



Lisbon School
of Economics
& Management
Universidade de Lisboa

MASTER
CORPORATE SCIENCES

MASTER'S FINAL WORK
DISSERTATION

EXISTING DEFECTS AND DEVELOPMENT TREND OF CHINA'S
INTELLECTUAL PROPERTY

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**SUPERVISION:
PROFESSOR MANUEL MIRA GODINHO**

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GLOSSARY

BRI – Belt and Road Initiative.

CNNIC – China Internet Network Information Center.

EUIPO – European Union Intellectual Property Office.

IP – Intellectual Property.

IPR – Intellectual Property Rights.

NPC – National People’s Congress.

OECD – Organisation for Economic Co-operation and Development.

OEM – Original Equipment Manufacturer.

SAIC – State Administration for Industry and Commerce of the People’s Republic of China.

SMEs – Small and Medium-sized Enterprises.

SPC – Supreme People’s Court.

USTR – The Office of United States Trade Representative.

WIPO – World Intellectual Property Organization.

WTO – World Trade Organization.



ABSTRACT, KEYWORDS AND JEL CODES

China's intellectual property has long been controversial. Dr. Arpad Bogsch, a former Director General of WIPO, praised that it had developed to where it is today in such a short time. On the other hand, the Donald Trump government has accused China of insufficient intellectual property protection, causing problems such as theft of intellectual property. This paper analyses the advantages and disadvantages of infringements through Michael Jordan's Case and Pinduoduo's counterfeits. Based on the analysis, this paper also takes a broad view of the Chinese market and attempts to explain the following concerns: the reasons why there has been so many infringements in China, how to improve the situation and the expectable trend on this regard in the near future.

KEYWORDS: Intellectual property; Michael Jordan's Case; Pinduoduo's counterfeits; trend.

JEL CODES: O34.

RESUMO

A propriedade intelectual na China tem constituído um assunto controverso. Neste contexto, o Dr. Arpad Bogisch, ex-Diretor-Geral da WIPO, elogiou o progresso que a China registou nesta matéria num curto espaço de tempo. Simultaneamente, o governo Donald Trump acusou a China de proteção insuficiente à propriedade intelectual, causando problemas designadamente com apropriações indevidas de propriedade intelectual. Este trabalho analisa especificamente infrações à propriedade intelectual na China através do estudo do “Caso Michael Jordan” e do caso das falsificações de Pinduoduo. Tomando como referência estes dois casos, tentou-se alcançar uma visão ampla do mercado chinês, de forma a responder às seguintes preocupações: porque se têm verificado tantas infrações na China; como melhorar a situação; e qual a tendência esperada nesta matéria num futuro próximo.

Palavras-chave: Propriedade intelectual; Caso de Michael Jordan; Falsificações de Pinduoduo; Tendência.

Código JEL: O34.

摘要

长期以来，中国的知识产权一直饱受争议，知识产权组织前总干事 Arpad Bogsch 博士称赞它在如此短的时间内就能够发展到今天的地步。然而另一方面，特朗普政府指责中国知识产权保护不力，引发知识产权盗窃等问题。本文通过迈克尔乔丹案和拼多多的假货来分析侵权的利弊。基于分析，本文还放眼中国市场，尝试解释以下问题：中国侵权行为如此之多的原因，如何改善这一情况以及近期这方面的可预期趋势。

关键字：知识产权；乔丹案；拼多多的假货；发展趋势。

JEL 分类号：034。



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1. INTRODUCTION

It is not fresh news that a significant number of counterfeiting cases of products and brands happened in China over the most recent decades, which has inevitably led to a series of infringements of intellectual property with litigation extending often to the courts. According to *Governance Frameworks to Counter Illicit Trade*, published by Organisation for Economic Co-operation and Development (OECD) on 19th July 2018, “China is the largest source economy for counterfeit and pirated products worldwide, far exceeding all other economies combined.” The article also pointed out “The majority of internationally traded goods that infringe Chinese brands (72%) originate from China itself.”

On 22nd March 2018, the Donald Trump government launched a trade war with China. The reason given is that “China steals American intellectual property and business secrets”. An article *More pain than gain: How the US-China trade war hurt America*, written by Ryan Hass and Abraham Denmark, published on Brookings on 7th August 2020, says “The ultimate results of the phase one trade deal between China and the United States — and the trade war that preceded it — have significantly hurt the American economy without solving the underlying economic concerns that the trade war was meant to resolve.” Through the trade war, the US former president aimed to force China to change its “unfair trade practices”. This has once again put the spotlight on China’s theft of intellectual property and trade secrets. However, after comparing the histories of development of intellectual property in both China and the USA, it would come to light that the tendency is generally consistent over certain time periods.

On 3rd June 1980, China joined the World Intellectual Property Organization (WIPO), becoming the 90th member country. So far, China has been organizing and extending its intellectual property system by acceding to various international treaties and conventions. In just 40 years, China has established a relatively sophisticated intellectual property system. That being said, there is a need for that system being optimized deeply. As a matter of fact, China’s intellectual property is a late starter, compared with those developed countries. The main reason is that the public ownership of the economy and social concept did not have values in protecting private property. Since the reform and opening up in 1978, with the economic development, people’s private property has been

increasing day by day, and since then there has been an urgent demand for the effective protection of the lawful property accumulated through hard work. By comparison, shortly after the United States declared its independence, intellectual property protection was enacted. Internationally, in 1883, *the Paris Convention* was born, signed by 11 countries. It aimed at protecting the inventors whose inventions were used in other countries.

Although IP laws and regulations have been constantly improved, there are still a large number of copycats appearing on the Chinese market. Under these circumstances, a worthwhile issue is: why has there been so many knock-offs in China? And, what will be the expectable trend on this regard in the near future? The reason why I am doing this dissertation is to raise the awareness about the pros and cons of these practices. Recommendations on how to improve the situation will be put forward, through analysing related cases.

This dissertation is divided into six parts. The first part is Introduction that presents the topic. The second part is Intellectual Property: Main Concepts, Problems and Relevant Trends, which also successively tells the history of patent, copyright and trademark. The third part is Methodology that is going to be used. The fourth section is Michael Jordan Case, which introduces the case and analyses the phenomenon of trademark squatting. The fifth section is Pinduoduo's Counterfeits, which put forward the reasons of the existence of fakes abound and the future of them. And the sixth section is the Conclusion.

2. INTELLECTUAL PROPERTY: MAIN CONCEPTS, PROBLEMS AND RELEVANT TRENDS

This chapter of the paper provides the necessary background for the analysis that will be carried out of two specific cases concerning uses and abuses of IP in China. It will focus successively on how the IP system was set up both abroad and in China (point 2.1), on some practices that disrespect the framework provided by IP law and which have been observed in China, including trademark squatting and counterfeiting (point 2.2), and finally the most recent trends in the development of IP in China will be considered (point 2.3).

2.1. Development of intellectual property abroad and in China

The term “intellectual property” was further accepted worldwide after the establishment of WIPO in 1976. In fact, according to *Study on Construction of the Intellectual Property Enriching Platform* (Yan, 2017) the concept had already been around since the mid-seventeenth century, first proposed by French scholar Carpzov. Afterwards, it was further expanded by well-known Belgian jurist Picardy. Intellectual property is divided into two broad categories: copyright and industrial property. Among all the types, the most frequently mentioned are patent, trademark and copyright. In addition, trade secret is defined as a kind of special intellectual property.

2.1.1. Patent

During the past few centuries, advancement of science and technology have had a huge impact on the economy and even human living conditions. People have been doing their best to insure and promote the progress of science and technology. Among all of the measures, the most effective one would be the patent system.

Patent system originated in the Republic of Venice during the Renaissance. In order to protect the rights of the inventors and attract more talents with advanced technology, the *Venetian Patent Statute* was established on 19th March 1474. This is generally accepted as the basis of today's patent system. The core of the statute is: Any person who

manufactures new and ingenious machinery in the city which has never been previously made before shall register it with the municipal authorities, as soon as it has been improved to the point where it can be used. Any other person in the city shall not manufacture the same or similar product without permission in 10 years. Otherwise, the infringer will be fined 100 gold pieces and the device will be destroyed immediately. It can be seen that the statute includes three requirements – novelty, usefulness and non-obviousness – which are the necessary and sufficient conditions of the patent system.

As for in China, the first law to reward scientific invention is called *Revitalization Process Awards Regulations*. It was issued by Guangxu Emperor in the late Qing Dynasty. The regulations is an important result of the Hundred Day's Reform. Before, the Qing government banned the establishment of factories and the use of machinery. After, the prohibition was abolished. Moreover, it not only recognized the legitimacy of the introduction of Western advanced technology, but also could be rewarded by the state. In other words, it is equivalent to declare that the development of the civil society is legitimate, so it is of great significance in the history of China's economic development (Pan & Wu, 1981).

In the past, the adaptation of China's feudal policy of physiocracy and restriction of business has seriously hindered the development of private rights, guided by the thought of justice outweighing benefit. In the late Qing Dynasty, although being aware of the gap with West, the government clearly paid attention to political order and stability instead of ownership rights and private rights, due to the lack of the basis of private rights (Feng & Liu, 2013).

Before 1944, the Chinese patent policy did not allow foreigners to apply for patents in China. Furthermore, it shall be rewarded for manufacturing products using existing foreign achievements. The reasons given by the government were: "China is backward in industry and immature in technology. People should be encouraged to study and imitate the existing foreign achievements, in order to make progress. Otherwise, it will only increase the difficulty of taking advantage of imitation of foreign inventions for us if foreigners are allowed to apply for patents in China." It is worth noting that this policy had a positive impact in technologically backward China. Nevertheless, in terms of the whole history of patents, the advantages of protecting foreign patents outweigh the

disadvantages. More specifically, the protection of foreign patents is conducive to the introduction and disclosure of advanced technologies.

2.1.2. Copyright

The value of a literary work consists in being circulated and read by the public. Before printing was invented, the dissemination of knowledge mainly depended on books written by scribes (or word of mouth). The process was slow and laborious. Moreover, there was no guarantee that errors would not occur during the copying process. Under the circumstances, it not only hindered the development of culture, but also brought undeserved loss to the spreading of knowledge. The appearance of printing has completely changed the way that works were disseminated, making them quickly spread around the world with low-cost paper (Liu & Zhang, 2003).

With the spread of printing, authors and publishers realized that published works could easily be pirated. Under the constant appeal of them, the queen of England enacted an act to protect their benefits, called the *Statute of Anne*.

The development of the way of dissemination of literary works promoted the birth of copyright law. Today, with the rapid development of science and technology, network technology has greatly changed the ways that works are disseminated. But no matter what, protecting the rights of writers will always be the core and fundamental of copyright law. No matter how technology develops, human creativity should be respected and protected as long as it continues.

In China, the use of compulsory laws to protect exclusive publishing rights began with the official compilation and publication of books. The first prohibition dates back to the almanac in the Tang Dynasty (618-906). The new calendar of the Tang Dynasty was compiled and reviewed by the authorities. However, in order to make profits, bookstores arbitrarily copied. There were many errors in the copy, which affected the farming time. Therefore, in 825, Emperor Wenzong of Tang approved an injunction - people were not allowed to make calendars without permission.

In modern times, Shen Jiaben, the Minister of Justice, in 1911-1912, compiled *Copyright Law of Qing Dynasty*. At the same time, Japanese legal experts were invited to

participate in the compilation, and the legislative experience of western developed countries was referred to.

2.1.3. Trademark

The earliest trademarks date back to the Stone Age, when people painted livestock branding on cave paintings to prevent personal items from being stolen. The first trademark law was passed by Henry III in 1266, which all bakers were required to use a uniquely recognizable mark for the bread they sold. As regards China, the origin of trademarks can be traced to the Song Dynasty, when craftsmen painted their signature or mark on their products.

China's first trademark law is called *Trademark Registration Pilot Constitution*, implemented in 1904. It is noteworthy that this law was introduced by the Beiyang government, under the background of the invasion of China by the Eight-Nation Alliance. This act was drafted by Robert Hart, a British diplomat and official in the Qing government. Its main purpose was to get foreign businessmen trademark protection. It can be said that the emergence of modern trademark protection legislation in China is directly related to the requirements of Western great powers (Li, 2012).

2.1.4. Practices defying the conventional IP law framework

2.1.4.1. Trademark squatting

One of the two cases analysed in detail in this dissertation (the Jordan case) concerns practices identifiable as "trademark squatting". Trademark squatting has also been referred to as "bad-faith trademark filing". It occurs when someone other than the original brand owner gets the trademark on abroad.

In recent years, due to the trademark acquisition system, trademark squatting occurs frequently. Targets can be well-known trademarks, public figures, hot topics, or even places of interest. It brings a lot of harm. It not only seriously harms the legitimate rights and interests of the original owner, but also occupies a large number of trademark audit

resources. Therefore, it is necessary to curb malicious trademark squatting. So, what is the current situation of trademark in China?

China is a first-to-file country, so is Japan, Germany and the European Union. Regardless of the date of the invention, the trademark office will conduct preliminary examination of the earlier application. In contrast, the first to use is that trademark should be given to the first enterprise using it. The countries that use this principle include Canada, the United States and Australia etc.

Both principles have their advantages and disadvantages, mainly in three aspects: First, the value of a trademark does not lie in itself, but in the goods or services. The “first to file” principle may take the trademark away from its essence and protect a registered mark that is not associated with commercial activity. Under “first to use”, the creation of trademark right is truly justified. Second, if “first to file” is adopted, the right holder’s proof will be simple. Registration is also the method of publicity, and the obligee need not to bother to preserve the evidence of prior use. As for “first to use”, in the event of dispute, the first users may not be able to successfully prove their rights. Third, as the effectiveness of publicity of use is far less than that of registration, trademark applicants cannot find out whether there is prior user. Once a conflict occurs, “first to use” model will inevitably lead to losses of one party. Under “first to file”, since registration is way of publicity, applicants can search in advance to avoid conflicts. The above three points reflect that fairness and efficiency cannot be achieved simultaneously. First to use is relatively fairer, while first to file is more efficient. In China, in practice, it is easy to induce dishonest people to abuse this principle, which leads to unfair competition. On the one hand, a large number of unregistered trademarks of others may be registered to prevent others from using them; On the other hand, trademarks are not used for a long time, resulting in a large amount of resources occupied, thus forming a large number of garbage trademarks.

China does not have a clear definition of trademark squatting. In compliance with article 7 of *Trademark Law of the People's Republic of China (Revised in 2019)*, “The application for registration and use of a trademark shall be based on the principle of good faith.” The act of trademark squatting is subjectively malicious and violates the principle of good faith. However, the trademark law does not specify what kind of legal provisions should be imposed when the principle is violated. In line with article 44, “The Trademark

Office shall annul the registered trademark if... it was acquired by fraud or any other improper means.” After the investigation and verification of the Trademark Office, the result is only the trademark invalid processing. Trademark squatters will not suffer other losses except the loss of the exclusive right to use the trademark. In other words, they have little legal liability.

In China, trademarks are regarded as private rights, so they should be regulated under private law. In the private law, usually only the acts that violate the law or endanger the public interests of society are negated in effect. In addition, conflicts between private rights should be left to the subject of rights to negotiate freely and resolve independently, without strong influence by law.

Nowadays, with the development of its economy, China is transforming from net importer of ideas to net innovator. In accordance with the *Global Innovation Index 2020*, “China retains its 14th place in 2020, having broken into the GII top 15 last years and establishing itself as an innovation leader” (Dutta, Lanvin & Wunsch-Vincent, 2020). During this progress, China gradually realizes the importance of good intellectual property protection. Above all, is China's intellectual property system really that bad?

Since China's accession to the WIPO in 1980, internally, China has continuously formulated relevant laws and regulations. For instance, on 23rd August 1982, the *Trademark Law of the People's Republic of China* was adopted, symbolizing the establishment of China's modern legal system for the protection of intellectual property rights. Externally, China has actively acceded to various international conventions, including the *Paris Convention for the Protection of Industrial Property* and the *Berne Convention for the protection of Literary and Artistic Works*. Thus, it can be seen that China has made great efforts by taking measures to raise its intellectual property protection level, which is currently near the international standards.

However, China's intellectual property situation is not as rosy as it was described above. According to the online article *Updates of the Protection of IP Rights in China: Primary Challenges, Recent Developments and Best Practices*, “studies conducted as recently as 2018 indicate that over 80 percent of fakes on markets originated from the People's Republic of China (‘PRC’)” (Plane & Chen, 2018). So what went wrong?

First, due to “first-to-file” registration system, the volume of trademark squatting cases is rampant. In the article mentioned above, the PRC's trademark system is compared

to a lottery, and the “ticket” that the foreign brand owner pays off is regarded as reward to trademark squatter (Plane & Chen, 2020).

Second, the amount of infringement acts is not sufficient to deter infringers or compensate right owners. Before 2014, the average fine for patent infringement cases nationwide was around 80,000 yuan (about EUR€10,000). It is only a derisory amount of penalty for those pirates, especially taking into consideration how huge profits they have made from their illegal activities. Over a period of three years from 2016 to 2018, there were 36,144 adjudication documents for infringement of patent right. Among them, there were only 88 judgment documents with the amount of compensation over 1 million yuan (about EUR€125,000), account for 0.24% of the total (AnJie Law Firm, 2019). Apparently, the penalty does not match the value of the IP free riding. In other words, the consequences for infringement are too easy to pay.

Third, with the rapid development of the internet technology, online infringement has been skyrocketing. What has been particularly prominent in recent years is online educational resources. In 2020, because of COVID-19, China's offline education was suspended, and online education gained an opportunity for rapid growth. According to *Statistics Reports on Internet Development in China*, published by China Internet Network Information Center (CNNIC), in June 2020, the number of online education users in China had reached 381 million. As a matter of fact, due to the ease of secondary transmission, a large number of video and courseware resources are pirated. The right owner cannot know the real name information of the infringer, and the infringer can easily delete the network content. Both attributes make the evidence more complex and difficult to obtain, leading to litigation hard to proceed. In addition, *Copyright Law of the People's Republic of China* was first promulgated since 1990, and amended twice respectively in 2001 and 2010, which is not suited to today's specific circumstances (Plane & Chen, 2020).

2.1.4.2. Counterfeiting: causes and implications

In the second case study of this dissertation (Pinduoduo), counterfeiting practices will be analysed.

What is counterfeiting? The definition of product counterfeiting by different

organizations is not completely consistent. The exact definition depends on the laws of each country or region. The World Trade Organization (WTO) defines counterfeiting as: "Unauthorized representation of a registered trademark carried on goods identical or similar to goods for which the trademark is registered, with a view to deceiving the purchaser into believing that he/she is buying the original goods."¹ An article, titled *Defining the Types of Counterfeiters, Counterfeiting, and Offender Organizations*, by John Spink et al., published on 1st December 2013 in *Crime Science*, summarizes the types of counterfeiting, as shown in the table 1.

Table 1 Types of counterfeiting (Adapted from (Spink, 2009b, Spink, 2007))

Note: In each case, fraudsters may not be following the regulatory definitions of

Term	Definition
Adulterate	A component of the legitimate finished product is fraudulent
Tamper	Legitimate product and package are used in a fraudulent way
Over-run	Legitimate product is made in excess of production agreements
Theft	Legitimate product is stolen and passed off as legitimately procured
Diversion	The sale or distribution of legitimate product outside of intended markets
Simulation	Illegitimate product is designed to look like but not exactly copy the legitimate product
Counterfeit	All aspects of the fraudulent product and package are fully replicated

Good Manufacturing Practices (GMPs), Good Agricultural Practices (GAPs), or Good Hygiene Practices (GHPs) (Spink et al., 2013).

The trade in counterfeiting and pirated goods can do a lot of harm. First, it hurts economic growth. The original trademark owner losses revenue, and the reputation that the company spent millions to build is damaged. It also reduces the government tax revenue. Second, it is major threat to health and safety. For example, in order to reduce

¹ https://www.wto.org/english/thewto_e/glossary_e/counterfeit_e.htm

production costs, counterfeit product manufacturers often use cheap, dangerous or unapproved materials, which may be harmful to consumers or the environment. Third, counterfeit products can finance organized crime, such as terrorism, human trafficking and child labor. In Paris in 2015, the terrorists that attacked Charlie Hebdo Newspaper obtained funds by selling fake footwear. Fourth, it may undermine sound public governance. Fifth, eventually, it can threaten democracy and political stability (OECD & EUIPO, 2021).

Why are there counterfeiting products in the market? For the businesses, which produce and sale fake goods, it is because of the benefit. For some innocent consumers, identifying fake goods can be complicated and expensive. While for other customers, they buy them on purpose.

In China, brand counters in most shopping malls do not provide authentication services for products purchased online. And it is difficult for ordinary consumers to get the identification of the original company (the brand owner). The difficulty in providing evidence leads to difficulty in defending rights. According to Alibaba customer service, there are three effective methods for consumers to report counterfeits: One is the seller's own admission of selling counterfeit goods; The other is the certification of the brand's identification of fake products; And the third is the appraisal by State Administration of Industry and Commerce of the People's Republic of China (SAIC). In practice, however, very few brands are willing to provide authenticity verification to consumers. Because brands are not sure what the results will be used for, and it is impossible for them to authenticate for every client. Most third-party accrediting agencies only accept commissions from legal operations departments, and generally do not give consumers accrediting. Even though some third-party agencies can do appraisals for consumers, from a legal point of view, the appraisals are only for reference. It is not the authenticity identification report, but the inconsistency report. That is, there is a discrepancy between the entrusted product and the original sample (Yan, 2018).

For other customers, they purchase counterfeits on purpose. On the one hand, the psychology of "wanting to show off" simulates a large amount of luxury consumption demand in China; On the other hand, due to their geographical location and price competitiveness, many consumers flock to e-commerce channels to purchase luxury goods.

To sum up, there are three reasons for the existence of counterfeits: First, businesses make and sell counterfeits in order to seek profits; Second, it is difficult for innocent consumers to present certificate of inauthenticity, which allows businesses to sell fakes unscrupulously; Third, some customers who cannot afford luxury want to satisfy their own vanity.

In the field of e-commerce, the net benefit of strategies towards opposing counterfeiting practices is hard to justify. On the one hand, due to the lack of physical stores for some online providers, it makes law enforcement difficult to be carried out, thus increasing enforcement cost. On the other hand, the low transaction volume of small suppliers dispersed on the Internet means that the benefits of enforcing intellectual property laws are relatively small. The reputation of the brand has been devalued due to trademark infringement, coupled with the loss of income, it is described that the e-commerce has become a brand's curse (Otim & Grover, 2010).

A Strategic Approach Using Governance, Risk and Compliance Model to Deal with Online Counterfeit Market was written by Ramakrishnan Raman and Dhanya Pramod, published in 2017. It talks about 11 factors that contribute to online counterfeit. Although the research target is the Indian market, there is still value for reference:

The consumer's negligence on health and safety, low regard for IPR and personal gratification issues contribute to online counterfeiting. Also they do not care for brand prestige and value. This leads to giving preference to price than quality and results in buying counterfeit goods. The cultural aspects include low regard for intellectual property rights and attitude towards counterfeiting as the influencing factors. When the counterfeit goods are offered at low price, the price difference between original and counterfeit becomes huge and customers tend to buy counterfeit products. Also if the acceptable perceived quality of the counterfeit is met and if counterfeiters are able to conceal status by projecting a better image, then the fake product gets sold in the market. The institutional characteristics such as low risk of discovery, legal and regulatory framework, easy access and availability of products, low risk of prosecution, weak or no penalties influence online counterfeiting. (Raman & Pram, 2017)

2.2. Development trend of intellectual property in China

In 1790, the United States enacted the world's first modern patent and copyright laws to promote the advancement of science and practical technology, with the publication of *Copyright Act of 1790*. It explicitly granted no protection to foreign creations. And it

pointed out that: “Nothing in this Act shall be construed to extend to prohibit the importation or vending, reprinting or publishing within the United States, of any map, chart, book or books written, printed or published by any person not a citizen of the United States.”

Throughout the 19th century, imitation played a crucial role in moving the US up the value chain, a process that relied on relatively weak intellectual property protection. With the enhancement of the United States' own innovation capabilities, domestic stakeholders began to call for strengthening IP law. At that time, the United States was transitioning from a net importer of the matter protected by intellectual property rights to a net innovator. This shift provided the necessary conditions for strengthening the protection of property rights (Huang & Smith, 2019).

The experience of the United States illuminates the trend of co-development of intellectual property protection and innovation capacity. According to *WIPO IP Facts and Figures 2020*, in 2019, the China's Intellectual Property Office received 1.4 million patent applications, more than twice the number received by the US Office (621,453). The number of applications filed by the Chinese Office has reached 7.8 million, accounting for more than half (51.7%) of the total global trademark application activities. As for the global industrial design application activities in 2019, the number of applications received by the Chinese Office alone accounted for 52.3% (711,617) of the global total. With the above three statistics, China ranked first in the world in terms of IP in 2019. As a result, there is reason to believe that China's IP system is bound to be further strengthened. A fact is that, in the past, in most of intellectual property cases involving Chinese and foreign enterprises, it was the Chinese part that was suspected of infringement. In contrast, in recent years, as the intellectual property rights owned by Chinese companies have increased, Chinese companies have become infringed. Overseas companies, such as Apple and Muji, got sued for infringing Chinese enterprises (Sagami, 2021).

Since 2013, President Xi Jinping has put forward the Belt and Road Initiative (BRI). It urges Chinese productions and brands to get involved further in the international trade competition. The Initiative promotes the institutional establishment and harmonious development of regional economic integration. The intellectual property system must be followed up and guaranteed accordingly, so as to construct a more fair and reasonable

international intellectual property protection and realize the institutional innovation of regional intellectual property integration. According to *Intellectual property cooperation with nations participating in Belt and Road Initiative continues to expand* (Ping, 2018), an intellectual property high-level conference was held in Beijing on 28th and 29th August 2018. He Zhimin, deputy director of the National Intellectual Property Administration, said: “Enhanced cooperation will help enterprises along the route understand the intellectual property system and business environment of each country, and improve their competitiveness in global market.” With frequent economic and trade exchanges, it has promoted IP communication among enterprises from Belt and Road countries. Therefore, it can be said that the internationalization trend of China's intellectual property law in the future is to actively promote the new international protection order of intellectual property based on the local national conditions, participate in global competition with the new international development of intellectual property law, and improve the comprehensive national strength.

3. METHODOLOGY

3.1. Overall

This dissertation will conduct research on “Existing defects and development trend of China’s intellectual property”. This chapter of the paper will explain the methodology applied, which are research design, strategy for secondary data collection and sampling, data analysis, ethical considerations and limitations of the research.

This chapter will elaborate the above points in detail.

3.2. Research design

This dissertation adopts the “Case Study” model following a Qualitative Research approach. Based on *Dissertation Skills for Business and Management Students (Second Edition)*², the reasons are as follows: First, in this complicated situation, multiple data resources will be used, which help to explore the specific phenomenon; Second, it allows to obtain reliable data; Third, it can help in enlightening casual mechanisms and processes; Fourth, it helps to understand the reasons why this happens, under what conditions and what is the impetus.

As a research method, Case Study can be used in many fields, including business and economics. “The more that your questions seek to explain some contemporary circumstance (e.g., “how” or “why” some social phenomenon works), the more that case study research will be relevant. Case studies also are relevant the more that your questions require an extensive and ‘in-depth’ description of some social phenomenon” (Yin, 2018, p. 4). As the research questions are: Why has there been so many knock-off in China? What will be the expectable trend on this regard in the near future? And how to improve the situation? This thesis will also describe the history of IP in the world, and in particular explore the situation of IP in China. So, Case Study is suitable and applicable for the paper.

² Written by Brian White and Stephen Rayner.

It is proposed that the same study can consist of multiple cases, which is likely to be stronger than a sing-case study (Yin, 2018). Therefore, two cases were selected: Michael Jordan Case and Pinduoduo's Counterfeits. They are two different types of cases, respectively concerning the abuse of a brand and related trademarks, and the sale of counterfeited products through an e-commerce platform. Through these two case studies it will be possible to identify adequate answers for my research questions, and draw a set of cross-case conclusions.

The reason why Jordan Case was chosen is that, as a guiding case, it has an extremely important role model in China. It clarifies the requirements for the protection of the right of name in trademark administrative dispute cases, the determination criteria for the damage of the right of name prior to applying for trademark registration, and the normative role of the principle of good faith in trademark application for registration. Moreover, it involves a well-known foreign athlete and a well-known domestic sports brand, which has attracted wide attention at home and abroad. Therefore, the Jordan case is worthy of study. As for Pinduoduo, it is the current biggest e-commerce platform in China, and it is constantly reported for selling counterfeits. Compared with other small e-commerce platforms, Pinduoduo is more representative.

3.3. Strategy for secondary data collection

In order to ensure reliability, the data from this paper are from academic websites, major newspapers and periodicals, including but not limited to: News websites - BBC, China Daily, Foreign Policy, Xinhuanews and IJTRD; Research and information publishing institutes - CNKI, CORE, Springer Science + Business, JSTOR, Elsevier and SciELO; Legal information websites - Lexology; Intellectual property websites - WIPO and IPR Daily.

As the data in this dissertation are all secondary, the advantages are as follows:

A. Lower acquisition costs – Whether in the aspects of time, manpower or resources, there are obvious advantages. The cost can be low or even free.

B. High degree of reproducibility – In comparison with primary data, there are fewer variables that affect the reproducibility quality of secondary data, making it more of academic value.

C. High degree of objectivity – Based on data from commercial newspaper and academic websites, second-hand data are more objective and reliable.

D. Large sample – Especially with the Internet as the platform in the information age, secondary data is very rich. Hence, it is possible to carry out horizontal and vertical analyses.

However, there are disadvantages that cannot be ignored:

A. Low concentration – Although the Internet provides a large amount of secondary data, it exists in different carriers. So, it is scattered in the use of case study.

B. Lack in precision – Compared with primary data, the secondary data are relatively coarser, due to the lack of detailed information. In addition, the secondary data may be questioned because it is not customized for the specifically designed research topic.

3.4. Data analysis

Based on the characteristics of secondary data, it is evaluated as the two following procedures:

Three steps to determine suitability: First, can the data answer the question? Second, is the data applicable to people who are interested? Third, is the data appropriate for the period of interest?

Five steps to determine accuracy: First, are data units and classifications appropriate? If not, can the data be reprocessed? Second, is it possible to identify the original source of the data? Third, is the cost of acquiring the data worth it? Fourth, what is the possibility of bias? Fifth, is the accuracy of data collection verified? If not, is it worth the risk?

3.5. Ethical considerations

First of all, this point starts by explaining what is meant by ethics. In China, this term refers to the relationship between people and the rules that govern them. To be more precisely, that is: reasonable actions that do not cause physical or mental harm to others. And from an academic point of view, it is tended to think of ethics as the pursuit of moral standards.

In scientific research, ethical considerations are not inconsequential. The bottom line of morality is law, it seems that it does not matter so long as we do not challenge the line. On the contrary, this is an integral aspect of research. Since “secondary data” is used, “interviews with participants” is not involved. Hence, it must be stressed that the use of other authors' works is acknowledged, marked as *Rules Governing the Presentation of Written Work at ISEG* requests. Furthermore, throughout the whole paper, from discussion to analysis, a high degree of objectivity will be maintained.

In reality, researchers are often unable to conduct responsible research because of deficiencies in knowledge, methods, skills or abilities. As a result, academic misconduct may occur. Academic misconduct can be divided into four points: fabrication, falsification, plagiarism and questioned research practices.

The hazards of research misconduct are enormous. First, academic research is supposed to be produced through years of professional knowledge. By fabrication, falsification or plagiarism, it will only bring bad effects. Second, academic misconduct violates the spirit of science, which is seeking truth from facts, pioneering and pragmatic. Moreover, it also encroaches on the limited academic resources, making it not conducive to the development of society and individuals. Third, if this happens frequently, it will cause the community to lose trust in academic research. This will not only affect the rational cognition of social groups, but also corrupt the social atmosphere.

3.6. Limitations of the research

Just as a cog in motion must get stuck sometimes, limitations in the study are inevitable. Although recognizing those limitations may cause readers to negatively evaluate the value of the paper, it can actually make the paper more persuasive. Therefore, it is necessary to point out the limitations of the research.

3.6.1. Data sources

A. The data sources for this paper have been mentioned above at “Strategy for secondary data collection”. No methods such as “interviews” were adopted to listen to the opinions of the public, so the data sources are relatively single and unrepresentative.

B. When using well-defined search techniques, there is no guarantee that all relevant literature reviews can be found due to search criteria. For example, when searching on Google, usually those results that are wanted will be found in the first few pages. On contrary, when using scientific and technological literature search, due to the use of time order sorting or citation rate sorting, it is possible to turn over ten pages without finding the needful literature.

3.6.2. Differences arising from cultural or personal factors

The cultural differences between the East and the West will lead to the diversity of modes of thinking worldwide. That is because the dominant philosophy of society will affect the ways of thinking. For example, western philosophers emphasize freedom and independence, while the East (such as Taoists and Confucianist) accents harmony and interpersonal relations.

As for individuals, it can result in irrationality because of cognitive bias.

Therefore, under the subtle influence of culture and individual, it is essential to maintain a high degree of objectivity to ensure the academic value of the paper.

4. THE MICHAEL JORDAN CASE

4.1. Background

Fujian Jinjiang Township Chendai Brookside General Supplies Factory Number Two was founded in 1984, as a company that designs, develops, manufactures and sells sportswear. In 2000, it was officially renamed Qiaodan Sports. By that time, Michael Jordan, nicknamed “Air Jordan”, had won six NBA championships. Although “Qiaodan” is widely regarded as the phonetic translation for the name “Jordan”, Qiaodan Sports has nothing to do with Michael Jordan. After the name change, Qiaodan Sports Company has gradually developed and expanded. As of 30th June 2011, Qiaodan Sports has established a marketing network covering 31 provinces, municipalities and autonomous regions in China. In 2010, the company’s sales revenue is as high as 2.93 billion yuan. It is undeniable that the trademark “乔丹” has played a key role.

Qiaodan Sports owns 127 registered trademarks in China, including “QIAODAN”, “乔丹” (transliteration of “Jordan” in Simplified Chinese), “杰弗里乔丹” and “马库里乔丹”. The last two are the Chinese translation of his two sons’ names, which are Jeffery Jordan and Marcus Jordan respectively.

On the other hand, Nike signed Michael Jordan to the company in 1985. Then Air Jordan entered the Chinese market in 2004. However, Nike did not register to use the corresponding Chinese name, only the word mark “Michael Jordan” and two figurative marks.

In 2012, Air Jordan applied to the Trademark Appeal Board of the State Administration of Industry & Commerce of the People’s Republic of China to revoke Qiaodan Sports’ 78 related registered trademarks, but the application was rejected. In other words, 78 related registered trademarks mean 78 administrative cases, and that is the reason why this litigation lasted so long for 8 years. In the same year, Air Jordan filed an administrative lawsuit with the Beijing No. 1 Intermediate People’s Court and the Beijing High People’s Court, but lost. Hereafter, Air Jordan petitioned the Supreme People’s Court (SPC) for a retrial. As a result, out of the 78 trademarks, Air Jordan only won 4, while Qiaodan Sports won 74.

4.2. Literature Review

In court, Qiaodan Sports attempted to explain that “乔丹” means “a kind of big tree growing in the south of China”³. Despite the explanation, Qiaodan Co.’s products and trademarks have nothing to do with it. On the contrary, the corporation manufactures and sells sporting goods, in which area Jordan is famous. (Chao & Ma, 2014). Qiaodan Sports tried to disassociate itself from Michael Jordan by using the literal meaning in the dictionary, to hide the fact that “乔丹” is a Chinese transliteration of Jordan. For the transliteration of Chinese, it is translated into Chinese characters with similar pronunciation to the source language. In this case, the words used for transliteration no longer have their own original meaning, but only remain their pronunciation and writing form. In the point of view of Baker et al. (2017), the transliteration loophole is more of a malpractice than a legal defect. It depends on whether the judge is inclined to protect domestic companies at the expense of foreign businesses. They also stressed the importance of more literature about trademark protection. The move to improve judicial enforcement could boost foreign economic investment in China and protect consumers from brand confusion (Baker et al., 2017).

On the vast majority of domestic and foreign media websites, it says that Michael Jordan has won the eight-year trademark battle. In fact, Michael Jordan only won 4 trademarks out of 78. Qiaodan Sports made the announcement on the evening of 8th April 2020, saying that it had won lawsuits on 74 trademarks registered for more than five years, including all the commonly used core trademarks. So the ruling will not affect the normal operation of the company. On the other hand, although Qiaodan retained most of its trademarks, the goodwill attached to them is impaired as a result. Under the circumstances, the corporate reputation suffers setbacks, and the marketing has a greater risk in the future (Li & Wu, 2020).

Some news reports have suggested that the ruling also has political ramifications. On 15th January 2020, the US-China Phase One trade deal was signed in Washington DC. In the trade deal, China has pledged to strengthen intellectual property protection, which

³ Meng & Ma (2014). *The analysis of trademark dispute cases in China – a cognitive perspective*, The Fourth International Conference on Law, Language and Discourse: American Scholars Press, Xi'an, pp. 103-108.

is one of the core sticking points in the trade war between the United States and China. In view of China's first-to-file system, international firms are supposed to file proactively (McCann, 2020).

In China, this type of infringement is referred to as "touch ball", as for the West, "free-ride". The ruling is a sign that "free-ride" is a dead end in China. It also demonstrates China's determination to further strengthen intellectual property rights protection (Li & Wu, 2020). Besides, it has been a wake-up call for China's manufacturing industry. Instead of having a hazard of being controlled by others, it had better to build good brand awareness from the start. In practice, China is capable of producing well-designed and high-quality products. It is surely hard in the establishment stage of the brand, but once the brand is founded, there are no worries about the infringement of trademarks. Moreover, the brand effect is incomparable to the surplus value of earning cheap labor force by mere imitation. The profit maximization pursued by businessmen cannot be obtained through imitation. Only by establishing a direct connection between their brand and consumers can they guarantee the long-term development of enterprises (Zhu, online resource without date).

There are quite a few sportswear companies named after athletes, such as Cristiano Ronaldo (Portuguese footballer), Li Ning (Chinese gymnast) and, in this case, Jordan. For those who have not yet penetrated the Chinese market, it is necessary to take reasonable measures to protect their names and trademarks. Especially for athletes who have not registered their names or figures as trademarks, their growth potential makes them very likely to be squattered. To avoid it, athletes, who play in leagues or compete in major sport events, should invest in having their names transliterated into Chinese characters and registered in China (Baker et al., 2021).

4.3. Discussion: determination of the improvement of the IP system

An article, called *Top Court Gives Guidance for Grassroots Hearings*, updated on the website of the Supreme People's Court of the People's Republic of China on 15th January 2020, says "'Qiaodan' as a transliteration of 'Jordan' in Chinese characters had a strong connection to the basketball player from the United States, and many Chinese would think it was Jordan when they saw Qiaodan written in Chinese, the ruling said."

This means that, for many Chinese, they think Qiaodan has infringed on the rights. So why did it take 8 years for the Supreme People's Court (SPC) to rule in Michael Jordan's favour, while his appeals had been rejected in both the first and second trials?

When undeveloped countries try to catch up with developed countries, there will be more or less the problem of plagiarism and infringement. Because in this way, through cheap labour and fast imitation, they can get more profit – technology and fortune. For example, after World War I, Japan managed to develop its car industry by copying American cars, such as Nissan's "Special Six" was an imitation of Graham's "Cavalier Six". But at some point, it's going to have to be controlled. If this situation is left allowed to develop, domestic will also infringe on each other, making it difficult for excellent enterprises to stand out. To avoid "free ride", many companies have to register a bunch of useless trademarks. For instance, Redmi, a Chinese mobile brand affiliated with Xiaomi Technology, has basically registered all kinds of colours of "mi". In accordance with China Trade Mark Office, by 12th August 2021, Xiaomi has registered 10,499 trademarks in China.

As a matter of fact, Chinese enterprises also encounter trademark squatting after internationalization. For example, Lenovo was founded in 1984, whose original name was Legend. In 2001, it began to globalize, only to find that its English name has been registered as a trademark by more than 100 companies around the world. It was too overwhelming to negotiate with so many companies, so that Lenovo had no choice but to make a huge investment to change its name from "Legend" to "Lenovo" in 2003. Later, Lenovo spent about 200 million Chinese yuan to propagandize it. Nowadays, there are more and more cases of Chinese companies having their trademarks registered abroad, such as Tong Ren Tang, Hisense and Wangzhihe etc. However, some foreign supervisory departments are reluctant to help Chinese companies regain their trademarks, since many foreign companies suffer likewise in China. As Chinese companies go global, there will be more losses if this problem is not addressed.

If they want foreign regulators to cooperate, Chinese authorities should at least show sincerity. The Michael Jordan case is one of the most obvious examples. There is a post created 9 years ago on Reddit whose title is: *Michael Jordan Has a Big Challenge ahead Making His Trademark Claim in China against Qiaodan, and May Be Better off Settling than Taking the Case all the Way to a Court Decision [Audio]*. A comment under it,

written by “lordnikkon” in 2012, says: “First of all Jordan has no chance of stopping Qiaodan... In China as long as they are not copying the logo exactly, it is hard to make a trademark claim... and Chinese courts always favor Chinese companies when sued by foreign companies...” Although it is not an authority statement, it shows the attitude of foreign netizens who do not trust China’s intellectual property legal system. As trade frictions have been increasing recently, this phenomenon can be the target of public criticism, even the evidence that can get hold of in lawsuits or arguments. So in 2020, the SPC used the Jordan case to announce that China is not a lawless place for IP and determined to improve its IP system.

All in all, China is a developing country, but that is no excuse for weak IP protection. Michael Jordan’s win is a sign of China’s determination to improve its IP system. And it serves many purposes: First, it confirms the correspondence between “Jordan” and “乔丹”, and points to the need for laws to the name rights of high-profile public figures; Second, the ruling did not cause serious financial damage to Qiaodan Sports, but banned the use of four trademarks that had not been registered for more than five years; Third, it is a warning to domestic companies not to exploit “free ride”; Fourth, it reminds foreign companies to file a lawsuit as soon as possible, within five years since the trademark squatting happens; Fifth, it serves as a guiding case⁴ to lower courts.

The combination of these factors makes the case enough to go down in history.

⁴ China Guiding Cases Project: It is a system adopted by the SPC to summarize trial experience and unify the application of law. Jordan case is recorded as guiding case no.113, *Michael Jeffrey Jordan v. The Trademark Review and Adjudication Board of the State Administration for Industry and Commerce and Qiaodan Sports Co., Ltd., An Administrative Case Concerning a Dispute over the “乔丹” Trademark*.

5. PINDUODUO'S COUNTERFEITS

5.1. Background

On Forbes' 2020 China Rich List, 4 of the top 20 are in the area of e-commerce. Among them, Jack Ma of Alibaba and Colin Huang of Pinduoduo ranked first and seventh respectively. It can be said that e-commerce is thriving in China. However, Pinduoduo has been constantly exposed as selling fake goods. It's said that the rise of Pinduoduo stands for a consumption downgrade (Ren, 2020). But rampant counterfeits did not hamper its success. According to the *Pinduoduo Inc. 2020 Annual Report*, the number of active buyers on Pinduoduo reached 788.4 million by the end of 2020, making it the largest e-commerce platform in China by user scale. The other two major e-commerce platforms are Alibaba (779 million) and JD.com (472 million). The annual turnover of Pinduoduo was approximately 1.7 trillion Chinese yuan. Many attribute Pinduoduo's success to its mastery of the "sinking market". But the sales space of genuine goods has been squeezed for a long time, which might result in the situation that bad money drives out good.

What is sinking market? It is translated literally from "下沉市场 (xiachen market)", which means market in third-tier cities and below. There are 338 cities at or above prefectural level, but only 49 belong to the tier 1, new tier 1 or tier 2. In ranking cities in tiers, the following criteria are used: consumer behavior, consumer sophistication, income level, population size, talent pool, infrastructure and business opportunity. So, China's sinking market accounts for around 85.5% of the total Chinese market. Based on *Tencent Investment Li Zhaohui: How Do We Understand the Sinking Market?*, published in 2019, there are four features about sinking market: First, it is vast in territory and enormous population; Second, people from third-tier cities and below have 9 hours of leisure time on workdays, almost twice as much as people in first- and second-tier cities; Third, people in sinking market have less brand loyalty, and they are sensitive to price, in other words, price takes precedence over brand; Fourth, they have more frequent interactions with friends and family.

5.2. Relevant facts

On 25th April 2018, the Office of United States Trade Representative (USTR) released its Notorious Market List⁵. Several online and physical markets were listed for infringing intellectual property rights, including Pinduoduo. In accordance with *2018 Out-of-Cycle Review of Notorious Markets*, “Many of these price-conscious shoppers are reportedly aware of the proliferation of counterfeit products on pinduoduo.com but are nevertheless attracted to the low-priced goods on the platform... Meanwhile, counterfeit and pirated products, including counterfeit copies of legitimate products sold in the flagship stores, appear to remain widely available on the platform.”

In *2019 Review of Notorious Markets for Counterfeiting and Piracy*, the USTR acknowledged Pinduoduo's efforts towards anti-counterfeiting, such as its anti-counterfeiting programs and compensation policies. It is indicated in the report: “However, Pinduoduo does not have a clear and transparent policy for how or when sellers of counterfeit goods will be held accountable, when a merchant will be banned from the platform, or under what circumstances it will share information with right holders or law enforcement. Right holders convey that Pinduoduo's lack of a clear and transparent IP enforcement policy is indicative of its nascent IP enforcement system that, while headed in the right direction, is currently insufficient to deal with the availability of counterfeits on its platform.”

In *2020 Review of Notorious Markets for Counterfeiting and Piracy*, Pinduoduo continued to appear on the list. The USTR noted that there were still a large number of counterfeiting products on Pinduoduo, and that the platform was slow to respond to fake goods and remove identified ones. Furthermore, the platform was criticized for not actively providing information to assist right holders in filing lawsuits.

On 26th July 2018, Pinduoduo, which was established for three years, was listed on the Nasdaq in the United States, and its stock soared nearly 40%. But in fact, Pinduoduo

⁵ The Notorious Markets is used by the United States to describe those offshore websites and physical markets where large-scale violations of intellectual property rights exist. The Notorious Markets List, initiated by the International Intellectual Property Alliance (IIPA) and the OFFICE of the United States Trade Representative (USTR), was introduced in the Special 301 Report in 2006 and has been published annually independently since 2011. However, it is worth noting that the IIPA is a US non-governmental organization, while the USTR stands in the relevant legal and enforcement environment of the US, so it is said that the NML was unilaterally issued by the US and has not been sufficiently recognized by other countries.

has long been accused of selling counterfeits, unauthorized goods or illegal products that do not match its description, including daily necessities, electronic products, food, beverage and luxury goods etc. For example, on 28th July 2018, Skyworth, a Chinese television manufacturer, issued a solemn statement to ask Pinduoduo to remove and stop selling counterfeit Skyworth products on its platform. On 1st August 2018, China's State Administration for Market Regulation (SAMR) stated that it was paying close attention to media reports on Pinduoduo, regarding the sale of infringing counterfeit goods. Facing a deluge of negative reports on media, Pinduoduo's stock price fell 15.34% in four days after its flotation (Liao & Tao, 2018).

When faced with the problem of fakes, Huang Zheng, the founder and former CEO of Pinduoduo, said: "Pinduoduo is only a three-year-old child", "We have to go through what Alibaba has gone through," and "This is a common problem in the industry."⁶ These expressions are more or less suspected of evading responsibility, and Pinduoduo really should not use old questions (fake goods are rampant on e-commerce platforms) to cover itself. In 2017, Jack Ma, the co-founder and former executive chairman of Alibaba Group, appealed to the National People's Congress (NPC) to fight counterfeits the same way they fight drunk driving. He also invested heavily in counterfeiting operations and achieved good results. According to *Alibaba Group 2017 Intellectual Property Rights Protection Annual Report*, 240,000 Taobao stores suspected of selling counterfeits were closed; total intellectual property complaints dropped by 42%; in every 10,000 transactions, only 1.49 were suspected of being counterfeit (2.1 in the previous year) (Ai & Wang, 2018).

5.3. Discussion: The future of Pinduoduo and counterfeits

Pinduoduo's success in the sinking market also reflects the phenomenon of "fake goods proliferation" in underdeveloped regions in China. "雷碧" takes place of "雪碧 (Sprite)", "蓝月亮" replaces "蓝月亮 (Bluemoon)", similar examples abound... Those brand names are very similar to the Chinese names of well-known brands. In addition to names, it can also imitate packaging or decoration. It misleads consumers into believing that the products are of another entity or have a particular connection with another entity.

⁶ 深陷舆论漩涡 拼多多回应:山寨不是假货

This practice is also known as “free-riding”. Whether it is because of external doubts, or the urgent need of internal transformation and upgrading, Pinduoduo needs to increase its efforts to combat counterfeiting. If Pinduoduo achieves good results in combating counterfeit goods, it will gain two birds with one stone. On the one hand, the third, fourth and fifth tier cities can have high-quality and inexpensive genuine products, so as to counter the doubts about counterfeit goods, win the trust of consumers and even gain new customers. On the other hand, taking this as an opportunity to spread the knowledge of intellectual property to the whole country, to strengthen the national awareness of intellectual property.

Pinduoduo alone is not enough to strengthen the awareness of intellectual property rights in rural areas, the government should also take action. Just like after the establishment of People's Republic of China, it was generally believed that there were 80% of illiteracy at the time. The late Chairman Mao Zedong put forward, “Recovering and developing people's education is one of the most important tasks at present.”⁷ The large-scale literacy was launched, then the universal nine-year compulsory education. It reflects the firm belief that no matter how poor the country is, education cannot be poor. According to the *Main Data of the Seventh National Population Census*, illiterate population (over the age of 15) accounted for 2.67 percent of the national population. From a global perspective, this illiteracy rate is relatively low. Now, it should be the turn to popularize intellectual property rights.

As an explicit culture, the intellectual property system can be established relatively easily through legal transplantation, while the development of intellectual property awareness as an implicit culture cannot be completed overnight. Therefore, China needs to vigorously cultivate people's awareness of intellectual property, and try to eliminate the negative influence of traditional culture on the formation of intellectual property awareness. And the important way to this goal is education. Culture, as a social phenomenon, is accompanied by education. Through intellectual property education, people's acceptance of the intellectual property system will improve, promote the establishment of intellectual property awareness in the whole society, and eventually be incorporated into culture.

⁷ http://www.chinatoday.com.cn/ctenglish/2018/sl/201906/t20190619_800171107.html

Although China's intellectual property legal system has been relatively perfect, it still needs to be improved. As Jack Ma has called for, the government should penalize fakes as hard as it cracks down on drunk driving. Since 1st May 2011, after drunk driving entered the criminal law, the number of offenders and casualties of drunk driving has decreased significantly. According to an article, written by Traffic Administration Bureau of the Ministry of Public Security of the People's Republic of China, published on 29th April 2021 on Weibo, in 2020, the rate of drunk driving (that is, the rate of drunk driving among every 100 drivers) has been reduced by more than 70%, compared to before the "drunk driving penalty". Predictably, if making and selling counterfeits were criminalized, there would be fewer fakes on the market.

As for counterfeit products, in fact, they do not necessarily mean inferior quality. Sometimes, the quality of counterfeits is so good that it is difficult to distinguish them from the genuines. Nonetheless, intellectual property right infringement has dire economic consequences. Through making fake goods, merchants have accumulated enough experience in OEM and customer marketing to establish their own technology and brand. Merchants can establish now a special intellectual property organization to analyze the situation of intellectual property rights domestically and abroad, to prevent infringement of the intellectual property rights of others or repeated innovations. It is doable to set up strategic alliances of SMEs, to strengthen technical cooperation and research. Most importantly, as the country pays more and more attention to the problem of fake goods, businesses should transform and upgrade their structures as soon as possible.

About 4,000 years ago in China, the Yellow River was flooded, and Gun was assigned to be responsible for flood control. He mitigated the problem by placing embankments on the banks, but the water was getting higher and higher. Later, Gun's son Yu succeeded him in controlling the flood. He did the opposite of what his father did. All the way from west to east, Yu measured the terrain, planned the waterway and diverted the flood water into the sea. It took Yu 13 years to manage it. Under his command, the people could not be harmed by the dangerous flood so that they could live in peace and contentment. Back to Pinduoduo, there are plenty of articles about how to prevent

infringements and counterfeits, such as machine learning⁸ and Monte Carlo method⁹, but little about where the vendors go from here. Just like Yu tamed the flood, infringement merchants should be guided rather than blindly attacked.

⁸ Chin et al. (2021). *Commodity anti-counterfeiting decision in e-commerce trade based on machine learning and Internet of Things*.

⁹ Gai et al (2015). *Anti-Counterfeit Scheme Using Monte Carlo Simulation for E-Commerce in Cloud Systems*.

6. CONCLUSION

To answer the questions proposed at the beginning of this dissertation, why has there been so many knock-offs in China? From the above two cases, it can be seen that: First, in pursuit of profits, merchants produce and sell counterfeits. Second, it is difficult for innocent consumers to prove that they have bought fake goods, which encourages merchants to sell them unscrupulously. Third, some of the consumers intend to buy it. Due to the price of genuine products, they turn to e-commerce platforms to buy fake products in order to satisfy the mentality of “flexing”. Fourth, because of similar packaging or brand name, consumers cannot distinguish, such as “藍月亮” and “藍月亮”. In the first case, Qiaodan Sports misled people into believing that it had certain connection with Michael Jordan. Fifth, law enforcement departments do not crack down enough on intellectual property infringements. Sixth, lack of intellectual property education. Because of the above six reasons, just like a highway without traffic lights, fake goods can flow unimpeded all the way and reach every household “smoothly”.

After comparing China's IP history with that of the United States, there is reason to believe that China's IPR protection will be further strengthened. Not only is there a similar historical trajectory, but there is also pressure from the United States in the trade war with China, and China's economy has developed to the point where intellectual property rights protection should be strengthened. Recommendations on improving the situation are as follows: First, cultivate people's awareness of intellectual property through intellectual property education; Second, while transplanting more related laws, it should also pay attention to the localization of laws. Third, appropriately increase law enforcement in accordance with the country's level of economic development; Fourth, guide enterprises, especially those producing and selling counterfeits, to create and use intellectual property in a systematic way; Fifth, make full use of the advantages of the Belt and Road Initiative to establish a multilateral IPR protection system suitable for China.

Looking back on the birth of China's IP law, we can find that it started from the oppression of western great powers and was forced to take legal transplantation in order to seek a solution to the political crisis. From *Trademark Registration Pilot Constitution* to *Trademark Law of the People's Republic of China (Revised in 2019)*, China's IP law

has grown from nothing to awakening of self-improvement. Since the Republic of China, its IP law has been mainly imitating the existing laws in the west. Indeed, even in the 21st century, the development of China's IP law still lags far behind that of western developed countries. Legal transplantation can enable us to quickly absorb advanced foreign IP legislation achievements and thus narrow the gap. However, we should not ignore the localization of laws. How to draw lessons should be decided according to their own needs and combined with their own problems. Only in this way, the development of China's IP legal system can break through the barriers of old-school patterns, and maximize the effectiveness of the trademark law.

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