



## **Chofn Intellectual Property**

#703, 7th Floor, Glory Star Financial Tower,  
Building 3, No.16 Lize Road, Fengtai District,  
Beijing 100073, P.R. China

Tel: +86-10-6213 9699

Fax: +86-10-6213 1230

Email: [trademark@chofn.cn](mailto:trademark@chofn.cn); [mail@chofn.cn](mailto:mail@chofn.cn)

Web: [www.chofn.com](http://www.chofn.com)

### **Case Study: Parallel Import is Not Trademark Infringement in China**

Ms. Xuexing Wang, Lawyer at Chofn IP

Parallel import generally refers to the act of an operator who imports products bearing an authorized trademark through legal channels from outside the country without permission of the trademark holders to the importing country and resells the products. In practice, the Chinese courts usually opine that parallel import does not constitute trademark infringement, unless the trademark is used by illegal means or other infringements occur during import.

In a recent Judgment No. (2020) Yue 73 Min Zhong 1944 issued in April 2021 by the Guangzhou IP Court, the above-mentioned court opinion was reiterated. The importer, a Chinese company, imported Franziskaner Weissbier beer from an authorized seller in Singapore, who purchased genuine beer from another authorized seller in Germany. When sued by the Chinese subsidiary of the trademark holder, the importer submitted relevant evidence to prove the whole distribution chain and the beer are genuine and originated from the trademark holder. Based on the evidence, the Guangzhou IP Court held that the importer's action does not constitute trademark infringement mainly for the following reasons:

- 1) The products are genuine and imported from the authorized seller in Germany, which means the products are under the same control by the trademark holder like other authorized products;
- 2) The court checked and confirmed that the products did not have substantive difference from other products sold on online platforms in China authorized by the trademark holder; and
- 3) Selling the concerned products in China will not cause confusion among the customers about the origin of products and will not damage the reputation of the trademark or infringe customer's rights.

Furthermore, the court held that when the products imported parallelly are sold in original packaging without any alteration, such importation is only the expansion of the scope of the market and does not damage the interests of the trademark holder. On the contrary, it will promote global trade liberalization.

Once again, the case has typically represented the Chinese courts' attitude toward parallel import. As it does not constitute trademark infringement so long as the importer indeed imported the genuine products and showed their source honestly to the public, the trademark holder may take other actions if they want to prevent the parallel import. Controlling the sales channel more strictly may be a possible solution. The trademark holder should consider strictly controlling the entry of products into a specific market through contract by imposing heavier liability for breach of contract. However, due to the exhaustion of right, re-sale in any market may happen because other wholesalers or customers are not restricted by the contracts, which can be somewhat difficult to control.

To better prevent parallel import, the trademark holders shall build their factories farther away from one another, particularly when the production costs are sharply different. For example, if the trademark holders do not want cheaper products to be sold to the huge Chinese market, they shall refrain from building factories in nearby countries where the production costs are cheaper. Otherwise, the much cheaper genuine products can be easily imported to China and reduce their margin of profit.