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RESEARCH ARTICLE

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DONALD TRUMP'S TEN-YEAR TRADEMARK CASE IN CHINA: STATUTORY-LAW-UPHELD INTELLECTUAL PROPERTY RIGHTS IGNORED BY STATE APPARATUS

***Zemin WANG**

Associate Professor, Heilongjiang International University, P.R. China

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Corresponding Author: Zemin WANG,

ABSTRACT

The present article on Donald Trump's trademark case in China takes recourse to a specific sort of P.R.C statute law, the Trademark Law, to investigate the validity of the decision and rulings by the state apparatus like the Trademark Bureau, Trademark Review Committee and People's Courts, and finds out that provisions of the Trademark Law are ignored by the Bureaus and Courts. The dispute and lawsuits start in 2006; Donald Trump loses the case in middle of 2015 by the final ruling from Beijing Higher People's Court. By scrutinizing the relevant Articles of the Trademark Law, especially Article 13 and Article 31, it is discovered that Donald Trump's name rights and his trademark "TRUMP" are explicitly supported by the P.R.C. Trademark Law, which was amended in 2001 to better suit China's joining of the World Trade Organization in 2001 on intellectual property rights protection. Donald Trump's name rights granted by Article 31 is illustrated by the retrial ruling in late 2016 on Michael Jordan's trademark case by P.R.C. Supreme People's Court; and his right on trademark "TRUMP" is explained on a law journal in 2019 by a judge from Beijing Higher People's Court. But, the case is still a closed case Trump lost.

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INTRODUCTION

This paper focuses on the events related to Donald J. Trump's trademark case in People's Republic of China from 2006 to 2016, a time span of ten years. The earliest revelation of the case, which was closed on 18 May 2015 with the final ruling by Beijing Higher People's Court (IP House. *(2015) Higher Administrative (Intellectual) Final Verdict No.345*), happened in a matter of days after Donald Trump won the United States presidential election on 8 November 2016 (The White House. 2021, April 14), by news agencies in both the P.R.C. and the U.S. alike. The titbits of media coverage first appeared in Chinese language on the *National Business Daily* at 14:05 Beijing time on 14 November 2016, stating that Trump had a lawsuit in China and lost the case in spite of two appeals (ZHOU, 2016, Nov. 14). By 20:33 Beijing time of the same day, the *Global Times* announced "Trump loses suit over trademark in China" ("Trump loses suit", 2016, Nov. 14). On the same day but at U.S. Eastern time 7:24 pm, the *Wall Street Journal* joined in the talk, declaring "Trump Scores Legal Win in China Trademark Dispute: Trademark office decision comes days after surprise U.S. presidential victory, caps 10-year legal wrangle" (LI, 2016, Nov. 14). The *New York Times* followed suit on the second day, stating "In China, Toilets Have Trump's Name Without His Permission" (WEE, 2016, Nov. 15), so did the *People's Daily* by indicating "U.S. President-elect Donald Trump lost lawsuit over his trademark in China, twice" ("U.S. President-elect Donald Trump lost", 2016, Nov. 15).

By a later time of this very second day of the news erupt, the *Global Times* changed tone from its previous day's claim "Trump loses suit" to "Trump wins trademark case in China, law firm says" ("Trump wins trademark", 2016, Nov. 15). Obviously "loses" and "wins" indicate different perceptions on the same event, which are confusing at least. So, the "law firm" quoted by *Global Times* made an announcement two days later, on 17 November 2016, stating it "is only capable of making statement on the factual part of the case", and "will no longer accept interviews of any form from any media agencies" ("Solemn statement", 2016, Nov. 17). Unfortunately, the closed case was mingled by the revealing media at the time with new developments (hence constituting separate cases) proceeding Donald Trump's announcement of his candidacy for U.S. President on 16 June 2015 (Page, 2015, June 16). What happened after Trump's announcement were most probably influenced by Trump's new status, resulting in blurred review on the closed case and derailed insight regarding the rightness of the relevant rulings on the case in point. Fortunately, the case is marked with clear-cut timeline and events, which are going to be investigated to unveil the misinterpretation of P.R.C. trademark laws by administrative agencies as well as Court judges and the consequent misrepresentation of the intellectual property rights of Donald Trump, who was probably propelled by the events to a more adversarial position in dealing with the People's Republic of China during his US Presidency.

Relevant Events and Research Works Review: The statement of Trump's legal representative Unitalen Attorneys at Law poses a sharp question to the case: did Trump lose or win? In its factual statement,

at odds with *Global Times*' "wins" tone, Unitalen Attorneys at Law unambiguously stated that all the time through the five events of the case, which ends on 18 May 2015, "the application was finally not approved and not ratified", and the "objection and adjudication on objection" to the "trademark of the third party"… "all turned out to be unsuccessful", so by June 2015 "Unitalen Attorneys at Law once again represented Mr. Trump to apply to invalidate the trademark of this third party…" ("Solemn statement", 2016, Nov. 17, para. 3, 4). It is known that Donald Trump announced his candidacy to run for US President on 16 June 2015 (Page, 2015, June 16). What happened after Trump's announcement is beyond the scope of the closed case. So, the point here is that Trump's trademark case in China is a closed case. Legally speaking, having lost the case in appealing to Beijing Higher People's Court, Trump can only apply for a retrial by the P.R.C. Supreme People's Court, as hinted by *Global Times*: "As of press time on Monday, Trump had not responded to a Global Times reporter's tweet about whether he will appeal and bring the suit to the high Court [P.R.C. Supreme People's Court] ("Trump loses suit", 2016, Nov. 14, para. 6), which he did not do. So, the key events concerning the Trump case terminate by 18 May 2015. Relevant events happened after 18 May 2015 but before the end of 2016 are to be probed into also in order to illustrate and compare certain points.

Events Concerning the Trump Case in China and President-elect Trump in the U.S. : Within the time span from 24 November 2016 to 18 May 2015, there were five major events concerning Trump's trademark case in China, all of which were represented in Beijing by ZHOU Dandan of Unitalen Attorneys at Law (Kinetz, 2017, Feb. 14). The first event was the application of trademark "TRUMP" in class 37 to the Trademark Bureau of State Administration for Industry and Commerce of the P.R.C. on 7 December 2006 by Donald Trump, which was blocked by a previous application of trademark "TRUMP" also in class 37 by a P.R.C. citizen DONG Wei that was filed on 24 November 2016 ("Trump lost", 2016, Nov. 19). The second event was the formal rejection of Donald Trump's application of trademark "TRUMP" in class 37 on 30 November 2009 by the Trademark Bureau (ib). The third event was the review verdict on 10 February 2014 by the Trademark Review Committee of the State Administration for Industry and Commerce of the P.R.C., which rejected Donald Trump' application again (ib). The fourth event was the ruling of first instance on 22 October 2014 by Beijing First Intermediate People's Court to uphold the review verdict of the Trademark Review Committee (IP House. *(2014) First Intermediate Administrative (Intellectual) Initial Verdict No.6095*). The fifth event was the final ruling on 18 May 2015 by Beijing Higher People's Court to uphold the verdict of the first instance (IP House. *(2015) Higher Administrative (Intellectual) Final Verdict No.345*). The case was officially closed with the final ruling. Within the time span after 18 May 2015 to the end of 2016, the major event concerning Donald Trump was his announcement of candidacy to run for the US President on 16 June 2015 (Page, 2015, June 16). Donald Trump's winning of nomination as Republican candidate for the US President on 19 July 2016 (Collinson, 2016, July 19) precedes the surprise invalidation of DONG Wei's "TRUMP" trademark by Trademark Review Committee in September 2016 (HU, 2016, Dec. 6); his winning of US Presidency on 8 November 2016 (The White House. 2021, April 14) precedes the preliminary approval of his already-lost but applied-again trademark "TRUMP" in class 37 by Trademark Bureau on 13 November 2016 (HU, 2016, Dec. 6). In particular, the earthshaking retrial ruling that favors plaintiff Michael Jordan on the trademark case by the P.R.C. Supreme People's Court on 7 December 2016 (IP House. *(2016) Supreme Court Administrative Retrial No.27*) cast sharp contrast to Donald Trump's lost case one and a half years ago, regarding which he did not ask for a retrial by the P.R.C. Supreme People's Court (the only Court that is higher than the Beijing Higher People's Court that made the final ruling) hence stayed as a closed case.

Review on Relevant Research Works about the Trump Case in China: Besides media coverage by news agencies on the subject of "Donald Trump's trademark case in China", which mostly acknowledges China's "first-to-file" trademark registration principle (Legum & Raymond, 2017, Feb. 18), there haven't been many formal research papers published. In China, Peking University Law School published online the final verdict of the case in English, but offered no comments at all by simply reporting "[Key Terms] similar services; similar trademark; prior use. … [Disputed Issues] Where a trademark under application for registration is similar to a valid prior registered trademark of similar services, it cannot be registered" ("Donald Trump v. Trademark", n.d.). As for the research papers on the Trump case published in China in Chinese language, they are peripheral and negligible due to the actuality that academic study of Donald Trump in China is sensitive and unbeneficial. The news coverage of and political comments on Donald Trump have been handled by state media, which produced no academic studies. In particular the "trade war" with China brought up by Donald Trump as U.S. President makes himself an adversary-like figure to the P.R.C. media and academia alike, resulting in the default of fair and due academic and political research works on true Donald Trump.

In the U.S., the first research-like paper appeared in 2017 on *American University Business Law Review*, stating that

> The mark TRUMP began acquiring greater international notoriety when Mr. Trump publicly announced he was running for president of the United States in 2015. … Mr. Trump's thrust in the media stream has made him into a highly recognized public figure and has helped his mark become widely recognized, particularly in China. (Najera, 2017, para. 4, 5)

The paper offers nothing more insightful than what the media coverage does regarding the "Analysis of the Trump trademark lawsuit in China", which is actually part of the title of the paper. Two years later, in 2019, there was a more research-like paper on *The Columbia Journal of Law and the Arts*, indicating "Historically, Trump has struggled to win trademarks from China; he secured one recently after a 10-year fight that proved successful only after he declared his candidacy for the presidency" ("China says it followed law", 2019, Aug. 2, para. 7). This argument has some merit but gets the wrong timing—the preliminary approval of Donald Trump's trademark "TRUMP" by China's Trademark Bureau was on 13 November 2016, five days after his winning of the U.S. Presidency. Another two years later, in 2021, one more quasi-formal research paper concerning Donald Trump's ten-year trademark case in China appeared on *AU-HIU International Multidisciplinary Journal,* discerning that while the denial of the registration of trademark "TRUMP" in class 37 applied by Donald Trump is solely based upon one generic article of *first-to-file* principle, Article 28 of the 2001 version of *P.R.C. Trademark Law* ("National People's Congress", 2001), the prevailing of Donald Trump's application of trademark "TRUMP" over another application filed by P.R.C. citizen DONG Wei two weeks earlier of trademark "TRUMP" in class 37, is actually supported by two particular articles on the principles of *no-copying of well-known trademarks not yet registered in the P.R.C.* and *trademarking should not damage the existing prior rights of others*, Article 13 and Article 31 respectively of the 2001 version of *P.R.C. Trademark Law* (WANG, 2021). This paper proceeds from WANG's findings to elaborate Article 13 and Article 31 of the 2001 version of *P.R.C. Trademark Law* and endeavors to probe into (dare not to answer) why the two Articles, which was promulgated by National People's Congress, the highest P.R.C. state organ in national legislature, in an obvious attempt to promote statute-law-held intellectual property rights, were squarely ignored by state apparatus of the P.R.C., like the Trademark Bureau and Trademark Review Committee, and by some, maybe not all, P.R.C. judicial authorities, like the Beijing First Intermediate People's Court and the Beijing Higher People's Court.

Research Strategy as Methodology: from Statute Laws to Administrative Decisions and Courts' Rulings, and to Donald Trump: The research goes from the events to the relevant statute laws to ascertain the accountability in the rulings. It is here that the original findings are rendered. Common sense hints that the Courts and judges are not supposed to make common-sense mis-handlings since they are

the authorities and professionals entitled to interpret the law, properly and up to the points. But critical thinking works here. A little endeavor into the law articles reveals the inadequateness in the rulings, which serve to wrong businessman Donald Trump and exasperate him to be a belligerent President Donald Trump.

Applicable Statute Laws of the P.R.C. on the Trump Case: The P.R.C. has promulgated five versions of trademark law since the Reform and Open era of DENG Xiaoping regime. They are versions of 1982 ("China National", *(Year 1982)*), 1993 ("China National", *(1993 Revision)*), 2001, 2013 ("Central People's Government", 2013) and 2019 ("National People's Congress", 2019) years, respectively. The aforementioned principles embodied in Article 13 and Article 31 of 2001 version of *P.R.C. Trademark Law* appear first time in that version, and keep to be in the proceeding versions of 2013 and 2019, with Article 31 being moved to Article 32 for both subsequent versions. Due to the fact that the 2013 version of *P.R.C. Trademark Law* took effect on 1 May 2014 ("China's new trademark law", 2014), hence the 2001 version of *P.R.C. Trademark Law* was still in effect when the Trademark Review Committee made the decision on 10 February 2014, this paper takes the 2001 version of *P.R.C. Trademark Law* as the default and only governing *Trademark Law*, so do all the Courts' verdicts quoted by this paper.

Article 13 of the *Trademark law* stipulates:

> Where a trademark applied for registration on the same or similar goods is a copy, imitation or translation [from foreign language to Chinese language] of another person's well-known trademark that has not been registered in China, which is likely to cause confusion, it shall not be registered and its use shall be prohibited.

Based on this Article, "the trademark applied for registration on the same or similar goods" by DONG Wei as TRUMP "is a copy … of another person's [Donald Trump's] well-known trademark [TRUMP in the U.S.] that has not been registered in China, which is likely to cause confusion, it shall not be registered and its use shall be prohibited."

If Donald Trump's well-known trademark "TRUMP" hadn't been known to the Trademark Bureau by the time DONG Wei filed his application of trademark "TRUMP", it should be known two weeks later by the time Donald Trump filed his application of trademark "TRUMP", since the proof of a "well-known" brand could have been provided by Donald Trump himself: before the formal rejection of Donald Trump's application of trademark "TRUMP" in class 37 on 30 November 2009 by the Trademark Bureau, in [May] "2009 Trump sent a group of executives, including his son, … to Macau, along with 300 pounds of printed publicity materials featuring Trump's name and face. The goal of all that paper, Trump wrote, was to convince a Chinese judge that the word 'Trump' was indeed an internationally recognized brand" (Cherkis, 2016, Sept. 14). If Donald Trump could send the proving materials to Macau, certainly he could have sent that to Beijing upon request. If the proving materials could have proved that Donald Trump's "TRUMP" brand is "well-known" and "has not been registered in China," DONG Wei's application of trademark "TRUMP" would have been revealed not to comply with Article 13, hence "shall not be registered and its use shall be prohibited", since the Trademark Bureau can only prove the applications that do not violate the provisions of the *Trademark Law*, as pointed out by the *Trademark Law* itself:

> Article 27 Where a trademark applied for registration complies with the relevant provisions of this Law; it shall be preliminarily examined and approved, and announced by Trademark Bureau.

How the Trademark Bureau should treat an application if it does violate the provisions of *Trademark Law*? Article 28 of the *Trademark Law* states:

> Where a trademark applied for registration does not comply with the relevant provisions of this Law … the application shall be rejected by the Trademark Bureau and no announcement shall be made.

Based on this Article, the "trademark applied for registration" by DONG Wei as TRUMP "does not comply with relevant provisions of [Article 13] of this Law … the application shall be rejected by the Trademark Bureau and no announcement shall be made."

Since Donald Trump uses his own name as the trademark "TRUMP", there is another article in the *Trademark Law* to double-down his security in getting the trademark:

> Article 31 An application for trademark registration shall not damage the existing prior rights of others…

Based on this Article, the "application for trademark [TRUMP] registration [by DONG Wei] shall not damage the existing prior rights of others [Donald Trump]," which should be Donald Trump's name rights as his "existing prior rights".

Now comes the question: Can Article 13 or/and Article 31 override Article 28? The answer is yes! Article 41 of the *Trademark Law* asserts:

> ... If a registered trademark violates the provisions of Article 13 … Article 31 of this Law, within five years from the date of registration of the trademark, the trademark owner or interested parties may request the Trademark Review Committee to rule to revoke the registered trademark. …

Sure, the two weeks of the time period from DONG Wei's applying to Donald Trump's applying of trademark "TRUMP" is much shorter than five years, in addition the trademark "TRUMP" applied by DONG Wei hadn't been registered when Donald Trump filed his application of trademark "TRUMP".

Based on Article 41, once it is found out that the trademark TRUMP applied by DONG Wei violates the intellectual property rights of Donald Trump in trademarking, as depicted by Article 13, and violates the name rights of Donald Trump by depriving his priority in using his own English family name Trump in trademarking, as depicted by Article 31, DONG Wei himself, and other "interested parties" like Donald Trump through his legal representatives in Beijing, or even the Trademark Bureau "may request the Trademark Review Committee to rule to revoke the registered trademark" TRUMP. All the provisions by the *Trademark Law* make Donald Trump's winning his trademark "TRUMP" seem to be a logical and feasible job, as indicated by Donald Trump himself: "…if honesty prevailed, there would be no way we could lose" (Cherkis & Wilkie, 2016, Sept. 14, para. 4 of the letter). But how come that all those clear-cut statute-law provisions by the National People's Congress, the highest legislative state organ in P.R.C., and definitely not a "rubber stamp", are ignored by the state apparatus like the Trademark Bureau, the Trademark Review Committee, the Beijing First Intermediate People's Court, and the Beijing Higher People's Court? The causes, overt and covert, are worthy of probing into thoroughly.

The Rejection by the Trademark Bureau and the Review Ruling by the Committee: What the statute laws uphold and against are crystal clear, but the decisions made by the relevant administrative organs, strangely enough, are solely based on Article 28, which is a generic article and governed by other articles in the same *Trademark Law*. The first part of Article 28 is already introduced in section 3.1 above; the full section of Article 28 of the *Trademark Law*, with second part being the mysterious weapon that knocked down Donald Trump, is as follows:

> Article 28 Where a trademark applied for registration does not comply with the relevant provisions of this Law or is identical or similar to another person's registered or preliminarily approved trademark on the same or similar goods, the application shall be

> rejected by the Trademark Bureau and no announcement shall be made.

Donald Trump's ten-year trademark case starts from here.

Regarding the initial application and rejection of trademark "TRUMP", Donald Trump's legal representative Unitalen Attorneys at Law in Beijing states:

> In December 2006, Unitalen represented Mr. Trump to apply for the registration of the "TRUMP" trademark in class 37 of "providing commercial, residential and hotel real estate construction information" and other service items. The Trademark Bureau rejected the above application, citing the "TRUMP" trademark previously applied by a third party [DONG Wei]. ("Solemn statement", 2016, Nov. 17, para. 3)

Here please note the wording "previously applied", neither the wording like "registered" nor "preliminarily approved", as Article 28 of the *Trademark Law* depicts, is pointed out by Unitalen Attorneys at Law.

The formal rejection by the Trademark Bureau was made on 30 November 2009, a date indicated in the verdict of the first instance by Beijing First Intermediate People's Court (IP House. *(2014) First Intermediate Administrative (Intellectual) Initial Verdict No.6095*). The verdict also quotes the review ruling made by Trademark Review Committee on the Trump case on 10 February 2014 as follows:

> In its Decision No. 2758, the Trademark Review Committee determines that the No. 5771154 trademark "TRUMP" (hereinafter referred to as the applied trademark [by Donald Trump]) … is identical with the No. 5743720 trademark "TRUMP" (hereinafter referred to as the cited trademark [by DONG Wei]) in terms of letter composition and pronunciation, and has constituted a similar trademark; the services of "building of commercial, residential and hotel real estate; providing construction information on commercial, residential and hotel real estate" designated for use by the applied trademark are analogous to the services of "building, factory construction" and others that have been approved for use by the cited trademark. The two trademarks, which will cause the consumers to confuse and misidentify the source of the services if they coexist in the market, have constituted similar trademarks used for analogous services. The evidence submitted by Donald Trump is not sufficient to prove that the applied trademark can be distinguished from the cited trademark in usage, nor can it be a rightful basis for the grant of registration of the applied trademark. Donald Trump states that "without permission, the owner of the cited trademark applied for registration of Donald Trump's name as a trademark, which infringed the name rights of others" is not within the scope of the trial of this case, and the Trademark Review Committee will not hear it.
> In accordance with the provisions of Article 28 of the *Trademark Law of the People's Republic of China*, the Trademark Review Committee decides to reject the applied trademark on the reexamined goods.

Here puzzling the most is the attitude by the Trademark Review Committee expressed in above quote that it "will not hear" Donald Trump's objection that his name rights are fringed by the trademark "TRUMP", by using his name, without his permission, in the same business category he intends to do business in China.

The Rulings on the Trump Case by the Courts of the First and the Second Instance: The main body of the verdict made on 22 October 2014 by the Beijing First Intermediate People's Court on the Trump case is as follows:

> The case was heard in public on 30 July 2014. ZHOU Dandan, the attorney of the plaintiff Donald Trump, appeared in Court to take part in the lawsuit. The defendant Trademark Review Committee was summoned by this Court and stated in writing that it would not participate in the trial of the case. This Court heard the case in absentia according to law.

The plaintiff, Donald Trump, admits that the applied trademark is similar to the cited trademark, and the services [by the two intended trademarks] are similar ones, but the cited trademark is currently in the process of trademark objection review, and its legal status is uncertain. After hearing, this Court ascertains that the No. 5743720 trademark "TRUMP" (i.e., the cited trademark, …) was filed with the Trademark Bureau for registration by DONG Wei, an outsider of the case, on 24 November 2006, which was approved to be used in class 37 construction supervision and other services. The term of the exclusive trademark right of the registered trademark is up to 20 January 2020.

This Court believes that since this case was concluded by the Trademark Review Committee before 1 May 2014, it applies to the pre-revised *Trademark Law*, and all the legal provisions cited in this Judgment are all the contents of the 2001 version *Trademark Law*. The focus of the dispute of this case is whether the registration of applied trademark violates Article 28 of the *Trademark Law*.

Article 28 of the *Trademark Law* stipulates that the trademark applied for registration shall not constitute a trademark that is the same of or similar to the trademark already registered by another person on the same or similar goods.

In view of Donald Trump's recognition that the applied trademark and the cited trademark are similar trademarks to be registered and used on similar goods, the Court hereby confirms it. The cited trademark is still valid and can be used as a prior trademark in citing. Therefore, this Court upholds that the application for registration by the applied trademark violates Article 28 of the *Trademark Law*.

The verdict does not include the third-party DONG Wei in the section of "Parties" at the beginning of the written judgement, nor does it specify whether DONG Wei as the third party was notified to participate in the trial.

The main body of the verdict made on 18 May 2015 by the Beijing Higher People's Court on the Trump case is as follows:

> Donald Trump, who refuses to accept the verdict of the first instance, appeals to this Court, The reasons for the appeal are: first, the applied trademark has extremely-strong distinctiveness and extremely-high popularity …; second, the cited trademark is a malicious preemptive registration of an influential trademark previously used by the appellant. The cited trademark is currently in the process of trademark objection review, and its legal status is uncertain.
> This Court upholds that up to the trial period of this case, the No. 5743720 trademark "TRUMP", namely the cited trademark, is still a prior registered trademark in effect, which can be used as the basis for judging whether the applied trademark in this case can be registered. Therefore, the focus of the dispute in this case is whether the applied trademark constitutes a similar trademark to the cited trademark referred to by Article 28 of the *Trademark Law*. The applied trademark and the cited trademark are identical in terms of letter composition and pronunciation; and the services designated for use by the applied trademark and the services approved for the use by the cited trademark are analogous services. The two trademarks, which will cause the consumers to confuse and misidentify the source of the services if they coexist in the market, have constituted similar trademarks used for analogous services. The registration of the applied trademark does not comply with the provisions of Article 28 of the *Trademark Law*.

Also, the verdict does not include the third-party Dong Wei in the section of "Parties" at the beginning of the written judgement, nor does it specify whether DONG Wei as the third party was notified to

participate in the trial. In addition, the verdict does not indicate whether the law cited is the 2001 version of the *Trademark Law*.

Donald Trump's Reactions to the Rejection and the Rulings from China: The reactions from Donald Trump can be inferred from his relevant rhetoric. In his letter dated 7 February 2011, a time two years after the Trademark Bureau of the P.R.C. made the decision on his "TRUMP" trademark application in class 37, which is addressed to then Commerce Secretary Gary Locke of Obama administration of the U.S. and obtained by the *Huffington Post* through a Freedom of Information Act request (Cherkis & Wilkie, 2016, Sept. 14), Donald Trump claims:

> For many years, I have heard that the Court and political systems of China, and those of Macao, are totally corrupt. I spent hundreds of thousands of dollars in legal fees to secure my own name and globally recognized brand from Chinese individuals who seek to trade off of my reputation… my world-renowned name, a name which is protected in every other major country… such a ludicrous result is a clear indication that their entire system is faithless, corrupt and tainted. Who could expect anything from a deceitful culture…Their behavior should be a clear warning to the rest of the world to refrain from any trade practice or business relationship with them! (Para. 2)

Donald Trump at that time seemed to sense, with prophetic vision in the letter, his future fate in the judicial system of China: "while we should win the case 100%, we won't because the cards are sacked against Trump" (Para. 5). But why the odds are not in favor of him on the trademark "TRUMP" he applies with his own name? In the letter Donald Trump explains with the conclusion that "China's entire system of business is geared against the U.S. and other countries trying to enter their market, extending from the highest to the lowest officials" (Para. 5). During the 'Good Morning America' interview on 3 November 2015, a time several months after he lost his final appeal in the case of "TRUMP" trademark in China, he stated something most probably related to his feeling of chagrin: "But when you see China, these are fierce people in terms of negotiation. They want to take your throat out; they want to cut you apart. These are tough people. I've dealt with them all my life" (Stracqualursi, 2017, Nov. 9). In the same interview, Trump even described China as an enemy: "Because it's an economic enemy, because they have taken advantage of us like nobody in history." Trump went on: "It's the greatest theft in the history of the world what they've done to the United States. They've taken our jobs" (Phelps, 2017, Nov. 9, para. 6). These graphic metaphors of rhetoric most probably reflect that the negative legal experience in China reinforces businessman Donald Trump's negative view toward China, consequently making a China-adversary President Donald Trump.

On 8 December 2016, one month after winning the U.S. Presidency, Donald Trump accuses China of "massive theft of intellectual property" and unfairly taxing US companies, "they haven't played by the rules" (Friedman, 2016, Dec. 9). On 14 August 2017, Trump, now US President, orders a "Section 301" probe into alleged Chinese intellectual property theft. On 3 April 2018, Trump unveils plans for 25% tariffs on about $50 billion of Chinese imports. On 4 April 2018, China responds with plans for retaliatory tariffs on about $50 billion of U.S. imports ("Timeline: Key dates", 2020, Jan. 15). And it goes on. Not to overreach the span of ten years from 2006 to 2016 too much, the time line goes back to the end of 2016, when US-President-elect Donald Trump's harsh rhetoric toward China on "intellectual property theft" accusation might, by plausible cognition, have influenced Michael Jordan's trademark case in China to turn around after all, although Jordan's super fame in China as NBA star and the Chinese-President-to-be XI Jingping's liking of NBA game matching in 2012 might not have helped Jordan win his trademark case in China. So, before the decisions and rulings in the Trump case are scrutinized and further discussed, the Jordan case is worthy of probing into for the purpose of referencing, since the two cases are not limited in paralleling their time lines.

A Parallel and Matching Reference: U.S. NBA Super Star Michael Jordan's Trademark Case in China

Michael Jeffrey Jordan's trademark case in China was a series of sub-cases, numbering 68 as final rulings by Beijing Higher People's Court as second instances—he lost in all the cases ("Jordan series", 2019, Sept, 13). In all the sub-cases Michael Jordan experienced similar routes as Donald Trump did: rejected by the Trademark Review Committee in early 2014, then lost in the first instances ruled by Beijing First Intermediate People's Court in late 2014, then lost again, lost all, in the second instances (final rulings) by Beijing Higher People's Court in mid-year of 2015. Michael Jordan lost all the sub-cases despite his being so much more well-known than pre-May-2015 Donald Trump in China due to the fact that by 1994, all the NBA finals were shown live in China by CCTV, the state run television network (Saiidi, 2018, Nov. 20), and at the time Jordan brought up his trademark case in China in 2012 as the top star of the NBA, "the NBA is the [China] country's most popular sports league. Shortly before becoming Chinese president in 2012, XI Jinping caught a Lakers game and cheered on Kobe in Los Angeles" (Mansfield, 2019, Oct.15). After losing all in the final rulings, Donald Trump soon went on to campaign for the Presidency of the U.S., disregarding the lost case; but Michael Jordan went on to apply for retrials to the P.R.C. Supreme People's Court. As Donald Trump's rhetoric against China's "theft" on intellectual property rights got louder on the world stage, one voice started to change tone—the P.R.C. Supreme People's Court's interpretation of intellectual property rights. One month after Donald Trump's winning of the U.S. Presidency, Michael Jordan embraced a breath-taking turnaround in his trademark case: the P.R.C. Supreme People's Court ruled in favor of him on 7 December 2016. The Supreme Court's ruling is exactly based on "name rights", deriving from the "prior rights" in Article 31 of the *Trademark Law*, the very rights that the Trademark Review Committee in the Trump case even refuses to hear:

> The "prior rights" stipulated in Article 31 of the *Trademark Law* include the name rights that others have enjoyed before the date of filing the disputed trademark. The retrial applicant [Michael Jordan] has his prior name rights to the disputed trademark symbol "乔丹" [translation in Chinese characters of "Jordan", pronounced and written "Qiao Dan" in Mandarin Pinyin with Romanized letters]. Knowing that the retrial applicant has a long and extensive reputation in our country, Jordan Sports Company still uses "乔丹" to apply for the registration of the disputed trademark, which may easily cause the relevant public to mistakenly believe that the goods marked with the disputed trademark have specific connection with the retrial applicant, such as endorsing, licensing, etc., which prejudices the retrial applicant's prior name rights. Jordan Sports Company has obvious subjective malice in registering the disputed trademark. … Therefore, the registration of the disputed trademark violates provisions of Article 31 of the *Trademark Law*. (IP House. *(2016) Supreme Court Administrative Retrial No. 27*)

How the turnaround was made possible to a case in which the plaintiff already lost completely? The Supreme People's Court explains it thoroughly in its verdict, which constitutes the "common-law" exemplar in evaluating the Trump case with hindsight.

The Request, the Defense, and the Rulings by the Trademark Review Committee, the First and the Second Instance in the Jordan Case: Unbelievably, the verdict on the Jordan case by Beijing Higher People's Court, i.e., the written judgment, the wording, does not provide adequate and accurate information on the actual trial (IP House. *(2015) Higher Administrative (Intellectual) Final Verdict No.1915*), although it does specify that "The Trademark Review Committee made the No. 52058 Decision before 1 May 2014 based on the *Trademark Law* revised in October 2001, and the *Trademark Law* revised in August 2013 came into effect on 1 May 2014. Therefore, this case should be heard in accordance with the *Trademark Law* revised in October 2001 [2001 version of the *Trademark Law*]."

So, the verdict of the Supreme Court is relied on to provide the original request by Michael Jordan, the decision by the Trademark Review Committee on the original request, and the rulings of the first and the second instance.

Retrial Applicant's Original Request to the Trademark Review Committee: On October 31, 2012, the retrial applicant filed a revocation application to the Trademark Review Committee, requesting to revoke Jordan Sports Company's No. 6020569 trademark "乔丹" (hereinafter referred to as the disputed trademark). … The main reasons for the retrial applicant to apply for revocation of the disputed trademark are: … (2) The registration of the disputed trademark has prejudiced the prior rights of the retrial applicant. The disputed trademark can easily cause the relevant public to associate it with the retrial applicant. Without the permission of the retrial applicant, Jordan Sports Company applied for registration of a mark that is the same or similar to the Chinese translation of the retrial applicant's name as a trademark, which belongs to the situation of "damaging the existing prior rights of others" stipulated in Article 31 of the *Trademark Law of the People's Republic of China* amended in 2001…

Jordan Sports Company's Initial Defense to the Trademark Review Committee: "Jordan" is a common English surname, which is also used as a name by some people in our country. "Jordan" does not form a unique correspondence with the retrial applicant. 2. "乔丹" is a trade name legally owned by Jordan Sports Company. The disputed trademark and other series of trademarks are legally registered. After years of publicity and use by Jordan Sports Company, they have formed considerable popularity and reputation, and have been certified [by the government] as *Well-Known Trademark*. … 3. Having been vigorously promoted and widely used by Jordan Sports Company, the disputed trademark has established a one-to-one correspondence with the Company. Jordan Sports Company pays attention to product quality, so its products have won the trust and the choice-of-purchase by consumers. Jordan Sports Company is the creator of the valuable "乔丹" brand and a series of other brands, and is the real legal owner. … 4. Jordan Sports Company's act of registering a large number of trademarks is a normal defensive registration for the protection of intellectual property rights… 5. When Jordan Sports Company has invested heavily in the trademarks of "乔丹" and others to conduct business, it is malicious for the retrial applicant to obstruct the normal operation of Jordan Sports Company by filing lawsuits and applying for the cancellation of the disputed trademark.

Decision Made by the Trademark Review Committee: On 14 April 2014, the Trademark Review Committee made a decision ruling to maintain the disputed trademark. The main reasons are as follows: (1) Regarding Article 31 of the *Trademark Law*. 1. The retrial applicant has provided a lot of evidence of its publicity and coverage by Chinese media, which can prove that he has a high reputation in China and in the field of basketball. However, there are certain differences between the wording of the disputed trademark "乔丹" and "Michael Jordan" as well as its Chinese translation "迈克尔•乔丹". Moreover, "Jordan" is a common surname in the United Kingdom and the United States, so it is difficult to determine that there is a natural correspondence between this surname and the retrial applicant. 2. When publicizing and using the name and image of the retrial applicant, the retrial applicant and its business partner Nike use the full name of "Michael Jordan" or "迈克尔•乔丹" … 3. Jordan Company was approved to register No. 1541331 "乔丹" trademark (hereinafter referred to as No. 331 trademark) in 2001, and has been protected by Well-*Known Trademark*. 4. Although some media refer to the retrial applicant with "乔丹" in the reports on basketball, the frequency of use is limited. Neither the media reports nor Nike has formed a unified and fixed form of use of this denotation. Comparing to Jordan Sports Company's use of the marks related to the disputed trademark, considering the comprehensiveness, continuity, and unique correspondence in the usages by the two parties, it cannot be determined in this case that the corresponding relationship between "乔丹" and the retrial applicant is stronger than that between "乔丹"and Jordan Sports Company. In summary, the registration of the disputed trademark does not prejudice the name rights of the retrial applicant.

The Rulings by the Courts of the First and the Second Instance: The Court of first instance [Beijing First Intermediate People's Court] held that (1) Regarding Article 31 of the *Trademark Law*. The disputed trademark is "乔丹". "Jordan" is an American surname. The evidence in this case is not enough to prove that "Jordan" alone [without given name] clearly points to the retrial applicant. … Existing evidence is also insufficient to prove that the registration and use of the disputed trademark has improperly exploited the reputation of the retrial applicant, or may have other effects on the retrial applicant's name rights. Therefore, the evidence in this case is not enough to prove that the registration of the disputed trademark has prejudiced the retrial applicant's name rights.

> The retrial applicant refuses to accept the judgment of the first instance … filed an appeal … The main reasons for the appeal are: (1) the registration of the disputed trademark violates the provisions of Article 31 of the *Trademark Law*…
> The Court of second instance [Beijing Higher People's Court] ruled that the appeal is rejected and the judgment of the first instance is upheld.

The Retrial by the P.R.C. Supreme People's Court on the Jordan Case: The Supreme Court verdict (2016) No. 27 is a famous ruling in China, ranking top in the *Top 10 Intellectual Property Cases in Chinese Courts in 2016* (Supreme People's Court. 2017, April 24). On 8 December 2016, the Supreme Court convened a public announcement of the final ruling with live streams to the whole country. On the same day, Michael Jordan himself issued a statement through the media, stating

> "I am very happy to see that the Supreme People's Court recognizes my right to protect my name in its judgment in the Jordan Sports Company trademarks dispute." … "In the past thirty years, I have built my name and reputation into an internationally renowned brand. From my early career in the NBA to my trip to China last fall, millions of Chinese fans and consumers have already known my Chinese name "乔丹", and today's verdict makes every Chinese fan and Chinese consumers all know that Jordan Sports Company and its products have nothing to do with me." ("Michael Jordan is pleased", 2016, Dec. 8, para. 2-3)

Even the American Chamber of Commerce welcomes the judgement of the Supreme Court of China: Mark Eliot, executive vice chairman of global intellectual property of the American Chamber of Commerce, issued a statement saying "both Chinese and foreign brands can benefit from today's judgment. This judgment marks a step forward for China to build better business ecology" ("American Chamber", 2016, Dec. 8, para. 4). The Supreme Court's judgements of prior rights, name rights, trademark rights shall greatly help the coming deciphering and discussing on the rulings in the Trump case, serving as guidelines for relevant legal matters in the Trump case.

Application and Defense in the Retrial of Jordan Case by the Supreme Court

> The retrial applicant refuses to accept the judgment of the second instance, and applies to this Court for a retrial on the grounds that the facts and the applicable laws in the judgment of the second instance are wrong, and his appeal reason pertaining to Article 31 of the *Trademark Law* was omitted [by the second instance] . . . The main reasons [for a retrial] are: (1) . . .The *Standards for Trademark Examination and Adjudication* by the Trademark Review Committee also stipulates that "prior rights" include name rights. Therefore, the "prior rights" stipulated in Article 31 of the *Trademark Law* include name rights. (2) The retrial applicant has the right to name "乔丹" . . . The Chinese translation of a foreigner's surname can also be protected as a name symbol. Due to the length of foreigners' full names, the public in our

country is accustomed to use the Chinese translations or aliases of their surnames to call them.

The Trademark Review Committee argues: (1) the "prior rights" stipulated in Article 31 of the *Trademark Law* include name rights. The name rights of foreigners can also be protected in our country according to law… (2) … The protected object of name rights is the name of a natural person. . . The name has the value that can be commercialized, and what is protected by the trademark law is this kind of commercial value or economic benefit, which is closely related to the degree and field of the popularity of the name owner in our country...

The third party (Jordan Sports Company) argues: (1) Although Article 31 of the *Trademark Law* stipulates "prior rights", it does not explicitly stipulate that name rights are included. . . (2) The retrial applicant retrial cannot have the right to name "乔丹". 1. The name of the retrial applicant is "Michael Jordan", and "乔丹" is only one of the usual translations of the surname "Jordan" commonly used in the United Kingdom and the United States. "Surname" only or its translation cannot be the object of name rights. … (7) Our country's trademark system adopts the "principle of prior registration". If the effectiveness of name rights is excessively expanded, the trademark registration system will become redundant to a great extent. Therefore, the "prior rights" in Article 31 of the *Trademark Law* should be strictly interpreted in this case . . .

The Verdict on the Jordan Case by the P.R.C. Supreme People's Court: The Supreme Court in the retrial upholds that the focus of the dispute in this case is whether the registration of the disputed trademark prejudices retrial applicant's name rights to "乔丹", which violates the provisions of Article 31 of the *Trademark Law* that "application for trademark registration shall not damage the existing prior rights of others."

This Court upholds that the prior rights that have been specifically stipulated in the *Trademark Law* should be protected in accordance with the special provisions of the *Trademark Law*. For those prior rights that are not specifically stipulated in the *Trademark Law*, they should be protected in accordance with the *General Principles of Civil Law* [("National People's Congress", 2000)], the *Tort Liability Law* [("National People's Congress", 2009)] and other laws.

The First Paragraph of Article 99 of the *General Principles of Civil Law* stipulates: "Citizens have name rights, have the right to decide, use and change their names in accordance with regulations, and others are prohibited from interfering, embezzling or counterfeiting [the names]." The Second Paragraph of Article 2 of the *Tort Liability Law* stipulates: "The civil rights and interests referred to in this Law include the rights to life, health, name... and other personal and property rights." Accordingly, name rights can constitute the "prior rights" stipulated in Article 31 of the *Trademark Law*. If the registration of a disputed trademark impairs the prior name rights of others, it shall be determined that the registration of the disputed trademark violates the provisions of Article 31 of the *Trademark Law*.

When applying the provisions of Article 31 of the *Trademark Law* to protect the prior name rights of others, it involves not only the protection of the personal dignity of natural persons, but also the protection of the names of natural persons, especially the economic benefits contained in the names of well-known figures. Since the main function of a trademark is to distinguish the sources of goods or services, registering the name of another person who has the prior name rights as a trademark without permission will not only damage the personal dignity of that natural person, but also easily cause the relevant public to mistakenly believe that the goods or services marked with the trademark have specific connection with that natural person, such as endorsing, licensing, etc. This behavior not only damages the name rights of that natural person, but also damages the legitimate rights and interests of consumers.

In summary, in accordance with the provisions of Article 99 of the *General Principles of Civil Law* and Article 2 of the *Tort Liability Law*, natural persons have name rights according to law. If the name of another person with prior name rights is registered as a trademark without permission, it is easy to cause the relevant public to mistakenly believe that the goods or services marked with the trademark have specific connection with that natural person, such as endorsing, licensing, etc., it shall be deemed that the registration of the trademark damages the prior name rights of another person and violates the provisions of Article 31 of the *Trademark Law*.

On the question of whether foreigners can claim the protection of name rights with respect to parts of their foreign names in Chinese translation. This Court believes that due to differences in language and culture and for the convenience of addressing, the relevant public in our country is usually used to referring to and addressing a foreigner by a partial Chinese translation of his foreign name, instead of using the Chinese translation of his full name, and sometimes they are even not knowing and familiar with the Chinese translation of his full name. Therefore, when judging whether a foreigner can claim the protection of name rights for part of the Chinese translation of his foreign name, it is necessary to consider the addressing habits to foreigners possessed by the relevant public in our country.

This Court upholds that the decision by the sued, the judgment of the first instance is all wrong in ascertaining the facts and applying the laws and should be revoked; the judgment of the second instance, which wrongly upholds the judgment of the first instance and omits the retrial applicant's appeal reason that the disputed trademark violates the provisions of Article 31 of the *Trademark Law*, should also be revoked.

Findings and Discussions: Courts and Bureaus, Lawyers and Judges, Businessman and President Trump: The omission of Michael Jordan's appeal claim pertaining to Article 31 of the *Trademark Law* in the second instance constitutes the apparent reason for the Supreme Court to revoke the judgment by the Beijing Higher People's Court (BHPC). As early as in BHPC's recapitulation of the Decision made on Michael Jordan's request by the Trademark Review Committee (TRC), the ruling based on Article 31 is omitted (IP House. *(2015) Higher Administrative (Intellectual) Final Verdict No.1915*), which appears, by contrast, in the recapitulation made by the Supreme Court. In the Supreme Court's recapitulation of the judgment of the first instance on the Jordan case, the lengthy ruling based on Article 31 is one of the two ruled issues by Beijing First Intermediate People's Court (BFIPC), which is omitted in the recapitulation by BHPC. One of the two points in Michael Jordan's appeal to BHPC is the claim that the disputed trademark violates the provisions of Article 31 of the *Trademark Law*, which appears in the Supreme Court's recapitulation but is omitted in the BHPC's recapitulation. At last, BHPC did not rule the Jordan case over Article 31, which was one of the wrongs that caused the Supreme Court to revoke its ruling.

The Rulings by BHPC and BFIPC in the Trump Case: Two of the three BHPC ruling judges in the Jordan case are also two of the three BHPC judges who ruled the Trump case. The BHPC even did not bother to specify the *Trademark Law* version it based on to make the ruling in the Trump case, although it did that in the Jordan case three months later. The whole verdict by BHPC poses the following problems. First, the BHPC's ruling on the Trump case is based on a statement unsubstantiated by the *Trademark Law* that "up to the trial period of this case, the No. 5743720 trademark "TRUMP", namely the cited trademark [by DONG Wei], is still a prior registered trademark in effect, which can be used as the basis for judging whether the applied trademark in this case can be registered." In accordance with the *Trademark Law*, the application of No. 5743720 Trademark "TRUMP" in class 37 by DONG Wei had been in legal process that is depicted by Article 33 of the *Trademark Law*, "a process of trademark objection review" as described in Donald Trump's reasons for appealing the ruling of the first instance.

The objection was apparently brought up by appellant Donald Trump. The after-process due is further stipulated by Article 34:

> If it is ruled that the objection is untenable, the registration shall be approved, a trademark registration certificate shall be issued, and the registration shall be announced; if it is ruled that the objection is tenable, the registration shall not be approved.

Checking the Trademark Bureau's database updated up to 9 Dec. 2021, the "trademark process" of No. 5743720 trademark "Trump" (always quoted as "TRUMP" in all the rulings) is "waiting to print registration certificate" on 12 May 2015, and "trademark registration certificate" on 21 May 2015, three days after the BHPC's final ruling on 18 May 2015, and the "process character" is "objection review" (Application No. 5743720. 2021, Dec. 9), which proves that appellant Donald Trump was telling the truth. So, the No. 5743720 trademark "Trump" by DONG Wei was neither "registered" nor "in effect" and it cannot "be used as the basis for judging whether the applied trademark ["TRUMP" by Donald Trump] in this case can be registered." BHPC's ruling could have made the applied trademark be registered if it had found out the "distinctiveness and … popularity" of the trademark "TRUMP" claimed by appellant Donald Trump and ruled that the application of trademark "Trump" by DONG Wei violates Article 13 of the *Trademark Law*. Second, BHPC did find out that "the applied trademark ["TRUMP" by Donald Trump] and the cited trademark ["Trump" by DONG Wei] are identical in terms of letter composition and pronunciation", but did not figure out that the "cited trademark" violates Article 31 of the *Trademark Law* in fringing the name of Donald Trump, which would be an easy job considering Donald J. Trump faces his own English surname "Trump" attempted by an individual DONG Wei, while Michael Jeffrey Jordan was up against the Chinese translation of his surname registered by gigantic Jordan Sports Company.

Third, BHPC did not comply with Article 33 of the *Trademark Law*, which requires "The People's Court shall notify the opposing party in the trademark review procedure to participate in the trial as a third party." Otherwise, Dong Wei's arguments would have been heard loud and clear, as what happened with Jordan Sports Company in the Jordan case. Fourth, BHPC rules the Trump case based on Article 28 but does not quote and interpret it. Overlaying with the missing of the specification of the applied version of the *Trademark Law*, which is specified by all other Courts aforementioned, a "misdemeanor" is committed here at least if no "felony" is committed like violating the provisions of *Trademark Law*. The BFIPC did quote Article 28, in addition to specifying the 2001 version of the *Trademark Law*, as follows:

> Article 28 of the *Trademark Law* stipulates that the trademark applied for registration shall not constitute a trademark that is the same of or similar to the trademark already registered by another person on the same or similar goods.

This is an incomplete quote. The full text of Article 28 of the *Trademark Law* states:

> Where a trademark applied for registration does not comply with the relevant provisions of this Law or is identical or similar to another person's registered or preliminarily approved trademark on the same or similar goods, the application shall be rejected by the Trademark Bureau and no announcement shall be made. (As quoted in 3.2)

The missing of the first part of Article 28 misses the intention to investigate whether DONG Wei's application of trademark "Trump" "does not comply with the relevant provisions of this Law", which are Article 13 and Article 31. It is worth mentioning here that the condition "preliminarily approved" in Article 28 is also missed in BFIPC's quote above. What is also missing in the trial is the Trademark Review Committee who "was summoned by this Court and stated in writing that it would not participate in the trial of the case."

The Trademark Review Committee and the Trademark Bureau in the Trump Case: Perhaps the Trademark Review Committee was overconfident in not participating in the trial. Its confidence in the rightness of its ruling is fully reflected in its assertion:

> Donald Trump states that "without permission, the owner of the cited trademark applied for registration of Donald Trump's name as a trademark, which infringed the name rights of others" is not within the scope of the trial of this case, and the Trademark Review Committee will not hear it. (As quoted in 3.2)

The legal representative for Michael Jordan dug out that "The *Standards for Trademark Examination and Adjudication* by the Trademark Review Committee also stipulates that "prior rights" include name rights. Therefore, the "prior rights" stipulated in Article 31 of the *Trademark Law* include name rights" (as quoted in 4.3). So actually, the Trademark Review Committee knew "prior rights", knew name rights, and surely should know Donald Trump's name rights over the trademark "Trump" applied by DONG Wei, which can be proved by Trademark Review Committee's response:

> The "prior rights" stipulated in Article 31 of the *Trademark Law* include name rights. The name rights of foreigners can also be protected in our country according to law… The protected object of name rights is the name of a natural person. . . The name has the value that can be commercialized, and what is protected by the *Trademark Law* is this kind of commercial value or economic benefit… (As quoted in 4.3)

It seems that the Trademark Review Committee knows all, but ignores all, making up a situation foreseen by Donald Trump himself: "…if honesty prevailed, there would be no way we could lose" (Cherkis & Wilkie, 2016, Sept. 14, para. 4 of the letter). But the Trademark Review Committee upheld the Trademark Bureau's decision on rejecting Donald Trump's application of trademark "TRUMP" in class 37 anyway, based on article 28 of the *Trademark Law*. So, the ball rolls back to the Trademark Bureau. Checking the Trademark Bureau's database updated up to 9 Dec. 2021, the Trademark Bureau received DONG Wei's application on 24 November 2006, but primarily approved the application on 20 October 2009 (Application No. 5743720. 2021, Dec. 9), almost three years later. Donald Trump filed the application on 7 December 2006, received the rejection by Trademark Bureau on 30 November 2009 (Application No. 5771154. 2021, Dec. 9). It means that at the time Trademark Bureau received Donald Trump's application, Article 28 even wasn't governing since DONG Wei's application wasn't primarily approved yet. In technicality, the Trademark Bureau rejected Donald Trump's application 40 days after it primarily approved DONG Wei's application, complying with Article 28. But, why have the two events been delayed for so long as three years?

The database shows that DONG Wei received objection from Donald Trump on 14 December 2009, two weeks after Donald Trump received rejection from the Trademark Bureau. By this time the *Trademark Law* governs again through Article 33:

> Where an objection is filed against a trademark that has been preliminarily approved and announced, the Trademark Bureau shall hear the objector and the objectee to state the facts and reasons, and make a ruling after investigation and verification. If a party refuses to accept the ruling, it may apply to the Trademark Review Committee for review within 15 days from the date of receiving the ruling.
>
> If a party is not satisfied with the ruling of the Trademark Review Committee, it may bring a suit in a People's Court within 30 days from the date of receiving the ruling. The People's Court shall notify the opposing party in the trademark review procedure to participate in the trial as a third party.

So, Article 33 requires the Trademark Bureau to talk to (hear) the objector and objectee. The Trademark Bureau even had the opportunity to do the talk during the three-year-waiting, that is, before DONG Wei's application was preliminary approved on 20 October 2009. It can be understood that the intention of the *Trademark Law* is

to solve the matter by the Trademark Bureau before the matter becomes a case and goes to the Trademark Review Committee then to the People's Court. This intention is clearly stated in the last part of Article 31 of the *Trademark Law*:

> An application for trademark registration shall not damage the existing prior rights of others, nor shall it preemptively register by improper means a trademark that has been used by others and has certain influence.

Based on this Article, the Trademark Bureau "shall" not make DONG Wei to "preemptively register by improper means a trademark that has been used by others and has certain influence." If here in the Article "prior rights of others" apply to foreigners' name rights, by the same token "a trademark that has been used by others" applies to foreigners too, which can be the trademark "TRUMP", as described by *New York Times* in 1984 (Geist, 1984, April 8), when DONG Wei was only 13 years old (based on his application to the Trademark Bureau in 2006):

> Having just opened last year, Trump Tower is already becoming something of a New York landmark (para. 27) …While critics charge that Mr. Trump is a raving egomaniac, bent on putting his name on every inanimate object in the city, he claims that putting on the Trump name is value added (para. 14) …Just as the name Donald Trump is well-known to most New Yorkers, the name is now becoming recognized throughout the country. He is fast becoming one of the nation's wealthiest entrepreneurs, able to buy practically anything he wants. He controls a company [The Trump Organization] with assets estimated - some say conservatively estimated - $1 billion. (Para. 11)

Billionaire Donald Trump, being that as early as in 1984, was one of the business cohorts that the P.R.C wanted to attract to come to invest and to do business after joining the WTO in 2001 (China joins WTO, 2001, Dec. 11). So 2001 is the year when P.R.C. statute laws like the *Trademark Law* were enacted to protect intellectual rights to set up friendly social settings for foreign investment, which is vividly illustrated by the fact that in both the two previous versions, the 1982 *Trademark Law* ("China National", 2015… *(Year 1982)*) and the 1993 *Trademark Law* ("China National", 2015… *(1993 Revision)*), the content of Article 13 and Article 31 are not there. So around 2001 it was a transition time from intellectual property ignorance to intellectual property rights in the P.R.C., which was even realized by the legal representatives of Jordan Sports Company in the Supreme Court's retrial focusing on the Article 31 brought up by Jordan's legal representatives: "Before the amendment of the *Trademark Law* in 2001, there was no provision in the *Trademark Law* to protect the "prior rights", and Jordan Company's application for the registration of the Jordan series of trademarks complied with the law without obvious malice."

The Judges and Legal Representatives in and after the Trump Case: Unlike the legal representatives of the plaintiff in the Jordan case, who activated Article 31 from the very beginning, the Unitalen Attorneys at Law in Beijing that had represented Donald Trump, in this case lawyer ZHOU Dandan, did not quote either Article 13 or Article 31, so the Courts never made any relevant rulings pertaining to Article 13 or Article 31, based on BHPC and BFIPC's own written judgments. In the first instance, ZHOU Dandan claims that Donald Trump's application of trademark TRUMP "does not violate the provisions of Article 28 of the *Trademark Law*", but the BFIPC rules that "the application for registration by the applied trademark violates Article 28 of the *Trademark Law*" (IP House. (2014) No.1 Intermediate Administrative (Intellectual) First Verdict No.6095). In the second instance, ZHOU claims again that "The application for registration of trademark TRUMP "does not violate the provisions of Article 28 of the *Trademark Law*", but the BHPC rules that "the registration of the applied trademark does not comply with the provisions of Article 28 of the *Trademark Law*" (IP House. (2015) Higher Administrative (Intellectual) Final Verdict No. 345). As for why she wasn't successful in objecting DONG Wei's trademark "Trump" – "one she described as malicious squatting" (LI, 2016, Nov. 14, para. 15), ZHOU Dandan responded right after Donald Trump won the U.S. presidential election that "it was not surprising that Dong succeeded in keeping his trademark because although Trump and his services have been world famous, they were not a household name in China back in 2006" (HU, 2016, Dec. 6, para. 7), and since President-elect "has become a household name, even in China, which could change the outcome in any potential trademark disputes in the future" (LI, 2016, Nov. 14, para. 5). It can be plainly acceptable that ZHOU's realization that Donald Trump and his services had been world famous should not come to her after Trump won the U.S. presidential election, since she had been representing Donald Trump since 2006. Such being the case, pursuing Article 13 of the *Trademark Law* to win for Donald Trump wouldn't be that difficult. Even how to prove Trump's services are famous so his trademarks are "well-known" is provided in detail by the *Trademark Law*:

Article 14 In determining a well-known trademark, the following factors shall be taken into account:

(1) The extent to which the relevant public knows the trademark;
(2) The duration of use of the trademark;
(3) The duration, degree and geographic scope of any publicity work of the trademark;
(4) The record that the trademark is protected as a well-known trademark;
(5) Other factors contributing to the well-known trademark.

ZHOU Dandan herself never explained why she hadn't pursued Article 13 and Article 31 in the Trump case, but anyway she should be glad that she got the opportunity to represent a would-be U.S. President, and thankful to the new P.R.C. statute laws like the 2001 version of the *Trademark Law* for granting her the right to represent plaintiff Donald Trump. The 2001 version of the *Trademark Law* establishes the ruling of a case by a People's Court (Article 33 as quoted before), which does not exist in the 1982 and 1993 versions of the *Trademark Law*. Instead, the 1982 and 1993 versions of the *Trademark Law* depict in their Article 21 and Article 22 that on any objection, "final ruling is to be made by the Trademark Review Committee." Have the Judges, relevant or irrelevant to the Trump case, ever explained why Article 13 and Article 31 were never applied in the Trump case? Since although the *Trademark Law* went from intellectual property ignorance to intellectual property rights at the WTO-joining time of 2001, the judges of the People's Courts might not since they kept ignoring the new articles on intellectual property rights like Article 13 and Article 31 up to 2015 when the BHPC made the final ruling on the Trump case. But, how about after the Trump case?

The overall answer is an apparent "No". No judges have applied Article 13 and/or Article 31 of the *Trademark Law* to the Trump case, even after the trials on the Trump case. But, interpreting the articles of the *Trademark Law* has progressed significantly, with Supreme Court's ruling on the Jordan case based on Article 31 as the most monumental. Regarding Article 13, rarely and preciously, on the column of "Judge's Statement" of journal *Applications of Laws*, a judge from BHPC finally came out in 2019 and upheld Article 13 (ZHANG 2019):

> Article 13 of China's *Trademark Law* stipulates that if a trademark applied for registration on the same or similar goods is a copy, imitation or translation of a well-known trademark not registered in China, which is easy to cause confusion, it shall not be registered and its use shall be prohibited. (p. 128)
> The protection of unregistered well-known trademarks breaks the single principle of obtaining trademark rights through registration, which is conducive to the integration of our country's trademark system with international standards, and is also conducive to better protecting the legitimate rights and interests of trademark owners and encouraging and promoting fair competition. A detailed count of our country's unregistered well-known trademarks mainly presents the following three outstanding features: First, those who claim for unregistered well-known

trademarks are mostly the trademarks with high popularity in the world but have not applied for registration in our country, such as trademark "IKEA"… (pp. 119-120)

Our country's first trademark law, the 1982 *Trademark Law*, does not provide for the protection of well-known trademarks. However, protection of well-known trademarks after the formal accession to the Paris Convention on March 19, 1985 has become a convention obligation that our country must fulfill. The amended *Trademark Law* in 1993 added special protection provisions for well-known trademarks, which can be said to be the rudimentary form of the protection of well-known trademarks in our country. … On 27 October 2001, well-known trademarks formally entered our country's legal system after the second amendment to the *Trademark Law*. At the same time, unregistered well-known trademarks were protected in the form of law for the first time. On 12 October 2002, the Supreme People's Court issued the *Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Disputes on Trademarks*, stipulating that the copy, imitation and translation of well-known trademarks or their major parts that have not been registered in China that shall be easy to cause confusion when used as trademarks on the same or similar goods, shall stop the infringement and bear the relevant civil liability. (p. 120)

Regrettably, neither Donald Trump nor trademark "TRUMP" is mentioned by judge ZHANG Lingling of BHPC, despite several other trademarks are quoted in addition to "IKEA". But, her statement supports the realization that it is the *Trademark Law* amended in 2001, the year China joined the WTO, that embodies the intellectual property rights on well-know international trademarks, even though they are not yet registered in China. No comments from the two judges who finally ruled in 2015 both the Trump appeal case and the Jordan appeal case could be obtained.

From Losing Businessman to Hawkish U.S. President toward China: Obviously, the ruling after ruling that made Donald Trump lose also made him a businessman with negative experience and attitude toward China. As early as in 2011, the letter to then U.S. Commerce Secretary Gary Locke "reveals how deeply personal China is to Trump, and how he was arguably at least as offended at how it treated him as how it treats the United States. He's been a leading critic of U.S. trade policy with China since at least 2011 – in the wake of his personal and business dispute" ("How it got personal", 2016, Sept. 13, para. 2). Finally on 8-10 November 2017, "nine months after … office … US President Donald Trump starts a three-day state visit to China. This is his first visit to China since taking office. President Trump is the very first foreign leader making a state visit to China after the 19th National Congress of the Communist Party of China" ("Preview of US President", 2017, Nov. 8), and he was welcomed by the General Secretary XI Jinping of the Communist Party of China. During "a signing ceremony in Beijing … [for] … $250 billion worth of U.S.-China business agreements … Trump and … Xi … sat on a dais in arm chairs as U.S. and Chinese business leaders walked up to a table to sign multiple 'memorandums of understanding' for future business deals", then President Donald Trump "offered a surprising qualifier: 'I don't blame China. … After all … who can blame a country for being able to take advantage of another country to the benefit of its citizens?'". (Phelps, 2019, Nov. 9, para. 2-4). "I don't blame China" might be euphemism; "who can blame a country for being able to take advantage of another country to the benefit of its citizens?" might be equivoque. The wording might partially express Donald Trump's sub-consciousness that China took advantage of the U.S. and himself to benefit its citizen DONG Wei, a man who seeks "to trade off of my reputation… my world-renowned name" (Cherkis & Wilkie, 2016, Sept. 14, para. 2 of the letter).

The maneuvers after the BHPC's final ruling by Unitalen Attorneys at Law in Beijing might not work out as something positive to politician Donald Trump. Without a legal overturning or retrial of the "final ruling" by BHPC on Donald Trump's "TRUMP" trademark application in class 37, the adjudication of the closed case, which is proved by the analysis of this paper to be inconsistent with the provisions of the Trademark Law, shall picture Donald Trump as a loser forever historically.

Michael Jordan finally got the Supreme Court's adjudication in favor of him. The public trial of the case interested a big audience as what is depicted in the following:

> During the public hearing of the case on the World Intellectual Property Day on April 26, 2016, China Court Network managed by the Supreme People's Court, the Supreme People's Court Official Weibo, and the Court Channel of Sina Network have conducted a live broadcast of the trial processes. The total number of viewers on the Sina Court Channel has exceeded 1.5 million. (TAO et al, 2020, p. 30)

With reasonable and most conservative projection, if the Supreme People's Court of the People's Republic of China holds a public trial of the Trump trademark case at any time from now on up to a foreseeable future, on World Intellectual Property Day or not, the proceedings shall probably attract more than 1.5 million viewers.

Donald Trump must like his "world-renowned name" and affiliated rights like trademark TRUMP to be clarified by the Supreme Court of China. He is a man with character, having his own belief, values and outlooks. He is a fighter. Therefore, most probably, if his lost case is not rectified in legal terms but finally filed as a closed case by the Beijing Higher People's Court, that could forever imprint a very unusual image (highly possible a negative one) of China in his mentality, which would doubtlessly foster more hawkish US policies toward China, first from sitting U.S. President Trump himself, thereafter from other U.S. statesmen.

Epilogue: In 1839 a Hong Kong villager named LIN Weixi (LIN Wei-hsi) brawled with several drunk British merchant sailors, lost his life the second day after the fight due to the impact of stick-strikes. The incident, which was handled in a confrontational way by Chinese and British incumbents due to the discrepancies between Qing Dynasty and Britain in judicial concepts, principles, and procedures, eventually triggered the Sino-British Opium War (1840) and resulted in the cession of Hong Kong to Britain based on China's first "unequal treaty" (1842), the *Treaty of Nanking*, which earns extraterritoriality (historically first borne on China) for British subjects in China with its supplementary treaty (1843), the *Treaty of the Bogue*. Within this tiny island, as compared to Mainland China, the confrontation in judicial concepts, principles, and procedures happened again in the third century since LIN Weixi Incident. As described by *A Concise History of the Communist Party of China*, "In June 2019, protests erupted in Hong Kong over the amendment of extradition legislature, posing an unprecedented challenge to the practice of One Country, Two Systems in the special administrative region" ("Institute of Party History", 2021, p. 663). Superstitiously, the massive, persistent, and ominous protests heralded a big pandemic that started in the last half of year 2019 and was named Covid-19 by the World Health Organization, which is caused by a kind of Corona virus. But Donald Trump, now U.S. President, changes "Corona virus" to "Chinese virus", as a "Washington Post photographer captured an image of a printed copy of Trump's remarks that had the word "corona" … crossed out and the word "Chinese" put in its place with a black marker" … Which indicates "Trump's shift to more fully blame China" (Gearan, 2020, March 19, para. 4, 5). *A Concise History of the Communist Party of China* points out, "Amidst the Covid-19 pandemic, certain politicians from the U.S. and other Western countries did their utmost to disparage China, attempting to pass the buck for their own countries' lackluster response by making China a scapegoat" ("Institute of Party History", 2021, p. 662). Since his claim that "China's entire system of business is geared against the U.S. …" in his 2011 letter to then U.S. Commerce Secretary, another ten years has come to a passing, and Donald Trump has turned around from a mere businessman to an influential U.S. statesman. As a world-renowned politician, who is more well-known than his

trademarks to the world, Donald Trump is sincerely expected to do something on "China's entire system".

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