17th 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
Appealed the Judgment to Beijing High Court and subsequently to Supreme Court Invalidated in 2014	Suing TRAB against their invalidation decision on the maintenance of the 3-D mark before Beijing First Intermediate Court in 2010 Upheld by Court
Appealed the Judgment to Guangzhou High Court and subsequently to Supreme Court	Non-infringement action against Nestle before Guangzhou Jiang Men Intermediate Court in 2010 Upheld by Court
Dismissed in 2014	c



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



Filing Date	Feb. 2005
Rejected	Jun. 2007
Approved	Apr. 2009

Reg. No. 4496718



Color Combinations

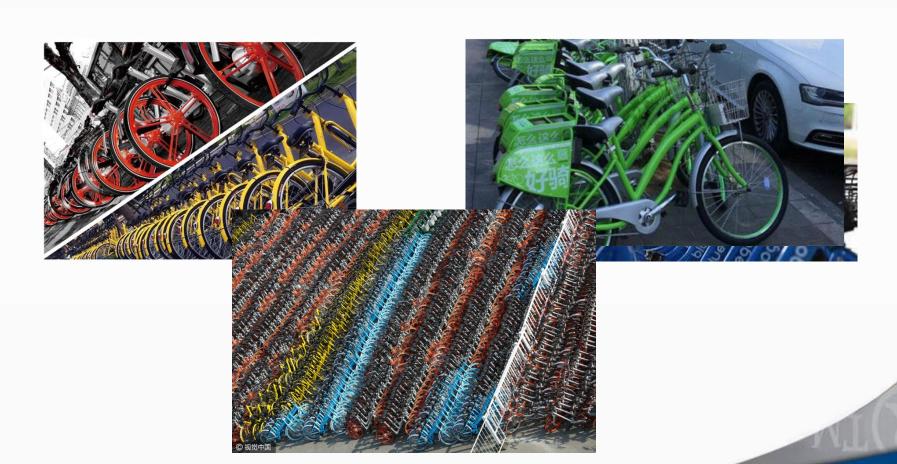




DEERE & COMPANY	JOTEC
Color Combinations Registered	Color Combinations not Registered
Filed Infringement action before Beijing Second Intermediate Court	Appealed before Beijing High Court
Upheld	Dismissed
	Compensation RMB 500,000 (around US\$ 77,00)



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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