

The 18th BFSU-WANHUIDA IP MOOT COURT PROBLEM (2026)

Before:

Beijing Intellectual Property Court

Sky Company of Australia

As Petitioner

vs.

Weilai Company of China

As Respondent

January 2026

Facts

1. In 2007, Mr. He (“何” in Chinese) and his wife, Ms. Lu (“卢” in Chinese), all Chinese citizens, established Weilai (“未来” in Chinese) Company in China, with Mr. He as the legal representative. In May 2011, Weilai Company applied for the word trademark "Neil" in China and got the registration, approved for use on goods in Class 5, including infant formula and baby food. Later in 2011, Ms. Lu applied for registration of the identical "Neil" trademark in Australia in her own name, also for infant formula and other related baby foods. In August 2014, Mr. He established Sky Company in Australia.
2. In 2015, Mr. He successfully developed a new type of formulated infant milk powder and began selling this product under the Neil brand. The business model was that Australia's Sky Company acted as the manufacturer, while China's Weilai Company served as the import agent and distributor in China, responsible for the sales of the "Neil" brand infant formula products in China.
3. To create the image of an imported product, the packaging of Neil products sold in the Chinese market all indicated the manufacturer as Australia's Sky Company; product manuals and online shopping platform product detail pages stated that "the Neil brand originates from Australia and is the own brand of Australia's Sky Company"; product traceability codes, barcode information, and QR codes all pointed to Australia's Sky Company. China's Weilai Company also introduced on its official website and platforms like "Xiaohongshu," "Douyin," "Kuaishou," and "Pinduoduo" that the "Neil" brand infant formula it distributed came from Australia's Sky Company.
4. In June 2018, the Australian-listed J Group acquired a 51% stake in Sky Company and became its controlling shareholder, with Mr. He holding 49%. Almost simultaneously, Ms. Lu transferred her Australian Neil trademark to Sky Company. After the acquisition, the day-to-day operations of Sky Company continued to be

managed by Mr. He. The basic cooperation model between Weilai Company and Sky Company remained unchanged: Australia's Sky Company produced the products and shipped them to China, and China's Weilai Company handled import customs clearance and delivered the products to major retail stores and other distributors.

5. Following the equity acquisition, the J Group vigorously promoted Neil products through various means, including participating multiple times in import commodity expos and brand interviews on CCTV's financial channel. These promotional reports conveyed the source identification information that "Neil is a brand of Sky Company under Australia's J Group." As the Chinese distributor, Weilai Company also participated in some promotional activities. For this, Sky Company paid Weilai Company for employee salaries, product promotion expenses, etc. in China.
6. During the collaboration, Neil products needed to be sold on e-commerce platforms, such as Tmall. To comply with the e-commerce platforms' launch requirements, which mandated the inclusion of a Chinese trademark registration certificate and authorization documents, China's Weilai China issued a trademark authorization letter to Australia's Sky Australia, granting Sky Australia the exclusive and perpetual right to use the Neil trademark worldwide.
7. Since its entry into China, "Neil" brand infant formula has quickly gained favor among Chinese consumers. Judging from the number of reviews on e-commerce platforms, the level of discussion on social media, and feedback from brand activities, "Neil" brand infant formula's annual sales in the Chinese market are estimated to reach hundreds of millions of Chinese yuan.
8. In October 2023, a dispute arose between Mr. He and the J Group, leading to a breakdown in their relationship. the J Group held a shareholders' meeting and reappointed a management team to replace Mr. He in managing Sky Company. The current directors are Mr. Wang (“王” in Chinese), Mr. Li (“李” in Chinese), all of

whom are Chinese. Mr. He resigned from the management team but still indirectly holds shares in Sky Company. Since Mr. He remains the actual controller of China's Weilai Company, at the outset of the conflict, Weilai Company issued a "Termination Notice" to Australia's Sky Company, terminating the authorization for Sky Company to continue using the Chinese Neil trademark and revoking the aforementioned "perpetual right to use."

9. Since November 2023, China's Weilai Company has been selling "Neil" branded milk powder products manufactured by a New Australian company under a separate commission. These products continue to be sold in China, using the original packaging, QR codes, and website advertising, thus still indicating that they are produced by Sky Company. Meanwhile, Australia's Sky Company continues to sell "Neil" branded milk powder products in China through distributors other than Weilai Company, with these products also indicating Sky as the manufacturer.
10. In May 2024, Australia's Sky Company filed a lawsuit and applied for an injunction in an Australian court. The Australian court prohibited Mr. He and his related entities from using the Neil trademark in Australia.
11. In October 2024, China's Weilai Company sued the Chinese distributors of Australia's Sky Company for trademark infringement in a Chinese court, which ruled in favor of Weilai. The court held that trademarks are territorial and only valid within the territory where they are registered. Therefore, determining whether a product is infringing depends on whether the mark used on the product has been authorized by the trademark holder in that country. The court held that Weilai is the registered trademark holder of the "Neil" trademark in China, and the importation and sale of the allegedly infringing products in mainland China were without the permission of Weilai, and thus constituted infringement.

Non-Use revocation Application and The Ruling of CNIPA

12. In October 2023, Australia's Sky Company filed an application with China National Intellectual Property Administration (CNIPA) to revoke the registration of the "Neil" trademark held by Weilai Company on the grounds of non-use for three consecutive years. The main reason given was that prior to the filing of the revocation application, all use by Weilai Company was directed at Sky Company and unrelated to the trademark registrant. To maintain trademark registration, the use must establish a clear connection between the source and the mark—that is, it must function to identify the source of the goods. Weilai evidently did not engage in any use of the "Neil" trademark that meets the legal standard under the Trademark Law, and therefore the registration of the "Neil" trademark cannot be upheld.
13. To prove the use of its registered "Neil" trademark, Weilai Company submitted evidence of its sales of Neil brand products in China, including product import customs declaration forms, e-commerce platform sales screenshots, promotional expense invoices, and promotion contracts.
14. Both the CNIPA's revocation decision and the subsequent review ruling confirmed that the evidence on file demonstrated China's Weilai Company had put the trademark to genuine and effective use during the specified period, thereby upholding the registration of the trademark.

Litigation

15. Dissatisfied with the decision, Australia's Sky Company filed an administrative lawsuit with the Beijing Intellectual Property Court, seeking to overturn the CNIPA's review decision and requesting the court to order the CNIPA to make a new decision.
16. During the litigation, the CNIPA is absent from the hearing, while China's Weilai Company appears as a third party, referred to in this case as the respondent.

Annex: Relevant (not Exhaustive) Statutes

Unofficial English Translation	Chinese Texts
<i>Trademark Law of the People's Republic of China (2019)</i> Article 43 The registrant of a trademark may, by concluding a trademark licensing contract, authorize another person to use the registered trademark. The licensor shall supervise the quality of the goods on which the licensee uses the registered trademark, and the licensee shall guarantee the quality of the goods on which the registered trademark is used. In using the registered trademark under authorization of another person, the name of the licensee and the production area of the goods shall be indicated on the goods that bear the registered trademark. A licensor who licenses others to use a registered trademark shall submit the trademark licensing to the trademark office for the record, and the trademark office shall announce the trademark licensing. Without the record, the trademark licensing shall not be used against a bona fide third party.	《中华人民共和国商标法》（2019） 第四十三条 商标注册人可以通过签订商标使用许可合同，许可他人使用其注册商标。许可人应当监督被许可人使用其注册商标的商品质量。被许可人应当保证使用该注册商标的商品质量。 经许可使用他人注册商标的，必须在使用该注册商标的商品上标明被许可人的名称和商品产地。 许可他人使用其注册商标的，许可人应当将其商标使用许可报商标局备案，由商标局公告。商标使用许可未经备案不得对抗善意第三人。
Article 49, Paragraph 2 Where a registered trademark ... has not been put in use for 3 consecutive years without a justifiable reason, any entity or individual may apply to the trademark office for revocation of the registered trademark ...	第四十九条第二款 注册商标……没有正当理由连续三年不使用的，任何单位或者个人可以向商标局申请撤销该注册商标。……

<i>Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Administrative Cases Involving Trademark Granting and Affirmation (2020)</i> Article 26 Use by the trademark owner, use by others with permission, and other use that is not contrary to the will of the trademark owner may be determined as the use referred to in paragraph 2 of Article 49 of the Trademark Law. Where there is a slight difference between the actually used trademark sign and the approved registered trademark sign, but such difference does not alter its distinctive character, it may be regarded as use of the registered trademark. If there is no actual use of the registered trademark, and there are only acts of assignment or licensing; or if only the trademark registration information is published or a claim of exclusive rights to the registered trademark is made, it shall not be recognized as trademark use. Where the trademark owner has a genuine intent to use the trademark and has made necessary preparations for actual use, but has not actually used the registered trademark due to other objective reasons, the people's court may determine that there are justifiable reasons.	最高人民法院《关于审理商标授权确权行政案件若干问题的规定》（2020） 第二十六条 商标权人自行使用、他人经许可使用以及其他不违背商标权人意志的使用，均可认定为商标法第四十九条第二款所称的使用。 实际使用的商标标志与核准注册的商标标志有细微差别，但未改变其显著特征的，可以视为注册商标的使用。 没有实际使用注册商标，仅有转让或者许可行为；或者仅是公布商标注册信息、声明享有注册商标专用权的，不认定为商标使用。 商标权人有真实使用商标的意图，并且有实际使用的必要准备，但因其他客观原因尚未实际使用注册商标的，人民法院可以认定其有正当理由。
<i>Guidelines of the Beijing High People's Court for the Trial of Administrative Cases Involving Trademark Granting and Affirmation (2019)</i> Article 19.6 [Determination of the Subject of Use] For the purposes of paragraph 2 of Article 49 of the Trademark Law concerning "non-use for three	北京市高级人民法院《商标授权确权行政案件审理指南》（2019） 第 19.6 条【使用主体的认定】 商标法第四十九条第二款规定的“连续三年不使用”中的“使用”主体，包括商标权人、被许可使用人以及其他不违背商标权人意志使用商标

consecutive years," the subject of "use" includes the trademark owner, the licensee, and any other person who uses the trademark without contravening the will of the trademark owner. If the trademark owner has explicitly refused to recognize another person's use of the disputed trademark but subsequently asserts use of the disputed trademark based on that other person's act in an administrative case for trademark revocation review, such claim shall not be supported.	的人。商标权人已经对他人使用诉争商标的行为明确表示不予认可，在商标权撤销复审行政案件中又依据该他人的行为主张使用诉争商标的，不予支持。
<i>Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)</i> Article 19 Requirement of Use 1. If use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use. 2. When subject to the control of its owner, use of a trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.	《与贸易有关的知识产权协议》 第十九条 关于使用的要求 一、如维持注册需要使用商标，则只有在至少连续三年不使用后方可注销注册，除非商标所有权人根据对商标使用存在的障碍说明正当理由。出现商标人意志以外的情况而构成对商标使用的障碍，例如对受商标保护的货物或服务实施进口限制或其他政府要求，此类情况应被视为不使用商标的正当理由。 二、在受所有权人控制的前提下，另一人使用一商标应被视为为维持注册而使用该商标。