

Parsing A Unique Int'l Class Of Goods Via Ivanka Trump's TMs

By **Jane Shay Wald** (January 23, 2020)

The Twittersphere is abuzz with theories that Ivanka Trump holds patents on voting machines in China that may even be used in U.S. elections. Where did this notion come from, and what does it mean?

As is often the case, patents and trademarks are mistakenly confused not only on Twitter, but in the mainstream media. But does Ivanka Trump Marks LLC have "Ivanka Trump" trademark registrations in China for voting machines? Yes, and for electrified fences and egg candler as well. These disparate goods are included within Ivanka LLC's Chinese Reg. No. 19978295, registered on Jan. 14, 2019. Similar goods can be found in Ivanka LLC's Reg. No. 19978288, "Ivanka."



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Only one Ivanka LLC registration, for Ivanka Trump and design, Reg. No. 19978300A, has voting machines, egg candler, decorative magnets, electrically heating clothes, electrified fences, hemline markers, dog whistles and other goods — and no optical wear. The social media red flags about Ivanka's voting machine trademarks illustrate a basic difference in — and misunderstanding of — the American trademark system compared to foreign trademark systems.

To understand how an entity could end up with a trademark registration for goods of zero interest to the registrant, it's helpful to review some background of how trademarks get registered here versus elsewhere.

Here is what is the same in most countries, including the U.S.

The trademark registration systems of almost every country, including the U.S. use the international trademark classification system established by the Nice Agreement of 1957 and updated from time to time. All goods and services fall within one of 45 numbered categories, called international classifications or just classes. Trademark office fees are typically assessed by the number of classes claimed. Trademark applications are searched within these classifications.

Some classes cover low-tech, broad and easily understood goods, such as International Class 25, which covers clothing, footwear and headwear. Some are higher tech but are also intuitively related, such as International Class 13, covering firearms, ammunition, explosives and fireworks.

Some are a bit harder to parse; food and drink may fall within International Classes 29, 30, 31 or 32. Yogurt is in Class 29, while frozen yogurt is in Class 30, a bit odd — but the idea is yogurt is classified with milk, and frozen yogurt is classified with the frozen treats. Class 45 includes legal services, security services and personal and social services; again, it's easy to intuit some conceptual relationship these personal services bear with each other.

And then there's International Class 9, the classification of strange bedfellows. The commonality of goods within Class 9 is not intuitive, at least not to a lay person. The class covers scientific and optical goods, goods that regulate use of electricity, and computers. It covers sunglasses and eyeglass frames, eyeglass cases and so much more, including voting machines, electric fences, mobile phones, lightning rods, postage meters and X-ray

apparatuses not for medical purposes. Yet trademark practitioners the world over manage to sort it out.

Here's where the U.S. departs from other countries in our registration system.

It is this key difference that has led designer eyeglasses and voting machines to travel together to registration in foreign countries — but not here. There are exceptions for foreign applicants to the U.S. Patent and Trademark Office not relevant here.

In the U.S., trademarks are created by use of the mark in commerce in connection with specific goods and services. U.S. entities cannot obtain trademark registrations unless and until they use their marks in commerce and demonstrate use with specimens and declarations. Even intent-to-use trademarks will not issue before a statement of use is accepted by the USPTO.

Think of the relationship between a U.S. trademark and a U.S. trademark registration as the relationship you have to your birth certificate. You arrive, followed by a birth certificate that evidences important details about who you are and when and where you come from. It gives you important evidentiary advantages. But it didn't create you. These days, you may have been created through many combinations of egg, sperm and housing. But you were not created by your birth certificate.

In other countries, the rights are created only by registration, akin to the patent system. In such other countries, no use or intent to use is required to obtain a trademark registration. For that reason, U.S. and other applicants seeking to register trademarks in foreign countries, including China, are entitled to register for all of the goods in an international class, without even an intention to use the mark there.

As a business matter, of course, companies spend to register their marks where they have or eventually may have a commercial interest. And they typically claim their marks for the goods or services they offer or intend to offer. Sometimes — and this is especially true with China — they register their important marks abroad for the core goods they are known for at home, to try to preclude others from grabbing them. And often, they register their marks for many or even all of the goods within a particular international class simply because they can.

There's a sense that it gives stronger protection to claim all of the goods in a class instead of just the few items of interest. In other cases, where a registrant has some goods registered in a class abroad, it may file additional applications to more completely occupy a class. And that is very likely why not only Ivanka's company, but many other design entities, have registered their marks in Class 9 for voting machines and other goods far afield from their core product lines.

Ivanka LLC does not have a U.S. application or registration for voting machines or electric fences. Absent actual use or intent to use "Ivanka Trump" as a brand for voting machines or electric fences, there would be no lawful basis for her U.S. company to apply to register marks for those goods with our USPTO.

Ivanka LLC has an International Class 9 registration for "Ivanka Trump" here for eyewear, which would encompass designer sunglasses and eyeglass frames in International Class 9. These goods are covered by U.S. Reg. No. 4,728,287, claiming a first use date in commerce of 2013. The company's U.S. Reg. No. 5,014, 450 for "Ivanka Trump" for cell phone and laptop cases claims a use date of 2015.

Is Ivanka LLC the only company with Chinese trademark registrations for fashion goods along with voting machines and other alarming or outlandish goods? Or even Class 9 registrations without fashion goods? Not at all. Here are some other companies, U.S. and foreign, doing exactly the same in China, culled from registrations identified and translated in the Corsearch searching database many trademark practitioners rely on.

- Adidas AG has a Chinese registration, Reg. No. 7957506 for "Adidas" and design for glasses (optical), lightning rods and other goods in Class 9.
- Bulgari SPA has a Chinese registration for "Bulgari," No. 15659744, for eyeglass chains, egg cinders, voting machines, fire extinguishers and other goods in Class 9.
- Burberry Ltd. has a Chinese registration for its plaid design (the well-known plaid only, no name or words), Reg. No. 18236250, for sports goggles, sunglasses, voting machines, egg cinders, electrified fences and other goods in Class 9.
- Fendi Adele S.R.L. has the mark "Fendi" registered in China, Reg. No. 25133501A, for "special package for portable computer," electronic collar for training animals, decorative magnets, egg devices, voting machines, electric fences and other goods in Class 9.
- Giorgio Armani has a Chinese registration in Class 9 for "Armani Collezioni A" and design, Reg. No. 20902097, for glasses, eyeglass frames and cases, eyeglass chains, bags for laptops, voting machines, egg cinders, electrified fences, and many other goods in Class 9.
- Levi Strauss & Co. has a Chinese registration, Reg. No. 12235540A for "Levi's" and design for sunglasses, glasses cases, smartphones, lightning arresters, egg washers, voting machines, electric fences and other goods in Class 9.
- Luxottica Group S.p.A has registered its "Ray Ban" mark in China, Reg. No. 20929421 for sunglasses, eyeglass frames, eyeglass cases, voting machines, egg cinders, electrified fences and "training animals electronic collar," as well as many other goods in Class 9.

- Michael Kors (Switzerland) International GmbH has a Chinese registration for "Michael Kors" and design, Reg. No. 19642906, for smart phone cases, egg caddlers, voting machines, electrified fences, computers, lightning conductors [rods]"and other goods in Class 9.
- River Light V LP has registered "Tory Burch" and design in China, Reg. No. 11383875, for eyeglass frames, glasses cases, laptop cases and cell phone cases, voting machines and other goods in Class 9.
- Tiffany and Co. has a Chinese registration for "Tiffany & Co.," Reg. No.11359175, for sunglasses, sunglass cases, eyeglass chains, voting machines, electric fences, "industrial radiation equipment" and other goods in Class 9.
- Yves Saint Laurent has registered its "YSL" and design mark in China, Reg. No. 25349737 for decorative magnets, facial recognition equipment, "electro-dynamic apparatus for the remote control of railway points," voting machines, electrified fences, "training animals electronic collar," and the ubiquitous egg caddlers and other goods in Class 9. Like one of the three Chinese Ivanka LLC registrations, this YSL registration does not include sunglasses or the like. However, its Chinese registration for YSL No. 25349756, does include sunglasses, in addition to voting machines, postmark inspection devices, and many other goods in Class 9.

Some other companies have registered their core marks in China in Class 9 applications that don't include consumer goods, including the goods for which they are known. Indeed, Chanel SA has registered its "Chanel" mark in China, Reg. No. 23076760 for an "atomic ray instrument" as well as voting machines, electrified fences, "control system for nuclear atom power station" and other goods in Class 9. This registration does not claim "Chanel" for sunglasses.

Have any of these well-known design companies commenced sales of voting machines, electrified fences, egg caddlers or atomic ray instruments in China? Almost certainly not. The registrations themselves do not imply that any such product is in use.

Use information has no place in the Chinese registration system or most other registration systems outside of the U.S. Chinese registrations do not extend protection for voting machines or any other goods outside China, just as U.S. registrations classically do not protect from infringements abroad. Trademark rights are "territorial," with exceptions so rare as to be considered outliers.

These broad registrations, in theory, protect the designers' well-known marks from infringers who might otherwise seek to claim these valuable marks in China for their own Class 9 goods. The registrations give these designers keep-away rights, because the same or similar marks will not proceed to registration for the goods covered in them.

Arguably, such registration rights can also be asserted to deter infringers in China from

taking these marks and applying them to their own Class 9 goods.

The designers' filing strategy to claim such peculiar and wildly disparate goods is not part of a scheme to control the outcome of elections, control a system for nuclear atom power station, or candle eggs. It's to surround their brands with a shield — and possibly a sword — in dealing with infringers in a very unusual international class. And that's what it's all about.

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