

## China's Qiaodan Sports Loses in Attempt to Enforce Michael Jordan Trademarks Against Amazon

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In a decision dated August 24, 2020, the [Beijing Intellectual Property Court](#), on appeal from the [People's Court of Chaoyang District](#) in Beijing, ruled against Qiaodan Sports Co., Ltd. (?????????) in a trademark infringement lawsuit against Amazon Excellence (?????????), the operator of Amazon's China website, and affiliate Century Excellence (????????????????). Qiaodan Sports had sued Amazon and Century for trademark infringement for selling Nike's Jordan footwear based on three trademarks for "???" (pronounced Qiaodan), the commonly accepted transliteration of Michael's Jordan's family name into Chinese.

Qiaodan Sports' predecessor registered Chinese trademarks 1541331, 3148047, 3148049 for "Qiaodan" in class 25 for shoes and sports shoes. Amazon, on Amazon's Chinese website [Amazon.cn](#), sells Qiaodan brand footwear without a license from Qiaodan Sports for their trademarks, which allegedly confused the relevant public. Accordingly, Qiaodan Sports sued for damages of 1 million RMB.

On December 27, 2019, the court of first instance ruled against Qiaodan Sports confirming that the Qiaodan Sports Company is the right holder of the three "Qiaodan" trademarks involved in the case, and the above-mentioned trademarks are currently live. The exclusive right of Qiaodan Sports Company to the aforementioned trademarks is protected by the Trademark Law. However, the court of first instance held that the defendants were not using Qiaodan as a trademark but instead were using Nike as the trademark in sales of footwear. That is, Qiaodan was used to describe the type of Nike brand shoes to enable ordinary consumers to understand they were buying Qiaodan-type footwear under the Nike brand. In the sales process, Nike played a major role in identifying the source of goods.

On appeal, the Beijing Intellectual Property Court ruled that "Nike has a legal basis of prior rights to 'Qiaodan.'" Based on the facts ascertained and the Supreme People's Court's prior judgment, since 1992, Chinese media have reported on American professional basketball player Michael Jordan as 'Qiaodan.' 'Qiaodan' has a high reputation in our country and is familiar to the relevant public. "Qiaodan" has a stable corresponding relationship with Michael Jordan. Therefore, Michael Jordan has the right for 'Jordan' in Chinese. In 1993, Nike signed an endorsement agreement with Michael Jordan, stipulating that Nike has the right to use Jordan's endorsement in the advertising, promotion, distribution and/or sales of Nike products without restriction. Therefore, Nike's use of 'Qiaodan' in

its products has a legal basis of prior rights.”

Further, “from the perspective of usage, ‘Qiaodan’ is used after ‘??’ [Nike in Chinese] and ‘NIKE’ and ‘??’ and ‘NIKE’ have high market popularity. Accordingly, relevant consumers can rely on ‘??’ and ‘NIKE’. The mark clearly identifies the source of the product and will not cause consumers to misidentify the source of the products as Qiaodan Sports.”

Finally, the Beijing IP Court criticized Qiaodan Sports for registering the Qiaodan trademarks stating that Qiaodan Sports “has obvious subjective malice... their [the trademarks’] legal existence does not mean the above-mentioned acquisition of the trademarks was legal and proper.”

The case no. is ?2020??73??1506?.



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