

知识产权：带领全球转型

《商法》读者专享以半价优惠参加论坛！



Mr David V Upite
宝洁公司
知识产权资深法律顾问



王鵬先生
联合利华
专利法务部门总负责人



Mr John LaBarre
谷歌
知识产权资深法律顾问



Mr Francis Gurry
世界知识产权组织
总干事



申长飏先生
中华人民共和国
国家知识产权局
局长



赵启彬博士
中兴通讯股份有限公司
知识产权总监

论坛焦点：

- 世界变局中的可持续知识产权商业模式
- 知识产权授权策略的全球趋势
- 「一带一路」建设下的知识产权机遇
- 4大主题超过15场分组专题讨论：
 - 知识产权实用资讯
 - 行业知识产权议题
 - 亚洲专题
 - 知识产权入门

立即登记：www.bipasiaforum.com/sc

(折扣代码：BIP2015MPCBLJ)



主办机构：香港特别行政区政府 The Government of the Hong Kong Special Administrative Region



同期活动：



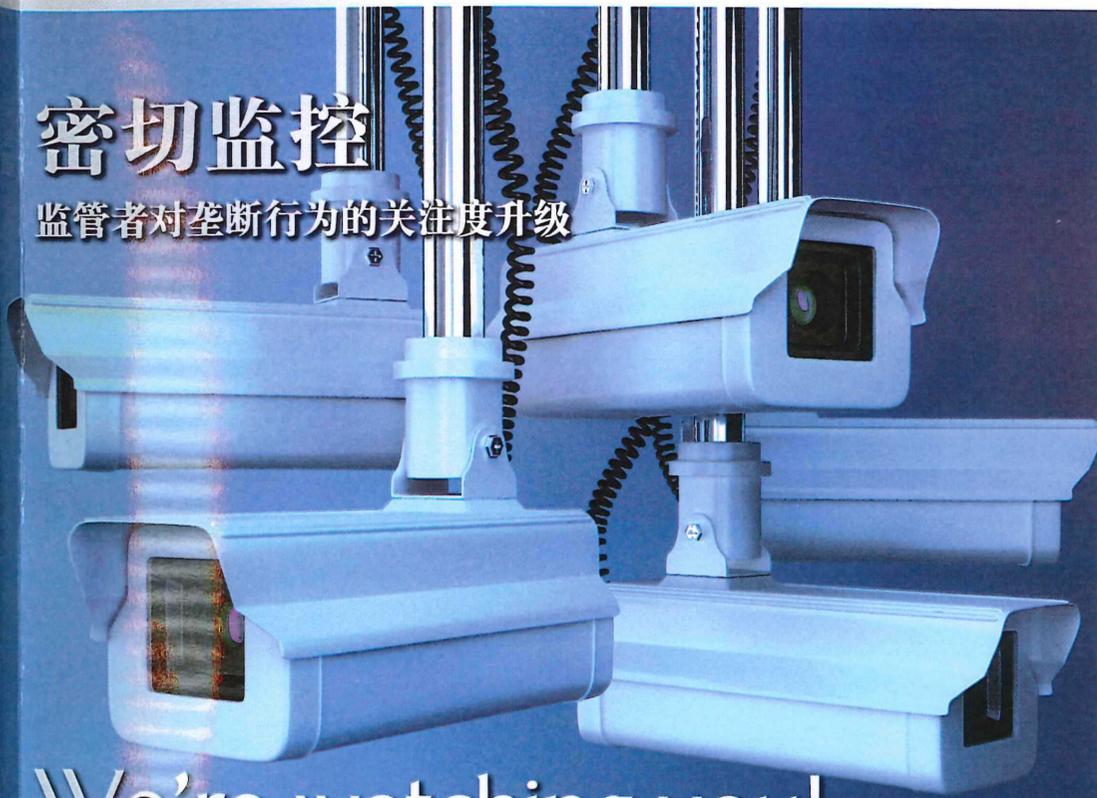
CHINA BUSINESS 商法 LAW JOURNAL 法

November 2015 | Volume 6, Issue 10

2015年11月 | 第6辑第10期

密切监控

监管者对垄断行为的关注度升级



We're watching you!

Antitrust regulators step up surveillance



构筑前路：中国在境内外基建领域的不懈努力

Building the future: China's regional infrastructure efforts

人物专访：汉能知识产权部负责人讲述其工作挑战

Profile: Hanergy's IP head discusses work challenges

商法词汇：免责条款

Lexicon: Exclusion clauses

瑞士修改企业名称法规 Swiss regime on corporate names revised



Thomas Krizaj
菲谢尔律师事务所
公司业务部管理律师
Managing Associate,
Corporate Department
VISCHER



Jonas Gassmann
菲谢尔律师事务所
知识产权部律师
Associate
IP Department
VISCHER

根据瑞士法律设立的公司制及合伙制企业，其企业名称应遵循的规则将由一部新法规进行协调统一。这部新法规已经由瑞士议会通过，预计将于2016年生效。

新法规的目标

新法规的目标如下：(1) 统一企业名称的制定标准；(2) 统一企业名称的保护；(3) 企业法律组织形式的可识别性；(4) 企业名称的可持续性。

新法规给普通合伙企业、有限合伙企业和股份有限公司在选择企业名称时提供了更多的选择。但是由于新法规中的自由过渡期规定，现有公司制和合伙企业不必立即更改企业名称。

新法提供的自由和保护

新名称制度不再强制要求普通合伙企业、有限合伙企业和股份有限公司的名称中包含无限责任合伙人的姓氏。不过企业仍可以自愿选择在名称中使用这些姓氏。

与其他类型的公司一样，普通合伙企业、有限合伙企业和股份有限公司的名称中可以包含技术或新颖元素、商标或任何其他描述性表述，只要企业名称不具有误导性，也不侵犯第三人的权利即

可。唯一的例外是个体企业，企业所有者的姓氏仍然需要包含在企业名称中。

在企业名称的通用标准获得统一之后，普通合伙企业、有限合伙企业和股份有限公司的名称专用权将在瑞士全境之内得到保护。而在过去，这些组织形式的企业不享有这种保护。

新法规要求相关机构在其名称中体现其法律组织形式，而在过去此要求只适用部分类别的企业。相关企业可用官方规定的简称对其组织形式进行表述。

程序简化

在企业名称的通用标准获得统一并且新的规定实施之后，公司制或合伙制企业的组织形式变更不会再影响其名称的核心部分。唯一需要调整的是名称中有关其组织形式的表述。

在合伙企业被出售或继承之后，普通合伙企业、有限合伙企业和股份有限公司也不需要删除或更改名称中包含的无限责任合伙人的姓氏部分。

企业名称与商标

虽然商贸活动中经常会用到企业名称和商标，但是两者之间存在很多区别。

企业名称是一个法律实体“开展业务”时使用的名称。名称持有人可排他性地将该名称用于识别该特定实体。新名称制度实行后，虽然大部分实体都在整个瑞士境内享有名称的专用权，但个体企业的名称仍仅在其注册地才能得到保护。通常来说，企业可任意设定其名称的核心部分，但是名称中不能包含图形元素。

VISCHER

SWISS LAW AND TAX

Schützengasse 1
P.O. Box 1230
8021 Zurich

电话 Tel: +41 58 211 34 00
传真 Fax: +41 58 211 34 10

电子邮件 E-mail:
tkrizaj@vischer.com
jgassmann@vischer.com
fgao@vischer.com

www.vischer.com

另一方面，商标是用于指明特定的商品和/或服务的标志。商标持有人可以在整个瑞士境内就相关商品和/或服务享有其商标的独家使用权。

商标可以是文字或图形或者由二者组合而成。商标即不应采用通用名称（即不是对所涉商品和/或服务的一般性描述），也不得具有欺骗性或违背公共政策、道德或适用法律。

商标完成注册并在瑞士商标注册簿中公布后，在先商标注册人可以在三个月内对商标注册提出异议。商标持有人可在商标注册后的任何时间限制商标所适用的商品和/或服务的范围，但是商标本身在注册后不能更改。

冲突

企业名称可能会与其他类似或者完全相同的企业名称或商标发生冲突。评估这类冲突及其后果需要基于个案做具体分析，考虑所涉标志的具体情况以及在商贸活动中造成混淆的可能性。

原则上来说，在先注册的企业名称/商标比后续注册的企业名称/商标效力优先。如果在先商标和在后注册的企业名称发生冲突，原则上来说商标持有人可禁止企业名称所有人就相关商品和/或服务使用其名称。

但是如果企业名称在先注册，与之有冲突的商标的持有人原则上来说在商标注册后不能禁止企业名称所有人在与商标注册前相同的范围内使用其名称。

为识别与其他商标或企业名称的潜在冲突，我们强烈建议在注册商标或企业名称前就相同或易造成混淆的类似标志或名称进行认真检索。■

The Swiss regulations regarding corporate names shall be harmonized for all legal forms of companies and partnerships by a new act passed by the Swiss Parliament, which is expected to come into force in 2016.

Goals of the new regime

With the new act the following goals shall be achieved: (1) harmonization of the criteria on corporate names; (2) harmonization with respect to the protection of the corporate name; (3) recognizability of the legal form of the entity; and (4) continuity with respect to corporate names.

The new regime offers new possibilities with respect to the corporate names of general partnerships, limited partnerships and partnerships limited by shares.

But owing to the liberal transitional provisions of the new regime, no immediate action is required to adapt the corporate names of existing companies and partnerships.

New freedom and protection

The new regime has dropped the requirement that the family name of the partner(s) with unlimited liability must be part of the corporate name of the relevant general partnership, limited partnership and partnership limited by shares, but they can still legitimately include their family names.

As with all other forms of companies, the corporate name of general partnerships, limited partnerships and partnerships limited by shares may consist of technical or fanciful components, trademarks or any other kind of description – as long as the corporate name is not misleading and does not infringe any rights of third parties. The only exception is for individual enterprises, which will be required to continue to include the family name of their owners in their corporate name.

As a consequence of the harmonization of the criteria on corporate names, the corporate names of general partnerships, limited partnerships and partnerships limited by shares will henceforth enjoy exclusivity throughout Switzerland. In the past this protection was limited to all other forms of companies.

The new regime requires that the corporate name includes the legal form of the relevant entity, as has already been the case with respect to some legal forms of companies. The relevant indication may be in the form of an official abbreviation.

Transactions simplified

As a result of this harmonization and the new requirements, the transformation of the legal form of a company or partnership will no longer have an impact on the core part of the corporate name. The only required amendment will be to the indicator of the legal form.

General partnerships, limited partnerships and partnerships limited by shares will no longer be required to remove or replace the family name of their partner(s) with unlimited liability in the case of any sale of the entity or any form of succession.

Corporate name v trademark

Although both corporate names and trademarks are used in commercial trade, there are numerous differences between them.

A corporate name is the name under which a legal entity "does business". It is deemed to individualize a particular entity and confers on its holder the exclusive right to use the name for the entity's identification. Whereas under the new regime on corporate names most entities now enjoy exclusivity throughout Switzerland, protection of an individual enterprise's name is still limited to the place of its registered office. The core part of a corporate name is generally arbitrary, but may not contain graphic elements.

A trademark, on the other hand, is used to designate particular goods and/or services. It confers on its holder the exclusive right to use the mark in connection with said goods and/or services throughout Switzerland.

A trademark may consist of words, graphic elements or of a combination of both. It must neither belong to the public domain (i.e. be descriptive for the claimed goods and/or services) nor be deceptive or contrary to public policy, morality or applicable law.

Once the trademark has been published in the Swiss Trademark

“A corporate name is the name under which a legal entity 'does business'”

Register, a three-month period begins during which owners of prior trademark registrations may oppose the registration. Whereas the holder of a trademark may limit the list of claimed goods and/or services at any time after the trademark's registration, the trademark itself may not be amended.

Conflict

Corporate names may conflict with other corporate names or trademarks that are similar or even identical. Such conflicts and their consequences have to be assessed on an individual basis, taking into account the signs in question as well as the likelihood of confusion in the commercial trade.

As a rule, corporate names/trademarks which are registered first prevail over respective signs registered later. If there is a conflict between a prior trademark and a corporate name registered later, the holder of the trademark in question may, as a rule, prohibit the holder of the corporate name from using it in connection with the claimed goods and/or services.

If, on the other hand, the corporate name has been registered first, the holder of the conflicting trademark may, as a rule, not prohibit the holder of the corporate name from using said name to the same extent as he has done prior to the trademark's registration.

Research marks

In order to identify potential conflicts with other signs, conducting careful research for identical and confusingly similar signs before registering a trademark or corporate name is highly recommended. ■

作者：菲谢尔律师事务所公司业务部的管理律师 Thomas Krizaj，知识产权部律师 Jonas Gassmann，以及中国业务团队律师高悦 Thomas Krizaj is managing associate in the corporate department and Jonas Gassmann is an associate in the IP department of VISCHER. Fiona Gao Yue, an associate of VISCHER's China Desk, co-authored this article

“企业名称是一个法律实体‘开展业务’时使用的名称”