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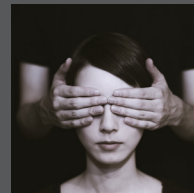
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Dear readers,

Bulgari is known worldwide for its marvelous jewels. Did it open a new activity?

One could think so, knowing about "Bulgari Music Coffee" ... But guess what? That Chinese Bulgari Coffee has nothing to do with Bulgari.

Speaking about brand names, what happens if a famous brand registers a trademark that already exists, for the same class of products? The case explained in the second article ends in a quite interesting way.

We discuss then the last step of the legislation about data and privacy in

China: started with the Cybersecurity Law in 2017, followed by the Data Security Law (DSL – we talked about it in the previous issue of GossIP), this time we tackle the newly issued Personal Information Protection Law.

Marketing is not an easy world. What can brands do to make their name unforgettable? The fourth article talks about a contract which was found to be illicit due to a clause asking to remove from the results of search engines the negative results.

And speaking about negative results, read in the last article what happened in the fashion marketing with some brand ambassadors: something all of us can learn from.

Keep reading during this nice autumn, and don't forget to check out our new Instagram account: [hfg_law_and_ip](https://www.instagram.com/hfg_law_and_ip)

Enjoy autumn and read GossIP!

HFG Law & Intellectual Property

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INTELLECTUAL
PROPERTY



IP Law

Bulgari wins against "Bulgari Music Coffee"



It took years, but finally the Italian brand Bulgari is recognized as well-known trademark in China. This is how it succeeded in protecting the trademark despite the lack of registration for services as coffees and bars (class 43).

The case offers us the occasion to analyze two topics that often concern foreigner enterprises when it comes to trademark issues in China: the well-known recognition and the action of invalidations, which are – especially in this case – strictly connected.

Before jumping in the BULGARI vs Bulgari Music Coffee Case, it can be useful to provide with a short overview of the Chinese trademark system.

The invalidation is the procedure by which anyone who believes to be damaged by the registration of a certain trademark can obtain the cancellation of an existing registered trademark.



The invalidation procedure can be filed within 5 years from the registration date. Whenever a trademark has been in registration for more than five years, it is still possible to file an invalidation, only when the plaintiff prove the two following requirements:

- i the prior trademark claimed for protection should be well-known before the filing date of the disputed trademark (i.e. considered reputable and that the general public commonly knows about);**
- ii the bad faith of the applicant.**

The above-mentioned scenario is what – summarizing – happened in the present case.

In 2013, Bulgari filed an invalidation against the trademark N. 6085778 filed in Class 43 on 2007/06/04 (“*disputed trademark*”), claiming the prior registration No. 3811212 (“*the cited mark*”).

This, despite 5 years from the registration date already passed.

Cited Trademark	Disputed Trademark
	

For this purpose, and for the reason explained above, in order to overcome the 5 years preclusion for the invalidation, Bulgari claimed that it should have deserved the well-known trademark protection and the bad faith of the Cai Qing He.

Cai Qing He, trying to keep his registration valid and alive, submitted evidence showing the use of the attacked trademark on the services relating to the operation of the music café adopting the name BULGARI music café in Chinese 宝格丽音乐咖啡 (Bǎo gé lì yīnyuè kāfēi) and argued that the trademark obtained certain reputation.

According to the registrant, back in 2009 the time of the filing of the Disputed Trademark, Bulgari's cited trademark hadn't become well-known, therefore Bulgari's claims for well-known trademark protection cross class should not have been accepted.

In the first place the TRAB (currently CNIPA) accepted Cai Qing He argument. However, BULGARI appealed and the Beijing IP Court deemed that, according to the evidence of sales submitted by Bulgari, the company started to sell jewels in China in 2005.

This said, the trademark had become well-known among the Chinese consuming public way before the filing date of the disputed trademark.

The disputed trademark was composed by the combination of the Chinese characters 宝格丽音乐咖啡 (Bǎo gé lì yīnyuè kāfēi), identical with the Chinese characters of the Italian trademark 宝格丽 (Bǎo gé lì).

Therefore, the Chinese registration was more than merely inspired by Bulgari's trademark.

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The IP Court recognized his bad faith in registering the subject trademark and the invalidation request.

In particular, according to the Court the disputed trademark has violated the article 13 (2) of 2001 China Trademark Law and the disputed decision should be rectified. Where a mark is a reproduction, imitation, or translation of a third party's well-known trademark that has not been registered in China in respect of identical or similar goods, which is likely to lead to confusion, such mark shall not be registered and shall be prohibited from being used.

Further confirmation of the conclusions from the first instance Court came from the Beijing High People's Court. According to the Judges, when applying the well-known trademark protection clause, there are few elements that shall be taken into consideration:

1. strength of the mark;
2. similarity between the marks;
3. use of the designated goods;
4. the target consumers.

Said what above, the Beijing High People's Court concluded in favor of Bulgari.

As a consequence, the trademark "BALCARY MUSIC COFFE + DEVICE + BULGARI MUSIC COFFE" (in Chinese) was invalidated since it was filed in violation of a priorly registered well-known trademark and misleading the consumers.



Take away from the present case

- ✓ obtaining the recognition of well-known trademark is complex and only a very limited number of super famous brands can reach this level.
- ✓ CNIPA has more restrictive approach than Courts on complex legal issues such as well-known trademark recognition.
- ✓ Don't let the 5 years preclusion pass by, monitor the Trademark Gazette, and take action promptly.

Silvia Capraro
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IP Law

“POLO” sues “POLO RALPH LAUREN”:
guess the result



Polo Ralph Lauren is famous for its preppy look started by its founder Ralph Lauren. The brand has always been dedicated to protect its intellectual property rights, starting from the famous dispute with the conational U.S. Polo Association who uses a trademark of two polo players on a horse.

In China, Polo Ralph Lauren is fighting – as many other brands – against several companies trying to register and use similar trademarks.

In this article we are reviewing the case against Guangzhou Aichi Leather Products Co., Ltd. (Aichi), owner of the trademark “POLO” No. 3301575 Class 18.

Recently, the Beijing IP Court ruled in favour of the American brand with a second instance decision which overturned the previous judgement.

In 2016 Aichi sued the American company for the infringement of the trademark “POLO” in class 18 (leather goods and luggage) and won the first instance being awarded 3ml RMB damages.



Background

Guangzhou Aichi Leather Products Co., Ltd. (Aichi)’s “POLO” trademark No. 3301575 Class 18 was approved for registration in August 2007. Ralph Lauren Trading (Shanghai) Co., Ltd. (“Ralph Lauren”)’s parent company owns trademark registrations No. 1230236 “POLO BY RALPH LAUREN” and No.1620757 “POLO RALPH LAUREN” for bags in Class 18.

In 2016, Aichi purchased dozens of bags with the logo “POLO RALPH LAUREN” from RALPH LAUREN’s stores. Then, Aichi filed a lawsuit to the Court alleging that Ralph Lauren’s use of the trademark “Polo Ralph Lauren” infringes its prior trademark rights on POLO.

In the 1st instance, the Beijing Chaoyang District People’s Court held that, established in the year 2009 in China,

Ralph Lauren and its related companies’ first use of the disputed trademark over “bags” was much later than the application date (May 14, 2007) of the disputed trademark “POLO”.

Further, there are other “POLO” trademarks filed by Ralph Lauren in Class 18 that were rejected by the CTMO and TRAB (currently known as CNIPA). The Beijing Chaoyang District People’s Court concluded that the malice of Ralph Lauren was obvious. The Court ruled that Ralph Lauren should compensate Aichi economic losses of RMB 3 million and reasonable expenses of RMB 30,000.

Ralph Lauren, not satisfied with the 1st instance decision, appealed to the Beijing IP Court (herein after referred to as the Court) which reversed the 1st instance decision and dismissed all Aichi’s claims.

Beijing IP Court’s opinion

The court found that Ralph Lauren’s use of the trademark should not cause confusion among relevant consumers and is without malicious intention.

The court found that although many products – such as backpacks in class 18 - sold by Ralph Lauren’s “RALPH LAUREN” and “POLO RALPH LAUREN” stores are with “POLO” logo or highlighted the “POLO” logo, the disputed stores are all using “RALPH LAUREN” as store signs or main logo, and there are also “POLO RALPH LAUREN” logo on the products or on the label of the products.

In terms of the specific way of using the alleged infringing logo, the aforesaid alleged infringing products were all displayed and sold at the exclusive stores of RALPH LAUREN, and marked the words of “RALPH LAUREN” and “RALPH LAUREN Trading (Shanghai) CO., LTD.”, which clearly indicates the provider of the alleged infringing products.

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Thus, the Court held that such use of the trademark will not cause confusion or misunderstanding as to the origins of goods or services to the relevant public.




Additionally, the court opines that RALPH LAUREN does not have the subjective intention to maliciously attach to the goodwill of Aichi's trademark. This is because RALPH LAUREN has applied and registered many "POLO BY RALPH LAUREN", "POLO RALPH LAUREN", "POLO" trademarks in Classes 18, 24 and 25. It also promotes and widely use its trademarks.

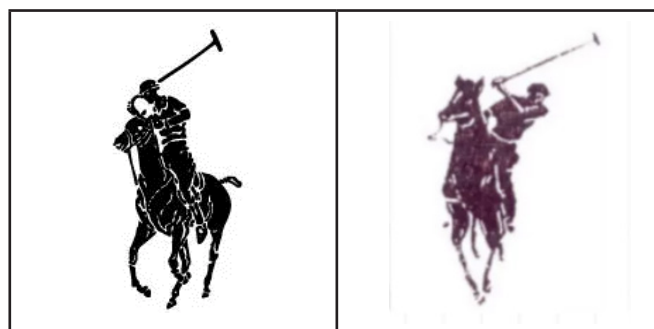
The "RALPH LAUREN" logo has formed a stable correspondence with Ralph Lauren and its affiliated company, and has a certain degree of popularity and influence.

Also, Aichi did not provide any evidence to prove its use of the trademark involved in the alleged infringing goods and the influence of its use.

Therefore, based on the abovementioned facts and documented evidence, the court held that RALPH LAUREN does not have the subjective motive and objective demand of maliciously trying to attach the brand reputation of Aichi's trademark.

Consequently, the Court decided to support Ralph Lauren's claim and revoked the 1st instance decision.

Appellant	Respondent
Ralph Lauren	Aichi
 No. 1230236; Class 18	 No. 3301575 Class 18
 No. 1620757; Class 18	
 Stores decoration from the internet	 Stores decoration from Polo sport's weibo
 Use of the trademark on bags from the internet	 Stores decoration from the internet



Comment

Generally speaking, no businessmen like to be involved in lawsuits. However, although reluctantly, many foreign brands were being involved with intellectual property disputes in China.

Some lawsuits are initiated by brands owner for IP protection, and some brands were passively involved because some trademark squatters not only want to take unfair advantage of the disputed mark, but even bite back towards the authentic trademark owner by alleging trademark infringement.

From this POLO case, we can see that even if the squatter successfully registered a trademark, when determining whether the authentic owner's use of the disputed trademark constitutes trademark infringement, the court will not only consider the similarity degree over similar goods, but will also take into account a variety of factors.

For example, the reputation, use and influence of the prior trademark, the way the alleged infringer uses the trademark and so on.

Although in this case the court did not comment on whether the lawsuit initiated by Aichi belongs to abuse of trademark rights, the decision still shows the court's attitude that if the trademark registrant intent to take unfair advantage from the disputed mark, and the use of the later could distinguish the origin of goods, it should not constitute trademark infringement.

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HFG Law&Intellectual Property

Tech Law

Facial Recognition: Supreme Court fixes basic rules



One of the recent innovations that the technology brought into our daily life is the facial recognition.

Even if it is relatively new, this technology and its implementation has quickly and pervasively permeated our lives, and the mainstream response of the public has also changed, from “convenient and hi-tech” to “intrusive and abusive”.

For individuals, the face information is highly sensitive, easy to collect, unique and unchangeable. In the event that the facial information is leaked, it can be an irretrievable situation, let alone the individuals’ suffering from the harm of properties and personal safety.

On July 27th 2021, the Supreme People’s Court (the “SPC”) has promulgated the Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Civil Cases involving the Processing of Personal Information Using Facial Recognition Technology (the “Provisions”), which has become effective since August 1st.

The promulgation of the Provisions from the SPC – who has no legislation power– is even earlier than the effectiveness of Data Security Law and the Personal Information Protection Law, which shows the importance and urgency of the Provisions.

There are sixteen articles in the Provisions, not very extensive but worthy-of-attention for each of them.

In the following parts, we highlight two most outstanding aspects of the Provisions.



Express, separate, written and voluntary consent.

In the Provisions, it is stipulated that the explicit consent of the individual (or his/her guardian in case of minors) shall be obtained before processing of the facial information.

This seems not new to us. The consent of data subjects is usually one of the key prerequisites for exemption. However, in practice, the individuals sometimes are not given any other alternatives but to agree with the collection and processing of facial information, which makes the “consent” an empty shell.

For example, some places offer no other options to its visitors but facial recognition; some Apps do not provide any services if the consent of facial information is not provided.

The above “coercive” situations have obviously been noticed by the SPC and are now expressly prohibited in the Provisions:

In any of the following circumstances, a defense claimed by an information processor on the grounds that it has obtained the consent of the natural person concerned or his/her guardian shall not be supported by the people’s courts:

- a. Where the information processor requires the natural person to consent to the processing of his/her facial information before providing a product or service to the natural person, unless the processing of such facial information is necessary for providing the product or service;*
- b. Where the consent to the processing of his/her facial information required by the information processor from the natural person is bundled with any other authorization; or*
- c. Any other circumstance under which the information processor forces or forces in a disguised form, the natural person to consent to the processing of his/her facial information.*

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In addition, it is also clearly and specifically pointed out in the Provisions that

a. using facial recognition technology to verify, identify, or analyze faces in hotels, shopping malls, banks, transport stations, airports, sports venues, entertainment venues, or other business places or public places in violation of laws or administrative regulations shall be considered as infringement of personal rights of a natural person; and

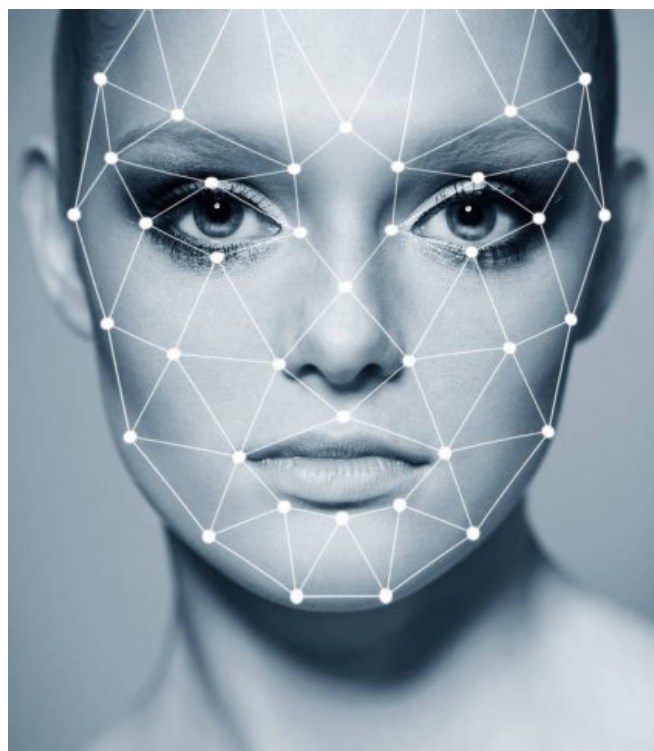
b. where a property service company or any other building manager uses facial recognition as the only means of authentication for owners or users of the property to enter or exit the property service area, a request for the provision of another reasonable means of authentication made by any owner or user of the property who does not consent to such use shall be legally supported by the people's courts.

We believe that the refined and detailed stipulations in Provisions will provide a more solid and more practical legal foundation of individuals' facial information protection.



Injunction against infringement

Pursuant to Article 9 of the Provisions, where a natural person has evidence to prove that an infringement of his/her right to privacy or any other personality right is being committed or is to be committed by an information processor using facial recognition technology, and that irreparable damage will be caused to his/her lawful right if the infringement is not stopped in time, if the natural person applies to a people's court for taking measures to order the information processor to stop the relevant act, the people's court may, depending on the specific circumstances of the case, issue pursuant to the law, an injunction against infringement of personality rights.



The right to apply for injunction in case of an infringement of personality rights is also stipulated in the PRC Civil Code.

This is a big step for SPC to expand or interpret “facial information” as “personality right”. In any case, the injunction is a strong and effective weapon provided by the Provisions to the individuals against infringement of facial information.

As an important part of Chinese data security section, we believe that the Provisions have comprehensively laid down the basic principles of facial information protection.

We will remain attentive to its implementation in judicial practice.

Claire Fu
HFG Law&Intellectual Property

Tech Law

Deleting negative info from search engine is illegal



On August 31st, Shanghai City Changning District People's Court released a news in relation to a contract dispute: the contract for providing service for suppressing negative information on search engines is invalid.

✓ Background of the case

The plaintiff is an online service provider, that supplies search engine optimization and online communication services. The Defendant has entered into a contract with the Plaintiff, where agreed that the plaintiff entrusted the defendant to provide technical services including Baidu optimization, Baidu bidding, Zhihu optimization and other services, and the service fee was RMB 67,300.

A clause for “*negative information suppression*” is also agreed in the contract: “*Search engine optimization for specified keywords to achieve no significant negative content on the first 5 pages of Baidu*”, “*Negative information suppression period of 30 days*”. The service fee was partially paid, and the Plaintiff was claiming breach of contract due to Defendant's failure to perform the service on suppressing negative information.

✓ Plaintiff's Argument

The Defendant did not perform its obligation agreed in the contract, achieving no obvious negative content of the brand on the first 5 pages of Baidu, which constitutes a breach of contract, and should bear the corresponding liability for breach of contract according to the law.

✓ Defendant's Argument

Both parties did not explicitly agree on the timeframe to achieve the “*negative information suppression*” optimization service, and the contract only agreed on “*no obvious negative content*” on the first 5 pages of Baidu, instead of “*no negative content*”.

Up to the date of the plaintiff's lawsuit, the Defendant has completed the keyword optimization of the official website and the opening of the Baidu bidding account according to the contract, and only two of the five negative contents requested by the plaintiff have not been successfully suppressed. There is no breach of contract in the performance of the contract.

Both parties agreed that unlike “*deleting negative information*”, suppressing negative information is not forbidden by the law^[1] there are 3 methods to achieve it:

- a. organizing the publication of positive information about a brand and increasing the number of clicks and readings so that the positive information is included in Baidu and displayed in the front of the search results, while the negative information is accordingly postponed.
- b. complaining to the publishing platform of the negative content and requesting the platform to disconnect the link or lower the weight of the negative content so that it cannot be displayed in the search results or the display position is set back.
- c. if the aforementioned platform does not follow the complaint requirements, the negative information can be linked to other content that has been downgraded through technical operations, so that the two are bundled and hence achieve the effect of downgrading and postponing the negative content.

The court did not support any of the arguments, but ruled that the clause for negative information suppression is invalid due to a violation of basic principle of civil law.

First of all, the purpose of “*negative information suppression*” is against the basic legal principle of honesty. As a new technology, the Internet has the characteristics of freedom, openness and sharing.

Internet search engine service can let the public know the real situation of civil subjects or related markets more conveniently and comprehensively, while the purpose of “*negative information suppression*” clause is to do the opposite, instead of letting the real situation be more accurately exposed in front of the public, it interferes artificially for private interests through an organized process.

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It allows the negative information of a specific civil subject to appear after “*dressed up*” so that it is not easily detectable or even difficult to trace. Such a purpose is already undermining the basic rules of civil behavior, and is aiming to undermine the core values cherished by society as a whole.

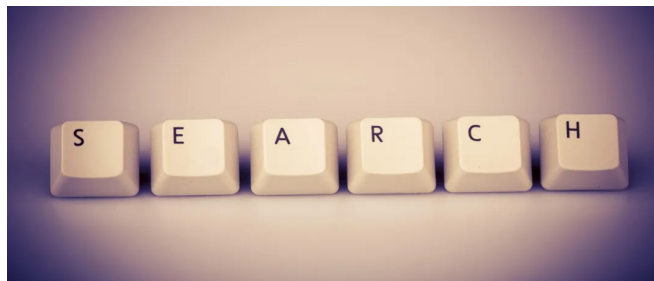
Second, the “*negative information suppression*” clause violates the basic principles of the Consumer Protection Law and the Anti-Unfair Competition Law.

On the one hand, for consumers, whether their right to information can be truly protected and whether Internet search engines can effectively provide information search services for consumers depends on whether the relevant information itself is true and accurate, but also closely related to whether such information can be properly known and accessed by consumers.

In this case, among the three methods of “*negative information suppression*”, except for the complaints to the platform, which are justified by law and objectively, the other two methods are either “*upgrading the positives*” or “*downgrading the negatives*”, they are obviously artificially interfering in the normal ranking of search engines, rendering consumers incapable to get comprehensive information on the products/services, and may even mislead consumers, thus affecting the formation of the true will of consumers, and the corresponding decision-making.

On the other hand, both positive and negative information are essential elements of a healthy market. A rational market player will learn from the positive evaluation to better serve consumers, and will also learn from the negative evaluation to correct mistakes.

However, “*negative information suppression*” is the intentional suppression of negative information that should be known to the public through behaviors other than honest management, forming “*goodwill*” that deviates from objective facts, gaining a competitive advantage improperly, which is detrimental to other competitors and the order of market competition. It is detrimental to the formation of a unified, open, competitive and orderly market system.



Again, the “*negative information suppression*” behavior will damage the rights of search engine service providers.

The credibility of search engines is mainly reflected in the comprehensive, objective, neutral and accurate display of market information and market evaluation to Internet users. To maintain the normal ranking of the search engine, one shall not change the ranking by means other than those permitted by law, which is also to realize the basic value of the search engine.

The “*negative information suppression*” is achieved by improper means like “*upgrading the positives*” or “*downgrading the negatives*”, so as to change or even distort the search engine ranking, misleading the search engine users, such behavior will certainly damage the credibility of the search engine service providers and business reputation.

The court also commented in the news, that the service for “*negative information suppression*” seriously affects the public's normal, objective and comprehensive access to information, violates the principle of honesty, infringes on consumers' right to be informed and the legitimate rights and interests of search engine service providers, and undermines the fair and orderly market competition and public order in Internet space. It is not conducive to the creation of a clear Internet space, and shall be deemed invalid according to law.

Fredrick Xie
HFG Law&Intellectual Property

[1] We would like to point out that deleting negative information in return for payment was forbidden by the law and also constitute a crime for illegal business since 2013. Art. 7, Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues of Applicable Law in Handling Criminal Cases of Defamation Using Information Network.

Fashion Law

The up and down of brand ambassadors marketing



Hiring celebrities and famous personalities from the various walks of life that complement the nature and objectives of the brand is one of the highly utilized marketing techniques in today's time.

Brand ambassadors help to raise awareness of the brand with the celebrity label attached to it and, consequently, to increase the sales of certain products and services. How do they do it? By leveraging their social status and the trust their followers place in them.

Ambassadors are usually famous figures, actors, models, social media celebrities; they are the face of the brand, and need to reflect the brand identity with their look, but also with their life behavior.

In a digital world where users are constantly bombarded with advertising and offers that are often misleading or of low quality, ambassadors are a figure that consumer can trust. This is why brands must carefully choose the person they want to be represented by: he/she must reflect the soul of the product.

Recently in China the world of ambassadors is experiencing a crackdown, with the Chinese celebrities accused of exerting a bad influence on society.

In February, Prada cut the collaboration with the popular actress Zheng Shuang 郑爽, who has been accused by her former partner of abandoning their two children born to US-based surrogate mothers after the couple's relationship ended before the children were born. After a while, she also was fined for tax evasion.



Prada SS 21 Press Conference In Shanghai - Source: GettyImages

In July, Wu Yi Fan 吴亦凡, aka Kris Wu, a Chinese-Canadian actor, model and singer, long-time Bulgari ambassador, was accused of rape by a beauty influencer and immediately dropped by Bulgari and also by Porsche

and Louis Vuitton, other brands he worked with; in mid-August Wu was formally charged with rape by police in Beijing and arrested.

The same happened to Zhang Zhehan 张哲瀚, a Chinese actor, singer and athlete: Zhang's 27 brand partners, including Lanvin, Pandora and Japanese jeweler, Tasaki, also distanced themselves from the young actor, who was on the receiving end of an official denouncement from the China Association of Performing Arts, following the publication of photos showing Zhang posing in front of the controversial Yasukuni Shrine in Tokyo.



Zhang Zhehan - Source: VCG

During the period of Tokyo Olympics, multiple Chinese brands have terminated their cooperation with a Taiwanese actress, Xu Xidi 徐熙娣, due to her controversial posts on Instagram where, referring to a Taiwanese badminton player, she would have used a term insinuating the idea that Taiwan is a country instead of a province.

While is not infrequent for a celebrity to be turned away by the brand due to a behavior that goes against the image, the mission or the value of the company, the opposite – that is, a celebrity breaking the contract with a brand for the same reason, appears to be less common, if not unlikely.

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While is not infrequent for a celebrity to be turned away by the brand due to a behavior that goes against the image, the mission or the value of the company, the opposite – that is, a celebrity breaking the contract with a brand for the same reason, appears to be less common, if not unlikely.

Despite that, this year has seen many Chinese stars breaking contracts with their brands.

The last one happened at the beginning of September: superstar singer and actor Lu Han 鹿晗 (one of the most in-demand brand ambassadors in China, whose endorsement ranges from local products such as Oppo mobile phones and Baidu maps to international brands like Puma and Cartier) decided to terminate his 4-years-long partnership with the Swiss watchmaker, Audemars Piguet, after the brand's CEO in an interview indicated Taiwan as an independent country.

In commenting his decision to cut ties with the brand, Lu Han declared that *“improper comments made by the Audemars Piguet brand seriously violate the one-China principle”*.

Earlier this year, Chinese celebrities decided to distance themselves from the brands involved in the Xinjiang case.

Chinese star Huang Xuan 黄轩, the spokesperson of the Swedish brand H&M, was the first to end his cooperation with the brand, which claimed that it will stop sourcing products from Xinjiang due to concerns about the reports of alleged forced labor in the region. Huang stated that he will *“oppose any attempt to insult or spread rumors”* about his country.

Huang's decision opened up the scene of Chinese stars to end contracts with such brand and others for the same issue.



Huang Xuan - Source: <https://wantubizhi.com/>

One of China's top idols, Wang Yibo 王一博, announced he had also terminated his relationship with Nike, since it and other brands such as Adidas have also made similar statements that he found inappropriate.

At the same time, the ambassador of Adidas in China, young actor Jackson Yee 易烊千玺 (who starred in the Oscar nominated film Better Days), announced that he had cut all cooperation with the sportswear company. The announcement comes after netizens questioned his endorsement of the brand. Hong Kong star singer Eason Chan 陳奕迅 has also cut off the cooperation with Adidas.

This *“boycott movement”* can't help recalling the celebrities and models breakaway from Dolce & Gabbana following the video advertising which offended the Chinese people. The echo of that false step still resounds in the fashion world, making it very difficult for the brand to regain the trust of the Chinese customers.

Based on this recent crackdown on brand ambassadors, is it still convenient for fashion companies to rely on celebrities for their brand marketing campaigns? The answer is yes.

In China, despite the potential risk, hiring a star brand ambassador still remains a very effective way for a brand to build up awareness and draw attention from potential customers, and companies keep paying celebrities millions of dollars to front their promotional campaigns.

Since terminating a contract can have very expensive consequences, from the company point of view the solution is to write in the contract specific clauses regarding the right to terminate the agreement based upon certain conditions such as bad behavior by the celebrity.

The company engaging a celebrity endorser will want the right to terminate the arrangement if the celebrity does something that is offensive or contrary to the brand's best interests, or gets involved in some kind of scandal or other negative news reports, or is indicted or accused of some form of criminal activity.

The contract can run a list of potential *“outs”* that usually arise from circumstances beyond the company's control. In addition, it would be advisable to regulate in written form that the company shall have the sole discretion to decide the nature of certain behaviors of the celebrity or the incidents concerned. As long as the company considers that the celebrity no longer fits the image of the brand, the company should be entitled to an *“out”*.

With regards to the possible legal consequences of the termination from the celebrity point of view, according to **HFG lawyer Claire Fu**, it also largely depends on the agreements between the parties.

In addition, the celebrities might also terminate the contract on the ground of basic principles set forth in the PRC Civil Code, i.e., the termination right of frustration in Article 580, or the principle of national interests in Articles 132 and 153.

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To our knowledge, many celebrities, due to the foregoing situations, have now requested to add a “*morality clause*” of the brands in their cooperation contracts, e.g., the brand shall ensure that any person or entity that the public deems to represent the brand, such as the founder / senior management of the brand, will not do anything that

endangers national unity, sovereignty and territorial integrity,

- a.** endangers national security,
- b.** harms national interests,
- c.** incites ethnic hatred or ethnic discrimination,
- e.** infringes upon national customs,
- f.** undermines national unity, or
- g.** violates religious policies, or any other acts that may adversely affect the artist;



otherwise, the artist shall be entitled to immediate terminate the contract unilaterally without any liability for breach of contract.

Silvia Marchi
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HFG News

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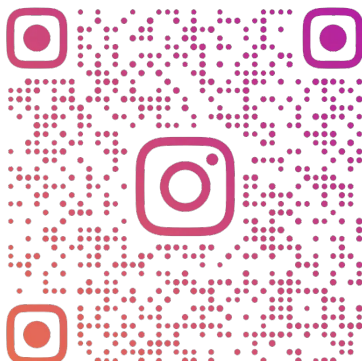
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