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China Update

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Business News

Top 10 Fastest Rising Brands in China

Chinese brands have claimed nine out of 10 places for fastest growing brands among Chinese consumers according to the fifth annual Brand Footprint report from Kantar World Panel. The report, based on research from 73 percent of the global population, a total of one billion households in 43 markets across five continents, looks at which brands are being bought by the most Chinese consumers the most often.

The top 10 fastest rising brands for Chinese consumers listed as follows:

- No. 10 Xinxiangyin
- No. 9 Liby
- No. 8 Shuanghui
- No. 7 Uni-President
- No. 6 Bright
- No. 5 Haday
- No. 4 Want Want
- No. 3 Master Kong
- No. 2 Mengniu
- No. 1 Yili

Chinese Companies Expand into Foreign Auto Industry Markets

Various Chinese companies accelerated their takeover efforts in the overseas auto industry in the first half of 2017, aiming for a bigger role in international auto markets. Chinese companies made eight overseas deals totaling more than USD 5.5 billion in the first half of this year, compared with nine investments for all of 2016. Tencent Holdings, one of China's well known tech companies, spent USD 1.78 billion on a 5-percent stake in Tesla in March 2017, a move targeting lucrative self-driving vehicles, new energy vehicles and related services. In June, Ningbo Joyson Electronic Corp announced a USD 1.59 billion takeover of the bankrupt Japanese air-bag maker Takata. If finalized, the purchase will be Ningbo Joyson's fourth overseas takeover in two years.

China Cracks down on Speculative Investment Projects

The National Development and Reform Commission (NDRC) expressed China will continue to supervise speculative investment projects in key areas, such as property, hotels, entertainment, cinemas and sports clubs. In December of 2016, the government released a document outlining plans to tighten controls over "irrational outbound investment". The official data showed that China's non-financial outbound FDI plunged 45.8 percent year-on-year in the first half of 2017 to USD 48.19 billion, according to the Ministry of Commerce.

Alibaba Looks at the Telecom Sector

Chinese e-commerce giant Alibaba Group Holding Ltd. is gearing up for expansion in the telecoms sector, as it aims to meet the communication demand of millions of small and medium-sized enterprises across China. The company obtained a license to conduct trial operations of virtual network operator services in 2013. Virtual network operators are resellers of network services from telecom suppliers that do not own the telecom infrastructure. They often offer more diversified services at lower costs than telecom carriers, in the hope of complementing their businesses. Alibaba is closing in on a deal to acquire ZTE's software subsidiary. The deal, which is expected to cost RMB 2 billion to 3 billion for ZTEsoft Technology Co., Ltd., can help strengthen Alibaba's global internet computing business, as it can benefit from ZTEsoft's global client portfolio and relationships with wireless carriers from Europe and Africa. Alibaba is already partnering with China Unicom in low-cost data traffic package services, which have attracted more than 3 million users.

Beijing Sanyuan Foods and Chinese Fosun Group Plan to Buy France's St Hubert

Beijing Sanyuan Foods Co., Ltd. and Chinese conglomerate Fosun Group plan to buy French margarine maker St Hubert for EUR 625 million (USD 733 million). Sanyuan and Fosun said they had signed an agreement with European private equity firm Montagu to acquire Brassica TopCo S.A. and PPN Management SAS, which are controlling shareholders of St Hubert. Montagu acquired St Hubert from Dairy Crest Plc for EUR 430 million in 2012. St Hubert was set up in 1904, and had a consolidated net turnover of EUR 129 million in the 2016 financial year and has 213 employees. It has more than 40 percent market share in France and almost 70 percent in Italy. The proposed acquisition is aimed at introducing healthy and innovative foods into China and is aligned with the government's policy to support and drive technological innovation.

New Amendment for Foreign Investment Industry Guidance Catalogue

On 28 June 2017, the National Development and Reform Commission and the Ministry of Commerce published the new amended Catalogue for the Guidance of Foreign Investment Industries. The new rules were implemented on 28 July 2017. The amended catalogue reduces the scope of restricted foreign investment and improves the investment potential in various industries, including mining, manufacturing and servicing. Further, it formally establishes the standard of Special Administrative Measures for Access of Foreign Investments (Negative List for Access of Foreign Investments) in the foreign invested enterprises laws amended in October 2016.

According to the amended catalogue, foreign investment into the banking sector is subject to the following restrictions:

● A single foreign financial institution, together with its affiliates, may invest in no more than 20% of the shares of a domestic Chinese commercial bank as promoter or strategic investor.
● Multiple foreign financial institutions, together with their affiliates, may invest in no more than 25% of a domestic Chinese commercial bank as promoter or strategic investor.
● Only foreign banking financial institutions may invest in domestic Chinese rural small to medium-sized financial institutions.
● Only foreign commercial banks may be the sole shareholder or controlling shareholder of a foreign invested enterprise bank, while other types of foreign financial institution may invest as non-controlling shareholders.

The above mentioned first three restrictions were included in the previous catalogue and the last one is a codification of the existing rules that can be found in the Administrative Regulations of the People's Republic of China on Foreign-Invested Banks 2014.

Starbucks to Pay USD 1.3 Billion for 1,300 Stores in China

On 27 July 2017, Coffee chain Starbucks Corporation said it would buy the remaining 50 percent share of its East China business from its joint venture partners for about USD 1.3 billion. China is Starbucks' fastest-growing market outside the United States by number of stores. The cash deal will give Starbucks ownership of about 1,300 stores in Shanghai and Jiangsu and Zhejiang provinces, and aligns with its target of operating 5,000 stores in mainland China by 2021.

Guangzhou Kaide Plans to Partner With LG in USD 6.7 Billion Display-Panel Plant

The South Korean home-appliances giant announced on 26 July 2017 that it will build a facility to produce large-panel organic light-emitting diode (OLED) displays in Guangzhou's Economic and Technological Development Zone. LG's official announcement said it was providing 70% of a RMB 15.7 billion (USD 2.33 billion) investment in the factory, but did not specify who will provide the remaining amount. The project will eventually involve a total investment of about RMB 45 billion yuan, or USD 6.7 billion. The display panels will be used in TV screens and electronic billboards. OLED panels are expected to replace LCD panels in the near future as they offer better image quality and have the advantage of being flexible and even foldable. A lack of large-panel OLED production capacity has long caused a supply bottleneck, but LG's new factory is set to increase capacity dramatically.

Legal News

Intellectual Property

Declaratory Judgments for Patent Non-infringement Cases in China

As China becomes a more litigious society, and R&D and manufacturing continues to develop, it is worth looking at how you can deal with claims of infringement, in terms of obtaining declaratory judgements of non-infringements from the Chinese courts.

Article 18 of The Interpretation of the Supreme People's Court on Issues Concerning the Application of Law in the Trial of Disputes over Infringement of Patent Rights which took effect on 1 January 2010, provides that where a patentee sends a warning to others for infringing a patent and where the patentee neither withdraws the warning nor files a lawsuit within one month upon receiving a written reminder in which the person warned or the interested party urges the patentee to exercise his/her patent right, or within two months upon issuing the written reminder, the courts shall accept the case if the person warned or the interested party files a suit for a declaratory judgment for non-infringement. The issue of whether the patentee's act of sending a warning letter to others may constitute a tort should be determined on a case-by-case basis according to *Anti-Unfair Competition Law of the People's Republic of China* and *Tort Law of the People's Republic of China*.

In the case of Beijing People's Higher Court Jing-Min-Zhong Case No. 6 Judgement, the defendant sent warning letters to the Plaintiff and its clients and asserted the manufactures of the products by the Plaintiff and the sale of these products by its clients have infringed the Dependent's Patent No. ZL201010127999.8 on 11 September 2015. The warning letter was solely based on Plaintiff's product photos, not detailed patent infringement analysis. On 13 October 2015, the Plaintiff in reply expressed no infringement and asserted that the acts of the Defendant had damaged its reputation among its clients. The Plaintiff requested the Defendant to withdraw the warning letter or file a lawsuit with a court to resolve the dispute, but the Defendant did not follow the Plaintiff's request. Thereafter, the Plaintiff filed a suit for a declaratory judgment for patent non-infringement with the Beijing IP Court and requested the Defendant eliminate the effects created by the Defendant's improper acts of sending these warning letters.

The Beijing IP Court in the first instance ruled that:

- The Plaintiff's products do not infringe on the patent concerned; and
- The Defendant should publish a statement on its website that the Plaintiff's products do not infringe on the patent concerned for fifteen consecutive days to eliminate the effects created by the Defendant's improper acts of sending these warning letters.

The Beijing People's Higher Court in the second instance, sustained the judgment of the first instance.

TRAB Accepts Use of Trademarks in China Based on Mass Media Reports

In February 2017, the TRAB supported the trademark invalidation action raised by a US company and decided the registration of the trademark "DROPCAM & Chinese characters" should be invalidated. In this case, the TRAB recognized the Petitioner's trademark in China, which had no actual business operation in China, to have a significant degree of influence in China due to relevant mass Chinese media reports, and accordingly found that the disputed trademark constituted a rush registration of the Petitioner's trademark "in prior use and with a significant degree of influence in China", and thereby decided that the disputed trademark shall be invalidated per Article 32 of the Trademark Law.

This is a breakthrough for the TRAB since the Trademark Law proposes that the Petitioner's trademark should be used in China prior to the filing of the disputed trademark. This case demonstrates the TRAB's flexibility and proactive attitude towards preventing malicious trademark filings, which should be welcomed by overseas trademark owners whose trademarks have not entered into the China market but have wide media exposure in China.

The Protection for Intellectual Property Rights for Online Movies, TV Shows and News Articles will be focused on

Each year, the National Copyright Administration announces what areas it will focus on in terms of enforcement. The director of copyright management for the National Copyright Administration has recently expressed that latest national campaign to protect intellectual property rights will focus on online movies, TV shows and news articles. To protect the copyright of movies, TV series and news stories online, the battle will severely strike websites and other platforms, such as cloud storage and social media platforms that spread unauthorized work. The websites, mobile apps and WeChat accounts that publish, repost and spread news articles without authorization, and app stores and app providers that spread works without authorization will be also will be also targeted. Further, it was said that e-commerce platforms will be strictly supervised, banning pirated books, video works and unauthorised electronic publications.

Dispute Resolution/Arbitration

China Establishes Cyberspace Court in Hangzhou

On 26 June 2017, the Central Chinese government approved the establishment of the first cyberspace court in Hangzhou, the capital of China's Zhejiang province and home to many technology companies. The purpose of the court establishment is to cater to the increasing number of internet-related disputes. Compared to general courts, the key features of this newly established Cyberspace Court should be:

● Cases are tried online; and
● The court only hears internet-related disputes.

The jurisdiction of the Cyberspace Court is limited to Hangzhou, and to civil disputes involving online shopping, online debt contracts and online copyright. The Cyberspace Court has jurisdiction to hear the following types of cases:

● Online shopping contract disputes: disputes arising from the signing or performance of a contract where a seller has made a sale offer online and a buyer has accepted the purchase commitment.
● Online shopping product liability disputes: disputes arising from personal injury or property damage caused by defective products bought online, and the buyer is seeking tort liability from the product seller or manufacturer.
● Online service contract disputes: disputes arising from the signing or performance of a contract where internet service providers provide consumers with access to third party services or content services. Disputes relating to the provision of general online services by non-internet service providers are excluded.
● Online loan contract disputes: disputes arising from repayment of loans and interests of financial loan contracts or small loan contracts formed online with financial or small loan institutions.

Disputes arising from repayment of loans and interests of loan contracts not entered into with financial or small loan institutions are excluded.
● Online copyright disputes: disputes relating to the infringement of right of communication through information network of a copyright work. Excluded are disputes that include other non-copyright related claims in addition to the infringement of right of communication through information network of a copyright work, for example, unfair competition.

On 19 July 2017, in collaboration with Chinese telecom company Sina Corporation, the Xishan District Court of Kunming established the first cyberspace court in Xishan, Yunnan province - the Online Court of Xishan District. Core functions of the online court include online mediation, online filing, online payment, online trial, online cross-examination, electronic supervision, electronic services, live broadcast of court proceedings and voice recognition. It enables online dispute resolution and provides litigants with more efficient, convenient and diversified services.

The establishment of the Cyberspace Court is a milestone for China in this digital era and this recent development is another testing ground, demonstrating China's genuine sincerity towards reform. While the Cyberspace Court offers brand owners another option for handling online copyright and e-commerce disputes, they should check the procedures of the Cyberspace Court which currently remain unclear and consider these when strategizing litigation in China.

New International Rules of Chinese Arbitration Association Simplifies Processes

The Chinese Arbitration Association (CAA) adopted the Chinese Arbitration Association International Arbitration Rules 2017 (CAAI Rules) on 1 July 2017. The Rules—which can apply only to arbitrations seated outside of Taiwan—seek to introduce features to address procedural issues associated with having international arbitrations seated in Taiwan, as well as to streamline the process generally.