

NEWSLETTER

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PRC Intellectual Property Law



Part I: News on Legislation, Policies and Law-enforcement

- **【Legislation】 New Revision of the New Plant Variety Regulation (draft) was Published for Public Consultation**

On February 2, the website of the Ministry of Agriculture of China issued a revised draft of the new plant variety regulations (draft for comments) for public comment, accompanied by draft provisions and related instructions.

- **【Legislation】 The State Market Regulatory Administration (SMRA) Issued its Legislative Work Plan in 2019**

On February 11, the website of the SMRA issued a message on the issuance of its Legislative Work Plan in 2019. In terms of relevant stipulations related to intellectual property rights, it is proposed to amend the Guidelines for Patent Examination, Administrative Measures for Patent Agents, and formulate Several Provisions on Regulating Trademark Application Behaviors, Trademark Electronic Application and Electronic Delivery Regulations, Patent Agent Qualification Examination Method, Official Signs Filing Protection Measures, Interim Measures for the Supervision of Trademark Agents, etc. It is proposed to abolish the Patent Agency Disciplinary Rules (Trial), Implementation Measures for Patent Agent Qualification Examination, Patent Agent Qualification Examinations Rules, Methods for Dealing with Disciplinary Actions of Patent Agent Qualification Examinations and other violations.

- **【Legislation】 China National Intellectual Property Administration (CNIPA) Release a Notice for Public Consultation on the Draft of Regulations Governing the Registration of Trademark Applications**

On February 12, the CNIPA issued a notice on the public consultation for the the

Draft of Regulations Governing the Registration of Trademark Applications, attached the draft and instructions.

- **【Legislation】 New Regulations on Patent Agency will be Implemented on March 1**

On February 25, the CNIPA issued a notice on the implementation of the newly revised Patent Agency Regulations. The revised Patent Agents Regulations will be implemented on March 1, 2019.

- **【Legislation】 Draft of the Protection of Foreign Geographical Indication Products was Published for Public Consultation**

On February 28, in order to improve the protection system for foreign geographical indication products, the CNIPA publicly solicited opinions on the draft of the Protection of Foreign Geographical Indication Products.

- **【Policies】 In 2019, SMRA will focus on examining the practice of patent agencies and patent attorneys.**

On February 12, 2019, the website of the SMRA officially issued a notice--"The State Market Regulatory Administration carried out a comprehensive promotion of the 'double random, one open' supervision.

In the notice, the SMRA compiled the List of Random Inspections by the General Administration of Market Supervision, in which the types of spot checks involving intellectual property rights include patent agency supervision and inspection, patent authenticity inspection, inspection of trademark use behavior, and inspection of trademark agency behavior;

The patent agency, the patent agent's practice inspection, the patent agency's annual report and the information disclosure verification are the key inspection items.

- **【Policies】 Integration of CNIPA will no longer retain the Patent Reexamination Board, the Trade Review Board, and the Review Association**

On February 15, the website of the Ministry of Human Resources and Social Security of the State Council issued a message, appointing Zhao Gang as the deputy director of the State Intellectual Property Office.

According to the reform and deployment of the central organization, the original Patent Reexamination Board of the State Intellectual Property Office was incorporated into the Patent Office of the State Intellectual Property Office. The former State Administration for Industry and Commerce, the Trademark Office, the Trademark Review and Evaluation Committee and the Trademark Review and

Cooperation Center were integrated into the Trademark Office of the State Intellectual Property Office. Retain the Patent Reexamination Board, the Trademark Review Board, and the Trademark Review Collaboration Center.

- **【Policies】 The Outline of the Development Planning of Guangdong, Hong Kong and Macao Dawan District was issued, emphasizing the protection of intellectual property rights**

On February 18, the Central Committee of the Communist Party of China and the State Council issued the Outline of the Development Plan for the Guangdong, Hong Kong and Macao Dawan District, and issued a notice requesting all departments of various regions to conscientiously implement it in light of the actual situation. The fourth chapter of the Outline points out that the establishment of an international science and technology innovation center, the optimization of the regional innovation environment, the implementation of IPR securitization pilots, and the strengthening of intellectual property protection and application. The sixth chapter of the Outline mentions the need to build a modern industrial system with international competitiveness, encourage Guangdong, Hong Kong and Macao to build professional service organizations, and promote accounting audit, legal and dispute resolution services, management consulting, inspection and testing, intellectual property, construction and related engineering. And other professional services development. The content of Chapter 10 of the Outline is to jointly build a platform for cooperation between Guangdong, Hong Kong and Macao, mentioning the implementation of strict intellectual property protection, strengthening the administrative protection of intellectual property rights, and giving full play to the role of intellectual property courts.

- **【Enforcement】 The State Copyright Administration announces the results of the special action of Sword Net 2018**

On February 22, State Copyright Administration held a symposium in Beijing to report the results of the special operation of Sword Net 2018. During the special action, the copyright law enforcement supervision departments at all levels removed 1.85 million infringement and piracy links, collected 1.23 million infringing and pirated products, and investigated 544 cases of network infringement and piracy, including 74 criminal cases and RMB 150 million involved. The special action has achieved remarkable results.

- **【Enforcement】 People's Daily reminds that it will be restricted taking train and plane after doing one of the six illegal acts concerning intellectual property**

On February 17, People's Daily Weibo released a set of pictures of These untrustworthy behaviors will be limited taking airplane and trains. Among them,

there are six kinds of serious untrustworthy behaviors in intellectual property rights, which will also be limited taking airplane and trains : 1. Repeating patent infringement; 2. Do not act according to the result of cases; 3. Infringement of patent agency; 4. Calling for patent agent qualification certificate; 5. Unlawful application for patent; 6. Providing false document.

- **【 Enforcement 】 Activities Strictly Inspecting and Rectifying Patents throughout the Country**

In recent days, the CNIPA is cooperating with the provincial, municipal, and district science and technology bureaus and national patent agencies to carry out the scraping and healing type of utility model patents with low technical level and unprotected value. Proactively requested the withdrawal of over 200,000 abnormal applications.

Part II: Case Overview and Reviews

- **【 Case 】 The first Internet patent case turned over once again, 17 lawsuits of Sougou company may be overwhelmed**

A series cases of Beijing Sougou Information Service Co., Ltd. v. Beijing Baidu Netcom Technology Co., Ltd started from 2015. The plaintiff believed that the defendant's Baidu Mobile Input Method implemented its patented technology program, and filed a total of 17 patent infringement lawsuits from 2015 to 2017, with a total compensation of 260 million. Of the 17 patent litigations that Sougou sued Baidu, 16 were lost or withdrawn, with 12 patents invalidated.

Recently, in an administrative lawsuit, the Beijing Intellectual Property Court made a judgment to revoke the original valid result. This means that the validity of Sougou's patent will be subject to re-audit, and the corresponding lawsuit may also be rescinded because the patent was invalidated.

Comments: The twists and turns between Sougou and Baidu series patent litigation exposed Sougou as a technology-centered Internet company, lacks the quality of its patent reserves. While increasing the amount of patent reserves, enterprises should enhance their core creativity in key areas and pay attention to the quality of patents.

- **【 Case 】 The Ford Mustang Trademark Dispute Closed**

Recently, the Beijing Higher People's Court made a final judgment, and found that the No. 9817109 trademark Ford Mustang registered by Ford Motor Company of the United States and the Wild Horse and Map and Wild Horse trademarks held by

Sichuan Mustu Motor Co., Ltd. constitute a similar trademark. According to this, Ford's appeal was dismissed, and the original Trademark Review and Adjudication Board's decision to maintain the trademark was finally revoked and it was decided to re-take the ruling.

Comments: In terms of the same or similar product, even if a company adds a trademark to its own well-known trademark to form a new trademark, and then re-apply for registration, it may infringe the legal trademark rights of others.

➤ **【Case】Huluwa Suzhou case was convicted of infringement**

Recently, a court in Suzhou made a first-instance judgment on a case of infringing the copyright of Huluwa. A network company was convicted of infringement because of the unauthorized use of the image of Huluwa on its WeChat public account. The result of the same use of the image of Huluwa in Shanghai before the year was quite different.

In the Huluwa Shanghai Case, the court held that the defendant used the image of Huluwa in the movie poster to constitute transformation use. The defendant claimed that they used the Huluwa as the background pattern, which occupied a small poster area and was used to awaken the growth memory of the post-80s audience. In the Huluwa Suzhou Case, the defendant wrote his article Marrying a Suzhou girl, is equivalent to marrying seven Huluwa, according to the article metaphor, the image of 7 Huluwa is selected as the map.

Comments: Generally, to judge whether it constitutes a conversion requires: 1. the purpose of using the work; 2. the nature of the original work; 3. the proportion of the quality and quantity occupied by the used part in the original work; 4. adverse effects on the market potential of the original. In the Huluwa Suzhou Case, the court did not recognize that the defendant's behavior produced new content or value for the use of the image of Huluwa.

➤ **【Case】Didi company win the case combating counterfeit**

Recently, the Shanghai Intellectual Property Court concluded the case Beijing Xiaoju Technology Co., Ltd., Beijing Didi Technology Development Co., Ltd. v. Didi Site Service (Shanghai) Co., Ltd. and Shanghai Jiuye Relocation Co., Ltd. The defendant was ordered to stop the trademark infringement and unfair competition immediately, change the name of the enterprise, stop using the "didibc.com" domain name, and jointly compensate economic losses and reasonable expenses of RMB 600,000.

In this case, although Didi has not been registered at the time of approval of the registration of the company name of the defendant, it has already gained a high

reputation and reputation in the relevant industry, and it should be recognized as a well-known trademark condition recognized by law. Accordingly, the defendant's use of Didi as the name of the company constitutes unfair competition, and the defendant's use of Didi in the domain name-didibc.com constitutes an infringement of trademark right.

Comments : Enterprises should abide by the principles of good faith and recognized business ethics when registering business names and conducting business promotion, as so not to infringe well-known trademarks that are being used by others.

➤ **【Case】 A case establishing that the notice and deletion rule does not apply on the Wechat widget procedure**

On February 27, the case Hangzhou Daodou Network Technology Co., Ltd. v. the Changsha Baizan Network Technology Co., Ltd. and Shenzhen Tencent Computer System Co., Ltd. was publicly judged by the first instance of the Hangzhou Internet Court. The court held that the defendant Changsha Baizan Network Technology Co., Ltd. constituted the violation of the right to disseminate information network, but the defendant Shenzhen Tencent Computer System Co., Ltd. as the platform manager of the WeChat applet did not have infringement intentions and faults, and did not assume responsibility for assistant infringement.

Comments : In this case, the court held that the small program is the basic technical service provided by Tencent for the architecture and access of small program developers. It is different from the information network storage space and search engine service, and the notice and deletion rule should not be applied. It's the first case assuring the notice and deletion rule was not valid for WeChat widget procedure.

Disclaimer: All of the above information is from domestic and foreign media reports and publications. We have not verified the specific content of the information, and are not responsible for its authenticity, accuracy and completeness. This Newsletter (including its comments) does not constitute any form of legal opinion or advice. If you need legal consultation on a particular matter, please contact the following lawyers:



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Ms. Wang earned her Master of Law degree from Fudan University and has 11 years of legal experience. She specializes in intellectual property rights protection, corporate compliance, labor law, dispute resolution, and has a lot of front-line operating experience in MNCs. Ms. Wang has served as in-house legal counsel to several MNCs including SMIC, Michelin etc. and has worked in the Shanghai Pudong New District Court for three years.



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