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Intellectual Property

The Guidance of Trademark Examination and Review Will Be Effective in 2022

On 16 November 2021, the China National Intellectual Property Administration ("CNIPA") issued *The Guidance of Trademark Examination and Review* ("the Guidance"), which shall come into effect from 1 January 2022, and the former *Trademark Examination and Review Standards* shall be repealed at the same time. The Guidance adds formal examination and work chapter, refines the work standards for the formal examination of trademark; clarifies the classification of elements such as trademark text search; adds a typical case section to guide practice; supplements the examination standards for actions such as applications for international registration of Madrid trademarks, opposition and follow-up actions; and regulates trademark fees, document service, trademark files and trademark announcements.

Source: [CNIPA](#)

Response from the CNIPA: "Xiaoyaozhen" and "Tongguan Rougamo ", No Franchise Fees Allowed

On 26 November 2021, CNIPA answered reporters' question on the dispute over the trademark of "Xiaoyaozhen" and "Tongguan Rougamo".

CNIPA responded that, the registrant of the "Xiaoyaozhen" trademark, which is a common trademark, could not charge the so-called "franchise fee". The "Tongguan Rougamo" is a registered geographical indication collective trademark, and its registrant does not have the right to license the collective trademark to merchants outside the specific area of Tongguan and charge franchise fees. At the same time, the registrant has no right to prohibit businesses in the specific area of Tongguan from using the geographical names.

Source: [CNIPA](#)

Shenzhen Will Establish a List of Well-Known Trademarks and Famous Trade Names for the Protection of the Company Name Registration

On 22 November 2021, the Shenzhen Administration of Market Regulation issued the *Measures for the Protection of Well-known Trademarks and Famous Trade Names of Commercial Entities of the Shenzhen Administration of Market Regulation*, which mainly provides protection for well-known trademarks and famous trade names that have been included in the *List for the Protection of Well-known Trademarks and Famous Trade Names of Commercial Entities* or are in the public disclosure period. Not all well-known trademarks and famous trade names are directly included in the Protection List, which is established taking into account whether the name is significantly different from other trade names and the degree of public familiarity. If, after the publication of the Protected List, a commercial entity believes that it shall be included but has not been included in the Protected List, it may submit a proposal to the commercial registration authority to be included in the Protected List.

Source: [Shenzhen Administration of Market Regulation](#)

In A Patent Litigation, Nanjing Court Awarded Damages of ¥17.635 Million Based on Calculation of Profit of the Defendant

Recently, the Nanjing Intermediate People's Court made a judgment of first instance on the case of Fujian Longjing Desulphurization and Denitrification Engineering Co., Ltd. (hereinafter referred to as Fujian Longjing) v. XX environmental technology company (hereinafter referred to as XX environmental company) infringed the patent right of the invention. Ordering XX environmental company to stop the

infringement and to compensate Fujian Longjing for economic losses and reasonable expenses for the maintenance of rights totalling RMB 17,635,000.

The court held that the total amount agreed in the general contract for the infringing equipment could be used as the basis for calculating the profit made by XX environmental company. On this basis, a profit margin of 10% was determined by taking into account the average profit margin of the industry, and the technical contribution ratio of the patent in question in the infringing equipment. Accordingly, it was determined that the profit made by an environmental company as a result of the infringement was RMB 17.38 million, and the plaintiff, Fujian Longjing, was fully supported in its claim for reasonable expenses of ¥255,000 yuan to defend its rights.

Source: [Nanjing Intermediate People's Court](#)

Fabricating Data and Information on Dianping Platform Was Recognized by Court as Unfair Competition

Shanghai Hantao Information Consulting Co., Ltd ("Shanghai Hantao") is the operator of the Dianping platform, Qingdao Simple Pay Network Technology Co., Ltd ("Qingdao Simple Payment") and the other three defendants organized people to create false orders on Dianping for the purpose of profit. These company conducted false transactions, positive reviews and credit speculation, and helped other operators to carry out false commercial promotion, resulting in untrue data on the "Dianping" platform and affecting Shanghai Hantao's credit rating system. Although there were some differences in the scope of business between Shanghai Hantao and the defendant Qingdao Simple Payment, both were operators in the Internet field and had a competitive relationship, and Qingdao Simple Payment constituted unfair competition. The court awarded damages of ¥300,000 to the plaintiff.

Lifang & Partners Comments:

In order to adapt to the current technological progress and the development of the Internet, the trend of determining the "competitive relationship" in pursuant to the Anti-Unfair Competition Law has evolved in two directions: expanding the interpretation of existing concepts and developing new concepts. The elements for determining the existence of a competitive relationship have been extended, and the concept of indirect competitive relationship has been introduced, instead of mere considering the substitutability of goods or services. Even if an operator provides goods or services that are not identical or similar, such acts shall be deemed as unfair competition, if the operator's market transactions harm the legitimate rights and interests of other operators, and disrupt the social and economic order.

Source: [iphouse](#)

Non-Compliance with Author Conditions in the Free Commercial Use of Software Can Constitutes Infringement

Changsha Mituo Information Technology Co., Ltd (hereinafter referred to as Mituo) developed the Mituo website building system on 26 July 2019, and is the owner of copyright of the software. Mituo's website provides free downloads of the website building software for internet users. Users are required to agree to the *End User License Agreement* before they can install and use the website building software in their own computer terminals (servers). The main content of the *End User License Agreement* states that Mituo agrees to the free commercial use of the website software, but requires the user to retain Mituo's copyright logo and website link information in the website building software. Mituo found that Henan Province Engineering Construction Association did not retain Mituo's copyright logo and website link information as required by the *End User License Agreement*, and filed a lawsuit.

The Intellectual Property Court of the Supreme People's Court held in the second instance, that the software copyright owner provides free website building software that can be downloaded and used by unspecified users, and the user agreement clearly requires the user who uses the software for free to retain

the copyright logo and relevant link information of the copyright owner. The user shall be deemed to have infringed the authorship right of the copyright owner of the computer software by removing the copyright logo and relevant link information, when downloading and using the website software free of charge, and shall be liable for stopping the infringement, and compensating for damages in accordance with the law, and the People's Court may also decide whether to assume the liability of making an apology.

Source: [The Intellectual Property Court of the Supreme People's Court](#)

Court Awards ¥8.5 Million in Damages for Unauthorised Use of Logo of Supreme

CHAPTER 4 CORP (C4C). is a hipster company founded in 1993 in New York State, USA. On November 14, 2019, C4C filed a lawsuit for unfair competition and trademark infringement, claiming that Shanghai Jiaoshe International Trade Co. Ltd. used the "Supreme" logo on the infringing products manufactured and sold by them, and that the Zhejiang Outlet Plaza Co. sale of the aforesaid infringing products constituted unfair competition. The Court ultimately upheld C4C 's claim and awarded the three defendants joint liability for a total of ¥8.5 million in damages.

In this case, although the defendant added the words "Italfigo" or "GRIP" to "Supreme", the font is not easily observable by the public as it is too small compare to the word "Supreme" and has a weaker overall presence; the main identifying feature of marks remains the word "Supreme". The defendant's use of the similar marks on same goods with C4C constituted trademark infringement. Although C4C does not have a physical shop in China, in light of the facts reported in the media, the fact that C4C has launched co-branded models with brands such as LV, NIKE and LACOSTE in China, and the factual findings of the CNIPA in its prior administrative decision, it can be concluded that the "Supreme " logo already has a certain influence and shall be protected by the *Anti-Unfair Competition Law*. At the same time, the trademark rights of the C4C shall also be protected. Due to the territorial nature of trademark rights, the registered trademark rights obtained by Shanghai Jiaoshe International Trading Co., Ltd. outside of China cannot be opposed to the prior legitimate rights and interests within the China, and the trademarks used on imported goods need to avoid infringing the registered trademark rights or other commercial mark rights and interests in the importing country.

Source: [Zhejiang Higher People's Court](#)

EU Parliament's key Committee Adopts Digital Markets Act

On 23 November 2021, the Parliament's Committee on the Internal Market and Consumer Protection (IMCO) approved the Digital Markets Act (DMA) following lengthy discussions, negotiations, and compromises.

The Digital Markets Act is a draft EU law intended to impose specific obligations on gatekeeper platforms, including the company with following criteria:

strong economic position, significant impact on the internal market and is active in multiple EU countries

strong intermediation position, meaning that it links a large user base to a large number of businesses

has (or is about to have) an entrenched and durable position in the market, meaning that it is stable over time

This obviously includes international internet giants such as Google, Facebook and Amazon. Under the proposal, such companies would not be allowed to take advantage of data to target advertising to users within the EU, unless they have obtained their explicit consent. They would also be subject to restrictions and regulations on mergers and acquisitions in the same industry within the EU, and would

have to obtain prior approval from the European Commission for their intentions. Violations of these rules will result in fines of between 4% and 20% of annual turnover.

The European Parliament is scheduled to vote on the DMA in December and, if adopted, further consultations with EU governments will take place, with the bill eventually expected to be implemented in Europe during the French EU Presidency in the first half of next year.

Source: CCTV News

The USPTO Amends the Rules of Practice to Implement Provisions of the Trademark Modernization Act of 2020 (TMA)

The United States Patent and Trademark Office (USPTO) amends the rules of practice in trademark cases to implement provisions of the *Trademark Modernization Act of 2020* (TMA). The TMA amends the Trademark Act of 1946 to establish new ex parte expungement and reexamination proceedings to cancel, either in whole or in part, registered marks for which the required use in commerce was not made. And provides for a new nonuse ground for cancellation before the Trademark Trial and Appeal Board. The regulation is effective on December 18, 2021. On 27 December 2020, TMA was passed in Congress, which makes significant amendments to the Lanham Act (the Act) and aims to modernize the trademark examination process.

Source: USPTO

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Beijing High People's Court Hears over CNY 300 Million Anti-trust Penalty Decision

On November 22, 2021, Beijing High People's Court heard the cases together brought by two APIs companies against SAMR's CNY 325.5 million penalty decision. In the December of 2020, Beijing No.1 Intermediate People's Court heard these two cases respectively, but this time Beijing High People's Court decided to hear the cases together. ([More](#))

SAMR Issues 43 Gun-jumping Cases, Collectively Fining CNY 27.5 Million

On November 20, 2021, SAMR issued 43 gun-jumping cases, collectively fining CNY 27.5 million. It can be concluded from these 43 cases that various famous domestic internet platform companies are still involved in gun-jumping cases and most of these cases involved equity acquisition. ([More](#))

EU Restarts Hyundai, Daewoo EU 2 Billion Deal Probe

EU antitrust regulators have resumed their investigation into Hyundai Heavy Industries bid for rival Daewoo after a temporary halt of more than a year, setting a Jan. 20 deadline for their decision on the deal. The European Commission, which paused its probe in July last year while waiting for the companies to provide requested data, had previously expressed concerns that the deal could inflate prices and reduce competition in cargo shipbuilding. The deal also requires regulatory approval in South Korea and Japan. ([More](#))

Amazon and Apple Hands over 200 Million in Italian Antitrust Fines

On November 23, 2021, it was reported by Italian antitrust watchdog that it had fined U.S. tech giants Amazon and Apple a total of more than 200 million euros for alleged anti-competitive cooperation in the sale of Apple and Beats products. It was found that the contractual provisions of a 2018 agreement

between the companies meant only selected resellers were allowed to sell Apple and Beats products on Amazon.it, the watchdog said, adding that this was in violation of European Union rules and affected competition on prices. The authority imposed a fine of EU 68.7 million on Amazon and EU 134.5 million on Apple, ordering the companies to end the restrictions to give retailers of genuine Apple and Beats products access to Amazon.it in a non-discriminatory manner. ([More](#))

Cybersecurity and Data Protection

Shanghai Data Regulation Adopted and to Come into Force on January 1, 2021

On November 25, 2021, the 37th meeting of the Standing Committee of the 15th Shanghai Municipal People's Congress voted to adopt *Shanghai Data Regulation*, providing a basic institutional guarantee for Shanghai to comprehensively promote the urban digital transformation.

Shanghai Data Regulation regulates on data development and management systems, protection of data rights and interests, public data, data element markets, development and application of data resources, data reform in Pudong New Area, data cooperation in the Yangtze River Delta region and data security and corresponding legal responsibilities. ([More](#))

The CAC Issued the Notice on Further Strengthening the Online Information Standards of Entertainment Stars

On November 23, 2021, the Cyberspace Administration of China (CAC) issued *the Notice on Further Strengthening the Online Information Standards of Entertainment Stars* (the “*Notice*”), aiming to further strengthen the online information norms of entertainment figures, maintain good order of the online environment, and create clearer cyberspace. The *Notice* puts forward 15 specific work measures from four aspects, including content orientation, information presentation, account management and public opinion mechanism, in an effort to effectively standardize the online information of entertainment figures. The *Notice* stresses that the local Internet and information departments should attach great importance to strengthening the regulation work of online information of entertainment figures, formulate detailed implementation plans, guide and urge the website platforms to pay attention to the implementation of various measures to ensure efficient working achievement. ([More](#))

Shanghai Data Exchange was Inaugurated

On November 25, 2021, the inauguration ceremony of Shanghai Data Exchange & 2021 Shanghai Global Digital Business Conference, was held in Shanghai. Gong Zheng, the Deputy Secretary of Municipal Party Committee and Mayor, inaugurated the Shanghai Data Exchange and launched the all-digital trading system. At the meeting, Shanghai Data Exchange Expert Committee was also established. 31 experts in the fields of legal compliance, financial transaction, data industry, data security, public management, and comprehensive economy, etc. will provide advice and professional guidance for data circulation and transaction. ([More](#))

MIIT Takes Transitional Administrative Guidance Measures Against Tencent

Since this year, in the special rectification of Apps' infringement on users' rights carried out by Ministry of Industry and Information Technology (MIIT), nine products of Tencent have violated related rules and been publicly notified for four times, violating the relevant regulations of the information and communication industry in 2021. In accordance with the relevant deployment, MIIT has taken transitional administrative guidance measures for Tencent, asking that new App products and updated versions of

existing App products shall be technically tested by the MIIT, and only if they pass the test, will they be put on the apps shop. ([More](#))

The CVERC Found 17 Illegal Mobile Applications

The National Computer Virus Emergency Response Center (CVERC) recently found 17 mobile applications with privacy non-compliance through Internet monitoring, which violate the relevant provisions of *the Cybersecurity Law* and *the PIPL* and are suspected of collecting personal privacy information beyond the scope. ([More](#))

The MIIT and the MPS Interviewed Ali Cloud and Baidu Cloud to Urge Implementation of the Prevention and Control of Telecommunications Network Fraud Work Requirements

Recently, the Network Security Administration of MIIT and the Criminal Investigation Bureau of Ministry of Public Security(MPS) jointly interviewed the heads of Ali Cloud and Baidu Cloud, notified their problems in the prevention and governance of telecom network fraud, including the large number of links to fraudulent websites, etc., requires the two enterprises to fulfill their network and information security responsibilities, strictly implement *the Cybersecurity Law* and other laws and regulations, and rectify the relevant problems. If the two enterprises refuse to rectify or the rectification is implemented inadequately, they will be severely punished in accordance with the laws and regulations. The two enterprises indicated that they would earnestly implement the regulatory requirements, further strengthen the management of website access, domain name registration and information services, and effectively prevent and defuse the risk of telecom and network fraud. ([More](#))

Digital Markets Act: ending unfair practices of big online platforms

On the morning of November 23, 2021, the Internal Market and Consumer Protection Committee adopted the Digital Markets Act (DMA) proposal, which sets rules on what companies with “gatekeeper” status will be allowed to do and not to do in the EU. The draft law blacklists certain practices of large platforms and enables the Commission to carry out market investigations and sanction non-compliant behaviours. ([More](#))

EDPB Adopts Letters to UN & ENISA

During its November plenary, the European Data Protection Board (EDPB) adopted a letter in reply to the United Nations (UN) concerning transfers to international organisations. In the letter, the EDPB welcomes the UN’s continuous participation in the Task Force on transfers to international organisations established by the European Data Protection Supervisor.

The EDPB also adopted a letter to European Union Agency for Cybersecurity (ENISA) concerning the European Cybersecurity Certification Scheme for Cloud Services’ (EUCCS) compatibility with Schrems II. In the letter, the EDPB reiterates its stance that the final certification scheme should be consistent with the obligations laid down in the GDPR and should facilitate the compliance of cloud service providers and their clients with the GDPR, also considering the Schrems II ruling. ([More](#))

OAIC Published First Consumer Data Right Privacy Assessment

On November 23,2021, the Office of the Australian information Commissioner (OAIC) Published its first Consumer Data Rights (CDR) Privacy Assessment. OAIC provides 13 legally binding privacy protections that set out consumers' privacy rights and providers' obligations to collect and process their data.

The OALC's first privacy assessment examined how the initial CDR data holders are complying with Privacy Safeguard 1, which requires providers to have a policy describing how they manage consumer data, and to implement internal practices, procedures and systems to ensure compliance. ([More](#))



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