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## Zhejiang High Court provides clarification on trade name confusion (2023)

Time: May 19 2023

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# Zhejiang High Court provides clarification on trade name confusion (2023)

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Bruce Yu, Nan Jiang and Paul Ranjard, 19 May 2023, first published by [WTR](#)

Johnson Electric, whose affiliated companies use ‘德昌’ as their Chinese trade name, filed suit against Ningbo Dechang for using ‘德昌’ as its trade name

The court found that Johnson Electric's Chinese trade name had not generated a "certain influence" in Mainland China prior to Ningbo Dechang's creation

The sign used by Johnson Electric and its affiliated companies was different from the trade name at issue  
On 6 April 2023 the Zhejiang High Court, acting as court of appeal, rendered a decision in an unfair competition case initiated by Johnson Electric Industrial Manufactory Limited against Ningbo Dechang Electric Machinery Co Ltd. At issue was the use of the trade name ‘德昌’ (Chinese characters for ‘De Chang’).

#### Background

Plaintiff Johnson Electric, which was incorporated in Hong Kong on 25 April 1960, manufactures electric motors in mainland China via half a dozen affiliated companies, with the first one having been created in 1992. These affiliates use ‘Johnson’ as their English trade name and the Chinese characters ‘德昌’ as their Chinese trade name.

Defendant Ningbo Dechang is a small household appliance manufacturer located in Ningbo, Zhejiang Province. Ningbo Dechang has been using ‘德昌’ as its trade name since its inception on 21 January 2002.

In 2021 Johnson Electric, complaining that Ningbo Dechang was using ‘德昌’ as its trade name, initiated a litigation before the Ningbo Intermediate Court on the ground of unfair competition, requesting an injunction to change the trade name, and damages in the amount of Rmb100 million. The case was dismissed by the Intermediate Court and Johnson Electric appealed to the Zhejiang High Court, reducing its claim to Rmb30 million. The High Court upheld the first-instance decision and dismissed all the plaintiff's claims.

#### Decision

According to the appeal court, the dispute boiled down to the following issues:

whether the Chinese trade name ‘德昌’ of Johnson Electric had generated a "certain influence" in Mainland China prior to the creation of Ningbo Dechang in 2002; and  
whether the use of such trade name by Ningbo Dechang was likely to create confusion with Johnson Electric.

On the issue of influence, the court found that the evidence of use of the trade name by Johnson Electric's affiliate companies, prior to the creation of Ningbo Dechang in 2002, was only localised and regional in Mainland China, so that such use had generated little impact in the electric motor industry.

In addition, the court ascertained that Johnson Electric had actually been using the following sign on its products, and not the trade name ‘德昌’:



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The court therefore held that there was no evidence suggesting that Ningbo Dechang attempted to free-ride on the goodwill of Johnson Electric.

Concerning the likelihood of confusion, the court found that the sign used by Johnson Electric and its affiliated companies, as depicted above, was quite different from the trade name at issue, so that there was no link between the name Johnson and the characters ‘德昌’ which could give rise to a likelihood of confusion.

Further, the main business of Johnson Electric was the manufacturing of motors, motion sub-systems and related electro-mechanical components for automobiles, whereas Ningbo Dechang focused on manufacturing vacuum cleaners and components. There was little overlapping of their main businesses that would lead to confusion.

Finally, the marketing channels and the consumer bases were different. Johnson Electric was the biggest buyer of the products manufactured by its affiliated companies, which was almost equivalent to an OEM situation (with very few products being sold in the domestic market), while Ningbo Dechang's household appliance products were sold in mainland China. Therefore, both sides had different marketing channels and consumer bases, and the chance of confusion was, at best, slim.

The court thus concluded that the use of the trade name at issue by Ningbo Dechang did not constitute unfair competition.

#### Comment

Article 6 of the Anti-unfair Competition law (2019) provides that "business operators shall not commit any of the following acts that create confusion, misleading the consumers to believe that their products are those of another person or induce a special relationship with another person", including the "use, without authorisation, of a business name or trade name... which has a certain influence".

Proving the likelihood of confusion is of the essence for the application of Article 6. The fact that the defendant had the same trade name as the Chinese affiliates of Johnson Electric was not, as such, sufficient to establish that there was a risk of confusion. The plaintiff had to prove that the name had acquired a certain reputation in China and that the defendant was committing "acts that create confusion". Given that Johnson Electric could prove only a very limited influence of its Chinese trade name, the courts meticulously assessed multiple parameters that may serve as indicators of confusion. Since there was no confusion, there was no infringement. The courts, therefore, justly dismissed the claims.

The case has been selected to be included in the "Top 10 Innovative IP Judicial Protection Cases of the Ningbo Courts of 2022".