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Morality refusal grounds are gone from the United States but are alive and well in China

In China, a broad swath of trademarks are likely to be refused based on the grounds that they are 'unhealthy'. In this guest piece, [Christopher Schulte](#), partner and co-chair of the Merchant & Gould trademark group and a consulting expert at [Trademarks OnPoint](#), uses the latter's global refusal database to highlight a number of potential traps to be wary of when filing marks in China. (Please note, due to the nature of the article's focus, there are terms and marks referenced in the piece that some readers may find offensive.)

Guest analysis

In 2017 the US Supreme Court struck down the trademark application refusal ground of disparagement and two years later struck down the 'immoral and scandalous' grounds as well – all on the basis of free speech. Therefore, anything goes in the United States now in terms of off-colour applications. Indeed, since this decision in mid-2019, hundreds of marks employing the term 'fuck' have been filed in the United States, dozens of which have now registered.

Over the years the US trademark bar became generally aware of the line for such filings, such that practitioners could advise their clients as to whether a certain mark may be refused on morality grounds. But that understanding will likely pass into the rearview mirror now that the law has been struck down. And as time passes, US trademark owners seeking to expand globally may be less sensitive to this issue. However, a significant number of jurisdictions still refuse registrations on morality grounds. Some of these refusals are surprising, and even an understanding of local morality refusals may not be enough to anticipate a refusal on these grounds overseas.

While some marks might strike a US practitioner as obviously objectionable on morality basis (eg, foul language), others may come as a complete surprise. It is somewhat comparable to translation issues, where a perfectly fine term in English is somehow objectionable in another language. So while NOVA for an auto in Spanish may have suffered from the translation of 'not going', so too would REBEL be refused in certain countries as having an unhealthy influence.

Global Madrid Protocol refusal data collected by Trademarks OnPoint reveals a number of possible traps for the unwary, particularly in China. Refusals on morality grounds in China are likely the most unusual from a Western perspective. The country refuses a broad swath of marks based on the grounds that they are 'unhealthy'. But a number of sub-categories fall under an 'unhealthy' refusal.

Religious references keep examiners busy

By far the most common refusal on unhealthy grounds in China are marks with terms or images that could be construed as referencing a religion. References to a deity fall into this category, for instance:



(IR 1458209)

So too do marks that include the term 'God'. The following marks were refused on that basis: GOD WARS THE COMPLETE LEGEND (IR 1454188),



(Japanese for 'God') (IR 1435706) and

(IR 1451423).

The opposite of 'God' is also prohibited, with the marks DEVIL WALKING (IR 1471675) and ZLO ('evil' in Bosnian) (IR 1470911) having been rejected.

Sometimes the 'God' refusal sweeps in questionable marks such as ELOHIMED (IR 1458086). 'Elohim' is the Hebrew word for 'God', but no translation is available for the 'Elohimed' term. It seems that the examiner for this case saw 'Elohim' as the dominant portion of the mark and thus deemed it unhealthy.

The names of religions or sects are also routinely refused, including PAGAN ONLINE (IR 1478185), ZENCOLOR (IR 1472181) and TOTEM ZEN (IR 1486227). So too are religious texts such as SUNNAH (IR 1480388), religious relics such as GRAIL (IR 1321299) and places of worship, as in the case of VIEILLE ÉGLISE (French for 'old church') (IR 1473737). In addition, the closing of a prayer will also be refused, for instance:

A★M★E★N

(IR 1302935)

The names of holy cities are also commonly refused, as was the case of the application for KINDER KANDY (IR 1476561). This famous German chocolate was refused for employing the term 'kandy' as it was held to have a religious unhealthy influence. Kandy is a city in Sri Lanka and the home of the Temple of the Tooth Relic, one of the most sacred places of worship in the Buddhist world.

Numerous references to religious leaders and subdivisions have been refused as well, ranging from BISHOP (IR 1459405) to MATT PARISH (IR 1489075). Monks and monasteries do not fare well either, as illustrated by these refused marks: MONASTIC (IR 1458028) and



(IR 1454745).

Apostles are also out based on the refusal of the mark THE IMPUDENT COUSIN MATTHEW (IR 1459827).

Sometimes the refusal on religious unhealthy grounds is hard to discern, as this mark shows:



(IR 1378964)

Presumably, the 'Christkindles' term referencing the famous Nuremburg Christmas market was what triggered this refusal.

Marks with references to currency also fail

The China Trademark Office will find any mark that incorporates a reference to foreign currency as unhealthy, whether the currency exists or not. The most obvious refusals include marks such as DOLLAR PIZZA CLUB (IR 1478486). Less obvious refusals include marks that possibly incorporate a currency, as in the case of EUROCHECK (IR 1465752) or this mark owned by a Latvian cosmetic company that inadvertently incorporated the Bulgarian currency (Lev) into its logo:



(IR 1453752)

Even non-official currency can trigger a refusal, as was the case of ALOHA COIN (IR 1318045). 'Aloha Coin' is the official currency of the Nation of Hawai'i, a sovereignty movement in that state. The currency is not recognised by the US government.

Some refused political terms may surprise applicants

Another unhealthy category is political unhealthiness. Various marks have fallen into this category, possibly surprising the applicant. References to uprisings are refused, as illustrated by REBEL RACING (IR 1490599). A close approximation of the National Emblem of the Republic of China (Taiwan), the white sun on a blue background, will also draw a refusal:



(IR 1457179)

In addition, Brexit is a disfavoured term in China, with the filing for BRIX-IT (IR 1459535) refused as politically unhealthy. The examiner here claimed that the term was similar to "Brixit", an early version of the now more common term, Brexit. Perhaps the protests in Hong Kong have rendered all independence movements negative in China, akin to the term 'Rebel' which is also not allowed.

Less obvious to a US observer is the refusal on political unhealthy grounds of a mark such as IBM CLOUD PAK (IR 1464880). The examiner in this case held the 'Pak' term politically unhealthy. No readily available definition offers any insight into why 'Pak' is objectionable on this basis. Perhaps the examiner felt that it referred to Hong Kong pop singer and actor Pakho Chau Pak-ho, who allegedly supported the Hong Kong protests.

The undead, vampires, skeletons and bones need not apply

As many global video game developers know, China tends to disapprove of images of skeletons. Whether this is an interpretation of its Ministry of Culture laws or custom, the fact is that bones, skeletons and other terms or images that relate to those or superstitions are generally refused. Non-living folks are always refused (eg, ZOMBIE RESCUE SQUAD (IR 1465693) and TRANSYLVANIA AIR FRESH AIR FROM THE LAND OF VAMPIRES (IR 1483808)). Fortune tellers are also disfavoured:

祥華算命
S h o k a s a n m e i

(Japanese for 'fortune telling') (IR 1458332)

Skulls and bones are commonly refused as well:



(IR 1481585)



(IR 1459203)



(IR 1456602)

Finally, beware of zombie sharks, as their image will also be refused:



(IR 1466519)

Those in the cannabis or rock and roll industries should take note

Edgy Western marks (eg, HIGH THERE! (IR 1463730) and DEATHLOOP (IR 1462227)) can fall victim to the unhealthy moral refusal in China. A new amplifier by Marshall (CONTAMINATOR (IR 1486086)) was refused on these grounds as well.

It may be that any term that suggests contamination will be refused, as was the case of NUKE GUYS (IR 1457277) and MORALLY TOXIC (IR 1453288). Rock and roll may be coming to China, but its associated brands may take more time to arrive.

Disparaging and vulgar marks

While US lawyers have a history with disparagement and vulgarity refusals stemming from when the law was still in place in the country, some refusals on these grounds in China are puzzling. A refusal of a rendering of part of the female anatomy may not be a surprise to a foreign filer in China:



(IR 1453737)

Nor perhaps would a mark incorporating a traditional vulgarity: OL' DIRTY BASTARD (IR 1440390). But few US counsel would consider the term for one's female lover as immoral. However, the term that is defined as such – INAMORATA (IR 1481015) – was refused as unhealthy.

Another questionable refusal centered on the filing for BOOGIE BOMB (IR 1455144). The mark prompted the Chinese examiner to state that the 'boogie' term disparages black people, which renders the whole mark unhealthy. While a definition does exist identifying the term as disparaging, it is also commonly understood as a verb to mean to dance or to go. The applicant, Epic Games Inc, is clearly associating the term with a power-up tool in its *Fortnite* game. The Boogie Bomb, once deployed, requires those in the blast radius to dance. It is clearly a play on the verb 'boogie'. However, as a disparaging definition exists, the term was refused in China.

Some unhealthy refusals are not obvious to US applicants

While one may see the reason for refusing a mark suggesting an addiction (eg, COMPULSION GAMES (IR 1460875)), some refusals in China are hard to anticipate from a US perspective. For example, the mark CABALLO DE ORO (IR 1184815) was refused as the examiner held the 'Caballo' term to mean heroin in Spanish slang ('caballo' is both 'horse' in Spanish and slang for the drug). Another Japanese clothing brand, SMOKING CHILLS (IR 1459096), was also refused as an unhealthy influence. Cigarette and vape marks are not refused on this basis, so one possible explanation is that the mark as a whole somehow glamorises smoking.

Another confusing rejection was of the filing for an Australian fashion brand, CHANCERY THE LABEL (IR 1469851). The application was refused as 'chancery' was deemed an unhealthy influence. For US and UK lawyers, the term has well-understood meaning – a court that sits in equity. This definition renders the mark distinctive from a US viewpoint. But in China, the term is objectionable.

Conclusion

US trademark clients are seeking more protection in China. While many lawyers in the United States can make an educated guess on what marks will be objectionable in China, many refusals come out of the blue. Checking a global refusal database can take some of the guesswork out of the global clearance process.

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