



MMLC Group 

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China Update

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Legal News

Intellectual Property

China and the U.S. Pledge Closer Intellectual Property Rights Cooperation

Recently in Guangzhou during an annual trade talk between Chinese Vice Premier Wang Yang, United States Secretary of Commerce Penny Pritzker and United States Trade Representative Michael Froman, China and the United States agreed to boost cooperation on their cooperation of intellectual property rights. This agreement involves increased exchanges and cooperation over issues such as network piracy, law enforcement against intellectual property rights infringements, and preventing bad faith trademark filing. Both China and the United States have also agreed to increase cooperation on the enforcement and regulation of food security, on the surplus capacity in the aluminum and steel industries, to work together to battle against illegal fishing, illegal logging and wildlife trafficking, and to provide stronger protection for business secrets to promote innovation and fair competition. Therefore, this annual talk not only has promoted stronger relations between China and the United States, it has stimulated increased protection for intellectual property rights to encourage innovation and economic growth.

Illegal Registration of the Michael Jackson Trademark

In early November, the Beijing Intellectual Property Court ruled Fujian Funson Fashion Corporation Limited as acting illegally when it rush-registered the name of Michael Jackson as a trademark. Triumph International Inc., a wholly owned merchandise licensing company owned by the estate of Michael Jackson, filed a complaint against the Chinese fashion company, and claimed the registration was a malicious action. In return, Fujian Funson Fashion, who had use the trademark 'Michael Jackson' in its promotion and production of cleansing foam products, argued the trademark 'Michael Jackson' was merely a name and did not signify any connection to the singer Michael Jackson.

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Initially in the Trademark Review and Adjudication Board, it was decided in accordance with the Trademark Law of the People's Republic of China that although Michael Jackson had enjoyed prior rights, the death of the singer caused the protection to cease, therefore maintaining the right of the usage of the trademark 'Michael Jackson' as authorised. Therefore, Triumph International brought the case to the Beijing Intellectual Property Court seeking reversal of the Board's decision. Although it was argued that Michael Jackson, being dead, no longer enjoyed rights to his name and Triumph International had no standing to sue on his behalf, the Beijing Court accepted evidence that Michael Jackson's name and likeness still possessed outstanding economic value. Therefore, it was decided that Fujian Funson Fashion sought economic gain when it registered and used the trademark 'Michael Jackson' on their products, which was potentially harmful to the public, as it misled the public into thinking the products were licensed by Michael Jackson himself or affiliated with his company, creating an incorrect assumption regarding the qualities and sources of product and services. The Beijing Intellectual Property Court revoked the Board's decision, showing further its support for the protection of intellectual property rights.

The Manufacturing of Counterfeit Basketballs

In China's Anhui Province, nine people have been arrested for suspected involvement in a counterfeit basketball manufacturing and online sales network covering Anhui and its neighbouring Jiangsu Province. In this scheme, it is suspected workers were hired to produce basketballs illegally carrying famous sports brands such as Nike, NBA, Adidas, and Spalding, which was then sold via online platforms such as Taobao or WeChat. The bust, which was carried through the cooperation of the police force from Anhui, Jiangsu, Shaanxi, Heilongjiang, Henan, and Guangdong provinces, involved the seizure of 8,300 fake basketballs, with a value of approximately RMB 50 million. Therefore, although China has increased its intellectual property protection and enforcement, its fight against intellectual property infringement is further challenged with the rise of e-Commerce.

Court Uses Brand Owner's Calculation of Counterfeiter's Illegal Turnover

Recently, the Supreme People's Procuratorate and the Baiyun District Court have adopted the opinion of the brand owner in a criminal case regarding the calculation of a trademark counterfeiter's illegal turnover. In the case, a well-known German garden tools company found a Guangzhou factory counterfeiting its registered trademark, and after a thorough investigation, requested the police of the Baiyun District and the Guangzhou City to raid the counterfeiter's factory and warehouse. The investigation revealed large amounts of finished counterfeit products, which were seized along with delivery records and sales receipts conducted by the Guangzhou factory.

Although the total value of fake goods manufactured and sold by the counterfeiter amounted to RMB 170,000, the brand owner was aware the delivery records indicated the sales volume exceeded RMB 1 million, and was further aware of the counterfeiter's confession that the sold products bore the counterfeited trademark. Therefore, the brand owner submitted a written opinion to the prosecutor requesting for the value of the sold products documented in the delivery records calculated as part of the illegal business turnover. This caused a large gap between the illegal turnover calculations made by the police during the raid (RMB 170,000) and that proposed by the brand owner (RMB 1.4 million). Consequently, the Procuratorate and the Court adopted the brand owner's calculation, and the counterfeiter was sentenced to three years imprisonment and fined RMB 650,000.

Disney Receives Special Trademark Protection

In the period towards the construction of a Disneyland theme park in Mainland China, China has announced its plans to give special trademark protection to Walt Disney Company. This involves authorities carrying out a yearlong campaign to track down Disney counterfeits by the State Administration for Industry and Commerce (SAIC) in response to concerns over fake products damaging the country's reputation, as well as creating emergency teams to assist in protecting Disney trademarks, therefore promoting the development of a fair and competitive market and protecting China's international image for safeguarding intellectual property rights.

Disney has actually been a major target of counterfeiting for many years ... According to the state-run Xinhua news agency on November 25, the Shanghai Municipal Administration for Industry and Commerce (SAIC) fined five hotels which were located in Pudong District where the Disney theme park is due to open next year, for using the "Disney" trademark on their signs and websites without authorization. According to the SAIC, in hope of cashing in on the resort and attracting customers, these hotels did not only infringe trademark rights, but also suspected of unfair competition. It is said that the hotels were fined a combined 100,000 Yuan (\$22,000).

China's Copyright Compliance for Cloud Storage Services

On 20 October 2015, the National Copyright Administration of China (NCAC) published the Circular on Regulating Copyright Compliance in Online Storage Service. Specifically, the Circular specifies the obligations of service providers in providing cloud storage services with more elaborated and operable requirements on the basis of relevant provisions in the Chinese Copyright Law. The obligations of the service providers are three-pronged, including obligations such as:

- i. concentrated efforts with copyright holders: service providers must clearly indicate on the front page of their online storage platforms how copyright holders may report on incidents of infringement, and deal with the matter promptly upon receiving such reports;
- ii. self-initiation: service providers should take effective actions to prevent the upload, storage and sharing of infringing or pirated works, and refrain from facilitating illegal sharing of other works; and
- iii. user management: service providers must keep record of users' registration information, and inform users of their duty to respect copyright rights and the existence of preventative measures such as blacklisting the offenders or the suspension or termination of services.

The regulation of copyright compliance in cloud storage services is one of the five main tasks under Operation Swordnet 2015, which is a nationwide initiative of fighting against Internet copyright infringement organised by the NCAC, the State Internet Information Office, the Minister of Industry and Information Technology, and the Ministry of Public Security. Therefore, China is seeking to further enlarge its intellectual property protection and has taken positive steps to ensure thus.

U.S. Judge Imposes Penalty on Bank of China for Withholding Records

On November 24, a U.S. judge held that the Bank of China must pay a fine for refusing to turn over account information of Chinese entities accused of selling counterfeit luxury goods. In a suit against the Chinese entities brought by subsidiaries of luxury goods conglomerate Kering SA, including Gucci Group, Bottega Veneta and Yves Saint Laurent in 2010, the plaintiff subpoenaed Bank of China for records of accounts of the Chinese entities which were alleged counterfeit sellers, but the Bank argued that it could not turn over the records without violating Chinese privacy law, and the New York court had no jurisdiction over it. However, the judge did not agree

and said that he would likely decide on the amount of the penalty by the end of November. This is a welcome development in the fight against counterfeits.

Health

Departments Work Together to Combine Medical and Health Services

Recently, the combined effort of the General Office of the State Council, the Ministry of Civil Affairs, the National Development and Reform Commission, the Ministry of Finance, the Ministry of Human Resources and Social Security, and four other departments on the Advancing the Combination of the Medical and Health Service and Elderly Care Service produced the Guiding Opinions of the National Health and Family Planning Commission. Amongst others, these Opinions will indicate key tasks in five areas, including:

- a. the establishment and the improvement of the cooperation mechanism of medical care and health institutions and elderly care institutions;
- b. the support of elderly care institutions in launching medical care services;
- c. the expansion of medical care and health services to communities and households;
- d. the construction of social forces to set up institutions which combine medical care and health services and elderly services; and
- e. the encouragement of medical and health institutions to develop integrated elder care services.

International Trade

Preventing Infant Formula Smuggling

A draft law proposed in Beijing seeks to prevent the stripping of infant formula from Australian supermarket shelves for resale in China, therefore aiming to tighten regulations on imported food sold online. Currently, foreign food products sold via China's booming e-Commerce sector are exempted from local regulations, but the draft law aims to close this loophole to bring the e-Commerce sector in line with traditional retailers. Therefore, this involves more stringent checks at mainland ports, and a requirement for Chinese labeling and tougher food safety protocols.

Not only does the draft law prevent parallel traders from using informal supply chains and buying products such as infant formula, vitamins and cosmetics in Australia and re-selling it online in China, the draft law will also potentially affect smaller Australian companies lacking a local distributor or central operations in China. The draft law is the combined result of the rapid growth of online sales and the overwhelming complaints of fake goods sold online, therefore it aims to provide better consumer protection and provide Australian businesses better control over their brand sales in China. In the long run, the draft law will encourage businesses to establish an entity in China and to invest in the marketing and distribution of their products, as well as standardize the supervision and administration on the safety of foods imported via cross-border e-Commerce.

China Cracks Underground Bank Found in China

In China's combat against corruption and control of capital outflows in 2015, it has cracked China's biggest yet 'underground bank', revealing USD 64 billion worth of illegal foreign exchange transactions. In this latest battle, over 370 people have been arrested or are facing lawsuits or some other punishment, and more than 3,000 bank accounts have been frozen by the authorities. Therefore, this case highlights the nation's struggle to control capital outflows, which if left unchecked could lead to potentially significant consequences, such as sending the real-estate

prices soaring from Vancouver to Sydney, when Chinese citizens are officially limited to only converting USD 50,000 of RMB per year. Therefore, the Chinese government is highly invested in preventing illegal capital outflows in their efforts to stabilise the RMB.

Privacy

The Leakage of Personal Information by Chinese Courier Companies

Recently, unveiled draft regulations reveal potentially the fining of Chinese courier companies up to RMB 50,000 and license revocation for the leakage of customers' personal information. In the draft's provisions, it stipulates for the destruction of waybills and the prohibition of the sale, leaking and the illegal provision of customers' personal information by express companies. Further provided under the draft, items that could endanger national security, social stability and public interest are banned from delivery, delivery service staff is required to check goods before packaging, and the mishandling of packages causing damages may incur fines up to RMB 50,000 and the possibility of suspension of the company's operations. Therefore, China has improved its regulation of such services in light of the increasing popularity of courier services to ensure the protection of personal information and the security of delivery services.

Life Sciences

Pilot Scheme to Ease Drug Approvals

In an attempt to stimulate innovation in China's pharmaceutical sector, the China Food and Drug Administration has launched a three-year pilot scheme to loosen approvals for new drugs. Set to take place in ten regions, the pilot scheme will allow research and development bodies to seek drug approvals, which are currently restricted to drug manufacturers. Because the current rules make it difficult for smaller, research-based firms to bring new drugs to the market, as they need to invest in expensive manufacturing plants before seeking approval, the scheme will assist in creating stronger local firms to rival global drug-makers such as Pfizer Inc and AstraZeneca Plc in the long term. Therefore, global drug-makers in China's pharmaceutical market are now facing increased competition from local rivals in the medicine market, which is estimated by IMS Health to hit USD 185 billion by 2018. In this scheme, it is evident the Chinese government is focusing its efforts in assisting first its domestic businesses to further its position in the global economy.

Advertising

Apple's iPhone 6s Slogan Claims to be in Violation of New Advertising Law

According to a recent report from Sina News, a Chinese lawyer initiated a legal action against Apple and China Mobile for their slogan on the basis of new advertising law. The involved slogan is "The only thing that's changed is everything" for Apple's iPhone 6s, which is actually not that different from the iPhone 6. It is reported that the said lawyer sought compensation of about \$3,000 by citing the new advertising law that prohibits companies from using misleading or false words, and a fine of around 200,000 yuan (\$31,000) may be imposed on those who violate this law. The said new advertising law came into effect on September 1, 2015, and it prohibits companies from using superlative terms such as "the best" and "the most".

Business News

China Introduces Pro-Consumption Measures

China has introduced a number of measures aimed at encouraging consumption and stabilizing the struggling economy, including importing more advanced equipment and daily consumer goods, eliminating or reducing tariffs on the imports of these products, and opening up its service sector to foreign investors by adopting the pre-establishment national treatment plus negative list approach. Furthermore, the measures include making it easier for overseas shoppers to obtain tax refunds, allowing foreigners to visit for more than 72 hours without a visa, and developing industries such as 3D printing, robotics, gene engineering, wearable devices, smart home appliances, and digital media as targets for development. Therefore, China has acknowledged the importance of consumption and innovation-drive expansion, and is accordingly implementing relevant strategies to increase economic growth.

WeChat's Expansion to Reach Twenty Countries

Tencent Holdings Limited, a Chinese investment holding company whose subsidiaries provide media, entertainment, Internet and mobile phone value-added services, is expanding its WeChat mobile payment system to stores in more than over twenty countries to take advantage of the growing purchasing power of Chinese outbound tourists. In this process, foreign stores holding a trading license and a website may apply to be a part of the WeChat payment ecosystem, therefore allowing Chinese outbound travellers to pay bills by scanning the quick-response codes on WeChat, which will automatically convert RMB payments with a partnered bank into the relevant foreign currency.

WeChat is currently one of the most popular messaging applications in China, with 650 million regular users, which 60% of employs the payment tool. The payment system supports transactions in nine different currencies, such as the euro, the dollar, the pound, and the yen. Therefore, it is an important aspect of travelling, especially as visitors from Mainland China spent approximately USD 165 billion on international tourism, which accounts for more than 10% of global assumption abroad. Furthermore, Alibaba Group Holdings Limited, a major rival of Tencent, will also be expanding its international presence through its mobile payment tool Alipay by offering similar services at more than 30,000 stores in South Korea, Singapore and Hong Kong. Therefore, due to the increased popularity of mobile payments, China's giant companies will have opportunity to grow internationally.

Alibaba to Purchase Stake in Hong Kong's English Language Newspaper

Alibaba Group Holding Limited, a Chinese e-Commerce company providing consumer-to-consumer, business-to-consumer, and business-to-business sales services via web portals, is currently in the process of buying a stake in the South China Morning Post (SCMP) newspaper, which is the most widely circulated English language newspaper in Hong Kong. The completion of this deal will see Alibaba making another successful investment in media, especially after its recent bid for Youku Tudou, the video sharing website seen as China's version of YouTube, and financial news provider Yicai. Furthermore, the SCMP Group contains other businesses such as magazines and printing, therefore Alibaba, whose ambition reaches far beyond e-Commerce, will be further advantaged if the deal is completed.

The Construction of Nuclear Plants in Argentina

In a deal worth up to USD 15 billion, China will finance and build two nuclear plants in Argentina, which will further underline its continued presence in Latin America. In a series of projects to stimulate economic growth, the deal takes advantage of China's homegrown atomic technology by offering cheap technology and generous financing, and follows from China's move in October 2015 to take a one-third stake in a French-led project to build the first in a new generation of UK nuclear plants.

In this agreement with Argentina, which was signed in Turkey during the G20 meetings, China will provide major financing for the two nuclear plants, as well as provide construction by its state-owned China National Nuclear Corporation in cooperation with Argentina's state-owned Nucleoelectrica. Therefore, this is another project in a series of projects aimed at stimulating China's economic growth through the investment of foreign projects.

China Doubles Margin Requirement for Equities

In a bid to check volatility, China has moved to contain leveraged wagers on its stock market by cutting half the amount of borrowed money investors can use to buy shares. Margin requirements will increase to 100 percent from 50 percent as of the 23rd November, 2015, which means an investor with RMB 1 million in their account is limited to borrowing another RMB 1 million from a broker to purchase additional shares, whereas previously they were limited to RMB 2 million. In the long run, this measure will assist in de-risking, or taking down, some of the inherent volatility in the market.

The Prioritization of the China Free Trade Areas

Recently, the Chinese government has vowed to prioritize its network of its free trade areas (FTAs), therefore it will take such steps as necessary to implement its FTA strategy while balancing other incidental issues such as maintaining national security. This involves building a high-standard FTA network focused on neighboring countries, as well as countries along China's Belt and Road Initiative, which is the Silk Road Economic Belt and the 21st Century Maritime Silk Road aimed at reviving the ancient trade routes. Currently, China has signed fourteen FTAs involving 22 countries and regions, and is in the process of negotiating the construction of several new FTAs, such as the China-Japan-ROK FTA, the Sri Lanka FTA, and the Regional Comprehensive Economic Partnership (RCEP), which is a free trade pact involving 16 countries.

In the expansion of the FTA network, priorities will be set on making goods and services trade more open, relaxing investment access rules, promoting trade facilitation, pushing forward rule-making negotiations and enhancing economic and technological cooperation. Therefore, by extending China's FTA network, the nation will raise its international competitiveness as well as further and safeguard its interests.

Chinese Leading Wine Producer Buys into French Chateau for \$3.5m

Yantai Changyu Pioneer Wine Co Ltd, a leading Chinese wine producer, has bought a 90 percent stake in the Bordeaux-based Chateau Mirefleurs for 3.33 million euros (\$3.54 million). It is reported that this deal will allow Changyu to gain Appellation d'Origine Contrôlée, or controlled designation of origin – a quality certification granted to certain French wines, cheese and agricultural products. According to Changyu, it was just the latest step in its expansion. It has been looking at more chateaux of this quality and character in Bordeaux and other areas of France, as well as main wine-producing countries including Australia and Chile.

Issuance of Group Standards for Robots

At the World Robot Conference 2015 in Beijing, the China Association for Science and Technology published four standards for industrial robots, which will apply to three different kinds of robots, including the stacking robot, the wheeled robot and the electronic belt scales. The three-day conference, which was hosted by the Association, the Beijing municipal government and the Ministry of Industry and Information Technology was aimed at boosting the development of the robotics industry within China. It was recognized technological innovation is a driving force in the development of the robotics industry, therefore standards play a crucial role in promoting new technologies and is yet another step in securing a common language for international technological exchanges.

China's Sports Industry Blooms as Fitness is Encouraged

In an attempt to counteract decades-long of over-indulging on food, cigarettes and booze, the Chinese government has revealed a new aim to build a RMB 5 trillion sports industry by 2025 to counter the increasing number of cases of diabetes, strokes and cancer epidemics. Already dominant in badminton and table tennis, this involves having its citizens enter in mass sporting events, such as open water swims and triathlons. For example, Wisdom Sports Group plans to triple the number of marathons it will hold in China; therefore it expects an increase in the number of participants to go up to 10 million. Incidentally, this will also expand sales for sports companies such as Nike Inc. and Dalian Wanda Group Company. It has been predicted the annual revenue of athletic footwear and apparel in China will reach USD 6.5 billion in 2020, and China's sports industry will expand more than 19 percent annually. Therefore, this combined result, where the citizens of China increase their fitness levels while boosting China's sports clothing industry, will assist in improving the lifestyle in China and increase its economic growth.

China's Service Trade Volume Hits a New Record

China's service trade volume has hit USD 495.33 billion in the first three quarters of 2015, showing an increase of 15.9 percent on a year-on-year basis. This is due to China deploying more resources and manpower to develop its fast-growing modern service industry, as well as its fast-growing insurance, culture, telecommunication and information service sectors, which have accounted for 14.6 percent of China's foreign trade volume in the first three quarters of 2015. Furthermore, the export of intellectual property rights, culture and entertainment exports grew by 80% and 53% year-on-year between January and September, therefore with a total trade volume of USD 107.36 billion, the service business in Shanghai has taken the lead of China's service trade up by 16.3 percent.

Manchester Airport Increases 25 More Long-Haul Routes Led by Air China

Manchester Airport has announced its plans to support 25 more long-haul routes after Air China Limited became its latest major carrier to seek flights to the biggest British hub outside London. The airport currently has a catchment of 22 million people within two hours' travel, and has achieved a rolling 12-month passenger tally above 23 million for the first time in its 77-year history. Therefore, as the only leading British airport with two runways other than London Heathrow, Manchester is operating at half its capacity and is able to support 20 to 25 more long-haul destinations based on current demand. Consequently, Air China applied to the Civil Aviation Administration of China to serve Manchester from Shanghai four times weekly starting in March 2016 with Airbus Group SE A330 jets, which will further expand its horizon as well as help Manchester Airport reach its full potential.

UnionPay and Apple Reach Apple Pay Agreement for China

China UnionPay Co. and Apple Inc. are reported to reach a preliminary agreement to introduce Apple Pay in China through UnionPay's point-of-sales network. Although the agreement is yet to be finalized in details, this potential agreement is expected to benefit both parties—Apple's mobile-payment system may help UnionPay and Chinese banks improve their competition against third-party payment service providers, such as Alibaba Group Holding Ltd. and Tencent Holdings Ltd; whereas it offers Apple an opportunity to profit from a market where mobile-payment transactions jumped 134 percent to 22.6 trillion yuan (\$3.5 trillion) last year. However, some Chinese banks are concerned about fees charged by Apple Pay. It is reported that Apple Pay charges 0.15 percent of the value of each purchase made through its system, out of the 2 percent fee paid by merchants in U.S, which would be too expensive in China.

Small Businesses Receive Multibillion-Dollar Tax Cuts in China

In its attempt to further mass entrepreneurship and encourage innovation, the Chinese governments have imposed policies to effectively cause Chinese firms to receive tax cuts totaling RMB 237.5 billion in the first three quarters of the year. By slashing the corporate income tax rate from 25 percent to 15 percent, the State Administration of Taxation have reported millions of businesses seeing their taxes reduced, with approximately RMB 96.5 billion of taxes reduced in the high-tech sector for example. Furthermore, tax exemptions and breaks on small enterprises reached RMB 73.3 billion, and tax cuts designed to encourage spending on research and development totaled RMB 44.4 billion. Therefore, in the face of economic slowdown, China is taking measures to encourage entrepreneurship and innovate to generate and create new jobs and improve the skill set of its citizens, with the goal of ultimately increasing economic growth.

Tax Cuts Causes an Increase in China's Auto Sales

After the Chinese government imposed a cut on the car-purchase tax, China's automobile sales increased, benefitting automakers such as the Great Wall Motor Company. While wholesale deliveries of sedans, SUVs and multipurpose vehicles increased by 13% to 1.94 million vehicles in October, Chinese carmakers outperformed the market with a boosted share of sales by 2.1 percentage points in comparison to 2014. Therefore, the effect from the purchase sales tax cut has been positive and will assist China in stimulating economic growth.

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.