

本函经电子邮件及特快专递送达

致： 杨荣山先生  
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## 关于：中国大陆境内 IPAD 商标争议

尊敬的杨先生：

就美国苹果公司（以下简称“苹果公司”）与唯冠科技（深圳）有限公司（以下简称“深圳唯冠”）之间存在的商标争议，金杜律师事务所（以下简称“我所”）已接受苹果公司委托，代表该公司处理相关事宜。应苹果公司指示和要求，我们现就您、您的代理人及贵公司在中国大陆境内针对 IPAD 商标采取的有关行为致送本函。

如您所知，苹果公司的控股公司，即 IP 申请发展有限公司（以下简称“英国 IP 公司”）已然合法购买了唯冠控股国际有限公司及其各子公司（以下合称“唯冠集团”，包括深圳唯冠）拥有的十项 IPAD 商标，其中包括深圳唯冠于中国大陆注册的两项商标。

就我们所知，作为唯冠集团的实际控制人和负责人，以及深圳唯冠的董事长和法定代表人，您知悉并授权深圳唯冠就前述商标转让与英国 IP 公司进行磋商并最终达成协议，其法律总顾问麦世宏先生在您的指示下于 2009 年 12 月 23 日签署了《商标转让协议》和其他转让文件。

但是，深圳唯冠却未能履行协议，这已然背离了诚实信用和公平交易的原则。此外，深圳唯冠及其代理人持续向公众发布有关苹果公司的不实陈述，这包括：

- 苹果公司的关联公司“误”与并未持有中国大陆境内IPAD商标的唯冠电子股份有限公司（以下简称“台湾唯冠”，唯冠集团内另一子公司）进行交易；
- “深圳唯冠对商标转让毫不知情”；
- 苹果公司的关联公司仅与台湾唯冠的代表进行交易磋商，而此磋商“与深圳唯冠毫无关系”；以及
- IPAD在中国大陆的商标“不包括在出售的一系列IPAD商标之中”。

现有证据，特别是部分一审程序中深圳中级人民法院并未获得的证据已然证明，深圳唯冠向媒体和政府提供的前述信息与事实并不相符。此外，如深圳唯冠所知，苹果公司已然依据该等证据提起上诉，该案已由广东省高级人民法院受理并确定了开庭日期。

因此，我们在此善意地提醒您：有关诉争两项 IPAD 商标的权属问题尚未经中国法院生效判决予以确认，因此在终审判决作出之前，您、贵司及贵司代理人均应尊重中国法律和中国法院的司法程序，不宜也不应向中国媒体披露任何与事实不符的信息，特别是有损于苹果公司声誉的信息，否则您需要就此承担相应的法律责任。

实际上，深圳唯冠所持有的证据业已能够反映以下事实：

- 2009年8月至2009年12月期间的多封邮件表明，深圳唯冠出售唯冠集团（包括各子公司）于全球注册的IPAD商标，其中包括深圳唯冠于中国大陆注册的两项商标。因此，当英国IP公司善意询问IPAD商标购买事宜（该等商标已然停止使用三年以上）时，其被要求与深圳唯冠的代表直接联系，随后双方就此进行了历时数月的洽谈。
- 2009年10月21日，英国唯冠的Timothy Lo先生向英国IP公司的Jonathan Hargreaves先生介绍了唯冠集团“总部”的麦世宏先生，称其在中国“负责我们的法务部”（其名片也表明其为深圳唯冠法务部总监）。该邮件同时抄送了深圳唯冠的袁辉先生。第二天，袁先生回复邮件，介绍自己为法律部成员，并将该邮件抄送麦世宏先生和深圳唯冠的其他人员，在邮件签名中，袁辉先生的公司始终显示为“唯冠科技（深圳）有限公司（即深圳唯冠）”。
- 深圳唯冠直接参与协商商标转让事宜，并于2009年11月6日书面同意“接

受[英国IP公司]35,000英镑的报价。”

- 深圳唯冠对台湾唯冠称其为全部IPAD商标所有者一事毫不知情，以及英国IP公司“误与台湾唯冠交易”的说法与事实不符。而与此相反的是，深圳唯冠在2009年12月15日的邮件中表示：“麦世宏先生和我在深圳。但是商标不属于深圳公司，而是台湾公司。因此我们选择将会议安排在台湾召开。”
- 深圳唯冠参与协商并同意转让的IPAD商标中始终包括于中国大陆注册的两项商标。Jonathan Hargreaves先生于2009年11月10日向深圳唯冠发送的第一份转让协议稿的“附件A”中已然包含了在中国大陆注册的商标内容（包括注册号码）。深圳唯冠确认转让唯冠集团于各国持有的IPAD商标，其中包括深圳唯冠所持商标，并于2009年11月20日的邮件中强调：“如你所知，我公司是一家跨国公司，且一直信守诺言”，并表示“我公司在收到钱后即签署国家转让合同”。麦世宏先生于2009年12月23日所签署的转让文件附件A中也同样注明了在中国大陆注册的商标及其注册号码，麦世宏先生还为此签署了中国大陆注册商标的转让协议。
- 前述证据同时表明，杨先生作为唯冠集团各公司，特别是深圳唯冠的董事长和法定代表人，知晓并特别授权深圳唯冠和麦世宏先生出售在中国大陆登记注册的两个IPAD商标及其全部权利，而目前贵司方面的公开言论与此并不相符。

如您亲自参加香港法院庭审所知，2011年6月，香港特别行政区高等法院原讼法庭已然根据苹果公司申请签发了临时禁令，禁止深圳唯冠，及其董事（包括您本人）、代理人 and 律师以任何方式使用、出售该等争议商标，或作出深圳唯冠拥有IPAD商标的任何口头或书面表示。您和您的代理人目前所采取的行为实际上已然违反了前述禁令。虽然香港法院尚未对苹果公司提出的诉讼请求做出最终判决，但临时禁令已然在一定程度上反映了香港法院目前对此所持的基本态度。

既然唯冠集团作为一家“跨国公司”，其理应尊重香港法律和香港法庭的裁定、命令，并对律师和代理人的不当行为予以约束。实际上，利用媒体来渲染此案将不利于各方当事人就本案寻求合理的解决方案。

同时，我所客户苹果公司在此保留对任何个人或实体进行就其任何损害苹果公司业务、业务关系的表述和行为采取进一步法律措施进行索赔的权利。

顺祝业祺！

北京市金杜律师事务所  
代表美国苹果公司

二〇一二年二月二十日

**BY EMAIL AND COURIER**

February 20, 2012

**Mr. Rowell Yang**

Chairmen of the Board  
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**Re: IPAD Trademark Dispute in Mainland China**

Mr. Yang:

We are now representing Apple Inc. (“Apple”) with respect to its trademark dispute with Proview Technology (Shenzhen) Co., Ltd. (“Proview Shenzhen”). At Apple’s request, we are writing you regarding the actions which you, your agents, and your company have undertaken in relation to the IPAD trademarks in mainland China.

As you are well aware, Apple’s holding company, IP Applications Development Ltd. (“IPADL”), legally purchased all the rights to the ten iPad trademarks of Proview International Holdings Limited and its subsidiaries (collectively “Proview”, including

Proview Shenzhen), specifically and expressly including the two trademark rights registered in mainland China for iPad by Proview Shenzhen.

Based upon the evidence, you, as Proview's actual controller and chief, as well as Proview Shenzhen's chairman and legal representative, knew and actually authorized Proview Shenzhen's negotiation and conclusion of the transfer agreement of the above trademark with IPADL. The contract and assignment documents were signed on December 23, 2009 by Mai Shih-Hung, the general counsel of Proview Shenzhen, at your direction.

However, Proview Shenzhen refuses to honor its agreement and has breached the principles of good faith and fair dealing. Further, Proview Shenzhen and its agents continue to make statements about Apple to the public, which are false and misleading, including:

- that Apple's affiliate "mistakenly" transacted with Proview Electronics Co., Ltd. ("Proview Taiwan", Proview's another subsidiary) who did not own the trademarks for IPAD in mainland China;
- that "Proview Shenzhen had no knowledge of the trademark transfer";
- that Apple's affiliates dealt only with representatives of Proview Taiwan who "had nothing to do with Proview Shenzhen"; and
- that the IPAD trademarks in mainland China "were not included in the package of trademarks under consideration" in the sale.

However, the information provided by Proview Shenzhen to the press and government agencies is contrary to the facts proved by the evidence, including certain documentary evidence that was not available to the Shenzhen Intermediate People's Court for its consideration in the first instance proceedings. As you and Proview Shenzhen are aware, Apple has appealed based upon such evidence and Apple's appeal has now been accepted and is set for hearing before the Guangdong High People's Court.

We remind you that there has not been any final determination or final court judgment from the Appellate Court in the P.R.C. concerning the ownership of the two IPAD trademarks in dispute. Therefore, you and Proview Shenzhen together with your various agents or lawyers should respect Chinese law and the Chinese court proceedings. Accordingly, it is inappropriate to release information contrary to the facts to the media, especially when such disclosures have the effect of wrongly causing damage to Apple's reputation. You will be held legally responsible for such activity.

The following facts are reflected by the evidence already in Proview Shenzhen's

possession:

- Numerous emails from August 2009 through December 2009 clearly establish that Proview Shenzhen was selling Proview's (including all of its relevant subsidiaries) all the IPAD trademarks on global basis, including the two trademarks registered by Proview Shenzhen in mainland China. When IPADL inquired in good faith about the purchase of Proview's IPAD trademarks (use of which had been completely abandoned by Proview for more than three years); it was directed to and negotiated for several months solely with representatives of Proview Shenzhen.
- On October 21, 2009, Timothy Lo of Proview (UK) introduced Mr. Jonathan Hargreaves of IPADL to Mr. Mai in Proview's "head office," who was described as "in charge of our Legal Department" in China (and whose business card identifies him as the Legal Director of Proview Shenzhen). Mr. Yuan Hui of Proview Shenzhen was also copied on that email. The very next day, Mr. Yuan Hui, again copying Mr. Mai and others at Proview Shenzhen's email addresses, responded and identified himself as a member of the legal department, with his company always identified as "PROVIEW TECHNOLOGY (SHENZHEN) CO., LTD." (i.e. Proview Shenzhen).
- Proview Shenzhen directly negotiated the transfer of the trademarks and agreed in writing on November 6, 2009 "to accept [IPADL's] offer of £35,000."
- The statement that Proview Taiwan held itself out as the owner of all the IPAD trademarks without the knowledge of Proview Shenzhen and the statement that IPADL "mistakenly dealt with" the Proview Taiwan entity are inconsistent with the facts. To the contrary, it was Proview Shenzhen which stated explicitly in an email on December 15, 2009 that "Mr. Ray Mai and I are located in Shenzhen. But the trademark is (sic) not belong to Shenzhen company but Taiwan company. That [was] the reason why we choose the meeting location in Taiwan."
- The transaction negotiated and agreed by Proview Shenzhen always expressly included the two trademarks registered in mainland China. The first draft of the assignment agreement sent by Mr. Jonathan Hargreaves to Proview Shenzhen on November 10, 2009 included on its "Schedule A" the P.R.C. registrations (including the specific registration numbers). Proview Shenzhen confirmed that the assignments of all the trademarks owned by Proview in all countries (including those owned by Proview Shenzhen) would be executed, including stating in an email to Mr. Hargreaves on November 20, 2009, "As you know my company is an international company and it always keep to its promise," and that once IPADL paid the money, "then my company will sign the country assignments." The assignment documentation signed by Mr. Mai on December

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23, 2009 also included the Schedule A, initialed by Mr. Mai, identifying the registrations and registration numbers in mainland China. Mr. Mai also signed the China-specific country assignment document for the mainland China registrations.

- The evidence is also clear that you, Mr. Yang, as chairman and/or legal representative of all of the Proview entities, including Proview Shenzhen, were aware of and specifically authorized Proview Shenzhen and Mr. Mai to sell the two IPAD trademarks registered in mainland China. Your public assertions to the contrary are untrue.

As you are also aware, as you have appeared pro se in the Hong Kong court proceedings, in June 2011, the Hong Kong Court of First Instance granted Apple's request for a preliminary injunction against Proview Shenzhen, its directors (including you personally), its agents and lawyers, expressly prohibiting them and you from attempting to sell or otherwise exploit the IPAD trademarks and from making any oral or written statement to the effect that Proview Shenzhen owns those rights. The very conduct in which you and your agents are engaging has actually violated the injunction. While the Hong Kong court has yet to reach a final adjudication of Apple's claims in that case, the injunction speaks for itself as to the Hong Kong court's view of the case.

Proview as an "international company" should respect Hong Kong law and the Hong Kong courts and you should manage your lawyers and agents appropriately. Making misrepresentations in the press to inflame the situation is adversely affecting the interests of the parties in seeking any resolution of the matter.

On behalf of Apple, we formally reserve all rights to take further legal action against any individuals and entities for any damages that may result from defamatory statements and unlawful actions intended to wrongfully interfere with Apple's business and business relationships.

With regards,

King & Wood

On behalf of Apple Inc.

