**Content**

Introduction 2

Part 1. Concept of band names 4

Part 2. The courts and judges in USA 5

Part 3. Band Protection in China 7

Conclusion 16

Bibliography 18

# Introduction

The band protection system emerged as a product of the development of human civilization and commodity economy and, in various countries, it has increasingly become an effective legal tool for protecting the interests of the owner of intellectual products, promoting the development of science, technology and the social economy, and allowing international competition.

Since the 1980s, bands and the management of bands have attracted an enormous amount of interest. Companies became acutely aware of how their band image could mean the difference between success and failure. Band Management: A theoretical and practical approach gives insight into this phenomenon, moving from the history of the band to how to develop, manage and protect bands. Band Management: A theoretical and practical approach takes a decision-making approach to the subject, structured around the decisions a band or product manager would face when considering their own band strategy, covering topics such as design, judicial protection, adverse publicity and financial-band valuation.

How do you overhaul and reorganize more than 3,000 trademark registrations owned by an $11 billion global corporation?

That was the question faced by Ingersoll-Rand several years ago when it sized up its trademark situation.

Ingersoll-Rand, founded in 1905, was long known for its tools and machinery, which carved the faces on Mount Rushmore. The company now is a diversified company that makes refrigeration equipment (under bands ThermoKing, Hussmann); compact vehicles such as small loaders, excavators and golf cars (under bands Bobcat, Club Car); locks and security systems (under bands Schlage, Kryptonite); construction equipment such as pavers, compactors, portable compressors; and industrial equipment such as generators, turbines.

The benefits in preserving our band integrity were more far reaching, particularly in terms of avoiding band dilution. Many new product/ service offerings were accompanied by a new name, so in many instances, the promise of core bands might confused by the marketplace. For instance, if the promise of a strategic band is technological innovation, would you then really need a new sub-band for the next generation of a product family? In this case, does a new name really provide a competitive differentiation, or just create confusion?

# Part 1. Concept of band names

Band is the image of the product in the market. Some people distinguish the psychological aspect of a band from the experiential aspect. The experiential aspect consists of the sum of all points of contact with the band and is known as the band experience. The psychological aspect, sometimes referred to as the band image, is a symbolic construct created within the minds of people and consists of all the information and expectations associated with a product or service.

People engaged in banding seek to develop or align the expectations behind the band experience, creating the impression that a band associated with a product or service has certain qualities or characteristics that make it special or unique. A band is therefore one of the most valuable elements in an advertising theme, as it demonstrates what the band owner is able to offer in the marketplace. The art of creating and maintaining a band is called band management. Orientation of the whole organization towards its band is called integrated marketing.

Careful band management seeks to make the product or services. Therefore cleverly crafted advertising campaigns, can be highly successful in convincing consumers to pay remarkably high prices for products which are inherently extremely cheap to make. This concept, known as creating value, essentially consists of manipulating the projected image of the product so that the consumer sees the product as being worth the amount that the advertiser wants him/her to see, rather than a more logical valuation that comprises an aggregate of the cost of raw materials, plus the cost of manufacture, plus the cost of distribution. Modern value-creation banding-and-advertising campaigns are highly successful at inducing consumers to pay, for example, 50 dollars for a T-shirt that cost a mere 50 cents to make, or 5 dollars for a box of breakfast cereal that contains a few cents' worth of wheat.

Bands should be seen as more than the difference between the actual cost of a product and its selling price - they represent the sum of all valuable qualities of a product to the consumer. There are many intangibles involved in business, intangibles left wholly from the income statement and balance sheet which determine how a business is perceived. The learned skill of a knowledge worker, the type of metal working, the type of stitch: all may be without an 'accounting cost' but for those who truly know the product, for it is these people the company should wish to find and keep, the difference is incomparable. Failing to recognize these assets that a business, any business, can create and maintain will set an enterprise at a serious disadvantage.

A band which is widely known in the marketplace acquires band recognition. When band recognition builds up to a point where a band enjoys a critical mass of positive sentiment in the marketplace, it is said to have achieved band franchise. One goal in band recognition is the identification of a band without the name of the company present. For example, Disney has been successful at banding with their particular script font (originally created for Walt Disney's "signature" logo), which it used in the logo for go.com.

Consumers may look on banding as an important value added aspect of products or services, as it often serves to denote a certain attractive quality or characteristic (see also band promise). From the perspective of band owners, banded products or services also command higher prices. Where two products resemble each other, but one of the products has no associated banding (such as a generic, store-banded product), people may often select the more expensive banded product on the basis of the quality of the band or the reputation of the band owner.

# Part 2. The courts and judges in USA

The judges, and the courts in which they sit, are a good starting point. Band names causes are invariably assigned to the Patents Court, part of the Chancery Division of the High Court (the only exception being those that are started in the Patents County Court, which in some ways is barely distinguishable from the High Court equivalent). The Patents Court, which for years had a single judge assigned to it (Whitford, Aldous, Jacob, Laddie and Pumphrey JJ will become familiar names to the student of this area of law), now boasts seven (Lewison, Mann, Kitchin, Floyd, Arnold, Morgan and Norris JJ ). A number of practising barristers also sit as deputy judges, and there is also a need for practitioners to exercise their judicial talents as appointed persons to hear appeals from decisions of the UK Band Office.

In the days when a band names would have to wait until one particular judge had time to hear it, there could be a significant delay between the issue of proceedings and trial. As a result, many (perhaps most) band names were dealt with conclusively at an interlocutory hearing, maybe even ex parte. A plaintiff would be unhappy at the prospect of waiting months for the trial to start and would often want to seek an interlocutory injunction right at the outset to stop the defendant doing whatever wrong he was accused of. An injunction would be granted if the plaintiff had a strong arguable case, if the balance of convenience favoured it (the plaintiff would suffer irreparable harm if the defendant were allowed to continue: the defendant could be compensated if the injunction were wrongly granted) and if the plaintiff gave a cross-undertaking in damages to guard against that eventuality.

At that early stage in the proceedings, the defendant might be restrained from carrying on the business from which he earned his living, obliging him to find an alternative, clearly non-infringing, source of income. The injunction would remain in place for months, until trial, and the fact that it had been granted indicated that the judge liked the plaintiff's case. That added up to a strong indication that a settlement would be a good idea.

Likewise, a plaintiff denied an interlocutory injunction would receive a loud message discouraging him from further litigation. Band names cases have always been notoriously expensive, and going full steam ahead after an indication had been given that the judge was not convinced about the strength of the case would give the plaintiff pause for thought.

Nowadays, with more judges to hear band names cases, despite there being more and more band names cases to hear (in contrast with other divisions of the High Court since Lord Woolf's civil justice reforms), cases come to trial much more speedily. An application for interim, or urgent, relief may be met by the judge (charged by the same civil justice reforms with being more proactive in the management of his cases) setting the case down for a speedy trial. And in the post-Woolf environment, if the parties get to trial they might find their counsel being summoned to the judge's chambers at an early stage to hear how he expects the case to go and to receive a clear, if not explicit, exhortation to settle.

# Part 3. Band Protection in China

As a whole, China, however, for a variety of historical reasons, began work on its band rights protection system at a comparatively late date. After China started reform and opening to the outside world, it accelerated the process of establishing an band rights protection system in order to rapidly develop social productive forces, promote overall social progress, meet the needs of developing a socialist market economy and expedite China's entry into the world economy.

Today, band protection is an issue of universal concern in the international political, economic, scientific, technological and cultural exchanges. International bilateral and multilateral negotiations on this topic, especially the reaching of the Agreement on Trade-related Aspects of Band Rights in the General Agreement on Tariffs and Trade (GATT), have raised worldwide band protection to a new level.

In today's world, great importance is attached to band protection. What is China's specific position regarding this question? What is China's current legislation on band rights and how is it enforced? What measures has China taken to ensure its international commitment to band protection? A brief introduction to these issues will prove useful.

It is the Chinese government's view that the band protection system plays a significant role in promoting progress in science and technology, enriching culture and developing the economy. It functions both as an important institution ensuring the normal running of the socialist market economy and as one of the basic environments and conditions for conducting international exchange and cooperation in science, technology, economy and culture. China considers the protection of band an important part of its policy of reform and opening to the outside world and of the building of its socialist legal system.

The basic framework for China's band rights protection legal system was completed for the most part in the 1980s. In the 1990s, international economic relations and the international economic environment have already undergone great changes.

The Chinese government's sincerity in its efforts to scrupulously abide by international conventions and bilateral agreements regarding the protection of band rights, and its capacity to fully implement its international obligations have been appreciated and supported by world opinion.

Along with its progress in reform and opening up, China has made big strides in band protection. In accordance with its national conditions and current tendencies in international development, China has formulated and finetuned various laws and regulations on band protection, thereby constructing a socialist legal system for band protection with Chinese characteristics. The scope of the band rights protected in China and the degree of protection afforded have gradually conformed with international practices and the high degree of legal protection for band rights has been realized.

China has a complete legal system for the protection of band rights. China's band law stipulates the legal responsibilities to be borne by anyone who violates the law, including civil liability, criminal liability and exposure to administrative sanctions.

China's Patent Law provides that in the case of infringement arising from the exploitation of a patent without authorization of the patentee, the patentee or other affected parties may request the patent administrative authorities to deal with the matter or may directly file suit in a people's court. In investigating and dealing with the matter, the patent administrative authorities are empowered to order the infringer to stop all acts of infringement and compensate for any losses. Whoever counterfeits a patented product or wrongly appropriates a patented technique will be ordered by the patent administrative authorities to cease all acts of counterfeiting, to provide the public with notification of his or her violation, and to pay a fine. In the case of serious violations, the criminal liability of the person directly responsible shall be investigated through application of relevant articles of the Criminal Law, and if found guilty, the person directly responsible shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or a fine.

With the implementation of band laws, band rights are effectively protected in China. These laws are also actively encouraging invention and other forms of creation and fair competition. For instance, the protection of the right to the exclusive use of registered trademarks has resulted in the rapid growth of the number of trademarks registered by Chinese and foreign businessmen in China. By the end of 1993, the number of effective registered trademarks had exceeded 410,000. Of these, 350,000 were domestic, with the remaining 60,000 coming from 67 countries and regions. Companies from the United States, for example, had only 122 trademarks registered in China before 1979; by 1993 that number had soared to 16,221, more than a hundred times the earlier figure. In 1993, there were 170,000 applications for trademark registration annually in China, including more than 130,000 applications for new trademarks registration, among the highest number in the world. In addition, the Patent Law of China has greatly encouraged inventions and other creations in China, and has proved a magnet to patent applications from other countries and regions. On April 1, 1985, the first day the Patent Law came into effect, 3,455 applications for patent rights were submitted. By the end of 1993, the Patent Office of China had handled over 360,000 applications for patent rights. Of those, 27.5 percent were for inventions, 62.8 percent for utility models, and 9.7 percent for exterior designs; domestic applications accounted for 86.4 percent, while 13.6 percent were applications from 70 countries and regions. By the end of 1993, 175,000 patents had been approved, including more than 20,000 invention patents, more than 130,000 utility model patents and over 20,000 exterior design patents.

China has formulated comprehensive band rights laws and regulations. Today, it is earnest and fair in executing these laws, and much has been accomplished in this regard.

These great achievements in the execution of the band rights protection laws and regulations are above all the product of comprehensive judicature and administration provided for in these same laws and regulations.

1. China's judicial institutions for band protection.

In China, any citizen, legal person or organization entitled to band rights whose rights and interests have been infringed may bring a lawsuit to the people's court in accordance with the law and receive practical and effective judicial protection.

The people's courts exercise judicial power independently according to law, are subordinate only to the law itself, and are not subject to interference by any administrative organ, public organization or individual.

Earnest execution of the law is the core of the administration of justice. The judicial activities of a people's court are carried out on the basis of facts, and with the law providing the criterion. Cases are tried strictly in accordance with substantive and procedural laws. Cases are heard in an open court, and a collegial system, a challenge system, a system whereby the court of second instance is the court of last instance, and a trial supervision system are practised. Judicial work, in accordance with the law, is also subject to supervision by people's congresses and people's procuratorates at all levels and by the masses, so as to ensure openness, impartiality, and seriousness.

The establishment and fortification of the judicial organs for trying band rights cases and the optimization of the judicial system are important guarantees for the people's courts correctly to handle such cases and conscientiously to protect band rights according to law.

With the implementation of China's law on band protection and the increasing improvement of the judiciary's protective power, people's courts at various levels in China have accepted and decided a large number of civil disputes concerning band rights. A total of 3,505 cases concerning band rights disputes were accepted and handled by people's courts throughout the country from 2006 to the end of 2008, 1,168 of which concerned copyrights, 1,783 patents, and 554 trademark rights. The people's courts in accordance with the law defend the legitimate rights and interests of the foreign and domestic band rights holders through trying cases concerning band rights disputes. For example, the inventor of a new "technique for sinking piling using drill holes," brought a suit against the Beijing Subway Foundation Engineering Company to determine ownership of the patent on the invention. After trying the case, the Beijing Higher People's Court held that this invention was not a service invention as described by the Patent Law, so the patent right belonged to the inventor and not to his employer. In another example, Hong Kong's Sendon International Co., Ltd. brought suit against Shenzhen's Huada Electronics Co., Ltd. for trademark infringement. After hearing the case, the Shenzhen Intermediate People's Court ruled that the trademark "SENDON" was registered in China mainland by the plaintiff and should be protected by law. The defendant's use of the trademark "SENDON" on the same commodity sold by the plaintiff under that name constituted infringement on the rights to exclusive use of a registered trademark. The court decided that the defendant should pay the plaintiff 468,314.4 yuan in compensation.

Band rights are important civil rights. In civil infringement cases, the people's court is empowered to order the infringer to bear civil responsibility for the cessation of the infringement, for the elimination of any negative effects caused by his actions, for offering apologies, and for compensation for any losses in accordance with the law. Furthermore, it is empowered to confiscate the infringer's illegal gains and/ or adjudge the infringer to criminal detention or a fine.

If the infringement of band rights is so serious that it has disrupted the economic order and constitutes a crime, the infringer's criminal responsibility is investigated and dealt with according to law. When a people's procuratorate institutes prosecution for a criminal act of infringement, if the evidence is sufficient to prove that the defendant has counterfeited another's trademark or patent right and the case is so serious as to constitute a crime, the people's court shall promptly and precisely impose punishment in strict accordance with the law. Between 2002 and 2003, people's courts accepted 743 criminal cases for counterfeiting trademarks, of which 731 have been tried with 566 people being sentenced to fixed terms of imprisonment, criminal detention or other punishments. The People's Court of Zhongshan City in Guangdong Province in separate cases imposed fines on five persons directly responsible for counterfeiting the American Mobil Oil Corporation's trademark "MOBIL," further sentencing the defendants to fixed terms of imprisonment from one year to two and a half years. This amply demonstrates that the people's courts of China are resolute in their stand towards punishing criminals and safeguarding band rights.

According to China's Administrative Procedure Law, if a citizen, legal person or organization wishes to contest a judgement or order of an administrative department for band protection in a dispute concerning band rights and to initiate administrative procedure litigation, the people's court shall try the case and shall, in accordance with the law, make a decision to maintain, rescind, or alter it.

When a people's court tries a case arising from band rights involving foreign nationals, it acts in accordance with Chinese laws and relevant international conventions to which China is a party, adhering to the principle of equity and reciprocity. In this way, the court provides the solid legal guarantees necessary for expanding international economic, technological and cultural exchange and cooperation. The Shenzhen Intermediate People's Court accepted the American E.F. Houghton Company's suit against the Shenzhen Hailian Chemical Co., Ltd. for the latter's trademark violations. Investigation proved the defendant's infringement and held it responsible. The two parties negotiated a settlement through mediation. The defendant promptly stopped its acts of infringement, offered public apology to the plaintiff, and handed over 130,000 yuan as a compensation for the plaintiff's economic loss. The court, in addition, adjudged the defendant a civil sanction fine. Ten days passed from the court's acceptance of the case to its resolution, expeditious remedy much appreciated by the American plaintiff. In acknowledgement of this, the E. F. Houghton Company presented the court with a silk banner reading: "Chinese law is just; judges try cases expeditiously."

Over the past few years, in an effort to raise the level of the administration of justice, the people's courts have adopted a series of potent measures to improve their quality and efficiency in handling cases. In order to amplify their impact, the people's courts have selected typical cases and tried them publicly, conducting information campaigns through the various public media. Undeniable social effects have been achieved through the use of specific cases in the popularization of legal education and the dignity of the socialist legal system has been maintained.

In addition to judicature in accordance with international practices, China's system for the protection of band rights comprises the Patent Law, the Trademark Law, and the Copyright Law and other administrative channels designated in band laws, all proceeding from China's actual conditions.

Under the Patent Law, the competent authorities in the State Council and local people's governments have the right to establish patent offices. Today, China has more than 50 patent offices established by local governments and more than 20 patent offices established by various ministries and departments under the State Council. The State Copyright Administration and local copyright administrative organs have been established in accordance with the Copyright Law. Trademark administration calls for unified registration of trademarks by the central government and level-by-level administration by the various local governments. Trademark administrative departments under the administrative bureaus for industry and commerce have been established at the central, provincial, city, prefectural and county levels; below the county level, there are administrative offices for industry and commerce. Today, there are well over 7,000 full-time trademark administration personnel throughout China, in addition to 300,000 part-time personnel.

Chinese band rights administrative departments exercise their legally stipulated powers and functions to safeguard law and order within the field of band, encourage fair competition, mediate disputes, settle cases involving violations of band rights, and protect the interests of the broad masses of the people by maintaining a good social and economic environment.

In China the administrative procedures for solving disputes concerning band rights are simple and convenient. Cases can be quickly filed for official examination and possible prosecution, investigation follows promptly, and efficiency in handling the case is high. This is advantageous to the owners of the rights. The patent administrative organs in China always treat patent violation claims seriously and deal with them without delay in accordance with the law.

China's band rights administrative organs, in accordance with Chinese laws and relevant international treaties to which China is a party, adhering to the principle of equal treatment for nationals and non-nationals and reciprocity, give protection to foreigners' band rights in accordance with the law. For instance, the Zhejiang Provincial Patent Administration Office recently reached a just settlement in a complaint brought by a foreign plaintiff concerning unlicensed production of a cigarette lighter to which he held patent. The competent authorities ordered the factory concerned to cease all acts of infringement and compensate the foreigner for his losses. The State Copyright Administration investigated and then dealt with a series of cases in which a dozen odd arts and crafts factories in Fujian and Guangdong had manufactured pirated toys copying several foreign companies' toy designs, and a case in which an electronics enterprise in Jiangsu was illegally producing compact discs. Administrative departments for industry and commerce have investigated and dealt with 3,000 cases involving the counterfeiting and other violations of such foreign trademarks as TDK, Toshiba, Sony, IBM, 3M, ESSO, P&G, Head & Shoulders, Xiaotiancai, and Philips.

A large proportion of the cases concerning violations of foreigners' band rights were investigated and dealt with by China's band protection administrative offices on their own initiative, acting in accordance with their prescribed functions and powers.

China's administrative departments for industry and commerce have undertaken the responsibility of maintaining economic order and can make market investigations on their own initiative so as to effectively protect the rights of the registered trademark owners. Since 1998, administrative organs for industry and commerce at various levels in Guangdong Province have investigated and dealt with 301 cases concerning the violation of US-owned trademarks. Out of these 301 cases, one third were filed by the American trademark owners, with the remaining cases being the product of market investigations by the administrative organs for industry and commerce or consumer complaints. China's band rights administrative offices are impartial, and firmly safeguard the lawful rights and interests of those who hold such rights. This has earned them praises from many foreign enterprises and joint ventures. Some of these companies presented the administrative departments for industry and commerce silk banners or gilt boards, bearing words of praise such as "Upright and honest, firm as a rock in administering justice," "Impartiality in enforcing the law, support right, eliminate wrong," "Just settlement, protection of commerce," "Strict and impartial justice, conquerer of fakes and frauds," and "Strict and impartial in executing the law, consummate impartiality." They praised the personnel handling the cases as "conscientious in work and resolute in action," "Such speed in handling a case is seldom encountered anywhere in the world," etc.

# Conclusion

We could summarize our learning this way:

(1) Managing trademarks should not be left only with the legal experts. This issue has far reaching impact on how bands are built and business leaders need to play a more proactive role.

(2) Trademarks are building blocks for bands. They can become valuable intangible assets but only if managed as such. If left unchecked, a free trademark proliferation does enormous harm to band equities.

(3) I cannot over-emphasize the need for communication. We didn’t stop after writing policy documents but embarked upon a large-scale training program that included “global training of trainers.” Now this training is part of our executive education curriculum.

As China implements its reform and opening to the outside world, it is changing with each passing day. Today more than a few international observers have come to the conclusion that in terms of band protection China has reached international advanced levels. China's backwardness in its band system is now a thing of the past.

However, there remain some naysayers in the world seemingly willfully blind to China's development and transformation who incognizant of present realities pass improper judgements on the nation's current situation regarding band protection. They allege that China has not yet established a "full and effective band system," and that China "lacks the ability to undertake international obligations." Such unfounded opinions do not bear argument; the truth speaks for itself.

Nonetheless, China cannot remain satisfied with the achievements it has already made. China is a developing country and still has much work towards optimizing its band system. This system in its modern form was established only a short time ago, and as a result, awareness of band rights remains underdeveloped in society at large. In some regions and in some governmental departments there is insufficient appreciation of the importance of band protection. Some serious acts of infringement have violated not only the legitimate rights and interests of the holder of the band right, but also the dignity of the law. Accordingly, even as the nation continues to otherwise improve the band legal system, the State Council has drawn up Decisions on Further Strengthening the Protection of Band. China is confident that the implementation of all the important measures contained in the Decisions will mark a great new step forward in the nation's efforts to ensure the protection of band rights.

China will continue actively to promote international cooperation in the field of band. China itself has received active assistance from the World Band Organization and from others working in the field in establishing and fine-tuning its band rights protection system. The nation will, as in the past, actively join in the activities of relevant international organizations and fulfill the obligations described in the international band treaties and agreements. Operating on the basis of the Five Principles of Peaceful Coexistence and in accordance with the principle of equality and mutual benefit, China will continue to cooperate with the rest of the world's nations, working and making positive contributions towards the development and optimization of the international band system.

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