

# CIVIL LITIGATION AGAINST PARASITE BRAND



new balance®

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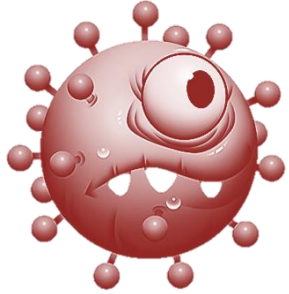
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A **PARASITE BRAND** is one that mimics the overall look and feel of a famous brand yet avoids technically using the brand's trademarks. The epidemic of the parasite brand is being faced by nearly every famous brand that sells within China.



*Under Armour, say hello to... Uncle Martian. No, you're not seeing things. China's newest sportswear brand, Uncle Martian, is a bold rip-off of American brand Under Armour.*

*The logos are almost identical. A stylised letter U with an inverted U directly beneath it. But unlike in Under Armour's famous brand, the letters do not intersect in the Uncle Martian logo. The obvious resemblance has caused a sensation online in China, reported The New York Times.*



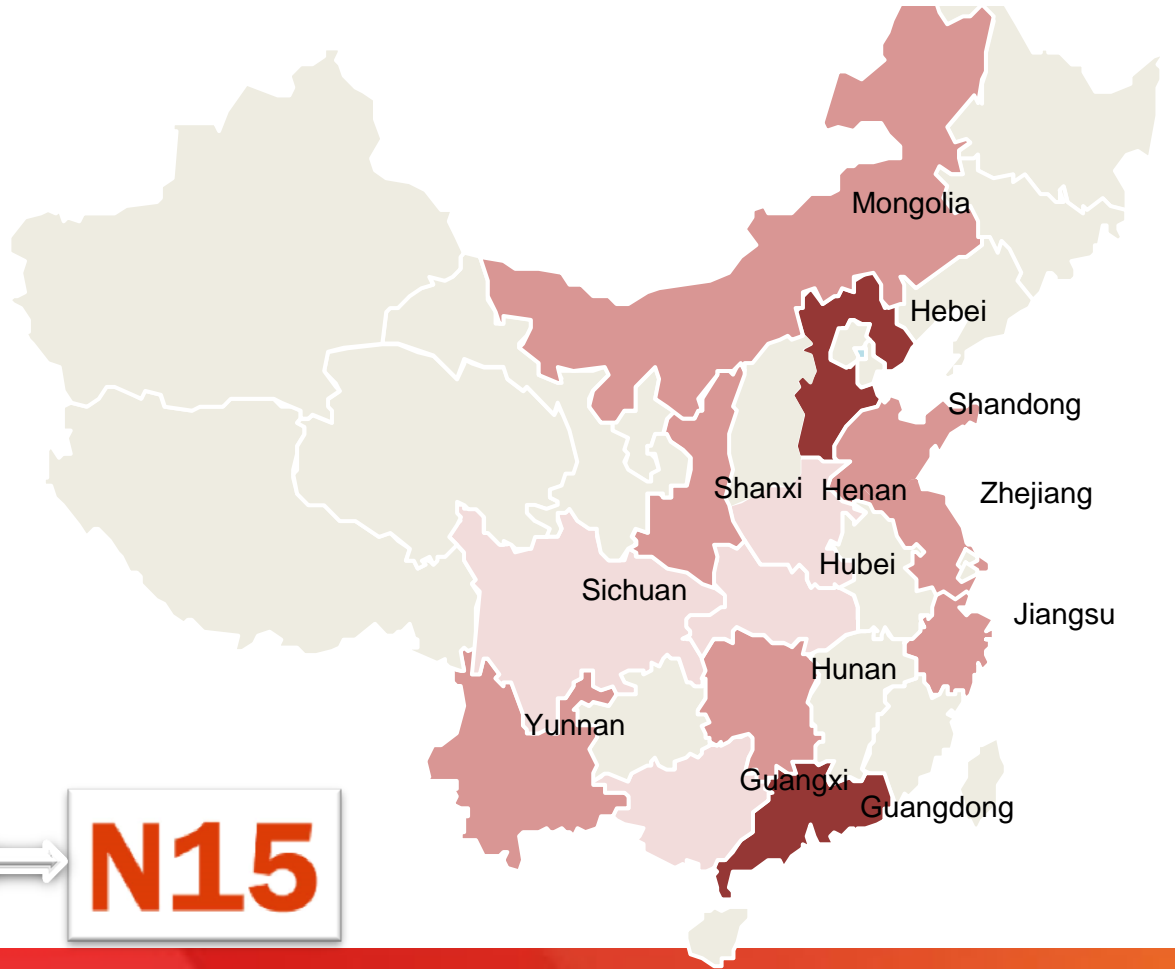
## THE PLAGUE OF THE **PARASITE** BRANDS

China is a first-to-file trademark jurisdiction that does not require trademark applicants to demonstrate use of or an intention to use an applied-for mark. This makes China's trademark system ripe for abuse by bad-faith trademark filings. The issue is a perennial problem. Legitimate brand owners with the best intentions of operating in good faith in China are placed in an inequitable position when they have been targeted by a bad-faith trademark owner.





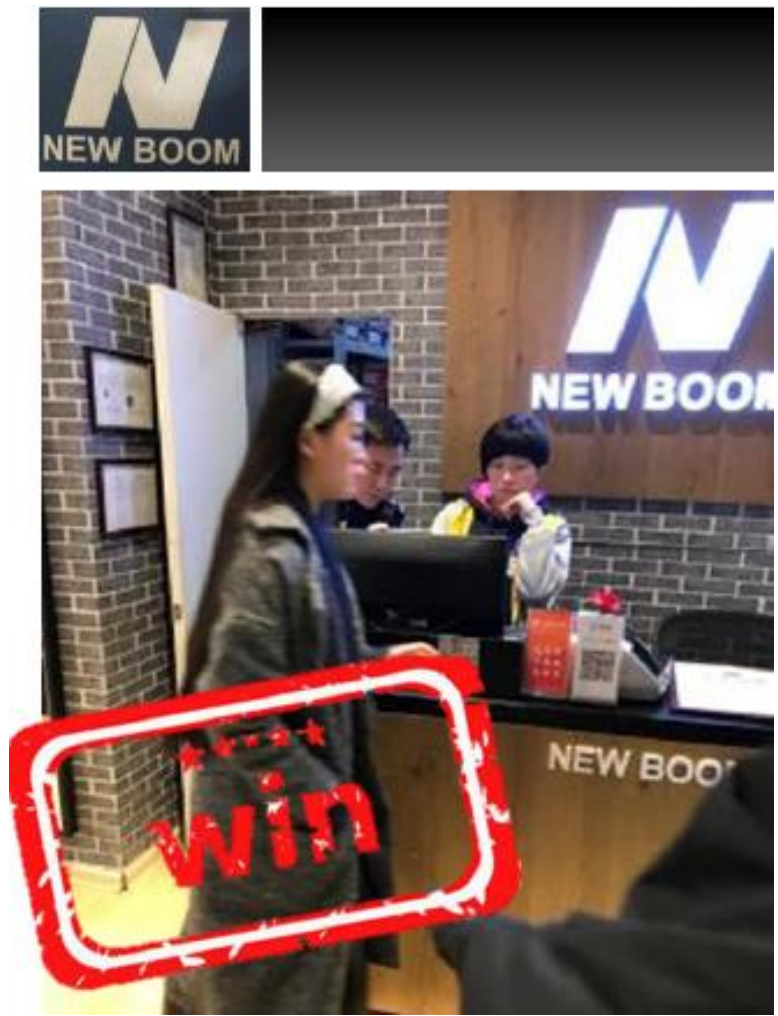
↔ **N15**



- On August 18, 2016, New Balance filed an IP infringement lawsuit against New Boom with the Suzhou Intermediate Court, claiming RMB10M in damages (\$1.5M USD).
- On September 24, 2016, New Balance was awarded a preliminary injunction ordering the defendants to immediately stop infringement activities.



- On April 24 2017, the Suzhou Intermediate Court issued a penalty decision against defendants. In the decision, the court imposed a fine on the defendants for breaching an injunction against the manufacture and sale of shoes bearing the N letter design.
- On August 20, 2017, the court made first instance judgement, New Balance was awarded the highest IP damages ever by a foreign company in China (the full \$1.5M USD).



## 《最高人民法院关于审理商标民事纠纷案件适用法律若干问题的解释》

### The interpretation of the law of the Supreme People's Court on the application of the law to the trial of Trademark Civil Disputes

- 第十四条规定：“商标法第五十六条第一款规定的侵权所获得的利益，可以根据侵权商品销售量与该商品单位利润乘积计算；该商品单位利润无法查明的，按照注册商标商品的单位利润计算。
- 第十五条规定：“商标法第五十六条第一款规定的因被侵权所受到的损失，可以根据权利人因侵权所造成商品销售减少量或者侵权商品销售量与该注册商标商品的单位利润乘积计算。

**损失 = 侵权商品销售量 x New Balance运动鞋单价 x 利润率**



# New Balance Wins \$1.5 Million in Landmark China Trademark Case

By SUI-LEE WEE AUG. 22, 2017

BEIJING — A Chinese court has ruled that three domestic shoemakers must pay New Balance \$1.5 million in damages and legal costs for infringing the American sportswear company's signature slanting "N" logo, in what lawyers said was the largest trademark infringement award ever granted to a foreign business in China.

It is a victory not just for New Balance, but also for many other foreign companies that have long complained that Beijing has not done enough to protect their brands. And while the size of the ruling — issued three days after President



## CONCLUSION

Many foreign brand owners are quick to criticize China for failing to adequately protect their IP rights. But, while the system is certainly not perfect, it has improved greatly in recent years. The number of court cases now exceeds that in the US, meaning judges are becoming more experienced in IP cases. There is plenty of evidence that foreign companies can succeed in court. With the right strategy, and the right local advice, there is no reason why overseas IP owners should fear investing in China.