

# The Nationalist Government's Failure to Establish a Trademark Protection System, 1927–1931

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When the Nationalist government started its northern expedition in 1924 and established its new government in Nanjing in May 1927, it also opened a final phase in the long series of negotiations to settle trademark infringement disputes between foreign firms and Chinese firms, a saga which had been running since the 1890s. The Nationalist government, which had its own trademark registration system when still in Guangdong, declared the trademark registration system of the Beijing government to no longer be valid. This meant the system, which was the product of a long negotiation between the Japanese government and the Qing central, and the Beijing governments and the fierce Anglo-Japanese controversy over the attitude towards the Chinese governments since 1906,<sup>1</sup> was entirely negated.

However insufficiently the Beijing government had protected the trademarks of firms under the 1923 law, it was not at all certain whether or not the Nationalist government would effectively protect foreign firms' trademarks under their own system. Even if it might be so, foreign firms were reluctant to prepare the application forms for registration, which once again entailed an expensive fee for each trademark. For prominent firms, which had numerous well-known trademarks, applying to the Nationalist government for a registration was prohibitively expensive. Therefore, pleading to their governments, they asked the Nationalist government to respect the trademark law of 1923 and

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<sup>1</sup> The process of how the Chinese trademark law of 1923 was promulgated is dealt with in my previous article, "Anglo-Japanese Trademark Conflict in China and the Birth of the Chinese Trademark Law (1923), 1906–26, *East Asian History* 37 (Dec. 2011), pp. 9–26.

with it the trademark registration papers of foreign powers which had been submitted to the trademark bureau in Beijing.

However, absorbed in revolutionary feeling, the Nationalist government decided to abandon everything that their enemy had established and rebuild it, including the trademark registration system. In such a tense situation, how did the foreign powers and the Nationalist government negotiate in order to settle the trademark protection problem and what were the consequences?

Previous studies concerning the trademark registration system in the period of the Nationalist government have dealt with the process only from the viewpoint of the Chinese side. As a result of the documents they used, they dealt with the trademark infringements issued by the Chinese in the 1930s or outlined the development of the trademark law system.<sup>2</sup> Consequently, they did not reveal how the foreign side, especially the British and Japanese firms and governments, responded to the Nationalist government's challenge. This article,<sup>3</sup> using the British Foreign Office archives (FO228)<sup>4</sup> and documents from the Japanese Ministry of Foreign Affairs (*Nihon Gaimushō Kiroku* [日本外務省記録], hereafter *NGK*), is an attempt to reveal how the foreign powers responded to the challenge by the Nationalist government and the results. Unfortunately, however, since the documents in the National Archives in Kew and *NGK* in Roppongi [六本木] stop at 1931, this article only takes the story up to the end of 1930.

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<sup>2</sup> Zhao Yukun (趙毓坤), "Minguo shiqi de shangbiao lifa yu shangbiao baohu (民国时期的商標立法与商標保護) (Registration and Protection of Trademarks in the Period of the Republic of China)," *Lishi dang'an* (歷史檔案). August 2003:3. pp. 119–24, 133; Zuo Xuchu (左旭初), *Zhongguo shangbiao falishi: Jin xiandai bufen* (中国商標法律史：近现代部分) (*History of Chinese Trademark Law: The Modern Era*). (Beijing, Zhishi chanquan chubanshe [知識產權出版社], 2005).

<sup>3</sup> This article is a part of my research concerning "the development of the foreign trademark protection system in Republican China," for which research funds were provided from Waseda University in 2004, the Seimeikai (清明会) Fund in 2005 and the Japanese Ministry of Education and Science in 2006 (No. A06114600).

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## 1. Challenge

When the Nationalist government issued its own trademark law in May 1924 and declared it would not protect any trademarks unless their owners registered them, no foreign firms considered this to be a real problem. However, as the Northern Expedition advanced from the summer of 1926 onwards, they came to reconsider their former attitude. In the end, it was the Japanese firms in Guangdong that first noticed the importance of registering their trademarks in the trademark bureau of the Nationalist government.<sup>5</sup> This happened as a result of an incident in which the Industrial Bureau (*Shiyeting*, 實業庁) of the Guangdong government confiscated a product (a sewing needle) from a Japanese firm and ordered the firm not to import it to Guangdong any more. This order was based upon a request by a German firm, Reuter Brockelmann (*Lulin yanghang*, 魯鱗洋行), which alleged that the trademark of the Japanese firm, *Miyake Seishin Shōkai* (三宅製針商会), was a counterfeit of their trademark. Since Miyake had not registered its trademark in the Guangdong Industrial Bureau while Reuter Brockelmann had, Miyake had no choice but to obey the order, paying the fine of HK\$ 100 in order to retrieve their confiscated goods.<sup>6</sup> After this case, the members of the Japanese Chamber of Commerce in Guangdong (*Zai kanton nikkyō jitsugyō kyōkai* 在広東日僑實業協會) came to register their trademarks in the trademark bureau of the Nationalist government.<sup>7</sup>

Meanwhile, the British government was anxious about the trademark protection system in China from a broader perspective. They wondered how to reconcile the extraterritorial system and the trademark protection system in China. From 1898 to 1904, they had signed mutual

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<sup>5</sup> NGK 3.5.6.22. Confidential No. 90, Consul in Guangdong, Amō Eiji (天羽英二) to the Foreign Minister, Shidehara Kijūrō (幣原喜重郎), July 15, 1924; "A Canton Trademark Law," *The North-China Herald*, Aug. 9, 1924, p. 201; NGK E4.7.3.1-1-1, Commercial Confidential No. 18, Acting Commercial Attaché Katō Nichikichi (加藤日吉), to the Foreign Minister, Tanaka Giichi (田中義一), Jan. 22, 1928.

<sup>6</sup> NGK 3.5.6.22. Japanese Consul in Guangdong, Morita Kanzō (森田寛藏) to the Foreign Minister, Shidehara Kijūrō, No. 566, Oct. 20, 1927; *ibid.*, Commercial No. 343, Commercial Attaché in Shanghai, Yokotake Heitarō (横竹平太郎), to the Foreign Minister, Tanaka Giichi (田中義一), Nov. 12, 1927.

<sup>7</sup> NGK E4.7.3.1-1-1, Commercial Confidential No. 18, Acting Commercial Attaché Katō Nichikichi, to the Foreign Minister, Tanaka Giichi, Jan. 22, 1928.

conventions with the major European governments and the United States so that they could protect the trademarks of British firms in China. Under these mutual conventions, if a British trademark were infringed by a company from a signatory nation, the governments would punish their nationals in their consular court under their own trademark law.<sup>8</sup> However, Western governments led by the British government came to be aware that production and sales of counterfeits by Western merchants were much rarer than those by Chinese merchants. That said, they also found that trademark infringement by the Chinese was in fact quite easy to deal with: by protesting to local governments or local district courts (*Shenpan ting* 審判庁), they could order the Chinese to cease producing counterfeits with forged trademarks and this would come to pass.<sup>9</sup>

In fact then, the genuine commercial opponents were the joint groups consisting of Japanese manufacturers and Chinese partners, which could produce and sell much better counterfeits of Western firms' goods than those produced by Chinese manufacturers alone. Moreover, since the forged trademarks of such counterfeits had frequently been registered in Japan and considered legitimate, their strenuous efforts at persuading these manufacturing firms to withdraw their registration through the Japanese government did not always succeed.<sup>10</sup>

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<sup>8</sup> See my “*Kōsho Shinseiki Chūgoku no Shōhyō Hogo Seido no Zasetu to Nichiei Tairitsu* (Anglo-Japanese conflict and the trademark registration law during the Guangxu New Policy period),” *Shakai-Keizaishigaku (Socio-Economic History)*, Vol. 74 No. 3, September 2008, p. 12.

<sup>9</sup> I am planning to write another Japanese article dealing with this issue from the late 1910s to the early 1920s, the title of which is “*Chūgoku Shōhyōhō Shikō zengo no gaikoku kigyō shōhyō hogo taisei* (The protection system of foreign trademarks before and after the promulgation of the Chinese trademark law [1923])” (*Tōyōshi kenkyū* Vol. 71. No. 4 Mar. 2013).

<sup>10</sup> See my “*Shinmatsu Minsho ni okeru Shōhyōken shingai funsō –Nichū kankei wo chūshin ni* (Conflict over Sino-foreign trademark violation in the late Qing and early Republican periods: with special reference to the relationship between Japanese and Chinese companies),” *Shakai-Keizaishigaku (Socio-Economic History)*, Vol. 75 No. 3, September 2009, pp. 13–21; “Anglo-Japanese Trademark Conflict in China and the Birth of the Chinese Trademark Law (1923), 1906–26, *East Asian History* 37 (Dec. 2011), pp. 10–16.

Even though the Beijing government promulgated its own trademark law in 1923, the law was effective only in relation to people who had Republic of China nationality; the Japanese and their Chinese partners were thus outside the jurisdiction of the Chinese courts. Therefore, the British government worried that the Chinese trademark law would be ineffective in preventing these Japanese/Chinese joint ventures from manufacturing counterfeits with forged trademarks of the goods of British and other Western firms. Moreover, even if it were effective, they also worried what would happen if they allowed “a Chinese department” to interfere with the property (i.e. trademark) of British nationals, who were involved in civil cases regarding the violation of trademarks.<sup>11</sup>

At the diplomats’ meeting on March 17 in Beijing, the British Minister to China, Miles Lampson, proposed that the ministers of other powers adopt the Chinese trademark law (1923) at their consular courts so that they could punish their own nationals who violated the trademarks of other countries’ firms. Anticipating that the Japanese or the Chinese might request the owners of British trademarks to withdraw their registration by claiming that they had already registered their forged trademarks at the trademark bureau of the Nationalist government in advance, he added the condition that registration at the Beijing trademark bureau should be regarded as *prima facie* evidence, not as conclusive evidence. In so doing, he hoped that British trademark owners could avoid such trouble. They could prove that their trademarks had been used much earlier than the forged trademarks were registered in Beijing by submitting their registration records from the UK as conclusive evidence.<sup>12</sup>

Unfortunately for Lampson, the ministers of the other countries did not approve his proposal and, as a result, the major foreign ministries could not present a unified front against the Nationalist government’s trademark policy.<sup>13</sup> The British and American governments agreed to see whether the Shanghai Provisional Court (*Shanghai Linshi fayuan*

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<sup>11</sup> FO 228/3637 19851/27/15 “Trademarks in China,” Dec. 29, 1927.

<sup>12</sup> FO228/3637 19851/27/15 “Trademarks in China,” Dec. 29, 1927, pp. 35–6; FO228/3822 A. G. Gossop to Miles Lampson No. 1, Jan. 28, 1928.

<sup>13</sup> *Ibid.* p. 38. NGK E.4-7-3-1-1-1 Telegram No. 281, Minister Yoshizawa (芳澤) to Foreign Minister, Shidehara, Mar. 22, 1927.

上海臨時法院), which had protected foreign trademarks so far, would change its attitude, and then would decide what attitude they would adopt. For the time being, the British government left the Shanghai British Chamber of Commerce and the Consul-General in Shanghai to deal with all trademark issues.<sup>14</sup>

Seeing the disunity of the major foreign governments, the Nationalist government took a stronger attitude. On September 26, 1927, they opened the National Registration Bureau (*Quanguo Zhucejū* 全國註冊局) in Shanghai to start registration of not only trademarks but also the names of Chinese and foreign firms.<sup>15</sup> On December 10, the Ministry of Finance of the Nationalist government promulgated the Rules of Registration (*Quanguo Zhuce tiaoli*, 全國註冊條例) and ordered all trademark owners to register their trademarks at the National Registration Bureau within three months. Moreover, a US\$ 18 registration fee for each trademark was to be levied, regardless of whether a firm had previously registered its trademarks with the trademark bureau in Beijing.<sup>16</sup>

The Japanese and American governments were fiercely opposed to this, arguing that the Nationalist government lacked a specific law to deal with a trademark infringement case in which someone infringed a foreign trademark registered in the trademark bureau of the Beijing government. Moreover, they pointed out that since the Nationalist government had not clearly defined the registration procedure, foreign trademark owners would be at a loss as to what stage they should protest to the National Registration Bureau if they found that forged trademarks had been registered.<sup>17</sup> At this stage though, the British government did not support the Japanese and the American governments, continuing to leave the Shanghai British Chamber of Commerce and Consul-Gener-

<sup>14</sup> NGK E.4-7-3-1-1-1 Confidential Telegram No. 101 Acting Commercial Attaché in Shanghai, Vice-Consul Katō to the Foreign Minister Tanaka, Nov. 29, 1927.

<sup>15</sup> NGK E.4-7-3-1-1-1 Official Correspondence, No. 1040, Shanghai Consul-General Yada Shichitarō (矢田七太郎) to the Foreign Minister Baron Tanaka Giichi (田中義一), Dec. 2, 1927.

<sup>16</sup> NGK E.4-7-3-1-1-1 Commercial Confidential No. 18, Acting Commercial Attaché Katō Nichikichi (加藤日吉) to the Foreign Minister, Baron Tanaka Giichi, Jan. 22, 1928.

<sup>17</sup> *Ibid.*; FO228/3822 No. 235 (3/331), R. C. Newton to Sir Austen Chamberlain, Mar. 9, 1928.

als in Shanghai to deal with the problem.

By contrast, being aware that the jurisdiction of the National Registration Bureau was valid only within the sphere of their *de facto* territory and invalid within the Shanghai foreign settlement, many foreign firms opposed the Rules of Registration.<sup>18</sup> As a result of pressure from the Shanghai British Chamber of Commerce then, the British Consul-General also declared British opposition to the trademark registration system of the Nationalist government.<sup>19</sup> Consequently, the foreign ministers in Beijing protested to the Nanjing government on April 2, 1928 that the order to re-register their trademarks to the National Registration Bureau had “a grave bearing” on foreign firms, because it completely negated the trademark registration system according to the trademark law of 1923, which foreign firms in China respected.<sup>20</sup>

## 2. Threats

Nonetheless, however vehement the protests they received from foreign powers, the Nationalist government did not change their attitude. From their point of view, it was quite natural that every law and regulation of the defeated enemy, the Beijing government, should be replaced by their own ones. A commissioner for foreign affairs in Shanghai clearly explained the trademark registration policy of the Nationalist government as follows:

Since the inauguration of this [National Registration] Bureau it has had to deal with a large number of re-registrations of trademarks and new applications on behalf of foreign merchants, the nation-

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<sup>18</sup> NGK E.4-7-3-1-1-1 Commerce No. 64, Acting Commercial Attaché Katō Nichikichi to the Foreign Minister Baron Tanaka Giichi, Mar. 16, 1928.

<sup>19</sup> FO228/3822 S. Barton to Miles Lampson No. 54 with two enclosures, Mar. 27, 1928.

<sup>20</sup> NGK E.4-7-3-1-1-1 Telegram Nos. 411 and 439, Minister Yoshizawa to the Foreign Minister Tanaka Giichi, Apr. 3, 11, 1928; *ibid.* Official Correspondence No. 656 Shanghai Consul-General Yada Shichitarō to the Foreign Minister Baron Tanaka Giichi, Aug. 7, 1928 with enclosure; FO228/3822 No. 386 (12/31) Miles Lampson to Sir Austin Chamberlain, Apr. 20, 1928; *ibid.* 15/31 S. Barton to Miles Lampson No. 110, June 21, 1928.

als involved being British, American, German and Japanese, from which it is obvious that foreign merchants are, for the protection of their own interests, willing to comply with the laws of the Nationalist Government [sic]. It is also only reasonable that laws promulgated by Peking cannot be recognized as being valid within the jurisdiction of the Nationalist Government [sic].

At present, marks already registered in Peking need only go through the formality of re-registration and only need pay fees amounting to a quarter of the fees for original registration: in fact, the process is analogous to a re-examination and is not a re-registration. Our government's consideration for the Chinese and foreign commercial community is perfectly clear.<sup>21</sup>

So, what was the content of the Trademark law of the Nationalist government? It was precisely the same as the Trademark law of 1923, the only exception being the registration fee stipulated in Article 35.<sup>22</sup> Therefore, British and Japanese diplomats considered that the genuine object of the trademark registration system was simply to squeeze registration fees out of foreign firms in China.<sup>23</sup> They anticipated that the Nationalist government might collect money from foreign firms in a similar way to their methods in relation to the Chinese living in Shanghai. Just after they put Shanghai under their control, the Nationalist government arrested some of the wealthy Chinese, claiming that they were “counter-revolutionary,” “a corrupt merchant who assisted warlords,” or “Communist.” In so doing, they extracted funds from their families for release.<sup>24</sup>

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<sup>21</sup> FO228/3822 Enclosure No. 5 in Shanghai despatch to Peking No. 110 of the 21st June, 1928: Translation of letter from Commissioner for Foreign Affairs to H. M. Consul-General, Shanghai, May 21, 1928.

<sup>22</sup> FO228/3822 No. 510 (13/31) Miles Lampson to Sir Austen Chamberlain, May 18, 1928.

<sup>23</sup> NGK E.4-7-3-1-1-1 Commercial Confidential No. 18, Acting Commercial Attaché Katō Nichikichi to the Foreign Minister, Baron Tanaka Giichi, Jan. 28, 1928; FO228/3823 Copy of telegram to Nanking Sep. 28, 1928 from H. M. Minister, Sep. 28, 1928.

<sup>24</sup> Parks M. Coble, Jr. *The Shanghai Capitalists and the Nationalist Government 1927–1937* (Harvard University Press, 1980), pp. 34–5.



Thus, as the British and Japanese diplomats expected, they also employed similar tactics when they started their trademark registration policy. However, instead of arresting wealthy foreigners, they simply went ahead and let Chinese firms produce counterfeits with forged trademarks of goods of a prominent foreign firm which had not registered their original trademarks at the National Registration Bureau. In that vein, the commissioner for foreign affairs in Shanghai warned that “if the owners of genuine marks are not willing to come to the [National Registration] Bureau and re-register while imitators do come forward with applications which comply with the law, this [National Registration] Bureau, having nothing on record, has no course open but to treat the new applications as in order. This makes it very hard to deal with any difficulties which may arise subsequently.”<sup>25</sup>

Such a case happened when the British American Tobacco Company (China) Limited (hereafter BAT) discovered a Chinese firm, the *Mei Lee* Tobacco Company (whose Chinese characters are unknown), had registered three forged trademarks of their own cigarette brands (“Baby,” “Hatamen [哈德門],” and “Capital”) in the National Registration Bureau in May 1928.<sup>26</sup> In reply to their protest, the National Bureau of Registration reconfirmed the policy of the Nationalist government and declared BAT to be to blame as follows:

It is necessary, in order to make use of a trademark, that application for re-registration of trademarks registered before May 1st 1927 at the Peking Bureau of Trademarks should be made to this Bureau [the National Bureau of Registration], whereupon the rights of exclusive [sic] use within the areas controlled by the Nationalist Government [sic] will be duly protected. As the B. A. T. Company has not so far applied here for re-registration of the three marks in question, we have no records to look up. Accordingly when the Chinese firm, the Mei Lee Tobacco Company, brought trademarks

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<sup>25</sup> FO228/3822 Enclosure No. 5 in Shanghai despatch to Peking No. 110 of the 21st June, 1928: Translation of letter from Commissioner for Foreign Affairs to H. M. Consul-General, Shanghai, May 21, 1928.

<sup>26</sup> FO228/3822 Enclosure Nos. 1 & 3 in Shanghai despatch to Peking No. 110 of 21st June 1928, May 4, 26 and 29, 1928.

here for registration we duly examined the designs and, finding that there were no points of resemblance or similarity with trademarks of other merchants awaiting registration, we naturally approved and published them in accordance with the regulations. If the B. A. T. Company had applied early for re-registration, the attempts of others to imitate their designs and then to make false application would, when observed here, have been immediately rejected. But the Company has been dallying and has taken no action and thus caused this complication.<sup>27</sup>

The National Bureau of Registration went on to suggest that BAT should apply to them for re-registration of their “Baby”, “Hatamen” and “Capital” brands in accordance with Article 5 of the Rules of Registration and, at the same time, lodge a formal objection against the approved trademarks of the *Mei Lee* Tobacco Company.<sup>28</sup>

### 3. Compromise

Reacting to the above incident, the foreign powers realized that it was no longer possible to make the Nationalist government alter their policy by protest. Instead, they tried to persuade them that it was futile to open the National Bureaus of Registration in Shanghai and Nanjing and order native and foreign firms to register their trademarks because once the National Revolutionary army succeeded in reaching Beijing they could then obtain the whole archives of the Beijing trademark bureau.<sup>29</sup> Moreover, pointing out the difficulties in submitting the relevant papers for re-registration to Shanghai or Nanjing from overseas or from parts of China in turmoil, the foreign ministers in Beijing requested the Nationalist government extend the deadline on re-registration, which

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<sup>27</sup> FO228/3822 Enclosure No. 4 in Shanghai despatch to Peking No. 110 of 21st June, 1928: Copy of letter to H. M. Consul-General, Shanghai from Commissioner for Foreign Affairs, June 7, 1928.

<sup>28</sup> *Ibid.*

<sup>29</sup> FO228/3822 15/31 S. Barton to Miles Lampson No. 110 with Enclosures Nos. 6-8, June 8, 12, 13, 21, 1928.

was set for August 18, 1928.<sup>30</sup>

Facing up to reality, the Nationalist government had to agree with their request. They extended the deadline until October 18.<sup>31</sup> In addition, the British government inquired of the Nationalist government whether or not they would protect such British trademarks that did not receive a certificate of registration from the trademark bureau in Beijing, even though they had applied for it and had paid the registration fee.<sup>32</sup> Since the Nationalist government did not reply to this inquiry quickly, they sent the same request again to the Nationalist government through the British Consulate in Shanghai at the end of August 1928.<sup>33</sup>

Meanwhile, anticipating that the Nationalist government might not protect their trademarks unless they re-registered in Shanghai or Nanjing, foreign firms did start to apply to the National Bureau of Registration. According to the Japanese Consulate in Shanghai, among the 520 trademarks formally registered at the National Bureau of Registration between February 15 and the end of May 1928, 31 were Japanese, four were British, 11 were American and 66 were German trademarks.<sup>34</sup> Furthermore, the number of foreign trademarks re-registered at the National Bureau of Registration increased after August, since a prominent British firm, the Asiatic Petroleum Co., whose trademarks had been frequently infringed by Chinese manufacturers since the 1910s, sent a message that they would register their trademarks, following their com-

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<sup>30</sup> NGK E.4-7-3-1-1-1 Official No. 1079, Minister Yoshizawa to the Foreign Minister, Tanaka, July 23, 1928; FO228/3822 17/31 Commercial Secretary at Shanghai to H. M. Minister, Telegram No. 26, July 24, 1928; *ibid.* S. Barton to H. M. Minister No. 150 1928 with one Enclosure, July 27; *ibid.* No. 1061 (36/31) B. C. Newton (In the absence of H. M. Minister) to Lord Cushendun, Aug. 30, 1928.

<sup>31</sup> FO228/3822 Enclosure No. 3 in Shanghai despatch No. 166 of 20/8/28 to Peking, Aug. 17, 1928; NGK E.4-7-3-1-1-1 Minister Consulate Confidential No. 286 Acting Consul-General in Shanghai Shimizu Hōjirō (清水芳次郎) to Envoy Minister Yoshizawa Kenkichi (芳澤謙吉), Aug. 22, 1928. The postponement of the time limit was limited for several times until September 1930.

<sup>32</sup> FO228/3822 37/31 C. F. Garstin to H. M. Minister No. 166, Aug. 20, 1928; *ibid.*, Enclosure No. 1 in Shanghai despatch No. 166 of 20/8/28 to Peking, Aug. 17, 1928.

<sup>33</sup> FO228/3823 Enclosure Nos. 1 and 2 in Shanghai despatch No. 18 to Peking, 29/9/28, Aug. 28, 30, 1928.

<sup>34</sup> NGK E.4-7-3-1-1-1 Telegram No. 583 Acting Consul-General Shimizu to the Foreign Minister Tanaka, Aug. 29, 1928.

mercial opponents (probably Chinese manufacturers, which produced counterfeits of their goods) if their commercial opponents decided to register their counterfeit trademarks at the National Bureau of Registration.<sup>35</sup>

Table 1 is the list of the British and American firms which formally re-registered their trademarks at the National Bureau of Registration in September 1928. This tendency must have been encouraged because prominent British firms, such as Fulford and Company (Doctor William's Medicine Company), the Poldi Steel Works, and Moore Eady & Murcote Goods Limited, as well as a number of American firms decided to re-register their trademarks at the National Bureau of Registration, while BAT was also being pressed to follow them.<sup>36</sup>

Seeing that the situation was broadly in their favor, the Nationalist government made a slight concession in issuing the Provisional Regulations for the Examination of Trademark Registration Certificates (*Chayan Shangbiao Zhuhezeng Zanxing zhangcheng* 查驗商標註冊証暫行章程) on December 21, 1928. In this regulation, they admitted the certificates of trademark registration issued by the trademark bureau of the Beijing government were valid if the date of issuance was before May 1927. Moreover, the holders of such certificates could re-register their trademarks for only a quarter of the ordinary registration fee if they applied for re-registration within six months of the promulgation of the Provisional Regulations for the Examination of Trademark Registration Certificates. However, they refused to recognize the validity of the certificates of trademark registration of the Beijing government issued after May 1927, except where holders lived in provinces and districts which were not under the jurisdiction of the Nationalist government, such as the Shandong and Hubei provinces, the North-Eastern districts and Beijing.<sup>37</sup>

While the British ministry in Beijing could not decide to admit the

<sup>35</sup> FO228/3822 Enclosure No. 2 in Shanghai despatch No. 166 of 20/8/28 to Peking: The Asiatic Petroleum Co. (North China Ltd.) to C. F. Garstin, Aug. 15, 1928.

<sup>36</sup> FO228/3822 C. F. Garstin to H. M. Minister Telegram No. 237, Sep. 14, 1928; FO228/3823 C. F. Garstin to H. M. Minister No. 198 and Enclosure Nos. 3, 5–7, Sep. 29, 1928.

<sup>37</sup> FO228/4002 Enclosure in Shanghai Printed Letter Despatch No. 6 to Peking, 7/1/29, Jan. 7, 1929.

**Table 1 List of British and American firms whose trademarks were registered at the National Bureau of Registration**

<b>Names of Firms</b>	<b>Nationality</b>	<b>Numbers of Trademarks</b>
G. & H. Barnett Company	American	2
Nicholson File Company	American	4
Lysol. Incorporated.	American	7
Standard Laboratories Inc.	American	1
Fabrica de Tabacos el Oriente	American	2
G. T. Fulford Co. Ltd.	British	3
Colgate & Co.	American	8
The Poldi Steel Works, Poldi Steel Co. (England) Ltd.	British	1
Valentine & Company	American	1
Kress & Owen Company	American	1
McCallum Hosiery Co.	American	1
Martin H. Smith Company	American	2
Moore Eady & Murcott Goode, Ltd.	British	5
The Stanley Works	American	7
A. B. Ordway & Company	American	1
Walworth Manufacturing Company	American	2

Source: FO228/3823 Enclosure No.10 in Shanghai Despatch No. 198 to Peking, 29/9/28

Nationalist government to carry out the above regulation, the Shanghai British Chamber of Commerce strongly opposed it.<sup>38</sup> Citing the first-to-use principle, they argued that the registration at the trademark bureau in Beijing should be recognized prior to the re-registration at the National Bureau of Registration even if the registration date was after May 1927.<sup>39</sup> They asked the British ministry to request that the Nationalist government regard the certificates issued by the trademark bureau of the Beijing government after May 1927 as valid, referring to at least 1,500 British trademarks which had been registered after that

<sup>38</sup> NGK E.4-7-3-1-1-1 Telegram No. 21 Acting Minister Hori to the Foreign Minister Tanaka, Jan. 8, 1929; FO228/4002 Telegram to Shanghai, Jan. 24, 1929.

<sup>39</sup> FO228/4002 Enclosure in Shanghai despatch No. 22 to Peking dated 28/1/29.

date. Moreover, there were also a number of British trademarks where the certificates had not been issued, despite the company having applied for the registration and sent the fee.<sup>40</sup>

As a remedy for those British trademark holders who had failed to receive the certificate of registration from the trademark bureau of the Beijing government after May 1927, the Shanghai British Chamber of Commerce had a proposal. It suggested that the National Bureau of Registration issue new certificates for trademark registration in exchange for the certificates of registration issued by the trademark bureau of Beijing government for \$ 10, or the receipt of the registration fee, the validity of both of which should be extended until February 15, 1928, when the trademark bureau in Beijing was finally closed.<sup>41</sup>

While Kong Xiangxi (孔祥熙, H. H. Kung), the Minister of Industry and Commerce, totally rejected the proposal,<sup>42</sup> Wen Wanqing (温萬慶, W. J. Wen), the Director of the Trademarks Bureau, expressed support for the proposal as long as the certificates and receipts were issued before May 1927. He also promised to prevent similar trademark infringement cases to the BAT and *Mei Lee* Tobacco Company case.<sup>43</sup>

So, up to this point the crucial issue between the foreign powers and the Nationalist government had been the question of whether or not certificates of trademark registration and the receipt of the fee by the trademark bureau of the Beijing government between May 1, 1927 and February 15, 1928 were regarded as valid. In the end, it was the American diplomat Julean Arnold who persuaded the Nationalist government to admit the validity of such certificates of trademark registration and receipts issued for American firms even if they were issued after May

<sup>40</sup> FO228/4002 From Shanghai to H. M. Minister, Tel. No. 28, Jan. 26, 1929.

<sup>41</sup> FO228/4002 Telegram to Shanghai No. 37, Feb. 1, 1929.

<sup>42</sup> FO228/4002 British Legation Peking Telegram to Foreign Office, No. 145 of 16th February 1929; *ibid.* Telegram to Foreign Office No. 172, Desp. 12:30 pm, Feb. 28, 1929; *ibid.* Telegram to Mr. Brett, Shanghai No. 2, Desp. at noon, Feb. 28, 1929; NGK E.4-7-3-1-1-1 Telegram No. 185 Acting Consul-General Kamimura to Foreign Minister Tanaka, Feb. 27, 1929; *ibid.* Acting Minister Hori to the Foreign Minister Tanaka, Feb. 27, 1929.

<sup>43</sup> FO228/4002 Mr. Newton at Nanking to H. M. Minister, Telegram 2, Desp. at midnight, Feb. 8, 1929; *ibid.* From Nanking to H. M. Minister No. 47, Desp. 3:30 pm, Feb. 8, 1929; *ibid.* H. J. Brett to Miles Lampson, Feb. 8, 1929; *ibid.* H. H. Kung to Miles Lampson, Feb. 25, 1929.

1927.<sup>44</sup>

Unfortunately, since no relevant records are available, it is not possible to reveal exactly how he persuaded Wen Wanqing and Kong Xi-angxi. The news that the Nationalist government decided the priority of the certificates of trademark registration and receipts for the registration fee was immediately conveyed to the other foreign diplomats in China. Within two weeks, the Nationalist government confirmed that all certificates of trademark registration and registration fee receipts issued by the trademark bureau of the Beijing government were valid and the British and the Japanese governments allowed their firms to re-register their trademarks at the National Bureau of Registration on the condition that the Nationalist government extended the time limit for re-registration for another six months.<sup>45</sup> Table 2 indicates the number of trademark re-registrations that foreign and native firms applied for just before the British and the Japanese governments formally admitted their trademark re-registrations at the National Bureau of Registration. The total numbers of trademarks applied for re-registration must have increased after that date.

However, the National Bureau of Registration did not always protect the re-registered trademarks of prominent foreign firms. In the same source used to construct Table 2, Japanese Consul-General Shigemitsu Mamoru (重光葵) reported that certain Chinese merchants re-registered forged trademarks of those of *Kanegafuchi Bōseki* (鐘淵紡績, i.e. *Kanebō* 鐘紡).<sup>46</sup> However, since there are no relevant records in *NGK*,

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<sup>44</sup> FO228/4002 J. M. Brett to H. H. Fox, Mar. 8, 1929; *ibid.* H. J. Brett to Miles Lampson General Series No. 7 with Enclosure, Mar. 16, 1929; *NGK* E.4-7-3-1-1-1 Telegram No. 269 Acting Minister Hori to Foreign Minister Tanaka, Mar. 19, 1929.

<sup>45</sup> *NGK* E.4-7-3-1-1-1 Telegram Nos. 376, 390 Consul Okamoto to the Foreign Minister, Tanaka, April 13, 19, 1929; *ibid.* Telegram No. 629 Minister Yoshizawa to the Foreign Minister Tanaka, June 15, 1929; *ibid.* Commerce No. 153, Acting Shanghai Commercial Attaché Katō Nichikichi to the Chairman of the Shanghai Japanese Chambers of Commerce Yonezato Monkichi (米里紋吉), June 17, 1929; *ibid.* Confidential Message No. 406, Consul in Nanjing Okamoto Issaku (岡本一策) to Foreign Minister, Tanaka Giichi, Jun. 17, 1929; FO228/4003 C. F. Garstin to H. M. Minister No. 164, May 31, 1929 with two Enclosures; *ibid.* Circular to Consuls No. 45 (53/31), July 3, 1929.

<sup>46</sup> *NGK* E.4-7-3-1-1-1 Telegram No. 346 Consul-General Shigemitsu to Foreign Minister, Tanaka, Mar. 23, 1929.

**Table 2 Trademarks re-registered at the National Bureau of Registration  
(quoted from Nanjing Monthly Trademark Gazette)**

Nationality	Valid	Under Examination	Re-registered
American	308	225	7
British	226	57	0
Japanese	263	77	1
Chinese	772	856	185
Sundry	528	206	10
Total	2097	1421	203

Source: *NGK E. 4.7.3.1-1-1* Telegram No. 346 Consul-General Shigemitsu (重光) to the Foreign Minister Tanaka, March 23, 1929.

it is impossible to know which *Kanebō* trademarks were infringed and how they responded to it.

Meanwhile, as the following section will reveal, the British firms experienced similar trademark infringements by Chinese firms, and we can certainly see the limits of the trademark protection system run by the Nationalist government.

#### 4. Disappointments

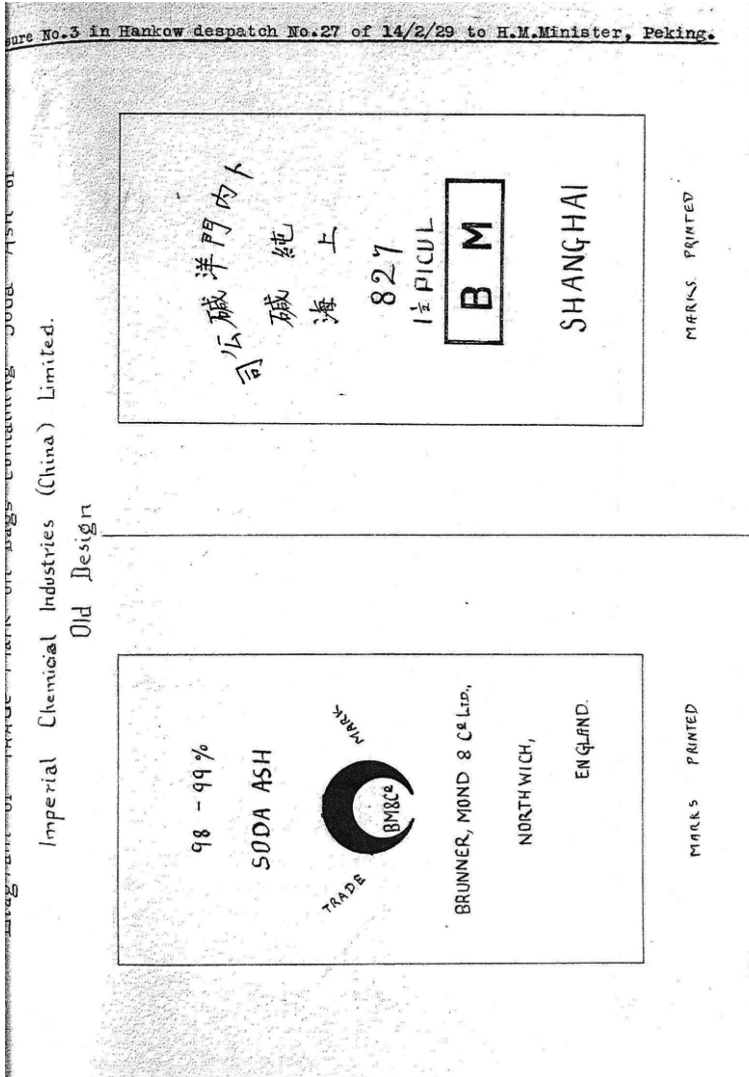
In contrast to the Japanese firms whose trademarks were no longer considered to be major models for forgeries in the 1920s due to the Japanese government's "twenty-one demands" and the effect of the May Fourth movement, the famous trademarks of prominent British firms were still seen as good models for Chinese manufacturers for producing forgeries. The British Foreign Office consular archives concerning the negotiations on how to settle have the following four cases of trademark infringement cases from 1929 to 1930.

**(1) Imperial Chemical Industries (China) limited (*Buneimen yangjian youxian gongsi* 卜内門洋碱有限公司) v. *Yung Ch'i* (Chinese characters unknown)**

The defendant Chinese firm purchased soda ash from the plaintiff British firm, the trademark of which (see Plate 1) was registered both in



### Plate 1 Trademark on bags containing Imperial Chemical Industries (China) Limited ash



Source: FO228/4002 Enclosure No. 3 in Hankow despatch No. 27 of 14/2/29 to H. M. Minister

the trademark bureau in Beijing and the National Bureau of Registration in Nanjing. The defendant firm, which had produced block soda or soda crystals from the soda ash they purchased from the plaintiff, was said to resell the soda ash at a much cheaper price with a product of inferior quality contained in a bag printed with a forged trademark (see Plate 2). When the manager of the plaintiff and his native staff visited the premises of the defendant in Hankou on December 12, 1928, they discovered not only the bag printed with forged trademark but also its two steel-dies. Based upon the evidence they discovered, the plaintiff sued the two managers of the defendant for trademark infringement in the Xiakou local district court (夏口地方審判庁).<sup>47</sup>

At the proceedings, Liao Chi Fu, one of the two managers of the defendant, insisted that they purchased the bag printed with the forged trademark and the two steel dies from someone else. Moreover, they claimed that the spelling of the English words in the trademark in Plate 2 was not the same as those in Plate 1, meaning it could not be considered illegal as defined in Article No. 268 of the Chinese criminal code and Article No. 3 Sec. 244 of the Chinese criminal suit code. The Xia-kou local district court, following the claim by the defendant, dismissed the prosecution on January 25, 1929.<sup>48</sup>

The plaintiff did not accept the above judgment, because the forged trademarks (Plate 2) used precisely the same Chinese characters in expressing the name of the firm and the ingredients of the bag and used a very similar design of logo mark. The only difference was the incorrect spelling of certain English words (i.e. “SHANDEAI”, “BRUNIER, NOH & Cot,” “NDHETHETH,” and “SODA ASH”). If such an obvious forged trademark were regarded as legal and the judgment thus established as a precedent, the registration of trademarks at the National Bureau of Registration would therefore be meaningless. As a result, instead of appealing, the plaintiff firm asked the British ministry to make an official protest to the Nationalist government.<sup>49</sup>

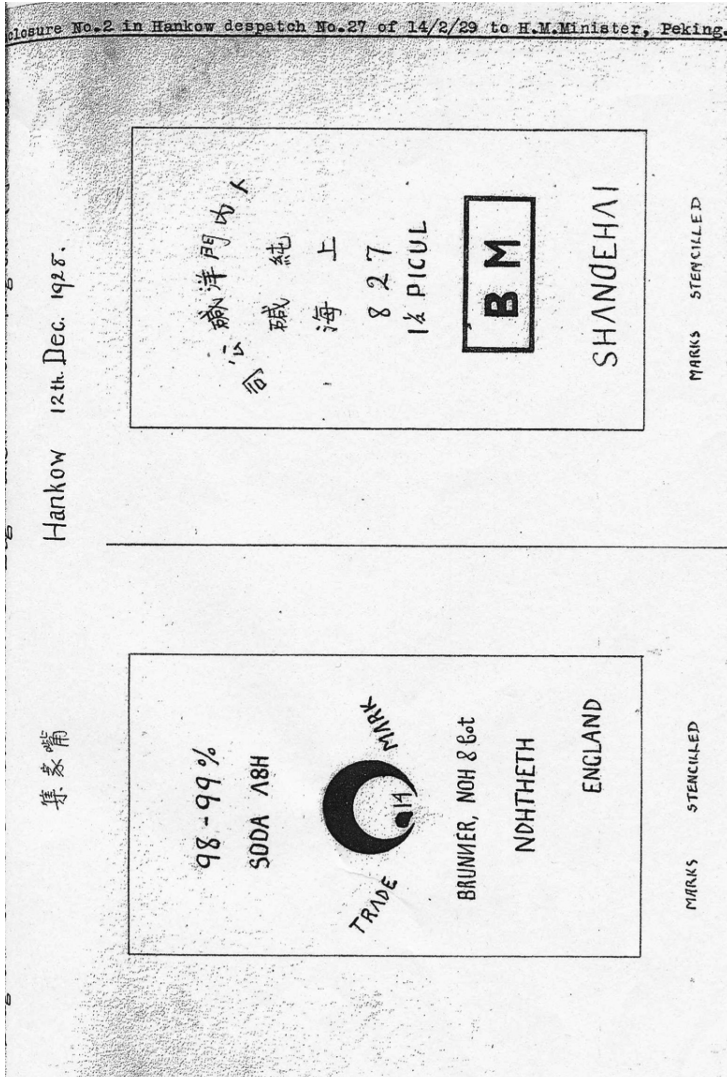
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<sup>47</sup> FO228/4002 Lancerot Giles to Miles Lampson, No. 27 with three Enclosures, Jan. 25, 1929.

<sup>48</sup> FO228/4002 Enclosure No. 1 in Hankow despatch No. 27 of 14/2/29 to H. M. Minister Peking, Jan. 25, 1929.

<sup>49</sup> FO228/4002 Lancerot Giles to Miles Lampson, No. 27, January 25, 1929.

### Plate 2 False trademark on bag taken from Yung Ch'i Company of Hankou



Source: FO228/4002 Enclosure No. 2 in Hankow despatch No. 27 of 14/2/29 to H. M. Minister, Peking

Seen this case, the British side suspected that the Nationalist government permitted the custom, which was requested to prohibit since the Mackay treaty: plagiarized trademarks should be strictly prohibited, but imitated trademarks should be permitted as legal.<sup>50</sup> Their suspicion was confirmed by the next case, which took place in 1930.

**(2) BAT v. Fu Fong-hu (spelling in Chinese characters unrecorded in sources)”**

The defendant was the manager of the *Hwa Teh* Tobacco Factory. He manufactured a counterfeit of the plaintiff’s “Ruby Queen” brand cigarette, with a forged trademark, “Rosy Queen.” However, in judging the case, the Shanghai Provisional Court (*Shanghai Linshi Fayuan*, 上海臨時法院) turned down the plaintiff’s request to cease producing the counterfeit, claiming that the Rosy Queen brand, which was quite similar to the Ruby Queen brand except for two letters, might not be called a counterfeit but rather was perhaps an imitation. The three judges of the Shanghai Provisional Court justified their judgment by pointing to the fact that the revised trademark law promulgated in 1930 provided no punishment for imitation of trademarks, whereas identical forged trademarks were punished according to Article 268 of the Chinese criminal code. Moreover, the Rosy Queen brand produced by the defendant was different in wrapping, color, and letters from those of the Ruby Queen brand. Therefore, it could not be called even an imitation, and consequently the defendant could not be punished in accordance with the provisions on the counterfeiting of trademarks in the Chinese criminal code.<sup>51</sup>

The trademarks sub-committee of the Shanghai British Chamber of Commerce expressed grave concern regarding the judgments in the above two cases. Confirming that the penal clauses (i.e. Nos. 39-44) of the trademark law of 1928 were deleted in the 1930 draft, they worried that various imitations could not be successfully prosecuted in the Chi-

<sup>50</sup> See my “*Shinmatsu Minsho ni okeru Shōhyōken shingai funsō –Nicchū kankei wo chūshin ni*” p. 5.

<sup>51</sup> FO228/4204 In the Shanghai Special District Court Criminal Jurisdiction (19th year, Character “Shang” No. 23), Jun. 9, 1930.

nese courts because articles 268 and 269 of the criminal code prohibited only identical forged trademarks.<sup>52</sup>

When he received the reports about the above two cases and the comment by the Shanghai British Chamber of Commerce, Miles Lampson strongly protested to Wen Wanqing. In a meeting with him on September 8, 1930, Lampson protested that, if such a “principle were definitely established it would practically deprive [British] trademark owners of all possibility of securing redress by action under the criminal code, for infringements almost invariably took the form of colorable imitation rather than of an exact reproduction of the genuine mark.” Wen explained that “their reason for deleting the penal clauses formerly appearing in the trademark law [of 1928] and substituting them for Articles of 268 and 269 of the criminal code had been to render possible the infliction of more severe penalties in serious cases”. He assured him that permitting forgeries was “by no means the policy of the Chinese authorities” and that they were very “far from desiring to throw obstacles in the way of those [British trademark owners] seeking the protection of the [Chinese] courts.” As evidence, he stated that he had sent strict instructions to the Chinese courts to refer trademark infringement cases to the National Trademark Bureau in the first instance so that, in future, Chinese judges did not follow similar lines to those in the above two trademark infringement cases. He strongly emphasized that he was certainly not disposed to refuse protection in cases where colorable imitation was clearly established and assured Lampson that, “although the Nationalist trademark bureau’s decisions might not be absolutely binding on the court concerned, they could not be disregarded.”<sup>53</sup>

Probably directed by Wen, the Shanghai Provisional Court, which dealt with BAT’s appeal, ruled in their favor on the grounds that the new trademark law had not yet come into force.<sup>54</sup> However, the higher authorities of the Nationalist government seemed displeased with Wen’s

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<sup>52</sup> FO228/4204 J. Brennan to H. M. Minister, No. 200, Jul. 24, 1930.

<sup>53</sup> FO228/4204 J. H. Brett to Miles Lampson, General Series No. 21, Sep. 8, 1930.

<sup>54</sup> FO228/4204 10/31 J. P. Brenan to H. M. Minister, No. 285, Oct. 17, 1930. In addition to this case, the Shanghai Provisional Court and the Jiangsu High Court had already been criticized for arbitrarily dealing with trademark infringement cases without considering the trademark law of 1928 in 1929. See Zuo Xuchu, *Zhongguo Shangbiao Faliishi*, pp. 299–300.

attitude. They refused to respond to the British firms' grievance in their favor at first. In a confidential meeting with Lampson, Kong Xiangxi told him that the question of colorable imitations was being addressed by Hu Hanmin (胡漢民), the president of the Legislative Yuan (*Lifa yuan* 立法院), and that unless the British government attempted a direct appeal to Hu, nothing could be done.<sup>55</sup>

The reason why Hu Hanmin prevented the Trademark Bureau from solving the imitation question as the British firms requested was explained by Xu Mo (徐謨), the chief of the Euro-American Bureau of the Ministry for Foreign Affairs. Speaking with the British Consul-General in Nanjing on December 31, 1930, he stated that the focal point of the issue was whether the term "counterfeit" in Articles 268 and 269 of the criminal code includes colorable imitations or not. If the Judicial Yuan (*Sifa yuan* 司法院) considered it to include colorable imitations, the Chinese courts must be brought to book. If not, revision of the trademark law must at once be considered. However, it was held to ultimately rest with the Legislative Yuan to decide whether colorable imitations should be punished at all.<sup>56</sup>

If the National Trademark Bureau instructed the Chinese courts not to interfere with trademark infringement cases, but rather to refer them to the bureau in the first instance, this would automatically interfere with the jurisdiction of the Legislative Yuan over which Hu Hanmin presided. Even though the Nationalist government did not promulgate their own constitution, declaring the division of the three powers, at that time they were nonetheless quite sensitive not to cause any trouble which might rupture the fragile political balance within their government. In such a situation, it was quite suspected the trademark law of the Nationalist government was effective whether it was under the National trademark bureau or the local district courts. The evidence for this is found in the following two cases.

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<sup>55</sup> FO228/4204 From Nanking to H. M. Minister Tel. No. 311, Desp. 12:53 pm, Dec. 30, 1930.

<sup>56</sup> FO228/4204 (14/31) From Nanking to H. M. Minister Tel. No. 312, Desp. 12:33 pm, Dec. 31, 1930.

### (3) BAT v. North-China Cigarette Company (*Huabei Yan gongsi* 中国華北煙公司)

The defendant firm was a Chinese firm in Yuci county [榆次县], Shanxi province. Just like the *Mei Lee* Tobacco Company, it manufactured and sold a “Tapamen (太平門)” brand cigarette, a counterfeit of the plaintiff’s “Hatamen (哈德門)” brand cigarette, in Shanxi province. Since they continued with their commercial activities despite two warnings from BAT, the National Trademark Bureau ordered them to cease manufacturing the Tapamen cigarette according to Articles 268 and 269 of the criminal code and Articles 39 and 40 of the Trademark law of 1930.<sup>57</sup>

The commercial attaché of the British ministry in Beijing was displeased when he learnt of this arrangement. Instead of going to the National Trademark Bureau, he personally took up the dispute with the foreign affairs delegate of Yan Xishan [閻錫山] in Beijing. Theoretically, it might have seemed there would be little difficulty in obtaining the desired judgment in accordance with the order already issued by the bureau. However, considering the tension between the central government in Nanjing and the Shanxi authorities who were governed by Yan Xishan, he thought such an arrangement might make it difficult to obtain a favorable judgment in a Shanxi local district court in accordance with an order from the National Trademark Bureau. Therefore, he thought it would be much better to directly make representations in the first instance to the Shanxi authorities.<sup>58</sup>

Moreover, since the North-China Cigarette Company was a monopoly business run by Yan Xishan in Shanxi province and “Yan Xishan being a law unto himself at present, and his government virtually an independent administration,” he considered that “nothing short of personal representations from the British Minister direct to Yan himself would have the slightest effect.”<sup>59</sup> Unfortunately, British government

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<sup>57</sup> FO228/4204 (1/31) British-American Tobacco Company (China) Limited to H. B. M. Minister, May 27th, 1930; *ibid.* A Reply from the Bureau of Trademarks, Nanking, No. 9481, May 9, 1930, original Chinese text attached; *ibid.* Copy of an order issued to North China Cigarettes Co. Ltd., original Chinese text attached.

<sup>58</sup> FO228/4204 (1/31) A. H. George to the British-American Tobacco Company, Limited., Jun. 4, 1930.

<sup>59</sup> FO228/4202 Personal [A. H. George] to Lancerot Giles, June 16, 1930.

archives do not record the consequences of the dispute. Whatever the result it brought about, this case indicates that the power of the National Trademark Bureau was somewhat limited in Northern China.

#### **(4) The China Soap Company Limited v. various Chinese firms**

Even in the territory of the Nationalist central government in Nanjing, however, the power of the National Trademark Bureau was questionable. This is clearly revealed in the list of 38 Chinese firms against which the China Soap Co. Ltd. requested the bureau order suspension of manufacturing 49 brands of counterfeits of their products (see Table 3). Whilst the National Trademark Bureau warned the defendants to destroy all their stocks of counterfeits within a definite period, 21 of the 38 factories continued to manufacture counterfeits with infringed trademarks.<sup>60</sup>

The reason for their disobedience was explained in a reply from *Li Shing* Soap Factory (Chinese characters unknown) in Changzhou (常州) to the National Trademark Bureau. In their reply, they stated that if the order were carried out immediately, the livelihood of the workers would be eventually affected. So they pleaded to prolong the time limit.<sup>61</sup> As this case indicated, when confronted with the plea that many factory workers would lose their jobs if the suspension order were truly carried out, the Nationalist government could not easily prohibit manufacturing of counterfeits of British brand goods by Chinese firms.

Since the Nationalist government did not reply to the request from the China Soap Co. Ltd., we do not know how these disputes were settled. All we can confirm was that the Nationalist government decided that colorable imitation should be punished through Articles 268 and 269 of the criminal as requested by the British government in January 1931.<sup>62</sup> However, due to the Sino-Japanese war, all of these trademark infringement disputes were shortly to be completely forgotten.

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<sup>60</sup> FO228/4202 Notification No. 10379, Jun. 9, 1930; *ibid.*, 2/31 E. H. Jones to Miles Lampson No. 36 of 4/7/30, Jun. 18, 1930.

<sup>61</sup> FO228/4204 Translation of letter received from Trademark Bureau, Nanking dated Jun. 6, 1930: Order No. 2162.

<sup>62</sup> See Zuo Xuchu, *Zhongguo Shangbiao Falüshi*, pp. 324–325.



**Table 3 List of Details of Action taken against various imitations, of which the China Soap Co. Ltd. have complained (as submitted to the Ministry of Industry, Labour Commerce)**

<b>Name of Factory</b>	<b>Address</b>	<b>Name of Infringement Trade Mark</b>	<b>Name of Trade Mark imitated by Others</b>	<b>Details of Action Taken</b>
Dah Sing Soap Factory	11, Shing Loong Yang, Main Street, outside of Feng Shan Menm Hangzhou	Yang Mow Foreign Soap	Ziang Mow Yang Hong	The China Soap Co. Ltd. have petitioned to the Ministry of Industry, Labour & Commerce to request the concerned Authorities to suppress it in previous time, and although this has been done, yet no result has been produced therefrom. The China Soap Co., Ltd. has now been ordered by this Bureau to sue the Manufacturer according to Law.
Li Yih Kee Soap Factory	Nanhao Ka, Suzhou	Yang Ge Hang Hong	Ziang Mow Yang Hong	do.
Kwang Hwa Soap Factory	Nansze Ka, Yazeh (sic.)	Yang Ge Hang Hong	Ziang Mow Yang Hong	do.
Tung Ah Soap Factory	Kuchun-kiao, Hangzhou	Ziang Mow Yang Hong	Ziang Mow Yang Hong	do.
Kih Mow Yuen Kee Factory	66, Siao Ka, Zhenjiang	Moonlight	Sunlight	The said merchant has applied to us for registration but, as we have notified him to amend his mark, it has not been suppressed. However, we have now warned and restricted him to stop using the infringed trademark.
Ching Yuen Soap Factory	Sze Si Men, Nanjing	Three-lights	Sunlight	We have petitioned to you for suppression before. Afterwards, the said merchant has applied to us for registration and, accordingly, we have notified him to amend it. The said mark has now been duly amended.
Chee Sing Soap Factory	Kung Shing Kiaoo Chapei, Shanghai	Monk & Magig Leaf	Magical Umbrella	do.

Tshen Sing Native Soap Factory	35, Kong Erh Yang, Hangzhou	Maachine Gun	Magical	The China Soap Co. Ltd. has not yet applied for this mark. For suppression.
do.	do.	Ekeetric Lano "L"	Umbrella	The said merchant has applied to register these trademarks, but they have now been voluntarily cancelled after the said merchant was told to amend them.
do.	do.	Ziang Mow Yang Hong	Ziang Mow Yang Hong	We have petitioned to you to request the concerned authorities to suppress it, but have now ordered the China Soap Co. Ltd. to sue the Manufacturer according to Law.
Sing Chong Soap Factory	Kiang Ah Li, Wuhu	Sunlight	Sunlight	do.
Chung Kiang Soap Factory	Liu Tush Yuan, Wuhu	Sun & Moon Light	Sunlight	do.
Chung Hwa Native Soap Factory	Mu Bai Ka, inside South Gate, Tanyang	Moonlight	Sunlight	do.
Mow Kong Soap Factory	Next door to Electric Co., Railway station, Tanyang,	Mow Kong	Sunlight	do.
Dah Tung Soap Factory	Peh Hao Lung, outside of Zhong men, Suzhou	Yang Mow Yang Hong	Ziang Mow Yang Hong	do.
The Chen Nee Soap Factory	Si Tsin Kiao, outside of Zhongmen, Suzhou	Yang Mow Yang Hong	Ziang Mow Yang Hong	do.
Jih Sing Soap Factory	End of Shih Whei Kiao, Dah Nan Sah, Sinshih	Ziang Mow Yang Hong	Ziang Mow Yang Hong	do.

Tsen Mow Soap Factory	Si Thsin Kiao, outside of Zhongmen, Suzhou	Ziang Mow Yang Hong	Ziang Mow Yang Hong	do.
Yung Foong Soap Factory	Tze Foong Hong Lung, Kiang Tung, Ningbo	Ziang Ta Yang Hong Ziang Fa Yang Hong	Ziang Mow Yang Hong	do.
Tai Foong Soap Factory	Tsen An Kiao, Kiang Tung, Ningbo	Ziang Tshen Yang Hong Ziang Chun Yang Hong	Ziang Mow Yang Hong	do.
Yung Ming Sze Soap Factory	Liang Yen Kiao, Kiang Tung, Ningbo	Ziang Ta Yang Hong Ziang Fa Yang Hong	Ziang Mow Yang Hong	do.
Tsen Hwa Soap Factory	Near the West Amusement House, Pengpu	Sunlight	Sunlight	do.
Tung Mow Soap Factory	Main Street, South Gate, Nanjing	Moonlight	Sunlight	do.
Ho Mow Soap Factory	Zee Tze Hong, Nanjing	Moon Brand	Sunlight	do.
Tsen Hwa Kung Sze	Van Kia Hong, Zhenjiang	Bright Light	Sunlight	We have ordered the said merchant to destroy all the stocks and packings on hand within a dilinite [sic] period.
Hwa Ming Soap Factory	Chung Shan Road, Nanchang	Umbrella	Umbrella	do.
Hwa Seng Soap Factory	Shang Yu Ting, Nanchang	Umbrella	Umbrella	do.
Yung An Soap Factory	Kien The Kwei, Nanchang	Umbrella	Umbrella	do.

Yue Chwang Soap Factory	Yang Kee Yuen, Nanchang	Umbrella	Umbrella	As we have not yet had the designs and samples of the corresponding brands, it has not been considered and dealt with.
Chung Hwa Soap Factory	Kiao Be Hong, Nanchang	Umbrella	Umbrella	We have ordered the said merchant to destroy all the stocks and packings on hand within a definite period.
Teh Sing Soap Factory	Mu Liao Sze, Nan-jing	Hwa Lee Bright Light	Sunlight	do.
Ching Yuen Soap Factory	Sze Si Men, Nanjing	Ziang Mow Bar Soap	Ziang Mow Bar Soap	As we have not yet had the designs and samples of the corresponding brands, it has not been considered and dealt with.
Shiang An Soap Factory	Main Street South Gate, Wenzhou	Umbrella	Umbrella	do.
Heng Dah Soap Works	Inside Peh Ying Men, Tianjin	Pao Kwang (Jade Light)	Sunlight	do.
Lee Sing Soap Factory	Changzhou	Eye-light	Sunlight	We have ordered the said merchant to destroy all the stocks and packings on hand within a definite period.
Fook Lee Soap Factory	Hwang Pu Teng, Wuxi	Bright Light	Sunlight	do.
Chin Hwa Soap Factory	Jiangyin	Peh Ge Yang Hong	Peh Ge Yang Hong "N" Soap	do.
Yueh Hu Soap Factory	Nan Yien, Jiaxing	Yang Mow Foreign Soap	Ziang Mow Yang Hong	do.
Dah Shiing Soap Factory	Hangzhou	Magical Western Magic	Magical	do.
do.	Hangzhou	Lotus Leaf Military Wheel	Umbrella Wheel	do.
Pah Dah Soap Factory	Lanchi, Zhejiang	Mushroom brand	Umbrella	do.

Chuan Mo Soap Factory	Tung Sheng Ka, Kiang Tung, Ningbo	Yang Ge Yang Hong	Ziang Mow Yang Hong	We have petitioned to you to request the concerned authorities to suppress it, but, have now ordered the China Soap Co. Ltd. to sue the Manufacturer according to Law.
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Source: FO228/4204 E. H. Jones to Miles Lampson No. 36 of 4/7/30

## Conclusion

The Nationalist government failed to replace the Chinese trademark law of 1923. This meant that China eventually failed in its attempts to transplant the Western trademark law system, which was modeled after the Japanese trademark law of 1899 into their society. Although the Nationalist government did succeed in getting the trademarks of British, American and Japanese firms under their control, nevertheless they could not protect them from Chinese counterfeit manufacturers.

The primary reason was, needless to say, the complex situation in which the Nationalist government found itself. In addition to the fragile balance of power within their own government and the relationship with opponent local warlords, they had to fight against the Chinese communist party. Moreover, they had to prepare for the Japanese invasion at about the same time as the final stages of the negotiation for settling the trademark protection system. Therefore, the Nationalist government could not really have been expected to deal well with such a trivial issue when faced with two imminent problems of such magnitude.

A more important underlying reason, however, was the moral economy of Chinese society of the time, which did not regard imitating the intellectual property of others as problematic. In such a peculiar society, the idea that individuals' property (including trademarks and patents) should be protected was invalid. The trademark infringement issues between foreign firms and the Chinese, which had been taking place since the 1890s, were a reflection of the peculiar character of the Chinese market system.

The Nationalist government in itself could not replace the traditional Chinese moral economy. They too did not consider the protection of a firm's property important. From their point of view, the *laissez-faire* policy of allowing each firm to compete to accumulate more capital by reducing costs and adopting new technology was to be avoided.

Only through government officials or privileged capitalists should the new production technology be introduced and prevail in society.<sup>63</sup> This economic policy of the Nationalist government in the 1930s was obviously influenced by the traditional Chinese moral economy. Also, it made them quite passive with regard to strictly controlling Chinese counterfeit manufacturers.

As a result of this, trademark infringement disputes erupted all over China even after the outbreak of the Sino-Japanese war. After the Nationalist government, the Chinese communist government, the Japanese puppet “Manchukuo,” and another Japanese puppet the Wang Zhaoming (汪兆銘) government also had to make every effort to establish their own trademark registration systems so that they reduced the amount of trademark infringement cases.<sup>64</sup>

The peculiar character of the Chinese market economy remained unchanged even after the subsequent periods of civil war and the terror under the Mao Zedong (毛澤東) regime. Indeed, it was resurrected in a different style after 1979, as a Japanese journalist and American specialists on contemporary China report.<sup>65</sup> Numerous trademark infringement cases after the 1980s are variations of the same problem, which previous Chinese governments failed to deal with. It should be regarded as a spark, which inevitably creates a fire when the capitalism market system collides with the totally different market system in China. Quelling the conflagration safely remains a crucial task for the government of the People’s Republic of China.

## Appendix

Article 268 of the Chinese criminal code: Whoever with intent to

<sup>63</sup> Shiroyama Tomoko (城山智子) *China during the Great Depression: Market, State and the World Economy, 1929–1937* (Harvard University Press, 2008), pp. 221–7.

<sup>64</sup> Zuo Xuchu, *Zhongguo Shangbiao Falüshi*, pp. 379–559.

<sup>65</sup> Baba Rensei (馬場鍊成) *Chūgoku Nisemono Shōhin (Counterfeit Commodities Made in China)* (Chūkō Shinsho la Clef, 2004); William P. Alford, *To Steal a Book is an Elegant Offense: Intellectual Property Law in Chinese Civilization* (Stanford University Press, 1995); and Andrew C. Mertha, *The Politics of Piracy: Intellectual Property in Contemporary China* (Cornell University Press, 2005).

defraud counterfeits any trade mark, or any firm name used as a trade mark, whether or not such trade mark or firm name has been registered, shall be punished with imprisonment for not more than two years, in addition to which a fine of not more than three thousand yuan may be imposed.

Article 269 of the Chinese criminal code: Whoever imports, sells, or exposes for sale any article which he knows to bear a counterfeit trade mark or firm name used as a trade mark, shall be punished with imprisonment for not more than six months or detention, in addition to or in lieu of which a fine of not more than one thousand yuan may be imposed

Source: FO228/4204 Enclosure No.2 in Shanghai despatch No. 200 to Peiping, 24th July, 1930.