Application of the Principle of Exhaustion of Trademark Rights under the System of Concurrent Judgment for Class Cases

-- Take the Case of C City Trademark Infringement Dispute as an Example

Yun Chang*
School of Law, Xiangtan University, Hunan, 411105, China

Abstract
As the market economy is highly developed, the circulation of commodities and trading methods are more rapid and diverse, and the abuse of trademark rights by the owner of commodities will restrict the free circulation of commodities and reduce the market activity. The principle of exhaustion of trademark rights has been affirmatively stipulated in the world, and the academic circles in China are mostly in favor of this principle, but the legislation on this principle is still missing in China, and the judges' perception of this principle is also different. The introduction of the system of the same judgment in such cases is of great significance to the uniform application of the principle of exhaustion of trademark rights in China. This article takes real cases as the premise for consideration, and takes the current situation of the application of the principle of exhaustion of trademark rights in my judicial practice as a guide to derive the significance of the same system for this principle, enumerate various practical dilemmas in the application of this principle in individual cases, and put forward corresponding application suggestions, with a view to providing a practical reference for the judicial practice involving trademark infringement in China.

Keywords
Market Economy; Exhaustion of Trademark Rights; Lack of Legislation; Same Judgment in Class Cases.

1. Introduction
Brief description of the case
In the second half of 2020, a court in C City handled a trademark infringement dispute in which the focus of the dispute was whether secondary sales constituted infringement of trademark rights. The main arguments of the parties were: the plaintiff argued that the defendant's unauthorized sale of its company's products constituted infringement, and therefore sued the defendant for damages and payment of costs for the maintenance of rights. The defendant argued that it purchased the plaintiff's products through legal channels and had paid reasonable consideration, at this time the plaintiff's trademark rights for the goods contained in the trademark have been exhausted, the defendant's secondary sales behavior does not constitute trademark infringement. The defendant provided relevant purchase certificates and a number of evidence that it has done its duty of reasonable examination.

In the trial of this case, there was a lack of legislation on the exhaustion of trademark rights and insufficient knowledge of the judges. For example, the trial judge and the clerk were both very unfamiliar with the concept of "exhaustion of trademark rights" and repeatedly asked the defendant's agent what was the exhaustion of trademark rights. Does it mean that the right
holder has no rights after spending money to buy out the intellectual property rights? Where is there such a provision? This article provides the following thoughts on this phenomenon.

### 1.1. The Principle of Exhaustion of Trademark Rights in the Current State of Application of Judicial Practice

#### 1.1.1. Overview of the Principle of Exhaustion of Trademark Rights

A trademark is a distinctive mark used by producers and operators for the production of different goods or services provided by different producers of goods[1]. Article 6 of the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) specifically addresses the issue of exhaustion of intellectual property rights (also translated as "one-time exhaustion of rights"). The exhaustion of trademark rights means that the trademark owner cannot continue to exercise its exclusive rights in one or more aspects, i.e., the trademark rights are exhausted. For example, the UK Trademark Act provides that the owner of a trademark or the registered user of a license issued by that owner has no right to control the distribution and resale of goods bearing that trademark, provided that the owner of the registered user of a license issued by that owner has consented to the use of his trademark on the goods placed on the market; the European Common Market The "European Court of Justice" of the countries of the European Common Market has also ruled, in accordance with the Treaty of Rome, that in all countries of the Common Market, neither the owner of a trademark nor his subsidiary, which has been placed on the market in a member state of the Common Market with the consent of himself or his licensee, has the right to control the continued flow of the same goods bearing his trademark to any other member state (including the country of the trademark owner)[2].

As for the principle of exhaustion of trademark rights, some theoretical circles in China believe that the exhaustion of rights is the loss of the rights of the right holder after the sale of the trademark goods[3]; some believe that the theory of exhaustion of trademark rights should be explained by the implied license use of the trademark, that is, the resale of goods is the implied authority of the trademark, at which time the exclusive right of the trademark has been exhausted and the illegality of the use of the trademark by the later hand is blocked. In Mr. Liu Chuntian’s view, the rights of the right holder have been exhausted after the first sale of the product containing intellectual property rights[4]. This all points out the point of time when the rights are exhausted. Later, some scholars further explain that the premise of exhaustion of rights must be "sold and distributed in a lawful manner", after which the right holder has no right to control the flow of the goods, no matter the goods are transferred to any person[5]. This theory tends to suggest that the trademark right is exhausted by the right to control the sale of the sold goods, and explains the premise of "lawful manner". Then, Mr. Tao Xinliang and Mr. Yuan Zhenfu pointed out that after the right holder or his licensor put the product into circulation, he has no right to interfere with the use and circulation of the product, that is, he has exhausted the relevant right and cannot exercise it again[6]. This theory tends to hold that after the first sale of the goods, the right holder exhausts the right to use and control the sale of the trademark contained in the goods.

The author believes that the principle of exhaustion of trademark rights is the general trend. In the complicated and intertwined market economy, if the law over-protects one party to a transaction, it will turn itself into a means of unfair competition. The function of a trademark is to distinguish and retain the brand value of a company, which will not be diminished under legal circulation.

#### 1.1.2. Reasonableness of the Principle of Exhaustion of Trademark Right

The principle of exhaustion of trademark rights can prevent trademark owners from abusing their rights[7]. Therefore, the reasonableness of the principle of exhaustion of trademark rights mainly lies in balancing the interests of the trademark owner and the owner of the goods
attached to the trademark, and in order to ensure the normal circulation of goods, active market and promote economic and trade activities, which is, in essence, a reasonable restriction on the abuse of the rights of the non-right holder of the trademark.

Any kind of abuse of rights is unfair, and there is no absolute right. In terms of the purpose of trademark protection, the trademark law prohibits the use of identical or similar trademarks on identical or similar goods in order to avoid consumer confusion about the source of goods and misleading purchases, and to facilitate the improvement of manufacturers’ goodwill by improving the quality of goods and management, further promoting the improvement of the quality and quantity of social material wealth, and achieving the purpose of "making the best use of things"[8]. The purpose of "making the best use of things". After the trademark owner or its licensor has put the goods on the market, the legitimate use or sale by anyone else does not harm the trademark right. If the rights of the trademark owner are not exhausted at the time of the secondary sale, the trademark owner can use the trademark rights to control all retail rights of the goods. This will inevitably restrict the free flow of goods and create a monopoly in the market, which will turn into a disguised unfair competition. In order to protect the legitimate rights of other operators and consumers, the exhaustion of trademark rights is necessary. It can be seen that the principle of exhaustion of trademark rights aims to promote the freedom of trade and active market by limiting the abuse of the rights of trademark owners.

1.1.3. Lack of Legislation on the Principle of Exhaustion of Trademark Rights

So far, the specific regulations on the exhaustion of trademark rights in China are still in a blank state. China’s trademark law provides in Article 64 that "a person who sells goods that he does not know is infringing the exclusive right to use a registered trademark and can prove that the goods were lawfully obtained by him and specify the provider shall not be liable for compensation". This provision holds that even if a non-trademark owner obtains the goods legally and can state the provider of the goods, it still constitutes trademark infringement, i.e. the infringement of the defendant in the aforementioned case, which is extremely diligent in examining the obligation, will be uncontroversial, which to some extent denies the principle of exhaustion of trademark rights.

In fact, the development of today’s society is in urgent need of laws and regulations on the principle of exhaustion of trademark rights to escort. In terms of adapting to economic development, China’s economy is growing rapidly and the market is becoming increasingly diverse. Convenient purchase and sale mode is sought after by more people for its remarkable advantages of low cost and low time consumption. For example, the use of "WeChat" as the main channel to purchase products and then sell them online is becoming popular. If we were to require the authorization of the trademark owner for each resale link, it would not only limit the development of the new trading model but also be unrealistic. In this socio-economic development, the legislative demand for the principle of exhaustion of trademark rights is realistic and urgent; from the two-way protection of the law, the protection of the law is not one-way, but protects the legitimate interests of the right holder as well as the non-right holder from illegal infringement, and thus maintains the stability of market transactions and protects the healthy development of the economy. The new market operation mode inevitably leads to new legal issues, and in today’s increasingly important intellectual property protection, the two-way protection of commodity trademark right holders and non-right holders is an important part of it. The lack of legislation on trademark rights, while expanding the scope of protection for right holders, has infringed on the reliance interests of non-right holders in disguise; from the perspective of guaranteeing fair competition in the market, the law should have the function of guaranteeing fair competition among market players, but the lack of legislation on the principle of exhaustion of trademark rights has not only restricted the accelerated flow of market economy but also increased judicial costs. The right holder may use the vacancy of this provision for frequent litigation and unfair competition, simply because the
cost of litigation is low for the right holder, while the sales party as a non-right holder will face the risk of immediate shelving, goods hoarding, and capital breakage once involved in the lawsuit, and there is a greater economic risk after the infringement is identified. This also leads to many scruples and fears when the terminal sales body participates in market transactions; in terms of the predictive role of the law, the lack of relevant legislation, the results of the verdict vary, the legal purchase of sales may or may not infringe, resulting in the public confusion about whether the secondary sale of infringement, can not be based on the law to predict, guide their own behavior. For lawyers and other legal practitioners, they need to consult a large number of cases, analyze and compare the trend of judgments, and then guess the direction of individual judgments. However, even this will be misjudged due to the cognitive differences of individual judges, which not only reduces the utilization of judicial resources but also does not mention the two-way protection of trademark law.

### 1.1.4. Differences in the Application of the Principle of Exhaustion of Trademark Rights

Differences in perceptions have led to different judgments in such cases. Some judges are familiar with and apply the principle of exhaustion of trademark rights in trial activities, while others are unaware of and do not understand this principle, which has led to blindness in judicial practice and inconsistent trial results. For example, in the Supreme People’s Court’s "Jiumu" case ((2019) Supreme Law Min Shen No. 5946), it was held that "it is highly probable that the Long Ding Trading Company claimed that the Jiumu products it sold came from the Jiumu Sanming Center. After Jim sold its products, its trademark rights were exhausted and it had no right to prohibit Longding Shanghai from continuing to use the trademark in question when it sold the products again.

Secondly, Longding Shanghai sold Jiumu products, and its use of Jiumu’s trademark logo in its business premises was indicative of the source of the goods, and this act did not constitute trademark infringement. Therefore, the court of the second instance found that Long Ding did not infringe the exclusive right of the Nine-Mu Company to use the trademark in question and was not improper". For example, the Fujian Provincial High People’s Court held in its judgment in the Lipang case (No. 191) that "trademark use is the act of using a trademark in commercial activities for the purpose of identifying the source of goods.

The approved categories of use of the trademarks in question are all Class 2, which are commodity trademarks. Based on the principle of exhaustion of trademark rights, Guangzhou Lipang failed to provide evidence to prove that the Lipang products sold by Shengjie Commercial Bank were counterfeit goods with its registered trademark, that Shengjie Commercial Bank infringed the exclusive right of the registered trademark involved, and that He Xuan authorized Shengjie Commercial Bank to use the trademark involved, and that Shengjie Commercial Bank’s sale of genuine Lipang paint and reasonable labeling behavior was a reasonable use of the trademark involved."

These two cases both dispute whether the secondary sale after legal purchase is an infringement, and the circumstances of the cases are highly similar to the cases cited in this paper, but the two presiding judges have different degrees of understanding of the principle of exhaustion of trademark rights, the presiding judges of the Supreme People's Court and Fujian Provincial High People's Court know the principle of exhaustion of trademark rights very well and explain and reason while invoking the application, while the presiding judges of the cases cited in this paper are The presiding judges of the cases cited in this paper were unfamiliar with this principle. The difference in perception led to a great difference in the trial situation of the two types of cases, which shows the great difference in the application of the principle of exhaustion of trademark rights in judicial practice.

The lack of legislation on the principle of trademark exhaustion is one of the main reasons for the difference in the perception of different judges in similar cases, which ultimately leads to
different judgments in such cases. Although the legislation of this principle is lagging behind, there is already jurisprudence in this field in China, and opinions on the application of the jurisprudence have been issued. What is the significance of the principle of exhaustion of trademark rights and what is the dilemma of its application under the new regulation at the beginning that deserves further study.

2. The Significance and Dilemma of the System of Concurrent Adjudication in the Principle of Exhaustion of Trademark Rights

In July this year, the Supreme People's Court issued the "Guiding Opinions on Unifying the Application of Law and Strengthening Case Searching (for Trial Implementation)", (hereinafter: "Guiding Opinions"), which requires the undertaking judges to conduct case search when hearing relevant cases, to provide a reference for the collegial court, professional (presiding) judges' meeting and trial committee to study and discuss the cases. This system emerged precisely to make up for the inadequacy of existing laws and regulations. In this case, if the provisions of trademark law are mechanically applied and the principle of exhaustion of trademark rights is applied without considering the existing precedents, it will directly result in a judgment finding that the defendant's infringement constitutes. After the issuance of the Guidance, the defendant in the case cited therein may not constitute trademark infringement, which adds additional prudence to the determination of whether the secondary sale constitutes infringement, and the judgment result will be more reasonable and acceptable.

2.1. The Significance of the System of Concurrent Adjudication in the Principle of Exhaustion of Trademark Rights

Firstly, the same sentence system for similar cases is conducive to the establishment of judicial authority and the maintenance of legal unity. A country's judicial authority to establish and improve the credibility of the basis of the Du will be the public's respect for the law, the court's decision enough, recognition and acceptance, otherwise the perfect law will lose authority and credibility, in vain a piece of paper, become worthless[9]. Using "exhaustion of trademark rights" as the keyword, 73 judgments can be searched on the website of China Judicial Documents. If we broaden the scope, hundreds of effective adjudication documents will appear with the keywords of "trademark right" and "trademark infringement", among which there are many controversial points related to the exhaustion of trademark rights. It can be seen from these decisional documents that the principle of exhaustion of trademark rights has been widely invoked by lawyers and judges, but the degree of application of this principle varies only in cases with highly similar circumstances and different regions. If there is a group of cases involving the same points, then the parties will expect the same decision. If the cases were decided alternately based on opposing principles, then this would be a great injustice. If in a case yesterday the decision was against me as the defendant, then if I were the plaintiff today, I would expect the same decision in the case. If it were different, a feeling of anger and injustice would rise in my chest[10]: it would be a violation of my substantive and moral rights.

This is true of the case discussed in this article and the preceding examples of the "Nine Muses" case and the "Lippo case," which involve the same issues, evidence, and legal facts that are highly similar. Just because the judges' perception of the principle is different, they may produce completely different results. It can be seen that the different judgments of such cases will make the public confused about the legal provisions so that the people do not understand the court's decision, which in turn will cause difficulties in implementation, and the authority of justice will be difficult to establish.

Secondly, the system of concurrent adjudication of class cases is conducive to making up for the cognitive differences of judges and flexibly responding to the different requirements of social
development, to meet the needs of market operation. In China, the trial of intellectual property cases is still in its infancy, and the application of the principle of exhaustion of trademark rights is even in its infancy. Some judges are familiar with this theory and can apply it in trademark infringement cases of brands known to the people; some judges do not know this theory, as in the case discussed in this paper. However, the globalization of the market economy has put forward more urgent and objective requirements for the two-way protection of trademark rights, and the exhaustion of rights is an important principle to prevent one-size-fits-all protection of rights, and the judges' general knowledge of this principle is the practical basis for the two-way protection of rights.

In practice, lawyers or other litigation participants will also submit relevant case search reports for the judges' reference, which is an important means to make up for the judges' cognitive differences. In addition, jurisprudence is the embodiment of judicial activism, and the use of jurisprudence puts a deeper demand on the subjective activism of judges, and its role in the principle of exhaustion of trademark rights is self-evident. The characteristic of jurisprudence is that, by applying realistic matters to specific legal provisions, people can have a more intuitive understanding between the facts of the case and the provisions of the law, so that they can accurately judge whether they have violated the law, and the predictive role of the law will be further brought into play.

In summary, it can be seen that the significance of the system of concurrent adjudication of class cases on the principle of exhaustion of trademark rights can be divided into three levels from the surface to the inside. The first level is to promote the uniform application of trademark law. The same judgment of class cases is the embodiment of the case guidance system at the specific and micro level, and the same judgment of class cases requires judges to cooperate at different levels, such as gazetted cases, guiding cases, typical cases, and jurisprudence of various regions, in order to achieve the purpose of unified law of the same judgment of class cases. The second level is the requirement of improving the judicial accountability system. The same case system requires the establishment of a case database, the judge's decision documents are bound to go online, is bound to face the research and discussion of the cocoon, another case judge in deciding whether to refer to the application of the law before the accuracy of the application, the reasoning is appropriate, how the judge's skills at a glance. Under the system of the same case, a new supervision mechanism more in line with the laws of justice, it can be said that the same case carries the high hopes of trial supervision mechanism reform. The third layer is to make the court decision more acceptable. The people's simple view of justice is that my situation in this case and his situation, in that case, is the same, then the judge's verdict on me should be the same as his verdict. Moreover, most of the hot public opinion cases in recent years have seen the public express their views and emotions by spontaneously comparing similar cases. Therefore, it is difficult for the parties to be convinced by the verdict of different cases; the same verdict of similar cases can improve the judicial credibility and make the people get more just feelings[11]. In the case discussed in this article, the defendant did not understand why the second sale of his purchase through legal channels did not constitute infringement in other places but might constitute infringement in the c-city court. The simple thinking of the society at large also believes that what one has bought naturally has the right to dispose of the item.

2.2. The Dilemma of the Case by Case System of Concurrent Judgment on the Principle of Exhaustion of Trademark Rights

Firstly, the dilemma of fewer cases. First, there are fewer cases of trademark infringement in China than other categories of cases in general, and the Guidance stipulates that the scope of the search of China's category of cases generally includes: the guiding cases issued by the Supreme People's Court; the typical cases issued by the Supreme People's Court and the cases
with rulings in force; the reference cases issued by the High People's Court of this province (autonomous region, municipality directly under the Central Government) and the cases with rulings in force; the people’s courts of the higher level and the Cases in which the ruling is effective. With "exhaustion of trademark rights" as the keyword, less than eighty decided cases were searched on the website of China Judicial Documents, among which there were few cases that took c-city cases as the premise to meet the scope requirements of the Guidance.

Secondly, the cases that meet the scope requirements should be further screened, mainly to compare the similarity with the pending cases in terms of basic facts, controversial focus, legal application issues, etc., which further reduces the number of reference cases. The lack of cases will not meet the needs of individual cases, which requires judges to fully consider the relationship between the decided cases and the legal provisions, take into account the facts of the case, and form a new high-quality decision, which will also become the reference case for the next judge, and the proper resolution of the dilemma will also create a virtuous circle; second, the burden of lawyers and other participants in the litigation increased.

As in this case, in the case where the judge was unaware or even suspicious of the exhaustion of trademark rights principle, in addition to the need to fully explain the extent of the application of the principle by other judges and the reasons for it, there is also the added task of explaining the principle itself. The class search report in the case discussed in this paper, i.e., the item of similarities and differences between the decided case and the pending case is singled out to analyze whether the principle of exhaustion of trademark rights should be applied in terms of the popularity of the trademark in the two cases, the subjective awareness of the suspected infringers, and the proof of evidence.

The judge as the adjudicating party should know more about the principle, and the Guidance mainly requires the judge to analyze and search the class cases, and the judge needs to have the ability to identify, distinguish, and form the report of the class case search report submitted by other parties. The dilemma encountered in this case is that the judge directly asked the lawyer or other litigation participants to submit multiple cases and form a report, which amounts to a transfer of work; third is the dilemma of proving the contradictory allocation of burden. Whether the goods involved are genuine is the key condition to determine whether the goods are legally obtained.

Some courts in similar cases, in this case, held that the burden of proving that the goods involved are counterfeit belongs to the plaintiff, and those who cannot prove it are presumed to be genuine; some courts held that the defendant should prove the legal source, otherwise it is presumed to be counterfeit and thus cannot affirm its legal source. The allocation of the burden of proof is directly related to the interests of the two litigations, and will even dominate the direction of the case, so the choice of these two types of precedents is crucial to the application of the principle of exhaustion of trademark rights.

3. The Application of the Principle of Exhaustion of Trademark Rights under the System of Concurrent Adjudication in Similar Cases

Although there is a lack of legislation in China on the principle of exhaustion of trademark rights, the introduction of the Guidance, the system of concurrent judgments in similar cases has made the application of this principle more justifiable and legitimate.

However, the new Guidance is in its infancy and judges need time to over-adapt. In this case, the presiding judge was not sufficiently aware of the exhaustion of the trademark rights principle, which in turn led to a dilemma in the case. In practice, the application of the exhaustion of trademark rights principle, in this case, should be carried out in two steps: lawyers and other litigation participants provide detailed case search reports for the judge’s reference, and the judge adopts the explanation required by the Guidance.
For the class cases provided by lawyers and other litigation participants other than judges, the Guidance has targeted arrangements in its institutional design: firstly, it allows public prosecution organs, parties to cases, and their advocates and litigation agents to submit class case search reports to provide judges with references for their decisions. The second is to clarify the responsibilities of the people’s courts, that is, if the public prosecution organs, the parties to the case and their advocates, litigation agents, etc. submit guiding cases as grounds for prosecution (litigation), the people’s courts should respond in the reasoning of the adjudication documents whether to refer to and explain the reasons, to enhance the acceptability of the decision and achieve the organic unity of legal and social effects; if other types of cases are submitted as grounds for prosecution (litigation), the people’s courts The people’s court may respond by way of explanation. [12]

Firstly, by the rules of the Guidance, priority is given to searching the "China Judicial Documents Website" for judgments of the same court, higher courts, regional high people’s courts, and the Supreme People’s Court that have come into force within three years. The focus is on guiding cases, typical cases, etc. As noted above, the dilemma of the low number of precedents was immediately encountered, and the search should be expanded to focus on the precedents of other local higher people’s courts first, at which point the issue of quantity was resolved, but the more detailed elaboration of cases from both sides was required as they were beyond the scope of the Guidance.

Secondly, in the search report submitted, the purpose of the case search, the search method, and the search keywords should be clearly defined, and then a table should be made to list the brief of the class case, excerpts from the original text of the judge’s reasoning, and key points such as the popularity of the trademark, the submission of evidence by both the plaintiff and the defendant, and whether the defendant was subjectively malicious should be compared with the pending case for similarities and differences, and the wording used in the report should be objective and neutral.

The original judgment is then attached, printed directly from the "China Judicial Documents Website", retaining the time of printing and the header and footer of the page so that the reference is authentic and complete and the judge is spared the repetitive task of searching for it twice.

Finally, for the convenience of judges and to verify that an electronic version of the search report is sent to them, the report contains links to the websites of the jurisprudence. Once the electronic version of the search report is opened, you can click directly on the corresponding link to the case law to be redirected to the current page of the "China Judicial Documents Website". For example:

xxxxx Ltd. v. xxxxx Ltd. in a dispute over infringement of trademark rights [(2020) Cxxx Civil No. xxx

Class Case Search Report (Short Form)

I. Overview of class searches

(i) Date of search

2020 Months

(ii) Purpose of the search

In the light of the focus of dispute in the xxxxxxxx case (referred to as "this case" in the "Overview of the search of similar cases" section), to clarify the views of judicial practice on the determination of trademark infringement, the liability of the accused trademark infringer, the amount of compensation and other issues, we searched for cases with a high degree of similarity to the basic facts and focus of dispute in this case and conducted a comprehensive review and summary of the views of decisions. We searched for cases with a high degree of
similarity to the basic facts and issues at issue in the present case, and comprehensively sorted out and summarised the views of the adjudication.

(iii) Search platform
China Judicial Documents Website (http://wenshu.court.gov.cn/), Beida Faber Legal Database (http://www.pkulaw.cn/Case/), No Lawsuit Cases (https://www.itslaw.com/), etc.

(iv) Search terms
1. Search keywords: Multiple searches were conducted using the keywords "disputes over infringement of trademark rights", "liability" and "exhaustion of trademark rights" respectively.
2. Screening criteria: among the cases searched with the above keywords, select those that also meet the following criteria: (1) the cause of action is "dispute over infringement of trademark rights"; (2) the factual findings relate to counterfeit products, exhaustion of trademark rights and allocation of the burden of proof; (3) the "the Court considers " and the part on "whether it constitutes infringement".

(v) Search results and conclusions
A total of 2 cases with a high degree of similarity to the basic facts and focus of the dispute, in this case, were searched, both involving the determination of trademark infringement and the allocation of the burden of proof, made by the Supreme People's Court and the Fujian Provincial High People's Court.

On whether it constituted trademark infringement. The majority of the courts, including the Supreme People's Court and the Fujian Provincial High People's Court, held that: 1. if the plaintiff failed to prove that the defendant sold counterfeit products, the products sold by the defendant were presumed to be genuine; 2. if there was a high probability that the goods sold by the defendant originated from the plaintiff, the defendant's sale was a fair use of the trademark and the plaintiff's trademark rights were exhausted, which did not constitute trademark infringement.

Submitted by: xxxx Ltd.
Date of submission: 2020
Attachment: the original text of the decision in the class case

4. Conclusion
The lack of legislation on the exhaustion of trademark rights, coupled with the different perceptions of the principle by individual judges, has led to different decisions in the same case. In addition, Article 123(2) of the General Principles of the Civil Code establishes a strict statutory doctrine of intellectual property rights, and the relatively rigid "statutory doctrine of intellectual property rights" cannot be adapted to the needs of the expansion of intellectual property rights in the new era. Excessive reliance on the legislator will not be able to fill the gaps in the legislation itself, and will seriously neglect the dynamism and creativity of the judiciary. Therefore, the courts should be restricted from interpreting the control rights of IPR owners in the name of the basic principles of civil law and over-emphasizing the exclusive application of IPR law. Reasonable restrictions on trademark rights are also the proper way to protect rights in both directions.

The introduction of the Guidance is encouragement and affirmation of judicial initiative and creativity. The proper application of the principle of exhaustion of trademark rights under the system of concurrent adjudication of similar cases is not only a complement to the two-way protection of rights but also a need for the development of the market economy and will lay the foundation for the practical legislation of the principle.
References


[9] Lin Zhentong. Efforts to realize "the same sentence in the same case" to promote strict and fair justice [N]. People’s Court Daily. 2015-02-04008.


