



中國專利代理(香港)有限公司  
CHINA PATENT AGENT (H.K.) LTD.

17<sup>th</sup> OPEN FORUM  
SESSION 4.2

# What is Registrable as a Trade Mark in China

China Patent Agent (H.K.) Ltd.

## What is Registrable in China

Words;

Graphs;

Letters;

Numbers;

Three-dimensional symbols;

Color combinations;

Sound



## What is **Not** Registrable in China

Colors;

Moving images;

Holograms;

Position;

Scents;

Tastes;

Textures

## Three Dimensional Mark



**FERRERO ROCHER**  
**Madrid No. 783985**

Designating China	Sep. 2002
Rejected	Mar. 2003
Rejection Appeal Failed	Oct. 2006
Approved by Beijing First Intermediate Court	Nov. 2007

# Three Dimensional Mark ----things getting easier



Filing Date	Jan. 5, 2016
Publication Date	Nov. 20, 2016
Reg. Date	Mar. 27, 2017

**Reg. No. 18796001**

# Three Dimensional Mark vs. Unfair Competition Law



2003	2015
3-D Mark not registered	3-D mark Registered
Unfair Competition Law	Trademark Law
Failed at the Court of First Instance Supported by the Court of Second Instance and Supreme Court	Supported by Shanghai AIC Office
Compensation of RMB 500,000 (around US\$ 77,000) in 2005	Penalty of RMB 1,930,000 (around US\$ 2970,000) in 2015

# Three Dimensional Mark

## Are you ready for a fight?



Nestle	Foodstar
3-D Mark Registered	3-D Mark not Registered
Sending warning letter to Foodstar in 2008	Filing Invalidation action against 3-D mark in 2008
<p>Appealed the Judgment to Beijing High Court and subsequently to Supreme Court</p> <p>Invalidated in 2014</p>	<p>Suing TRAB against their invalidation decision on the maintenance of the 3-D mark before Beijing First Intermediate Court in 2010 Upheld by Court</p>
<p>Appealed the Judgment to Guangzhou High Court and subsequently to Supreme Court</p> <p>Dismissed in 2014</p>	<p>Non-infringement action against Nestle before Guangzhou Jiang Men Intermediate Court in 2010 Upheld by Court</p>



# Three Dimensional Mark

## You're ready for a fight !

- 1. Obtaining the registration;
- 2. Use the mark extensively in China;
- 3. Make sure you have abundant evidence;
- 4. Pick an ideal battlefield;
- 5. Ready for the Long March;
- 6. Good Luck!

# Color Combinations



<b>Filing Date</b>	<b>Feb. 2005</b>
Rejected	Jun. 2007
Approved	Apr. 2009

**Reg. No. 4496718**

# Color Combinations



DEERE & COMPANY	JOTEC
Color Combinations Registered	Color Combinations not Registered
Filed Infringement action before Beijing Second Intermediate Court	Appealed before Beijing High Court
Upheld	Dismissed  Compensation RMB 500,000 (around US\$ 77,00)

# Next Step -- Single Color ?





# Sound Marks

- Introduced in 2014
- 478 applications
- Approved around 10
- Rejection---- Acquired distinctiveness

# Sound Marks



**Introduced in Feb. 1999;**  
**Active account up to 829,000, 000**  
**worldwide;**  
**Acquired distinctiveness vs.**  
**Functional Sound**



# Other Forms of Non-Traditional Marks

- Moving images;
- Holograms;
- Position;
- Scents;
- Tastes;
- Textures;
- Device marks
- Copyright
- Unfair Competition



# Thank you !

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