

an increase in architecture copyright violation recently. “*Porsche AG v. TechArt China* was included in 2008 top 10 IP cases by the Supreme Court and is one of the cases involving infringement of architecture copyright,” he says. “In the case, the trial court decided to support the plaintiff, Porsche, and ordered the defendant, TechArt China, to alter its building so that its main parts would bear no resemblance to that of the plaintiff’s. The Supreme Court believed that this ruling could effectively combat architecture copyright violations in the future.”

In other architecture copyright infringements, Chinese courts generally order the violator to bear civil liability including ceasing its infringing behaviour and paying compensations to plaintiffs, he says. But whether the court will decide to tear a building down if it is too similar to another, the court will consider the following characteristics: “First, is it necessary; second, is it a serious violation; and third, will the removal cause any unnecessary losses.”

Trademark Office Widens Services of Class 35

China’s Trademark Office has issued a notice to adopt amendments to the 10th edition of the Nice Classification of Goods and Services. The amendments, which widen Class 35 services, went into effect on January 1, 2013.

The Office now processes applications under the seven items of services that fall into the new subgroup 3509 in Class 35. The seven items of services include retail or wholesale services of pharmaceutical, veterinary and sanitary preparations, and medical supplies; retail or wholesale services of medicine; retail or wholesale services of pharmaceutical preparations; retail or wholesale services of sanitary preparations; retail or wholesale services of medical supplies; retail or wholesale services of veterinary medicine; and retail or wholesale services of veterinary preparations.

The services intend to group the above goods to allow customers to make purchases conveniently, said Isabella Liu, a partner at Baker & McKenzie in Hong Kong, writing in a Client Alert. Such services can be provided by physical retail and wholesale outlets, or virtual online shops. The trademark office will not consider any descriptions

other than the aforementioned ones.

For submitting applications covering the new services, the trademark office used January 1 to 31, 2013, as a transition period. During the transition period, applications filed by different applicants for similar or the same trademarks covering conflicting services will be deemed to have been made on the same date, said Christopher Smith, a Baker & McKenzie partner. “The issue of priority will be first determined by the date of first use in China. Where there is no use by any of the applicants, priority will be determined through negotiation between the applicants, failing which it will be determined by way of ballot,” he wrote.

HONG KONG

Business of IP Asia Forum Held in Hong Kong

The Hong Kong Secretary for Commerce and Economic Development Gregory So says that the city’s low taxes and top service sector make it the ideal location as an IP trading centre. So gave the opening remarks at the December 2012 Business of IP Asia Forum in Hong Kong.

More than 1,400 IP professionals and government representatives from 23 nations and jurisdictions gathered for the forum; attendance was double compared with 2011.

“Together with our sound financial and legal systems, a low-tax regime and world-class service industries, Hong Kong is fully equipped to pioneer new frontiers in the evolving IP landscape,” So said. “The government is committed to facilitating and promoting Hong Kong as a regional IP trading hub. Our IP department is reaching out to all relevant sectors to champion the cause.”

Fred Lam, executive director of the Hong Kong Trade Development Council, also spoke about opportunities for IP owners in Asia.

“A key factor driving IP trading today is the dramatic economic shift from west to east, and the equally significant rise of Asian consumption, particularly on the Chinese mainland,” he said. “Those realities bring with them extraordinary IP opportunities here in Asia, particularly for Hong Kong business and the growing critical mass

of IP-related companies based here.”

Other speakers discussed licensing and trademarks, software copyright, patents in biotechnology and Chinese medicine and IP valuation.

Liu Yanxin from the China Patent Information Centre, State Intellectual Property Office, delivered the keynote luncheon address following remarks by the Hong Kong Intellectual Property Department Director Peter Cheung.

INDIA

Laying Down – and Copyrighting – Your Moves

While Bollywood filmmakers strive for copyright protection, choreographer-director Remo D’Souza has taken the unprecedented step of copyrighting parts of the dance from his song *Bezubaan* from his upcoming directorial debut *ABCD – Any Body Can Dance* in hopes of preventing copyright violations – and of keeping the dance from being used in inappropriate situations.

“There have been instances in the past where ballet dance, etc, have been copyrighted,” says Krishna Jhala, an associate at PSA Legal Counsellors in New Delhi. “In *Academy of General Edu., Manipal and Anr. v. Malini Mallya*, the Supreme Court of India observed that ballet dance formed part of dramatic work for the purpose of copyright.”

Nevertheless, “copyright law with respect to choreographic steps is very nascent in India, and jurisprudence is still developing on this subject,” she says.

According to the Indian Copyright Act, 1957, dance forms part of dramatic work. “Section 2(h) of the Act defines dramatic work that includes choreographic work or entertainment in dumb show which is fixed in writing or otherwise but does not include a cinematograph film,” Neeraj Dubey, principal senior associate at PSA, tells *Asia IP*. “The Act also provides protection to a dance performer by granting the performer’s right. The performer’s right envisages infringement when sound or visual recordings are reproduced, broadcasted or communicated to the public without the consent of the performer.”

D’Souza says he wants “to take this forward and copyright the sequence that I have conceived and used for the

song Bezubaan. It's the first number that we are rolling out, so I don't want this to be copied and used in a manner that doesn't fit its extravagance, as it is shown in the movie."

If people want to perform the dance moves in any media, they must pay royalties as if they are singing copyrighted songs, he says. "Of course, if I have the copyright, nobody will be able to perform the same steps on any platform. If they wish to, they can pay me royalty," added D'Souza.

However, not every medium or person will need to pay royalty for performing his moves. Section 39 of the Act states

that infringement of a performer's right will not take place where sound or visual recording is for *bona fide* use or where excerpts of performance are used for reporting of current events, says Dubey. "As per Section 52 of the Act, copyright infringement will not take place when dramatic work is reproduced for private use, criticism, review, judicial proceeding or member of either house of legislature or educational institutions."

Bezubaan features winners from Indian reality television show *Dance India Dance* (who also play lead characters in the film) and Lauren

Gottlieb from the American reality show, *So You Think You Can Dance*, all dancing in the rain.

MALAYSIA



Klang Valley Striving to Be Asia's E-Book Hub

Malaysia's deputy international trade and industry minister Mukhriz Mahathir challenged publishers at the ASEAN e-Book Conference 2012 in December to solve IP issues first before making the Klang Valley, an area comprising Kuala Lumpur and its suburbs, the e-book hub of Asia.

"The primary issue is IP. As such, it must be tackled first to encourage more authors to write and publish their works in digital form," Mahathir told reporters after the conference.

Mahathir said he expects Malaysia's e-book industry to experience massive development, similar to China and Japan, as the industry is still in its infancy. He added that emphasis must be given to national broadband infrastructure to enable Malaysia to become a producer of works meeting international standards.

Meanwhile, Abdul Wahab Ibrahim, the National Book Council of Malaysia director, said that the council and several relevant quarters were drawing up the blueprint for the industry's growth, which will be forwarded to the government soon.

The target of 0.1% per one million population of e-book readers was taken as the benchmark to ensure that the industry served as a contributor to the national economy, said Ibrahim.

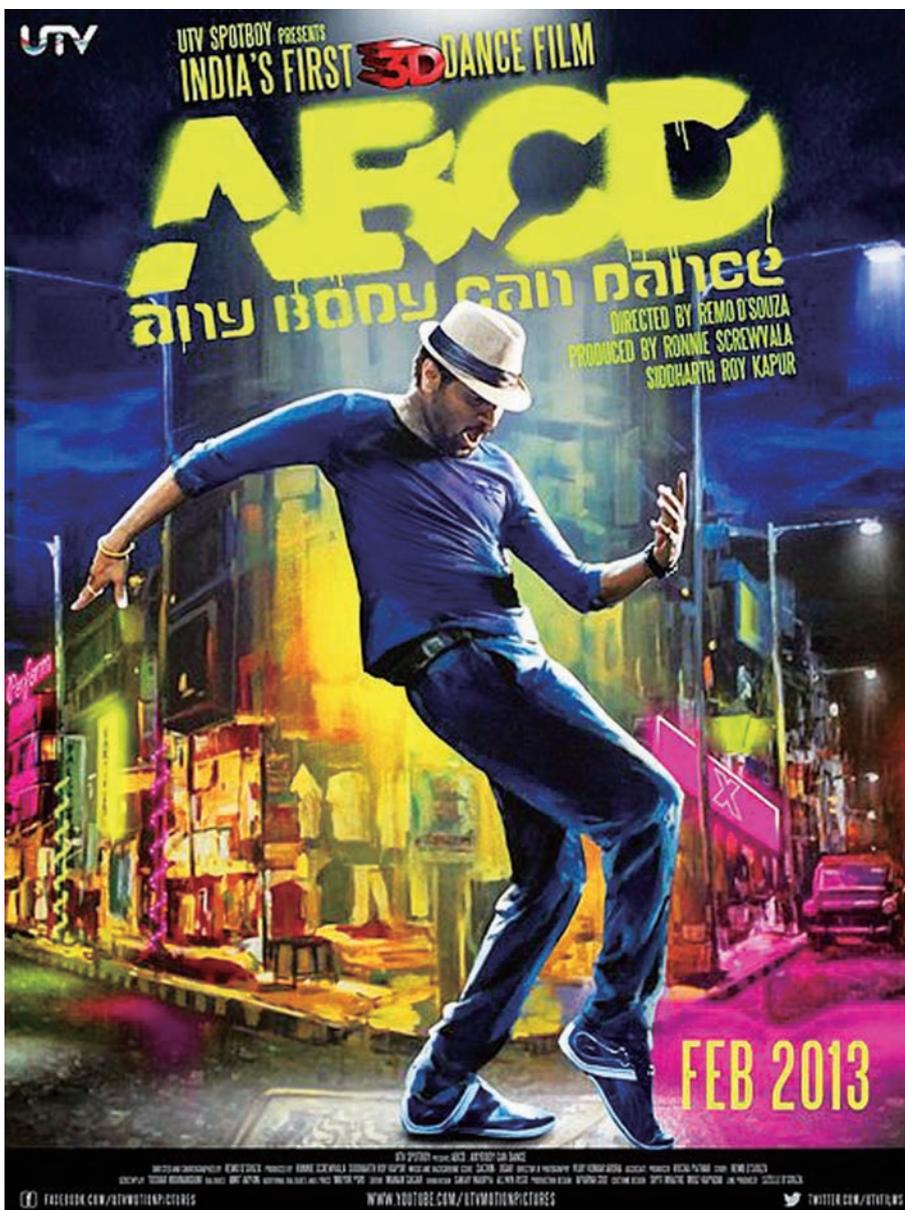
NEW ZEALAND



New Zealand Under the Madrid Protocol

New Zealand is now part of the Madrid Protocol, which allows trademark owners in New Zealand to register their trademarks in over 80 countries with only one application and one set of fees.

Commerce minister Craig Foss said in the *New Zealand Herald* that joining the protocol will give "a significant boost" to trademark owners in New



Bollywood director and choreographer Remo D'Souza has taken the unprecedented step of copyrighting parts of the dance from his song Bezubaan.