

## 案例 1

# 王东升诉中南大学科技开发总公司、 攀钢集团攀枝花钢钒有限公司侵犯 实用新型专利权纠纷案

王东升的“智能多点式集中润滑装置”实用新型专利的授权公告日为 2002 年 3 月 20 日，专利号 ZL01240260.5。王东升认为中南大学科技开发总公司（以下简称中南大学科技公司）未经其许可，制造、销售和许诺销售与涉案专利特征相同的智能润滑设备，攀钢集团攀枝花钢钒有限公司（以下简称攀钢公司）为制造经营目的而使用该设备，中南大学科技公司、攀钢公司的上述行为侵犯了其专利权，诉至成都市中级人民法院，请求判令：一、中南大学科技公司停止制造、销售和许诺销售侵犯其专利权的智能润滑设备；二、攀钢公司停止使用侵犯其专利权的智能润滑设备；三、中南大学科技公司赔偿其经济损失 100 万元及维权合理开支 51400 元。

一审法院审理认为：王东升的“智能多点式集中润滑装置”实用新型专利权合法有效，应受到法律保护。被诉侵权技术方案的技术特征与授权实用新型专利权利要求记载的技术特征分别对应并相同，被诉侵权产品的技术特征落入了涉案专利的保护范围。判决：一、中南大学科技公司自判决生效之日起三十日内赔偿王东升经济损失及合理开支费用共计 151400 元；二、攀钢公司自判决生效之日起三十日内补偿王东升 3 万元；三、驳回王东升的其余诉讼请求。

中南大学科技公司及攀钢公司不服一审判决，向四川省高级人民法院提起上诉。2016年3月30日，四川省高级人民法院判决：驳回上诉，维持原判。

评析：侵犯专利权纠纷案件中，判断被诉侵权产品是否落入涉案专利的保护范围是判断构成侵权与否的关键。由于专利的专业性和技术性，审判法官审查时存在一定的难度，司法实践中，向具有一定技术背景的专业人员咨询是通常的做法。本案得到了国家知识产权局专利复审委员会的大力支持。为充分发挥技术专家为法院审理相关案件提供咨询等作用，我省建立了知识产权审判技术专家库，切实提高了我省法院知识产权审判质量和效率。

## 案例 2

# 四川五丰黎红食品有限公司 请求处理成都市富贵玻璃制品有限公司 专利侵权案

2016年8月11日，四川五丰黎红食品有限公司（以下简称五丰公司）请求成都市知识产权局处理成都市富贵玻璃制品有限公司（以下简称富贵公司）专利侵权。

五丰食品称：2015年5月，富贵公司生产并销售的侵权产品，由经销商汉源县益可食品厂（以下简称益可食品厂）加工后销售的侵权行为已经雅安市科学技术和知识产权局进行了调解，益可食品厂承诺停止销售侵权产品和赔偿经济损失。由于益可食厂未履行承

诺，继续实施侵权行为，2016年6月，五丰公司再次请求雅安市科学技术和知识产权局处理益可食品厂的专利侵权行为。2016年7月27日，雅安市科学技术和知识产权局作出益可食品厂侵权成立并责令停止侵权行为的处理决定，益可食品厂未提起行政诉讼。益可食品厂向五丰公司提供了产品来源相关材料，材料表明侵权产品生产厂商为富贵公司。

2016年8月15日，成都市知识产权局立案后，依据《四川省专利行政执法办案规范》相关规定，启动快速调解程序，向双方当事人送达了相关法律文书。在征求了双方调解意愿后，案件调处组根据前期的现场调查情况，组织双方当事人进行现场调解，达成“富贵公司停止制造、销售涉案侵权产品，销毁制造涉案侵权产品的模具，向五丰公司支付各种经济损失3万元”的调解协议。该调解协议在成都市知识产权局的见证下得到即时履行。

评析：专利侵权纠纷的行政保护具有效率高、效果好的特点，本案中，五丰公司遭遇连续侵权，三次均通过行政保护的手段及时有效地维护了自身合法权益，体现了知识产权行政保护手段的及时性、高效性，最后通过调解的方式结案也确保了当事双方的满意度。针对反复侵权等恶意侵犯知识产权的行为，今后将纳入信用黑名单。

### 案例 3

## 罗文均、成都日月鑫家具有限公司 系列家具外观专利维权案

2016年9月，专利权人罗文均、成都日月鑫家具有限公司向四川省知识产权局提出调处请求，称成都市场上有大量家具销售企业销售侵犯两权利人合法权利的非法产品，侵占了权利人原有的市场份额，给专利权人造成重大损失，申请依法维权。

四川省知识产权局对该批群体侵权案件予以集中立案，共涉及32个被控侵权主体，17件家具外观设计专利，总计60个案件。省知识产权局及时立案后，启动快速调解、处理机制，通过省市县三级执法联动，在成都家具行业商会的支持、配合下，对涉案的全部被控侵权主体进行集中送达和现场调查，并采取集中口审、集中调解等办案方式，于一个月内促成当事人达成和解，专利权人获得总计5万元经济赔偿，所有涉嫌侵权产品撤出市场。

评析：家具行业因产品市场周期短，仿冒仿制容易，是专利侵权行为发生较多的领域。权利人常面临侵权企业数量多，侵权主体不易确认，取证困难等维权难题。省知识产权局针对被控侵权群体集中于家具专业市场的实际情况，及时与市场管理方及家具行业协会沟通，采取现场送达、现场调查等行政手段，在送达法律文书的同时固定证据，确定主体，解决了权利人维权最大难题，其后又通过集中口审，快速调解的方式加大办案力度，权利人不仅获得了赔偿，更重要的是重新获得了市场。我省“行政执法、企业维权、行

业自律” “三位一体” 知识产权保护特色通过本系列案件得到充分体现。

#### 案例 4

### 绵阳丰特酒业有限责任公司侵犯四川省绵阳市丰谷酒业有限责任公司外观设计专利案

四川省绵阳市丰谷酒业有限责任公司（以下简称丰谷公司）系专利号为 ZL201230151469.7、名称为“包装盒（丰谷特曲精品）、专利号为 ZL201530031854.1、名称为“酒盒（丰谷特曲老酒）两项专利的专利权人，因其认为绵阳丰特酒业有限责任公司（以下简称丰特公司）侵犯了其上述两项专利，故请求绵阳市知识产权局进行调处。经调解，双方当事人达成调解协议：丰特公司承诺未经请求人丰谷公司许可，不再生产制造、销售、许诺销售侵犯专利号为 ZL201230151469.7、名称为“包装盒（丰谷特曲精品）”，以及专利号为 ZL201530031854.1、名称为“酒盒（丰谷特曲老酒）”的外观设计专利权的产品；丰特公司收回批发商、零售商等经销商处的侵权产品，并销毁库存产品；丰特公司向丰谷公司支付 3 万元赔偿金。

评析：对于外观设计专利而言，只要对产品形状、图案或者其结合等作出富有美感的新颖设计就可以申请获得专利。丰谷公司的酒瓶外包装明显不同于其它酒类外包装，已经获得外观设计专利权应该受到法律的保护。而丰特公司所用酒瓶外包装虽然局部细微有

差别，但对于消费者而言，不能就外包装的整体视觉效果区分两者的不同。按照外观设计专利的侵权判定“客观归责”原则，只要侵权产品进入了专利保护范围，就推定侵权人主观明知。知识产权局在向丰特公司说明了相关法律规定后，丰特公司表示愿意调解。最终，本案在非常短的时间内得到妥善解决。

## 案例 5

# 捷豹路虎控股有限公司诉成都路虎商贸有限公司、南通诚荣贸易有限公司、吴晓春、被上诉人成都洋洋摩尔百货有限公司侵害 商标专用权纠纷案

2001年10月26日，案外人北京科文华商贸有限责任公司申请注册本案诉争第3004861号“LAND ROVER”商标。2004年3月14日，商标局发布诉争商标的注册公告。2004年6月28日，商标局发诉争商标异议公告，被异议人为案外人北京科文华商贸有限责任公司。2008年10月8日，商标局作出（2008）商标异字第07479号《“LAND ROVER”商标异议裁定书》，裁定异议人英国路华公司（以下简称路华公司）的异议不成立，诉争商标予以核准注册。该裁定书于2008年10月15日送达路华公司。路华公司向商标评审委员会申请复审，商标评审委员会作出《复审裁定书》，认定路华公司异议不成立。该裁定书于2010年6月30日向路华公司送达。2011年1月17日，商标局出具《核准商标转让证明》，载明

核准第 3004861 号商标转让，受让人为路华公司，并在附注部分同时载明“核准转让商标为注册商标的，本证明应与《商标注册证》一并使用；本证明标注的日期为转让的生效日期”。2012 年 6 月 25 日，商标局出具《商标注册证明》，内容为：“兹证明，路华公司在 25 类商品上使用的 LAND ROVER 商标，已在我局注册。注册号为 3004861。有效期自 2004 年 3 月 14 日至 2014 年 3 月 13 日。”2012 年 10 月 21 日，商标局发布诉争商标核准注册公告，商标专用期限为 2012 年 10 月 21 日至 2022 年 10 月 20 日，注册人为英国路华公司，商品类别为 25 类。

2011 年 9 月 26 日，捷豹路虎控股有限公司（原名英国路华公司，以下简称捷豹路虎公司）向四川省工商行政管理局投诉，成都路虎商贸有限公司（以下简称成都路虎公司）涉嫌销售侵权服装。省工商局进行立案调查，2011 年 10 月 14 日，执法人员在成都市大石西路雅然居 3 栋 1501 号成都路虎公司办公地点及东御街 55 号摩尔百货公司天府店 5 楼成都路虎专柜分别进行现场检查，查扣了被控侵权的服装。2012 年 5 月 3 日，省工商局作出川商处字〔2012〕1004 号《行政处罚决定书》，认定成都路虎公司未经“LAND ROVER”注册商标权利人捷豹路虎公司的许可，销售“LAND ROVER”服饰的行为违反了《中华人民共和国商标法》第五十二条的规定，处以没收标有“LAND ROVER”字样服装 799 件、罚款 3 万元的处罚。其中被省工商局查处的部分商品吊牌上载明，商标：LAND ROVER，制造商：南通诚荣贸易有限公司（以下简称诚荣公司），地址：南通工农路 111 号华晨大厦 1903，电话：0513-88869303”等内容。2012 年 3 月 16 日、2012 年 7 月 6 日，捷豹路

虎公司分别在青岛、淄博等地公证购买了涉案侵权服装，服装吊牌上载明制造商：诚荣公司。捷豹路虎公司起诉至成都市中级人民法院，请求停止生产、销售侵权产品，赔偿损失，消除影响。

成都路虎公司（委托方）与诚荣公司（生产方）分别于2010年11月10日、2011年10月31日签订《委托加工合同》（合同编号分别为LC110101、LC110102），约定加工品牌为“**LIIROVER**”、“*ludRauer*”。成都路虎公司在签订合同时向诚荣公司提供了第7541726号“**LIIROVER**”《商标注册证》及第7255129号“*ludRauer*”《商标注册证》等相应材料，上述两份《商标注册证》均载明注册人为吴晓春，核定使用商标为第25类，注册有效期限分别为自2010年11月7日至2020年11月6日、2010年9月14日至2020年9月13日。

摩尔百货公司（甲方）与成都路虎公司（乙方）签订有《摩尔百货联销合同书》（合同编号：T10201），载明甲方在运动休闲部五层提供适当经营场地及商场有关经营管理条件，乙方向甲方提供包括自产以及从正当渠道进销或授权代理的商品，并约定“乙方对其专柜名称及陈列、销售的商品应符合有关法律、法规及政府的相关规定，使用合法的注册商标，不得侵犯他人的商标权、专利权、知识产权及独家代理权等合法权益”。合同有效期自2011年9月1日至2012年2月28日。合同附件（一）载明乙方联销的品牌为**LIIROVER**、*ludRauer*，类别为第25类。签订合同时，成都路虎公司向摩尔百货公司提供了第7541726号《商标注册证》及《商标使用许可合同备案通知书》、第7255129号《商标注册证》。

捷豹路虎公司认为被告侵权时间长、地域广、数量大、价值



高，大量侵占了捷豹路虎公司的市场，诉至成都市中级人民法院，请求判令：一、成都路虎公司停止生产、销售侵权产品，南通诚荣公司停止生产侵权产品，并销毁库存产品和回收侵权产品；二、四被告连带赔偿捷豹路虎公司经济损失及为制止侵权支出的合理费用人民币 60 万元；三、四被告在《中国法制报》和《消费者报》上刊登声明，消除影响。

一审法院审理认为：四被告的被控侵权行为发生在捷豹路虎公司取得涉案注册商标专用权之前，没有侵犯捷豹路虎公司的第 3004861 号商标专用权，四被告也不应承担相应的民事责任。一审法院判决驳回捷豹路虎控股有限公司的全部诉讼请求。


捷豹路虎公司不服一审判决，向四川省高级人民法院提起上诉。二审法院审理认为：涉案第 3004861 号“LANDROVER”商标最初由科文华公司申请注册，历经两次转让，最后由捷豹路虎公司受让取得。捷豹路虎公司对涉案第 3004861 号“LANDROVER”商标享有商标专有权，依法应受法律保护。成都路虎公司（委托方）与诚荣公司（生产方）签订有《委托加工合同》，诚荣公司生产被控侵权服装的行为系受成都路虎公司委托。吴晓春作为成都路虎公司的法定代表人以及“LIROVER”、“*lvudRauer*”商标持有人，授权成都路虎公司以及包括诚荣公司在内的制造商生产、销售被控侵权产品，并在成都路虎公司与摩尔百货公司签订《摩尔百货联销合同书》时，代表成都路虎公司签字等行为，均说明其系被控侵权行为的实际操控者。因此，成都路虎公司、吴晓春、诚荣公司应当对此次被控侵权行为承担连带责任。摩尔百货公司已经尽到了合理注意义务，不应当承担相应的民事责任。2016 年 12 月 8 日，






四川省高级人民法院作出终审判决，判决：一、撤销四川省成都市中级人民法院（2012）成民初字第1872号民事判决；二、成都路虎商贸有限公司、吴晓春在本判决生效之日起，立即停止生产、销售侵犯捷豹路虎控股有限公司第3004861号“LANDROVER”商标专用权的侵权产品；三、南通诚荣贸易有限公司在本判决生效之日起，立即停止生产侵犯捷豹路虎控股有限公司第3004861号“LANDROVER”商标专用权的侵权产品；四、成都路虎商贸有限公司、吴晓春、南通诚荣贸易有限公司在本判决生效之日起十日内，连带赔偿捷豹路虎控股有限公司经济损失45万元。成都路虎商贸有限公司、吴晓春、南通诚荣贸易有限公司在本判决生效之日起十日内，连带赔偿捷豹路虎控股有限公司为制止侵权支出的合理费用5512元；五、驳回捷豹路虎控股有限公司的其他诉讼请求。



评析：本案一审原告、二审上诉人捷豹路虎控股有限公司是一家具有极高国际知名度的跨国企业，在其行业内外和普通社会公众之间都具有很大影响力。“搭便车”、“傍名牌”是当今市场中存在的较为常见的不正当竞争行为（此处所指不正当竞争是传统意义上理解的，而非从法律意义上解释的不正当竞争行为），不仅扰乱了市场秩序，更打击了其他社会主体的创新和发展积极性，长此以往，也将对我国的改革创新和知识产权战略实施产生不利影响。该案终审判决切实保障了商标权利人的利益，打击了搭便车行为，彰显了我国法律保护知识产权权利人利益的决心，具有良好的社会示范导向意义。

## 案例 6

# 深圳市沃尔核材股份有限公司商标侵权案

2015年8月10日，泸州市工商局接长缆电工科技股份有限公司举报，称深圳市沃尔核材股份有限公司于2015年5月通过湖北宜昌经销商购得长缆电工科技股份有限公司生产的30套“”牌110KV支柱型插拔式终端，将其中的24套通过更换商标、厂名、厂址后销售给了泸州区域的泸州合能实业有限责任公司，侵犯了该公司注册商标专用权。

经查，当事人销售的24套“”牌110KV支柱型插拔式终端，标注的企业名称：深圳市沃尔核材股份有限公司，地址：深圳市坪山新区兰景北路沃尔工业园。泸州合能实业有限责任公司介绍该批110KV支柱型插拔式终端是从深圳市沃尔核材股份有限公司购进，用于林泸、龙泸、林冯线电缆下地工程。经长缆电工科技股份有限公司鉴定，24套“”牌110KV支柱型插拔式终端全是长缆电工科技股份有限公司生产，通过更换了注册商标标识和包装后重新投入市场。该批套管主体销售计价1.21万元/个，违法经营额29.04万元。长缆电工科技股份有限公司生产的该款“”牌110KV支柱型插拔式终端电缆附件产品属于配套组合式产品，由8个主要部件配套组合而成，每一个部件都是单独的、独立的成型产品，有独立的产品名称和注册商标，是既可以配套销售也可以单独销售的商品。当事人以成套产品形式采购到的配套部件“”牌套管主体，也是外购的一种形式，通过购买所谓“部分配套部件外购所得”的“”牌套管主体在销售中未做任何加工，将24个

套管主体商品上的“”牌注册商标标识更换为“”牌注册商标标识后销售给泸州合能实业有限责任公司，已经构成更换商标并再次投入市场销售行为，违反了《中华人民共和国商标法》第五十七条第（五）项的规定，属侵犯注册商标专用权行为。依据《中华人民共和国商标法》第六十条之规定，泸州市工商局责令当事人立即停止侵权行为，并处罚款 58.04 万元。

评析：该案未经商标注册人的同意，擅自将其在商品上使用的注册商标撤下并换上自己的商标冒充为自己生产的商品投入市场的行为，剥夺了原商标注册人向市场展示自己的商标的权利和创建品牌获得商誉的机会，不正当的获得市场交易机会。侵犯了相关公众的知悉权，使相关公众对产品的来源，对生产者、提供者产生误认，对注册商标有效地发挥其功能和商标注册人的商品争创品牌造成了妨碍。本案的查处，对商标反向假冒的行为人为获取不正当利益，盗用他人商品的信誉作出了有力的惩戒，积极维护了商标权利人的利益，有利于社会主义市场经济的健康发展。

## 案例 7

### 王进发销售假冒注册商标的商品案

2013 年 1 月，被告人王进发向四川省建筑机械化工程公司报价销售“川消”牌消防器材，随后二者签订材料采购合同，合同约定由王进发向成都市高新区南城都汇 5A 期汇晴园项目分别以 70 元/个、105 元/个和 6.8 元/个销售“川消”牌 SN65 普通消防栓头、SNJ65 减压型室内消火栓、喷淋头消防器材。王进发随后在“川消”

牌消防器材厂家授权的经销商处对上述商品进行询价，在得知正宗“川消”牌门店售价远远高于流动商贩报价后，王进发在没有审查流动商贩任何资质的情形下分别以 50 多元/个、80 多元/个、5 块多/个的价格购买上述 3 种假冒“川消”牌注册商标的商品，并将购买的假冒川消”牌注册商标商品按照约定价格销往南城都汇 5A 期项目安装部，共计销售 SN65 普通消防栓头 825 个、SNJ65 减压型室内消防栓 952 个、喷淋头 5170 个。

2014 年 9 月 12 日，成都高新区消防大队在对该项目进行消防监督检查时发现上述消防器材涉嫌质量不合格，随后，将该案移送高新区工商行政管理局。高新区工商行政管理局在对该楼盘进行检查时发现，该工程部分消防器材涉嫌侵犯“川消”牌注册商标专用权，经萃联（中国）消防设备制造有限公司现场鉴别，上述“川消”牌消防产品系假冒注册商标的商品，高新区工商行政管理局遂将案件移送公安机关。

2014 年 11 月 3 日，王进发被公安机关抓获。经鉴定：SN65 “川消”牌的普通消防栓头、SNJ65 减压型室内消防栓均符合标准规定要求，属假冒注册商标商品，两种商品销售额共计 157710 元；喷淋头属不合格产品，该产品销售金额为 35156 元，上述销售金额合计 192866 元。

2015 年 12 月 28 日，成都高新区人民检察院以王进发涉嫌销售假冒注册商标的商品罪将该案起诉至成都高新区人民法院。

2016 年 5 月 5 日，成都高新区人民法院判决采纳公诉机关意见，认定王进发犯销售假冒注册商标的商品罪，对其判处有期徒刑二年，缓刑三年，并处罚金人民币 19.2 万元；对扣押在案的假冒注

册商标的商品予以没收并销毁。判决后，王进发服判息诉，全额缴纳了罚金，并依据合同约定为业主方全部更换了正宗“川消”牌消防器材。

评析：该案是行政执法与刑事司法衔接机制的成果。消防大队和工商部门扎实的前期工作（包括查封、扣押等），为公安机关开展调查取证工作做了大量的铺垫，为案件顺利查处奠定了基础。检察机关在审查起诉环节，充分发挥提前介入、引导侦查职能，夯实证据体系，依靠严密的证据锁链定案。本案彰显了司法机关加强保护知识产权的司法导向。

## 案例 8

# 芦菲诉平昌县人民政府、周莉萍、平昌县文化馆侵害表演者权纠纷案

2012年6月，平昌县文化馆邀请聂正罡等人到平昌采风创作歌唱平昌的歌曲。同年10月，聂正罡将歌词、曲谱、音乐伴奏及芦菲演唱的歌曲小样通过网络传给了文化馆。文化馆根据聂正罡提供的歌曲小样组织制作了MTV，并将该歌曲的演唱者署名为周莉萍。文化馆将该MTV提供给平昌县人民政府网、平昌文化网、平昌县旅游网、平昌县电视台进行播放。2014年4月25日，由平昌县政府等单位承办的四川省第五届乡村文化旅游节开幕式在平昌举行。开幕式中有关文艺表演的相关事宜均由文化馆具体组织、策划和实施。在开幕式上，周莉萍受文化馆的邀请和安排，参加了此次开幕

式的文艺表演，并演唱了歌曲《江口水乡》，屏幕注明的演唱者是周莉萍，但在表演过程中，播放的是芦菲演唱的歌曲小样，周莉萍在舞台上进行表演。2014年4月底，芦菲向四川省旅游局反映周莉萍假唱侵权之事，要求予以赔偿。文化馆得知后，组织人员对芦菲反映的歌曲《江口水乡》被假唱的事件进行协调处理。2014年5月13日，芦菲与文化馆达成调解协议，芦菲领取了15万元赔偿费用。芦菲认为，文化馆、平昌县政府、周莉萍存在侵权行为，诉至巴中市中级人民法院，请求判令：一、文化馆、平昌县政府立即停止侵害，在侵权范围内消除影响，恢复名誉，公开赔礼道歉；二、文化馆、平昌县政府赔偿原告经济损失500万元；三、文化馆支付自使用原告作品之日起一年的使用费50万元；四、文化馆、平昌县政府支付原告因维权所支出的律师等费用5.3万元；五、文化馆、平昌县政府承担本案的全部诉讼费。

一审法院审理认为：芦菲是《江口水乡》歌曲小样的演唱者，享有表演者权。文化馆在制作MTV，向相关网站提供歌曲视频，具体组织旅游节开幕式文艺演出活动中，使用了芦菲演唱的《江口水乡》歌曲小样，而未表明芦菲就是该歌曲的演唱者，侵犯了芦菲作为表演者应当享有的表明表演者身份的权利，以及许可他人通过信息网络向公众传播其表演，并获得报酬的权利。由于文化馆与芦菲已就侵权事宜达成了赔偿协议，向其支付了15万元赔偿款，并在平昌县人民政府网站上发表声明，表明芦菲原唱者身份，且在庭审中芦菲当庭表示不再追究文化馆的责任，故文化馆在本案中不再承担侵权责任。周莉萍在拍摄《江口水乡》MTV时系文化馆的职工，履行的是职务行为，拍摄后MTV的制作、演唱者的署名以及向平

昌县人民政府网站提供视频等均是文化馆的行为，故周莉萍实施的行为后果，应当由文化馆承担。平昌县政府作为四川省第五届乡村文化旅游节开幕式的承办单位之一，并不是文艺表演的具体组织、策划和实施者，也无证据证实平昌县政府在乡村旅游文化节上授意或知道文化馆、周莉萍有侵犯芦菲表演者权的行为。对芦菲要求其承担侵权责任的主张，不予支持。

芦菲不服一审判决，向四川省高级人民法院提起上诉。2016年12月2日，四川省高级人民法院判决：驳回上诉，维持原判。

评析：随着网络经济的发展，围绕网络发生的各类纠纷逐渐增多。在网络环境下，每个人包括政府部门的角色不是固定的，可能是一个网络消费者，也可能是一个网络服务商，更有可能在无意间成为一个网络著作权侵权行为的参与者。本案被告便是在意识不强，审查不严的情况下，构成了侵权。行为发生后，各方积极应对，妥善处理，与权利人达成调解协议，并实际履行。鉴于权利人的损失已经实际得到赔偿，故诉讼中权利人的重复权利要求未能得到支持。

## 案例 9

### 美映咖啡和电影影吧侵权案

2016年9月2日，经成都市文化市场综合执法总队查实，成都市成华区钻石广场A座1413号的美映咖啡和电影影吧在其服务器储存电影片源，用户通过百度糯米、大众点评发布团购信息和现场到店现金支付的形式取得观影资格，电话预约后，到达影吧通过包



间内的平板端选取影片后直接通过包间内的投影设备进行放映观看。该影吧服务器共储存影片 1558 部，影片来源为通过土豪网、BT 天堂等网站自行下载存储在服务器。该影吧开设私人影院未经著作权人许可发行其作品，涉嫌违反了《著作权法》第四十八条第一项之规定。10 月 9 日，成都市文广新局依据《著作权法实施条例》第三十六条之规定，依法给予成都市美映咖啡和电影影吧罚款人民币 5000 元的行政处罚。

评析：该案件系第十二次打击网络侵权盗版“剑网 2016”专项行动中，成功查办的一起针对小影吧侵犯著作权的案例。国家版权局首次将打击小影吧侵犯著作权的违法行为纳入“剑网行动”整治范围，全年仅有 4 个省、市探索开展了对小影吧侵权问题的查处，其中就包含成都市。这一案件的成功查办，为拓展和延伸版权执法领域，进一步贯彻落实《著作权法》和《著作权法实施条例》，主动防范和有效遏制互联网领域侵权盗版案件发生，起到了积极的推动作用。

## 案例 10

# 四川省仪陇宏德中学 52 名教师擅自从事出版物发行业务及发行非法出版物案

2016 年 4 月 12 日，群众举报四川仪陇县宏德中学（以下简称宏德中学）老师征订盗版教辅资料。4 月 13 日，南充市文化市场综合执法支队对四川仪陇县宏德中学高一至高三年级学生正在使用的

《金榜题名·数学》（文、理科）、《红对勾·高中化学》（选修4）、《骄子之路·45分钟课时作业与单元测试》（数学、物理）、《红对勾·讲与练》（高三化学）、《高中总复习导与练·第二轮》（生物）等教辅出版物进行了检查。提取试卷类出版物10种34份、教辅出版物27种48册进行了证据先行登记保存。经南充市文化广电新闻出版局鉴定，除《金榜题名·数学》（文科、理科，定价：60.00元/册）为非法出版物外，其余均为合法出版物。

根据调查，南充市文化市场综合执法支队认定宏德中学阳光等37名教师未经许可，擅自从事出版物发行业务；邓琦等15名教师发行非法出版物。阳光等37名教师共发行出版物数量为4242册，违法经营额84951.50元，共计获利26760.00元。邓琦等15名老师共发行非法出版物《金榜题名·数学》（文科、理科）1113册，总码洋为66780.00元（1113册×60.00元/册），违法经营额32190.00元（1113册×30.00元/册），共获利4440.00元（贫困学生未收取书款）。

2016年8月19日，南充市文化广电新闻出版局对52名教师分别给予没收非法出版物、没收违法所得、处罚款的行政处罚决定。共没收非法出版物1113册，没收违法所得31992.00元（因已退还学生，不再追缴），处罚款人民币36818.40元。

评析：此案涉及52名教师、45个班级、2745名学生，发行出版物4242册（含非法出版物1113册），案情复杂，执法力量投入大、持续时间长，是违反新闻出版总署《关于中小学校征订发放教辅资料行为定性的意见》发行教辅出版物中的典型窝案。当前发行教辅出版物的违法行为呈上升趋势，四川省仪陇宏德中学52名教

师擅自从事出版物发行业务暨发行非法出版物案的查处，对依法惩处发行教辅出版物的违法行为，规范学校的教辅资料征订工作，端正行风，消除职务犯罪滋生地，起到了较好促进作用，在当地产生了强烈的反响。

Case 1

**Dispute Case of Infringing Utility Model Patents among  
Wang Dongshen, Technology Development CO., LTD.  
Of Central South University, Steel and Vanadium  
CO., LTD of Panzhihua Iron & Steel Group**

The unity model patent of “intelligent centralized lubrication equipment of multi-points” created by Wang Dongshen was granted on March 20, 2002 with patent number ZL01240260.5. Wang Dongshen considered that Technology Development CO., LTD. Of Central South University (hereafter referred to as Technology Development Company of Central South University) produced, sold and permitted others to sell intelligent lubrication equipments with same feature of the patent without patentee’s permission. He also deemed that Steel and Vanadium CO., LTD of Panzhihua Iron & Steel Group (hereafter referred to as Pangzhihua Iron & Steel Company) used this equipments for business which has infringed his patent right, and appealed to Chengdu Intermediate People’s Court to claimed that firstly, Technology Development Company of Central South University should stop producing, selling and permitting others to sell the equipments; secondly, Pangzhihua Iron & Steel Company should stop using the equipments; thirdly Technology Development Company of Central South University should pay 1,000,000 Yuan for economic losses and 51,400 Yuan for rational expenditure of safeguarding the patent right.

The court identified after the first trail that the unity model patent of “intelligent centralized lubrication equipment of multi-points” created by Wang Dongshen which is legal and in the effective date should protected by law. The features of the sued technical scheme were similar with the granted patent’ correspondently which has infringed its right, and sentenced that, firstly, Technology

Development Company of Central South University pay 151,400 Yuan to Wang Dongshen for economic losses and rational expenditure in the thirty days since the judge comes to force; secondly, Pangzhihua Iron & Steel Company pay 30,000 Yuan to Wang Dongshen for compensation in the thirty days since the judge comes to force.

Technology Development Company of Central South University, Pangzhihua Iron & Steel Company refused to accept the judgment of the first trial and appealed to Sichuan High People's Court. On March 30, 2016, The high court adjudged, reject the appeal and uphold the original sentence.

**Case Comment:**

It is the key point that identifying whether the features of the infringement products fall into the claims of the patent involved in a dispute patent infringement case. Because of the patent's specialty and technicality, it is hard for the judges to identify, so they usually consult the technicians in the practice of trial. This Case was supported by Patent Reexamination Board of SIPO for consultation. The province established technical experts tank for providing technical consult when trying cases which do enhance the trial quality and efficiency of the courts.

**Case 2**

**Patent Infringement Case of Requesting to Handle  
by Sichuan WUFENG & LIHONG Food CO., LTD.**

On August 11, 2016, Sichuan WUFENG & HONGLI Food CO., LTD. (hereafter referred to as WUFENG Company demanded Chengdu Intellectual Property Office (hereafter referred to as Chengdu IP Office) to investigate patent infringement of Chengdu FUGUI Glassware CO., LTD. (hereafter referred to as FUGUI Company)

WUFENG Food Company claimed that in May, 2015, the infringement case

that FUGUI Company produced, sold the infringement products and permitted Hanyuan YIKE Food Factory (hereafter referred to as YIKE Food Company) to sell has mediated by Yaan Science, Technology, Intellectual Property Office (hereafter referred to as Yangan IP Office). YIKE Food Factory had promised to stop selling the products and pay the compensation but afterward it has not commit the promise and continued infringement. In June, 2016, WUFENG Company demanded Yaan IP Office to deal with YIKE Food Factory' infringement action again. On July, 27, 2016, Yaan IP Office made the determination that YIKE Food Company has constitute infringement and must stop at once. YIKE Food Factory did not bring administrative lawsuit and provided WUFENG Company with materials about products' recourse.

On August 15, 2016, Chengdu IP Office placed this case on file, started the fast mediation procedure and sends the tow parties relative legal documents according to Regulation of Sichuan on Patent Administrative Law –enforcement. Organizing on–site mediate according to the investigation situation and the will of tow parties, Case mediation group made agreement that FUGUI Company stops producing, selling infringement products, hands over and destroys producing moulds, and pays WUFENG Company 30,000 Yuan for economic losses which was comes into force instantly witnessed by Chengdu IP Office.

**Case Comment:**

It is more efficient to do administrative protection in a patent infringement dispute case. In this case, WUFENG Company encountered continuous infringement, and safeguarded the legal right through administrative protection for three times. This showed the timeliness and high efficiency of IP administrative protection. The tow parties are satisfied with the mediation and the result. The willful infringement action will be included in the credit blacklist.

### Case 3

## **Case of Luo Wenjun, Chengdu RIYUEXIN Furniture CO., LTD. Safeguarding the Design Patent Right of Furniture**

In September, 2016, patentees Luo Wenjun and Chengdu RIYUEXIN Furniture CO., LTD (hereafter referred to as RIYUEXIN Company) demanded Sichuan Provincial Intellectual Property Office (hereafter referred to as provincial IP Office) to investigate that a lot of furniture trade company were selling furniture which infringing their patent right, occupied the market share and caused heavy losses. The Provincial IP Office placed these group infringement cases on file which referred to 32 accused subjects, 17 design patents, 60 pieces of cases and started fast mediation and handling mechanism. In a month, they promoted the reconciliation of both parties through the way of joint law-enforcement at province, city and county level and finished on-site investigation and legal documents sending for all accused subjects supporting and cooperating by Chengdu Furniture Industry Chamber of Commerce. The patentees got 50,000 Yuan for economic compensation in total and all infringement products were withdraw from the market.

#### **Case Comment:**

It is the industry of great deal of infringement cases because it is easy to shaped-down for the short-term market cycle. The patentees often face the problems that the number of infringement enterprise is large, infringing subjects is not easy to identify and it is hard to find the evidence. In these cases, the patentee applied for safeguard the right because its market share has been occupied seriously but only provided the preliminary evidence about the accused subjects and infringement products. The provincial IP Office contacted with market management and furniture industry association on time, investigated on site, sent for legal documents, collected

evidence and identified the infringement subjects. All the cases were solved in a month through ways of centralized oral trial and quick mediation. The patentee is satisfied to require compensation as well as market share again. This case fully shows the IP protection trinity futures of the administrative law –enforcement, enterprises safeguarding rights and industries self–discipline.

#### Case 4

### **Design Patent Infringement Case between Mianyang FENGTE Brewery CO., LTD. and Sichuan Mianyang FENGGU Brewery CO., LTD.**

Sichuan Mianyang FENGGU Brewery CO., LTD. (hereafter referred to as FENGGU Company) owns the tow design patents respectively named packing box (patent number: ZL201230151469.7) and wine box (patent number ZL201530031854.1). FENGGU Company considered that Mianyang FENGTE Brewery CO., LTD. (hereafter referred to as FUTE Company) infringed the two patents' right and demanded Mianyang Intellectual Office (hereafter referred to as Mianyang IP Office) to investigate and handle the case. Through mediation, the both parties made the agreement that FENGTE Company promised to stop producing, selling and permitting others to sell products infringing the tow design patents; FENGTE Company withdraws the infringement products from wholesalers and retailers and destroys all the stock; FENGTE Company pay 30,000 Yuan to FENGGU Company for compensation.

#### **Case Comment:**

The design patent will be granted by the new and beautiful design for shape, pattern or both of them of the products. The packing boxes of FENGGU Company which has granted as the design patent are apparently different from others and



should be protected by law. Although it has little difference in some parts but it does not affect the overall visual effect. The customs can not tell the difference of the both. The identification of the design patent follows the objective attribution principle, the infringement still exists even the accused subject unknown. Only if the future of the infringement products fell into the claim of the patent, it can identify that the accused subject know the infringement subjectively. After the provincial IP Office explained the laws and regulations, FENGTE Company agreed mediation. This case was solved in short time at last.

#### Case 5

### **Trademark Exclusive Right Dispute Case among Jaguar & Land Rover Trade CO., LTD., Nantong CHENRONG Trade CO., LTD., Wu Xiaochun and Chengdu YANGYANG Mall Business CO., LTD.**

On October 26, 2001, the person other than involved in the case Beijing KEWENHUA Trade CO., LTD. registered the dispute trademark “LAND ROVER” (No.3004861). On March 14, 2004, the state Trademark Office made the announcement of the dispute trademark. On June 28, 2004, the state Trademark Office made the written verdict on dispute trademark “LAND ROVER”, convicting that the protest raised by the protestant England LUHUA Company (hereafter referred to as LUHUA Company) was voided and the dispute trademark was registered. The written verdict was send to LUHUA Company on October 15, 2008. On January, 17, 2011, the state Trademark Office issued confirmation which records that the trademark (no.3004861) was transferred to LUHUA Company and specified that the confirmation should be used with trademark registration certificate and the date is for transfer comes into force. On June 25, 2012, the state trademark office

issued trademark registration certificate which records that the trademark LUHUA Company used in 25 kinds of products has been registered with registration number of 3004861 and the term of validity is from March 14, 2004 to March 13, 2014. On October 21, 2012, the state Trademark Office issued dispute trademark identification registration announcement which records that the term of validity is from October 21, 2012 to October 20, 2020, registration subject is LUHUA Company and the trademark covers 25 kinds of products.

On September 26, 2011, Jaguar & Land Rover Trade CO., LTD. (primitive name: LUHUA Company, here after referred to as Jaguar & Land Rover Company) complained to Sichuan provincial Administration for Industry and Commerce that Chengdu Land Rover Trade CO., LTD. (hereafter referred to as Chengdu Land Rover Company) was suspected to sell infringement clothes. On October 14, 2011, The provincial Administration for Industry and Commerce started to investigate, carried out on-site inspection on the no.1501, Yanranju building 3, west Dashi road where Chengdu Land Rover Company locates and on the fifth floor of Tianfu store of Mall Business on the no.55 of Dongyu Street where Chengdu Land Rover set its sale department confiscating all the accused clothes. On March 3, 2012, the provincial Administration for Industry and Commerce issued written decision of administrative penalty, identifying it has violated the 52 regulation of Trademark Law of People's Republic of China, that Chengdu Land Rover Company sold clothes with trademark of "Land Rover" without permission of Jaguar & Land Rover Company and making the penalty that confiscates the 799 clothes with trademark of "Land Rover" and fined 30,000 Yuan. Some of the confiscated clothes are marked that producer is Nantong CHENGRONG Trade Company (hereafter referred to as CHENGRONG Company), address is HUACHENG Building 1903 on the Gongnong Road of Nantong, and telephone number is 0513-88869303. On March 16, 2012 and July 6, 2012, Jaguar & Land Rover Company respectively bought infringement clothes undertaking notarization in Qingdao and Zibo which are marked the producer

CHENGRONG Company. Jaguar & Land Rover Company appealed to Chengdu Intermediate People's Court, requesting to stop producing, selling infringement products, pay for the compensation and eliminate the effect.

Chengdu Land Rover Company (client) and CHEGNRONG Company (producer) signed commissioned processing contract respectively on December 10, 2010 and October 31, 2011 (contract numbers: LC110101, LC110102) and agreed on the producing brand are “ **LIIROVER** ” and “ *ludRover* ”. Chengdu Land Rover Company provided trademark registration certificates of “ **LIIROVER** ” (no.7541726) and “ *ludRover* ”(no.7255129) which records the registration subject is Wu Xiaochun, commodity checked and ratified - Class is no .25, and the term of validity is from December 7,2010 to December 6, 2020, from September 14, 2010 to September 13, 2020.

Mall Business Company (first party) and Chengdu Land Rover Company (second party) signed joint sale contract ( no.T10201) which records that the first party provides the fifth floor as sale place and relative running and management condition; the second party provides products of authorization or from legal channel, and agrees that the second party should display, sell legal products. The term of validity of the contract is from September 1, 2011 to February 28, 2012. The attachment of the contract records that the brands the second party sells are “ **LIIROVER** ”, “ *ludRover* ”, and the commodity checked and ratified - Class is no. 25. Chengdu Land Rover Company provides trademark registration certificates of registration numbers of 7541726 and 7255129.

Jaguar & Land Rover Company considered that the accused occupied its market share through long-time infringement in a great number of places with large-number of products with high pressure, appealed to Chengdu Immediate People's Court, request that firstly, Chengdu Land Rover Company should stop producing and selling the infringement products, Nantong CHENGRONG Company should stop producing the infringement products destroy the stock and withdraw the

products; secondly, the four accused should pay Jaguar & Land Rover Company 600,000 Yuan for economic losses and rational expenditure of safeguarding the right; thirdly, the four accused should publish a statement on the China Consumer Newspaper to eliminate the effect.

The Court identified at the first sentence that the infringement actions of the four accused happened before the Jaguar & Land Rover Company acquired the exclusive right of the registered trademark, have not infringing its trademark (no. 3004861) and should not bear civil liability. The court rejected the appeal of Jaguar & Land Rover Company.

Jaguar & Land Rover Company refused to accept the judgment of the first trial and appealed to the Sichuan Provincial High People's Court. The court identified at the first sentence that the trademark "LANDROVER" (no.3004861) registered by KEWENHUA Company at first, transferred twice and acquired by Jaguar & Land Rover Company at last. Jaguar & Land Rover Company have the exclusive right of the trademark involved and should be protected by law. Chengdu Land Rover Company (client) and CHENGRONG Company signed commissioned processing contract, and the later was entrusted to produce the accused infringement clothes. Wu Xiaochun granted Chengdu Land Rover Company and CHENGRONG Company to produce and sell the accused infringement products as legal representative and the owner of the tow trademarks of " **LIROVER** ", " *land Rover* " which indicates that he is the actual controller of the accused infringement actions. So, Chengdu Land Rover Company, Wu Xiaochun, ChengRong Company should bear the joint liability. Mall Business Company has taken its responsibility and should not bear the correspondent liability. On December 8, 2016, Sichuan Provincial High People's Court made the final sentence that firstly, cancels the civil judgment made by Chengdu Immediate People's Court, secondly, Chengdu Land Rover Company, Wu Xiaochun must stop producing and selling the products infringing the exclusive right of the trademark "LAND ROVER"(no.3004816) since the sentence comes to

force, thirdly, Nantong CHENGRONG Company must stop producing and selling the products infringing the exclusive right of the trademark “LAND ROVER” (no. 3004816) since the sentence comes to force; fourthly, Chengdu Land Rover Company, Wu Xiaochun and Nantong CHENGRONG Company pay 450,000 Yuan and 5,512 Yuan to Jaguar & Land Rover Company for economic losses and rational expenditure of safeguarding the right in the ten days since the sentence comes to force; fifthly, rejects other appeals of Jaguar & Land Rover Company.


**Case Comment:**




Jaguar & Land Rover Company as the accuser at the first trial and the appellant at the second trial in this case is a transnational enterprise with high international popularity which has huge influence in the motor industry and in the public. It is usual unfair competition method in the market to thumb a ride and copycat brand which should be understand as traditional way but not the legal meaning. These methods disturb the market order as well as strike the innovation and development activity of the public. If things go on like this, it will bring bad effect to the reform, innovation and IP strategy of the country. The final trial of this case do safeguard the right of trademark obligee, strike the illegal action of thumb a ride, and show the determination of protecting IP obligee.

**Case 6**

**Trademark Infringement Case of Shenzhen WOER  
Heat-Shrinkable Material CO., LTD.**

On August,10, 2015, Luzhou Administration for Industrial and Commerce received the complaint from CHANGLAN Cable Accessories CO., LTD. (hereafter referred to as CHANGLAN Company) that Shenzhen WOER Heat-Shrinkable Material CO., LTD.(hereafter referred to as WOER Company) bought 30 sets of plug

type terminal equipments of pillar model with trademark of “”, sold to Luzhou HENENG Industry CO., LTD.(hereafter referred to as HENENG Company) by changing trademark, factory name and address which has infringed its exclusive right of registered trademark.

Through investigation, the equipments marked with “” WOER Company sold was marked with Shenzhen WOER Heat-Shrinkable Material CO., LTD. as producer’s name, WOER industrial park on north Lanjing road of Pingshan district in Shenzhen. HENENG Company confirmed that the terminal equipments were bought from WOER Company and used in the under cable projects of roads construction of Lin-Lu, Long-Lu and Lin-Feng lines. CHANGLAN Company identified that the 24 sets of terminal equipments were sold in the market by changing trademark and package with unit price of 1.21 Yuan and total sales of 290,400 Yuan. The terminal equipments produced by CHANGLAN Company belong to combination products and combined with 8 main components each of which is separate products with independent name and trademark and can be sold separately. WOER Company bought the terminal equipments with trademark “” by sets, changed it to “” and sold them to HENEGN Company without any extra processing which has infringed the exclusive right of registered trademark and violated the fifth paragraph of the 57th article of Trademark Law of the People’s Republic of China according to which Luzhou Administration for Industry and Commerce ordered WOER Company to stop infringement action at once and fined 580,400 Yuan.

**Case Comment:**

It deprived the right of trademark registrant to show its trademark and the opportunity to create brand and gain the goodwill that one produced and sold the products by changing registered trademark into trademark of its own. It is unfair competition and infringement upon the public’s right to know which makes the public mistakes the recourses, producers and providers and hinders the registered

trademarks to effectively function and the registrant to develop the brand. This case punished the action that infringing other's trademark and illegally accessing the goodwill of other's products, safeguarded the right of the trademark registrant, and exerted the positive effect on the development of the socialist market economy.

#### Case 7

### **Case of Wang Jinfa Selling Products Counterfeiting Registered Trademark**

In January, 2013, the accused Wang Jinfa sold Chuangxiao fire-fighting equipments to Sichuan Construction Mechanization Engineering Company. The two parties signed material purchase contract which agrees Wang Jinfa sold Chuanxiao fire hydrants (model number: SN65), pressure release indoor fire hydrants (model number: SNJ65) and sprinkler head fire equipments with unit prices of 70 Yuan, 105 Yuan and 6.8 Yuan. Then, Wang Jinfa inquired these equipments' price from dealers entrusted by factory of Chuanxiao fire-fighting equipment, and got that the prices genuine Chuanxiao store fixed are far more than peddlers quoted. Wang Jinfa bought three kinds of products above infringing Chuanxiao brand with unit price of 50 Yuan, 80 Yuan and 5 Yuan without confirming any qualification of the peddlers, and sold 825 fire hydrants (model number: SN65), 952 pressure release indoor fire hydrants (model number: SNJ65) and 5,170 sprinkler head fire equipments to the construction department of Nanchengduhui 5A project with the prices Chuangxiao factory fixes.

On September 12, 2014, the fire brigade of Chengdu Hi-Tech Industrial Zone found those fire-fighting equipments are not qualified when checking, then transferred the case to the Administration for Industry and Commerce of Chengdu Hi-Tech Industrial Zone who found that in the project a part of fire-fighting equipments were suspected infringed the exclusive right of Chuanxiao trademark

when checking. Through identification on site, Cuilian (China) Fire –fighting Equipment Manufacturing CO., LED. confirmed those equipments are infringement products. Administration for Industry and Commerce of Chengdu Hi–Tech Industrial Zone then transferred the case to public security organ.

On December 3, 2014, Wan Jinfa was captured by public security organ. It identified that Chuanxiao fire hydrants (model number: SN65), pressure release indoor fire hydrants (model number: SNJ65) are products infringing registered trademark with sales volume of 157,710 Yuan; sprinkler heads are unqualified with sales volume of 35,156 Yuan, a total of 192,866 Yuan.

On December 28, 2015, the procuratorate of Chengdu Hi–Tech Industrial Zone prosecuted to people’s court.

On May 5, 2016, Chengdu Hi –Tech District People’s Court adopted the procuratorate’ opinion, identified Wan Jinfa sold products infringing registered trademark and sentenced the defendant tow years of imprisonment, three years of probation, fined 192,000 Yuan, confiscated and destroyed the infringement products. Wan Jinfa accepted the trail, paid the penalty and provided proprietors with genuine Chuanxiao fire–fighting equipments according to contracts.

**Case Comment:**

It is the achievement to use linkage mechanism of administrative law – enforcement and criminal judicature to solve this case. The fire brigade and administration of industry and commerce did a lot of preliminary work including check, closed–down and detention which help the public security organ a lot in investigation and evidence finding. The procuratorate intervened in advance, and guided to investigate in the prosecution procedure. The procuratorate made the verdict by tight chains of evidence. This case shows the judicial led of IP protection of the judicial organs.



Case 8

**Dispute Case of Right of Performer among Lufei,  
Pingchang People's Government, Zhou Liping and  
Pingchang Culture Center**

In June, 2012, Pingchang Culture Center invited Nie Zhenggang etc. to Pingchang to do on-the-spot investigation and create songs publicizing Pingchang. In October of the same year, Nie Zhenggang transmitted the lyric, opern, music accompaniment and music sample to the Culture Center by network. The Culture Center made MTV according to the music sample, signed the singer as Zhou Liping, and provided it to the government website, culture website and travel website and television station of Pingchang County to broadcast. On April, 25, 2014, the opening ceremony of the fifth Sichuan Village Culture and Travel Festival was hosted by Pingchang government etc. The relative performance in the ceremony were organized, planed and carried out by the Culture Center. In the ceremony, Zhou Liping was invited by the Culture Center to sing Jiangkou watery region which signed the singer is Zhou Liping but accompanied by the music sample singed by Lufei. At the end of April, 2014, Lufei complained the false singing of Zhou Liping to Sichuan provincial Tourist Administration and requiried for compensation. The Culture Center then investigated the case. On March13, 2014, Lufei and the Culture Center made the mediation agreement. Lufei got 150,000 Yuan for compensation. Lufei considered that the Culture Center, government and Zhou Liping has infringement actions, appealed to Bazhong Immediate People's Court, request that firstly, Pingchang People's Government should stop infringement at once, eliminate the effect and make a public apologize; secondly, the Culture Center and Pingchang People's Government should pay 5,000,000 Yuan for economic losses; thirdly, the Culture Center should pay 500,000 Yuan fee since it used the accuser's work;

fourthly, the Culture Center and Pingchang People's Government should pay accuser 53,000 Yuan for lawyer's fee etc.; fifthly, the Culture Center and Pingchang People's Government should bear all the legal cost of this case.

The court identified at the first sentence that Lufei is singer of the music sample of Jiangkou Water Region and has right of performer. The Culture Center used Lufei's music sample when making MIV, providing song videos to some websites and organizing performance without figure the singer is Lufei which has infringed the right of performer, permitting others to broadcast in public through network and getting the reward. The Culture Center has made the mediation agreement with Lufei, paid 150,000 Yuan for compensation, made the statement in the government website to figure the original singer is Lufei. Meanwhile Lufei has confirmed not look into legal obligation of the Culture Center on the court, so the Culture Center does not bear infringement liability in this case. Zhou Liping was the official of the Culture Center and committed her duty to shoot MTV of Jiangkou Water Region so the effect of Zhou Liping's action should be beared by the Culture Center. Pingchang People's Government did not organize, plan and carry out the perforce as the host of the opening ceremony of the fifth Sichuan Village Culture and Travel Festival. There's no evidence to show the government incite or know the situation, so the court did not support Lufei's request.

Lufei refused to accept the judgment of the first trail and appealed to Sichuan High People's Court. On December 2, 2016, The high court adjudged, reject the appeal and uphold the original sentence.

**Case Comment:**

With the development of network economy, many types of dispute cases increased a lot concerning with network on which everyone including government organ plays uncertain roles who maybe a consumer or service provider even may participate of an infringement case. The accused in this case had no strong awareness to examine so that they constituted infringement. The parties actively

dealt with the case, reached the mediation agreement with the obligee and performed the agreement. The obligee has gained the compensation so her repeated right requests were not approved in the trail.

#### Case 9

## **Copyright Infringement of MEIYIN Coffee and Movie Café**

On September 2, 2016, Chengdu comprehensive Law-enforcement brigade of culture market checked that MEIYIN Coffee and Movie Café located on no.1413, building A of Diamond plaza in Chenghua district, Chengdu stored movies in its server. The user can watch the movies in the compartments of the café with the projector by publishing group-buying information in Baidu Nuomi and Dazhongdianping or paying cash on site. The café stored a total of 1558 movies which downloaded from Tuhao website, BT Tangtang etc. The café published movies without permission of the copyright owners which was suspected to violate the regulation of first paragraph of 48th article of Copyright Law of People's Republic of China. On October 9, Chengdu Administration of Culture, Radio, Film and Television fined MEIYIN Coffee and Movie Café 5,000 Yuan for administrative penalty according to Implementing Regulation on Copyright Law.

#### **Case Comment:**

It is a case in terms with small movie café infringing copyright which was successfully solved in the 12th special action of "Sword Net 2016" to cracking down on network piracy. The state Copyright Administration included the work of cracking down on the infringement of small movie café into the regulation scope of "Sword Net" action. This year only 4 provinces and cities carried out this work one of which is Chengdu. It further promoted the implementation of the Copyright Law and its

implementing regulation, expanded the copyright law –enforcement range and effectively suppressed the piracy in the network.

#### Case 10

### **Illegal Publication Case of 52 Teachers of Sichuan Yilong HONGDE Middle School**

On April, 12, 2016, the public complained that teachers of Sichuan Yilong HONGDE Middle School (hereafter referred to as HONGDE Middle School) subscribed piracy supplementary books. On April, 13, Nanchong branch Law – enforcement brigade of culture market checked the supplementary books including Succeeding in the Entrance Examination·Math (arts, science), Red Marks·Chemistry (elective course 4), Red Marks·Teach and practice (chemistry for senior three students, Guide and Practice in General Review of Senior Grades·Round Tow (Biology) etc. used by the students of HONGDE Middle School from first to the third senior grade. They filed and stored 10 kinds and 34 copies of test papers, 27 kinds and 48 copies of supplementary books as evidence. Nanchong branch Law – enforcement brigade of culture market identified that except Succeeding in the Entrance Examination·Math (arts, science, price:60 Yuan/ copy) are illegal publication ,the others are legal books.

Through investigation, Nanchong branch Law –enforcement brigade of culture market identified 37 teachers of HONGDE Middle School

published books without authorization, 15 teachers including Deng Qi etc. published illegal books. 37 teachers including Yang Guang etc. published 4,242 copies of books with illegal income of 84,951.50 Yuan and profit of 26,760 Yuan. 15 teachers including Deng Qi etc. published 1,113 copies of illegal book Succeeding in the Entrance Examination·Math (arts, science) with total price of 66,780 Yuan,

illegal income of 32,190 Yuan and profit of 4,440 Yuan (the poor students did not pay fees).

On August 19, 2016, Nanchong Administration of Culture, Radio, Film, Television, Press and Publication made the administrative penalty of confiscating illegal publication, illegal income and fining. There confiscated 1,113 copies of illegal books, 31,992 Yuan illegal income which has returned to the students and shall be not recovered, fined 36,818.4 Yuan.

**Case Comment:**

This case concerned with 52 teachers, 45 classes and 2745 students in which published 4,242 copies of books including 1,113 copies of illegal publications. It is complicated enough to input large number of law-enforcers and spend long time. This case is a typical group case in supplementary publication which violated the regulation of opinion on Subscribing and Distributing Supplementary Materials. Now, the action of illegal publication increased, it benefits to regulate the subscription work of schools, and eliminate the duty crime to solve this case.

(This publication is released in both Chinese and English, and in the event of any discrepancy, the Chinese version shall prevail.)

# 目 录

1. 王东升诉中南大学科技开发总公司、攀钢集团攀枝花钢钒有限公司侵犯实用新型专利权纠纷案
2. 四川五丰黎红食品有限公司请求处理成都市富贵玻璃制品有限公司专利侵权案
3. 罗文均、成都日月鑫家具有限公司系列家具外观专利维权案
4. 绵阳丰特酒业有限责任公司侵犯四川省绵阳市丰谷酒业有限责任公司外观设计专利案
5. 捷豹路虎控股有限公司诉成都路虎商贸有限公司、南通诚荣贸易有限公司、吴晓春、被上诉人成都洋洋摩尔百货有限公司侵害商标专用权纠纷案
6. 深圳市沃尔核材股份有限公司商标侵权案
7. 王进发销售假冒注册商标的商品案
8. 芦菲诉平昌县人民政府、周莉萍、平昌县文化馆侵害表演者权纠纷案
9. 美映咖啡和电影影吧侵权案
10. 四川省仪陇宏德中学 52 名教师擅自从事出版物发行业务及发行非法出版物案

# List

1. Dispute Case of Infringing Utility Model Patents among Wang Dongshen, Technology Development CO., LTD. of Central South University, Steel and Vanadium CO., LTD. of Panzhihua Iron & Steel Group
2. Patent Infringement Case of Requesting to Handle by Sichuan WUFENG & LI-HONG Food CO., LTD.
3. Case of Luo Wenjun, Chengdu RIYUEXIN Furniture CO., LTD. Safeguarding the Design Patent Right of Furniture
4. Design Patent Infringement Case between Mianyang FENGTE Brewery CO., LTD. and Sichuan Mianyang FENGGU Brewery CO., LTD.
5. Trademark Exclusive Right Dispute Case among Jaguar & Land Rover Trade CO., LTD., Nantong CHENRONG Trade CO., LTD., Wu Xiaochun and Chengdu YANGYANG Mall Business CO., LTD.
6. Trademark Infringement Case of Shenzhen WOER Heat-Shrinkable Material CO., LTD.
7. Case of Wang Jinfa Selling Products Counterfeiting Registered Trademark
8. Dispute Case of Right of Performer among Lufei, Pingchagn People's Government, Zhouliping and Pingchang Culture Center
9. Copyright Infringement of MEIYIN Coffee and Movie Café
10. Illegal Publication Case of 52 Teachers of Sichuan Yilong HONGDE Middle School

# 2016 年四川省知识产权保护典型案例

Typical Cases of Sichuan Intellectual Property Rights Protection in 2016

四川省知识产权工作领导小组办公室

Office of Sichuan IP Leading Group