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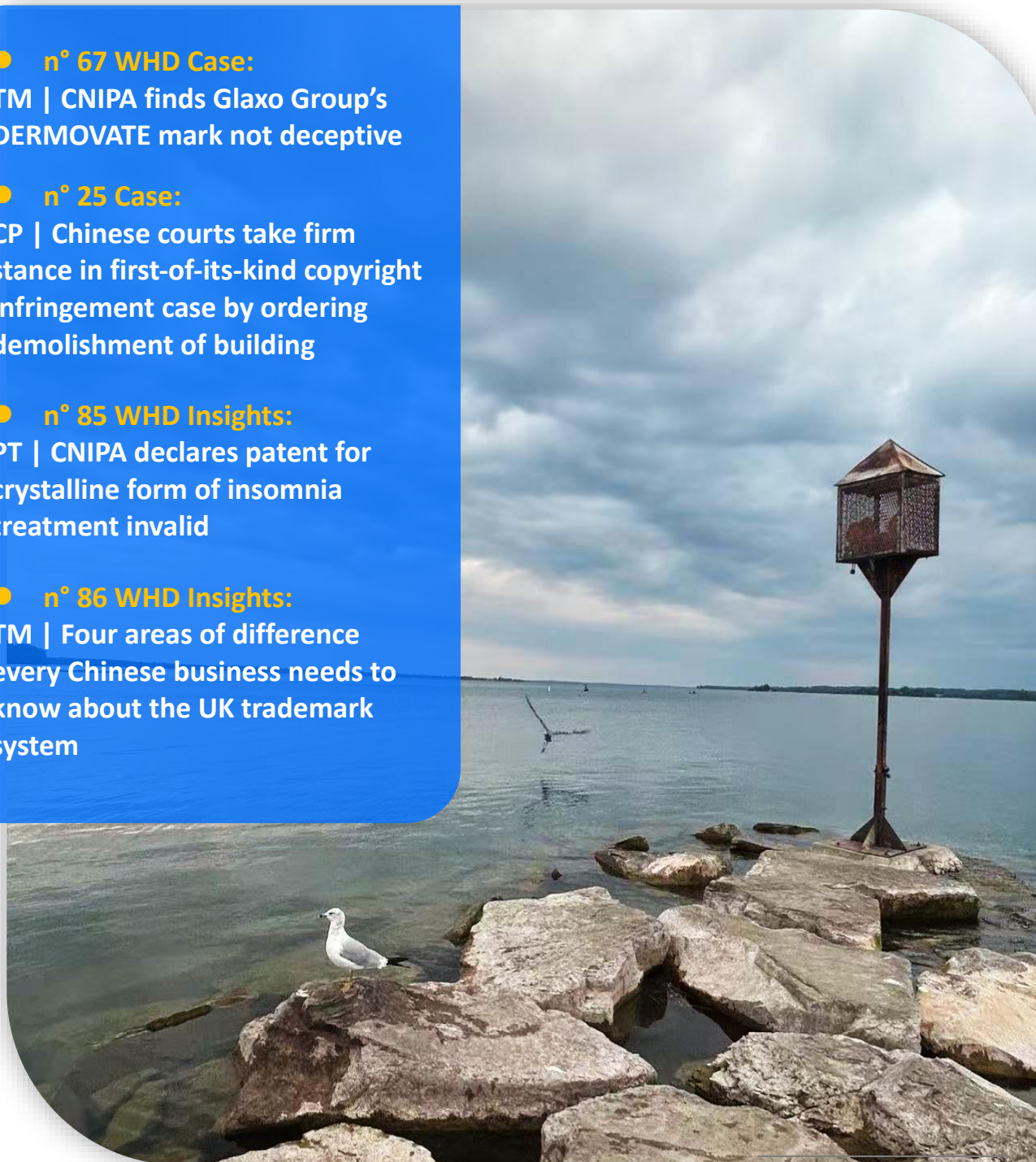
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n° 67 WHD Case: TM | CNIPA finds Glaxo Group's DERMOVATE mark not deceptive

Ruirui Sun, Paul Ranjard, 31 July 2025, first published by [WTR](#)

Current practice

This case illustrates the evolving trademark practice of the China National Intellectual Property Administration (CNIPA), which has been applying a stricter interpretation of Article 10.1.7 of the Trademark Law (deceptiveness). The CNIPA's Trademark Examination and Trial Guidelines (2021) prescribe as follows:

- Deceptive signs refer to those that inaccurately represent the quality, characteristics or origin of the designated goods or services, thereby likely causing the public to form a mistaken understanding of such attributes or source.
- The deceptiveness assessment of a sign must be made on a case-by-case basis, taking into account the specific characteristics of the designated goods or services.

This practice has led to frequent refusals of trademark applications and, consequently, frequent requests for review of these decisions. The proportion of such review decisions in relation to all review decisions by the CNIPA almost doubled from 5.4% in 2019 to 10% in 2024:

Year	Number of review decisions involving Article 10.1.7	Percentage of all review decisions
2019	14,951	5.4%
2020	12,659	5.6%
2021	12,707	5.8%
2022	17,944	6.6%
2023	23,028	9.8%
2024	26,066	10%

Source: MOZLEN

This situation may even occur when an already registered trademark is re-filed with an expanded list of designated goods.

Background of the case

This is precisely what happened to GSK, one of the oldest and largest pharmaceutical

companies in the world. In 1988 Glaxo Group Limited, which is part of the GSK Group, registered the trademark DERMOVATE in Class 5 (“pharmaceutical preparations for the treatment and/or remission of skin diseases”).

On 21 December 2023 – 35 years later – Glaxo Group refiled the trademark in Class 5, expanding the list of goods by adding, among others, “pharmaceutical preparations; skin care pharmaceutical preparations”.

This time, the application was refused by the CNIPA, citing Article 10.1.7 of the Trademark Law. The CNIPA held that the term ‘derm’ could be interpreted as referring to ‘dermis’ or ‘skin’, thus making the trademark misleading regarding the functions and usage of the designated goods.

Glaxo Group filed an application for review of the refusal, presenting the following arguments:

1. The term ‘derm’ does not constitute an independently recognisable component in the applied-for mark, and it is unlikely that consumers would isolate and interpret it separately. Further, the mark DERMOVATE, as a whole, is not commonly used or understood by the general Chinese public. It is thus inherently distinctive and does not convey any specific meaning that could mislead consumers as to the characteristics of the goods.
2. The mark DERMOVATE has been successfully registered in Classes 3 and 5 in China and various other jurisdictions. The CNIPA should follow consistent examination standards in assessing this new application.
3. The mark DERMOVATE has been used by GSK for many years. In English-speaking jurisdictions, no deceptiveness issues have arisen. It would be unreasonable to assume that Chinese consumers, who may have limited familiarity with English, would be misled solely due to the presence of the term ‘derm’ in the mark.

In support of the review request, Glaxo Group submitted

- dictionary search results for the term ‘dermovate’;
- registration records of other trademarks containing ‘derm’;
- precedents where the CNIPA or the courts overturned refusals based on deceptiveness; and
- evidence demonstrating the global use and registration history of DERMOVATE by Glaxo Group.


Decision

On 10 April 2025 CNIPA concluded that there was insufficient evidence suggesting that the trademark would likely mislead the relevant public regarding the functions or characteristics of the designated goods. Therefore, the mark was approved for registration.

Comment

Against the backdrop of increasingly rigorous examination criteria and frequent citation of absolute grounds for refusal, the result is quite satisfactory.

Although Glaxo Group secured a partial win in reversing the unreasonable refusal, the success rate of overcoming refusals based on deceptiveness remains relatively low; it is believed to be hovering around 10.2% in 2024 according to a third-party database.

It is therefore recommended that brand owners, when re-filing an already registered trademark, conduct a risk assessment analysis. Given that Article 52 provides for a fine of up to 20% of the turnover in cases of violation of Article 10, the risk caused by the current examination practice could be high. 

n° 25 Case: **CP | Chinese courts take firm stance in first-of-its-kind copyright infringement case by ordering demolition of building**

Xiaoquan (Claus) Zhang, 23 July 2025, first published by [IAM](#)

On 11 June 2025, the Henan High Court rejected a retrial application filed by Henan Jing Kai Li Real Estate (JKL), which made final the Xinxiang Intermediate Court's second-instance decision in a copyright infringement dispute involving the iconic architectural work of the Aranya Seashore Chapel in the coastal city Qinhuangdao.

The appeal court ordered the infringing structure to be demolished within one month of the ruling. This is said to be the first known case in China in which a court has directly ordered the demolition of a building for copyright infringement.

Case background

The name 'Aranya' is derived from Sanskrit and translates as 'a serene place above the mundane'. Promoted as a lifestyle brand, Aranya has become synonymous with a utopian community with minimalistic design and otherworldly serenity. In 2014, Qinhuangdao Aranya Real Estate Development built a minimalist and solitary chapel on the coast of Qinhuangdao in Hebei Province, and its distinctive aesthetic quickly made it a social media hotspot. The copyrighted architectural work was licensed to its affiliated company Aranya Group for commercial use and enforcement.

In March 2024, Aranya Group discovered multiple posts on Chinese social media

platform RedNote featuring a chapel located in Xinxiang, in Henan Province. Dubbed as ‘copycat Aranya’, the building bore a striking resemblance to the Aranya chapel.



Figure 1. Aranya chapel



Figure 2. Infringing building

As its cease-and-desist letter to JKL proved futile, Aranya Group filed a lawsuit with the Weibin District Court in Xinxiang, seeking immediate demolition of the infringing structure, as well as 300,000 yuan to cover damages and legal expenses.

Court decision

On 9 September 2024, the Weibin District Court found that JKL had indeed infringed the copyright. However, given the cost already incurred in the building’s construction, the court held that full demolition would be disproportionate. It instead ordered cessation by way of remodelling, which would be subject to consultation with Aranya Group. The court also awarded 6,000 yuan in damages. Aranya Group appealed.

During the second-instance proceedings, JKL claimed to have spent approximately 60,000 yuan on the construction of the infringing structure. On 26 February 2025,

after assessing the building's construction cost, current state, the degree of similarity to the original copyrighted work and the viability of subjecting the building to remodelling, the appeal court ruled that remodelling was unenforceable and demolition was the more viable remedy. It thus ordered the building to be torn down within one month. The court also enjoined JKL from disseminating images of the infringing structure and ordered 20,000 yuan in damages.

JKL petitioned the Henan High Court for a retrial, the focus of which was whether demolition was a necessary and proportionate remedy. The retrial court held that:

after the conclusion of the first-instance proceedings, JKL conducted voluntary remodelling without consulting Aranya Group or altering the infringing features, particularly the roof; and the building had no designated practical use and only cost 60,000 yuan to construct. The court therefore concluded that further remodelling would fail to address the copyright infringement and instead incur additional waste in terms of design, materials and labour. Weighing the viability and cost of remodelling and the effective protection of the rights holder's legitimate interests, the court upheld the demolition order and dismissed the retrial request.

Diverging from precedent


This case marks a notable departure from previous precedents in China, where courts have generally favoured remodelling over removal or allowed ongoing infringement in exchange for increased compensation.

In the Tribal Doom film case, although the film had been produced without the scriptwriter's permission, the court allowed continued distribution due to the high production costs, opting instead to increase the compensation as a compromise (2022 Yue Min Zai No 346).

In a case involving erasable pens, the court declined to issue an injunction against the unauthorised use of 14 Chinese characters on product packaging, citing the potential marketing ramifications on the accused stationery company and noting that the compensation awarded exceeded the commercial value of the font licence (2021 Su 01 Min Zhong No 11555).

In stark contrast, this case resulted in the ordered demolition of a building with a 60,000-yuan price tag, with a damages award of only 20,000 yuan. This decision sends a strong message and challenges the mindset among developers that infringement can be legitimised retrospectively with a cheque – an assumption that the courts have now firmly rebutted.

Key takeaways

This judgment showcases the Chinese courts' strong commitment to proportionality. It reflects the thinking that rather than tipping the scales to find a middle ground, proportionality means that rights holders are entitled to the proportionate redress, even if it might lead to greater losses for the infringers. 

n° 85 WHD Insights:

PT | CNIPA declares patent for crystalline form of insomnia treatment invalid

Yue Guan, March 10 2025, first published by [MIP](#)

On February 25 2025, the CNIPA issued an invalidation decision, No. 584735, declaring the patent for the crystalline form of the drug lemborexant invalid.

Lemborexant, also known by its trade name Dayvigo, was developed by Eisai Co. Ltd. (Eisai) and is clinically used to treat insomnia. First approved by the US Food and Drug Administration in December 2019, lemborexant has been marketed in the US, Japan, Canada, Australia, and Hong Kong. The marketing application that Eisai filed in mainland China in January 2024 is expected to be approved in 2025. The global sales revenue of lemborexant reached \$2.6 billion in 2023.

The patent at issue – which was initially owned by Crystal Pharmaceutical (Suzhou) Co., Ltd. – changed hands to Bergen Pharmaceutical, LLC (Bergen) in May 2021. The invalidation request was filed by the original drug company, Eisai (the petitioner), on June 19 2024, presumably because the patent portfolio built by the patentee around lemborexant would impede Eisai's exploitation of lemborexant in China. The invalidation action therefore aimed to remove the patent at issue and to clear the path for Eisai's marketing of lemborexant in China.

The invalidation proceeding

Eisai's invalidity action is mainly predicated on the following grounds:

The claimed crystalline is disclosed by the prior manufacture process patent of lemborexant (Evidence 1), and the experiment report (Evidence 2) indicates that the crystalline of the product obtained by following the prior process is identical to the crystalline claimed by the patent. That is, the claimed crystalline is disclosed by the implied contents of Evidence 1 that can be derived directly and unambiguously from the disclosure by a person skilled in the art. The crystalline thus does not possess novelty when compared with Evidence 1.

Leaving aside the facts proven by Evidence 2, the patent at issue failed to prove the following: (i) lemborexant has other crystalline forms, and (ii) there are unexpected technical effects created by the crystalline. Therefore, the claimed crystalline does not possess an inventive step over Evidence 1.

As counterevidence, Bergen filed an experiment report to show that the claimed crystalline is not necessarily obtained by following the process in Evidence 1 and pointed out that the synthesis steps to produce lemborexant in Evidence 1 are not strictly followed as described in Evidence 1. Bergen also adduced evidence to prove

that lemborexant has an amorphous form, underlining that the hygroscopicity and in vitro dissolution rate of the crystalline are unexpected when compared with the amorphous form. Based on these reasonings, Bergen argued that the crystalline has not been disclosed and is non-obvious over Evidence 1.

The CNIPA's methodology in reaching its conclusion

The CNIPA delved into the patentability assessment of the crystalline using a layered approach.

First, the CNIPA determined that Eisai has demonstrated, by a preponderance of evidence, that following the procedures set forth in Evidence 1 will necessarily and inevitably result in the formation of the claimed crystalline, and the claimed crystalline does not possess novelty.

Second, the CNIPA determined that even without Evidence 2, based on the description of the patent at issue, it cannot be concluded that the crystalline has unexpected technical effects when compared with the amorphous form. The CNIPA therefore concluded that the crystalline does not possess an inventive step.

With respect to novelty, the CNIPA deemed that experiments to follow the steps disclosed in the prior art could be appropriately detailed by a person skilled in the art based on their conventional cognition, and it would be neither scientific nor reasonable to carry out experiments in a manner that is completely consistent with the methods described in the prior literature.

The CNIPA found Evidence 2 to be preponderant, compared with the counterevidence. Specifically, the CNIPA found that the differences between the experiment disclosed by Evidence 2 and Evidence 1 are mainly related to the compound synthesis process, which has no material effect on the subsequent solid precipitation generating the crystalline. Therefore, the argument that Evidence 2 cannot represent the result of Evidence 1 has no merit.

In addition, the CNIPA held that the patentee's experiment failed to follow the steps of Evidence 1 due to the following reasons:

The colour of the key raw material 'acid' is light orange, and the nuclear magnetic resonance spectrum shows the existence of certain impurities, which may cause side reactions and thus affect the product composition;

The experiment does not include the important steps of heating to dissolve the reaction mixture and then cooling in the precipitation procedure, which may influence the generation of the crystalline; and

A solid form is not obtained by adding the poor solvent n-hexane to the solution, corroborating that Evidence 1 could not be successfully replicated.

In assessing the inventiveness, the CNIPA opined that:

Bergen failed to prove that lemborexant prepared by Evidence 1 is another crystalline

form; consequently, unexpected technical effects of the crystalline can only be evaluated by comparison with the amorphous form;

It can be expected that the structural characteristics of the crystalline and amorphous forms dictate the improvement of physical and chemical stability, compressibility, grinding stability, flowability, and solvent residue of the crystalline compared with the amorphous form; and


Regarding the better hygroscopicity and in vitro dissolution rate of the crystalline over the amorphous form, the patent did not describe the effects, and the patentee did not submit control experiments.

The implications of the CNIPA's decision

The CNIPA provides some guidance as to how experiment evidence should be scrutinised. In the invalidation decision, it explicitly states “in the absence of any questions raised by the patentee regarding the substantive content in Evidence 2 (except for the method different from Evidence 1), it would be insufficient if the panel were to exclude Evidence 2 from consideration, merely because the experimenters failed to appear in court for questioning.”

This suggests that in assessing the authenticity of experiment evidence, the panel shall not only look into its formality, but also take into account any legitimate doubts raised by the adverse party over substantive matters, as well as the level of high probability of the evidence, so as to make a comprehensive assessment.

Also, the CNIPA applied the preponderance of evidence standard in reviewing the evidence furnished to underpin opposite conclusions regarding the same fact to be proven. For example, the panel did not stop short of negating the novelty of the crystalline based on Evidence 2; instead, it went farther to compare the probative force of the two experiment reports, making the obviousness conclusion of the crystalline more convincing. It stated that “compared to the differences in raw materials and experimental procedures between counterevidence 4 and evidence 1, the differences in filtration and other processes between evidence 2 and evidence 1 have little impact on the final experimental results, and will not substantially affect the crystallisation of lemborexant. Therefore, evidence 2 has a stronger probative force than counterevidence 4.”

The decision sheds light on matters such as proving implicit technical contents of the prior art and inventiveness assessment for pharmaceutical crystalline inventions. Applicants could also take heed of the guidance offered by the CNIPA to refine their pharmaceutical patent filing strategy. 

n° 86 WHD Insights: TM | Four areas of difference every Chinese business needs to know about the UK trademark system

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14 August 2025, first published by [WTR](#)

Chinese businesses have been increasingly seeking international trademark protection in recent years. In the UK, Chinese applicants accounted for over 50% of all trademark applications filed by foreign entities in 2024.

Understanding the differences between UK and Chinese trademark practices can help these applicants optimise their filing strategies and overall IP protection.

This article highlights four key areas where trademark practices differ, and which Chinese companies and entrepreneurs should consider, whether they have already filed or are planning to file trademarks in the UK.

Co-existence agreements and letters of consent

China has historically adopted a relatively open approach towards accepting co-existence agreements and letters of consent to approve junior trademark applications. A notable example comes from *Google LLC v TRAB* (2016), in which the Supreme People's Court permitted the co-existence of two NEXUS marks by recognising subtle differences between them and explicitly treating the submitted letter of consent as "an important factor" in its decision.

However, in recent years, Chinese authorities have increasingly prioritised public interest protection in trademark disputes. As a result, brand owners now face greater challenges in convincing both the China National IP Administration (CNIPA) and the courts to accept co-existence agreements or letters of consent as sufficient grounds for registration. This shift reflects a stricter scrutiny of potential consumer confusion and market fairness, even where parties have negotiated private agreements.

Unlike in China, the UK Intellectual Property Office (UKIPO) does not raise objections to UK trademark applications, nor Madrid Protocol international trademarks that designate the UK, based on the existence of earlier third-party registered marks or applications.

Instead, when the UKIPO examines an application, it carries out a search to see whether any earlier third-party marks exist that may conflict with the applied-for mark. The search looks for earlier marks, which:

- have either been registered or applied for in the UK;
- are identical or similar to the applied-for mark; and
- cover identical or similar goods and/or services.

If any marks are found, the applicant is notified of them via a UKIPO examination report.

The UKIPO does not prevent marks from being registered where earlier third-party marks have been found during the search. Instead, the applicant is given the opportunity to consider whether it wishes to proceed to publication of its application.

If the applicant decides to proceed, the owners of any earlier marks uncovered by the search are notified of the application. They have two months from the publication date of the application to oppose it, or three months if they file a request to extend the deadline to oppose. If no opposition is filed, the mark will proceed to registration – even if it is identical to an earlier registered mark for identical goods or services.

If an applicant is notified by the UKIPO of an earlier third-party mark uncovered by the UKIPO's search, or if the owner of earlier rights opposes the application, the applicant can seek consent for the application from the third party and negotiate and agree to a co-existence agreement. If consent is given, or a co-existence agreement reached, it need not be filed with the UKIPO. All that is required is for the third party to withdraw its opposition to the application.

Often, in return for giving its consent to an application, or concluding a co-existence agreement, the third party will request amendments to be made to the specification of goods and services in the application.

It is important to ensure that any amendments result in a specification that is sufficiently clear and precise. For example, “all of the aforesaid being business and ancillary services” would not be acceptable, because the term ‘ancillary services’ is ambiguous in its scope.

Further, any amendment must not identify a characteristic of the goods or services. For example, “bags, all displaying images of cartoon characters” would not be acceptable. And any restrictions must make sense within the context of the specification. For example, “sunglasses; all of the aforesaid relating to music” would not be acceptable.

Failure to meet any of these requirements will result in the UKIPO rejecting the amendments and thus the application, until the specification is amended in accordance with such requirements.

Absolute grounds for refusal

Due to various policy considerations, absolute grounds – especially deceptive and non-distinctive grounds – have been increasingly applied when refusing Chinese trademark applications. The chances of overturning an initial refusal based on

absolute grounds are also quite low.

As in China, UK trademark applications can be refused on absolute grounds (eg, because the mark in question is deceptive, non-distinctive or descriptive, or has been filed in bad faith).

Overall, it is uncommon for word or logo marks to result in absolute grounds objections being raised by the UKIPO.

An example of a bad-faith application would be where an applicant seeks to register its trademark for goods or services for which it has no intention of using the mark. Thus, when examining applications (including Madrid Protocol international registrations designating the UK), UKIPO examiners will consider whether the applied-for goods and services are so manifestly and self-evidently broad (eg, a request to register a mark for “all goods in Class 9”) that a bad-faith objection should be raised.

If an objection is raised, the applicant will be given an opportunity to explain its commercial rationale for the goods or services at issue. The applicant can also apply to restrict the goods or services to a specification that more appropriately reflects its genuine intention to use the mark.

Trademarks are rarely refused because they are considered to be deceptive (ie, they are of such nature as to deceive the public, for instance, as to the nature, quality or geographical origins of the goods or services at issue). An objection will be raised only where there is a real potential for deception of the public. Examples of such marks include SWISSTEX for ‘watches’. Switzerland has a recognised reputation for producing high-quality watches and thus the specification would need to be amended to “watches made in Switzerland only”.

Examples of descriptive marks, which would be refused registration by the UKIPO, are BLUE (for ‘cheese’), BROWN (for ‘sugar’) and RED (for ‘wine’). Each describes a particular type of product and thus other traders should be free to use the same when describing their goods.

Non-traditional marks are often refused by the UKIPO because they are considered non-distinctive (see below).

Securing a non-traditional trademark registration

The Chinese Trademark Office has historically approved a variety of non-traditional marks. Notable examples have included:

- Duracell’s colour combination mark for batteries;
- Ferrero Rocher’s 3D packaging shape; and
- Nokia’s registered sound mark for its iconic ringtone.

These cases demonstrate that, in principle, Chinese trademark law does not outright prohibit the registration of non-traditional marks, provided that they meet the necessary legal criteria.

However, in recent years, the approval rate for such marks has significantly declined, with very few high-profile non-traditional marks successfully making it onto the register.

The primary reason for rejection in most cases is a lack of inherent distinctiveness. Non-traditional marks (eg, single colours, product shapes or sounds) are often viewed as functional or decorative elements, rather than indicators of commercial origin. Chinese examiners frequently argue that consumers do not naturally perceive these features as trademarks unless the applicant can prove otherwise.

Beyond distinctiveness concerns, broader policy considerations also play a role in the authorities' restrictive approach. Chinese authorities are cautious about granting monopolies over basic product features (eg, a single colour or a common shape), as this could unfairly limit competition.

There is also an emphasis on public interest, with regulators taking the view that certain elements should remain available for all market participants to use.

This perspective aligns with the general principle that trademark protection should not extend to features that:

- are essential to the product's use; or
- other competitors may need to use in the ordinary course of trade.

The case of Christian Louboutin's red-sole trademark exemplifies these challenges. Despite its global recognition, the mark was ultimately rejected in China not because colour marks are inherently unregistrable, but because the evidence was deemed insufficient to prove that Chinese consumers exclusively associated the red sole with Louboutin. This outcome underscores the high threshold for non-traditional marks in China, where even well-known brands face an uphill battle in securing protection. The trend reflects a cautious and competition-driven approach in China's trademark system, prioritising market fairness over the expansion of exclusive brand rights for unconventional signs.

In the UK, it is again possible to register non-traditional marks (eg, the shape and appearance of goods, 3D packaging designs, colours, sounds, holograms and motion marks).

However, such marks will not be registered unless they comply with various criteria, including that the mark is 'distinctive' (ie, it is capable of distinguishing the goods or services of one undertaking from those of other undertakings).

Experience has shown that it is particularly difficult to register colour marks *per se*. This is because the UKIPO considers such marks to be inherently devoid of any distinctive character.

The UKIPO's Manual of Trade Marks Practice states:

...consumers are not in the habit of making assumptions about the origin of goods and services based solely on their colour or the colour of their packaging. It therefore follows that single colours will only be deemed capable of denoting the origin of a product or service in exceptional circumstances.

In some cases, single colours may also be rejected if the colour is customary in the relevant trade (eg, the colour red for fire-fighting services).

If a colour mark is refused, it is possible to file evidence to try to convince the UKIPO to allow the mark to be registered because, through use, the mark has acquired distinctive character. In other words, through extensive use over several years, a significant proportion of the relevant public has come to see and regard the colour *per se* as a trademark, identifying the goods or services of one undertaking only. This is not easy to prove and obtaining such evidence can be a costly exercise.

It is also difficult to register the shape of goods as a UK trademark. Again, this is because the UKIPO considers such marks to be inherently devoid of any distinctive character. The courts have consistently held that average consumers are not in the habit of making assumptions about the origin of goods based on their shape, in the absence of any graphic or word mark.

To overcome such an objection, it is necessary to file evidence that, through extensive use over several years, a significant proportion of the relevant public has come to see and regard the shape as a trademark, identifying the goods or services of one undertaking only.

Shape marks can also be rejected pursuant to Section 3(2) of the Trade Marks Act 1994, which states:

A sign shall not be registered as a trade mark if it consists exclusively of – (a) the shape or another characteristic which results from the nature of the goods themselves, (b) the shape or another characteristic of the goods which is necessary to obtain a technical result, or (c) the shape or another characteristic which gives substantial value to the goods.

Finally, at present, it is not possible to register smells or tastes as trademarks in the UK.

Non-use cancellation actions

In China, there has been a significant shift in the practice of filing non-use cancellations since last year. Previously, any party could apply to revoke a trademark registration if the mark had not been used for three consecutive years after registration, with the burden of proof resting entirely on the trademark owner.

However, due to the increasing number of non-use actions initiated by shell companies – many of which were used to harass legitimate trademark owners whose marks were clearly in use – the CNIPA has taken steps to curb these weaponised cancellations.

The CNIPA has introduced two key requirements to address this issue.

First, suspicious shell companies filing a high volume of non-use actions must now justify their filings.

Second, challengers now share the burden of proof and must demonstrate that the targeted trademarks are genuinely unused in commerce.

In the UK, anyone can apply to revoke a registered mark if:

- the mark has not been put to genuine use by the owner – or with its consent – in the UK for at least five years (not three years, as under Chinese law), in relation to the goods or services for which it is registered; and
- there are no proper reasons for non-use.

Use in the UK includes affixing the trademark to goods or the packaging of goods solely for export purposes.

Before it can apply for the mark to be revoked, it is not necessary for the party seeking revocation to obtain and file evidence to show that the disputed mark does not appear to have been put to genuine use. If an application is made to revoke a registration based on an allegation of five years' non-use, the burden is solely on the trademark owner to prove genuine use within the relevant period. If it fails to do so, or to provide proper reasons for non-use, the registration will be revoked for the goods or services at issue. 