

Enforcing Trademarks in China – Problems and Possibilities

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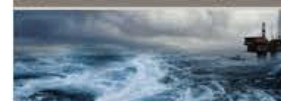
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News

Higher seminar in law and philosophy

2013-03-07

Marcin Romanowicz (Warszawa) on "Cognitive Theory of Legal Interpretation. Eyes - Mind - Rules", March 21, 2-4 pm, Styrelserummet. For more information, contact christian.dahlman@jur.lu.se

Law and Vulnerabilities seminar

2013-03-04

Guest professor Nancy Dowd, University of Florida, on Vulnerabilities and Identities: Synergy or Conflict? The Case of Masculinities. March 21, 12-14 in Styrelserummet.



**How to Get to
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[Maps and Directions](#)

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NEWSLETTER

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2013

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Privatization, globalization,
and social responsibility.

Workshop June 14-15

[Call for papers March 18](#)

Lund Student

Private law enforcement in EU and China

- A research project initiated during 2013
- 1st Workshop in Lund, Faculty of Law, Summer 2014
- China University of Law and Political Science (CULP) and Peking University Law School
- Analytical comparative legal method



Private law enforcement in EU and China

- **Aims:**

- Achieve greater knowledge and understanding as to the legal, cultural and social environment in which private law enforcement takes place in China and EU/Sweden.
- Point out general similarities and differences between the systems.
- Point out general advantages and disadvantages within the systems.



Analytical comparative legal method

- How to obtain current and accurate information
- Availability and Reliability of the Sources of Information
- Interpretation and use of Foreign Sources of Law
- The Foreign legal system must be studied in its entirety
- Translation problems
- Obsolete and Living Law
- The Social Context and Purpose of the Legal Rules
- Problems of Comparability – in particular so when comparing countries with different social systems



Enforcement – what is it?

- A right...
- ...that is upheld
(defended/protected/secured) ...
- ... by the legal system
- Private enforcement?



Trademark enforcement

- A right? – Substantive Trademark Law = Legal Development
- Actions? – Procedural Law = Institutional development



Legal Development

- International harmonisation
- WIPO – World Intellectual Property Organization
 - Bern Convention
 - Paris Convention
- WTO – World Trade Organization
 - TRIPs Agreement



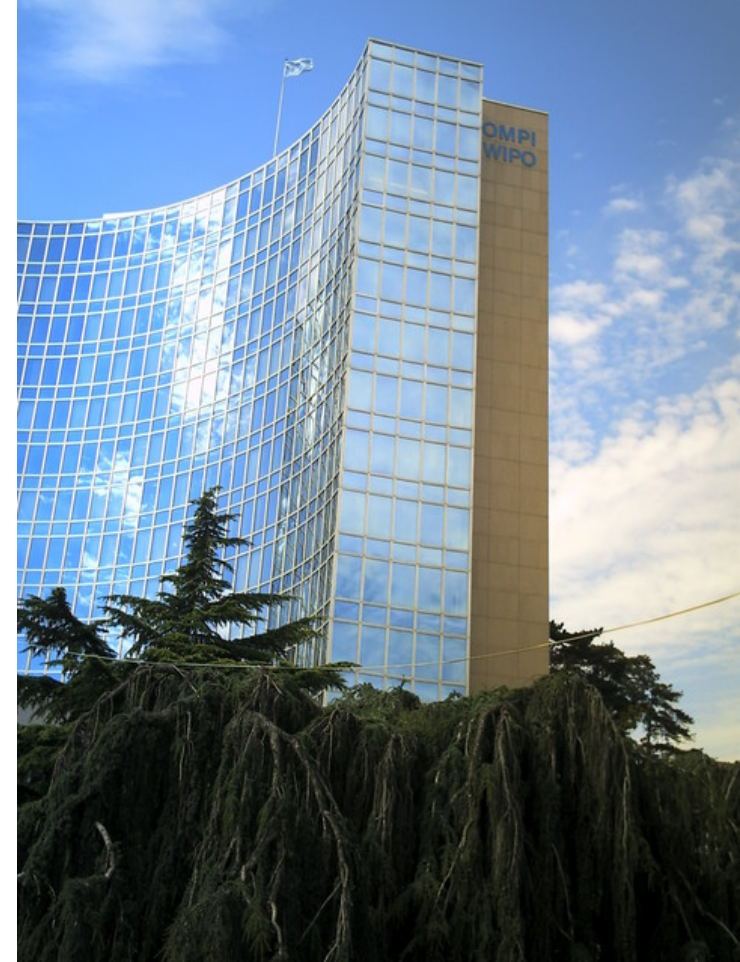
Institutional Development

- International
 - WIPO – World Intellectual Property Organization
 - WTO – World Trade Organization



The World Intellectual Property Organization (WIPO) is a specialized agency of the United Nations. It is dedicated to developing a balanced and accessible international intellectual property (IP) system.

WIPO was established by the WIPO Convention in 1967 with a mandate from its Member States to promote the protection of IP throughout the world. Its headquarters are in Geneva, Switzerland.



The World Trade Organization (WTO) is the only global international organization dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the bulk of the world's trading nations and ratified in their parliaments. The goal is to help producers of goods and services, exporters, and importers conduct their business.

Location: Geneva, Switzerland

Established: 1 January 1995

Created b.: Uruguay Round negotiations (1986-94)

Membership: 153 countries on 23 July 2008



TRIPS - principles

- Minimum protection – Standards: Trademarks, art 15-21; Enforcement, Part III (art 41-49)
- National Treatment (art 3)
- Most-Favoured-Nation Treatment (art 4)
- Priority (derived from the Paris convention)



Article 15 - Protectable Subject Matter

1. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. *Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.*



Article 16 - Rights Conferred

1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. *The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use.*



TRIPs – “Enforcement” – Part III

SECTION 1 - GENERAL OBLIGATIONS: Article 41

SECTION 2 - CIVIL AND ADMINISTRATIVE PROCEDURES AND REMEDIES: Article 42 – 49 (including injunctions, damages, access to information etc.)

SECTION 3 - PROVISIONAL MEASURES: Article 50

SECTION 4 - SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES: Article 51 – 60

SECTION 5 - CRIMINAL PROCEDURES: Article 61



Trademark law in China



Legal developments

- International harmonisation
 - Paris convention
 - TRIPs agreement
- Trademark Law of the People's Republic of China, Adopted at the 24th Meeting of the Standing Committee of the Fifth National People's Congress on August 23, 1982. Revised on several occasions, lastly by the Decision on Revising the Trademark Law of the People's Republic of China adopted at the 24th Meeting of the Standing Committee of the Ninth National People's Congress on October 27, 2001
- A modified act will enter into force may 2014



Institutional developments

- Administrative procedures
- Civil litigation
- Criminal litigation
- Custom seizure



China – In summary

- Legal harmonisation
 - China has adopted a modern legislation with profound similarities with EU law. The Chinese legislator has been attentive to international developments.
- Institutional harmonisation
 - A developed institutional framework that provides access to a wide variety of different actions. Similar to the situation in EU.

A comparison – EU and China

**Similar rights and similar actions!
No apparent differences**

... and still ...

Piracy continues



Why?



- **A research project initiated during 2013**
- **1st Workshop in Lund, Faculty of Law, Summer 2014**
- **No answers yet...**



Private law enforcement in EU and China

- Initial hypothesises -

Practical aspects

- Language
- Geography
- Society

Cultural differences

- Religious/philosophical
- Political
- Institutional



Confucius (551- 479 BC)

- Confucianism – moral philosophy focusing on (among other things) self-cultivation, respect (of elders...) and loyalty
- “Family as a basis for ideal government”



Do you want to win a dispute (in court) and lose
your face
or
... agree to a honourable settlement?



Conclusions?



What can we learn?

Problems:

- Litigation costs in Europe is increasing dramatically - The cost of defending outweigh the benefit of protection? – Law and Economic/Utilitarian approach
- No access to justice for SMEs – A rights based approach

Solutions?

- “Honourable settlement”



Tanks for the Attention!

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