Zhou Hewei *

RETHINKING CHINESE TRADEMARK LAW'S PROHIBITION OF TRADEMARKS "HAVING OTHER ADVERSE EFFECTS"

Abstract

China has developed very rapidly in both intellectual property law system and relative economy. Its quantity of trademark applications ranks number one for more than 17 years is a result of the government's incentive policy on IP and people's motivation to take up more market share. Marks "having other adverse effects" can neither be registered nor used as trademarks in China. CTMO, China TRAB and China courts employed and interpreted this miscellaneous provision in an inconsistent way makes people confused about where is the boundary of the regulation. Considering there is a gap in trademark registration prohibition between China and other countries, China should reform the system for marks to mitigate adverse effects of the current "having other adverse effects" trademark registration prohibition system. Measures of reform include unify the standard of "having other adverse effects", replace forbidden to use system with forbidden to register system, open trademark use and trademark registration based on free speech. Other supplementary measures such as China guiding cases system can be implemented.

Annotasiya

Çin həm əqli mülkiyyət hüquq sistemini, həm də əlaqədər sahələri çox tez bir zamanda inkişaf etdirmişdir. 17 ildən daha çox bir müddət ərzində Çinin əmtəə nişanı müraciətlərində lider olmasının səbəbi dövlətin əqli mülkiyyət hüququ sahəsindəki təşəbbüskarlığıdır. Çində "digər mənfi təsirlər"ə sahib olan nişanlar istifadə oluna və qeydiyyatdan keçirilə bilməz. Çin məhkəmələri və dövlət orqanları bu ifadəni düzgün təfsir etməmiş və vətəndaşlar arasında çaşqınlıq yaratmışlar. Çin və digər dövlətlərin əmtəə nişanı qeydiyyatına olan qadağalar arasında böyük fərqlərin olduğunu nəzərə alaraq belə bir nəticəyə gəlinir ki, Çin qanunvericiliyində ciddi islahatlar həyata keçirilməlidir. Bu islahatlar müvafiq ifadəyə vahid anlayışın verilməsi, əmtəə nişanının sərbəst istifadəsi və s. məsələləri əhatə edir. Çin aparıcı məhkəmə işləri sistemi də yardımçı tədbirlər kimi həyata keçirilə bilər.

* Ph.D. candidate at Civil, Commercial and Economic Law School, China University of Political Science and Law, Visiting Researcher at University of California Berkeley Law School. I am grateful for professor Robert Merges, professor Mar Cohen, Ms. Alisa Surilova and Editor-in-Chief and other staffs at Baku State University Law Review. In this paper, most information of trademarks are from official websites, including China Trademark Office (http://wsjs.saic.gov.cn), China Trademark Review and Adjudication Board (http://wssq.saic.gov.cn:9080/tmsve/pingshen_getMain.xhtml) and China Judgements Online (http://wenshu.court.gov.cn/).

CONTENTS

Introduction

Unlike trademark regulations in the United States that allow people to obtain themselves trademark right on a trademark via use, Chinese Trademark Law shows a registration-obtain system. Based on Chinese Trademark Law, there are two methods for people to acquire a trademark right. The most important and promising one is to file an application to the Trademark Office of the State Administration for Industry and Commerce of the People's Republic of China (CTMO). If the trademark

registration application is approved, the applicant can obtain an exclusive Right on the trademark and approved goods or services classes.[1] The second way is to get a well-known trademark by use without registration. However, the second method is becoming harder and less certain after China revised its Trademark Law in 2013, which emphasized the importance of trademark use in order to maintain the right to applicants' trademark.[2] Thus in China only two types of trademark can be protected by Trademark Law: registered trademarks and some qualified unregistered trademarks. An unregistered trademark can get Trademark Law's protection only if it meets the requirement of well-known trademark.[3] After China revised its Trademark Law in 2013, CTMO is receiving more and more applications.[4] In China courts, there are also more and more trademark cases emerging.[5] Considering that China built three intellectual property courts in 2014,[6] people's attitudes and attention on intellectual property is changing and they are likely to pay greater attention to intellectual property under the government's policy impact.

China is the second largest economy in the world and its growing wealth and large population make it a very attractive consumer market in its own right.[7] By the end of 2017, CTMO has received 27.842 million trademark applications, 17.30 million approved registered trademarks, and 14.92 million valid registered trademarks.[8] With such statistics, China has been ranking first in the number of trademark applications over other countries in the world for the past 17 years.

---

[1] See Chinese Trademark Law, art. 4(1) and art. 56 (Amendment) 2013.

[2] Based on the third amendment of Chinese Trademark Law in 2013, the identification of well-known trademark is a case-specific result. It means the recognition of well-known trademark only happens in some special situations and it's not a permanent well-known trademark recognition by the court. As a result of that, if people want to obtain a stable trademark right, it is the best way to get his mark registered in CTMO. See Supra note 1, art. 14.

[3] The unregistered well-known trademark protection is still limited compared with registered trademark in some ways though unregistered trademark can acquire protection over congeneric/ inhomogeneous products or services. See Supra note 1, art. 13(2).

[4] CTMO received 2.285 million trademark applications in 2014, 2.876 million trademark applications in 2015, 3.691 million trademark applications in 2016 and 5.748 million trademark applications in 2017. Data from 2014 to 2016, see Annual Development Report on China's Trademark Strategy 2016 at http://sbj.saic.gov.cn/sbtj/201709/W020170901344688293241.pdf (last visited May 9, 2018). Data of 2017 see at http://sbj.saic.gov.cn/gzdt/201801/t20180122_271953.html (last visited May 9, 2018).

[5] In 2016, Chinese local courts admitted 7186 IP administrative cases of first instance, among which there are 5990 trademark administrative cases of first instance. See Intellectual Property Protection by Chinese Courts in 2016. In 2013, China local courts admitted 2886 IP administrative cases of first instance, among which there are 2161 trademark administrative cases of first instance. See Intellectual Property Protection by Chinese Courts in 2013. While in 2009, Chinese local courts only admitted 1376 trademark administrative cases of first instance. See Intellectual Property Protection by Chinese Courts in 2009.

[6] Beijing Intellectual Property Court, Shanghai Intellectual Property Court and Guangzhou Intellectual Property Court.

[7] See Ed Perlman & Octavian Timaru, The Wild, Wild East: Winning Trademark Registration for US Companies in China, 20 No. 2 Intell. Prop. & Tech. L.J. 17, 17 (2008).

[8] See at http://sbj.saic.gov.cn/gzdt/201801/t20180122_271953.html (last visited May 9, 2018).

Considering the above data, it is important to know what is forbidden to use as a trademark in China and what kind of signs are more likely to be approved by CTMO. Chinese Trademark Law has listed several different situations that cannot be registered as trademarks,[9] and many scholars have written on forbidden registration regime in China.[10] Prohibiting certain kinds of signs as trademarks is a general trademark system for domestic trademark law around the world. However, in China the regulations for trademark registration and use are more restrictive. Article 10 of Chinese Trademark Law stipulates that several kinds of signs are not only forbidden to register but also forbidden to use as trademarks.[11] The Article lists seven specific situations and one term for containing all other unlisted prohibition situations that cannot be used as trademark: "None of the following signs may be used as trademarks: …(8) Those detrimental to socialist ethics or customs, or having other adverse effects…."(I call it "miscellaneous provision/ term/ regulation/clause"), neither registered as trademark nor used as trademark, though the legislation word "cannot be used as trademarks" seems only prohibit using them as trademarks. The first half of the Article 10 (1) (8) is beyond the scope of this paper as its meaning is relatively clear and its independence. My emphasis is on the second half of clause (8) stipulating that "having other adverse effects" signs cannot be used as trademarks.

It is important to introduce briefly here about the status of "other adverse effects" term in Chinese Trademark Law and the practice in Chinese courts' cases in order to make people informed of what kind of signs they should choose when they plan to use or register a trademark in China. For China itself, it is also an important opportunity to rethink the "having other adverse effects" term in Chinese Trademark Law, seeing that it introduces certain difficulties into the trademark system. For example, CTMO refused an applicant to register "周强" ("Zhou Qiang") as a trademark solely because the name of current Chief Justice and President of the Supreme Court of China is "周强" ("Zhou Qiang").[12] However, the applications on "周强" ("Zhou

[9] Supra note 1, art. 11.

[10] In China, there are many papers talked on this topic, but most of them stay at a domestic level and there is a lack of some research result in English. This status makes foreign people are not aware China's attitude and policy in these forbidden trademarks. In fact, forbidden "adverse effects" signs used as trademarks is lack fairness, this has not been mentioned in Chinese research result. But it is the most important fundamental for re-crafting the adverse effects prohibition system.

[11] See Supra note 1, art. 10.

[12] See Application Number: 22128250 ("Notice of Rejection", No. TMZC22128250BHTZ01), Application Number: 24142042 ("Notice of Rejection", No. TMZC24142042BHTZ01) (In China, trademark Application Number and Registration Number are same). Both Notices of Rejection gave same reason as follows: This sign contains "周强" ("Zhou Qiang"), which is the name of President of China Supreme Court. Using it on designated goods classes will produce adverse social effects, so it cannot be used as a trademark. CTMO gave this reason according to Chinese Trademark Law Article 10 (1) (8) "The following signs shall not be used as trademarks "…having other unhealthy influence."".

In fact, "周强" ("Zhou Qiang") is a normal name in China., The application for trademark "周强"

Qiang") got approved before 2014.[13] By comparison, in the U.S., several trademark registration applications for signs containing the name "John Roberts" obtained approval, despite John Roberts' being the current Chief Justice of the Supreme Court of the United States.[14] In another case in China, the word "MLGB" was registered on Class 25, such as clothing, shoes and so on.[15] A third party Yao filed a claim to China Trademark Review and Adjudication Board (China TRAB) request it to declare the "MLGB" invalid based on Article 10 (1) (8) of Chinese Trademark Law "having other adverse effects", and as a result China TRAB made an invalid declare of trademark "MLGB". The trademark holder Shanghai Junke Trading Co. Ltd. dissatisfied with the decision and brought a lawsuit to court. Beijing Intellectual Property Court gave the former part of Article 10 (1) (8) of Chinese Trademark Law as the legal basis of its verdict in MLGB case. The applicant in this case insisted that the mark "MLGB" means "My Life's Getting Better". However, Beijing Intellectual Property Court held that "MLGB"'s also having another meaning- "f..ck your mother", it would be detrimental to social ethics or customs and could easily result in direct adverse effects on teenagers.[16] In the U.S., on the other hand, the word "FUCT" trademark won in the court based on free speech protection.[17] So many signs are refused to be used and registered as trademarks based on the latter term of Article 10 (1) (8) of Chinese Trademark Law that it introduces uncertainty for people who are trying to register a trademark for their businesses. Given that the words for use and registration as trademarks are harder and harder to find, people are eager to own a trademark that may help to attract the consumers and make their business successful in the market.[18] However, CTMO, China TRAB and Chinese courts are showing unpredictable attitudes toward trademark applications and infringement based on the "having other adverse effects" term.

("Zhou Qiang") are rejected, even though both the names of the legal representatives of the applicants (Application Number: 22128250, 24142042) are "周强" ("Zhou Qiang").

[13] Zhou Qiang was appointed to be the President of China Supreme Court on March 15, 2013. While before 2014, all trademark registration applications got approved. See Application Number: 1758139 (applied in 2001 on Class 29), Application Number: 3275349 (applied in 2002 on Class 17), Application Number: 5849284 (applied in 2007 on Class 3), Application Number: 7123518 (applied in 2008 on Class 29), Application Number: 10877734 (applied in 2012 on Class 35), and Application Number: 13804563 (applied in 2013 on Class 6).

[14] For example, "ROBERT JOHN VINEYARDS" was approved in 2012 (registration No. 4208156), "JRJ JAMES ROBERT JOHN FOR EVERYONE. FOR YOU." was approved in 2014 (registration No. 4501444). Both of them include "JOHN" and "ROBERT" and were approved during Judge John Roberts' term.

[15] "MLGB", Application Number: 8954893.

[16] Shanghai Junke Trading Co. Ltd. v. China TRAB, Beijing Intellectual Property Court Jing73XingChu No. 6871 (2016).

[17] In re Brunetti, 877 F.3d 1330 (Fed. Cir. 2017).

[18] Barton Beebe & Jeanne C. Fromer, Are We Running Out of Trademarks? An Empirical Study of Trademark Depletion and Congestion, 131 Harv. L. Rev. 945 (2018).

A "miscellaneous" clause in laws provides guidance for unforeseeable situations but also introduces a potential for abuse when improperly applied. For Article 10 (1) (8) of Chinese Trademark Law, the administrative government organs and the courts is making it dysfunctional. Considering the importance of system transparency and transnational commerce frequency, China should rebuild its system on the use and registration of the so-called "having other adverse effects" marks prohibition in both legislature, administrative examination and review, and judicial activity. This article intends to expose the "wrong" way of this regulation and the risks of the current situation in Chinese trademark development because of the "having other adverse effects" trademark regulation. This article also proposes suggestions for revising the existing law and its adoption so that it retains its generality without introducing unnecessary ambiguity.

The second part of the article gives a historical perspective of the "having other adverse effects" clause in Chinese trademark laws and related government legal documents. It shows how this miscellaneous clause came to be and what effects the lawmakers wanted to obtain by introducing it.

The third and fourth parts of this article intend to explore how CTMO and Chinese Courts are treating marks "having other adverse effects" in their crucial works.[19] The failures they gave in the past are destroying the efficiency and fairness of the trademark use and registration system. Controversial trademark cases are well-publicized in a variety of media modalities and created an unnecessary confusion for consumers and persons concerned with trademark application.

The fifth part of this article suggests that China legislature should revise the trademark system and limit the clause "having other adverse effects" and its adoption by CTMO, China TRAB and Chinese courts. In this part, the article also presents a comparative research that shows how China could adopt certain more successful practices of other countries.

II. The boundary of "having other adverse effects" in Chinese trademark law

Chinese law has a long history, but in the course of the 20th century it has struggled to retain its roots while introducing innovations from legal system of the West.[20] The trademark concept has existed in China for a long time, but Chinese Trademark Law came relatively late.[21] During the former half of 20th

[19] Their work on trademarks are very crucial not only because they are the "king" who decide whether the applicants will get their trademark registration successfully, but also because they are "wind indicator" of Chinese trademarks development. Their authority makes their decisions convincing to public people and related closely to trademark approval predictability, fair competition and economic increase in the market based on trademarks.

[20] Leslie A. Burton, A Review of Great Legal Traditions: Civil Law, Common Law, and Chinese Law in Historical and Operational Perspective, 60 U. Kan. L. Rev. 1135, 1143 (2012).

[21] China's Long and Tortured History When It Comes to Intellectual Property Laws, 2014.

century, China got through a very hard time because of being manipulated by strong foreign powers, invasions from other countries and very cruel wars. The economy was under control, the competitive order was not in right way. So the trademark laws showed very obvious government administration and management image and not much relevant to what should be used and what should be forbidden to be used or registered as trademarks. From 1949 to 1978, Chinese economy still stayed depressed because of many ongoing reforms and systems construction.

The State Council of China enacted "Trademark Administration Regulations" to replace 1950 "Interim Regulations on Trademark Registration" in 1963. It was the first time to say "forbidden use" and "adverse effects" in trademark regulations in China. Then China went through another very hard time based on a special event from 1966 to 1976[22] The trademark administration couldn't work anymore and the trademark system also was destroyed heavily. In 1978, State Administration for Industry and Commerce (SAIC of PRC) was built. Considering that "Interim Regulations on Trademark Registration" in 1963 was out of date and China was starting the policy of "reform and opening-up", Trademark Office, an institute under SAIC of PRC begun to do some research and wrote drafts for a new Trademark Law. Chinese Trademark Law was enacted in 1982 and became the first to be enacted among three main intellectual property laws in China. Chinese Trademark Law of 1982 has been used until now, with three times revisions, in 1993, in 2001, and 2013 respectively.

Mandatory registration of trademark system was built in 1957.[23] In order to encourage people to register trademarks based on their actual business needs, Chinese Trademark Law (1982) abolished the inappropriate mandatory trademark registration system.[24] In order to govern the order of trademark in China, there are nine clauses in Trademark Law (1982) listing situations that prohibition using some signs as trademarks while Trademark Law (1982) has no words saying some signs that cannot be registered as trademarks. The ninth clause of Trademark Law (1982) Article 8 says "(9) Those detrimental to socialist morals or customs, or having other adverse effects." which is same to current Chinese Trademark Law regulation. In order to practice international treaties and join WTO and keep compliant with the TRIPs, China revised

https://blog.jipel.law.nyu.edu/2014/02/chinas-long-and-tortured-history-when-it-comes-to-intellectual-property-laws/ (last visited May 28, 2018).

[22] See William O. Hennessey, Protection of Intellectual Property in China (30 Years and More): A Personal Reflection, 46 Hous. L. Rev. 1257, 1263 (2009).

[23] In January 1957, the State Council of China approved the Central Administration for Industry and Commerce's Opinion on Implementing the System of Mandatory Registration of Trademarks. The Opinion says that the trademarks used by companies (regardless of their economic nature) and the products produced by the cooperatives must be registered. If it is not yet registered, the application procedures must complete by June 30, 1957 and unregistered trademarks cannot be used afterwards.

[24] Explanation on the "Chinese Trademark Law (Draft)", art. 2 (1982).

Trademark Law for the second time with a great overhaul in 2001.[25] In regard to forbidden rules, it separated forbidden use situations from forbidden registration situations because China adopts the principle of voluntary registration of trademarks, so there are registered trademarks and unregistered trademarks co-existing in China market. It became essential to clarify forbidden situations for trademark registration and use.[26] From then on, the prohibition regulations stay very stable until recent years. Problems arose from the miscellaneous forbidden use clause were getting more and more, especially when China published Outline of the National Intellectual Property Strategy in 2008 and people started to pay more attention to and develop their intellectual property.

China is a country with statute laws. Generally speaking, one civil conduct shall be deemed to be allowed if there is no clear statute prohibition in the law especially for the sake of common interests. This tangible property principle works in the same way in intellectual property-an intangible property world.[27] Trademark right along with copyright and patent compose three prime intellectual property rights as well as very important civil rights. Chinese Trademark Law employs two articles to regulate what kinds of signs cannot be registered and used.[28] Prohibition clauses are important to guide people's conducts in trademark filed. For example, what kinds of trademarks cannot be accepted by CTMO, people cannot use a trademark in a confusing or misleading way, people cannot use other people's trademarks unless they have a license from the trademark right holder. By negative regulations, people could be clear about where is the boundary line for their conducts. "Having other adverse effects" exists as such a kind of negative clause. In theory, a negative regulation should be clear, because it is a regulation that restricts people's civil actions. The number and ambiguity of negative terms shall be minimized as much as it could because any negative clauses and their ambiguity would decrease people's opportunities to obtain trademark rights or other benefits from trademarks.

As we see in Chinese Trademark Law, there are two articles relating to trademarks prohibition. Compared with Article 11's protection on trademark distinctiveness, Article 10 lists more special situations that certain signs are forbidden to be used as trademarks. Signs in Article 10 are forbidden to be registered as trademarks as well as used as trademarks. This implies that Chinese Trademark Law gives a stricter attitude towards the protection of other official flags, names, offensive signs, social order, and public interest

[25] William O. Hennessey, Protection of Intellectual Property in China (30 Years and More): A Personal Reflection, 46 Hous. L. Rev. 1257, 1282 (2009).
[26] Report of the National People's Congress Law Committee on the Review of the "Revision to Chinese Trademark Law (Draft)" (2001).
[27] Séverine Dusollier, Inclusivity in Intellectual Property, in Graeme B. Dinwoodie (ed), Intellectual Property and General Legal Principles: Is IP a Lex Specialis?, Edward Elgar Publishing (2015), 101.
[28] Supra note 1, art. 10 and 11.

than to the protection of trademark distinctiveness. According to Article 11, if a sign lacks distinctiveness, it still can be registered as a trademark if it acquires distinctiveness via trademark use. However, there is almost no exception for Article 10 situations. If a sign falls within the scope of Article 10 situations, there is no turning chance for the sign to be a trademark. It is harsh for commercial entities and individuals that they have no idea they are using a sign as a trademark which is a conduct violating Article 10 (1) (8) "Those detrimental to socialist morals or customs, or having other adverse effects" because this term is so ambiguous and unpredictable for general people to tell. How can people know what is "having other adverse effects" even though they can tell what is "detrimental to socialist morals or customs" based on normal social ethic and common sense?

From the structure of Chinese Trademark Law, we can know that Article 10 (1) (8) is a miscellaneous provision for the previous listed seven special kinds of signs that are forbidden to be used as trademarks. As "having other adverse effects" comes after "those detrimental to socialist morals or customs", so it is also a miscellaneous provision for "those detrimental to socialist morals or customs". In this perspective, if one sign is determined to be "having other adverse effects", the sign's impact to our society shall be in the same or similar level with "detrimental to socialist morals or customs". They share a same parallel value. China has a large market and Chinese market participants do their business both around the world and on the internet, there is no excuse to deny the essential to clarify the meaning and specifics of "having other adverse effects". What we are clear in present is that: (1) "having other adverse effects" is a prohibition provision in Chinese Trademark Law; (2) "having other adverse effects" is a miscellaneous provision for previous seven kinds of prohibition situations; (3) "having other adverse effects" is a miscellaneous provision for "those detrimental to socialist morals or customs"; (4) "having other adverse effects" is an absolute negative miscellaneous provision, which means this kind of sign cannot be used as well as registered by any people and it has no exception above this term.

As a totally negative provision for trademark use and registration, it should be kept into a reasonable scope to the rule-makers' original meaning. But how CTMO examiners, China TRAB reviewers and China judges are employing and explaining this provision looks like they are going to give it a confusing way and abuse this provision to satisfy themselves or other people. Making a provision omnipotent is ruining it and destroying the market order.

III. How do CTMO, China TRAB and courts employ "having other adverse effects" clause

A. Definition of "other adverse effects" from CTMO and China TRAB

Chinese Standards for Trademark Examination and Trial (CSTET)[29] is one most important and authoritative document for applicants and CTMO trademark examiners and China TRAB trademark reviewers to follow. There is pretty detailed interpretation for "having other adverse effects" in CSTET. It reads:

"Other adverse effects" refers to the negative and adverse effects of the characters, graphics or other composition elements of the trademark on the politics, economy, culture, religion, nations or other social public benefits or public order of China. When determining whether a trademark will be detrimental to socialist morals or customs or have other adverse effects, it shall take into account the social background, political background, historical background, cultural tradition, national customs, religious policies and other elements, as well as the composition of trademark and its designated goods or services.[30]

After this general define, CSTET gives nine kinds of specific "having other adverse effects" situations and a miscellaneous "other adverse effects" for "other adverse effects". These nine situations are as follows: (1) Trademarks with unhealthy political effects, including trademarks identical or similar to the name of any leader of any country, region or international political organization, such as Runzhi, Pujing, [31] trademarks detrimental to the sovereign, dignity or image of a State, trademarks that are composed of numbers with political significance, such as "9.11", "seven · seven", "nine one eight, [32] trademarks identical or similar to the same of any terrorist organization, heretical organization, organized crime organization or leader of such organizations, for example "LADENG". [33] (2) Trademarks which contain the State name of China and may therefore lead to the abuse of the State name, and cause other negative and adverse effects on the social public interest or public order. For example, "China Jing Wine", "XIKE China", "China Star". (3) Trademarks detrimental to ethnic dignity or feelings, for example, "nigger", "HONKY". (4) Trademarks detrimental to religious belief, religious feelings or folk belief. About what is "religious", it says "includes

[29] This document was issued by CTMO and China TRAB, and was last revised in December of 2016.
[30] See CSTET, art. 9.
[31] Runzhi is China previous Chairman Mao Zedong's courtesy name. Pujing is Putin's Chinese name.
[32] "七·七" refers to July 7, which is the same month and date of Marco Polo Bridge Incident. "九一八" refers to September 18, which is the same month and date of Mukden Incident.
[33] "LADENG" is the Chinese name of Laden.

Buddhism, Taoism, Islam, Christianity, etc., and different branches of such religion". In regard to "folk belief", it says "mainly refers to Mazu and other folk beliefs".[34] Except for the positive regulation of religious adverse effects, it also listed two situations that should not be determined to the religious belief, religious feelings or folk beliefs. They are: First, where, pursuant to the Regulations on Religious Affairs under which social and public benefits undertaking may be legally established at the site of religious groups and activities, and without prejudice to the interests of other sites of religious activities, a religious group and the religious enterprise it authorizes applies for registration of a trademark based on the name exclusive to the site of its religious activities, for example, "Shaolin Temple" by Songshan Shaolin Temple in China. Second, where the words or graphics of a trademark are related to religion or folk belief, but have other meaning or their meaning as related to the religion has generalized, which will not cause the public to associate them with any particular religion or folk belief, for example, "Tai Chi" Diagram is one of the signs of Taoism, but has already generalized. (5) Trademarks identical or similar to the name or emblem of any party,[35] governmental authority, social group or other entity or organization in China. The name contains full name, abbreviation, acronym, etc.; the emblems include emblems, flags, etc. (6) Trademarks identical to any of the titles of the party or government organ of China or any of the administrative titles or military ranks of the army. (7) Trademarks identical or similar to the pattern, name or symbol of the legal tender of any country, such as "$", "€", "￥", "KROEN", etc. (8) Trademarks containing nonstandard Chinese characters or nonstandard use of idioms, which will likely mislead the public, especially the minor. For example, wrong words writing, wrong letter in a phrase. (9) Trademarks containing words identical or similar to the name of any political, religious, historical or public figure, which are sufficient to produce negative or adverse effects on the politics, economy, culture, religion, nations or social public benefits or public order of China. For example, "Confucius". After a list of signs that having adverse effects, CSTET also gives a miscellaneous regulation named "trademarks having other adverse effects". It means it gives a sub-miscellaneous-provision for a miscellaneous provision. Here are the examples for this sub-miscellaneous-provision: "SARS", "Ebola", "Three Represents" and "Anti-corruption".

From the Standards of Trademark administrative office, we could see a scope of broad and seems having the potential of becoming unlimited for

[34] Mazu is the name of a Chinese Sea goddess.

[35] "The party" includes China Communist Party and the eight parties collectively referred to as democratic parties, namely, the Revolutionary Committee of the Chinese Kuomintang, the China Democratic League, the China Democratic National Construction Association, the China Association for Promoting Democracy, the Chinese Peasants' and Workers' Democratic Party, the China Zhi Gong Party, the Jiusan Society, and the Taiwan Democratic Self-Government League.

"having other adverse effects". Overlapped and not well categorized miscellaneous provision interpretation provides chances for trademark examiners and administrative officers to deny too many trademark applications based on the term of "having other adverse effects".

B. Interpretation of "having other adverse effects" from China Supreme Court

In April 2010, China Supreme Court issued "The Opinions on Several Issues Concerning the Trial of Administrative Cases Involving the Authorization and Determination of Trademark Rights". The third Article reads "In judging whether a mark has any other adverse effect, a people's court shall consider whether the mark or any of its elements is possible to cause any negative effect on political, economic, cultural, religious, ethnic and other public interests or the public order. If a mark would only damage certain civil rights and interests after it is registered, since the Trademark Law has provided the remedy measures and the corresponding procedures, it is not appropriate to decide that the mark has any other adverse effect."[36]

In December of 2016, China Supreme Court issued "Regulations on Several Issues Concerning the Trial of Administrative Cases Involving the Granting and Conformation of Trademark Rights". Article 5 says "Where a trademark sign or its constituent parts may give rise to negative effects affecting Chinese public interest and public order, the People Courts may rule that it falls within the scope of "other adverse effects" set out in Article 10 (1) (8) of the Trademark Law. An application to register the name, etc., of a public figure in the fields of politics, economics, culture, religion, an ethnic group, etc., falls within the scope of "other adverse effects" referred to in the preceding paragraph."[37]

From China Supreme Court's interpretation documents, we can see that it also has consideration for signs that are not "having adverse effects". Especially it separates the protection for public interest from protection of private civil rights. It means the "having other adverse influence" clause shall be only used to protect public interest and public order, but not private civil rights and private civil interests. So the main function of this clause is protecting public interest.

When we compare the different definitions of "having other adverse effects" between trademark administrative office and the Supreme Court of judicial system, we can figure out the big gap. Trademark administrative office listed many specific situations and with a sub-miscellaneous-clause to cover all signs that they have the opportunity to put into the scope of "having

[36] Opinions on Several Issues Concerning the Trial of Administrative Cases Involving the Authorization and Determination of Trademark Rights, art. 3, Judicial Interpretation No.12 (2010).
[37] Regulations on Several Issues Concerning the Trial of Administrative Cases Involving the Granting and Conformation of Trademark Rights, art. 5, Judicial Interpretation No.2 (2017).

other adverse effects". The judicial system seems like attempting to use "other adverse effects" in a balanced leverage with "detrimental to socialist ethics or customs" to protect public interest and public order. But the status of trial and countless trademark cases show us a different attitude to "having other adverse effects" by China courts. It seems that most circumstances courts are standing on the same side with CTMO and China TRAB.

C. Situations belong to "having other adverse effects" in Chinese cases

In this part, I prefer to classify situations that were deems as signs with adverse effects into several sorts as follows.

1. Dirty words

Different from trademarks disfavored offensive trademarks in the U.S., China treated trademarks including dirty words or negative words as sings with other adverse effects even though the words are not offensive to anyone. As the words "MLGB" in case *Shanghai Junke Trading Co. Ltd. v. China TRAB*, there are countless words are popular to people especially in the internet era. Most dirty words signs can be rejected by the former part of Article 10 (1) (8) "detrimental to socialist morals or customs". However, CTMO, China TRAB and China courts seem prefer to use "having other adverse effects" to determine dirty words as forbidden use trademarks. As for dirty words, not only the dirty words themselves have the potential to be rejected by trademark office and courts, so do the letters same as acronym[38] of dirty words or read like dirty words. Beyond that, any words that has any relationship or has any possibilities to be associated with dirty words have very great possibility to be rejected by China trademark administration offices and China courts.

In the case *Beijing Manman Station Beverage Store v. China TRAB*, the trademark applicant wanted to register "臭榴芒" ("chou liu mang", smelly durian and mango, pinyin[39]: chòu liú máng) as a trademark on class 43.[40] CTMO and China TRAB rejected it on the ground of "having other adverse effects". Specific reason is that the phrase "臭榴芒" ("chou liu mang") reads same as "臭流氓" ("chou liu mang", smelly rascal, pinyin: chòu liú máng). Then the applicant filed a suit to Beijing Intellectual Property Court. Beijing Intellectual Property Court held that: the trademark under application "臭榴芒" ("chou liu mang") reads same with "臭流氓" ("chou liu mang"), so it is easy to make consumers think of "smelly rascal". "Rascal" generally refers to people who are idle and do nothing but evil things, or refers to people who

[38] For example, the case of "MLGB".

[39] Pinyin is the Chinese words' pronunciation. In order to make readers of this paper much easily to read and understand Chinese trademarks in this paper, I affixed pinyin for Chinese words.

[40] "臭榴芒" ("chou liu mang", smelly durian and mango), Application Number: 14042108.

act in a rascally manner and are extremely unreasonable. The term "smelly rascal" further describes the severity of the above-mentioned actions and common public's very disgusted and aversion feeling degree to that kind of people. Therefore, the use of the word "臭榴芒" ("chou liu mang") as a trademark makes it easy to mislead some social public about the notions of right and wrong. It is inconsistent with the socialist morality which we are promoting and this belongs to Article 10(1) (8) of the Trademark Law "having adverse effects" signs prohibition situation.[41] The applicant appealed the verdict, saying that the "臭榴芒" ("chou liu mang") refers to fresh durian and mango, which has very different Chinese characters and meanings comparing with "smelly rascal" even they share the same pronunciation. It is very easy for relevant public to distinguish them. Additionally, people will associate it with fresh durian and mango naturally but not smelly rascal when people see it used on restaurant or other services. Beijing High People's Court held that "臭榴芒" ("chou liu mang") shares same pronunciation with "臭流氓" ("chou liu mang", smelly rascal). If approve the trademark registration application on "臭榴芒" ("chou liu mang"), it will not be conductive for promoting correct, positive and healthy socialist morality, which will produce adverse social effects.[42]

There are many these kinds of sings rejected by CTMO. For example, sings with "F..CK".[43] Signs with "thief" were also rejected by CTMO on the ground that words like "小偷改行" ("thief changed positions", pinyin: xiǎo tōu gǎi háng), "小偷天敌" ("thief natural enemy", pinyin: xiǎo tōu tiān dí) , "小偷快跑" ("run, thief", pinyin: xiǎo tōu kuài pǎo) will produce adverse effects.[44] While in the U.S., "PAIR OF THIEVES", "KILLERS AND THIEVES", "THIEVES LIKE US", "THIRTEEN THIEVES", etc. all got trademark registration approval in the U.S..[45] The word sign "牛逼" ("f..cking awesome", pinyin: niú bī) was also rejected by CTMO.[46] It also could be seen that words like "混蛋兄弟" ("bastard brother", pinyin: hún dàn xiōng dì), "傻帽儿"

[41] Beijing Manman Station Beverage Store v. China TRAB, Beijing Intellectual Property Court, JingZhiXingChuZi No.5274 (2015).

[42] Beijing Manman Station Beverage Store v. China TRAB, Beijing High People's Court, JingXingZhong No.1972 (2016).

[43] See "F..CK LA CRISE", Application Number: G1015515. "F..CKING BELL", Application Number: G1056542. "F..CKINGLIFE", Application Number: 17873862. "F..ckstone", Application Number: 20046929. "F..CKTHELABEL FTL", Application Number: 23437295.

[44] "小偷改行"("thief changed positions"), Application Number: 12857734. "小偷天敌"("thief natural enemy"), Application Number: 13768052. "小偷快跑" ("run, thief"), Application Number: 15223431.

[45] "PAIR OF THIEVES" (registration number: 5095290), "KILLERS AND THIEVES" (registration number: 5359900), "THIEVES LIKE US" (registration number: 5270980), "THIRTEEN THIEVES" (registration number: 5276347).

[46] "牛逼" ("f..cking awesome"), Application Number: 14980969. Other trademark applications such as "牛逼 B" ("f..cking awesome B"), Application Number: 17603886, "牛逼爸爸 NB PAPA" ("f..cking awesome PAPA"), Application Number: 16736862 were all rejected by CTMO.

("dumbass", pinyin: shǎ mào er), "土鳖" ("woodlouse", pinyin: tǔ biē), and "卧槽" ("what the f..ck"/ "f..cking my life", pinyin: wò cáo) etc. were all rejected by CTMO and TRAB.[47]

If a sign has some relation with sex, it will more likely to be deemed as dirty words and be rejected based on "adverse effects" in the same way. For example, "Yellow" is a color and it also refers to something related to pornographic things in Chinese, such as yellow video, yellow journalism, yellow novel and so on. There was an applicant trying to register "黄态" ("yellow state", pinyin: huáng tài) as his trademark. However, CTMO rejected it with the reason that it's easy for consumers to associate "黄态" ("yellow state") with yellow dynamic graphics.[48] The sign "going down", CTMO rejected the registration application and said that the trademark under application reads similar to "够淫荡" (pinyin: gòu yín dàng), which means very lewd, so it is easy to produce adverse effects if using it on designated goods.[49] In the trademark "UBER LIGHT" examine, CTMO considered that the word "UBER" can be translated into "udder", it is easy to produce adverse effects if used on designated goods.[50] However, this opinion was overturned by China TRAB and this trademark registration application got approval at last. During the examination of trademark "BITCH ELEGANCE", CTMO held that the mark contains "BITCH" which will produce adverse effects easily if used as trademark.[51] In the U.S., "SASSY BITCH" and "HOUSE OF BOSS BITCHES" were registered in the U.S. successfully.[52]

With the development of Chinese language, new words and expressions emerge endlessly. Some of these new words and expressions are used to describe some situations or behaviors precisely. But if these words or expressions include any immoral meaning, then they have a high risk to be rejected by CTMO. For example, the words "寻欢" ("make merry", pinyin: xún huān) refers to seeking happiness. Then it also refers to chase the opposite sex, even develops to the meaning of seek fun from opposite sex. The applicant tried to apply "寻欢" ("make merry") as a trademark, CTMO

---

[47] "混蛋兄弟" ("bastard brother"), Application Number: 16062031. "傻帽儿" ("dumbass"), Application Number: 23676187. "土鳖" ("woodlouse"), Application Number: 12831447, 13313179, 13884696. "卧槽" ("what the f..ck"/ "f..cking my life"), Application Number: 15874387. So does "卧槽网"("wocao net", pinyin: wò cáo wǎng), Application Number: 17876107. In this trademark application, the Chinese characters are same with the former sign, and added with a "net", this trademark application also was rejected.

[48] "黄态" ("yellow state"), Application Number: 20002706.

[49] "going down", Application Number: 23218651.

[50] "UBER LIGHT", Application Number: 17492467. The applying designated goods includes 1101 lamps, 1101 arc lamps, 1101 lights for vehicles, 1101 light diffusers, etc.

[51] "BITCH ELEGANCE", Application Number: 8192014.

[52] "SASSY BITCH", registration NO. 5464391. "HOUSE OF BOSS BITCHES", registration NO. 5459992.

rejected it with the reason that the word "寻欢" ("make merry") has a low taste which will produce adverse effects.[53] Similar results also happened to "艳遇" ("meet a beauty", pinyin: yàn yù). This word originally means the chance or the situation to meet a beauty. People also use it for joke that meet an opposite sex or have an affair with an opposite sex. The trademark registration application was rejected by CTMO, giving the reason that the word "艳遇" ("meet a beauty") in the sign under application "舌尖上的艳遇" ("meet with a beauty on the tip of the tongue", pinyin: shé jiān shàng de yàn yù) has the meaning of the chance to meet a beauty, it also refers to "love affair", which is easy to produce adverse social effects.[54] In fact, the sign "舌尖上的艳遇" ("meet with a beauty on the tip of the tongue") has a very alive description for the situation that a food tastes good even like a romantic meeting. However, the sign was rejected because it has the potential to be interpreted as a situation with love affairs. In the trademark "夜点" ("night point", pinyin: yè diǎn) registration application, CTMO acknowledged that the word "夜点" ("night point") is easy to produce adverse effects and rejected the application. But this opinion was overturned by China TRAB with the reason that the trademark "夜点" ("night point") will not bring adverse effects to the politics, economy, culture, religion, etc. social public benefits or public order of China.[55]

In the case *Feihu Information Technology (TianJin) Co. Ltd. v. China TRAB*, the applicant intended to register "屌丝男士" ("Diors Man", pinyin: diǎo sī nán shì) on Class 38 including services related to information transmission, email etc.[56] CTMO and TRAB both consider the sign "屌丝男士" ("Diors Man") has adverse effects because "屌丝" ("Diors/loser") is an ironic language that is generated from China internet culture. It will produce adverse social effects easily. Beijing Intellectual Property Court held that "屌丝"("Diors/loser") is not a canonical nor normal social culture language, it will produce negative effects on good social ethos and social culture, which can't be removed by the applicant's evidence that it has used "屌丝男士" ("Diors Man") for a long time and there is no negative effects.[57] This opinion was confirmed by Beijing High People's Court.[58]

---

[53] "寻欢" ("make merry"), Application Number: 15934643, 15934694, 15934773, 15934856.

[54] "舌尖上的艳遇" ("meet with a beauty on the tip of the tongue"), Application Number: 19130445.

[55] "夜点" ("night point"), Application Number: 17864965, designated good are in class 41 and 9. CTMO didn't give the specific reason for the rejection, I guess it might think the word "夜点" ("night point") sounds similar with "夜店" ("night club").

[56] "屌丝男士" ("Diors Man"), Application Number: 1162570.

[57] Feihu Information Technology (TianJin) Co. Ltd. v. TRAB, Beijing First Intermediate Court, YiZhongZhiXingChuZi No. 5555 (2014).

[58] Feihu Information Technology (TianJin) Co., Ltd. v. TRAB, Beijing High People's Court, GaoXing(Zhi)ZhongZi No. 3631 (2014).

Based on very decent and strict attitude, trademark examiners in CTMO take dirty words with very wide range of rejection just with a simple law basis, it is "having other adverse effects" in Article 10 (1) (8). But the opinions given by CTMO do not always get the affirmation of China TRAB even most time their opinions are coincident. In this way, China TRAB plays an important role for adverse effects recognition. Especially in these kinds of so-called dirty words which have multiple meanings. CTMO often interprets the meaning of signs with a broadly association in order to put more trademarks under application into the large basket of marks "having other adverse effects". Because if a trademark registration is approved, the chance to revoke it is limited. However, there are enough procedures and opportunities to reexamine the application trademark even CTMO refused a trademark application. For example, the refused trademark applicant can file to China TRAB for review and go to court and seek for further judicial decision if China TRAB also refuses the application. So it seems that CTMO can transfer much trademark examination work to TRAB and court, which will make its very prudent attitude meaningful.

2. Using words in not-standard way

In order to keep the right order of Chinese words writing, formal words using in idioms and set phrases,[59] CTMO, China TRAB and Courts tend to against using words wrongfully in trademarks. The authorities condemn informal use of idioms and fixed phrases because they think using these Chinese words wrongfully will teach and guide students and teenagers to a misled way in the cognation of Chinese traditional culture including Chinese words, phrases, and idioms. In CTMO's mind, altering such words, phrases and idioms will bring adverse effects if they are permitted to be registered as trademarks. For example, in the case "新花怒放" ("new-flower-angry-open", means new flowers in full blossoming, pinyin: xīn huā nù fàng), the applicant changed the character "心" ("heart", pinyin: xīn) in the idiom "心花怒放"("heart-flower-angry-open", means be wild with joy or heart would burst with joy) to the same pronunciation character "新" ("new", pinyin: xīn) and formed "新花怒放" ("new-flower-angry-open", means new flowers in full blossoming, pinyin: xīn huā nù fàng).[60] The court held that the altered idiom

[59] In China, there are many phrases and idioms with fixed words. In order to make trademarks and advertisement slogans with a catchy tune and sounds well to the consumers, merchants prefer to choose an idiom but make the idiom a little change but reads alike with the idiom. By this way, the trademark will be easier to be remembered by the market because the idioms are often familiar to people, even primary students.

[60] "新花怒放" ("new-flower-angry-open", pinyin: xīn huā nù fang, it means new flowers in full blossoming), Application Number: 14313616.

has adverse effects.[61] In the case "津津友味" (pinyin: jīn jīn yǒu wèi), the applicant also just changed one character of the idiom "津津有味" (pinyin: jīn jīn yǒu wèi) which means very tasteful, and also metaphors that with keen interest pleasure. After the change, the character "有" ("with", pinyin: yǒu) becomes "友" ("friend/friendship", pinyin: yǒu), the two four-character-phrases share the same pronunciation "jīn jīn yǒu wèi". China TRAB deemed that the controversial trademark "津津友味" is an irrational use of the idiom "津津有味", which is easy to confuse people, especially primary school and middle school students, with their recognition of specific words in idioms. It is easy to produce adverse social effects.[62] This situation also happens to the application of sign "心满意竹 HEART TSATISFYING BAMBOO",[63] "芝根芝底",[64] "爱屋吉屋",[65] etc. Chinese idioms contains very extensive and profound Chinese traditional culture. Every primary school and middle school student learns idioms in their Chinese classes. Sometimes these kinds of changes in idiom will make the sign more accurate, more alive and more proper especially using on special goods or services Classes. But sometimes it is really a worrying issue when we consider that the trademarks will be used on advertisements to promote the goods or services, which will mislead people, especially students in school, to a wrong way for Chinese idiom or Chinese

[61] Beijing Fenghua Qiushi Culture Media Co., Ltd. v. TRAB, Beijing High People's Court, JingXingZhong No. 1667 (2016).

[62] "津津友味", Application Number: 9320998.

[63] "心满意竹 HEART TSATISFYING BAMBOO" (pinyin: xīn mǎn yì zú), Application Number: 15063832. The sign "心满意竹 HEART TSATISFYING BAMBOO" is a transformation from the idiom "心满意足" (pinyin: xīn mǎn yì zú), which means be content with something. Chinese character "竹" ("bamboo") pronounces same with "足" ("enough").

[64] "芝根芝底" ("sesame-root-sesame-bottom", pinyin: zhī gēn zhī dǐ), Application Number: 20710111 (on Class 30), 20698982 (on Class 35). The original idiom for this sign is "知根知底"("know-root-know-bottom", pinyin: zhī gēn zhī dǐ, it means know through and through). The applicant replaced "知" ("know") with a same pronunciation character "芝".

[65] Manyi (Shanghai) Real Estate Consulting Co., Ltd. v. TRAB, Beijing High People's Court, JingXingZhong No. 1577 (2017). "爱屋吉屋 IWJW.COM" ("love-house-auspicious-house", pinyin: ài wū jí wū), Application Number: 15012498, applying services includes leasing of real estate, estate agencies, apartment house management, etc. Beijing Intellectual Property Court and Beijing High People's Court held that: "爱屋吉屋" ("love-house-auspicious-house", pinyin: ài wū jí wū) is a non-standard use of the idiom "爱屋及乌" ("love-house-and-crow", pinyin: ài wū jí wū. It means love me love, my dog.). Such a large number of trademarks that are not standard in the use of idioms will have a negative impact on China's language and writing, and will be detrimental to the inheritance of Chinese language and historical culture and the development of national cultural construction. Therefore, the application for a trademark constitutes a mark with "other adverse effects" and should not be approved for registration.

language learning.

It is often to see people change characters in idioms and keep the catchy reading, similar pronunciation is often to see in our daily life. Some applicants also choose to change the strokes in the character of a word, we can call this situation "making misspelling". For example, in the trademark "融 360 RONG360.COM"  , the applicant added one line in the character "融" and shaped one sign like "¥" as following picture.[66] As for the misspelling of Chinese words or idioms signs, China Courts also do not support it. In the case *XingYeDingSheng Ceramics Co., Ltd. v. China TRAB*, Beijing Intellectual Property Court held that the main identification part of the "杏野 XINGYE and graphic" ("apricot wild", pinyin: xìng yě)  trademark is "杏野" ("apricot wild") which was written in an irregular way. This easily affects the public's recognition and learning of Chinese characters and the trademark constitutes the forbidden use situation based on Article 10 (1) (8). Beijing High People's Court confirmed the opinion and said that "杏野" ("apricot wild") in the under dispute trademark is a misuse of Chinese character, it impacts public people's recognition and learning of Chinese characters, which will have negative influence on the national culture education and go against to the construction of the socialist spiritual civilization. This belongs to "having other adverse effects" that described in Article 10 (1) (8) of Chinese Trademark Law.[67]

There are new internet words such as "高富帅" ("tall rich handsome", pinyin: gāo fù shuài), "矮穷矬"("short poor stupid", pinyin: aǐ qióng cuó), "白富美"("white rich pretty", pinyin: bái fù měi), etc. sound very catchy but they are not welcomed by CTMO. CTMO gives these kinds of network catchwords a cautious mind and insists that these words may lead the society with a negative value and produce adverse social effects. However, the sign "帅锅的诱惑" ("the temptation of handsome guy", pinyin: shuài guō de yòu huò) was registered successfully on class 43.[68]

---

[66] "融 360 RONG360.COM", Application Number: 20952380, 20952434, 20952777.

[67] XingYeDingSheng Ceramics Co., Ltd. v. China TRAB, Beijing High People's Court, JingXingZhong No. 5562 (2017).

[68] "帅锅的诱惑" ("the temptation of handsome guy", pinyin: shuài guō de yòu huò), Application Number: 9435628. This trademark was registered on class 43 services including restaurants, tea house, Rental of transportable buildings, bar, Cafés, moving for food supply, motels, cafeterias, Day-nurseries [crèches], etc. in Chinese language, "帅锅" (handsome pot, pinyin: shuài guō) is a homophone for "帅哥" ("handsome guy", pinyin: shuài gē) and young people often use the former word refer to the latter word.

3. Famous people's names

Famous public celebrities' names cannot be registered as a trademark, even though some signs that changed from celebrities' names.

In the case *Michael Jeffrey Jordan v. China TRAB*, Michael Jeffrey Jordan claimed that Qiaodan Sports Company registered the trademark "乔丹" (pinyin: Qiáo Dān)[69] will produce adverse effects and should be revoked. Beijing High People's Court held that if a trademark registration is only harmful to certain civil rights and interests, it should not be determined that it has adverse effects of Article 10 (1) (8), because Chinese Trademark Law has provided regulations for the remedy and corresponding procedures. In this case, the sign "乔丹" (pinyin: Qiáo Dān) itself has no elements of "those detrimental to socialist morals or customs, or having other unhealthy influences", so there is no error of the TRAB's decision saying that the trademark "乔丹" (pinyin: Qiáo Dān) doesn't violate Article 10 (1) (8).[70] This opinion was also approved by Chinese Supreme Court.[71]

In *GUSS v. TRAB, Nanjing Meidi Import and Export Co. Ltd.*, TRAB consider that "other adverse effects" refers to the fact that the words, graphs, or other constituent elements of a trademark may have passive or negative influences on the public interest and public order in China.[72] In case Guizhou Meijiuhe Brewery Co., Ltd. *v. TRAB, Li Changshou*, TRAB insists that "other adverse effects" refers to the words, graphs, or other constituent elements of a trademark may have passive or negative influences on politics, economy, religion, race, etc. kinds of public interest and public order in China. In the process of determining "having other adverse effects", there are several elements should be considered, which including social background, history background, cultural tradition etc. as well as the product or service category. The Supreme Court consented Beijing High People's Court's verdict and held that it is an "adverse effects" to register "Li Xingfa"[73] and graph as trademark on alcohol beverage (except for beer) product and will mislead consumers based on Li Xingfa is a former vice manager of Moutai Distillery and he is very famous in wine field.[74]

---

[69] "乔丹" (pinyin: Qiáo Dān), Application Number: 6020569.

[70] Michael Jeffrey Jordan v. China TRAB, Beijing High People's Court, GaoXing(Zhi)ZhongZi No. 1915 (2015).

[71] Michael Jeffrey Jordan v. China TRAB, China Supreme People's Court, ZuiGaoFaXingZai No.27 (2016).

[72] GUSS v. TRAB, Nanjing Meidi Import and Export Co., Ltd., Chinese Supreme People's Court, ZuiGaoFaXingZai No. 46 (2017).

[73] Li Xingfa (李兴发) is Li Changshou's father, he has died when Guizhou Meijiuhe Brewery Co., Ltd. tried to register "Li Xingfa" and the graph as its trademark in 2003.

[74] Guizhou Meijiuhe Brewery Co., Ltd. v. TRAB, Li Changshou, Beijing High People's Court, ZhiXingZi No.11 (2012). Beijing High People's Court held same define of "unhealthy influence" with TRAB.

In January 2017, China Supreme Court promulgated "Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Administrative Cases involving Trademark Authorization and Confirmation". The fifth Article reads *"If a trademark logo or its constituent elements may have passive and negative effects on China's social public interest and public order, people's courts may determine that the mark has "other adverse effects" as stipulated in Article 10(1)(8) of the Trademark Law.*

The application for the registration of the names of public figures in political, economic, cultural, religious, ethnic, and other fields as trademarks is former paragragh referring "other adverse effects" situation."[75] It means that not only super stars' names cannot be used as trademarks, but also all public figures' names and signs with similar reading or writing cannot be used as trademarks. For the political leaders' names, the prohibition is much stricter than normal pubic figures. Beijing Ximeihui Cultural Consultation Co., Ltd. filed a trademark application for the sign "习美汇" (Ximeihui, pinyin: xí měi huì). CTMO rejected with the reason that the sign "习美汇" (Ximeihui) contains the character "习" ("Xi"), it will be easy to produce adverse effects to society if used as a trademark.[76] In fact, "习" ("Xi") refers to a Chinese surname as well as the meaning of study. Adverse effects really will be brought just because China current president's surname is "习" ("Xi")? Especially when we consider that the name of applicant company is "习美汇" (Ximeihui), this kind of potential of adverse effects is very limited.

4. Words related to religious and superstitious issues

Foreign countries have the prejudiced view saying that China doesn't support or protect religions enough, however the protection of religions in China trademark law field is very strict.[77] In fact, religion plays a part during China's development.[78] Religion and religious spirit protection in trademark law examination and trademark cases are taken seriously, much stronger than some other countries.[79] Any words related to religion issues have the potential to be rejected and denied by CTMO, TRAB and China courts even though some words have other multiple meanings except for religious related meanings. In *Taishan Gypsum Co., Ltd. v. Wanjia Group Building Materials Co., Ltd., TRAB*, the sign "泰山大帝" ("Taishan Deity", pinyin: tài shān dà dì) went

[75] Provisions of the Supreme People's Court on Several Issues concerning the Trial of Administrative Cases involving Trademark Authorization and Confirmation, art. 5.

[76] "习美汇" (Ximeihui), Application Number: 21061298, 21073064, 21073289.

[77] There are many comments on this issue from foreign scholars. See Lawrence Cox, Freedom of Religion in China: Religious, Economic and Social Disenfranchisement for China's Internal Migrant Workers, 8 Asian-Pac. L. & Pol'y J. 370, 382-391 (2007).

[78] See Zeng Chuanhui, Coalition and Hegemony: Religion's Role in the Progress of Modernization in Reformed China, 2011 B.Y.U. L. Rev. 759, 774-777 (2011).

[79] David A. Simon, Register Trademarks and Keep the Faith: Trademarks, Religion and Identity, 49 IDEA 233, 261 (2009). The author says there is no way to protect the identity religions in the U.S. However, in China, it is permissible.

through a very volatile ups and downs. "泰山大帝" ("Taishan Deity") was registered on gysum products of Class 19 in CTMO in 2003 and was assigned to Wanjia Group Building Materials Co., Ltd (Wanjia) in 2010.[80] Taishan Gypsum Co., Ltd. (Taishan Gysum) applied to TRAB to revoke Wanjia's registered trademark "泰山大帝" ("Taishan Deity") because the registered trademark "泰山大帝" ("Taishan Deity") refers to "Dongyue Deity" in Taoism, it is harmful to religious beliefs, religious feelings or folk beliefs and will produce adverse effects if being used as a trademark. China TRAB held that "泰山大帝" ("Taishan Deity") is also called "Dongyue Taishan Deity" with the full name of "Dongyue Taishan Qirensheng Deity", one Deity in Taoism. It is prone to harm feelings of religious people and produce adverse effects if it is used as a trademark. So TRAB of China revoked "Taishan Deity".

Wanjia filed a lawsuit to Beijing First Intermediate Court. Beijing First Intermediate Court held that: "泰山大帝" ("Taishan Deity") refers to "Dongyue Taishan Deity". It is one of the five mountain deities and has been worshiped by people and Taolism believers for a long time, and has a very high religious status.[81] Wanjia is also located in Shandong province, where Taishan Mountain is also located in. The words "Taishan" and "Dongyue" both refer to Taishan Mountain. Wanjia should be aware of the religious meaning of "Taishan Deity". If it is used as a trademark, it is prone to harm the feelings of religious people and Taoism believers which will produce adverse effects.[82]

Beijing High People's Court denied Beijing First Intermediate Court's opinion, saying that: In general, signs cannot be registered as trademarks if they are harmful to religious beliefs, religious sentiments, or folk beliefs. To judge whether a sign is harmful, it should be considered whether the sign is authentic or definitively used by religion believers or worshippers, the sign is directly associated with the religion, and whether the sign produces influence on social public interest such as religious beliefs, religious sentiments and folk beliefs. In this case, there is no proof showing that "泰山大帝" ("Taishan Deity") is officially used for the deity and "泰山大帝" ("Taishan Deity") has no unique relationship with the deity, nor is it an objective appellation for the deity. The evidences in this case are not enough to prove "泰山大帝" ("Taishan Deity") is authentic and definite to be used by religion believers

[80] "泰山大帝" ("Taishan Deity"), Application Number: 3011175.

[81] For information about China five mountain deities, see Terry F. Kleeman, Mountain Deities in China: The Domestication of the Mountain God and the Subjugation of the Margins, 114 Journal of the American Oriental Society 226, 226-238 (1994).

[82] Taishan Gypsum Co., Ltd. v. Wanjia Group Building Materials Co., Ltd., TRAB, Beijing First Intermediate Court, YiZhongZhiXingChuZi No. 6325 (2014). In this verdict, the court also shows: Article 10 (1) (8) is an absolute prohibition clause which doesn't say any exception for the situation that signs having other adverse effects can get registered through use. That's to say, if a trademark is a sign with other adverse effects, it still cannot be registered in CTMO no matter how much good reputations it has obtained by using for many years.

and worshippers in Taoism or is related to Taoism directly. So there is no possibility to produce "other adverse effects". Moreover, Wanjia provided evidence that it has used the disputed trademark "泰山大帝" ("Taishan Deity") for a long time and has achieved high reputation, good social benefit and positive evaluation. In order to safeguard the established and stable market order, it should be concluded that the registration of the disputed trademark is not "having other adverse effects".[83]

Taishan Gypsum applied for retrial. The Supreme Court of China held that: If a sign has a religious meaning, no matter whether the relevant public can generally recognize it or it has been used and has a certain reputation, it is generally considered that the registration of the sign is harmful to religious feelings, religious beliefs or folk beliefs, and has adverse effects. "泰山大帝" ("Taishan Deity") is an objective appellation and has religion meaning. It may be harmful to religion belief, religion emotion and folk religion, so it will produce adverse effects if Wanjia registers and uses "泰山大帝" ("Taishan Deity") as a trademark. The Supreme Court insisted that the trademark "泰山大帝" ("Taishan Deity") violates Article 10 (1) (8) and shall be revoked.[84]

In the case *Cao Xiaoqing v. China TRAB*, "土地神" ("God of the Soil and the Ground", pinyin: tSodì shén) was rejected by CTMO and TRAB.[85] Beijing Intellectual Property Court held that if using the disputed trademark "土地神" ("God of the Soil and the Ground") on the designated goods can easily cause the relevant public to associate it with religious beliefs and feudal superstitions. It is detrimental to socialist morality and can easily produce adverse social effects.[86] In the case *Shanghai Yupo Industrial Co., Ltd. v. China TRAB*, the sign "浮图 FUTU" was rejected by CTMO and TRAB.[87] Beijing Intellectual Property Court held that the word "浮图" is a transfer word from "佛陀" ("the Buddha")-the appellation of Buddha, Buddhism and Buddhist pagodas. Using it on the designated goods makes it easy for the relevant public to associate it with Buddhism or certain religious figures, and this kind of secular use of it will bring adverse effects to relevant public including those who have a specific religious belief.[88] In the case *Chongqing Changcheng Tea Co., Ltd. v. China TRAB*, the sign "佛印" ("Buddha Seal", pinyin: fó yìn) was rejected by CTMO and TRAB.[89] Beijing Intellectual Property Court held that

[83] Taishan Gypsum Co., Ltd. v. Wanjia Group Building Materials Co., Ltd., TRAB, Beijing High People's Court, GaoXing(Zhi)ZhongZi No. 3390 (2014).

[84] Taishan Gypsum Co., Ltd. v. Wanjia Group Building Materials Co., Ltd., TRAB, Chinese Supreme People's Court, ZuiGaoFaXingZai No. 21 (2016).

[85] "土地神" ("God of the Soil and the Ground"), Application Number: 18587639.

[86] Cao Xiaoqing v. China TRAB, Beijing Intellectual Property Court, Jing73XingChu No. 5769 (2017).

[87] "浮图 FUTU", Application Number: 17222095.

[88] Shanghai Yupo Industrial Co., Ltd. v. China TRAB, Beijing Intellectual Property Court, Jing73XingChu No. 6891 (2016).

[89] "佛印" ("Buddha Seal"), Application Number: 14784436.

the "佛印" ("Buddha Seal") will be understood as its literal meaning-stamp of Buddha, stamper of Buddha and so on even the applicant claimed that "佛印" ("Buddha Seal") refers to "佛印山" ("Fo Yin Mountain", pinyin: fó yìn shān) in Chongqing, because "佛印山" ("Fo Yin Mountain") has a very limited popularity, most consumers cannot set up a corresponding relationship between "佛印" ("Buddha Seal") and "佛印山" ("Fo Yin Mountain"). The Chinese word "佛" ("Buddha", pinyin: fó) mainly refers to the name of an idol worshiped by a Buddhist religion or the name of a person who fulfilled the practice perfection. "佛" ("Buddha") has special meaning among Buddhist believers in China. Therefore, using the word "佛" ("Buddha") in the trademark can easily and negatively affect Buddhist believers in China which will also bring negative consequences to China's religious order and constitutes "other adverse effects".[90]

The trademark application was also rejected because of adverse effects in case *Paramount Pictures v. China TRAB*. The applicant applied to register "THEGODFATHER" and graphic as a trademark on Class 8.[91] CTMO, China TRAB and Beijing First Intermediate People's Court all rejected this trademark application. CTMO and TRAB acknowledged that the "GODFATHER"  in the trademark application can be translated to the "godfather". In Christianity, it refers to theologians who are authoritative in the formulation and interpretation of doctrines in the second to 12th centuries. It's easy to harm religious feelings and will produce adverse effects if using it on designated goods. The applicant claimed that the trademark under application is from its classic movie "THEGODFATHER". The obviousness becomes strong though long-term use and broad publicity, so consumers have already established a fixed correspondence relationship between the trademark and the movie character. "GODFATHER" has a multiple meanings and the Chinese translation for "GODFATHER" and the religious meaning is generalized, so it is not in the scope of forbidden use situations. Beijing First Intermediate People's Court didn't support the applicant's claim and held that "GODFATHER" refers to theologians who are authoritative in the formulation and interpretation of doctrines in the second to 12th centuries, if use it on Class 8 such as abrading instruments will hurt religious feelings easily and produce adverse social effects. The Court also interpreted that the religious meaning of Chinese translation of English language "GODFATHER" has not been generalized to a degree that cannot make public people associate it to certain religion.[92]

[90] Chongqing Changcheng Tea Co., Ltd. v. China TRAB, Beijing Intellectual Property Court, JingZhiXingChuZi No. 6454 (2015).
[91] "THEGODFATHER", Application Number: 11352932.
[92] Paramount Pictures v. China TRAB, Beijing First Intermediate People's Court, YiZhongXing(Zhi)ChuZi No. 9765 (2014).

The sign "佛家山" ("Buddhist Mountains", pinyin: fó jiā shān) was rejected in the case *Jiangxi Fojiashan Marketing Mangement Co., Ltd. v. China TRAB* for the reason that the sign contains "佛" ("Buddhist") which will harm religious feelings and will produce adverse effects.[93] The word "禅智" ("Zen wisdom", pinyin: chán zhì) was rejected in the case *Shanghai Mengrong Information Technology Co., Ltd. v. China TRAB*. The court held that the character "禅" ("Zen") is widely recognized as a common Buddhist term in Chinese and represents things related to Buddhism. Even though "禅" ("zen") has other meanings, but all the meanings are related to religion. If use it on the service like insurance, pawn, charity fundraising, financial etc. will be harmful to religious feelings and produce adverse effects easily.[94] So does a sign with the name of Xuanzang was rejected in the case *Beijing Xingzhi Exploring Cultural Development Co., Ltd. v. China TRAB* for the reason that the sign "玄奘之路 理想·行动·坚持" ("Road of Xuanzang ideal·action·persistence") will harm religious feelings and will produce adverse effects even the applicant has used the sign in their activities for ten years and the trademark has been recognized as a well-known service brand, which has promoted (the development of) Gansu Province, inherited the spirit of Xuanzang, and produced a positive and positive social impact.[95]

CTMO, China TRAB and China courts share very close opinions on trademarks related to religion and superstitious issues. Any potential to be related to religion will be denied by them. There is no excuse to get approval even though the applicants have used the sign for a long time and the sign has gained a broad popularity. In China the religion protection is protected very well in the field of trademark.

5. Marks with politics elements

In terms of the political adverse effects, CTMO, China TRAB and China courts are all very cautious. Many cases show that neither names of national leaders nor appellations of official posts can be registered as trademarks in China, because these kinds of trademarks' registration or use might produce adverse political effects. As former mentioned cases, "习美汇" (Ximeihui), "习卓" ("xizuo", pinyin: xí zhuó) were all rejected because it contains "习"

---

[93] "佛家山" ("Buddhist Mountains"), Application Number: 17906463. Jiangxi Fojiashan Marketing Mangement Co., Ltd. v. China TRAB, Beijing Intellectual Property Court, Jing73XingChu No. 4371 (2017).

[94] "禅智" ("Zen wisdom"), Application Number: 10491073. Shanghai Mengrong Information Technology Co., Ltd. v. China TRAB, Beijing High People's Court, GaoXing(Zhi)ZhongZi No. 2491 (2014).

[95] "玄奘之路 理想·行动·坚持" ("Road of Xuanzang ideal·action·persistence"), Application Number: 12886386. Beijing Xingzhi Exploring Cultural Development Co., Ltd. v. China TRAB, Beijing High People's Court, JingXingZhong No. 638 (2016).

("Xi"), the surname of China current President.[96] "周强" ("Zhou Qiang") was rejected because the name of current President of China Supreme Court is 周强 (Zhou Qiang).

In the case *Sichuan Guansheng Agricultural Co., Ltd. v. China TRAB*, the applicant wanted to register "官升" ("Guan Sheng", pinyin: guān shēng) as trademark. CTMO and China TRAB deemed that if read the sign "官升" ("Guan Sheng") from right to left, it is "升官" ("Sheng Guan") which means "get a promotion to a higher official position", if use "升官" ("Sheng Guan") in commercial activities will produce adverse effects easily.[97] However, both Beijing Intellectual Property Court and Beijing High People's Court didn't support this opinion. Courts held that the trademark under application "官升" ("Guan Sheng") will not produce adverse effects with the reason that "官升" ("Guan Sheng") is also the name of a town in Sichuan province and "升官" ("Sheng Guan") is a neutral term and objectively expresses the expectation for professional advancement. It does not have a negative or negative impact on public interest and public order in China.[98]

In case *Shuangcheng Chengxu Wine Co., Ltd. v. China TRAB*, "東北老鄉長" ("northeast old township head", pinyin: dōng běi lǎo xiāng zhǎng) was rejected.[99] China TRAB considered that "乡长" ("township head") is the administrative officer of local township government. The trademark under application contains "鄉長" ("乡长", "township head"), which will produce adverse effects. Beijing Intellectual Property Court held that "老乡长" ("old township head") is a respectful calling with a certain emotion. TRAB has no good reason to prove that it is easy for using "老乡长" ("old township head") on designated goods like wine and shochu can cause adverse effects on the image of government officials. Additionally, "东北" ("northeast") in front of "老乡长" ("old township head") makes no change to the meaning of "老乡长" ("old township head").[100]

Linyi Tianwei Pants Co., Ltd.'s trademark application was rejected by CTMO because the trademark under application  is like the special mark of China Customs . It will undermine the seriousness and dignity of the China Customs if using the sign on designated goods, which will result in

[96] "习美汇" (Ximeihui), Application Number: 21061298, 21073064, 21073289. "习卓" ("xizuo"), Application Number: 20801671, 20801828, 20801863.

[97] "官升" ("Guan Sheng"), Application Number: 17558341.

[98] Sichuan Guansheng Agricultural Co., Ltd. v. China TRAB, Beijing Intellectual Property Court, Jing73XingChu No. 3069 (2017). Sichuan Guansheng Agricultural Co., Ltd. v. China TRAB, Beijing High People's Court, JingXingZhong No. 3696 (2017).

[99] "東北老鄉長" ("northeast old township head"), Application Number: 16413387.

[100] Shuangcheng Chengxu Wine Co., Ltd. v. China TRAB, Beijing Intellectual Property Court, Jing73XingChu No. 6976 (2016).

adverse social effects.[101] "中國邊貿 ZHONGGUOBIANMAO" ("China Border Trade") was also rejected for such a reason. CTMO and China TRAB insisted that the "中國邊貿 ZHONGGUOBIANMAO" ("China Border Trade") contains "China" which is the symbol of the country. It will lead to the abuse of the country name, damage the dignity of the country and produce adverse effects if allow to register it as a trademark and use in trade. This opinion was confirmed by Beijing First Intermediate Court and Beijing High People's Court.[102]

There is no possibility to register current leaders' names or similar names as trademarks in China. General public are also very sensitive to these kinds of negative issues and want to keep themselves away from this kind of risk. So normally, there is no people to seek a change to register leaders' names as their trademarks. But for the general appellation, people like to try because these words have good meanings and hope to use them as their trademarks to bring them successful business. But it seems CTMO is still in a struggle in deciding which ones have potential adverse political effects.

6. Dazzling public interest

There is also a very general function word that can cover everything in the procedure of determining adverse effects, it is "public interest". Where is the boundary of public interest, who is represent of public's interests? There is no clear predictability. This is one of the most complex problem in determination of "having other adverse effects".

Courts gave different viewpoints in the case *Trunkbow Asia Pacific (Shandong) Co., Ltd. v. TRAB, Zhang Qinghe*. Trunkbow Asia Pacific filed to register "微信" ("wei xin", pinyin: wēi xìn) as a service trademark on Class 38 such as information transmission, telephone service, telephone communications, mobile telephone communications etc. on August 12, 2010.[103] During the publication period[104], Zhang Qinghe, a consumer of the social media "微信" ("Wechat") raised an objection for the applicant's registration of "微信" ("wei xin") for the reason that Tencent issued the social media with the name of "微信" ("Wechat") is totally same as the applicant's trademark. CTMO issued a rejection to Trunkbow Asia Pacific. TRAB of China also gave a negative notice on the applicant's trademark registration with reasonsthat: Firstly, Tencent published Wechat APP to the public before the publication of Trunkbow Asia Pacific's trademark application on "微信" ("wei xin"), although Tencent hadn't published Wechat software when Trunkbow Asia Pacific filed trademark registration application to CTMO.

[101] Application Number: 1218539.
[102] Yang Guodong v. China TRAB, Beijing High People's Court, GaoXing(Zhi)ZhongZi No. 2884 (2014).
[103] "微信" ("wei xin"), Application Number: 8840949.
[104] From August 27, 2011.

Secondly, the quantity of Wechat APP users increased rapidly and the number went to at least 0.4 billion by July of 2013. Many government organizations, courts, schools, banks etc. started to provide their service through Wechat APP, so the public connected "微信" ("wei xin") with Tencent. Thirdly, if Trunkbow Asia Pacific's trademark application on "微信" ("wei xin") is approved, it will bring much inconvenience and loss to 0.4 billion users of Wechat, then it may produce negative influence on social public interest and public order when considering that people may also mistake Trunkbow Asia Pacific's service with the trademark "微信" ("wei xin"). Beijing Intellectual Property Courts rejected Trunkbow Asia Pacific's claim on the ground of "having other adverse effects".[105] It held that: Firstly, it will bring not only mistake to the nature, content and origin of "微信"("Wechat") but also negative influence on the already established stable market order if permit Trunkbow Asia Pacific's trademark registration application on "微信" ("wei xin"). Secondly, even China opts first-file trademark right obtain policy, we should balance this policy with public interest and market order. In this case, in one hand it is the expectation interest by trademark registration of the applicant, the other hand is users of "微信" (WeChat) APP and large society cost to change the stable recognition, we choose to protect the interests of non-specific majority public.[106] However, Beijing High People's Court overturned the former standpoints on "having other adverse effects" while it rejected Trunkbow Asia Pacific's claim based on the trademark is non-obvious on services of Class 38. Beijing High People's Court held that, "having other adverse effects" is an absolute prohibition situation for trademark registration and trademark use, a sign can neither be registered as a trademark nor be used as a trademark once it is affirmed to have "other adverse effects". If a sign is affirmed to have "other adverse effects", nobody can use or register it as a trademark. So we have to be very cautious when decide whether a sign has "other adverse effects". In this case: Firstly, "微信" ("wei xin") itself has no "other adverse effects" at all. Secondly, WeChat has many users, but the users are using the APP. The registration of "微信" ("wei xin") by Trunkbow Asia Pacific only might influence the name or the trademark of the APP, but not the operation of the APP which is the closest to public users. Thirdly, if WeChat APP change its name, it will benefit from convenient internet technology and inform its users instantly, it has nothing to do with public users' interests. So Beijing High People's Court held that "微信" ("wei xin"), applied by Trunkbow Asia Pacific, has no "other adverse effects".[107] This case went to China Supreme Court and China

[105] Trunkbow Asia Pacific (Shandong) Co., Ltd. v. TRAB, Zhang Qinghe, Beijing Intellectual Property Court, JingZhiXingChuZi No.67 (2014).
[106] Trunkbow Asia Pacific (Shandong) Co., Ltd. v. TRAB, Zhang Qinghe, Beijing Intellectual Property Court, JingZhiXingChuZi No.67 (2014).
[107] Trunkbow Asia Pacific (Shandong) Co., Ltd. v. TRAB, Zhang Qinghe, Beijing High People's

Supreme People's Court said nothing related to "having other adverse effects" issues and rejected Trunkbow Asia Pacific's retrial petition.[108]

In case *Ji Shiqin v. China TRAB*, Beijing First Intermediate People's Court held that the value of trademark comes from trademark use, it is saying that trademark should be used to recognize the sources of goods or services in order to reduce people's search cost and keep normal market order. But Ji Shiqin as a natural person registered more than 170 trademarks which are identical or same with other trademark right holders' trademarks without intention to actual use, this will result that particular people unfairly monopoly special signs, which is a conduct of undermine the order of trademark registration and this will lead producing adverse effects to China's economic, culture et. social public interest and public order.[109] This verdict was revised by Beijing High People's Court. Beijing High People's Court held that there is not enough evidence to prove that Ji Shiqin's conduct of applying to register the trademark has adverse effects based on Article 10 (1) (8) of Chinese Trademark Law.[110] That is to say, Beijing First Intermediate People's Court employed law incorrectly.

The trademark application of "COACHPOPPYCOACHEST.1941" was rejected because the trademark contains "POPPY" which will produce adverse effects if use it as a trademark.[111] Beijing First Intermediate Court confirmed this opinion in the verdict.[112] The trademark "LL LUXURYLIVING" was rejected by CTMO and China TRAB, because it has the meaning of luxury life, it's easy to produce adverse effects if use it on goods like curtain.[113] Beijing First Intermediate Court and Beijing High People's Court overturned China TRAB's opinion and held that there is no adverse effects of this trademark.[114]

Court, GaoXingZhiZhongZi No.1538 (2015).

[108] Trunkbow Asia Pacific (Shandong) Co., Ltd. v. TRAB, Zhang Qinghe, China Supreme People's Court, ZuiGaoFaXingShen No. 3313 (2016).

[109] Ji Shiqin v. China TRAB, Beijing First Intermediate Court, YiZhongZhiXingChuZi No. 3290 (2011).

[110] Ji Shiqin v. China TRAB, Beijing High People's Court, GaoXingZhongZi No. 1420 (2012). Beijing High Peoples' Court did the verdict on the ground that Chinese Trademark Law (2001) Article 28 "Where a trademark, for the registration of which an application is made, that does not conform to the relevant provisions of this Law or that is identical with or similar to the trademark already registered by another person or is given preliminary examination and approval for use on the same kind of goods or similar goods, the trademark office shall reject the application and shall not announce that trademark." This Article becomes Article 30 in Chinese Trademark Law (2013).

[111] "COACHPOPPYCOACHEST.1941", Application Number: 10334368.

[112] COACH, INC. v. China TRAB, Beijing First Intermediate Court, YiZhongXing(Zhi)ChuZi No. 7313 (2014).

[113] "LL LUXURYLIVING", Application Number: 9890027.

[114] Club House Italian Stock Company v. China TRAB, Beijing High People's Court, GaoXing(Zhi)ZhongZi No. 1518 (2015).

These kinds of trademarks are deemed to be having other adverse effects because they contain things that are negative to positive value which the authority wants to advocate.

7. Most recent case: continuing ambiguity and inconsistency

Jiejue (Beijing) Network Technology Co., Ltd. intended to register "熟女" ("mature women", pinyin: shú nǚ) on Class 4105.[115] It was refused by CTMO and China TRAB. Jiejue filed a lawsuit to Beijing Intellectual Property Court. Beijing Intellectual Property Court insisted that the word "熟女" ("mature women") has the meaning of sexual maturity and flirty woman. It has derogatory meaning and low taste, goes against to the public order and good customs, and is prone to produce adverse effects if used in designated services.[116]

Beijing High People's Court overturned the verdict of the first instance.[117] Beijing High People's Court held that, the meaning of a trademark or its constituent elements should be determined based on the meaning given by the dictionaries, reference books and other public publications or other information carriers which general public can widely get access to. By this way, it can avoid explaining the meaning of a trademark based on external factors such as occasions and contexts, or using deducing or associating way, which will make the trademark or its constituent elements loaded with non-ordinary meanings of the words and result with improperly limiting the freedom of expression in commerce and going against to the aim of giving our country's socialist morals and culture in positive and correct way. At the same time, burden of proof shall be on the side who claims the trademark has adverse effects when the meaning of the trademark or its constituent elements are not determined based on general cognition from common sense. In this case, Jiejue provided evidence such as network print, book contents, other trademark registration information and so on, which can prove that there is not a general understanding of the meaning of ("熟女") "mature women" in China. China TRAB did not provide further proof or adequate explanation for interpreting ("熟女") "mature women" to sexual maturity and flirty woman. So there is no proof that ("熟女") "mature women" may produce adverse effects to public interest and public order such as Chinese politics, economy, culture, religion, and ethnicity et.[118] This case is a positive attitude to the determination of "having other adverse effects" by court. Beijing High

[115] For example, screenplay writing, videotaping, entertainer services, presentation of live performances, film production (other than advertising films), theatre productions, production of shows, and so forth.
[116] Jiejue (Beijing) Network Technology Co., Ltd. v. TRAB, Beijing Intellectual Property Court, Jing73XingChu No. 5226 (2017).
[117] Jiejue (Beijing) Network Technology Co., Ltd. v. TRAB, Beijing High People's Court, JingXingZhongZi No. 231 (2018).
[118] Jiejue (Beijing) Network Technology Co., Ltd. v. TRAB, Beijing High People's Court, JingXingZhongZi No. 231 (2018).

People's Court didn't follow the general and ambiguous rule in other cases and put dictionaries and other publications as first resource for the explanation of the words of trademark and the trademark constituent elements. This is the right way to guide common people to use words in right way, but not be led by misuse of words.

For the words related to sex, both CTMO and China courts are very strict, but the latest case shows another side opinion from court. In the case *Beijing Weimei Quanxiang Catering Management Co., Ltd. v. China TRAB*, the applicant Beijing Weimei Quanxiang Co., Ltd. applied to register "叫个鸭子" ("call a duck", pinyin: jiào gè yā zi)  on class 35.[119] China TRAB insisted that the trademark under application consists of a duck picture, characters "叫个鸭子" ("call a duck") and a black rectangular background. The words "叫个鸭子" ("call a duck") has low taste and is easy to produce adverse social effects. Using it on the service such as advertisement constitutes a violation to Article 10 (1) (8) of Trademark Law. The applicant filed a lawsuit to Beijing Intellectual Property Court. Beijing Intellectual Property Court held that the trademark under application consists of the text "叫个鸭子" ("call a duck"), the duck cartoon graphics and black background. According to the general understanding of the public, it can't be interpreted other meanings beyond the literature meaning of the text "叫个鸭子" ("call a duck") itself. The TRAB believes that "叫个鸭子" ("call a duck") is in low taste is not equivalent to the social public's general understanding. Therefore, using the trademark under application on the designated services has no adverse effects.[120] Then China TRAB appealed the decision. Beijing High People's Court affirmed the first instance verdict.[121]

In another very similar case *Beijing Manman Station Beverage Store v. China TRAB*, the same trademark was applied on class 43.[122] With the rejection from China TRAB, the applicant filed a lawsuit to Beijing Intellectual Property Court. Beijing Intellectual Property Court held that "duck" generally refers to a poultry, but also refers to male sex workers in non-mainstream culture. In general, using the second meaning as a trademark cannot be accepted by

[119] "叫个鸭子" ("call a duck"), Application Number: 15739764. Designated service includes advertising, exhibitions (Organization of –) for commercial or advertising purposes, marketing, sales promotion for others, computer databases (Systemization of information into –), compilation of information into computer databases, accounting, sponsorship search, etc.

[120] Beijing Weimei Quanxiang Catering Management Co., Ltd. v. China TRAB, Beijing Intellectual Property Court, Jing73XingChu No. 4015 (2016).

[121] Beijing Weimei Quanxiang Catering Management Co., Ltd. v. China TRAB, Beijing High People's Court, JingXingZhong No. 395 (2017).

[122] ("叫个鸭子") "call a duck", Application Number:15740333. Applying trademark designating service includes hotels, motels, tourist homes, hotel reservations, retirement homes, day-nurseries [crèches], animals (boarding for –), bar, etc.

mainstream culture and value. The use of the dispute-claimed trademark is designated in services such as "bar service, lodging agency (hotel, boarding)" etc., especially with the term "call a duck", this will further strengthen the relevant public cognition of and association to the second meanings of "duck", it can easily produce adverse effects.[123] However, Beijing Intellectual Property Court's verdict was overturned by Beijing High People's Court. Beijing High People's Court held that the term "adverse effects" as used in Trademark Law refers to the situation that the registration or use itself is harmful to moral or customs, or produce negative influence to national political, economic, cultural, religious, ethnic and etc. social public interest and public order. The TRAB's understanding on the "call a duck" cannot equal to social public's general understanding on it.[124]

Comparing with "叫个鸭子" ("call a duck")'s good luck, almost all the trademark applications of "叫了个鸡" ("call a chicken", pinyin: jiào le gè jī) were rejected.[125] Even Yanji (Shanghai) Catering Business Management Co., Ltd. (the trademark applicant) has been running a very successful business based on the sign "叫了个鸡" ("call a chicken"), it was rejected for the reason that it will produce adverse effects. For Chinese words and language general use, people use "duck" and "chicken" to refer male sex workers and female sex workers respectively. If the trademark "叫了个鸡" ("call a chicken") was rejected, then how could "叫个鸭子" ("call a duck") get registration approval? Especially when they were applied in the similar Classes. Multiple results enhance people's puzzling on the "other adverse effects" meaning.

When we look back similar level word signs handled by CTMO, TRAB and court, we can find different results for similar signs very easily. For the dirty words, as the most disputed trademark "MLGB", it was approved in many kinds of Classes before the case *Shanghai Junke Trading Co. Ltd. v. China TRAB*. Same as "MLGB", "CNM" is also the acronym of a very popular dirty words used on internet.[126] "CNM" trademark registration application was approved by CTMO in many Classes. For example, it was approved class 9, class 8, class 35, class 7, class 26 and so forth.[127] Another similar internet slang example is "碧池" ("bi chi", pinyin: bì chí). It is a popular translation for "bitch" in China,

[123] Beijing Weimei Quanxiang Catering Management Co., Ltd. v. China TRAB, Beijing Intellectual Property Court, Jing73XingChu No. 2359 (2017).
[124] Beijing Weimei Quanxiang Catering Management Co., Ltd. v. China TRAB, Beijing High People's Court, JingXingZhong No. 3393 (2017).
[125] "叫了个鸡" ("call a chicken"), Application Number: 16038402, 16045535, 16059522, 16084940, 16085280, etc.
[126] CNM is the acronym of Cao Ni Ma (the meaning is f..ck your mother). It is very popular on internet communication.
[127] "CNM" on Class 9, Application Number: 19080537, 22935807. "CNM" on Class 8, Application Number: 22952822. "CNM" on Class 35, Application Number: 19505261. "CNM" on Class 7, Application Number: 13597204. "CNM" on Class 26, Application Number: 9766108, the Class of 2601 contains clothing laces, laces, ribbons, tapes, fringes, clothing trims, frills and so forth, it is similar with the "MLGB" applying for registration on clothing.

but this sign got approved by CTMO in different Classes, for example condom, medical apparatus, cosmetics and so on.[128]

For using altered idioms, Beijing First Intermediate Court held that "糖糖正正" ("tang tang zheng zheng", pinyin: táng táng zhèng zhèng) has no adverse effect. The Chinese idiom "堂堂正正" (meaning dignified and imposing, pinyin: táng táng zhèng zhèng) is a commendatory term and has a fixed meaning of character integrity and greatness. Relevant public in our country has a clear understanding of the meaning of the idiom "堂堂正正" (meaning dignified and imposing). The application for trademark in this case changed some of the constituent characters of the above idiom, but the change did not result in any other comprehension that was clearly different from the fixed meaning of the idiom, nor did it use derogatory or distorted use of the idiom. The change in trademark under application will not cause the relevant public to have other understandings of the meaning of the idiom "堂堂正正" (meaning dignified and imposing), thereby causing misunderstanding of the fixed meaning of the idiom and thus causing adverse social influence. [129] This case was cited by many applicants in courts to justify their applying trademarks and prove that their applying trademarks will not produce adverse effects.[130] Comparing with the trademark "糖糖正正" ("tang tang zheng zheng"), there is no big difference in other cases of idioms altering use way, but the results of them are different. In the case *Beijing Manman Station Beverage Store v. China TRAB*, the applicant claimed that there have been some trademarks named "榴芒" ("liu mang") gotten approval in CTMO and are existing until now, so it has nothing related to adverse effects. However, Beijing High People's Court explained this problem with the logic that the application, review, and approval of other trademarks are not necessarily related to this case, nor can they be the basis for this case final verdict, in terms

[128] "碧池" ("bi chi") on Class 10, Application Number: 20389965, 14485638. "碧池" ("bi chi") on Class 3, Application Number: 15970175.

[129] Beijing Hannashan Century International Commerce Clubhouse Co., Ltd. v. TRAB, Beijing First Intermediate Court, YiZhongZhiXingChuZi No. 144 (2014).

[130] For example, in the case Manyi (Shanghai) Real Estate Consulting Co., Ltd. v. TRAB, the plaintiff Manyi Company insisted that: in order to keep consistency with the standard of trademark review in the case "糖糖正正" ("tang tang zheng zheng"), the trademark "爱屋吉屋 IWJW.COM" ("love-house-auspicious-house", pinyin: ài wū jí wū, Application Number: 15012498) in this case shall get approved. Otherwise, Manyi Company will lose the reasonable expectation of specific administrative actions and it will cause obvious differences to trademark examination standards. See Manyi (Shanghai) Real Estate Consulting Co., Ltd. v. TRAB, Beijing High People's Court, (2017) JingXingZhong No. 1577. In the case Jiangyin Baiyibaishun Clothing Co., Ltd. v. TRAB, the plaintiff wanted to cite case Manyi (Shanghai) Real Estate Consulting Co., Ltd. v. TRAB to justify its trademark "百衣百顺 BATTSALE" (pinyin: bǎi yī bǎi shùn) while "百衣百顺" (pinyin: bǎi yī bǎi shùn) is a transformative result from Chinese idiom "百依百顺" (means obey to somebody totally, pinyin: bǎi yī bǎi shùn). Beijing Intellectual Property Court didn't support its claim and held that the transformative use of idioms has adverse effects. See Jiangyin Baiyibaishun Clothing Co., Ltd. v. TRAB, Beijing Intellectual Property Court, (2016) Jing73XingChu No.2193.

of trademark examination is affected by various factors, such as the time and environment of the trademark examination's formation, or the evidence existing in the case and so forth.[131]

Compared with former mentioned sign "寻欢"("make merry", pinyin: xún huān) was rejected on Class 9, Class 38, Class 41, Class 42, Class 45, while it was registered on Class 29 successfully.[132] "寻欢时光" ("make merry time", pinyin: xún huān shí guāng) was rejected on Class 35 and Class 43, while it was registered on Class 29.[133] "寻欢记"("make merry notes", pinyin: xún huān jì) was also registered on Class 20 and on Class 35 successfully[134]. Even "心满意竹 HEAR TSATISFYING BAMBOO" was invalidated on Class 24, but it was approved on Class 35.[135] The trademark "随心所浴" (pinyin: suí xīn suǒ yù) and "随心所遇" (pinyin: suí xīn suǒ yù) are all transformative use of the idiom "随心所欲" (meaning that do whatever one wants. pinyin: suí xīn suǒ yù), they also share the same pronunciation. But those trademark application got success on Class 11 and Class 25.[136] The sign "芝根芝底" got the approval on Class 30.[137]

It is still hard to find where is the line of rejecting a trademark registration application based on "having other adverse effects". Large amount of trademarks is treated in inconsistent ways makes people confused and lost their mind about what kind of trademark design and craft they can make. The approval of trademarks (even some of them or some similar trademarks are rejected in the same time) means there is still chance to get approval for the trademark application only if CTMO sees the hope of good effects and benefits from using this trademark wins the adverse effects. In order to keep a relative consistency among cases, court said that other trademarks' approval results have no meaning to the case under trail, it means the court did not deem the different verdicts shall be followed even the trademarks are similar. It is very confusing!

---

[131] Beijing Manman Station Beverage Store v. China TRAB, Beijing High People's Court, JingXingZhong No. 1972 (2016).

[132] "寻欢" ("make merry"), Application Number: 8747995 (Class 9), Application Number: 15934643 (Class 38), Application Number: 15934694 (Class 41), Application Number: 15934773 (Class 42), Application Number: 15934856 (Class 45), Application Number: 18210306 (Class 29).

[133] "寻欢时光" ("make merry time"), Class 35 (Application Number: 18304371), Class 43 (Application Number: 18304620), Class 29 (Application Number: 18304572).

[134] "寻欢记" ("make merry notes"), Application Number: 19509552 (on Class 20), Application Number: 19509246 (on Class 35).

[135] "心满意竹 HEAR TSATISFYING BAMBOO": Class 24, Application Number: 15063832; Class 35, Application Number: 15061678.

[136] "随心所浴" (pinyin: suí xīn suǒ yù), Application Number: 4883629. "随心所遇" (pinyin: suí xīn suǒ yù), Application Number: 4667469.

[137] "芝根芝底" ("sesame-root-sesame-bottom", pinyin: zhī gēn zhī dǐ), Application Number: 17064312.

D. Summary of the problems on "adverse effects" employ

Surely "having other adverse effects" provides CTMO, China TRAB and China courts a broad discretion on the trademark registration. It makes registered trademarks play a role of leading positive life and value (in fact it needn't), which seems compelling as its original function that designate the origins and sources of the goods or services.[138] Taking advantage of "having other adverse effects", it makes consumers and public people especially students who are learning Chinese in school and teenagers who are sensitive to knowledge learning get rid of dirty and unhealthy language environment because it reduces the chances people get access to adverse effects signs by rejecting trademark application with signs "having other adverse effects". In the end, China forbids the use and registration of any signs with adverse effects will make it reserve large amount of available trademark resources in the future when the registrable trademarks become more and more limited. This trademark registration and use policy in China may benefit its trademarks shortage very much in the future. When we stand out of law system, we also can see China is safeguarding the authority and dignity of the leaders, the governments, the community and other organizations by prohibiting using their names or similar signs as trademarks. It can be helpful for the holy power to be in force and irreparable. Additionally, it puts registration interests to an important protection role will also enhance the union of the country. However, as the original function of trademark is to distinguish the origins and sources of goods or services, there are also shortcomings by doing like this.

China trademark system's limited ability on determining "other adverse effects" becomes apparent in view of cases emerged in CTMO, China TRAB and China courts. Similar signs get different results. Different authoritative organizations have different concerns. By comparison, CTMO sets up the strictest line to prohibit some potential negative signs to keep trademarks in China positive and sets up a super high protection line for the famous political figures. However, China courts are not stand in the same line totally.[139] On the other side, it seems "having other adverse effects" also works as a results to prove other damages in law, for example public interest, detrimental to social

[138] Original functions of trademarks, see David A. Simon, Register Trademarks and Keep the Faith: Trademarks, Religion and Identity, 49 IDEA 233, 237 (2009).

[139] China courts here mostly refers to Beijing First Intermediate Court, Beijing Intellectual Property Court, Beijing High People's Court and China Supreme Court. Because before 2014, China TRAB's location was in the jurisdiction of Beijing Intermediate Court. In November 2014, Beijing Intellectual Property Court was built and trademark administrative cases started to go to Beijing Intellectual Property Court. See Notice of the Supreme People's Court on Issues concerning the Jurisdiction of Intellectual Property Courts over Cases, Documents of Judicial Interpretation No. 289 (2009). Notice of Beijing High People's Court's Implementing "Notice of the Supreme People's Court on Issues concerning the Jurisdiction of Intellectual Property Courts over Cases", Beijing High People's Court, (2009). Notice of the Supreme People's Court on Issues concerning the Jurisdiction of Intellectual Property Courts over Cases, Documents of Judicial Interpretation No. 338 (2014).

moral, fake issues, hurt a third party's rights and prior arts, etc.

There is one important disruption in the determination of "having other adverse effects". It is whether the "adverse effects" shall be produced by the sign itself or through the use of the sign. If the "adverse effects" shall be produced from the sign itself, then anybody could not use it, there is no exception. If the "adverse effects" shall be produced through use, who should and can foresee the adverse effects is a problem. Based on trademark law general principle, subject of the judgment of whether there is "other adverse effects" on a trademark should be relevant public.[140] However, there is no public opinion survey during the trail and rejection of trademark registration. It means trademark examiners, trademark reviewers and judges are playing the role of relevant public, but it seems their opinion are not in relevant public's way. Does it fair for trademark applicants? Does it democratic for relevant public? Does it essential for authority to do so?

IV. It is a wrong way in China to use "having other adverse effects"

A. China legislation phrase might be not the biggest but is the primal problem

This article is not saying that there shouldn't be miscellaneous provisions exist in trademark law or general phrases shouldn't be used to trademark forbidden use terms, it is just intending to declare that the legislation phrase in Chinese Trademark Law is too general, too broad, too confusing and too easy to be manipulated, which leads to a broad scope signs are expelled out of use and registration while they could function as distinguishing the origins and sources of goods or services, and gain goodwill on them. Especially some unregistered trademarks that has been used for a long time and have the unique indicator role for the relevant public, especially consumers. General legislation can improve the flexibility of law, but too general legislation would weaken the bind of the law.

China is a statute country and it is clear to be known that there are general legislations in other parts of Chinese Trademark Law as well as other laws in China. For example, General Principles of the Civil Law of the People's Republic of China was issued four years later than Chinese Trademark Law and has been worked as primary Chinese Civil Law (China General Principles of the Civil Law) until now also contains many general provisions. The most similar provision in China General Principles of the Civil Law with the "having other adverse effects" provision in Chinese Trademark Law is public order and good customs in Article 7 which reads "Civil activities shall have respect for social ethics and shall not harm the public interest or disrupt social

[140] The "relevant public" is a broadly used subject in Chinese Trademark Law.

economic order."[141] People call this Article "public order and good customs principle" provision. But when judges use Article 7 and other general basic principle provisions in China General Principles of the Civil Law, it means there is no specific provisions available to solve the argument and disputes. That is to say, the judges do not employ the general and miscellaneous provisions unless there is no specific provisions are available to support their opinions for the trial.

There is a very general and versatile Article in the first chapter of Chinese Trademark Law. Article 1 of Chinese Trademark Law tells the law's intention, which can help to supply the reasoning law basis if the specific articles are not appropriate and not available to apply. Although the "other adverse effects" is also put in the general chapters in China Trademark Law, it expresses the specific content in trademark use and registration article. So in fact, it works as a general rule but can be employed as a primary legal basis and be used very often.

As summary above, even Chinese Trademark Law uses a general legislative term, but it is not the biggest problem by rejecting so many trademarks based on "having other adverse effects". The biggest reason is that CTMO and China TRAB pay a conservative attitude to trademarks that might have potential to have adverse effects flood to market. China courts also have a discreet attitude on trademarks of adverse effects, but much less than CTMO. What's more, Chinese traditional order and culture also make the government feel powerful and liable to purify the trademarks based on the content of trademarks.

B. Reasons for CTMO, China TRAB and China courts' actions

Because it is a miscellaneous clause, so the authorities issued relative interpretations on how to define "having other adverse effects" for their own work to follow (and guide the public). As it shows in the third part of this paper, different authorities gave different interpretations for "having other adverse effects". In order to enhance the examination of trademarks that having other adverse effects, Trademark Examination Cooperation Center of The State Administration for Industry and Commerce of China (Trademark Examination Cooperation Center) [142] released one document on the examination of trademarks having other adverse effects, named "Trademark Examination Cooperation Center Control Measures on Trademark Registration Examination Timeline Limitation and Adverse Effects Trademarks" ("Control Measures on Adverse Effects Trademarks") in 2017. This document builds a multi-stage-monitoring method for trademarks of

[141] See China General Principles of the Civil Law (Document Number: Order No. 37 of the president of the People's Republic of China), art.7.

[142] Trademark Examination Cooperation Center is a unit directly under SAIC. About its main responsible duties. See at http://www.tdtm.com.cn/?jianjie.html (last visited June 5, 2018).

adverse effects[143] This explains why there are so many trademark applications were rejected by CTMO based on "having other adverse effects". Because if they don't put much "attention" to reject trademarks have potential "other adverse effects", they are probably get punishment based on this document.

Courts are using "having other adverse effects" to deny trademark registrations which they think might be harmful to society order. In September 2015, China Supreme Court promulgated "Several Opinions of the Supreme People's Court on Improving the Judicial Accountability System of People's Courts". This document sets up the policy that judges are lifelong responsible for cases which are under their trial. It says "Judges shall be liable for their performance of trial duties and assume lifelong responsibility for the quality of case handling within the scope of their duties."[144] In 2017, this policy was enhanced again in "Opinions of the Supreme People's Court on the Implementation of the Judicial Accountability System (for Trial Implementation)", the first article of which states that "…the requirements for the reform of "making triers render judgments and making judges be accountable" shall be strictly implemented on the basis of…".[145] Judges have to consider whether their opinions in the cases will bring trouble to them in the future. As a result of that, judges prefer to borrow opinions from former similar cases, especially cases processed by the Supreme Court and high courts.[146] China built guiding cases system in 2010 even China is not a case country.[147] "When trying similar cases, people's courts at all levels shall use the guiding cases issued by the Supreme People's Court as a reference."[148] It is the briefest statement of the power of guiding cases. This policy was originally used to guide lower courts for similar cases' adjudication and

[143] See at http://www.tdtm.com.cn/?searchjg/id/213/gzgtid/231.html (last visited May 9, 2018).
[144] Several Opinions of the Supreme People's Court on Improving the Judicial Accountability System of People's Courts (Document Number: No. 13 [2015] of the Supreme People's Court), art. 25.
[145] Opinions of the Supreme People's Court on the Implementation of the Judicial Accountability System (for Trial Implementation) (Document Number: No. 20 [2017] of the Supreme People's Court), art. 1. This also regulates the supervision about it, it reads "After the reform of the judge quota system is completed, the people's courts at all levels must strictly implement the reform of the judicial accountability system and ensure "the judges hear the cases to render judgments and assume related responsibilities." No court president or division chief judge may examine, sign and issue any written judgment for cases that are not directly tried by him- or herself, except for cases decided by the judicial committee upon collective discussion, or conduct approval of any case in a disguised form by such means as giving an oral instruction, observing the hearing of the collegial panel, and reviewing the delivered written judgments." It means that judges have to undertake the responsibility for "their own" cases.
[146] Mo Zhang, Pushing the Envelope: Application of Guiding Cases in Chinese Courts and Development Case Law in China, 26 Wash. Int'l L.J. 269, 270 (2017).
[147] About the details of guiding cases system, see Provisions of the Supreme People's Court Concerning Work on Case Guidance (Document Number: No. 51 [2010] of the Supreme People's Court) and Detailed Implementing Rules on the "Provisions of the Supreme People's Court Concerning Work on Case Guidance" (Document Number: No. 130 [2015] of the Supreme People's Court).
[148] See *Id.* art 7.

provide references for lower courts.[149] In current China statues system, guiding cases and other cases published by the Supreme Court and higher courts are expanding the power of Courts because it should be China's legislative bodies to enact laws but not courts in China law system.[150] Until the end of 2017, China Supreme Court has published 92 guiding cases. In fact, except for guiding cases, China Supreme Court also issues Top 10 IPR Cases of Chinese Courts and 50 Typical IPR Cases of Chinese Courts around April 26 every year since 2009. In addition, almost every China local high court and intermediate court follows the trend to issue (local) top 10 cases decided by local courts themselves. These cases are all made public before April 26 annually as a way to celebrate the World Intellectual Property Day. With these cases' going around and getting people's competitive flavor, judges, scholars and the parties are keen to do research on these cases and try to follow some rules summarized from these cases. This makes judges keen on finding former published cases similar to cases under their deciding when they find the cases are very controversial. However, adverse effects trademark cases are mostly determined by limited specific courts in China and there are not many adverse effects trademark registration cases are published as annual cases,[151] so it's harder for judges in court to tell the adverse effects trademarks independently. But as we could see, judges have their own rules given by courts and higher courts. In intellectual property trail system, there are much enthusiasm for following guiding cases and these annual cases even there are still many challenges to Chinese guiding cases system.[152]

In recent years, Chinese courts are also respond to national industry incentive theory.[153] In some cases, they put their decision basis on public interest which in fact is about some certain industries' interests, or even some certain companies' interests. For example, in the "wechat" case, it is a far-fetched excuse saying that it will harm the public interest if stop Wechat APP using the name "wechat". Public people were represented as the

[149] Supra note 146.

[150] Jocelyn E.H. Limmer, China's New "Common Law": Using China's Guiding Cases to Understand How to Do Business in the People's Republic of China, 21 Willamette J. Int'l L. & Disp. Resol. 96, 99 (2013).

[151] In China, most "having other adverse effects" trademark cases are administrative cases with TRAB as administrative lawsuit defendant. See Notice of the Supreme People's Court on Issues concerning the Jurisdiction of Intellectual Property Courts over Cases, Documents of Judicial Interpretation No. 289 (2009). Notice of Beijing High People's Court's Implementing "Notice of the Supreme People's Court on Issues concerning the Jurisdiction of Intellectual Property Courts over Cases", Beijing High People's Court, (2009). Notice of the Supreme People's Court on Issues concerning the Jurisdiction of Intellectual Property Courts over Cases, Documents of Judicial Interpretation No. 338 (2014).

[152] About the challenges to Chinese guiding cases system, see Chinese Common Law? Guiding Cases and Judicial Reform, 129 HARV. L. REV. 2213, 2213-2234 (2016).

[153] The creation, innovation, industries incentive policies are enforced very well after the promulgation of Outlines of the National Intellectual Property Strategy in 2008. Yahong Li, Intellectual Property and Innovation: A Case Study of High-Tech Industries in China, 13 Or. Rev. Int'l L. 263, 303 (2011).

representatives' willing as public people don't know. It is an old trick to use public interest as endorsement for some certain private interests. Especially under China's policy of *Mass Entrepreneurship and Innovation*, China intellectual property trials have to balance the interests of promoting industries development and intellectual property rights protection, which makes stable public order and market environment essential. As a result of that, generally trademarks with any adverse effects are not welcomed by authorities, even though the trademark has been used in the market for a long period, owned some consumer fans and shaped stable market order.[154]

C. What has been ignored by the authorities

1. Applicants' intention on disputed signs is not for so-called "other adverse effects"

Generally speaking, we can't know how individual trademark applicants are thinking when they apply their satisfied trademarks while CTMO examiners are not satisfied with, but we believe most trademark applicants are applying trademarks with intention to use on their business. The revision of Chinese Trademark Law in 2013 strengthened the use of trademark, which seems much more reasonable and protects much heavily on the goodwill accumulated on the trademark which is the soul of trademark protection comparing with before relatively pure first-file system of Chinese Trademark Law.[155] It means putting trademark use as a factor for right obtaining will limit chances of trademark trolls. [156] Most so-called other adverse effects trademarks' applicants seem have no motivation to register a trademark with obvious common sense level real adverse effects. In addition, trademark trolls don't like trademarks with real adverse effects, because trademarks with real adverse effects own high risk of selling badly which goes against trademark trolls' original intention "stock up trademarks for speculation". By the way, trademarks with real adverse effects are much more possible to get CTMO's rejection which means it will cost more for trademark trolls to struggle for a possible trademark registration on real trademarks with adverse effects.

As scholars insists that "A good brand name may not guarantee success, but a bad brand name will often doom a product or company to oblivion."[157] Nobody wants to make their own business fail just because some adverse

[154] For example, the trademark "叫了个鸡" ("call a chicken"), the applicant had gotten large amount of consumers when it was asked to give up its trademark "叫了个鸡" ("call a chicken"). It changed its trademark and the name of its shop after it got fine from the government. "叫了个鸡" ("call a chicken"), Application Number: 16038402, 16045535, 16059522, 16084940, 16085280, etc.
[155] Zhou Zhongqi, Key Amendments to the Chinese Trademark Law, 49 les Nouvelles 124, 124 (2014).
[156] Michael S. Mireles, Trademark Trolls: A Problem in the United States, 18 Chap. L. Rev. 815, 816 (2015).
[157] Supra note 18, 970.

effects factors in their trademarks, expect for trademark troll or cyber squatters who have no intention to use the trademark but just stock up trademarks for speculation. Normal trademark applicants prefer to use some signs transferred from Chinese idiom or fixed expressions, they just want to make their trademarks much easier to be remembered; they prefer to use some so-called dirty words, they might want to change the adverse effects of the words to a positive one;[158] many so-called not standard words trademarks showed meaningful innovative idea and even some of them make the trademark to lively by changing parts of characters or strokes in the words. Is it not a good work to reshape the words to a positive side or bring new blood to language development by make some "creating" in trademarks? It seems applicants' good intention and occasional kind willing are ignored by the government and courts.

Stepping back a few steps, trademark is a source-identifying property and people can rely on the mark to access the information about the products where the trademark used on,[159] the trademark law protects the goodwill affixed on the trademark. Contemporary trademark rights protection rests on the premise of confusion theory, while goodwill appropriation stands next to it on the same footing.[160] If trademarks applicants have been used the marks as their unregistered trademarks for a long time and result in a goodwill on the unregistered trademarks, the government should support this goodwill on the marks but not ruin it just because the marks are born with so called "having other adverse effects" content. It is in accord with the logic of Trademark Law's essence.

We could bet that nobody is willing to just seek a real adverse effects trademark right with sacrifice of available market at hand. People have their own recognition on the market and the consumers' favor. They know better about the strategy on operating trademarks than examiners who are sitting in the government offices all day along.

With the lasting rapid rising enthusiasm on trademark registration, catchy and memorable trademarks are less and less easy to find.[161] Even we believe most of them are with good intention when they apply for so-called adverse effects trademarks registration, there are still reasons to doubt their intention

[158] As the trademark applicant in the case Matal v. Tam said, "chose this moniker ["THE SLANTS"] in order to "reclaim" the term and drain its denigrating force as a derogatory term for Asian persons." See Matal v. Tam, 137 S.Ct. 1744 (2017). Also as the applicant in the case Shanghai Junke Trading Co. Ltd. v. China TRAB that MLGB refers to "MLGB" means "My Life's Getting Better", not the dirty words "f..ck your mother". See Shanghai Junke Trading Co. Ltd. v. China TRAB, Beijing Intellectual Property Court, Jing73XingChu No. 6871 (2016).

[159] Robert G. Bone, Hunting Goodwill: A History of the Concept of Goodwill in Trademark Law, 86 B.U. L. Rev. 547, 554 (2006).

[160] Apostolos Chronopoulos, Goodwill Appropriation as a Distinct Theory of Trademark Liability: A Study on the Misappropriation Rationale in Trademark and Unfair Competition Law, 22 Tex. Intell. Prop. L.J. 253, 254 (2014).

[161] Supra note 18, 999.

of attention-seeking. [162] Usually, a catchy expression is easily to be remembered by consumers and costs public less for the search, and costs people less to gain goodwill on it. Public consumers are familiar and tend to remember better on existed words and expressions which most trademark applicants prefer to use or just have a partly change. Let alone that there might be some people want to increase their companies' popularity through lawsuit. Take a free ride on a new popular net language and grasp the chance to hype loudly with China TRAB or have a lawsuit on courts will benefit the companies even they lose the lawsuit in the end. Especially in cases using a leader's name, unhealthy new popular words, etc. circumstances. This is the bad side of small number of people, we could not deny the risk of this possibility. However, these kinds of opportunistic and adventuritic actions are not normal rational people's choices.

2. Who ought to be the subject to decide the adverse effects of a trademark

Trademark law poses more legal tests that depends on public's opinion than any other intellectual property laws.[163] In Chinese Trademark Law, it's often to see that "relevant public" is the subject to judge trademark problems.[164] In 2013 Chinese Trademark Law put the standard of trademark infringement as "confusion", the relevant public's importance raised.[165] We could say that relevant public is the basic and principle subject factor for trademark issue decisions and judgments, for example whether a trademark has adverse effects or not, whether a trademark will be disgusting in the market. Because it is relevant public who will get in touch with the trademark most often after the trademark goes into market. Comparing with copyright and patent's incentive invention and expression function, trademark performs a different role which makes it a fundamentally regulation of consumer information.[166] Relevant consumers' benefit in trademarks is much more obvious and important, even much more than any other competitors.[167] So relevant consumers, relevant producers, these kinds of relevant public's prediction and evaluation on trademarks which have the potential to be told as having other adverse effects are ignoring the benefits of relevant public.

As above illustrated, CTMO and China courts often use the logic that one trademark has other adverse effects because it may produce adverse effects to

[162] As someone says that "Brands are also sometimes chosen that aim at shocking existing and potential customers". See Enrico Bonadio, Brands, Morality and Public Policy: Some Reflections on the Ban on Registration of Controversial Trademarks, 19 Marq. Intell. Prop. L. Rev. 39, 43 (2015).
[163] Steven Wilf, Who Authors Trademarks?, 17 Cardozo Arts & Ent. L.J. 1, 1 (1999).
[164] See Supra note 1, art. 10 (1)(3), 10(1)(7) and 14.
[165] See Xiaoqing Feng, Internationalization and Local Elements: Research on Recent Amendments to the Trademark Law of China, 7 Akron Intell. Prop. J. 101, 130-133 (2015).
[166] Michael Grynberg, More than IP: Trademark among the Consumer Information Laws, 55 Wm. & Mary L. Rev. 1429, 1431 (2014).
[167] Michael Grynberg, Trademark Litigation as Consumer Conflict, 83 N.Y.U. L. Rev. 60, 117 (2008).

some community or group members, some individuals or public. However, when they say the trademark has adverse effects to individuals/community/group, they don't ask the opinion of the individuals nor the members of the group, especially in some circumstances the trademark only contains the surname of an individual or a normal name of an individual especially when the applicant's legal representative shares the same name. CTMO examiners and judges on courts take themselves as very strong representatives for these people.

Advertisement is playing the function as well as trademark to help raising the popularity of products, but there is no this kind of prohibition regulation in Chinese Advertisement law. Chinese Advertising Law Article 9 (1) (7) reads that "Interfering with social public order, or going against good social norm" is not allowed in advertising. Article 9 (1) (11) reads that "Other situations prohibited by laws and regulations" is not allowed in advertising. Chinese Advertising Law put the prohibition miscellaneous provision to "other laws and regulations" as other Chinese laws when they make a miscellaneous provision. It means for private rights are legal unless there are clear prohibition words in law. However, Chinese Trademark Law puts it as a large open prohibition for trademark right because there are no clear words say who shall be the subject to tell adverse effects while it should be the crowd whose benefit is potential to be harmed by the trademark registration and use.

The most fallacious thing is trademark examiners and courts judges determine trademarks having adverse effects to the public without any survey of public perceptions on these kinds of trademarks.[168] They give their conclusion mostly based on their own common sense and pretend themselves as the public's only representative. I am not totally denying the common sense of trademark examiners and judges are largely different from the trademark's relevant public. I intend to notify that trademark examiners and judges can't make themselves as the representative as they deprive applicants' trademark using right and trademark registration with easy and general excuse-the trademark "having other adverse effects" as they did in the past and they will continue doing now. It is not fair for the applicants as well as the public. The public's rights should not be granted to trademark examiners and judges all the time. If we see the registration of trademarks as a battle between applicants and trademark examiners, we can see there is still a similar leverage for consumers who don't think there is any adverse effects of the trademark and the potential being harmed public. People would say trademark examiners also permit trademark registrations against people who claim that the trademark has adverse effects and harmful to them. In this

[168] Even consumer survey is popular in other countries' trademark infringement litigations, it is still rare to see in China trademark litigation, not to say in the proceeding of trademark registration. The first and foremost reason is that survey is not accepted and adopted as strong evidence in court.

circumstance, trademark examiners are on the side of trademark applicants who are against the trademarks' adverse effects. Yes, it does seem so. But it is much more like a rare occasional event in which is the result of examiners and judges randomly dice play. In order to put it fair for both sides, it should be the relevant public's rights and responsibility to represent themselves and claim for themselves in case of adverse effects to them. Then somebody would suspect whether relevant public are willing to represent themselves. I am sure if the trademark is a harm to them, they have the motivation to claim for their benefit. If not, it might be the harm is fake or not enough to be protected by trademark registration prohibition.

3. Are their protecting benefits real public interest?

It is a consensus that the protecting content of prohibition using trademarks "having other adverse effects" in latter half of Article 10 (1) (8) of Chinese Trademark Law shall be similar as the former half of Article 10 (1) (8) "those detrimental to socialist morals or customs". In Chinese law system, this kind of structure should be interpreted as parallel relationship, which means they shall share the same, at least similar degree of value and protected interests. Comparing with "having other adverse effects", "detrimental to socialist morals or customs" speaks clearer of its inherent values. Surely "detrimental to socialist morals and customs" refers to some good and not bad morals and customs. But it doesn't refer to broadly public order and customs. It shall be controlled into a narrow public interest protection aiming at achieving Trademark Law legislative goals.

The public' benefits but not private interest is the object of this clause intending to protect. The public interest must be **direct** public interest, not deducing possible public interest. Because if you make it an indirect public interest, people can make any case related to public interest and government or other powerful subjects are more manipulated to utilize "public interest" for some certain fake public interest which can harm individuals' interest and true public interest. Indirect public interest becomes true prey and attracts people to call it public interest when it is profitable. This kind of interest is not the scope of interest shall be protected by "having other adverse effects" clause.

In the other way, for the signs such as change one character of one word, hide strokes or parts of a word constructing a new shape of drawing, etc., most of these kinds of signs are rejected in the name of protecting public interest. CTMO and China courts say it is bad for people's Chinese language study, they make students at school as the most important potential victims.[169]

[169] In most trademark application rejection cases, CTMO and TRAB give this as the reason. Most of their opinions get approved by Chinese courts except the case "糖糖正正" ("tang tang zheng zheng", pinyin: táng táng zhèng zhèng). Beijing Hannashan Century International Commerce Clubhouse Co., Ltd. v. TRAB, Beijing First Intermediate Court, (2014) YiZhongZhiXingChuZi No. 144.

There is no evidence to prove that these kinds of signs will ruin or disorder the study of Chinese language. Students have their teachers, dictionaries to learn from. To say the least, people have to train and own their own ability to tell which words are the right writing style, which are not. Chinese words are not that easy to be learnt and not that hard to tell the difference between right and wrong. It is a good example to see from advertising. We can see there are many advertisings and slogans are from normal phrases and just changed one or more words with similar pronunciation.[170] Wrong spelling words and phrases advertisings are not appropriate because the advertisings are accessible to a broad of audiences due to most advertisements are spread via media. The audience in advertising situations are different from trademark situations. A trademark may be spread around the world if it becomes famous, but most of trademarks do not have that opportunity to get famous and have audiences across the nation, across all ages, or around the world even the internet is so popular. Most of the trademarks are under struggle to make profits and function as a brand name of the trademark holders. Primary school students and teenagers who are considered very seriously by CTMO, China TRAB and China courts are not so frequently exposed to trademarks as to advertisements with similar words "problems" shown on TV prime time. In terms to other public except for students, they don't care much about trademarks very much unless those products they need or feel interested in. In this circumstance, they become relevant public of the trademarks. When we put our eyes on only one trademark, we cannot know the general probability of a trademark's influence, especially we habitually pick a well-known or famous trademark as an example. The fact is that well-known or famous trademarks only make up a very minority part in all trademarks.[171] So the public interest in this situation is very limited.

But I have to say, most of the protected benefits are important and are real public benefit. They are on the same level with socialist morals and customs, such as religion things. Religion is a real sensitive content not only in China, but also in most of worldwide countries. However, not every trademark that

[170] For example, "晋善晋美" ("jìn shàn jìn měi") is used as an advertising slogan while "晋善晋美" ("jìn shàn jìn měi") is a transformative four-character-words from a Chinese idiom "尽善尽美" ("jìn shàn jìn měi", it means to reach the acme of perfection). "最美" ("zuì měi", means the most beautiful) is altered to be "醉美" ("zuì měi", drunk beautiful) which is used in the advertising slogan"醉美多彩贵州" ("zuì měi duō cǎi guì zhōu", drunk beautiful, colorful Guizhou). "无屑可击" ("wú xiè kě jī") is a changed word from "无懈可击" ("wú xiè kě jī", it means unassailable) and refers to there is no dandruff , it is used by a hair shampoo company as its advertising slogan. See at https://v.qq.com/x/page/m0327nrqxw9.html (last visited May 28, 2018). There are many these kinds of advertising slogans.

[171] See Feng Xiaoqing & Deng Jingjing, Empirical Study and Theoretical Thought of Registered China Famous Brand [it shall be well-known trademarks]: Data Analysis of Registered China Famous Brand from 1983 to 2011, 37 Jounal of Wuling, 65, 69 (2012).

has a little bit relationship with religion shall be condemned as having adverse effects trademarks. Chinese words are often containing multiple meanings, especially when a character appears independently. Only direct public interest may be included in this "having other adverse effects" situations. Only benefits of public social order and customs at the similar level with "detrimental to socialist morals and customs" could be counted. Keep it in a narrow way, not an unlimited extensive way.

4. Who benefit from current broad "having other adverse effects" trademark application rejection in China

Firstly, it benefits the trademark officers and judges who reject trademarks with the reason that these trademarks have other adverse effects. Because these official people can get rid of risk of being responsible for the unstable future of these trademarks. If not, they might get punished if the trademarks are found having other adverse effects finally. Rejecting any trademarks that have any possibility of negative or related to politics, religions at their first step seems their best choice to avoid the risk of being deemed as work incompetently. In the other side, most of officials in CTMO and Courts are default as decent persons and live a decent life comparing with other most non-official people, they don't want to be seen as persons of supporting negative things such as any trademarks have potential to be related to negative issues or sensitive issues. This is a tricky psychology issue based on people's instinct under the background of judges are responsible for the cases lifelong policy and examiners are responsible for their examining trademarks in China. It is not irrational for them that they have to reject many trademark applications on the ground of "having other adverse effects" merely in order to ensure their job are kept.

Secondly, Chinese trademark resources could be reserved. China is also facing the problem of trademark resource decreasing day by day especially China ranks first for many years in its quantity of trademark application annually and may last in the future which means it has exploited and utilized many of its trademark resources. Trademark depletion and congestion is not the only problem for English marks, it also could be and is the problem for Chinese language trademarks [172] Rejection on most negative words trademarks can relieve this tense of trademark resource. It seems a good way to reserve these trademark resources while other countries are going to open offensive words trademark registration as the U.S..[173] It will make Chinese market full of expectation from other countries in the future because it will store words which are not hard to be put in a trademark and available to

[172] About trademark depletion and congestion, see Supra note 18, 977-1021.

[173] The U.S. Supreme Court's opinion in Matal v. Tam illustrates that "the disparagement clause violates the Free Speech Clause of the First Amendment" can enlarge the scope of registrable trademark. See supra note 158.

register. This may be an attraction for foreigners to do business in China and raise the foreign investment in China at that time. But this benefit is just a conditioned benefit, the condition is China opens the door to use these words for registrable trademarks in the future while these words are forbidden in a strict way in present China.

Thirdly, it will benefit the social stability. This could be an obvious result benefiting from Chinese harsh attitude to trademark registration on sensitive words that might bring adverse effects to politics and religions. China people would know clearly that official leaders' names cannot be used as trademarks if lots of these kinds of applications are rejected though they do want to get good luck and raise their sense of pride by using trademarks that have connection with leaders' names or something related to authorities. This will make the society learn from these kinds of rejections that words related to authorities are not available to "**you**". It seems that it stays at too high level to be accessible. People respect it, honor it, support it and safeguard it, which is also can be truth based on China Confucian culture of obeying the official and authorities.[174] China is developing very well under its stable society and harsh authority which will last in the aspect of trademark registration because it's important to sustain the government's authority. For the religion issues, it shares the same logic. Religion is a sensitive issue and is not appropriate to be popularized. A good protection of religion feelings surely will enhance the development of religion and show government's support to religion protection.[175] Broad interpretation of "other adverse effects" will benefit religion stable development as well as the authorities.

Fourthly, it functions as guiding people to live a positive life sometimes. It says that laws have the function of leading people's actions.[176] Forbidding people using dirty words and negative words as a trademark can strengthen people's belief into positive things and will build themselves and their business in a positive direction. However, is CTMO rejecting the applicant's willing to live a better life while applicants intend to transform a phrase to a positive side by interpreting it or re-organize it? For example in the case "MLGB", the applicant's interpret "MLGB" as "My Life's Getting Better", this wasn't support by courts.[177]

---

[174] Yan Xu, The Cultural and Psychological Characteristics of Chinese Consumers and Their Influence on the Trademark Law in China, 15 Hous. Bus. & Tax L. J. 100, 104 (2015).

[175] In the U.S., trademarks disparaging religions also cannot be registered in USPTO. But in China, the prohibition is stricter, any signs have any bit of association with religions might be rejected, certainly including signs that disparaging to religions.

[176] Chad J. Doellinger, A New Theory of Trademarks, 111 Penn St. L. Rev. 823, 823 (2007). "…trademark law provides a normative code of proper business conduct."

[177] The applicant in the case Shanghai Junke Trading Co. Ltd. v. China TRAB insisted that MLGB refers to "MLGB" means "My Life's Getting Better", not the dirty words "f..ck your mother". Shanghai Junke Trading Co. Ltd. v. China TRAB, Beijing Intellectual Property Court, (2016) Jing73XingChu No. 6871.

Would consumers or relevant public could get benefit from this status? It probably not if we say consumers are benefit from trademarks because trademarks without confusion can guide the products' resources and origins, may be also presents some quality of the goods, which can be used as a tool to reduce their cost on searching goods.[178] Easy to read and remember trademarks will benefit the consumers when they try to remember a trademark while hard and long words trademarks may cost consumers much more to remember.[179] Not to speak of focusing on search cost is not a right and effective way to improve trademark development. "Focusing on search costs has had serious negative effects on trademark doctrine: courts have accepted virtually any argument sounding in consumer confusion terms, and the result has been nearly unbridled expansion."[180] Consumers and relevant public deserves the right to decide how much cost they want to spend on searching and they have the right to enjoy a less cost on it for which the current disputed trademarks are practicing.

Will competitors benefit from this status? It depends. If an applicant applies to register a trademark after a long time use with some degree reputation on the sign and gets rejected at last by trademark office or courts based on "having other adverse effects", it will ruin the former goodwill and the market shares. When the applicant changes its trademark because signs having other adverse effects cannot be used as a trademark, this can leave a good change to competitors to catch up and surpass to take up more market shares, in part of which should have been the applicant's market shares. However, if the applicant has not done a good business on the trademark under apply and the trademark under apply has not much reputation and fans, there should not be much benefit to competitors.

Even I don't agree trademarks play a decisive role in students' language study, I still think it may benefit student's language learning if all trademarks have the potential to be connected with negative things and wrongly spelt are eliminated totally. That will keep students in an ideal greenhouse where has no wind nor rain students can be exposed to. They will benefit it in a short time but not for the long run if we are aware that Chinese language is not the only content teenagers need to learn. Their growth is more important when they get access to some wrong things and distinguish right from wrong during this learning period. People need to know whether it is really the trademarks' wrong to influence teenagers or it is advertising. In my view, advertising is prone to be a more effective way to impact students in their language learning. If the advertising teaches students in a wrong way, they

[178] Mohammad Amin Naser, Re-examining the Functions of Trademark Law, 8 Chi.-Kent J. Intell. Prop. 99, 101 (2008).
[179] Supra note 18, 965, 981.
[180] Mark P. McKenna, A Consumer Decision-making Theory of Trademark Law, 98 Va. L. Rev. 67, 141 (2012).

have more potential to use words in corresponding wrong way and build their wrong writing and reading habits. Not the trademark.

5. What's the loss of current broad "adverse effects" trademark application rejection

China's biggest loss from current "having other adverse effects" trademark prohibition regulation is the freedom of speech as well as freedom of choosing trademarks. However, it is not a good idea to talk about freedom of speech in China because freedom of speech has many limits in Chinese Constitution Law, especially when we take China's super need for society stability into consideration.[181] From the long term of China's market economy development goals, there should be much more flexibility on its trademark policy, because trademarks are the traders' reputation and soul, and trademarks are also the reflection of the economy of a nation. But shouldn't political civilization keep pace with economy growth? How people choose their trademarks should be their own business. The government should let its hands out of the relationship between consumers and traders as much as possible and leave people with enough space for their freedom of speech. The consumers make their decision not on the meaning of a trademark but on what the trademark indicating objects. Trademark is only a tool not the destination for consumers. A free choice of trademark can improve the efficiency of market economy, improve the incentive to the market and enhance the growth of economy.[182] China is optimizing its intellectual property law system all these years and is undergoing building its rule of law system. But these years it put more and more emphasize on intellectual property protection and enforcement. It is also expanding registrable trademark scope, while it is shrinking the scope of usable trademarks based on the trademarks' meaning and connotation, we say the content of trademarks. While the west countries start to seek the justification of free speech of trademark registration, China hasn't started its topic for free speech in many fields including trademark.[183] It is a loss both for trademark law system and the whole domestic law system.

---

[181] Chinese Constitution Law (2018 Amendment), art. 35 reads "Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration." Article 51 gives the limits for freedom, it says "Citizens of the People's Republic of China, in exercising their freedoms and rights, may not infringe upon the interests of the state, of society or of the collective, or upon the lawful freedoms and rights of other citizens."

[182] Sean M. Flynn, The Washington Declaration on Intellectual Property and the Public Interest, 28 Am. U. Int'l L. Rev. 19, 20 (2012).

[183] In China, there are scholars talking about free speech in trademark, but they were talking with the center of trademark parody. See Wu Handong, Freedom of Expression in Intellectual Property: Protection and Regulation (in Chinese), 38 Modern Law Science 3, 7 (2016). Zhang Huibin, Coordinating Free Speech and Trademark Right (in Chinese), 22 Journalism & Communication 86, 88-91 (2015). Li Yufeng, The Boundary of Companies' Trademark Right and Freedom of Speech: A Perspective from Parody in the U.S. Trademark Law (in Chinese), 33 Global Law Review 18, 21 (2011).

The second biggest loss is that it can raise the cost of traders to adopt and manage a trademark for their business. It is not easy to make a trademark full of high reputation and goodwill, it should be protected as long as it is full of goodwill. But some unregistered trademark users have to quit their interest on the trademarks which are determined having other adverse effects even they have won a good business on these unregistered trademarks because "having other adverse effects" trademarks are forbidden to use as well as register.[184] It is a risk for traders to apply trademarks that are easier to remember but owing high risk of being rejected or revoked by authorities because of the marks content are negative. As people say trademark law is different from copyright law and patent law, and it is not intending to incentive something, but it could be used as an incentive tool to protect investments in trademarks, including investment in the creation of the mark, investment in advertising and promoting the product in association with the mark, and product-related investments such as high-quality raw materials, production equipment and quality assurance techniques.[185] Moreover, modern marks creation also require some kind of intense commitment of expertise and resources, trademark law shall encourage trademark creation.[186] For adverse effects marks forbidden to use is full of uncertainty in China, people have to wait like a lamb waiting to be killed or let free by accident one day. The law doesn't regard the creation investment and trademark applicants' investment into the marks in both the creation and management period. It is a real exhaustion for traders to rack brains to think out an ideal proper trademark to use or spend much money to buy from others while they could not use trademarks easier to discover which have the possibility to be determined as having other adverse effects. It is a discouragement for integrity traders to take an easy way to build their trademarks and invest as much as they could to manage well a trademark in some degree.

[184] In the case Shanghai Junke Trading Co. Ltd. v. China TRAB, Shanghai Junke Trading Company has been built a great population on the mark "MLGB" which meaning "My Life's Getting Better". It insisted on court as following: After the registration of the disputed trademark "MLGB", Shanghai Junke Company has continuously invested a lot of funds in the trademark and brand of "MLGB" building based on the trust in the authenticity of CTMO's original approval decision. If the trademark "MLGB" is revoked, accumulated t reputation and market value on "MLGB" will be damaged and ruined. See Shanghai Junke Trading Co. Ltd. v. China TRAB, Beijing Intellectual Property Court, Jing73XingChu No. 6871 (2016).

[185] Barton Beebe, Thomas Cotter, Mark A. Lemley, Peter S. Menell & Robert P. Merges, Trademarks, Unfair Competition, and Business Torts, Wolters Kluwer (2016), 32.

[186] Mark Bartholomew, Making a Mark in the Internet Economy: A Trademark Analysis of Search Engine Advertising, 58 Okla. L. Rev. 179, 202 (2005).

V. Re-craft a proper "having other adverse effects" system

"Trademark law is an essential component of a successful economy."[187] Even China has made considerable strides in entering and getting acceptance from countries around the world,[188] it is still being criticized for being lax in the realm of intellectual property law.[189] The revision of Chinese Trademark Law in 2013 did no change of trademarks "having other adverse effects", even the revision in 2013 is an overall revision of it. Before we start to re-craft a freer policy on adverse effects trademarks, let us see what other nations' policies on trademark registration, trademark use and trademarks having other adverse effects. Then we could figure out what China, China law-makers, Chinese official trademark examiners and reviewers, Chinese judges shall learn from them.

We can see from Article 6 of Paris Convention for the Protection of Industry Property (Paris Convention) that generally countries of the Union agree to refuse or to invalidate the registration only in circumstances that the marks' use may bring confusion could the countries prohibit the use of the marks for example the armorial bearings, flags and other emblems which could confuse the origins of the goods.[190] Paris Convention also reads that "Trademarks covered by this Article may be neither denied registration nor invalidated except in the following cases…"when they are contrary to morality or public order and, in particular, of such a nature as to deceive the public. It is understood that a mark may not be considered contrary to public order for the sole reason that it does not conform to a provision of the legislation on marks, except if such provision itself relates to public order."…"[191] As it shows clearly, there is neither miscellaneous prohibition clause nor prohibition to signs "having other adverse effects" in Paris Conventions. Paris Convention uses the phrase "contrary to morality or public order" which is similar to Chinese Trademark Law Article 10 (1) (8) former half clause "detrimental to socialist morals or customs". But as an international convention, Paris Convention just built lowest standards for intellectual property protection.

A. Other nations' policies on adverse effects in trademark law

Adverse effects, unhealthy influences, offensive, etc. different countries use different words to refer their non-registrable trademarks. In the U.S., it is reflected in section 2(a) of the Lanham Act, it says "No trademark by which

[187] Paul Kossof, The New Chinese Trademark Law, 104 Trademark Rep. 867, 867 (2014).
[188] Dalila Hoover, Coercion Will Not Protect Trademark Owners in China, but an Understanding of China's Culture Will: A Lesson the United States Has to Learn, 15 Marq. Intell. Prop. L. Rev. 325, 330 (2011).
[189] Yan Xu, The Cultural and Psychological Characteristics of Chinese Consumers and Their Influence on the Trademark Law in China, 15 Hous. Bus. & Tax L. J. 100, 116 (2015).
[190] Paris Convention for the Protection of Industrial Property, art. 6^{ter} (1) (a) and 6^{ter} (9) (1883).
[191] *Ib*. art. $6^{quinquies}$ B 3.

the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it-- " (a) Consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute…".''[192] Firstly, in the U.S. trademark law system, it is a trademark registration prohibition clause, not a trademark use forbidden clause.[193] Even the U.S. trademark registration and its emphasis on trademark use produces its own problems,[194] it still shows a very open and positive attitude to encourage people to register their trademarks, use their trademarks, manage well their trademarks and win their business through trademark rights. Secondly, it has a list of which kinds of marks cannot be registered, no miscellaneous regulations that serve an open prohibition scope. In the list we can see, immoral matter, scandalous matter, matter which may disparage persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute.[195] These lists can be contained in Chinese Trademark Law Article 10 (1) (8) except for "those having the nature of discrimination against any nationality" which is already described in Article 10 (1) (6). The regulation in the Lanham Act can also be interpreted broadly and not that clear, but it is far clearer than Chinese miscellaneous term "having other adverse effects". Thirdly, the U.S. gets the scope of registrable trademarks broader by means of constitutional right "free speech" which is a lack in China trademark registration and trademark use field. In the case *Matal v. Tam*, the U.S. Supreme Court held that "the disparagement clause violates the Free Speech Clause of the First Amendment."[196] This case makes the right of free speech in the U.S. overpass the society order which China is emphasizing strongly from the perspective of trademark usable and registrable. Considering "having other adverse effects" in Chinese Trademark Law is much broader than "disparaging" in *Matal v. Tam*, people who is reading this paper will suspect the unscientific of comparing them here. Each law has its own core purpose to improve the public interest in its own particular way.[197] I have to say the U.S. Supreme Court protects freedom of speech is also building its good trademark related social order which China should be cautious when China is still insisting on the public social order from a traditional way, the public order of a clean language trademark, no harmful

[192] The U.S. Lanham Act § 2 (a) (15 U.S.C.A. § 1052 (a)).
[193] It says "No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it…".
[194] Rebecca Tushnet, Registration Disagreement: Registration in Modern American Trademark Law, 130 Harv. L. Rev. 867, 878-881 (2017).
[195] Supra note 192.
[196] Supra note 158.
[197] R. Anthony Reese, Copyright and Trademark Law and Public Interest Lawyering, 2 UC Irvine L. Rev. 911, 912 (2012).

to everybody. It is hard to tell which public interest is superior to another, I just want to mention that China should to concern the importance of the freedom of speech (trademark) and commerce in the way of building a rule of law country and the development of market economy system. Finally, in terms of the degree of prohibition of trademark registration, we can see China is trying its best to shrink registrable trademarks while the U.S. is intending to protect people's free willingness to select their own business trademarks and keep anyway to protect people's "freedom of speech" to the utmost. Have a prediction how large is the gap between China and the U.S. in the trademarks available on their market.

While trademark rights are also based on registration, let us see what Japanese Trademark Law is doing in this aspect. In Japan, there is also not such harsh prohibitions based on trademarks' content. Japanese Trademark Act Article 4 (1) says "Notwithstanding the preceding Article, no trademark shall be registered if the trademark… (vii) is likely to cause damage to public policy; (viii) contains the portrait of another person, or the name, famous pseudonym, professional name or pen name of another person, or famous abbreviation thereof (except those the registration of which has been approved by the person concerned)…."[198] In Japan, it is only a forbidden to register, not a prohibition of trademark use. However, Japan is also using a very general phrase "public policy" referring to content like Chinese Trademark Law Article 10 (1) (8) "detrimental to socialist morals or customs, or having other unhealthy influences". Korea Trademark Act (2016 Amendment) also has a broad and specific non-registrable scope, but it has no unusable trademark scope and it also uses words like public order and common moral, etc. But it emphasizes the meaning and content of the trademark which shows it decides trademarks based on the meaning and content.[199]

In Europe, the Directive 89/104/EEC mentioned "Grounds for refusal or invalidity", Article 3 reads "He following shall not be registered or if registered shall be liable to declared invalid:…(f) trademarks which are contrary to public policy or accepted principles of morality."[200] Council Regulation (EC) No 40/94 Article 7 reads "1. The following shall not be registered: …(f) trademarks which are contrary to public policy or to accepted principles of morality…."[201] So does the regulation of Council Regulation (EC)

[198] Japanese Trademark Act, art. 4(1), No.127 (1959). See at http://www.wipo.int/wipolex/en/details.jsp?id=16059 (last visited May 28, 2018).
[199] See at http://www.wipo.int/wipolex/en/text.jsp?file_id=456033 (last visited May 28, 2018).
[200] First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, art. 3 1. (f). See at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31989L0104:en:HTML (last visited May 28, 2018).
[201] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, article 7(1)(f). See at http://www.wipo.int/wipolex/zh/text.jsp?file_id=126861 (last visited May 28, 2018).

No. 207/2009 Article 7 1. (f)[202] and Regulation (EU) 2017/1001 Article 71. (f).[203] Directive No. 200895EC Article 3 reads "1. The following shall not be registered or, if registered, shall be liable to be declared invalid: … (f) trademarks which are contrary to public policy or to accepted principles of morality;…".[204] So does the regulation of Directive (EU) No. 2015/2436 Article 4 1. (f).[205] We can see from European Union regulations, it uses the phrase "public policy or accepted principles of morality" to refer to issues in the same degree with Chinese Trademark Law Article 10 (1) (8) signs that "detrimental to socialist morals or customs, or having other unhealthy influences." It also uses prohibition of trademark registration, not prohibition of trademark use.

This is not only China's problem, it is a controversial problem around the world. As some people think, applicants register some "shocking" trademarks will attract consumers to buy their products where there is a need for governments to intervene.[206] I can't agree. The government has been intervening into trademark issues all the time and in a very strong way. Around the world, it is often to see traders need to register their trademarks in order to get an unquestioned legal protection for their trademarks and the government has the power to refuse, revoke and cancel their trademarks. This means trademark registration is a stronger way to protect people's investments into trademarks than actual trademark use even it seems trademark use is the only way to obtain goodwill for their trademarks.[207] The registration prohibition clauses in different European countries are similar. The conclusion from above comparisons are: 1) the U.S. has the least limits on trademark registration, especially when we put the U.S. Supreme Court's opinion in *Matal v. Tam* into consideration; 2) Japan and European countries have the middle degree to prohibit trademark registrations and they consider much on moral acceptance; 3) China is holding the strongest opposition to the registration of trademarks that contrary to social positive development, and its prohibition of using such kinds of signs as trademarks is seldom to see in

[202] Council Regulation (EC) No. 207/2009 of 26 February 2009 on the Community trade mark Article 7(1) (f). See at http://www.wipo.int/wipolex/zh/text.jsp?file_id=162995 (last visited May 28, 2018). There is no change of this article in REGULATION (EU) 2015/2424 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2015. See at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015R2424 (last visited May 28, 2018).

[203] REGULATION (EU) 2017/1001 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2017 on the European Union trade mark Article 7 1. (f). See at http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1506417891296&uri=CELEX:32017R1001 (last visited May 28, 2018). This regulation is in force now.

[204] Directive No. 200895EC of the European Parliament and the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks. See at http://www.wipo.int/wipolex/zh/text.jsp?file_id=162895 (last visited May 28, 2018).

[205] Directive (EU) No. 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks. See at http://www.wipo.int/wipolex/zh/text.jsp?file_id=395032 (last visited May 28, 2018).

[206] Supra note 162, 50.

[207] Weiguang Wu, The Balance of Two Trademarks Rights: Generation System in Japan's Trademark Law, 17 J. Marshall Rev. Intell. Prop. L. 608, 613 (2018).

other countries. However, the incongruence happens in all countries' trademark examination and court trial for these kinds of trademarks. Some marks are deemed as unacceptable in moral while other similar marks might get approval from trademark office.[208] Even though the prohibition content are different between China and other countries, it still can be understood and may not be very serious problem. The thought-provoking issue is that almost most countries say these kind of marks cannot be registered as trademarks while Chinese Trademark Law says these kinds of marks cannot be used as trademarks. It means if such a sign is rejected by Chinese authorities, there is no way to use them, show them and take advantage of them in the market under Chinese Trademark Law system. If we acknowledge trademark as a free speech issue in China, this problem will become more intricate. It is not only a strict on freedom of commercial, private speech, but also a self-cut foot in the development of trademark related economy and culture. Other countries' operation on trademark registration restriction share more common with the first half of Chinese Trademark Law Article 10 (1) (8) "those detrimental to socialist morals or customs".

B. How to re-craft a proper development for China "having other adverse effects" trademark issue

1. Principles of re-crafting "adverse effects" trademark system

Take principle of protecting private rights and control government power as the first principle. China government habitually treat everything in its control in a parent's way. This is not bad if it were in a planned economy regime and in some special circumstances in market economy time, for example market failure. The government would better withdraw its hand as much as it could unless there is an indeed need. For the aspect of trademark, it works in the same way. Trademark registration system exists in many countries around the world and the advantage of trademark registration system is very outstanding. Because of this, many countries choose voluntary registration system except for certain products. [209] Governing registered trademarks is enough for the government to get involved into the market related to trademark and represent certain public interest. It serves trademarks' main function well by statutory notifying what kinds of trademarks cannot be registered. However, because this limit is a restriction on private right (trademark right is private right) which may benefit the authority power, it shall be restricted. Because there is no need for the trademark office to care and spend time on whether a trademark can be used as an unregistered trademark because in China unregistered trademark can't

[208] Supra note 162, 44-49.

[209] In China history there are two kinds of goods shall use registered trademarks, they are the pharmaceuticals for human use and tobacco products. See Implementing Rules of the Trademark Law of the People's Republic of China (Amendment 1995) (Expired), art. 7, para. 1.

get protection from Trademark Law unless the unregistered trademark becomes some certain famous. The unregistered trademark users cannot get any benefit from trademark office if they choose not register their mark in the trademark office. Control the power of trademark office will not only reduce the cost on examination (which comes from people's taxes), but also can leave a chance for people to run their business based on unregistered trademarks and reserve their investments in their marks. Because if the trademark law make adverse effects signs as prohibition of registration replacing prohibition of use, parts of trademark applicants might choose not to appeal and keep their so-called trademarks with other adverse effects as unregistered trademark which will surely reduce the cost of trademark office, TRAB and courts on these issues delivered by "adverse effects".

Secondly, principle of predictability. Any rules used too flexibly will ruin the stability of the law system and reduce people's trust to the law. Ensuring the predictability can save people's belief into Chinese Trademark Law. China trademark examiners and judges' different attitudes and too flexible manipulation on "having other adverse effects" can bring the risk of Chinese Trademark Law's authority decrease. China trademark law system claimed that it lays emphasis on trademark use when evaluate people's trademark rights especially after 2014. It is also a common idea that goodwill in the marks is the protection essence in China. People shall have the right to be protected after they put much their energy into an unregistered trademark and their good faith to use a mark without intention to get a free-ride on other people's marks. Improving Chinese Trademark Law's predictability will decrease this harm and safeguard its key spirits, protecting people's goodwill accumulation on a mark by using it. General legislation surely can leave a flexible space to operate the law, but too general legislation can be taken advantage of by some powerful people for their own benefit or convenience. In order to sustain Chinese trademark law in a good order, the predictability principle shall be considered seriously.

Thirdly, principle of proportionality. In IP law system, proportionality is a fundamental legislative principle. Trademark rights and interests shall be restricted in a way under principle of proportionality.[210] It means only there is more competitive interests shall be protected, and the harm of protecting trademark rights and interests outweigh the benefits these trademark rights and interests, it can be cancelled and revoked. In terms of "having other adverse effects" trademark registration prohibition, it could be prohibited to register and use trademarks with other adverse effects only if it is provable that there are competitive and more important interests over the producers' and consumers' interests on adverse effects trademark use and registration.

[210] Danny Friedmann, Trademarks and Social Media: Towards Algorithmic Justice, Edward Elgar Publishing (2015), 134-135.

This conclusion shows fair especially when we take the right to use a mark as trademark as a freedom of speech.[211] In the case *In re Brunetti*, United States Court of Appeals 3rd Federal Circuit held that "To survive, such statutes must withstand strict scrutiny review, which requires the government to "prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.""[212] In China, similar proportionality shall be taken into consideration during prohibiting trademark registration and trademark use. It may be prohibited to use or register such trademarks only if there is enough compelling interest over applicants' trademark interests and relative interests. Lawmakers shall do some survey from actual market and then revise China current "having other adverse effects" trademarks use prohibition clause in order to serve some interests fairly. When trademark examiners and judges determine the adverse effects trademarks based on trademark law, they shall take this principle into their mind, too.

Fourthly, principle of equity and good faith. It is tricky that there is nobody care about unapplied unregistered trademarks with so-called "other adverse effects" when it would get trademark office's totally rejection (not only forbid the registration but also the use of the mark under application) once it is filed to trademark office. It seems like people who don't intended to seek trademark law's protection is safe and sound while people who are seeking legal protection will not survive. As a result of that the law is functioning as a discouragement to people's intention to file for trademark registration. It is unfair and unequal. Some people like to choose shocking signs as their trademarks in order to attract consumers.[213] But is there any wrong for people to choose trademarks that are more easily to be remembered more easily remembered, attract more consumers, run their business better and provide the society a better service? Catchy and short words attract additional consumers. It's in the logic that a flower shall not attract butterflies with its stinky scent while it is appreciated to use pleasing scent to attract butterflies. Good intention to seek business success with trademarks shall be supported especially when people are prepared well to invest into the trademarks or is investing or has been invested on the marks. It is an act of protecting people's good faith which is emphasized heavily by Chinese Trademark Law.[214]

In addition, freedom of speech theory shall be permitted to enter into consideration gradually. The relationship between trademark law and political is much far from administrative law and constitutional law with political, so determining the trademark use as a nature of free speech has not

[211] I am here not saying that trademark registration is a freedom of speech as the U.S. Supreme court says in Matal v. Tam. I insist that the right to choose a mark as an unregistered trademark is a freedom of speech.
[212] In re Brunetti, 877 F.3d 1330 (2017).
[213] Supra note 162, 43. The author says "Brands are also sometimes chosen that aim at shocking existing and potential customers."
[214] The most important clause is Article 7 (1) of Chinese Trademark Law.

much impact on political development. In addition, China is the most important builder of "One Belt, One Road (OBOR)" which will benefit many countries' development and their cooperation in different fields. [215] IP development is one of the most important filed and the trademark registration system and trademark use system shall be much more reasonable comparing with other countries, in this way it can make the cooperation and much more efficient. China is the biggest market in the world and it owns many potential and ongoing foreign investments and cooperators. All market entities care about their trademark in China, China shall make its trademark regulations and policies much transparent and easier to be followed based on China's highest level intellectual property development aim.

2. Recommendation to abolish current "having other adverse effects" trademark use prohibition system and re-craft a more proper one

a. Step one: unify evaluating "having other adverse effects" standards

From current determining standards for "having other adverse effects" trademarks, we see the general miscellaneous clause cannot give any clue.[216] CTMO, China TRAB and courts may enjoy the power and honor of stretching their long arms to determine what they think about the trademarks whether they are having adverse effects and try to make public people's living environment "better". As the first examining official department, CTMO checks trademarks with very cautious attitude. Trademark examiners in trademark office not only have to follow the rules in "Chinese Standards for Trademark Examination and Trial" but also their internal regulations for their work such as "Trademark Examination Cooperation Center Control Measures on Trademark Registration Examination Timeline Limitation and Adverse Effects Trademarks" and other social or special "interests" they are anticipated to protect, such as the national central political interests, the social stability, the economy improvement, other famous people's potential interests, etc. Latter interests are not their responsibilities to protect and are not regulated in rules, but they have to pay attention with the pressure because of their current post, national (trademark) civil servants! Courts have their own thinking during the trail, their most fundamental function is to solve disputes based on evidence rules, so their considerations during determination whether a trademark having adverse effects is not the same. Following measures will be helpful for unifying the standards in determining whether a mark has adverse effects.

[215] See Richard Baddeley, China's "ONE BELT ONE ROAD" Initiative: How does IP Fit in?, https://www.watermark.com.au/chinas-one-belt-one-road-initiative-how-does-ip-fit-in/ (last visited May 28, 2018).

[216] The "general miscellaneous clause" here refers to Chinese Trademark Law Article 10 (1) (8).

Define the boundary of "having other adverse effects" and don't expand it too much! "Detrimental to socialist morals or customs" is already a general clause, if "other adverse effects" is in the same and at least the similar level protection content, it will blur more. (1) Deprive true private interests from this regulation. This clause shall be used to protect "public" interest, not private interest. For example, Tencent's private interest was nearly protected against the trademark applicant in the case *Trunkbow Asia Pacific (Shandong) Co., Ltd. v. TRAB of China, Zhang Qinghe* based on "having other adverse effects".[217] Because Chinese Trademark Law already has other clauses to protect private rights against related trademark registration.[218] (2) Make sure the potential being effected interests are real potential objective interests, not subjectively hypothetical interests. If there is no real public interest, there is no excuse to prohibit the use and registration of a trademark. (3) When determining marks' effects, pick their interpretations from authoritative dictionary firstly. If the marks are coined internet catchwords, don't treat all of them as slangs, some of them are culture development results and deserve to be encouraged if they were given with coined meanings. Because if a new phrase has not to be collected into authoritative dictionaries, there remains chances to develop them in other ways. (4) If the trademark has only one character or one normal word, check the possible meanings of it and hear the applicants' interpretation for the mark. Especially in some circumstances that the marks contain religion or politics related words, does the marks can harm related people's feeling? If use or register the mark as trademark is just weird but NOT harmful, what's the public interest will be adversely effected by the trademark use or registration? If the mark is not confusing people about the origins and sources of the goods affixing the trademark and the mark is not "harmful", approve it unless the relevant or potential victims claimed to be harmed.[219] (5) Use confusing theory as the first rule when determine whether a trademark registration shall be approved. Confusing theory is and will continue to be the first rule of trademark law because the trademark's main and fundamental function is to indicate the origins and sources of goods or services. If the trademark registration application has no possibility of confusing people on the origins and sources of products, there is no much need to prohibit it unless there is bigger interests existing. In Chinese trademark law system, it seems not clear on this logic and value balance. It

[217] Trunkbow Asia Pacific (Shandong) Co., Ltd. v. TRAB, Zhang Qinghe, Beijing High People's Court, GaoXingZhiZhongZi No.1538 (2015).
[218] For example, supra note 1, art. 32.
[219] For example, in the case Shanghai Chenghuang Jewelry Co. Ltd v. China TRAB, Chinese Taoist Association filed opposition to the trademark application on "Chenghuang" because it claimed that "Chenghuang" is a name of a taoist god and use or register it as a trademark will harm taoists' feeling. It is a good example of the evidence to prove the potential harm to relevant public and religion interest. See Shanghai Chenghuang Jewelry Co. Ltd v. China TRAB, Beijing High Court, GaoXingZhongZi No. 593 (2014).

should be better if alter current Article 10 (1) (8) "Those detrimental to socialist morals or customs, or having other unhealthy influences" to "those likely to cause damage to other public orders and good morals". In this way, it dispels private interest out of this clause clearly and keeps consistent with "Chinese General Provisions of the Civil Law" general provisions regulations.[220] Chinese Trademark Law as one part of civil law shall follow Chinese Civil Law's spirit and constraint. The files given by CTMO and the Supreme Court shall change their regulations following this way: (1) Interpret the meaning of this prohibition clause under civil law system, it means don't raise the level of public orders and good morals comparing with Chinese Civil Law system; (2) Build its prohibition rules and examination standards based on confusing theory and put its emphasis on the function of trademarks, leave more success chances to market entities who are eager to manage their trademarks via using and managing the trademark which is the trademark law's incentive direction; (3) As for the content of "those likely to cause damage to other public orders and good morals" in trademark application, it should be marks that obscene, feudalistic, anti-political, anti-religion and so on. It means if the mark is not directly related to things likely to cause damage to public orders and good morals, it shall not be rejected totally; (4) Cooperate together to publish non-registrable words database where market entities who are intending to apply and manage a trademark can find the prohibition contents and get out of forbidden sections as early as they can.

In China, religion issues might not be popular to all people, especially people who are national or local civil servants. Because most of civil servants are Communist Party members who are not encouraged to have any religions.[221] It is not convincing that trademark examiners, reviewers and trademark judges (they are civil servants) have enough quality to determine whether a trademark is harmful to people in certain groups, so it is the potential victims who have the right to claim for rejection or removal for a trademark.[222] It is not a responsibility but a right, a way to protect their interests (if there is). For this sake, it is also much better to revise current adverse effects clause to "other public orders and good morals". In this way the trademark examiners, reviewers and trademark judges seem more qualified to determine whether a trademark is going to damage public orders and good morals. Because the standards for whether a trademark is going to damage public orders and good morals is a common public standing person's ability to publish their opinion, not to say official people. If it has to insist

[220] See Chinese General Provisions of the Civil Law, art. 8 (2017). ("The parties to civil legal relations shall not conduct civil activities in violation of the law, nor contrary to public order and good morals.")

[221] See at https://economictimes.indiatimes.com/news/international/world-news/chinas-communist-party-asks-members-to-give-up-religion/articleshow/59666001.cms (last visited May 28, 2018).

[222] It says there are more than 85% Chinese judges are China Communist Party member. See at http://news.ifeng.com/a/20160615/49039002_0.shtml (last visited May 28, 2018).

current provision, there shall be some regulations give a way for the trademark examiners, reviewers, judges to find the right potential victims to see whether the trademark is really having other adverse effects, for example establish a market survey system as prior trademark rejection essential procedure.[223] Because we cannot say a trademark is harmful just for one person says "I don't like this trademark because it hurts my religion feeling." We shall not stand at the top of morality to judge the potential influence of a trademark and decide its fortune based on the strictest requirement for social purity.

Apart from considering for potential victims from the trademark under application, consumers' benefits shall also be balanced on the basis of reducing the research cost of the consumers and their feelings. Consumers' interests are one of the most non-ignorable and important part in trademark field. In terms of whether a trademark has adverse effects or is going to damage public orders or good moral, the relevant public have the right to decide. Moreover, relevant public is the main subject deciding trademarks' status in trademark law. However, there is no words mentioned relevant public in Chinese Trademark Law when deciding the adverse effects issues. For example, in Article 5 of "Regulations on Several Issues Concerning the Trial of Administrative Cases Involving the Granting and Conformation of Trademark Rights", it only listed "what" issues while ignored "relevant public". Relevant public refers to the consumers relating to a certain type of commodities or services to which the trademark represents and other business operators that are closely connected with the marketing of the aforesaid commodities or services.[224] So the market survey shall also be delivered to relevant public to see their opinion. Surely there are some circumstances that do not need any market survey. For example some known words refers to disparaging some group or people or is damage to public order or good moral such as obscene words.[225]

b. Step two: replace "forbidden to use" with "forbidden to register"

China is one of minority countries who regulate the scope of trademark use prohibition in trademark law. It is time to replace "forbidden to use" system with "forbidden to register" system: change Chinese Trademark Law Article 10 to "The following signs shall not be registered as trademarks: …" and

[223] Shashank Upadhye, Trademark Surveys: Identifying the Relevant Universe of Confused Consumers, 8 Fordham Intell. Prop. Media & Ent. L.J. 549, 556 (1998).

[224] Interpretation of the Supreme People's Court Concerning the Application of Laws in the Trial of Cases of Civil Disputes Arising from Trademarks, art. 8. ("The "relevant general public" as mentioned in the Trademark Law refers to the consumers relating to a certain type of commodities or services to which the trademark represents and other business operators that are closely connected with the marketing of the aforesaid commodities or services.")

[225] "As the court held in the case "Paki", there is no need to bring evidence that the applicant wants to shock or offend consumers; the objective fact that the sign might be perceived as a shock or an offense is enough to deny registration." See supra note 162, 47.

parallel it with current Article 11 and sustain the same exceptions for current Article 11 obtaining distinctiveness. The reasons are as following:

Firstly, unlike the U.S.'s principal register and supplement register, China only has one trademark registration style: one or zero! So there is no chance left to the trademark applicant to protect its goodwill invested in the disputed mark. If there is a buffer zone for trademark applicant to prove his good faith for using and applying the trademark, for the trademark under apply is not in the meaning of against to public order and good morality, it would be helpful for efficiency of the trademark office's work and great to save the trademark applicant's investment into the trademark. For example in the case "MLGB", if the trademark law leaves the applicant for example 2 years (just as a hypothesis) to prove its good faith in that circumstances, the trademark applicant may have the chance to spread its good meaning of "My Life's Getting Better" much more broadly.[226] It is a positive social development direction which is in accordance with Chinese Trademark Law's purpose.[227]

Secondly, this will give the producers and dealers much freedom to run their businesses. Trademark's main function is to designate the origins and sources of goods or services. The content of trademark has nothing to do with its fundamental function unless the trademark has problem of distinctiveness. In another way, a trademark with negative content may make people lose interest into its designating goods and trademark owner will probably lose its potential consumers, this is the lesson the market gives to the producer and he shall learn from this which can make him aware that negative trademark can ruin his business. This is the trademark owner's title to have this try. However, what if the trademark with negative content can catch people's eyes and make people understand the trademark content in a different way? This is most of the trademark applicants are trying to do. In the fast information era, there are some normal words and phrases given different meaning on the internet, for example teenager or internet slangs.[228] If trademark owners can change these kinds of words or phrases into a positive and coined meaning, it is also a good thing to enrich the source of trademarks as well as their freedom to select their own trademarks.

Thirdly, the content of a trademark shall be protected if it is not against to Chinese Constitution Law's prohibition of free speech.[229] China shall have the courage to permit the freedom to argue whether the nature of trademark is freedom of speech. Leave larger space for its development on democracy and

[226] In fact, in the case "MLGB", when the case started, the applicant has set up its own interpretation of "MLGB" to the public after the trademark was approved by CTMO at first.
[227] See Supra note 1, art. 1.
[228] Caitlin Dewey, 24 Words That Mean Totally Different Things Now Than They Did Pre-Internet (2015), see at https://www.washingtonpost.com/news/the-intersect/wp/2015/10/15/24-words-that-mean-totally-different-things-now-than-they-did-pre-internet/?utm_term=.a95b33b873aa (last visited May 28, 2018).
[229] See Chinese Constitution Law (Amendment 2018), art. 35.

freedom, which is essential to its construction of rule of law. If it is going to insist the limit for free speech, keep aware that if the trademark is not going against to the limit of free speech from constitution law, give it a chance to survive. It is a hard step for China to admit the trademark use is a freedom of speech. However, it should be the long-term aim of trademark law in China. Because China is developing its own democracy and justice system, and building its own rule of law system which is a good sign to let the aim anticipatable.

c. Step three: open trademark use and registration totally under trademark confusion theory

The most radical step is to open trademark use world totally. Let the trademark registration free unless it is against the theory of trademark confusion which is the most important theory that never shall be abolished. Trademark registration exists because it can benefit people and the whole society especially when we consider the future available trademark resources. With the depletion and congestion are bringing increasingly serious problems to trademark system, the available or easier available trademarks will be found at higher cost and with less benefit.[230] The shortage of registrable trademarks based on current trademark law system will be a great challenge to countries around the world. In order to ensure the function of trademark never be ruined, it is the best way to open all words to trademark registration and use as long as the trademark is a combination of the words or other elements that with distinctiveness and can take the place of designate origins and sources of goods or services (distinguishable). It is the last scheme to protect our trademark generated market and the results of public interest balance. Allow trademark users to choose their trademark freely is a sign of reverting trademark right towards its private right origin.

d. Supplementary measures available to re-craft of the system of "adverse effects" trademark prohibition

Firstly, take advantage of Chinese guiding cases system. Even China is not a case law country, it is still enthusiastic into the guiding cases system and other guiding alike cases which are published by courts and other departments.[231] Guiding cases are useful for unifying standards especially for circumstances that general provisions in trademark law like Article 10 (1) (8) which is ambiguous and there is not available clear usable interpretations. Giving the definitions and standards in guiding cases can help to make relative general provisions much clear and easier to follow. Plus, jointly publish prohibition registration trademark database by CTMO and Chinese Supreme Court, there will be a convenient and efficient trademark

[230] Supra note 18, 1024.

[231] For example, copyright department also publishes cases every year, so do trademark offices and other official departments.

registration order which will also save much trademark examination cost and trademark judicial cost.

Secondly, publish clear registration guiding rules for special Classes of goods or services. Some trademark registration application is rejected because they are used on some certain classes such as condom, night club, etc. At least, there should be some guiding cases or files tell people who are running relative businesses what kinds of trademarks they can use or register and what kind of trademarks they shall keep away from. Because it seems whatever trademark you choose to use on condom or night club alike goods or services, the trademark will be associated further. In the same time, in order to protect teenagers' growth environment better, there can be some restrictions on trademarks used on teenagers-centered goods or services. For example, the expression "Nuckin Futs", in connection with prepared nuts, mixtures of nuts, and dried fruits, was considered acceptable, despite the fact that it is a clear spoonerism for "f..cking nuts." The registration is, however, conditional upon the trademark not being used on goods marketed to children. Such condition should not blame the owner of the registration since the products are sold in pubs that kids cannot enter.[232]

Thirdly, build a strict advertising system if the government really hopes to build a good living environment for people. When the trademark office examiners reject the trademark with the reason that the trademark is easily to produce other adverse effects to people or using Chinese words wrongfully will teach and guide students and teenagers into a misleading way in the cognition of Chinese traditional culture including Chinese words, phrases, and idioms, they are indeed not aware that the influence is not the trademark but the advertising. One word is probable can lead one people to wrong understanding or learning direction while it can also be a "shocking" creation point to give people new ideas. Different people have different understanding and tolerance to different level language using style and methods. It's true that if people want to use a trademark, they have to "spread" their trademark. However, the using methods are multiple and advertising is just one of them, remember that it is not the only one! If people want to use certain "disputed" trademarks, they have to know that they are expected to do sacrifice in the proceeding of the trademark use: don't spread in the way of advertising which would harm people's language environment. This supplementary measure will make the advertising law obeyed and make the trademark function works well. It can benefit trademark users and protect public audience at the same time, no one will be harmed by the "disputed"

[232] Austl. Trademark Application Serial No. 14082134 (filed Mar. 3, 2011) (Austl.) in the name of Universal Trading Australia Pty Ltd as trustee for Basil and Groovy Trust. See supra note 162, 49.

trademarks. By the way, advertising rating system might be helpful to eliminate people's worries about language purity.[233]

Fourthly, be cautious about the theory of interests' balance. The theory of interests balance is used very broadly in intellectual property law filed in the name of public domain reservation.[234] We have to be aware that public interest is distinct from the domain private interest.[235] With people's overwhelming attention on public interest and thinking that public interest has the potential to be invaded, it seems private intellectual property rights develop in a restrained way, which is making the intellectual property rights stay in "cage". It is right that private intellectual property rights are strived for by many stakeholders,[236] but sometimes the government pretend to say that they are doing something for the sake of "public interest" might turn out to be fake public interest. Moreover, relevant public interest is the most important part of "public interest" in trademark law. The relevant public shall be considered firstly when craft trademark system. In addition, trademark law is different from copyright law and patent law, public interest in them is fatal sometimes.[237] Public interest in trademark law is much light because the most important public interest in it is economy interests. So the public interest is not too essential and shall be considered in a more utilitarianism way and economy market centered way. With the rapid economy development, the internal connotation of some trademarks may change, the public interest related to it will also alter, while traders group cost reduction interest on finding a good trademark and relevant public's cost reduction interest stand still. Therefore, too strict rejection policy is no good to the dynamic world.

Another important non-legal problem of China's attitude on trademarks of "having other adverse effects" is ascribed to the government's internal working system. The working documents give much pressure to trademark registrars and judges because documents push all individual officers to take full responsibility for trademarks under their examination or cases under their trial.[238] This confines the officers' free evaluation of the trademarks and they prefer to take a strict attitude to the trademarks with risk to be considered having other adverse effects in order to keep their job and do everything to

[233] In fact, some representatives of the National People's Congress have proposed for this issue. See at http://media.people.com.cn/GB/40606/5988982.html (2007 proposal) (last visited May 28, 2018), https://cloud.tencent.com/info/aa03b9549d3a2fc36da57db592478097.html (2018 proposal) (last visited May 28, 2018).

[234] For example, some stakeholders may attempt to wrest control of some rights away from the owner through public interest intellectual property litigation. See Russell W. Jacobs, In Privity with the Public Domain: The Standing Doctrine, the Public Interest, and Intellectual Property, 30 Santa Clara High Tech. L.J. 415, 417 (2013).

[235] Sean M. Flynn, The Washington Declaration on Intellectual Property and the Public Interest, 28 Am. U. Int'l L. Rev. 19, 20 (2012).

[236] For example, some large and powerful companies and lobbyists.

[237] For example, some patented medicines that work for HIV and other fatal disease.

[238] For example, "Control Measures on Adverse Effects Trademarks".

avoid bear the unfavorable consequences. What the government needs to do is let the trademark registrars explain their rejection or approval themselves based on laws but not out of their fear of taking negative responsibility from the working documents. So do judges.

"Intellectual property systems are designed to serve human values and must be tailored to this end".[239] All trademark law provisions shall be built on the basis of some certain interests balance. Different economy styles shall alter their own trademark law system in order to utilize trademark law to make its people live a better life. For China, as one of the biggest market around the world, it shall consider its own trademark obtain system. Strict trademark governing system is not the best one for the benefit of its people when it claims and attempts to build its own rule of law system. Above steps for re-craft an advanced trademark system for registration for some certain trademarks are essential to be considered.

C. Potential comments and anticipated follow-up research

Empirical study on the registration rejections to trademarks "having other adverse effects" and relative judicial cases would be very helpful to this article's conclusion. Unfortunately, the specific information of administrative rejection excuses are not disclosed to public and the judicial cases empirical are not enough to state the status of trademark "having other adverse effects" in China.[240] However, the administrative organization is trying to disclose the review results documents to public on its website.[241] This part of research is expected to be done in the future.[242]

There are also some people suspect the essential to take Article 10 (1) (8) so serious. In their mind, there is not very much evidence showing this is a problem.[243] I can't agree that there is not essential to do research if the number of cases resulted from such a problem is so compelling, not to say there are real problems that may lead the determination of such marks in a high unpredictability which is not only essential but also deserves attention![244] In fact, the problem resulted from Article 10 (1) (8) of Chinese Trademark Law is not only a subjective law problem, but also a procedure law problem.

[239] Supra note 235, 21.
[240] On China Trademark Official website, the disclosure information is very limit and the function of advanced search can be improved much. For example, there are only 85903 information available on China TRAB official website until June 5, 2018. See at http://wssq.saic.gov.cn:9080/tmsve/pingshen_getMain.xhtml (last visited June 5, 2018).
[241] See Annual Development Report on China's Trademark and Brand Strategy 2017, http://www.ctmo.gov.cn/tzgg/201805/W020180513829986812509.pdf (last visited May 28, 2018).
[242] It is not only important for this article, but also helpful for the future Chinese strategy on trademark resources.
[243] See Yuan Bo, Whether a Mark Has "Adverse Effects", It Still Depends on How You think (in Chinese), see at http://news.zhichanli.cn/article/4645.html. (last visited June 5, 2018).
[244] There are many Chinese scholars deem that article 10 (1) (8) is being misused in practice. For example, Zhang Taolue & Zhang Weijun, The Choice of Trademark Law on the Protection of Public Interest (in Chinese), Intellectual Property 2015 (4).

Trademark examiners' work style need to be improved, for example, the trademark examiners shall give very specific for why a trademark has "other adverse effects".[245] It can be improved for the sake of a better trademark registration system.

China starts the State Council Institutional Reform in 2018. Based on the proposal, it will reorganize the State Intellectual Property Office. The trademark administrative issues and patent administrative issues will be consolidated and administered by the State Administration for Market Regulation.[246] Whether trademarks "having other adverse effects" will be determined much by the market shall be seen after the reform. In order to strengthen IP creation, IP protection and IP use, and improve the quality and efficiency of IP review, CTMO is seeking public comment on the fourth revision of Chinese Trademark Law.[247] Whether there will be some change on "having other adverse effects" trademarks will be seen.

Conclusion

China current policy on marks "having other adverse effects" is formed in a special economy time. The existence of prohibition of using marks "having other adverse effects" as trademarks seems not proper in current China.

The creation of trademarks has two stages to go, the first is trademark owner associates the sign with objects, the second is public grants the required recognition to this association. Trademarks themselves are objective and trademark owners can give the objective trademark their special meaning via trademark use. Public's cognition of the trademark is mostly from the trademark owners' management and investment of the trademark. Even there is not much need and value to incentive trademark, but there is still motivation to incentive the protection of goodwill on a trademark. China's strict and complex system of trademarks "having other adverse effects" is not beneficial to the goodwill protection even though it claims to enhance the goodwill protection very much.[248] Problems generated from Chinese Trademark Law Article 10 (1) (8) can harm both the producers' interests and the consumers' interests. While the work documents from the trademark administrative organizations and the Supreme Court further aggravated these problems.

[245] In fact, CTMO registration procedures on whether examiners could issue examination opinions that informed applicants why the CTMO did not approve a registration was revised in 2001 and 2013. See supra note 187, 874.

[246] See Decision of the First Session of the Thirteenth National People's Congress on the State Council Institutional Reform Proposal, National People's Congress (2018).

[247] See at http://sbj.saic.gov.cn/tzgg/201804/t20180402_273481.html (last visited June 5, 2018).

[248] See Notice of the Supreme People's Court on Issuing the Opinions on Several Issues concerning Intellectual Property Trials Serving the Overall Objective under the Current Economic Situation, Documents of Judicial Interpretation No. 23, art. 9 (2009).

From the view of legislative skills, there should not be any clause has versatile functions, especially the negative and prohibition clauses in civil law. Because private law represents the protection of private rights and interests, based on which there is a saying that "Absence of Legal Prohibition Means Freedom" for private rights. China is going further and further on employing "having other adverse effects" clause to prohibit trademark registration, declare trademarks invalid and revoke trademarks even the trademarks themselves have nothing to do with disparaging or offensive issues. China's favor on general and miscellaneous clauses gives the administrative organs and judicial courts much space in "creating rules", the higher level of these kinds of organizations might like these ambiguous rules but not all workers who work at the front line of trademark issues, because the work documents make them responsible for their opinions in the operation of the trademark cases. This situation can distort the trademark right obtain and protection system.

In order to keep Chinese huge amount of trademarks and the large market order, China should consider to re-craft these kinds of legislative words and change its constrained attitude on the trademarks "having other adverse effects". In that way, it will struggle out of the chaos and hesitations, and keep a relatively actual consistent standard to guide people to have a reasonable expectation on their business based on trademarks. From an international perspective, it is also an essential to improve the predictability of Article 10 (1) (8) of Chinese Trademark Law and its proper enforcement. China is the largest trademark registration country in the world and owns the admirable largest prosperous market. It could get much more cooperation chances and foreign investments only if it makes a proper and foreseeable regulation of the "having other adverse effects" signs.

Obtaining trademark registration approval in CTMO is the first step for a full trademark protection based on Chinese Trademark Law. Unifying the standards of determining trademarks' registrable nature is very important for the trademark law's predictability and reduce cost for trademark registration both for applicants and the official system.

Open the topic of free speech will contribute to the solution of "having other adverse effects" trademark problems. Lacking argument about freedom of speech makes the trademark use in a blur situation and prohibit people's chances to take advantage of unregistered trademark system and run their business based on their investments into their unregistered trademark. It is against to principle of proportionality and not fair for the goodwill protection which is the soul of trademark management based on trademark law. What China shall do is to take appropriate steps to safeguard its trademark and IP system, but not to feel too sensitive and over conscious about some not positive things, nor take individuals' thinking for ground and go to forecast things in irrational way. Adverse effects trademarks shall be treated in general

relevant public's understanding level, don't stand at the highest point of morality to make the regulations for normal people. Think about all people except for so called public interest, especially in some fake public interest situations.

In order to re-craft a virtuous trademark ecosystem, China can revise its Article 1 (1) (8) as above mentioned perfectible steps based on principles. China has been developing its trademark system and making progress toward a harmonized and fair trademark system in the world's largest developing economy,[249] what China will handle adverse effects and its trademark use freedom still remains to be expected.

[249] Supra note 187, 893.