

## The Juristic Analysis on the Package Decoration Case between Wong Lao Kat Limited Company and Jiaduobao Limited Company

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**Abstract:** The case on package and decoration between Wong Lao Kat and Jiaduobao limited company has raised a series of issues on judicial practices on how to identify well-known products and the belonging of the specific package and decoration. The relative lack of theoretical studies toward such issues in our country makes it hard for the scholars to search for a proper solution. Apart from an introduction of the basic statement of the case, the writer has selected part of its disputed subjects to make an analysis on the ground of evidence accountability, power of proving and legal adaptability. It chose “the recognition standards of customers” as the identification for the belonging of known brands and the theory of “opposition” as identification for the designated package design, which can provide a beneficial alternative for judicial personnel when they are dealing with other difficult cases alike.

**Keywords:** Wong Lao Kat, Jiaduobao, package and decoration, customers, “opposition”

### The basic introduction of the case

On July sixth, 2012, the JDB Company and Wong Lao Kat group respectively launched lawsuits in the court of Beijing and Guangdong. Each claimed itself as the representative of the known brand and accused the other of having violated its right on the red-can package and decoration. Meanwhile, the two companies held different assertions on the judicial right of the beverage commodity. In 2012, the first trial led by the Supreme People’s Court for the verdict of the two cases was held in Guangdong’s Higher People’s Court. To have a further knowledge of the juristic entanglement, it’s important for us to make an assortment of the facts or clues concerned the case.

### Trademark licensing clues of “Wong Lao Kat”

On March 28, 1995, the Yang Cheng [1] medicine manufacturing corporation in Guangdong and the HongDao Group Company in HongKong signed “the Contract on permission for using “Wong Lo Kat” as the trademark of the red paper wrapped and red iron-canned herbal tea product, which states that Yang Cheng [1] can hold the monopoly to use the “Wong Lao Kat” brand since the day the contract is signed to January, 2003. On February 13rd, 1997, the two sides remade a permission contract which granted the HongKong group and its investment companies the right to use the trademark on their products’ packages from 1995. On August 28, 1997, YangCheng [1] transferred the brand monopoly to the Guangdong Medicine Manufacturing Group Company. Later, on May 2, 2003, the latter signed a new agreement with the Hongdao Group in which the deadline of permission to the Wong Lao Kat trademark is adjusted from May 5, 2000 to May 5,

2010. They signed a supplementary agreement on the brand permission on November 27, 2002(shortened as “the supplementary contract in 2002”) and extended the permission range to January May, 2020. In May of 2012, China International Economic and Trade Arbitration Commission (CIETAC) announced that the contract signed by Guangdong Pharmaceutical Group and Hong Dao Group was invalid. The Hong Dao Group was ordered to stop using “Wong Lao Kat” trademark on Chinese mainland from the day of May 2ed, 2010.

### The general statement on the use of the package and decoration

Chen Hongdao had obtained the patent of canned package decoration design on June 14<sup>th</sup>, 1997, the monopoly of which was exclusively granted to Jiaduobao Company, but it was not shared by Guangdong Jiaduobao Group. From the year of 1998 to the first half year of 2011, the Jiaduobao Group had invested a total of 6230 million yuan on production, marketing, advertising and sales promotion of the herbal product. In the verdict of the case of 2012 rendered by China Economic and Trade arbitration Commission, the Guangdong Pharmaceutical Group retrieved the “Wong Lao Kat” trademark, and on BaDaling it held a launching ceremony for the new red-can package decoration on June 3<sup>rd</sup>, 2012. The appearance of the red-can ‘Wong Lao Kat’ herbal tea products produced in the period of public sales were in much resemblance to that of the very herbal tea produced by Jiaduobao Company.

### **The variation of the brand value of “Wong Lao Kat”**

The relocation of the brand “Wong Lao Kat” made by Jiaduobao Company in 2002 had raised the company’s sales volume in 2008 from less than 200million yuan to the huge number of over 5 billion in 2007 and 14 billion in 2008. Its donation of 100 million after the disaster of Wen Chuan Earthquake in 2008 had again swiftly lifted the brand value of “Wong Lao Kat” herbal tea. And in the year of 2011, the brand value was expected to be up to 108 billion yuan.

Through the introduction of the case mentioned above, the essay is aimed to inform the readers of the source of the package decoration dispute case, which could soothe the path for more comprehension of the focuses of the dispute.

### **Fierce argumentation-----the analysis of the dispute focus**

The focus of the package dispute between “Wong Lo Kat” Group and JDB Group was embodied by two aspects, the reference of the concerned product and the belonging of the known product. With respect to the two issues, the author is to make an assessment to the focus of the dispute in terms of the evidence provided by both sides and their legal adaptability.

### **Which is the concerned known product?**

To make it clear whether the concerned known product is “Jiaduobao Herbal Tea” or “Wong Lao Kat Herbal Tea”, the companies had submitted their evidence materials respectively.

### **The penetrating analyses of the proving materials from the two sides**

#### **The assessment of the evidence provided by JDB Group**

The materials given by JDB Group claimed that the referred known product is Jiaduobao Herbal Tea and that the concerned known product was red-can herbal tea products produced by JDB Group of these years, which included both the ones with stick “Jiaduobao” and the others with “Wong Lo Kat” trademark. From these arguments, it can only be concluded that the red-can package design was first created by the individual person Chen Hongdao and had no business with Wong Lo Kat Group. It can also be seen that the JDB Group and its investment companies had earlier monopolized the usage of red-can product design in herbal tea markets. However, in this case, after the Group had done away with the “Wong Lo Kat” trademark, it’s uncertain that the newly emerged “Jiaduobao” brand could independently serve as the identification of the known product. Furthermore, as the proving materials submitted were not persuasive enough and loosely connected, the renamed red-can Jiaduobao Herbal Tea can’t be proved as a known product.

### **The analyses of the evidence from Wong Lao Kat Group**

About the first issue, the Guangzhou Pharmaceutical “Wong Lao Kat” Group cited The verdict rendered by CIETAC (Chinese International Economy and Trade Arbitration Commission) and the material object produced by JDB Group. They argued that the time when JDB Group began to produce “Jiaduobao Herbal Tea” was in the latter half of the year 2012 while the brand permission contract was due before the first half of the year, which means the “Wong Lao Kat” Herbal Tea products that Jiaduobao Group has long been producing were not known products. There’s no doubt about the objectivity and legitimacy of the evidence provided by the Wong Lao Kat Group, but the relations of these facts only display the changes of the JDB Group’s trademark and was so inadequate to deprive the position of Jiaduobao Herbal Tea product as a known product. Meanwhile, they also presented the “Wong Lao Kat” trademarks of varied periods to prove its long historical heritage and materials of acquisition of many titles of honor as the evidence. However, these materials can only prove that the “Wong Lao Kat” Herbal Tea products which use the formula of Wang Zefang [4] can be recognized as known products. It still cannot be drawn that the herbal tea products marked by “Wong Lo Kat” brand remain known products with its formula changed.

In summary of the analyses to the materials provided by both sides, we cannot make it certain whether the known product is “Wong Lo Kat” Herbal Tea or “Jiaduobao” Herbal Tea.

### **The legal analyses on how to identify “known products”**

Brand commodity is a concept set in the fifth article, the second item of the Law against Unfair Competition. It rules that the market managers are not allowed to use inappropriate means in market competition and to impair other’s interest. The means include such instances as using the specific name, the package and decoration of brand commodities without authorization or imitating the trademarks or package designs of brand commodity to mix with other commodities, which leads to confusion to customers. But there is at present no definition of the concrete connotation and identification standards of known commodities in the law system of our country. In judicial practice, the authorization of a known commodity is done in terms of the market status of the commodity, the general view from the customers and the specifics. Therefore, in this case, we should abide by the principle of combining individual case analysis and way of integrating, which subsequently relies on the identification of the evidence materials submitted by the clients of both sides.

By combining the analyses to evidence materials and identification of brand commodities, the essay proposes that in view of the evidence material analyses, it remains uncertain whether “the famous commodity” is “Wong Lao Kat” or “Jiaduobao” Herbal Tea. According to the general rule of the civil procedure law that “who claim, who provide evidence”, and the common practice that evidence takes edges when the truth appears vague, the judge should declare the side whose evidence potency is over 50% win the lawsuit.

In this case, JDP Group and Wong Lao Kat Company respectively issued lawsuit to each other at the same charge, which means there must be one side whose evidence potency is over 50% and another less than 50%, so it would be easy to make a verdict. But considering there is a particularity of the separateness among the trademark, formula and package and decoration of the product and the three factors take a great part in the customers’ recognition, while the essay is inclined to assume that the evidence power of the two products are 50% and both should be authorized as known brand products, it breaks the rule that potency power index should not add up to be over 100%. As a result, the essay proposes that to solve this dilemma, the court should adopt the individual case identification analysis and figure out the ratio of the trademark, formula and package decoration which constitutes the essentials of the brand commodity. As long as the client from either side owns the evidence materials whose evidence potency index is over 50% by calculation, he would the lawsuit.

If there must be a stance, the essay would identify “Wong Lao Kat” Herbal Tea as the well-known product. It mainly depends on the awareness of customers for customers often regard the trademark of the goods as a measure of acceptance when they make purchases. Thus it is understandable that even though the WLK Company has no longer used WangZebang’s [4] formula, it still keeps a good reputation and the “Wong Lao Kat” trademark has not in the least been devalued. That’s to say the “well-known product” does not only include the products produced by the JDB Group during the period when they are using the trademark by contract, but also the products produced by the Guangzhou Pharmaceutical Corporation which adopts its own formula. As for the JDB Group, which had raised the reputation and brand value of the “Wong Lao Kat” trademark through advertising promotion and effective brand management, they should be conciliated with appropriate compensation by Wong Lao Kat Company. The reasons can be presented as follows. First, as a sensible economic subject, the JDB Group should anticipate the consequence of the “Wong Lao Kat” trademark being retrieved at the due of the

contract when they were using the trademark. Second, since the JDB Group had made contribution in increasing the value of “Wong Lao Kat” trademark, to the increased brand value owing to JDB Group, the “WLK” Group ought to make some compensation to the JDB Group after they recalled the usage of the trademark, according to the theory that labor produces value. As for how the compensation or adjustment is to be made, by referring to the opinion of LiYanng, the professor of ShenZhen University, the two sides are supposed to take into account of the proportion of the contribution they made in capital, labour, time and management to promote the brand and make a reasonable allocation of the interest.

#### **Who should claim for the package decoration right?**

Before the Guangdong “Wong Lao Kat” Group reclaimed its brand, the red can decoration right belongs to JDB Group. Is there a change on the proprietor of red-can products?

#### **The evidence analyses on both sides**

##### **The analyses of evidence provided by the JDB Group**

In the case, the JDB Group claimed that the specific package and decoration right was produced by the application of the red-can package designed by the JDB Company. By means of production of large scale, wide market promotion, sales management and propagation, the JDB Company had transformed its herbal tea into a known product. On this base, the JDB Group is the interest subject of the red-can decoration product. To prove that, they provided the materials of the herbal tea product and its historical development. However, part of the evidence is less persuasive; for example, a dispute lies in the authenticity of the individual announcement in the act though nothing is wrong on the factuality of the authentic act about Liang shihe’s individual declaration. That is because as a attester, who is required to make his presence on court had refused to attend without a proper cause. According to the 69<sup>th</sup> ruling of “Several rules on the evidence of civil lawsuits of the supreme court”, the attester who failed to make an attendance on court without proper excuses cannot hold a valid testimony. Therefore, the declaration of Liangshihe on behalf of the Hongdao group issued by the South Beverage Manufactory in Guangzhou in June, 26<sup>th</sup> 1992 cannot act alone as the basis of fact in this case. Besides, considering the objectivity, legitimacy and relevance of the evidence provided, it can be affirmed that the red-can package decoration designed by the individual person Chen Hongdao has no connection with the “Wong Lao Kat” Group, but the JDB group and its investment companies had managed to gain the monopoly of the package right in the earlier phrase. As for whether the exclusion still belongs to the JDB Group after the trademark and the affiliated

decoration rights was retrieved by the Guangdong “Wong Lao Kat” group, the JDB Group didn’t made a powerful demonstration on that. Consequently, the argument that the red-can package right belongs to the present JDB Group cannot be adopted.

#### **The evidence analyses on the part of “Wong Lao Kat” Company**

The Guangdong Pharmaceutical Company pointed that the package decoration right was different from other intellectual accomplishments. In terms of the 19<sup>th</sup> verdict issued by Foshan Intermediate People’s Court and the 212<sup>th</sup> verdict issued by the Higher People’s Court of Guangdong province. The ‘Wong Lao Kat’ herbal tea was declared as a known product. Thus, the package and decoration right was transmitted to the Guangdong Medical Manufacturing Group who had retrieved the right to produce and manage the red-can ‘WLK’ Company, though, there is a lack of connection in the conclusion that the denoted package decoration right was given to Guangdong Pharmaceutical Group along with the recognition of ‘WLK’ herbal tea as a known product. For the lack of connection and limited persuasion effect, the evidence cannot be used as the basis to prove the fact.

Therefore, the evidence materials provided by both ‘GDB’ Group Company and ‘JDB’ Group are lack of probative force in the ownership of package and decoration. That’s why they can’t be adopted directly. As for which sides will win the support of court, it depends on the laws.

#### **The analyses of “the ownership of package and decoration” on the basis of law—from the aspect of “apposition”**

There is no express provision about “the ownership of package and decoration” in the laws of china. In juridical practice, we adopt the way of recognizing the owner of known product first, then, it can be regarded as the owner of specific package. However, the “owner” of a known product is actually “operator”. The problem is that there is no universal standard in the identification of operator. Therefore, it is difficult to identify the ownership of particular package. Lin Xiuqin [2], a professor of Xiamen University, pointed out that it can be dealt in another way. In her opinion, we can follow Japan’s model which means identifying a package is known first. After that, the ownership of a package can be identified. In fact, her opinion is rational in some aspects. However, when it comes to the legitimacy and feasibility, more evaluation needs to be done. The author holds the opinion that package and decoration can be taken as an “object” since it is a kind of intangible asset. In this way, we can use the theory of “apposition” in property law to deal with this question.

In this case, the identification of decoration right could be explained with the theory of ‘apposition’. The relationship between red-can package and ‘Wong Lao Kat’ trademark is a kind of adhesion between the real estate and movable property; several reasons will be given as follows: ‘Wong Lao Kat’ needs the examination and approval of Trademark Office to register its trademark. It has similarities with the registration of real estate. In contrast, package and decoration doesn’t need administrative department’s check and approval so they can be viewed as the movable property of tangible asset. On the basis of the general principle in Property Law, the flowing estate is attached to fixed asset. It is usually set that owner of fixed asset get the propriety of the synthesized object after the composition is paid to the original following estate owner. Given such reasons mentioned, the author propose that when the trademark admission contract reached its due, the brand decoration right is in the possession of Guangdong ‘WLK’ Group Company in condition that the made a proper payment to GDB Company. The amount of compensation should be accounted in aspects including the design of the red-can package, the advertising cost and the increased value of the brand on the part of JDB Group. In this way, the situation of ‘gaining without pain’ ‘against fairness and justice’ can be avoided, as remarks of Xiang Bo [3], the lecture of Nan Kai university.

To sum up, the author holds the following opinions: according to the recognition standers of customers, the ‘known product’ should be ‘WLK’ trademark; the ownership of package and decoration must be held in the hands of ‘WLK’ Group, which has the real estate factors in line with the ‘apposition’ theory; in accordance with ‘the principle of contribution’, the Guangdong Pharmaceutical Company must give proper payment to ‘JDB’ Group for the increased value of the brand on the part of ‘JDB’ Group and the cost of red-can package. Concerning about a series of disputes caused by trademark license under the current framework of law, Wang Lianfeng [4], a professor of East China University of Political Science and Law said: ‘the oblige and user who are authorized to use trademark must obey settled rules as well as protect their rights in according to contract and treaty. Because the law cannot standardize every single aspect of the society, it has left room of ‘liberty of Contract’ to parties in the trade.’

#### **CONCLUSION**

Through the analyses of the basic lines and the dispute focuses of the package decoration case between Wong Lao Kat Corporation and JDB Group, the essay consequently attributes the authorization of “well-known commodity” and the right of using red-can

package and decoration to the Guangzhou Wong Lao Kat Group, which is the same as the verdict of the premier trial rendered by Higher People's Court in Guangzhou. The difference is that it advocates that to the profit brought by the increased brand value of "Wong Lao Kat" trademark and the investment to the red-can package and decoration on the part of JDB Company, the Wong Lao Kat Company should make an advisable compensation by the principle of joining the distribution at the proportion of contribution. In addition, there is another point that is similar to the verdict on the identification of "known brands": they are both based on the recognition standards of customers. But when turning to the belonging of the red-can package and decoration, the essay doesn't adopt the method of the trial to attribute the package and decoration right to the side who won the authorization of known commodity but rather applies the apposition theory in the property law to settle the issue. It is in expectation to provide new route for judicial personnel when they encounter difficult situations on brand disputes.

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