IPR Protection Problems of Taiwan’s Cultural Industry in Mainland China-Taking Liuligongfang as an Example

Wei-Wei HU*

Intellectual Property Research Institute, University of Xiamen, China
Helusi420hw@163.com

Keywords: Cultural, Liuligongfang, IPR Protection

Abstract. Within more than 10 years, there are only several Taiwan’s original famous cultural field brands dare to distribute channel and operate brand in Mainland China. Liuligongfang is one of them and encounter several IPR Protection Problems, Taking Liuligongfang as an Example, This article hopes Mainland China’s enhanced IPR Protection to continuously encourage cross-strait ‘innovation’ and make ‘innovation’ be driving force of development.

Introduction

Liuligongfang was established in Tamshui, Taiwan in 1987 as Asia’s first Liuligongfang workshop and stands today as Asia’s largest Liuligongfang arts brand. Loretta Hui-shan Yang and Chang Yi are the co-founders of Liuligongfang and lead the brand as Creative Director and Brand Manager respectively.

Liuligongfang operates 70 galleries around the world. Since in 1987, the company has expanded throughout Taiwan, Shanghai, Beijing, Singapore and Malaysia. 2008 brought the first two stateside galleries in San Francisco and New York.

Over twenty-nine years Liuligongfang creations have been acquired by internationally renowned museums for their permanent collections and Liuligongfang works have been exhibited in over 30 countries and territories. At least 32 world leaders have received the gifts that are made from Liuligongfang series works; Liuligongfang collection was once bestowed upon VIP members of the Annual Academy Awards and Grammy Awards.

In 2005, The Hong Kong Design Centre awarded Liuligongfang’s LIULI LIVING with the “Design for Asia Award (DFAA) for Most Influential Design Brand [1].

General speaking, Liuligongfang is one of the very few Taiwan companies with the necessary cultural heft to become a luxury brand. “Liuli has a unique technique enabling the company to make unique products, which is very rare in this business. Liuli is very well known in China for its products – but the design might look too Chinese for Occidental people. The challenge for Liuli is to find new designs that stay Chinese but appeal more to world culture.” says Nana Chen, head of public relations at Liuligongfang. It is a stiff challenge to become a leading brand, but Liuli has a head start, as was recognized by Vincent Bastien, former CEO of Louis Vuitton and now professor of marketing at the HEC School of Management in Paris when he called Liuli “one of Asia’s most promising brands.” [2]

IPR protection problem confronted by Liuligongfang in Mainland China

In 2002, there were advertisements in the market directly printing the most recent works of Liuligongfang to attract order for good. It was learned that those counterfeits were comparatively rough works with quite similar pricing of Liuligongfang but were sold with 60% off finally. While some customers mentioned the brand of Liuligongfang, the plagiarist just offended by rude remarks to deny originator’s design and production ability [3].

In August 2003, a reporter of Beijing Morning Post saw one kind of glass ornament in some market of Big Bell Temple. Its trademark was very similar to Taiwan’s famous Liuligongfang. Its propaganda material was printed “coming from Taiwan” but the actual address of factory was

1171
somewhere Beijing suburb. A saleslady introduced: “Our glaze product is Taiwan’s well known brand with international influence……” [4]

Originating from a embroidery pattern symbolizing Chinese people’s noble celebration, the “red base color peony embroidery pattern” was widely used by Liuligongfang’s calendar, various printed matter and new work catalog etc. as Liuligongfang’s visual image. Its relevant packing bag was awarded Appearance Design Patent in China.

In 2004, Plaintiff Hui-shan Yang found an almost identical “peony embroidery pattern” with fewer branches and leaves and floret etc. on the packaging of an art and craft named “Polynesian Fountain” sold by Shanghai Meilong Homemart decorating materials company. After investigation, this kind of art and craft was manufactured by Anxi Tianyuan Technology Company.

After trial, the first intermediate court of Shanghai thought that the “red base color peony embroidery pattern” was the graphic art work having aesthetic meaning and had originality. Even though Respondent Tianyuan Co. submitted protest against the original copyright owner of such pattern, but owing to the characteristic of using such work, copyright owner may sign his/her name indirectly, and using so far there was nobody claimed to enjoy copyright toward such pattern. Therefore, the court held that Hui-shan Yang enjoy copyright toward such “peony pattern”. Tianyuan Co. should compensate Hui-shan Yang ¥50,000 for economic loss and reasonable fee [5].

In addition, according to liuli.com, From January 12-February 25, 2015, Giordano used LIULIGONGFANG’s copyrighted photographic images without permission throughout China, Taiwan, Singapore, Vietnam, Indonesia and the Philippines. This unauthorized appropriation is in clear violation of the intellectual property rights of LIULIGONGFANG. After taking appropriate measures with the court of law, Giordano was ordered to remove all violating imagery and present a formal apology [6].

There is enhanced legal solution in Mainland China

We should pay attention that an intellectual property agreement signed in Chongqing on June 29, 2010 will uphold priority rights on both sides of the Taiwan Straits in claims for first application dates on patents, trademarks and plant species.

Chen Yunlin, then president of the mainland’s Association for Relations Across the Taiwan Straits and his Taiwan counterpart Chiang Pin-kung, chairman of the Taiwan-based Straits Exchange Foundation, signed the accord as well as a trade pact.

Following the agreement, one means of sharing patent data and examination results across the Straits will also be developed. Details of the cooperation are now under discussion, according to the State Intellectual Property Office. The agreement also highlights law enforcement coordination. Fighting piracy and counterfeiting, whether on the Internet or in the market, is listed as a top priority for collaboration.

The two sides also announced they will increase efforts to protect well-known trademarks, geological indications, famous origin names and prevent malicious trademark registration. Rightful owners are now assured of cancellation rights on malicious registrations, according to the agreement.

The measure is also expected to protect the creative arts. Wang Xiujuan, a manager on the mainland for Liuligongfang Co, welcomed the agreement, saying it will help shield firms from infringement and provides encouragement to innovation [7].

Conclusion

In most recent 10 years, there are many Mainland China’s provinces and cities via Int'l Cultural Industry Fair or go to Taiwan to communicate so as to invite Taiwan’s cultural enterprises to develop in Mainland China and provide many well settled conditions. But Taiwan cultural enterprises want to establish access, operate brand and take root in Mainland China. Within more than 10 years, there are only several Taiwan’s original famous cultural field brands including Xiazi
of fashion industry, Gan Tang Xuan, Falan china, Liuligongfang (as discussed above) and Tao Zuofang of process industry etc. dare to distribute channel and operate brand in Mainland China.

Besides small capital not good to enter Mainland China’s market, Mainland China’s market and product access regulation, Taiwan’s cultural enterprises worry about IPR infringement but know no place to complain very much. Many Taiwan’s cultural enterprises original film and television program, music MV and popular song are unautherizedly played by various websites but they are difficult to ask for help. One reason is many Mainland China’s enterprises have slim sense of IPR and the government insufficiently maintain IPR. Another reason is the issues of infringing national innovation and creation crystallization are not argued on the basis of reason by Taiwan’s representatives during cross-straits communication and transactional negotiation process.

Currently, many Taiwan’s cultural enterprises only deem Mainland China as a market to sell cultural products and not the R&D base and design center. The main reason is nothing but the IPR infringement problem [8].

Nevertheless, the future market tendency for cross-straits cultural industries’ development is still worthy for us to expect. Just as indicated by Taiwan’s DIT Startup CEO Qiu Zhengshen, Chia’s free trade zone (FTZ) policy is a new opportunity to be expected by Taiwan’s cultural enterprises. China’s State Council announced the implementation of a negative list. The establishment of a free trade zone is to prepare to integrate into the regional free market and the global free market. Taiwan’s merchants should closely concern the development process so as to grasp the turning point of Mainland China’s opening [9]. Also, Taiwan’s famous cultural sector personnel, and Liuligongfang’s founder Chang Yi said: “To develop design, create industry, first of all we should give young people policy and capital support and very good entrepreneurial site. All of these have been done by Mainland China’s government. In the future, Cross-straits cooperation in the field of intellectual property rights should also be enhanced. Unless doing well IPR protection assignment shall continuously encourage ‘innovation’ and make ‘innovation’ be driving force of development. [10]

Reference


[8],[9] Qiu Zhengsheng. To grab RMB- three dilemma and two expectations for Taiwan’s cultural enterprises going west (Chinese version),

1173

[10] 2nd“Huacan Award” was announced in Pingtan young people of cross straits use “innovation” to be driving force of development (Chinese version),