



Mercedes-Benz and Chery Auto – are they EQ-uals in China?

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Mercedes-Benz intends to launch a new sub-brand named EQ that will focus on electric cars. The company had already showed a concept car named Generation EQ in the 2016 Paris Motor Show as a forerunner for the new sub-brand. Mercedes's EQ brand had not been commercially launched yet (although EQ already appears as one of the brands on Daimler AG's website), but it already faces an obstacle in China.

China is the world's largest market for cars and a crucial market for Mercedes. According to Daimler AG's 2016 annual report, sales in Asia (of which China constitutes a major part) contribute 33% of global sales for Mercedes cars, with an expected double-digit growth in Mercedes car sales in China in 2017. It is also the world's most important market for electric cars – a combination of the market's huge size and the Chinese government's green car initiatives. We can therefore assume that China should be one of the main markets on Mercedes's sights when launching EQ as an all-electric car brand.

The obstacle takes the shape of a small, cheap electric car manufactured and sold in China by Chery Auto – one of China's largest automakers. In 2014 Chery launched and started selling in China an electric car bearing the name "eQ". Chery also had "奇瑞 EQ" (which translates as "Chery EQ") registered as a trademark in China in 2015 (Chery

filed the applications for this mark in 2014 and additional applications for "eQ" in December 2016).

Now, Chery and Mercedes are obviously not direct competitors – nor are they in any way equal (not at present anyway). Chery is mostly a local Chinese player (it generates almost all of its sales in China), it is a much younger and smaller manufacturer compared to Mercedes, it is known mostly for small, cheap cars that are simple and low-tech and has nothing of the brand kudos, global reach or reputation for quality and technology Mercedes has. But all of that matters not one bit when it comes to trademarks in China. Only one thing matters here – who came first. And, in the context of China's trademark regime, "who came first" does not mean who thought of the name first or who started using it first or who is bigger or better – it comes down to who filed a trademark application in China first. And for all its disadvantages compared to Mercedes, in this case Chery came first.

And indeed, Chery is asserting its trademark rights and had filed a complaint to the Chinese authorities against Mercedes's intended use of EQ in China, claiming that allowing Mercedes to use the mark EQ will undermine Chery's earlier rights to the mark eQ and its registered trademarks in China.

This type of disputes, when two trademarks appear to be clashing with one another, is usually decided based on three main factors: the similarity of the

marks, the similarity of the goods or services to which they apply (not only if they are the same but also if they are related) and whether their coexistence may lead to consumer confusion. These three main factors may be affected by things such as the distribution channels through which the relevant products will be distributed, the level of affluence of the target audience, the price ranges of the respective products, etc.

Now, some may say that “EQ” and “eQ” are not identical. Some (including Mercedes itself – according to some websites) may also point out that, as the products will compete in different market segments and vastly different price brackets, the chances that consumers will be confused are slim. Nonetheless, the products are essentially the same (electric cars) and, as Chery pointed out, a mark that is used today for small cheap cars can be used in the future for larger and more expensive ones.

What will happen? It is difficult to say. It remains to be seen how the Chinese regulator will view the matter.

On the one hand, when applying the basic trademark standards applicable in China, Chery has a case. On the other hand, Mercedes can (and probably will) contend that these marks are always used with the manufacturer’s main mark and never by themselves, and the chances that consumers will confuse “Mercedes-Benz EQ” with “Chery eQ” are low. It is also not uncommon in China for various automakers to use the same name for their very different cars. For example, many know that X5 is a large SUV made by BMW, and the BMW X5 is also sold and is quite popular in China (and BMW has “BMW X5” registered as a trademark in China), but that did not prevent a host of Chinese manufacturers from naming various cars X5 – and so we have the Changhe Suzuki Beiduoqing X5 (a small city car), the Dongfeng Jingyi X5 (a compact SUV), the Landwind X5 (another compact SUV), the Zotye Domy X5 (yet another compact SUV with an uncanny resemblance to the first generation VW Tiguan...) – and even Chery itself had a car called the Chery Weilin X5.

But if I had to make a bet I would say that Chery is likely to prevail. Not only does it have a case

according to China’s trademark laws, an outcome favoring Chery at Mercedes’s expense can be viewed by the Chinese authorities as favorable in an era when China is seeking to show that its homegrown industrial champions are to be taken seriously. Mercedes encroaching on a Chinese automaker’s trademark can be good headlines in a country more readily identified with infringing others’ IP rights.

What’s interesting is how did Mercedes end up in this situation to begin with? And – assuming it cannot prevail – what will it do?

As for the first question, I don’t know what went down at Mercedes’s trademarks department when they were asked to clear EQ for use (assuming that they were instructed to clear the mark for global use – including in China). Maybe the marketing people had their final say. Maybe they failed to do a proper trademark search and were not aware of Chery’s mark in China (highly unlikely as today’s global giants know that China must be included in any clearance search prior to launching a new product or brand and Mercedes knows how to work in China). Or maybe they simply did not take Chery seriously and believed that whatever comes they can overcome this obstacle.

As for the second question, Mercedes may decide to fight it out, but I think they do not have the upper hand here (not from the perspective of Chinese trademark law) and they may not want to compromise their position in China. Another option would be to negotiate a co-existence agreement with Chery, but this may come at a price. Another alternative is to change the brand for the Chinese market. This last option may be the most prudent choice. While there will be a price to pay in marketing and branding, it will not be the first time that this happens in the auto industry – one example is when Porsche wanted to call its seminal sports car the 901 but changed in to 911 after receiving notice from Peugeot stating that car names consisting of three numerals with “0” in the middle is a format identified with Peugeot.

Interestingly, the actual car in question, the Chery eQ, is an electric version of the Chery QQ, a small car which itself is something of an intellectual property celebrity (of the infamous kind) – it was

the subject of two different IP disputes: one with General Motors, which claimed that the design of the car was copied from its small car the Chevrolet Spark (aka Daewoo Matiz), and another with Tencent, which claimed to have the rights to the mark “QQ” in China in view of its popular

messaging app by that name. Chery managed to overcome both obstacle and the Chery QQ continued to soldier on in China.

In any case, it would be interesting to follow how this story unfolds.

Main takeaways:

- **Trademark strategy starts much earlier than most people realize:** Companies should consolidate their branding/marketing/IP strategies and formulate them at the same time. It is pointless to think of a great brand name that cannot be protected as a trademark. It is futile to start investing in marketing materials and product launches under a brand that cannot be used in a major market due to other people’s trademark rights.
- **Make sure to do your due diligence /clearance searches in China before committing to a strategy:** It is the world’s largest and most important market for many global companies. It would be unwise to launch in China or plan a launch in China without first looking carefully at what’s happening in China, understanding the business and IP environment, knowing who owns what and identifying potential obstacles.
- **Don’t underestimate Chinese companies:** They feel strong on Chinese soil, they have the government’s support and these days they understand the nature of intellectual property and how to use it more than you may realize.

NOTE: all information provided in this article was collected from publically-available sources, including the websites of Reuters, Daimler AG, the Chinese Trademark Office under the State Administration of Industry and Commerce and others. If any of the information herein is inaccurate please contact the author.



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