

# China: Brand Owner Prevails in Unfair Competition Action Against Bad Faith Squatter

*Bayer Consumer Care Holdings LLC and Bayer Consumer Care AG v. Li Qing, Hangzhou Yuhang, District People's Court 2018*

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## **Background:**

Bayer Consumer CareHoldings LLC and Bayer Consumer Care AG (collectively, "Bayer"), manufacturersof over-the-counter medication, dermatology, and sun care products, has soldits COPPERTONE brand of sunscreen in China since 2011. The COPPERTONE sunscreen products sold inChina feature images that were originally created by Bayer, namely, a stylizedsun and an illustration of a boy surfing, depicted as follows:

In May2015, a Chinese individual Li Qing ("Li") applied to register the following twodesigns covering sunscreen and cosmetics products in Class 3 that are highlysimilar to the images on Bayer's Coppertone sunscreen bottle:

Bayer did not oppose these applications. After the registrations issued in 2016, Li filed trademark infringement complaints against Bayer and its distributors on the Chinese e-commerce platform Taobao, where Bayer's COPPERTONE sunscreen was sold, claiming that Bayer's use of its design marks on the COPPERTONE sunscreen product infringed Li's trademark rights and that the COPPERTONE sunscreen products should therefore be removed from taobao.com. In response to Li's complaints, Taobao removed Bayer's COPPERTONE sunscreen products.

Li also sent warning letters to Bayer's distributors demanding compensation, and threatened to file trademark infringement complaints with administrative authorities against Bayer's distributors. Li also filed a trademark infringement complaint with administrative authorities against Bayer itself. Li offered to withdraw the complaints in exchange for compensation from Bayer's distributors, and even tried to sell his registrations to Bayer.

In response, Bayer filed an unfair competition action in 2017 against Li before the Hangzhou Yuhang District Court, asking the court to issue a declaration of non-infringement and grant damages for Li's egregious acts of unfair competition. Bayer claimed that Li's registration of the designs and malicious complaints filed with Taobao amounted to unfair competition under Article 2 of the Unfair Competition Law, constituting violations of the principle of good faith.

### **Hangzhou Yuhang District Decision**

In a decision issued in May 2018, the Hangzhou Yuhang District Court ruled in favor of Bayer, holding that Li's acts violated Article 2 of the Unfair Competition Law, and ordered Li to pay RMB 700,000 (about US \$100,700) in damages. The court determined that Bayer owned the copyright to the COPPERTONE designs, that such rights pre-dated the application date of Li's trademarks, and that the evidence sufficiently proved that Li copied Bayer's works. Applying the standard for determining whether the bad faith squatter's actions constituted unfair competition, the court found that Li's actions violated the principles of honesty and business morality given that his motive for securing the registrations was to provide a basis for filing the malicious complaints against Bayer and its competitors and to gain illegal profit, rather than for legitimate business operations. The Court also emphasized that Li is a serial trademark squatter who owns hundreds of trademarks that are identical or similar to other famous brands, that he has filed over 2,600 complaints against 1,800 Taobao vendors, and that such actions harm orderly and fair competition in the market.

This is an important decision for international brand owners facing trademark squatters in China. Chinese courts typically follow a strict interpretation of the law, which does not clearly define trademark squatting or malicious trademark registrations, and establishing bad faith can be challenging and expensive. This decision arguably opens the door to taking civil action based on unfair competition, and to claiming damages, when the squatter's actions demonstrably violate the principles of honesty and good faith and disrupt market competition.

### **Primary Contacts**

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