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**The challenges of IPR enforcement on online platforms in China:
practical tips and case review**

**中国网络平台知识产权维权的挑战
实用建议和案例回顾**

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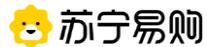


Online Platforms in China

中国网络平台

Major ecommerce platforms

主要电商平台



Major social media platforms

主要社媒平台



Challenges of IPR Enforcement on Online Platforms

网络平台知识产权维权面临的挑战

- Diversification of online platforms
网络平台多样化
- Platforms' reliability on addressing infringement
平台解决侵权的可靠性
- Transitory nature of new marketing frontiers (live streaming sales)
新型营销手段的瞬时性 (如直播带货)
- Cross-border e-commerce
跨境电商



Case Review 案例回顾

Topic 1: Does setting another party's trademark as keyword constitute infringement?

话题一：将他人商标设为搜索关键词是否侵权？

Huawei's trademarks Shenzhen Mingyu set “华为” as keyword for its earphones

深圳明宇将“华为”设为其耳机产品的搜索关键词



华为



Case Review 案例回顾

Topic 1: Does setting another party's trademark as keyword constitute infringement?

话题一：将他人商标设为搜索关键词是否侵权？

- Xihu Longjing Tea Association's GI & certification trademark

西湖龙井茶管理协会地理标志和
证明商标



- Hangzhou Mingyin used Xi-Hu-Long-Jing as the keyword of tea on its 1688 store
杭州茗音将“西湖龙井”设为其1688网店茶叶品类的搜索关键词



Case Review 案例回顾

Topic 1: Does setting another party's trademark as keyword constitute infringement?

话题一：将他人商标设为搜索关键词是否侵权？

Typical conditions of infringement recognized by courts:

法院认可的典型侵权情形：

- i. setting the trademark as a keyword; 将他人商标设为搜索关键词；
- ii. use the mark either in the product name or webpage of the infringing product; and 在侵权产品名称或网页中使用他人商标，并且
- iii. the products are identical or similar with the goods covered by the concerned trademark.

侵权产品与系争商标所涵盖的商品相同或相似。

*However, “setting the trademark as a search keyword and putting the trademark in **descriptive use may not cause confusion** and does not constitute infringement.” (Shanghai Fubao Health Technology Co., Ltd. v. Xiangyang Ai Ma Mi Technology Co., Ltd. (Hubei Higher People's Court))*

然而 “将商标设为搜索关键词并用于商品描述，未造成市场混淆的，不构成商标侵权。” [上海福报健康科技有限公司诉襄阳爱妈咪科技有限公司（湖北省高级人民法院）（2023）鄂知民终691号民事判决书]



Case Review 案例回顾

Topic 2: Enforcement against Live Streaming Sales

话题二：直播销售中的维权



Photos of clothing and bag with the Molly design extracted online

带有Molly形象衣服和包的网图



Case Review 案例回顾

Topic 2: Enforcement against Live Streaming Sales

话题二：直播销售中的维权

- Transitory nature
瞬时性
- Diverse methods (short videos, live streaming, and e-stores)
方式多样（短视频、直播和网店）
- Administrative seizure & penalty not sufficient
行政扣押和处罚局限
- Punitive damages CNY 5 million granted
判赔惩罚性赔偿500万



Case Review 案例回顾

Topic 3: Test Buy & Identification Report Requirement in support of Counterfeit Complaint

话题三：为支持假货投诉，测试购买和鉴定报告的要求

Cons - 缺点

- Too costly to buy from every link;
试购每项上架商品成本过高;
- **Arbitrary and lack transparency** in implementation of Platforms' Rules i.e. Good-faith Takedown Mechanism;
平台规则执行较为随意，缺乏透明度（诚信投诉机制）；
- Stores repost the products via different listings after the heat (**whack a mole**)
网店在严打过后，重新上架产品（打地鼠游戏）

Pros - 优点

- reasonable in fixing the evidence and protecting Platform, Right Holder, and Party under Complaint from liabilities in future proceedings.

合理性在于通过固定证据，有利于在后续诉讼等程序中厘清平台、权利人和被投诉方责任。



Case Review 案例回顾

Topic 3: Test Buy & Identification Report Requirement in support of Counterfeit Complaint

话题三：为支持假货投诉，测试购买和鉴定报告的要求

- **Closer collaboration** between Right Holders and platforms;
权利人与平台之间**加强合作**
- **Evaluate formal legal notices** to Platform and Party under Complaint;
评估是否对平台和被举报方发出**正式法律函件**
- **Evaluate the overall picture**, to decide whether to move to offline actions.
判断整体情况，决定是否进一步采取线下行动



Case Review 案例回顾

Topic 4: Non-straightforward & Complex Case Scenarios

话题四：非直接、复杂的案件情况

- Platforms support take-down requests claiming non-straightforward infringement (unfair competition, trademark ownership disputes, etc.) only based on effective Penalty Decision / Judgment;
对非直接类型侵权举报（不正当竞争、商标权属争议等），平台仅基于生效处罚决定 / 判决支持下架请求
- Platforms benefit from delaying removal by keeping the traffic and receiving promotion fees from Infringer after receiving the take-down request.
平台收到下架请求后，如果拖延下架时间，可以保有流量并保持赚取侵权商家的推广费用



Practical Tips 实用建议

- Strategic approach to IPR protection online and offline
知识产权保护线上和线下解决方略
- Deterrent effect to key infringers through well-built cases
通过重点案件达成对重点侵权人的制止侵权效果





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Thank you
感谢
Felice Meli

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