Goss IP

SEPTEMBER 2021

INSIDE

Dear readers,

Raise your hand who doesn't love chocolate! And if you find your beloved, crunchy and creamy Ferrero Rocher at a discounted price, how not to buy it in bulk? The problem is, you cannot then repackage it and sell it for profit.

The second article deals with a complicated case concerning the protection of a non-registered trademark in China, while the third one discusses the practice of Pei Huo, a marketing strategy used to select consumers and to request potential consumers to show loyalty before being enabled to buy iconic products.

You can read how China now requires signing Good Faith Commitment when applying for Well-Known Trademark protection in trademark disputes, after many companies have tried to obtain the recognition of well-known trademark by filling with fake evidence.

Let's then take you to learn about the main legislation of personal information protection in China: started with the establishment of principles and directions applicable to network security (with the Cybersecurity Law in 2017), it's now proceeding with the principles established by the Data Security Law (DSL) and will then be completed with the Personal Information Protection Law (PIPL) recently set to come into effect on 1st November this year.

We added one more article to finish as we started, with a touch of sweetness: the truth about the Magnum incident and the explanation of the legal grounds for the production of ice cream in China.

Enjoy the end of summer and keep reading!

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IP Law

Repackaging original Ferrero Rocher is a crime

On August 19, 2021, the Shanghai Third Intermediate Court released a news through its social media account regarding a criminal judgement stating that the repackaging of authentic Ferrero Rocher chocolates using Ferrero Rocher trademarks and labels without authorization would constitute crime of counterfeiting trademark.

Let's put our eyes back in 2020. In January, the Ferrero marketing system researched and found that the sales of a variety of *"Ferrero"* gift box chocolates in some online e-commerce platforms exceeded the total marketing volume of the company.

In October, Shanghai City Public Security Bureau (PSB) released a news that they have conducted criminal raid action against multiple targets in Shanghai, Guangdong and Zhejiang in July 2020, detained 18 criminal suspects and seized around 7,900 pcs product packaging boxes as well as 900,000 pcs labels bearing counterfeiting trademarks. The amount involved would be around RMB 13 million.

The PSB found that the criminal suspect LIU made purchase of original Ferrero products in bulk with the price of RMB 1.88/pc and then repackage them without authorization in its factory in Shanghai.

The packaging tapes and the packaging boxes were respectively purchased from the criminal suspect WEI located in Guangdong Province and criminal suspect PAN located in Zhejiang Province.

The branded labels, trays, backing cards and cartons were purchased from the criminal suspect YANG located in Shanghai. LIU repackaged the products and made sale with the price of around RMB 3–4/pc.

Packaging tapes and the packaging boxes

Branded labels, trays, backing cards and cartons

Now let's get back to the judgement released by the court. The court confirmed below facts:

- Since 2019, the defendant LIU, for the purpose of illegal profit, without the authorization of the owner of the registered trademark purchased *"Ferrero"* T96 (package with 96 pcs), T30 (package with 30 pcs) and other low-priced products.

- LIU commissioned others to illegally manufacture labels, backing cards, plastic boxes, bottom trays, outer cartons, tape and other packaging materials bearing the registered trademark *"Ferrero"* and hired workers to dispense the purchased chocolates with counterfeit packaging materials into commodities with a higher price such as *"Ferrero"* brand T8 (8 pcs packaging), T16 (16 pcs packaging), T24 (24pcs packaging), T32 (32 pcs packaging), etc. in their rented premises, and then sold them to the public for profit.

- From July to September 2020, the PSB seized more than 490,000 pieces of suspected counterfeit product packaging and other items with *"Ferrero"* trademarks, involving more than 800,000 *"Ferrero"* trademark related labels.

- The seized products involved were identified as using the same trademark logo as the registered trademark of the right holder without the authorization of the right holder.

Continue reading

- Upon sampling verification, the chocolate products are produced by Ferrero and there were no significant differences in terms of shape, structure and raw materials spotted on unsampled products between original products.

- Upon auditing, from July 2018 to July 2020, the defendant LIU commissioned others to forge packaging materials with the registered trademark *"Ferrero"*, involving more than 5.65 million labels, and actually paid more than 1.7 million yuan for the logos involved.

The Court deemed that the defendant LIU, without the authorization of the right holder, entrusted others to forge the registered trademark logo of Ferrero, which amounted to more than 5,650,000 pieces, and actually paid more than 1.7 million yuan for the logo, such scenario constituted *"particularly severe"* and therefore constitute crime for counterfeiting trademarks.

The Court, in the news, also commented that the defendant purchased genuine Ferrero chocolates with low unit price specifications, but he commissioned others to manufacture packaging materials with the registered trademark logo of the right holder in large quantities, aiming to make illegal profits by purchasing low-priced products and replacing the packaging to pass them off as high-priced products, which not only undermined China's trademark printing management regulations, but also caused damage to the goodwill of the right holder and the rights and interests of consumers.

In addition, the defendant did not have the ability to make the foodstuffs distribution system and did not have the qualification of food packaging license and cannot guarantee that the sanitary environment conditions of packaging and the health condition of packaging personnel meet the packaging standards, which poses food safety risks and poses safety hazards to consumers' health.

Therefore, the defendant's behavior is socially harmful and therefore meets the elements of the crime of illegally manufacturing registered trademark marks and should be convicted and punished according to law.

We would consider the case being judged under criminal law is of the reason that the defendant here manufactured the logos bearing trademarks without authorization (and also, in large volume).

Currently the 1st instance trial of the case was just completed and we will keep following on if it becomes a final judgment.

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IP Law

Infringement of unregistered Well-Known trademark

Recently, the Beijing IP Court has recognized *"PARIS BAGUETTE"* and "巴黎贝甜" (*"Ba Li Bei Tian"*) as un-registered well-known trademarks on services for fast food restaurant.

Below are the trademark specimens of the two groups of trademarks that are of concern in this dispute.

Paris Croissant Co. Ltd Subsidiary: SPC Investment Limited Company **herein refer to as the South Korean company**	**Paris Croissant Co. Ltd Subsidiary: SPC Investment Limited Company** **herein refer to as the South Korean company**
巴黎贝甜 **unregistered in Classes 30; 32 and 43**	**芭黎贝甜** **originally registered in Classes 35; 40 and 43 and currently invalid**
PARIS BAGUETTE **originally registered in Classes 35; 40 and 43 and currently invalid**	BARIS BAGUETTE **registered in Classes 30 and 32; unregistered in Class 43**

The trademarks " 巴黎贝甜 " and *"PARIS BAGUETTE"* belong to a Korean-owned French-inspired bakery which has developed a reasonably big business in China and has attracted companies trying to leverage on its reputation.

Among these, Beijing Bali Beitian Enterprise Management Co., Ltd. (Beijing Bali Beitian) is an enterprise management company that filed many copycats of the French company's brand, including " 芭黎贝甜 " (*"Ba Li Bei Tian"*) and *"BARIS BAGUETTE"*. Even the name of Beijing Bali Beitian is a copycat of the Korea company's brand.

Paris Croissant Co., Ltd. – however – has only partially succeeded in registering its trademarks in China. In 2007 Paris Croissant Co. Ltd. applied for the registration of the trademark *"PARIS BAGUETTE"* in China and eventually obtained the registration in class 30 for bread and other similar goods and class 32 for juice and other goods.

Unfortunately, Paris Croissant Co., Ltd. only owned the Latin letter trademark of *"PARIS BAGUETTE"* in China, indeed the corresponding Chinese trademark " 巴黎贝甜 " (*"Ba Li Bei Tian"*) has never been approved for registration.

In January 2017, Beijing Bali Beitian filed an invalidation action to the Trademark Review and Adjudication Commission Board (TRAB, currently known as CNIPA) against Paris Croissant Co., Ltd.'s "PARIS BAGUETTE" trademark registration in Class 32 challenged the validity of the trademark "PARIS BAGUETTE" for lack of distinctiveness, for being misleading and for the illegal utilization of a famous geographic name.

Nevertheless, the TRAB thought that no matter the presence of the word *"Paris"* there are other elements in the trademark, that can distinguish it from the famous geographic place name as a whole.

In addition, the trademark in dispute is not a sign of deception, nor harmful to the country moral trend or has other adverse effects.

Not satisfied with the decision of the TRAB, Beijing Bali Beitian brought the case to Beijing IP Court in August 2018, requesting the court to revoke the TRAB ruling and declaring the invalidity.

In the invalidation litigation, the Beijing IP Court surprisingly accepted the request of the Beijing company. It held that the disputed trademark is composed of English words *"PARIS"* and *"BAGUETTE"* and a figure similar to the iconic Eiffel Tower in Paris, France, among which *"PARIS"* means Paris and *"BAGUETTE"* means French bread or French-style baguette.

The use of the trademark on the designated class of goods may easily cause the relevant public to mistakenly believe that the origin of the goods is related to Paris, France.

The court held that the trademark in question shall not be allowed to be registered as a trademark under the Chinese Trademark Law.

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IP Law

"Pei Huo" (配货) or VIP card: luxury shall be fair

Recently, a Chinese consumer claimed that, in order to get access to buy the iconic bag Hermès Constance, he was requested to *"Pei Huo"* upon the implication of a salesperson at the Shanghai IFC boutique.

However, after payment of 150,000 yuan to *"Pei Huo"*, the consumer was denied access to the handbag he initially wanted to buy. The boutique claimed that he purchased by himself voluntarily.

This is not the first time that Hermès got protested by consumers in China for the *"Pei Huo"* issue. Previously, a protestor held up a board stating, *"Rubbish Hermès — Pei Huo but no bag"*, at the Hermès Beijing SKPstore.

So, what is "Pei Huo"?

It originates from that Hermès selects its consumers and requests its potential consumers to show loyalty before selling, particularly for the iconic products.

Now in a nutshell, such "loyalty" will be shown by "Pei Huo", meaning that, when a consumer wants to purchase certain bags – especially Birkin, Kelly and Constance – such bag will not be available until he/she has bought other products (of course less popular) in the shop and the payment has reached a certain amount.

Hermès officially denies the existence of such *"Pei Huo"* system. De facto none doubts it exists and the rules behind the *"PeiHuo"* are kept secret, and externally they appear quite arbitrary, it can be 1:1 or even 1:3, depending on the *"mood"* of the SA (*"sales"*).

In addition, the *"Pei Huo"* system has infected many other luxury brands.

Does *"Pei Huo"* constitute bundling sales?

Article17 of PRC Anti-Monopoly Law prohibits operators with a dominant market position from bundling sales or attaching unreasonable trading conditions without legitimate reasons.

Acts of bundling sales are further elaborated in Interim Provisions on Prohibiting Acts of Abuse of a Dominant Market Position, namely:

- making tied or combined sales of different commodities in breach of transaction practices, consumption habits or disregard of commodity functions;
- attaching unreasonable restrictions on the term of a contract, the method of payment, the mode of transport and delivery of commodities or the mode of service provision, and so on;
- attaching unreasonable restrictions on regions of sales, objects of sales, after-sales services of commodities, and so on;
- adding unreasonable charges to the price at the time of conducting transactions; and
- attaching conditions of transaction that are not related to the subject matter of transaction.

Inview of this, we believe that *"Pei Huo"* might easily be considered falling within the scope of bundling sales as consumers have to purchase irrelevant and unnecessary products before getting the access to the product they really want to buy.

Does *"Pei Huo"* constitute discrimination against consumers?

In addition to what above, consumers have complained that *"Pei Huo"* rules are more strict for Chinese consumers. Such kind of differentiated rules might also be considered as a price discrimination upon different categories of consumers.

Although the seller has the right to choose customers, once such selection loses the balance of fairness, it can easily touch the red line.

"Loyalty" can be requested by sellers as a threshold of transaction. If a seller fixes that a certain product is only available for VVVVVIP and it is fixed how to achieve that status in a transparent way, then this is fair and not against the law.

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IP Law

Well-Known? You shall be well aware of responsibilities!

China requires signing Good Faith Commitment when applying for well-known trademark protection in trademark disputes.
Last month, the Chinese Trademark Office issued an official notice regarding the request of well-known trademark protection.

Starting from September 1, 2021, whenever there is a request of well-known trademark protection in a trademark dispute (opposition, invalidation, opposition appeal), the IPR owner (applicant), its trademark agency and the agent in person are required to sign/stamp the Letter of Good Faith Commitment for the Parties Requesting the Well-Known Trademark Protection (*"Letter of Good Faith Commitment"*).

According to the sample of Letter of Good Faith Commitment provided by the Office at the same time, the applicant, its trademark agency and agent are required to undertake below:

1. Acknowledge the relevant provisions of the Trademark Law, Implementation Regulations of the Trademark Law, Regulations on the Recognition and Protection of Well-Known Trademark and other laws and regulations on the recognition and protection of well-known trademarks, and fill in and submit materials as required, and follow the principle of good faith.

2. Ensure that the relevant information and evidentiary materials in the opposition/review documents are true, accurate, and complete, and that there are no false situations such as forgery, alteration, concealment of evidence and instigation, bribery, and coercion of others to give false testimony.

3. Ensure that there are no dishonest acts such as malicious collusion with the counterparty, and no other acts of fraudulently obtaining protection of well-known trademarks by improper means.

If there is any violation of the above situation, I/this company, this agency and this agent are willing to bear the adverse consequences and corresponding legal liabilities.

As stated in the notice, the signing of Letter of Good Faith Commitment is in order to *"strictly regulate the relevant acts of parties submitting documents and evidence when requesting well-known trademark protection".*

In recent years many companies have tried to obtain the recognition of well-known trademark by filling with fake evidence.


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关于提交《当事人请求驰名商标保护诚信承诺书》的通知

发布时间：2021-08-06 09:52 信息来源：知识产权局商标局

为严格规范当事人请求驰名商标保护时提交文书、证据的相关行为，营造诚实守信的良好氛围，自2021年9月1日起，在异议、评审案件申请求驰名商标保护的当事人提交申请书时，需一并提交本人/本单位及其商标代理机构、代理人签章的《当事人请求驰名商标保护诚信承诺书》。

特此通知。

附件：《当事人请求驰名商标保护诚信承诺书》

国家知识产权局商标局

2021年8月6日

Official link of this notice: CLICK HERE

The above Notice was issued to remind attention not to file fake evidence and to strengthen the control and punishment in such cases. Therefore, not only the trademark owner but also the agency and the attorney are reminded of such liability.

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HFG Law&Intellectual Property

Tech Law

Data Security Law: What to do and what to expect

The Data Security Law (*"DSL"*), enacted on 10th June 2021 has entered into force on 1st September this year.

China's framework legislation on data is coming to completion. It started with the establishment of principles and directions applicable to network security (with the Cybersecurity Law in 2017).

It is now proceeding with the principles established to govern data security and will then be completed with the Personal Information Protection Law ("*PIPL*") recently set to come into effecton 1st November this year.

These three pieces of legislation can be considered the backbone of China's rules on data and data processing. Although secondary legislation has been announced for the DSL and the PIPL and is expected to be issued in the forthcoming weeks and months, the basic principles are laid down.

In this note we focus on the provisions of the DSL and its immediate effects for businesses handling or processing data.

Purposes and scope of application

The stated purposes of the DSL are to regulate data processing activities, ensure data security, promote data development and use, protect the rights of individuals and organisations, and safeguard national sovereignty, security and development interests.

***"Data"* is widely defined and includes any *"record of information"* in *"any form"*.**

***"Processing of data"* comprises any handling of data, starting from the mere collection of data to transfer, storage, use or public disclosure of data (whether personal data or not).**

Under such premises, and given the widespread presence and involvement of data in any business activity, any business operating in China is likely to fall within the scope of application of the DSL.

The provisions of the DSL are also of interest for businesses operating out of China, as they also have a stated extra-territorial application: where data processing activities harm the national security, public interests or the lawful interests of citizens or organisations of China, entities carrying out such activities outside China are also subject to legal liabilities.

Principles laid down by the DSL

The DSL states a general *"principle of legality"* for data collection: individuals or organisations collecting data must do so with lawful and justified methods. Also, no data can be stolen or obtained through other illegal means.

The principle of legality is also referred to when access to data is required by any public security agency or national security agency for the purposes of safeguarding national security or investigating a crime.

In such event, approval procedures must be followed and access by the authorities must be obtained in accordance with the relevant laws.

On the other hand, the DSL also specifically adds a provision imposing on the relevant organisations or individuals an obligation to cooperate when access to data is required or an investigation is carried out by the authorities.

Although the DSL places the state authorities in a central position with regard to the further development and implementation of the DSL, also individuals and organisations have a role to play as they are given a right to complain and report to the departments responsible for data security any infringements of the DSL they may be aware of.

The DSL also establishes a principle of *"consistency with the purpose or scope"* : where any law or regulation requires specific purposes or scope in relation to data collection or use, data must be collected or used in accordance with such requirements.

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This principle is similar to and consistent with the one expressed in *the Information Security Technology — Personal Information Security Specification*, which requires that the (personal) data to be collected should be related to the business activity or service for which it is collected, and also be limited to the minimum necessary for the performance of such business activity or service.

The *Specification* was issued soon after the Cybersecurity Law and, even if not binding, plays an important role in the implementation of such law and the definition of the principles applying to data processing.

Important Data

Specific obligations are set out in the DSL with regard to processing of *"important data"*.

Important data is defined or, more correctly, broadly referred to as data that will be categorised as such in a data categorisation and classification protection system to be established by the State.

The DSL indicates two criteria to follow in order to further identify important data:

i. the level of importance (of the relevant data) to the China's economic and social development, and

ii. the degree of damage to the national security, social interests or the lawful interests of individuals or organisations if data is tampered, damaged, leaked or illegally obtained or used.

Catalogues classifying important data are therefore expected to be prepared at regional, departmental, as well as industrial and sectorial level, according to the data categorisation and classification protection system criteria set out in the DSL.

An indication of the level and specificity of the protections required for the various categories of data is also expected to be provided in the catalogues.

Some industries, like finance and telecommunication, have already started classifying data for security purposes, by issuing their own guidelines.

Since the DSL encourages such initiatives, it will be interesting to see whether other industries will follow the same path.

Consequently, a huge effort of coordination will necessarily have to be deployed by the central authorities in order to ensure consistency in the categorisation of data and establishment of protection systems amongst all levels.

The definition of the criteria to follow in order to establish what is to be considered *"important data"* is not a marginal issue, as it will impose specific obligations on entities processing this kind of data.

In particular, entities processing important data will be required to designate a data security officer and set up a management office to fulfil data security protection responsibilities.

In addition, entities processing important data will have to periodically conduct risk assessments on their data processing activities, and submit a risk assessment report to departments responsible for data security duties.

The contents of such risk assessment reports will have to include the following information:

- the categories and quantities of important data processed,
- how data processing activities are carried out,
- data security risks and responding measures.

These obligations constitute an almost open window into their business for those entities whose main activity is data processing.

The concept of important data is also relevant with respect to cross-border transfer. Precisely, cross-border transfers of important data collected and generated by processing entities during their operation within the territory of China will have to follow rules to be formulated by the cyberspace administration and relevant departments of the State Council. At this stage only draft measures have been prepared in this regard.

When entities processing important data are operators of Critical Information Infrastructures [1], cross-border transfer will have to follow the requirements under the Cybersecurity Law, i.e. the transfer overseas has to be really necessary for reasons of business requirements and a security assessment must conducted in accordance with the measures formulated by the national cyberspace administration authority or other special applicable laws or administration regulations.

The DSL also refers to what seems to constitute a category of data separate from important data: the *"national core data"*. This category includes data that is related to national security, lifeline of the national economy, important people's livelihood, vital public interests.

The DSL simply states that for this data a stricter management system is required. Secondary legislation is expected to help further define this category of data and its specific implications in terms of compliance by entities processing it.

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What is immediately applicable starting from 1st September 2021

In addition to setting out principles and referring to implementing secondary legislation, the DSL also sets out provisions that are immediately applicable.

The most relevant immediately applicable provisions require entities processing data to establish data security management systems across their entire workflow.

Data security training must also be organised and conducted.

Entities are also required to safeguard data security by adopting technical measures and anyother necessary measures.

If the data processing activities are carried out by using information network (i.e. through the Internet) the security protection obligations must be based on the Multi-level Protection Scheme provided for by the implementing regulations of the Cybersecurity Law.

Entities carrying out data processing activities are then also required to strengthen risk monitoring and, where risks are identified (for example, data security defects or leaks), adopt appropriate remedies.

In the event of data security incidents, data processing entities must, in addition to immediately adopt remedies, also notify users and report to the relevant regulatory authorities.

With regard to transfer of data overseas, a specific provision of the DSL requires any organisation or individual in the territory of China not to provide data stored within the territory of China to foreign judicial or law enforcement agencies without the approval from the competent Chinese authorities.

In this regard, the DSL states that data provision requests will be handled in accordance with the principles of equality and reciprocity or any applicable international treaties.

This provision may also have a significant extra-territorial effect depending on how the words *"territory of China"* will be interpreted.

It is worth noting that most of the obligations imposed onto businesses by the DSL are accompanied by sanctions in case of infringement. Such sanctions range from simple warnings and orders for correction to fines (imposed on the business and the person directly responsible), suspension of services or business and revocation of licences.

What is expected to happen

A categorisation of data and a classification protection system, according to the criteria set out in the DSL, will take place at various levels and in various industries.

As mentioned above, some sectors (finance and telecommunication) have already started elaborating their own classification systems. Other industries, like transport, hygiene and health, education, natural resources science and technology, are expected to do the same.

Catalogues of what is to be considered *"important data"* or just *"data"* in specific sectors or industries will be prepared, along with definitions of protection standards and classifications.

Similarly, codes of conduct, group standards on data security are expected to be issued by sectorial organisations in various industries.

Businesses should therefore carefully monitor the future developments and implementation of the principles and guiding provisions of the DSL in order to better understand the contents of the obligations imposed by the DSL and the extent of their liability with respect to data processing.

Also, businesses should analyse their data collection and, more generally, data processing activities and methods, in order to verify whether they are compliant with the DSL provisions.

Such analysis and assessment should be first aimed at identifying the nature and importance of data processed, identifying data security risks, adopting appropriate remedies, verifying whether any transfer of data overseas is required or likely to happen, and ensure that security management systems are in place.

Businesses carrying out data processing activities may also expect to be required to cooperate with the authorities in their risk information acquisition, analysis, determination and warning, as well as in their data security review system.

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[1] *The Regulations on the Security Protection of Critical Information Infrastructure* define operators of Critical Information Infrastructures as operators of key network facilities and informational systems in important industries and sectors, such as public telecommunication and information service, energy, transport, water conservancy, finance, public service, e-government and science and technology industries for national defence, which may seriously harm national security, national economy, people's livelihood and public welfare if the relevant data is destroyed, lost or leaked.

Food Law

All the truth about the Magnum incident

You might have heard about the *"Magnum incident"*, a news that spread around last week regarding the double standard used by Unilever in producing the iconic ice-cream Magnum. In fact, it seems that the famous ice-cream produced in China contains different ingredients (supposedly lower quality) compared to the European one.

We will talk about this from the perspective of scientific compliance and more objective third-party view to explain that ice cream is not that simple as you usually think.

In terms of food categories, *"ice cream"* belongs to the "ice cream and ice milk" under the category of frozen drinks. The "ice cream" products produced and sold in China should comply with the Chinese national standard GB/T 31114-2014 Frozen Drinks – Ice cream.

It is worth mentioning that even if such national standard is not a mandatory standard, it is widely implemented in the industry.

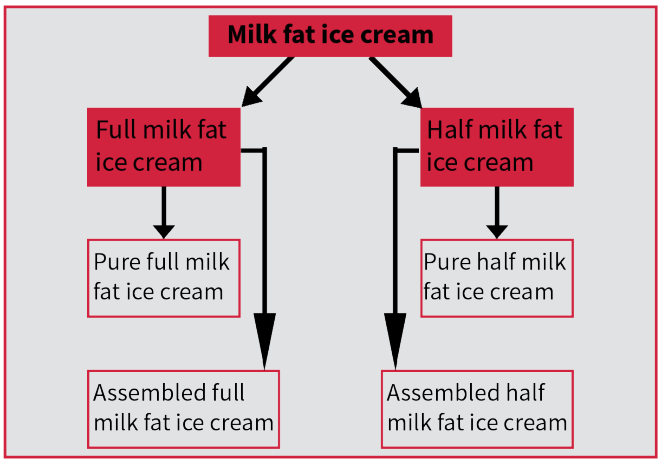
What is ice cream?

Ice cream is a kind of frozen drinks with volume expansion made by mixing, sterilization, homogenization, cooling, aging, freezing, hardening and other processes using one or more ingredients including drinking water, milk and/or dairy products, egg products, fruit products, bean products, sugar, edible vegetable oil, etc. as main and minor materials, with or without adding food additive and/or food nutrition fortifiers.

As can be seen from the definition, it is clear that both dairy products (source of milk fat) and edible vegetable oil (source of vegetable fat) can be used as main raw materials in ice cream; what matters is that information of raw materials used in the ice cream shall be conveyed to consumers clearly without any misleading.

For example, if its main raw material is *"vegetable oil"* (source of vegetable fat), product type of such ice cream shall be *"vegetable fat (non-milk fat) ice cream"*, and cannot mislead consumers by labelling as *"milk fat ice cream"*. If the product label has indicated its raw material clearly and correctly, there will not be any misleading issues.

"Milk fat ice cream" VS *"vegetable fat (non-milk fat) ice cream"* according to GB/T 31114



Full milk fat ice cream - Ice cream with mass fraction of milk fat > 8% (excluding non-milk fat) in the main part.

Pure full milk fat ice cream - Full milk fat ice cream without particle or bulk supplements, such as butter ice cream, cocoa ice cream, etc. milk fat > 8%.

Assembled full milk fat ice cream - An ice cream takes full milk fat ice cream as main with other kinds of frozen drinks and/or chocolate, cake blank, etc. The mass fraction of full milk fat ice cream > 50%, such as chocolate cream ice cream, cone cream ice cream, etc. Milk fat: NA.

Continue reading

Half milk fat ice cream- Ice cream with milk fat ≥ 2.2% in the main part.

Pure half milk fat ice cream- Half milk fat ice cream without particle or bulk supplementary materials, such as vanilla half milk ice cream, orange flavor half milk fat ice cream, taro half milk fat ice cream etc. milk fat: NA.

Assembled half milk fat ice cream - An ice cream takes half milk fat ice cream as main with other kinds of frozen drinks and/or chocolate, cake blank, etc. The mass fraction of half milk fat ice cream > 50%, such as crispy half milk ice cream, half milk ice cream cone, sandwich half milk ice cream etc. milk fat: NA.

Non milk fat ice cream- Ice cream with mass fraction of milk fat < 2.2% in the main part.

Pure non milk fat fat ice cream - Non milk fat ice cream without particle or bulk supplements, such as soymilk ice cream, cocoa vegetable fat ice cream. Milk Fat: < 2.2%.

Assembled non milk fat ice cream - An ice cream takes non milk fat ice cream as main with other kinds of frozen drinks and/or chocolate, cake blank, etc. The mass fraction of non milk fat ice cream > 50%, such as chocolate crispy non milk fat cream, waffle sandwich non milk fat ice cream, etc. milk fat: NA.

The key word in above definition is Milk Fat, which refers to the fat derived from milk, and it is also the key in the classification of ice cream. In addition, any ice cream product that meets the definition of certain ice cream product type in above classification can be classified into that ice cream product type.

Ice cream products produced and sold in China shall be classified into a certain ice cream product type according to its ingredients and process and the definition of classification in the national standard. Ice cream product type shall be listed clearly and correctly on the labelling of the ice cream product.

Magnum Chocolate Ice Cream

Product Type: Assembled vegetable fat (non-milk fat) ice cream.

Product Standard: GB/T 31144

Ingredients: Mini Magnum vanilla flavor ice cream: drinking water, chocolate (30%) (white granulated sugar, cocoa butter, cocoa mass, milk powder, anhydrous milk fat, phospholipid, edible flavouring), white granulated sugar, vegetable oil, milk powder (3.7%), maltodextrin, whey powder, food additives (mono- and diglycerides of fatty acids, carob bean gum, guar gum, carrageenan, β-Carotene, edible flavouring).

As the ingredients stated above fully complied with the definition of *"assembled vegetable fat (non-milk fat) ice cream"* stipulated in GB/T 31114, the classification of this product is correct.

One hot point in the argument is that the *"vegetable fat (non-milk fat) ice cream"* uses *"creamer"* as raw material which contains trans fatty acids and is not good for health. In fact, this opinion completely confuses *"vegetable fat"* with *"creamer"*.

Creamer usually follows the Industry Standard QB/T 4791-Creamer, the definition of *"creamer"* in this standard is: creamer is a kind of powder or granular product obtained by spray drying and other processing technology using sugar (including sugar and starch sugar) and/or syrup, edible oils and fats as main raw materials, with or without adding of milk or dairy products and other raw materials, food additives. Creamer is used for beverage whitening, taste improving and so on.

It should be noted that *"creamer"* is completely different from *"vegetable oil"*. Vegetable oil shall comply with GB 2716 National Food Safety Standard - Vegetable Oil (mandatory standard). Edible vegetable oil is edible oil made from edible vegetable oil materials or vegetable crude oil.

Therefore, we can't take it for granted that "*vegetable fat (non-milk fat) ice cream*" is the ice cream added with *"creamer"* just because the Chinese characters of *"vegetable fat"* and *"creamer"* are similar. As matter of fact, the *"non-milk fat"* here refers to fat derived from sources other than dairy products: fat sources other than dairy products usually refer to vegetable oil.

Ice Cream in EU

In the product definition of Code for Edible Ices issued by the European Ice Cream Association, *"ice cream"* and *"dairy ice cream"* are the ones related to *"ice cream"*.

The biggest difference between them is that dairy ice cream has a minimum content requirement for dairy fat, ice cream has only fat content requirement which can be dairy fat and/or non-dairy fat. Thus, *"Ice cream"* is divided into *"milk fat ice cream"* and *"non-milk fat ice cream"* in EU as well (of course, there are other more detailed requirements).

How should consumers choose ice cream?

We can't simply draw a conclusion on which is better, *"milk fat ice cream"* or *"non-milk fat ice cream"*. Raw material is not the only criterion to determine food quality. Except for raw materials, many factors, such as food processing technology, flavor and taste, applicable people, etc. shall be taken into consideration.

Moreover, consumer experience is also an important factor, especially for ice cream, a product with demanding taste requirements. Actually, it is up to the consumers to choose their favorites.

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Compliance reminder

If the composition used and production process of an ice cream product follow the relevant regulations and its labelling and advertisement clearly indicate its composition and classification and do not mislead consumers, such ice cream product is in compliance.

As for the *"trans fatty acids"* issue, it is suggested to check the nutritional information in the ice cream labeling. If the value of trans fatty acids in the food product shall be listed in its nutritional labelling according to relevant China regulation but the producer fails to do so, such violation of regulation will be penalized by the competent government authorities.

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