



MMLC Group 

北京铭辉达知识产权代理有限公司

China Update

Lawyers and Consultants

3 April 2017

BEIJING
709, Tower W3
The Towers
No.1 East Chang An Avenue
Dongcheng District 100738
Beijing, China
北京东城区东长安街1号东方广场东方经贸城
西三办公楼709室, 邮编100738
writer's p: +86 10 8515 1091
f: +86 10 8515 1089
w: mmlcgroup.com

Legal News

Intellectual Property

Beijing IP Court goes to RMB50 million for patent infringement

In a recent “USB Key” patent infringement case, the Beijing IP Court issued a damages award of RMB50,000,000 Yuan in a dispute between Beijing Watchdata System Co., Ltd. (the plaintiff) and the Hengbao Co., Ltd. (the defendant).

According to the plaintiff, the USB Key manufactured by the defendant used a verification method that fell into the protection scope of the plaintiff’s patent and therefore infringed its patent rights. The plaintiff requested the court to require the ceasing of the defendant’s infringing activities and to compensate it for economic losses in the amount of RMB49 million Yuan as well as 1 million Yuan for legal expenses. The court supported the plaintiff’s claims. When it came to calculate the compensation, the IP Court investigated and acquired evidence through banks, such as the Bank of China, and ascertained the actual sales amount of the infringed products in 12 banks nationwide. Then, the court calculated the actual loss suffered by the plaintiff amount to RMB48.14 million Yuan through the way of multiplying the actual sales amount and the reasonable profit of each patented product provided by the plaintiff. It is also worth of mentioning that the IP Court also calculated the attorney fee using hourly rates for the first time.

Sony China ordered to pay 9 million Yuan for patent infringement

Recently, the Beijing IP Court delivered a first instance judgment requiring that Sony China was to compensate the plaintiff, Xidian Jietong, a wireless network communications company in Xi'an for infringing its patent. The disputed patent was filed by the plaintiff on November 6, 2002 and was granted on March 2, 2005. Although Sony China claimed that its use of the chip that involved the infringing patent was reasonable use upon purchase, such that infringement could not be found. The Court decided that Sony China should pay economic losses in the amount of RMB 8,629,173

BEIJING

With support offices in Brisbane and Sunshine Beach

Matthew Murphy Ellen Wang Hong Mei Yu Du Xia Yu

Sarah Xuan Fei Dang

Partners and Associates in the MMLC Group are admitted to practice law in China, Australia and Europe (UK)

Yuan as well as reasonable legal expenses RMB 474,194 Yuan to the plaintiff. It is not clear that whether Sony China will appeal the decision yet. Clearly, China's courts are more than willing to order larger damages awards these days in the case of patent infringement.

Beijing court overturns ban on sales of iPhone 6

On March 24, 2017, in a patent lawsuit between Apple and a Shenzhen company, the Beijing IP Court repealed a decision that suspended sales of the iPhone 6 in some areas in China made by the Beijing Intellectual Property Bureau last May. The court decided that Apple did not infringe the design patent owned by the Shenzhen company plaintiff, based on generally applicable visual test rules. This decision was not surprising, as key differences exist between the iPhone 6 and the design patent at issue.

Chivas wins trademark infringement case gaining RMB500,000 in compensation

In a trademark and packaging infringement case tried in a Hangzhou court last year, the Chivas Holding (IP) Limited won compensation amount in the sum of RMB500,000 Yuan based on its 3D trademarks. According to the court, the defendants, two companies in Yantai, Shangdong province, had been manufacturing and selling Elysee 21 YO whisky, which infringed the trademark rights in the plaintiff's four 3-d marks due to their high similarity. This case confirms that the courts are willing and able to enforce 3D trademarks that may well have functional elements, provided that they have acquired distinctiveness through long term use.

China establishes first IP evaluation and certification center

On February 28, 2017, the first IP evaluation and certification center at the national level was announced as being founded in Beijing and has been put into operation. This IP center was registered and founded on July 12, 2016, upon the approval and authorization of the SAIC and the SIPO. It includes professional "IP information consulting services, IP evaluation services, IP value evaluation services, enterprise value evaluation services based on patents, enterprise IP information disclosure services and so on"; and it will provide such services across the country. It is also reported that the center has established seven provincial level sub-centers in Beijing, Jiangsu, Liaoning, Hebei, Shangdong, Guangxi and Jilin.

China tops global trademark application filings again

According to the latest statistics from the SAIC, trademark application filings in China in 2016 reached 3.69 million, which is up 28.4% compared to that of 2015. China has topped the national trademark application filings stats for 15 consecutive years. As far as filing origins for Chinese entities are concerned, the top five provinces are Guangdong, Beijing, Zhejiang, Shanghai and Jiangsu. Among them, the effective registration application from Guangdong Province broke through 2 million filings for the first time.

China's copyright registration reaches 2 million

In 2016, the total amount of copyright registrations filed in China came to 2,007,698, which is a 22.33% increase year on year. Among them, works accounted for 1,599,597, computer software registrations accounted for 407,774 and so on. In terms of the location of Chinese entity applications, Beijing had the most registrations which were 693,421 and accounted for 43.35% of the total registrations; Shanghai took the second place with 217,249 registrations, whereas Jiangsu Province was in third place with 181,309.

New trademark interpretation by the Supreme Court becomes effective

The “Several Provisions of the Supreme People's Court on Issuing the Trial of Administrative Cases Involving the Authorization and Determination of Trademark Rights” formally came to effective on March 1, 2017. The new Provisions was released this January and can be considered as an updated version of the Guidance concerning the trail of administrative cases involving the authorization and determination of trademark rights issued in 2010.

The Provisions deal with a number of topical issues, such as personal name rights - “in case the concerned party claims that the disputed trademark damages his/her right in name, if the relevant public considers that the such trademark refers to the natural person and are easily to consider that goods marked with the said trademark are licensed by the said natural person or associated with such natural person somehow, the people’s court shall recognize that such trademark has damaged the natural person’s right in name. If the concerned party claim right in name with his/her certain name, such as pen name, stage name, translation name and so on, and such certain name is of certain name and has established stable corresponding relation with the such natural person, which makes the relevant public refer such name to the said natural person, the people’s court shall support such claim.” The standard reflected in this provision was actually established and specified in the “JORDAN” case between Michael Jordan v.s. Qiaodan Sports Company by the Supreme Court.

Competition

China to amend its law against unfair competition

On February 26, 2017, upon reviewing, the 12th Standing Committee of the National People’s Congress released draft amendments to the PRC Anti-Unfair Competition Law (“the Amendments”) for public opinion solicitation. This will be first major amendment to the said law since its release in 1993.

Amendments

Comparing the Amendments to the current Anti-Unfair Competition Law, some of the main issues are:

- Amending the definition of the unfair competitive acts, and expressly discussing various online acts such as “using main part of other’s domain name, website name, webpage, as well as the name and logo of a channel, program, show, which results in people being mislead” and so on (Articles 2 and 6);
- Adding that the State Council will establish a “coordination system for anti-unfair competition work” (Article 3);
- Adding provisions on commercial bribery, especially the recognition of commercial bribery by employees. For instance, it provides that “if employees of an operator uses bribery to obtain trade opportunity or competing advantage for the operator, it shall be determined as behavior of the operator unless the operator has proof to prove that it is the employee’s personal behavior” (Article 7);
- Improving the protection regime for trade secrets, such as adding circumstances of infringing trade secrets by current or former employees, as well as obligations for protecting trade secrets by state personnel and professionals (e.g. lawyers, accountants) during the performance of their duties (Article 10);

In addition, the Amendments deletes some articles existing in the current law, such as dumping (Article 11 of the current Law) and collusion during tendering and bidding (Article 15 of the current Law) and so on as those behaviors are regulated by other laws already, such as the PRC Anti-Monopoly Law, the PRC Tendering and Bidding Law and others.

Business News

Mengniu Dairy suffers loss of RMB751 million Yuan in 2016

According to a recently disclosed annual report of Mengniu Dairy, in 2016, the revenue of the company's main business was RMB53.78 billion Yuan, an increase of 9.7% year on year; whereas its net profit suffered a loss amount of RMB751 million Yuan, which is the first loss since 2009. It is worth of noting that, despite being dragged down by Yashili, its baby milk powder subsidiary which suffered net loss of 320 million Yuan, the main business of Mengniu was actually solid. For instance, sales revenue for liquid milk was RMB48.6 billion Yuan, an increase of 11.19%.

Service sector creates more jobs in China

According to recent reports from the National Bureau of Statistics (NBS), the growing service sector in China has provided more jobs as a result of economic restructuring. It is reported that the service sector employed 43.5 percent of China's workforce in China, which is up from 36.1 percent in 2012. It is also said that private firms have become the main source of new jobs, and small enterprises created more jobs than medium and large enterprises. 13.1 million new jobs for urban residents were created in 2016, while the registered unemployment rate in Chinese cities stood at 4 percent at the end of last year, which is stable.

Tencent becomes 5th biggest shareholders of Tesla

Recently, the Chinese Internet giant, Tencent announced that it was to purchase 5% of shares of Tesla for USD1.778 billion and was to become the fifth largest shareholder in Tesla. The purchased shares are held by Huang River Investment Limited of Tencent.

HNA proposes to take control of Forbes

Hainan Airlines ("HNA") has been in talks to purchase controlling shares of the parent company of Forbes Media, with the price possibly reaching USD400 million. The controlling shareholder of Forbes is the Integrated Whale Media Investments located in Hong Kong, which controls 95% of shares of Forbes.

Li Ning's net profit up almost 44 times

According to Li Ning Company, China's flagship sportswear company, its net profit in 2016 reached RMB643 million Yuan, which increased 44 times year on year.

China and New Zealand to cooperate on "One Belt One Road"

On March 27, 2017, China and New Zealand signed a memo on enhancing "One Belt One Road" cooperation, which is the first cooperation document signed with South Pacific based country under the framework of the "One Belt One Road". It is reported that both countries wished to enhance the regional interconnection, and to promote cooperation in the fields of transportation, economy and trade, agricultural technology, investment, technology innovation, tourism and so on.

Securities regulators may expand scope of mandatory environment information disclosure

According to the Vice Chairman of the China Securities Regulatory Commission, Mr. Fang Xinghai, they are considering to expand the mandatory disclosure of environmental protection information to all listed companies. Currently, it only requires companies and subsidiaries that are published as pollution discharging work units by the environmental protection department to disclose relevant environment information in accordance with laws and regulations.

China seeks to expand e-commerce with Australia

China stated that it seeks to provide a fair competition platform for online sales of Chinese and Australian products, prior to the Chinese Premier, Mr. Li Keqiang's arrival to Australia. It is reported that China will loosen the supervising restriction on online sales of vitamins and other baby products from Australia. According to a statement issued by the China's Ministry of Commerce, some low-valued products for personal use imported through e-commerce will be categorized as a special class, which means that it will eliminate the marking and registration requirements for the online sales of such products.

Nike exposed of false advertisement for shoes in China

In an annual evening program held by the CCTV, it exposed that Nike claimed in advertisement that one of its shoes, Hyperdunk 2008 FTB, possesses patented zoom air, whereas it is found by consumers that the said shoes do not have the advertised air cushion. After purchasing the said shoes which worth RMB 1,499 Yuan, a consumer found that there was no air cushion as it was promoted but only a rubber sole. Thus, the consumer considered that Nike shall compensate three times of the purchased price for false advertisement. Upon exposure, Nike responded that there was a mistake in the description of the Hyperdunk 2008 FTB product, and expressed that they have tried to communicate with relevant consumers. In case of returning the shoes, Nike will accept such return and make the full refund. They will also provide a 25% off coupon for such consumers affected by their errors.

China issues new index of services production

On March 14, 2017, the State Bureau of Statistics issued an index of service production for the first time. It is said that such index could better service the macro decision making, service the enterprises and satisfy the society to observe the development and trend of Chinese service industries. It is reported that the new index grew 8.2% year on year in the first two months of this year, which is 0.1% faster than that of the December 2016.

SAIC launches online complaint platform

On March 15, 2017, the SAIC launched a National Internet Platform of Consumer Dispute Resolution to receive and deal with complaints from consumers. It is reported that upon registration on the platform, consumers may file complaints and report through computers, cell phones, APP, WeChat and so on. Once a complaint is filed, the platform will submit the complaint to the authority with jurisdiction which shall deal with such complaints within 7 working days after the receipt thereof. The consumer may check the process status and results, online.

China to open new FTZ

According to the latest news, China is ready to open seven new Free Trade Zones in Chongqing, Liaoning Province, Henan Province, Shaanxi province, Zhejiang Province, Hubei Province and

Sichuan Province. It is reported that the preparation work for opening FTZ in the said provinces are in the final stages. Once they are established, Chongqing will help with implementation of the country's western development strategy; whereas Hubei Province will build a base for high-tech industries and promote the Yangtze River Economic Belt. Shaanxi Province will diversify trade connections along the Belt and Road Initiative. Also, Henan Province will transform into a major logistics center, while Zhejiang Province will push forward trade liberalization and e-commerce businesses; and Liaoning Province will conduct market reforms to reinvigorate the old industrial heartland.

China offers tax breaks to small companies

According to the Finance Minister, China will implement tax preferential policies to help with the development of small and micro-sized companies. It is estimated that the new tax break policies to be implemented this year may further reduce RMB350 billion Yuan of tax compared to that of the last year. The Finance Minister also mentioned that China will continue to improve the VAT system to reduce the tax burden of small and micro-sized companies.

Chinese enterprise owners feel confident about economy

According to the latest statistics published by the People's Bank of China, in a quarterly research report aimed to 3200 banks and 5000 enterprises nationwide, in the first three months of 2017, the macro economy confidence index of bankers increased to 64.9 whereas the macro economy confidence index of enterprise owners raised to 61.5, which are the highest in the past two and a half years. Such indexes show that they are positive toward to the Chinese macro economy. It is reported that the latest activity data suggested China has a growth in investment and industrial output better than expectation, which means that the Chinese economy had a strong start to 2017.

AIIB adds 13 new members including Hong Kong

The Asian Infrastructure Investment Bank (AIIB) announced that it has approved 13 new applications to become members of AIIB. In the new added members, there are 8 non-regional members which are Belgium, Canada, Ethiopia, Hungary, Ireland, Peru, Republic of the Sudan and Venezuela, as well as 5 regional members including Afghanistan, Armenia, Fiji, Hong Kong and Timor-Leste. The AIIB spoke person expressed that upon adding the new members, the original member share subscription and voting right will be adjusted. It is estimated that China's influence in the international finance will be further enhanced.

Apple to establish two more R&D centers in China

In a statement released by Apple on March 17, it is said that it will establish two R&D centers in Shanghai and Suzhou, which will make Apple's committed investment in China exceed RMB3.5 billion Yuan. Currently, Apple has been operating a R&D center in Beijing. It also promised to build a R&D center in Shenzhen in 2016,

This update is aimed at keeping our clients and partners informed as to the latest legal and business developments in the Greater China region. Whilst every care has been taken to ensure the accuracy of the information contained in this update, it should not be relied upon for any purpose prior to formal legal advice being obtained.