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n° 66 WHD Case: TM | Deep dive into 2025 Annual Report case highlights difficulties for brand owners in proving trademark use under Class 35

Tong Du, 16 July 2025, first published by [IAM](#)

Live commerce has emerged as a major consumer purchasing channel in recent years. However, the China National IP Administration (CNIPA) has not yet articulated under which subgroup of services such activities should fall. It is therefore critical to analyse the Beijing High Court's ruling in the Huya case, which breaks new ground on this issue and provides essential guidance to trademark owners in the live commerce industry looking to secure or maintain registration on services under "sales promotion for others".

This case has been selected for inclusion in the Top 10 Judicial Cases on Trademark Granting and Affirmation 2024 by the Beijing courts and the Annual Report on the Application of Laws in Intellectual Property Cases, which was released by the Supreme Court in April 2025.

Case background

Guangzhou Huya Information Technology (Huya) is a leading game-livestreaming platform in China that offers dynamic content across games, e-sports and other areas of entertainment. The platform has amassed a large, highly engaged, interactive and immersive community of game enthusiasts.

On 2 December 2014, Huya applied for an image registration in Class 35, covering services including "sales promotion for others". The trademark was registered on 7 February 2016.



On 22 November 2021, a third party launched a non-use cancellation action before the CNIPA, alleging that this mark had not been used for three consecutive years since 22 November 2018.

In response, Huya provided contracts demonstrating its business collaboration with various game developers and providers, in which Huya vowed to promote their

games on its platform in exchange for a cut of the revenue that the games generate. The CNIPA deemed that the trademark use in connection with such promotion fell under the service category of “advertising” rather than “sales promotion for others”. Therefore, the CNIPA cancelled the registration for “sales promotion for others” on 29 August 2023.

Huya filed for administrative litigation before the Beijing IP Court, and, to prove the use on the service “sales promotion for others”, Huya supplied evidence of use of its trademark on live commerce, in which it organised livestreams to showcase clients’ products in real time, allowing customers to watch product demonstrations, ask questions and make purchases directly on the platform.

On 5 June 2024, the Beijing IP Court dismissed the suit, holding that in the “sales promotion for others”, service providers should provide planning, publicity, consultation and other services for selling the goods or services, which Huya’s evidence did not cover (2023 Jing 73 Xing Chu 19003).

Huya appealed to the Beijing High Court, citing two precedent decisions, which define “sales promotion for others” as “providing explicit advisory, planning and consulting services to help others promote their goods/services in the marketplace” (Zhejiang High Court, 2022 Zhe Min Zhong 1289 and SPC, 2023 Zui Gao Fa Min Shen 112).

Huya argued that it promoted games by displaying an introduction to them, organising promotional activities and providing downloading channels during livestreams. Games downloaded through its platform would be marked so that users and their top ups could be traced. Huya would receive a proportionate share of the revenue yielded from this.

With regard to the live commerce activities, Huya argued that it hosted livestreams and conducted the overall planning to facilitate the sale of others’ products, and in return, Huya charged for these services.

Court decision


The Beijing High Court examined the cooperation agreements signed with multiple game developers and providers. It found that the combination of time-stamped download pages, consumer reviews and walkthroughs proved that Huya was leveraging its traffic and user base and receiving a proportionate share of revenue. Further, the contracts regarding live commerce activities, together with corresponding media coverage and video screenshots cited by Huya, sufficed to prove Huya’s services to promote the sale of various products in exchange for promotional fees. Such gaming collaboration and live commerce both fell under the category of “sales promotion for others”. The court therefore concluded on 23 October 2024 that Huya engaged in genuine and lawful use of the trademark and that the registration would be maintained (2024 Jing Xing Zhong 6099).

Key takeaways and the road ahead

In practice, brand owners can find it difficult to prove use under “sales promotion for others”.

The CNIPA erroneously found that Huya’s use of the trademark in collaboration with various game developers and providers fell under the category of advertising – when advertising usually refers to the activity of mere promoting, not selling others’ goods. In this sense, a provider of advertising services does not offer any planning or promotional services aimed at boosting sales. However, under “sales promotion for others”, providers allow others to sell goods on their platforms and simultaneously offer various services to facilitate these sales – like Huya did in this case.

The Beijing High Court underscored that “sales promotion for others” means that providers render services to sellers for promoted goods or services by offering planning and promotion to facilitate these sales. Both the acts of selling products/services for others and planning and promotion for sales are crucial to proving use under “sales promotion for others”.

The ruling rendered by the Beijing High Court is groundbreaking in terms of providing guidance to trademark owners in the live commerce industry looking to secure or maintain registration under this section of Class 35. 

n° 83 WHD Insights: IP | China’s Newly Revised Anti-Unfair Competition Law: Expansion of Confusion Provisions and Clarification of Long-Arm Jurisdiction

Zhigang Zhu, 8 July 2025, published by [lexology](#)

On June 27, 2025, the Standing Committee of the National People’s Congress of China adopted the revised Anti-Unfair Competition Law (AUCL), which will come into effect on October 15, 2025.

The previous amendment of the AUCL had been promulgated in 2019 and two revision drafts had been issued, in 2022 and 2024.

The law finally expands from 33 articles in the previous version to 41 articles.

Some of the newly added articles aim to address the growing phenomenon of self-harming practices between competitors (who engage in price war and offer such extended payment conditions that end up hurting both). In addition, the Law prohibits platforms from imposing oppressive low-price competition (such as coercive “either-or choice” tactics that compel businesses to deal exclusively with a

single platform) and bans large enterprises from abusing their relatively dominant positions to squeeze small and medium-sized enterprises (through unreasonable price suppression or delayed payments). Additionally, the special “internet provisions” now include two new prohibitions: one against data scraping, and another against the abuse of platform rules (like posting fake reviews, filing baseless or malicious complaint).

Confusion Practices

But the most closely watched provision is Article 6, re-numbered Article 7, which provides: “Business operators shall not engage in the following confusing practices that may mislead others to believe that their goods are associated with another party...”.

The list of such confusing practices is significantly expanded.

- Protection of online interests: In line with the development of the digital economy, the law now explicitly protects “online names, social media and other new media account names, APP names or icons” that have a certain influence.
- Trade names: the prohibition extends to unauthorized use of others’ registered trademarks or unregistered well-known trademarks as trade name;
- Search Keywords: It is prohibited to use the product names, company names (including abbreviations, trade names, and so forth), registered trademarks, or unregistered well-known trademarks of others, as search keywords, to create false associations.

This point concerning search keywords corresponds not only to the “explicit” use (the infringing sign appears in the search results or pages), but also to the “implicit” use where the keyword does not appear in the search results but simply brings on the same page, next to the owner of the protected name, featuring the name of the person who set the keyword.

This “implicit” use has been at the center of academic debate and various contradictory court decisions. The issue was finally settled by a judgment of the Supreme People’s Court (Hailiang case 2022), on the basis of Article 2 of the 2019 version of AUCL, which provides the principle of good faith. The court found that the defendant intentionally leveraged the goodwill of another by setting keywords related to the competitor’s well-known trademarks or business names, diverting traffic that was supposed to be directed to the competitor, to its own site. This not only directly harmed the competitor’s interests and disrupted the normal internet competition order but also damaged consumer interests and public welfare, violating the good faith principle and business ethics enshrined in Article 2. The case was selected by the Supreme Court as one of the 50 typical cases of 2022.

The new Article 7 further provides that assisting others in engaging in acts that cause confusion is also prohibited.


Introduction of China's Long-Arm Jurisdiction Clause (Article 40)

The revised law introduces Article 40, which provides that where unfair competition acts occur outside China but disrupt market competition order within China or damage the legitimate rights and interests of domestic operators or even consumers, Chinese courts may exercise jurisdiction under the Anti-Unfair Competition Law.

This clause is widely regarded as China's version of a long-arm jurisdiction provision and also serves to codify existing judicial practice: in 2021 the Supreme Court (with parties names undisclosed) ruled that, when overseas unfair competition causes harm to parties within China, and such conduct disrupts the competitive order of the Chinese market, that disruptive effect in China can be treated as the jurisdictional connecting factor in litigation.

The 2022 draft

It is somewhat regrettable that several provisions that were well received by rights holders in the first draft released on November 22, 2022, did not make it to the next drafts and the final law. These include:

- Broadening the restriction against unauthorized use of a company name that has a certain influence to include "similar names" (Draft Article 7.1.2).
- Extending the scope of punitive damages (up to five times the amount of damages) from the intentional violation of trade secrets, to all types of unfair competition acts provided in the law;
- Extending the scope of statutory damages (up to 5 Million CNY when the prejudice is difficult to prove) which were limited to confusion acts and trade secrets violations to all unfair competition acts provided in the law (Draft Article 27).
- Authorizing administrative enforcement agencies to confiscate illegal gains and means of production used in confusion acts (Draft Article 28).
- Empowering administrative authorities to pursue unfair competition acts that violate the good faith principle under Article 2 (Draft Article 37). 



n° 84 WHD Insights: PT | Chengdu Sino-strong v CNIPA: shifting criteria for inventiveness assessments of polymorph patents?

Jicheng Yang, July 25 2025, first published by [MIP](#)

On April 30 2025, the Beijing Intellectual Property Court (BIPC) released its annual report on exemplary intellectual property cases of 2024, among which there is a noteworthy case concerning the validity of a polymorph patent related to rocuronium bromide. The BIPC, in revoking an invalidation decision made by the CNIPA, seems to develop a nascent assessment approach over the inventive step of a polymorph patent by underlining the successful marketing of the pharmaceutical crystal, marking a deviation from precedents.

Case brief

The patent at issue, ZL201911372921.X (the '921 Patent), relates to a crystal form of rocuronium bromide; namely, Form A. With an application date of December 27 2019, the '921 Patent is owned by Chengdu Sino-strong Pharmaceutical Co. Ltd.

The '921 Patent discloses that Form A has chemical stability markedly superior to that of the prior art. Rocuronium bromide is known, in the prior art, as an unstable compound that is supposed to be stored at a temperature below -15°C, according to the European Pharmacopoeia, or below -20°C, according to the US Pharmacopoeia. However, Form A of the '921 Patent can be stored in an open container at a temperature of 25°C for 30 days, with the level of impurities barely changed.

The invalidation proceeding was believed to be initiated by a 'straw man' (petitioner) acting in the interest of a rival drugmaker. The petitioner cited an amorphous form of rocuronium bromide as the closest prior art to attack the inventive step of the '921 Patent. The CNIPA recognised that Form A has better chemical stability than the prior art in the invalidation decision. However, the CNIPA reasoned that it is common knowledge that a person skilled in the art could anticipate that crystalline solids have better physical and chemical stability than amorphous solids, thus finding the technical effect of the '921 Patent not unexpected. Therefore, the CNIPA declared the '921 Patent invalid on August 17 2023.

Established practice

The CNIPA followed to the letter the established inventiveness assessment methodology over a polymorph patent, where inventiveness hinges on the presence of an "unexpected technical effect" or "non-obvious technical solutions".

In practice, a crystal patent, when subjected to patentability scrutiny, will most likely

fail the test, if the assessment were to focus on whether it has achieved non-obvious technical solutions. That is because the crystal is often an optimised form, manufactured by employing a conventional preparation method and selected in a polymorph screening process.

In such circumstances, it is the prevailing assessment approach that the inventiveness of a crystal is underpinned by the presence of an unexpected technical effect. The rationale behind this is that once a pharmaceutical compound is disclosed, it is believed that a person skilled in the art would have the motivation to study the polymorphs of the compound to obtain an applicable crystal form, which would have an effect on the manufacturing, stability, safety, and efficacy of the drugs. Given that there are well-established methods to screen a polymorph, an unexpected technical effect is a prerequisite in ascertaining an inventive step of polymorph patents, which do not involve special structures or novel preparation methods.

Under current examination practice, the threshold for being recognised as an unexpected technical effect is quite high. For example, stability is one of the most underlined properties for a polymorph in drug R&D, but it would be very challenging to argue the stability of a polymorph is unexpected in China, as the examiners are prone to rebut such an assertion based on the common knowledge that crystallised solids tend to have higher stability than amorphous solids. Other properties such as non-hygroscopicity and a high melting point, as dictated by the lattice energy of the crystal, may be perceived as highly relevant to stability, rendering them an expected technical effect in the eyes of the examiners.

Court decision

The aforesaid assessment approach was first established by the Supreme People's Court of the People's Republic of China (SPC) in its ruling of *Boehringer v CNIPA* (2011), which has been followed by the CNIPA and the judiciary in their inventiveness assessments of polymorph patents for over a decade.

The BIPC tried a new approach, where the affirmation of an inventive step of a polymorph patent is grounded in the presence of a "better technical effect" rather than the predominant yet demanding "unexpected technical effect", by factoring in the marketing of drugs exploiting such patents.

The BIPC reached its conclusion based on the following reasoning steps.

Dichotomy between 'technical solution' and 'technical effect'

The predominant method for assessing inventive step in China is the 'three-step approach'; namely:

- Determining the closest prior art;
- Determining the distinguishing technical feature and the technical problem actually solved by the patent; and
- Determining whether the patent is obvious for a person skilled in the art.

In the context of polymorph patents, the court develops this methodology into a dichotomy between a “technical solution” (by following the aforesaid three-step approach) and a “technical effect”, underlining the significance of technical effect in the assessment test. In a nutshell, the court finds that even if a polymorph patent is obvious in terms of the technical solution, it could still be inventive due to its technical effect.

Nevertheless, the court cautions that this is not a panacea applicable to the assessment of all patents: “It is undeniable that this standard utilised in [the assessment of a] polymorph patent is not the same as the method usually employed in inventive step assessment. Normally, the technical effect is not a decisive factor in the assessment of inventive step [...]

“However, the technical effect can be decisive in the assessment of inventive step of a polymorph patent. That is, if a crystal form achieves a better technical effect than the prior art, it could be recognised as inventive, even if the acquisition of this crystal form is obvious [...] Even if the crystal form can be prepared by a conventional method, the trial-and-error process leading to its final acquisition and the uncertainty surrounding the viability of acquiring a crystal form aligning with the requirements of the pharmaceutical industry [in this process] demand considerable economic investment. Considering the development of a crystal form is usually aimed at resolving the applicational problems in the pharmaceutical industry, it would be conducive to providing protection for the economic investment in polymorph research so as to ensure [the patentee] obtains an anticipated economic reward, which in turn would fuel the development of drugs and the pharmaceutical industry and serve the public interest.”

In sum, the BIPC holds that the technical effect of a polymorph patent alone can make the patent inventive, considering the investment and contribution of a polymorph research. This could prove a boon to the patentee, as long as clarity could be provided as to what technical effect a polymorph should achieve to meet the inventive step requirement.

Unexpected technical effect

Is an unexpected technical effect a must? The BIPC’s answer is yes, and no. In commenting on the technical effect of the ‘921 Patent, the court opines that: “The fact that the crystal form of rocuronium bromide is prepared by a conventional method in the ‘921 patent does not necessarily mean that it does not possess inventive step. Rather, whether this crystal form achieves unexpected effect still needs to be assessed. In other words, the crystal form possesses inventive step, as long as it achieves a better technical effect than the compound, salt form, or crystal form in the prior art, regardless of whether the acquisition of this crystal form is obvious.”

The court made the only reference to “unexpected technical effect” here and defined that it should be equivalent to the mere “[achievement] of a better technical effect” over the prior art.

After recognising that Form A achieves better stability than the prior art, the court

rules Form A of the '921 Patent achieves a better technical effect than the rocuronium bromide solid of Example 3 of Evidence 3, thus finding Claim 1 of the '921 Patent possesses inventive step.

It seems that from the BIPC's perspective, the term "unexpected" has shifted from being the focus of this case, so the court did not feel the need to comment on whether a technical effect of stability is unexpected.

Role of marketing

The court decision does not touch on this subject per se. However, in the case analysis the BIPC published alongside the exemplary cases, the court elucidated its rationale as follows: "The decision of this case proposed a rule of determining whether a crystal form achieves a technical effect that makes it inventive over the prior art, which includes considering whether the technical effect disclosed in the patent description is relevant to the druggability [the suitability of a compound for pharmaceutical development and use]. Such technical effect should not be a generalised physiochemical property but a specific property such as purity, melting point, and hygroscopicity. If the disclosed technical effect is highly relevant to druggability, and the marketed drug uses the crystal form, it should be recognised that it achieves a beneficial technical effect. Consequently, the polymorph patent would possess inventive step and should be protected according to the Patent Law" (emphasis added).

In this sense, the court explicitly factored into its reasoning the fact that Form A is a marketed form of rocuronium bromide. On this basis, the patentee should prove that the polymorph has some favourable (if not necessarily unexpected) physiochemical properties, which contributed to the successful marketing of the crystal drug. In other words, by considering the fact of marketing, the standard employed in the inventiveness assessment for a polymorph patent is significantly lower compared with that of the traditional assessment approach, thus leading to an affirmative patentability finding diverging from the CNIPA decision.

The BIPC issued the first-instance ruling on October 29 2024, revoking the CNIPA invalidation decision. As no appeals were filed, the BIPC decision has come into force.

Final thoughts on the implications of the BIPC ruling

The decision is interesting. It introduces an innovative assessment approach over the inventive step of a polymorph patent, marking a notable departure from the precedents. The BIPC's accentuation of the favourable properties of a crystal form and its contribution to druggability is inspiring to patentees investing heavily in the screening and R&D process and looking to patent and commercialise their findings.

However, as the case did not reach the Intellectual Property Court of the Supreme People's Court and the SPC has not yet commented on the BIPC decision in public, it remains to be seen whether the decision is an outlier or a prelude to a lasting shift of criteria for inventiveness assessments of polymorph patents in China. 