

# Trademark Issues

## Group buying sites: a trademark perspective

**Group buying sites are soaring in popularity, but what liabilities do such sites bear if the products on sale infringe trademark rights?**

Group buying sites are becoming increasingly popular in China. According to statistics issued by the Group Buying Industry in China, the transaction volume of group buying reached nearly Rmb22 billion for 2012. Further, a July 2013 report published by the China Internet Network Information Centre (CNNIC) revealed that the number of Chinese internet users engaging in group buying jumped from 83 million in December 2012 to over 100 million in June 2013.

Generally, group buying sites provide a platform allowing individual buyers to club together to purchase products in bulk and at a discount. In Chinese, this is called *tuan gou* ('group buying' or 'team buying').

In light of the growing prevalence of group buying sites, it may be asked what – if any – liabilities group buying sites should bear if the products on sale infringe trademark rights. This issue was discussed in one of the 10 representative IP cases of 2012 announced by the Beijing Higher People's Court.

The case (3969 of Beijing Higher People's Court 2012) involved the Le Coq Sportif brand and its 'cock' device mark. The registered owner of the marks in China, Descent Ltd, sued Shenzhen Xiu Network Technology Co, Ltd and Beijing Today Metropolis Information Technology Co, Ltd.

Xiu had entered into an agreement with Beijing Today under which Beijing Today provided group purchase promotion services for certain Le Coq Sportif goods sourced from Xiu on the group buying site operated by Beijing Today, [www.didatuan.com](http://www.didatuan.com). Xiu provided Beijing Today with two verification documents purportedly from a licensee of the marks in Argentina; but it was not apparent that this Argentine company had any relationship with Descent, the owner of the marks in China. The goods were reportedly of poor quality and were offered on the Didatuan website at a substantial discount.

Descent became aware of the goods offered on Didatuan and subsequently

confirmed that the goods were not authorised. At first instance, the Beijing Intermediate People's Court found that Xiu and Beijing Today had infringed Descent's rights in the marks and ordered them to pay damages of Rmb88,000 and Rmb22,000 respectively.

Beijing Today appealed to the Beijing Higher People's Court, which rejected the appeal in December 2012. In particular, the appeal court made the following points:

- The extent of Beijing Today's due diligence obligation did not hinge on whether it was labelled as a seller or an internet service provider (ISP). The extent of this obligation should instead take into account its involvement in, and benefits from, the group buying model.
- Beijing Today was obliged to ensure the legality of the use of the marks on the goods, given that it:
  - had clear knowledge of the details of the goods and the use of the marks thereon;
  - had advertised on Didatuan that the goods were "100% genuine";
  - had directly received payment from customers; and
  - had obtained direct economic benefits (by deducting certain service fees from the transactions).

The purported verification documents failed to prove that the use of the marks on the goods was legal in China.

Although not clear from the reported judgment, it is possible that in deciding that Beijing Today had failed to exercise due diligence, the appeal court also took into account the apparent poor quality of the goods, and that the marks had been recognised as "enjoying a relatively high degree of fame for clothing, sports apparel" in past opposition and court cases in China.

In its report of the 10 representative IP cases of 2012, the Beijing Higher People's Court commented that this case was significant in clarifying the scope of obligations of the operator of a group buying site. The court further commented that these obligations should enhance IP protection and consumer protection in e-commerce, and further the healthy development of e-commerce in China.

The decision underlines the degree of due diligence that operators of group buying sites might need to undertake in respect of trademark clearance. Under the existing laws and regulations of China (notably the Tort Law and the Tentative Measures on Online Commodity Trading), operators of online trading platforms are generally obliged to adopt necessary measures to protect trademark rights. In particular, the Tort Law provides that where an ISP is aware that an internet user is infringing another person's civil rights (including trademark rights) via its internet service, but fails to take action, the ISP shall be jointly and severally liable with the user. Interestingly, in this case the damages awards seem to reflect the court's view that Xiu, as the provider of the goods, was more culpable than Beijing Today.

The new Trademark Law, expected to be passed sometime this year, also includes a provision (according to the December 2012 draft) against the intentional provision of means to facilitate or assist another person's infringing act. This may further affect the duty of operators of group buying sites to ensure the legality of the goods on offer. [WTR](#)

**Eugene Low** is senior associate at Mayer Brown JSM  
[eugene.low@mayerbrownjmsm.com](mailto:eugene.low@mayerbrownjmsm.com)