against the BNIC to prove that the opposed trademarks "干邑" and "COGNAC" have become generic names for brandy.

Consequently, both the trademarks "干邑" and "COGNAC" have proceeded to registration.

This case is an important reminder for companies involved in the production of word-wide-used products, such as pharmaceutical or, exactly, beverage.

Indeed, no matter how strong trademarks are, over the years they can become generic and lose their protection as trademarks.

Of course, when a brand name becomes generic, its common usage becomes free word-of-mouth advertising.

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However, it comes with a price.

There are few things the company can do in order to avoid the genericide, such as adding the word "*brand*" after the trademark on the product packaging or adding a description after the trademark.

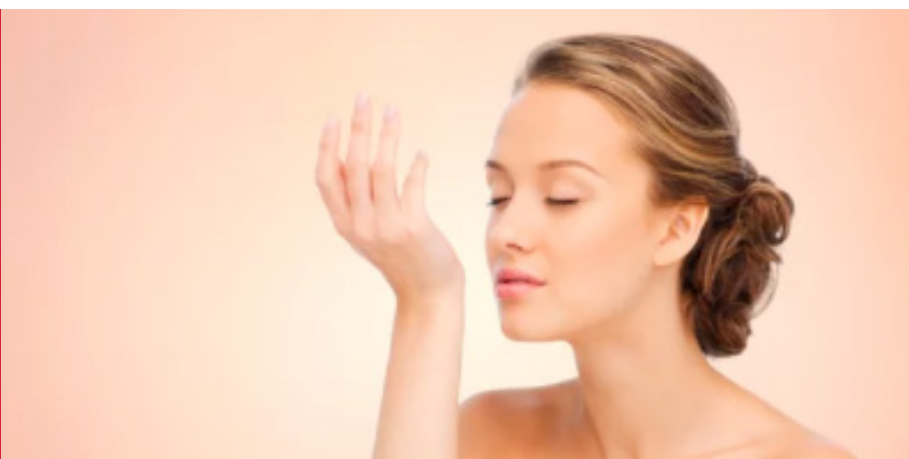
However, the best suggestion it's always the same. It's fundamental for foreigners' companies to establish guidelines for the usage of their trademarks in China.



Silvia Capraro
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IP Law

L'Occitane: the sweet perfume of the victory



In June 2021, the Zhejiang Higher People's Court issued a favorable verdict to L'Occitane, awarding the famous company with 9 Million RMB (1.4 Million USD) for trademark infringement and unfair competition.

L'Occitane contested to the defendants, Zhejiang Junda Biotechnology Development Co., Ltd. (Junda) and Guangzhou Ailian Cosmetics Co., Ltd. (Ailian), trademark infringement and unfair competition in relation to the "Andorheal Fragrance Body Lotion" sold in a bottle similar to "L'Occitane's Cherry Blossom Shimmering Lotion".

In 2019, L'Occitane found out a product called "Andorheal Fragrance Body Lotion" sold by Junda "Andorheal Flagship Store" via a mainstream e-commerce platform.

The Defendant's product looked very similar to its L'Occitane's "Cherry Blossom Shimmering Lotion", in the shape of the bottle, in its cherry blossom motif and in the design of the mouth. And the price was really (let's say) competitive.



Comparison between L'Occitane original (on left) and the infringing product (on right)

In the first instance judgement, the Intermediate People's Court of Hangzhou City recognized the trademark infringement and the unfair competition committed in detriment of the French company.

Based on the decision, Junda and Ailian should have paid respectively a compensation of 3 million RMB and 6 million RMB. However, the Defendants appealed.

In the second instance judgement, Ailian and Junda claimed that the first instance judgment did not consider the cost-effectiveness and argued that the amount of compensation in the issued decision was unfairly high.

Further, Ailian claimed that it had changed the package of its products after the company was sued, so the act of manufacturing and selling the newly packaged products was not trademark infringement and unfair competition.

Consequently, the appellants asked to reduce the compensation.

Notwithstanding the mentioned argument, the Zhejiang Higher People's Court recognized that the shape of the bottle, the size and quantity of the flowers as well as the patterns of the cherry blossoms remain too similar to those of the products of L'Occitane to change the verdict.

Furthermore, Ailian Company's production and sales of the newly packaged products also represented trademark infringement and unfair competition.

On one side, they imitated the trademark on the packaging of the products. On the other side, the product descriptions on the infringing product sales webpages were similar to the L'Occitane.

In brief, the risk of confusion for the consumer was too high and the amount of compensation was maintained.

In this case, the Court recognized that the products produced by the defendant fully imitated the trademarks, packaging and decoration of L'Occitane's earlier use of the well-known L'Occitane cherry blossom products.

Although the defendant changed the logo and packaging and decoration after the lawsuit, the changes were subtle and still similar to L'Occitane's trademark, packaging and decoration.

The decision is worth of note for the significant meaning of "similarity" adopted by the Judge.

Decisions like this shall be considered as a big step toward a more accurate protection of the trademarks in front of the abuse and – not less important – an application of the newly issued Trademark Law which puts a lot of attention on the damage compensation.

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Tech Law

More order for e-commerce



With the rapid development of the e-commerce, the new forms like “social online”, “livestreaming sales”, etc. are emerging. The Measures for the Supervision and Administration of Online Transactions (the “Measures”) published by State Administration for Market Regulation took effect on May 1, 2021. Let’s take look at the shining points of the Measures.

✓ Three Years Saving Rule

It is worth noting that the Measures point out that the livestreaming videos shall be saved for not less than three years from the end of the livestreaming, which means that the livestreaming videos shall be saved at least three years, and if possible, the longer time is encouraged.

The three years saving rule is in line with the provisions of Article 31 of the E-commerce law that “the time for preservation of trading information on goods and services and trading information shall not be less than three years from the date of completion of the transaction”.

In addition, the information about online stores, commodities, streamers and sales fully recorded in such live videos will enable the right owners, administrative law enforcement departments, public security departments and judicial departments to have a good and clear record of cracking down on counterfeiting commodities in the future, and efficiently find out the illegal operators involved in the infringing commodities, and carry out investigation one by one.

✓ Personal Information Protection

Currently, the excessive collection of personal information and abuse of personal information by the platform or the operators in the platform have become the most concerned issues of consumers in online transactions.

In daily life, the consumers often encounter the situation that they can't use App if they don't agree to authorize e-commerce to use or collect personal information.

Regarding on this, the Measures states that the online transaction operators must follow the principle of necessity to collect and use consumers' personal information.

The purpose, method and scope of collecting and using information must be clearly stated and agreed by consumers.

In addition, online transaction operators shall not force the consumers to agree to collect and use information that is not directly related to business activities by means of one-time authorization or default authorization, etc.

Like above-mentioned, we can see that the principle of necessity shall always be followed when collecting the personal information, and this principle has the similar provision in Cybersecurity Law and Civil Code.

It is worth mentioning that the Article 1036 of the Civil Code clearly states that a person will not bear civil liability for any other activity performed in a reasonable manner and for the purpose of protecting the public interests. This implies that people need to make certain concessions on personal information in front of public interests.

✓ “Choose One Platform over Others”

The e-commerce platforms normally set a rule stipulating that the merchants can only choose one e-commerce platform for promotion among the different shopping platforms during the annual shopping festival held by the e-commerce platforms. The “Choose One platform vore Others” has become a hot issue in the annual e-commerce activities like “Double 11” or “6.18”.

The essence of this rule is that the platform can eliminate competition by signing an exclusive agreement with the trading counterpart, which is contrary to the principle of voluntary equality.

Such rule of restricting transactions has brought great negative impact on the market environment and consumer interests.

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Meanwhile, the person in charge of the online supervision of the State Administration for Market Regulation said that due to the strong concealment of the restrictions implemented by the platform, from the perspective of practice, it has increased the difficulty of supervision and law enforcement.

The Measures make clear that the platform shall not prohibit or restrict the operators of the platform from independently choosing to carry out business activities on multiple platforms or using improper means to restrict the operators to carry out business activities only on specific platforms by removing goods from shelves, restricting operation, shielding stores, and increasing service charges.

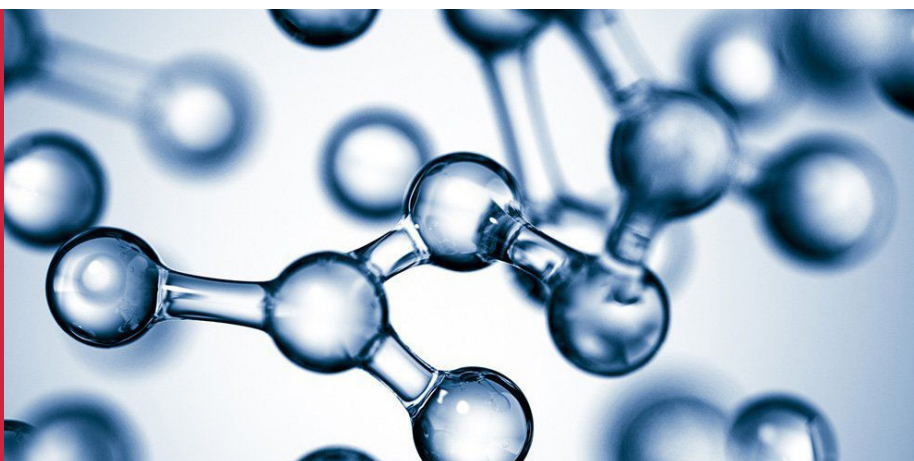
At the present stage, the Anti-monopoly Law is mostly applied to regulate the “*Choose One Platform over Others*” issue, and the relevant market definition and market dominant position are two major issues in the determination of abusing market dominant position, which need to be analyzed based on specific case.

Karen Wang
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Food Law

Can Hyaluronic Acid Foods give you beautiful skin?



Nowadays, functional foods are very popular on the market, including the famous hyaluronic acid food. In addition to the common cosmetic surgery shaping and wrinkle removing injections, facial moisturizing cosmetics and so on, now the hyaluronic acid foods also come out on the market. Are you surprised? However, are such hyaluronic foods reliable or not? Let me talk from the perspective of food laws and regulations.

✔ What is hyaluronic acid?

Firstly, Hyaluronic acid is a kind of sulfur-free straight chain mucopolysaccharide, which is composed of D-glucuronic acid and N-acetylglucosamine. It is widely distributed in connective tissue, epithelial tissue and nerve tissue of human body. It was first isolated from bovine vitreous by scientists from Columbia University in 1934.

Hyaluronic acid has many important physiological functions, such as skin water retention, joint lubrication, regulation of vascular wall permeability, regulation of protein and promotion of wound healing. It is widely used in biomedicine, cosmetic plastic surgery and cosmetics.

✔ So how did hyaluronic acid expand from your dressing table to your dining-table?

Hyaluronic acid first appeared as health food. At the end of the 20th century, Japan first launched hyaluronic acid skin care health food.

At present, hyaluronic acid health food has been recognized and listed in many regions of the world. There are many kinds of health food containing hyaluronic acid on the market in the United States, Great Britain, Canada, Czech Republic, Japan, Taiwan (China) and other regions.

As far as 2020 is concerned, more than 100 kinds of food containing hyaluronic acid are available on the market in Japan.

Studies proved that oral hyaluronic acid has the functions such as rehydrating, improving joint function and osteoporosis, repairing gastric mucosal injury, accelerating wound healing, improving cardiovascular system, improving symptoms of chondrosis, improving human immunity, promoting angiogenesis, etc.

In May 2008, under the application of Huaxi Biology, the leading manufacturer of “Hyaluronic Acid”, the Ministry of Health of China issued relevant announcement in accordance with the provisions of the “Measures for the Administration of Novel Food Material”, and approved sodium hyaluronate as a novel food material which can be used as raw material for health food, but only for health food.

Huaxi Biology then launched hyaluronic acid health food “HYLOVY” and the global oral beauty brand “Plumoon”.

It should be noted that the raw material of this health food approved by China is “sodium hyaluronate”.

Sodium hyaluronate is a kind of straight chain macromolecular polysaccharide, which is produced by fermentation of streptococcus equi subspecies, zooepidemicus with glucose, yeast powder and peptone as culture medium.

“Hyaluronic acid” and “Sodium Hyaluronate” have similar effects. The difference is that “Hyaluronic acid” is an acid and “Sodium Hyaluronate” is salt. Sodium hyaluronate, which contains sodium, is more stable and has smaller molecules, which can be absorbed and penetrated more effectively in the deeper skin.

There are more than 20 kinds of health food containing “Sodium Hyaluronate” on the market in China. Most of the declared functions are “improving skin moisture” and “increasing bone density”.

With the in-depth study on the functions of Hyaluronic Acid in China, the application of Hyaluronic Acid in the food field is gradually enriched, and the demand is increasing.

The leading manufacturers continue to apply for “Sodium Hyaluronate” as a novel food material for general food production.

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In January 2021, the National Health Commission announced that “Sodium Hyaluronate” was listed as a novel food material and allowed to be added to general food.

As a novel food material, the announcement of the National Health Commission specifies the application scope and recommended maximum dosage of “sodium hyaluronate” in general food, that is:

- ❁ dairy and dairy products (0.2g/kg),
- ❁ beverages (liquid drinks in ≤ 50 ml packaging 2.0 g/kg, 51-500 ml package 0.20 g/kg, solid drinks converted according to the liquid volume after preparing),
- ❁ alcoholic beverages (1.0 g/kg),
- ❁ cocoa products,
- ❁ chocolate and chocolate products (including alternative cocoa butter chocolate and products),
- ❁ candy (3.0 g/kg),
- ❁ frozen drinks (2.0g/kg).

Dosage: ≤ 200 mg / day

Unsuitable for infants, pregnant and breastfeeding women.

Note:

- ✓ In addition to the food categories that can be added with “Sodium Hyaluronate” as specified above, “Sodium Hyaluronate” shall not be added to other food categories.
- ✓ “Sodium Hyaluronate” should not be used in infant food.
- ✓ If “Sodium Hyaluronate” can be added to the food category as specified above, it is necessary to give the note, it is not suitable for infants, pregnant and breastfeeding women, and the maximum amount should not exceed 200 mg / day.

The quality specifications of Sodium Hyaluronate must meet the followings:

Character	White particles or powders
Sodium Hyaluronate content, g / 100g	≥87.0
Moisture content, g/100g	≤10.0
pH	6.0–8.0
Ash content, g/100g	≤13.0

Since “Sodium Hyaluronate” has been approved as a novel food material, can the food containing “Sodium Hyaluronate” have a functional claim?

Firstly, the name of the raw material should be “Sodium Hyaluronate”, not “Hyaluronic Acid”.

Secondly, according to the novel food material approval process of Sodium Hyaluronate, it shall be discussed based on “health food” and “general food”.

✓ The functional claim of health food containing “Sodium Hyaluronate”

In 2008, the Ministry of Health approved Sodium Hyaluronate as a novel food material for health food, that is, Sodium Hyaluronate can be added to health food.

However, the function claims of health food are strictly limited. There are 27 kinds of health function claims approved by the State, including “improving skin moisture” and “anti-oxidation” in terms of beauty.

However, claims such as “improving skin, making skin beautiful” are not approved.

✓ General food containing “Sodium Hyaluronate”

In 2021, the Ministry of Health approved Sodium Hyaluronate as a novel food material for designated general foods.

Can claims of beautiful skin be used for general food?

The answer is NO.

General foods are not allowed to have claim of therapeutic effects. According to the Article 71 of the Food Safety Law: labels and instructions of food and food additives shall not contain false contents or involve in the functions of disease prevention and treatment.

The producers and operators shall be responsible for the contents of the labels and instructions provided by them. According to these provisions, it is illegal to claim that general food has therapeutic function.

Therefore, the health food containing Sodium Hyaluronate can have functional claims, but the claims should be within the specified scope of functions, such as “help to improve skin moisture status” or “assist to antioxidation”, other claims might violate the rules.

As for general foods containing Sodium Hyaluronate, function claims cannot be used. Then how to promote “Sodium Hyaluronate” in advertisement?

The answer is that it shall follow the provisions of Advertising Law and the Anti-unfair Competition Law, and no false publicity shall be involved.

✓ What does expert say about the Hyaluronic Acid?

Let's take look at Hyaluronic Acid from the perspective of scientific principles. The technology of Hyaluronic Acid is tested and it has been approved, it should be safe for human body as long as the daily intake is less than or equal to 200 mg / day.

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Comments from experts:

Ruan Guangfeng, director of Science and Technology Department of Kexin food and nutrition information exchange center, said that:

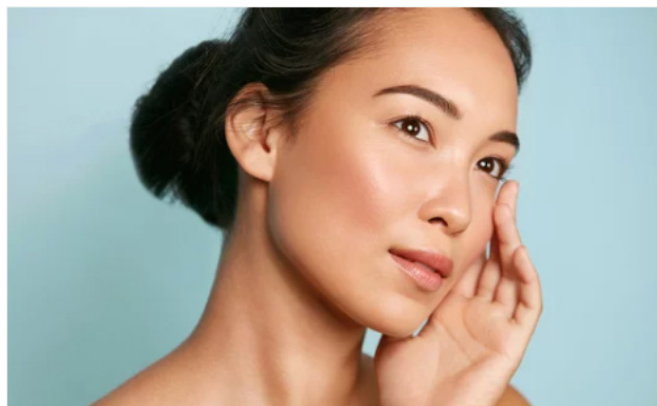
“Hyaluronic Acid is a macromolecular polysaccharide, which cannot be directly absorbed by the human body. It needs to be digested and decomposed by the gastrointestinal tract and converted into small molecules of sugar before it can be absorbed and utilized by the human body.

Secondly, the human body can synthesize Hyaluronic Acid by itself.

Hyaluronic Acid is synthesized by membrane protein hyaluronic acid synthase that is already in the human body, and it can synthesize Hyaluronic Acid by adding the substrate produced by human metabolism. Such basic raw materials can actually be obtained from diet and metabolites, no need to supplement Hyaluronic Acid at all”.

Another expert- Liu Shaowei, professor of the Bioengineering College of East China University of Science and Technology said that

“there is no widely recognized research achievement regarding how long monosaccharide can be synthesized and how much hyaluronic acid can be synthesized more experiments and data are needed to support the effect of Hyaluronic Acid”.



✔ So, do you think the Hyaluronic Acid food is a bit confusing?

Anyway, food safety of Hyaluronic Acid food is guaranteed. As for beautiful skin from Hyaluronic Acid food, we have to say that *“there is a long way to go”*.

Of course, if you want to try it, there is no problem since it has been approved. And we shall applaud for the company of *“hyaluronic acid”* who promoted it in China. Knowing the importance of compliance, it persistently applied novel food material approval for hyaluronic acid and finally achieved.

Enterprises shall always have compliance evaluation and apply for approval for novel food material newly developed, and always bear in mind that compliance is the bottom line.

Leon Zheng
HFG Law&Intellectual Property