

5-Year Prison Term for Counterfeiting Burberry in China

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On March 13, 2025, the Shanghai Procuratorate Third Branch announced that the Shanghai Third Intermediate People's Court upheld a 5-year prison term and 2 million RMB fine for the crime of counterfeiting registered trademarks belonging to Burberry. In 2021, the defendant, Gong XX, resumed operating an online store "XXX Overseas Shopping" and started selling counterfeit Burberry brand clothing. The cost of making a single piece of clothing involved in the case ranged from 500 to 700 RMB, but the selling price could reach 3,500 RMB per piece. From 2021 to 2023, Gong sold the clothing involved in the case in his own online store and WeChat Moments, with sales reaching more than 4 million RMB.



Counterfeit clothing involved.

In February 2023, the Jing'an Temple Police Station received a report from the public that they spent thousands of RMB to buy a brand-name windbreaker from the "XXX Overseas Shopping" online store, but found that it was a fake. Based on the evidence, the public security organs quickly launched an investigation and arrested the suspect Gong. Afterwards, the Jing'an District Procuratorate indicted Gong at the Jing'an District Court in accordance with the law on the grounds that Gong committed the crime of counterfeiting registered trademarks. In November, the court made a first-instance judgment, sentencing Gong to five years in prison for the crime of counterfeiting registered trademarks and a fine of RMB 2 million. Gong appealed to the Shanghai Third Intermediate People's Court. In February 2024, the court ruled on the second instance of the counterfeit registered trademark case handled by the Third Branch, dismissing Gong's appeal and upholding the original judgment.

On February 23, 2024, the Shanghai No. 3 Intermediate People's Court held a second-instance trial of the case, and the prosecutor in charge of the Third Branch attended the court.

During the trial, Gong argued that his “Knight” graphic was different from the mark registered by Burberry. However, the prosecutor pointed out that identical trademarks include not only “completely identical” but also “basically indistinguishable.” The Burberry trademark has been widely used and promoted for a long time, and has a high market visibility and strong distinctiveness. Comparing Gong’s counterfeit logo with the registered trademark of the right holder, there is basically no difference in the overall shape and arrangement of elements, with only slight differences in individual lines, which makes it impossible for ordinary consumers to distinguish them in appearance, thus misleading the public. Therefore, the “Knight” graphic trademark used by Gong can be identified as “a trademark identical to the registered trademark”.

During the trial, Gong also argued that the “BURBERRY BLACK LABEL” text trademark has not been used in China for several years, and the series of clothing is only sold in a certain country and has been discontinued. Based on this, he believed that reference should be made to the relevant provisions in the civil field where infringers of trademarks “not used for three consecutive years without justifiable reasons” may not be liable for compensation, and thus his counterfeiting behavior should not be considered a crime in the criminal field.

The prosecuting attorney pointed out that China’s criminal law currently does not have special provisions for the above situation. According to the certification letter issued by Burberry and the series of trademark registrations, “BURBERRY BLACK LABEL” is a legally registered trademark in China and is within the validity period, approved for use on clothing products, and should be protected by law. At the same time, the products of the involved text trademark still circulate in the secondary market in China, and the “BURBERRY BLACK LABEL” text trademark still plays the core function of identifying the brand.

In addition, “BURBERRY” itself is also a registered trademark of Burberry. The arrangement of the “BURBERRY BLACK LABEL” word trademark is: “BURBERRY” and “BLACK LABEL” are arranged in separate lines, and the “BURBERRY” word is enlarged, bolded and highlighted. “BLACK LABEL” itself only means “black label”, which is a common industry term for distinguishing product categories and is not a distinctive element of the trademark. According to regulations, if only the common name of the product, model number and other elements lacking distinctive features are added to the registered trademark, and it does not affect the distinctive features of the registered trademark, it can be determined as “a trademark identical to its registered trademark.”

The original announcement is available [here](#) (Chinese only).

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