



MMLC Group 

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China Update

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2 June 2015

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Business News

Enforcement of Environmental Audits

Chinese officials who are normally assessed and rewarded according to economic growth will now be answerable for environmental progress, in response to the Premier's resolution to take a firm and unrelenting approach to ensure blue skies, clear waters and sustainable development. China's State Council has issued instructions on improving the country's stressed ecology by 2020, therefore holding Chinese officials accountable for the air, water, and soil in areas under their control, including being subject to environmental audits, and those who have caused severe damage to the environment to be denied promotion and held accountable. China's safeguarding of the environment still lags behind its economic status, with major problems including limited resources and severe pollution becoming major bottlenecks for sustainable growth, therefore the government has declared a war against pollution and seeks to strike a balance between growth and the environment.

Alibaba-Backed Internet Bank

China has approved the opening of an Alibaba-backed Internet bank 'MYbank' in the latest development of a pilot program to bring in private players in the State-dominated sector. MYbank will center on financial services for small and micro business, as well as online consumers through the Internet platform, and will target financial products for deposits below ¥200,000 and loans of less than ¥5 million. MYbank is one of five private banks approved, including Tencent-backed Webank and Wenzhou Minshang Bank Co Ltd.

Economic Reports Signals Lack of Growth

China's economy has showed little evidence of acceleration from the beginning of the second quarter, with slower lending and investment data signaling the need for more in order to shore up

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growth. Industrial output rose 5.9% in April from a year earlier after a 5.6% gain in March which was the weakest since 2008, and fixed asset investment rose by 12% which was the least in almost 15 years, therefore illustrating the economy's slowing growth. While the People's Bank of China have actively taken steps such as freeing up more bank deposits for loans, and enforcing two interest-rate cuts before April, these were insufficient to stoke a rebound after the first quarter or drive a meaningful growth. The People's Bank of China will be providing further stimuli to assist the economy and to maintain China as the world's second largest economy.

China's Interest Rates

China's national central bank has cut interest rates for the third time since November to ensure China's stock markets keep running and in response to warnings that stock valuations were too high. The People's Bank of China unveiled a 25 basis point cut to its deposit and lending rates to support growth in China, especially since growth slowed to a six year low of 7% in the first quarter, and there are aims, which are supported by the latest round of policy easing, to ensure the government meets its full year target of 7% growth. The slowing growth is due to a number of factors, including CPI's fall to 0.2% on a monthly basis, the producer price index falling 4.6% over the year, and disappointing rail freight and port shipments data. Therefore, in order to aid and support growth, the government has also lowered the reserve requirement ratio in a bid to spur lending, but in order to ensure overall success, they will have to consider long-term reforms as opposed to merely short-term and instant mechanisms.

Private Investors Invited to Assist in \$318 Billion Worth of Projects

China's state planning agency have released a list of approximately 1,043 proposed projects totaling \$317.75 billion in sectors such as transport, water conservancy and public services, and have further invited private investors to help fund, build and operate the projects. Therefore, in order to respond to the decreasing economic growth, China is turning to public-private partnerships to fill a widening funding gap as Beijing clamps down on traditional off-balance sheet borrowing methods used by local authorities, and to encourage and guide social capital into the provinces, autonomous regions and municipalities.

Tech Code to Bring Overseas High-Tech to China

Tech Code, a leading high-tech business developer in Beijing, will be setting up ten centers in Beijing as well as overseas, including China's large cities such as Beijing, Shanghai, Shenzhen, and countries including South Korea, Israel and Germany, in an attempt to identify and develop world class technologies that can be industrialised in China. Tech Code, as a platform for worldwide resource integration, specialises in offering services to young enterprises for high-tech start-ups to assist in the growing and developing of new markets, and seeks to enhance China's economic growth by supporting entrepreneurship and innovation. Therefore, Tech Code has successfully introduced many high-tech projects to China in relation to mainly bio-pharmaceuticals, big data, cloud platform and smart hardware. China has become a nation of innovation through big players such as Tech Code, Legend Star, and The Innovation Works working to increase the global perspective of China and further enhance entry into the overseas market.

Foreign Technology Firms Launching R&D Centers

Foreign technology companies such as Cisco Systems Inc., SAP AG and Fujitsu Ltd are moving into second-tier cities, including Suzhou, Hangzhou and Nanjing, and developing research centers in order to attract the right staff at a lower cost and local industrial support. Also, the key

attractions for foreign companies include China's talent pool and a major supply chain to support the founding of an innovation base, as well as the supply of low-cost land, tax cuts and human resources.

China's Factories Busier in May, Offering Relief to Investors Amid Slowing Economy

Growth in the China's giant factory sector edged up to a six-month high last month but export demand shrank again, prompting companies to shed jobs and keeping alive worries about a protracted economic slowdown, a government survey showed on 1 June. In a sign that the nation's worst downturn in at least six years is hurting its services companies, too, a similar survey showed growth in that sector slipped to a low not seen in more than five years. Services have been one of the lone bright spots in the mainland economy in 2014. The muted reports reinforced the view that the authorities would have to roll out more stimulus in coming months, despite having cut interest rates three times in six months.

China Signs Biggest Free Trade Deal with S Korea

China and South Korea signed a bilateral free trade agreement on 1 June, the largest bilateral FTA deal for China in terms of volume. Under the agreement, China will abolish tariffs on 91 percent of all South Korean products within 20 years, while South Korea will eliminate tariffs on 92 percent of all goods from China. The countries began talks in May 2012 covering 17 areas, including trade in goods and services, health care, entertainment, investment and trade rules, as well as e-commerce and government procurement.

Legal News

Intellectual Property

China Plans Software Guidelines

In an attempt to enhance China's ability to keep safe information and data, the government has been working on a five-year software security guideline to safeguard the State's secrets and data in key industries, with a focus on the financial sector and applications used by the government departments and state-owned enterprises. While this may be a further hurdle for overseas vendors, China is one of the largest software manufacturers in the world with the industry annual revenue expected to exceed ¥10 trillion by 2012, therefore it has a responsibility to provide adequate safety measures for software and data protection.

China's Application for International Patent Increased Fastest in 2014

The World Intellectual Property Organization released the latest report on March 19, in 2014 Chinese companies submitted a total of 25,539 international patent applications in the framework of "Patent Cooperation Treaty" (PCT), with an annual growth rate of 18.7%, which is the only country with double digit growth in the world. According to statistics, the United States remains the largest country with PCT international patent applications, with 61,492 in 2014, accounting for 28.7% of the global amount, followed by Japan with 42,459, accounting for 19.8%, and China ranked third, accounting for 11.9%. China's Huawei Technologies Co., Ltd. applied for 3442

patents, becoming the largest applicant in 2014. Qualcomm of the U.S. ranked the second, and China's ZTE ranked the third.

China Supreme Court Released 2014 White Paper on China IP Protection

On 20 April 2015, China's Supreme Court released 2014 White Paper on Intellectual Property Protection by Chinese Courts. According to the White Paper, Chinese courts received 133,836 and concluded 127,129 IP related cases during 2014, with respective increase of 19.52% and 10.82% than the previous year. Administrative litigation cases had the sharpest growth of 243.66%, largely due to the implementation of the amended China Trademark Law. The numbers of administrative litigation cases concerning trademark reached 9190, taking up 92.67% of the total administrative litigations at the first instance.

China Publishes Guidelines for Applying Anti-monopoly Laws to IP

China recently published its Regulations on the Prohibition of Conduct Eliminating or Restricting Competition by Abusing Intellectual Property Rights which come into force on 1 August 2015. The Regulations are aimed at anti-competitive abuses involving the use of intellectual property. These are the first comprehensive statement of antitrust laws in relation to intellectual property rights in China. The Regulations do not make major changes in Chinese law but clarifies how the law will be applied. Below are some key provisions.

- IP Licensing - Companies with dominant power in a relevant market are prohibited from licensing their technology under specified terms, absent valid reasons. Problematic licensing clauses include non-competes, no-challenge clauses, and exclusive grant-backs from licensees for improvements they make to the licensed technology.
- Refusal to License - The owner of an IP right (such as a patent) that is deemed an "essential facility" for a particular market must agree to license it under reasonable terms.
- Setting Standards - intellectual property rights should not be used in an anti-competitive manner when industries are setting standards for the interoperability of technology.

China Regulates Copyright in Network Reproduction

The National Copyright Administration of the PRC (NCAC) to promulgate the Notice on Standardization of Network Reproduction Copyright Order on 17 April 2015, aiming to promote the convergence of traditional and new media, and encourages the newspaper industry and the Internet media to operate in good faith. The notice clarifies that a statutory license shall not apply to network reproduction. The Internet media, unless otherwise stipulated by laws and regulations, when reproducing the work of others shall comply with the relevant copyright laws and regulations, obtain license from the copyright owners, pay the royalty and indicate the author's name and the title as well as the source of the work. Reproduction of work between newspapers will not need to obtain a license from the author provided royalties are paid, but reproduction of work between newspapers and the Internet media, or between the Internet media, will require a license from the author. The Notice is significant to those authors and newspapers whose rights are violated by online infringements, and who can now seek recourse through a legal basis.

China's Copyright Law

The National Copyright Administration of the PRC (NCAC) promulgated the Notice on Standardisation of Network Reproduction Copyright Order on 17 April, 2015 in order to encourage the legal and business integrity of the press and the Internet media, and promote the establishment of a sound copyright cooperation mechanism to regulate over network reproductions. The relevant articles are as follows:

- (1) the Internet media, unless otherwise stipulated by laws and regulations, when reproducing the work of others, shall comply with the relevant copyright laws and regulations, obtain license from the copyright owners and pay the royalty and indicate the author's name and title as well as the source of the work, and further shall not prejudice the interests of legally entitled copyright holders (Article 1);
- (2) Article 32, paragraph 2 of the Copyright Law, which states except where the copyright owner has declared that reprinting or excerpting is not permitted, newspapers or publishers may, after the publication of the original work, reprint the work or create abstracts, provided remuneration is paid to the copyright owner as prescribed in the regulations, is expounded in Article 2 of the Notice by applying it to the reproduction of the work between newspapers so that newspapers involved in such reproduction will not need to obtain a licence from the author provided royalties are paid (Article 2);
- (3) the Internet media is prohibited from making substantial changes when reproducing the work of others, and is also prohibited from distorting or mutilating the title and the intent of the work when making amendments (Article 3);
- (4) merely factual news, defined as news on current affairs reported by newspapers, periodicals, radio, television and many others, are not protected under the copyright law but works such as news, communications, close-ups, and reports containing the copyright owner's original creation are protected, therefore the those using the Internet media will need to obtain a license from the copyright owner and further provide payment of royalties (Article 4);
- (5) newspapers may enter into license agreements with copyright owners, which stipulate the type of rights, the geographical area, the period of the license, the remuneration standards and methods, and the liability of breach, and which the Internet media can obtain a licence to reproduce subject to the payment of royalties (Article 5);
- (6) newspapers may enter into agreements with their employees acknowledging the ownership of the employee's service works, and which the Internet media can obtain a licence to reproduce subject to the payment of royalties (Article 6);
- (7) newspapers and the Internet media may establish and improve the copyright management system, which may contain a copyright works repository, an ownership information database and a license management system (Article 7);
- (8) the encouragement of the traditional and Internet media to establish a network reproduction cooperation mechanism by entering into copyright licensing agreement, the strengthening of the review of copyright procedures, the joint establishment of a reasonably royalty payment system, and the further improvement of a scheme for work authorisation trading (Article 8); and
- (9) the encouragement of all copyright administrative management departments to increase Internet media copyright supervision and support of industry organisation to play an active role in promoting copyright protection, copyright trading and other similar rights to eliminate unauthorised reprints and any illegal distributions (Article 9).

Although such implementation will add considerable costs to provide for negotiations with copyright owners and payment of royalties, this is a significant move so as to provide for the previous unequal situation where Internet media prevailed over the traditional media. Furthermore, it adjusts and balances the position between parties and provides recourse through a legal basis.

Singapore and China Agreement on Trademark Cooperation

The Intellectual Property Office of Singapore (IPOS) and China's State Administration for Industry and Commerce (SAIC) have signed a Memorandum of Understanding (MOU) on trademark cooperation to enhance exchanges on trademarking matters such as registration, examination practices, protection and enforcement. This includes developing capacity-building activities such as training on trademark examination and dispute resolution proceedings, and the exchange of information and best practices related to trademark registration and protection. Therefore, the MOU further strengthens the cooperation and coordination between China and Singapore to provide support and protection for trademarks owners, as well as increase the linkage between the two countries and their trademarks and brands, ultimately facilitating each countries' effort to expand their operations.

Fine of RMB 1.93 Million for Three-Dimensional Trademark Infringement

The Shanghai AIC revealed that the package of Rorrero Chocolate produced by the Shanghai Golden Monkey Food Co., Ltd counterfeited Ferrero S.P.A.'s registered trademark, which is protected through registration of the three-dimensional mark for its unique packaging, therefore amounting to trademark infringement. The penalty enforced here, a fine of RMB 1,936,784.85, and an order to confiscate all infringing merchandise, is the highest seen so far by the Shanghai AIC for trademark infringement cases.

Market developments have dictated the actions of companies to be more aware of the brand, and focus solely on basic trademark elements such as words, numbers and graphics, therefore ignoring three-dimensional graphics or sound trademark elements, especially because the review procedures for an application of a three-dimensional design is more cumbersome than most.

Generally, companies may protect their packaging through registration of three-dimensional trademark or a design patent, which are distinctively different from each other:

- (1) a three-dimensional mark refers to a trademark and possesses a high requirement of recognition with consumers being able to easily identify the source of the goods or services, whereas a design patent refers to a type of shape which emphasizes on design aesthetics and application with consumers gaining a better user experience through product appearance;
- (2) the scope and time frames are different, in that a three-dimensional mark and its designated goods will be protected under the Trademark Law for a period of ten years and the use of an identical or similar mark by another will constitute an infringement, whereas a design patent protects only the drawing for a period of ten years, in which it will expire when the patent is released into the public; and
- (3) the review for a three-dimensional mark is stringent but the rights for the mark is stable, whereas there is no substantive examination or review for a design patent therefore its rights are less stable because of the difficulty on its determination and identification of infringement.

Therefore, Ferrero S.P.A was able to successfully defend their trade mark through its registration of its three-dimensional mark, illustrating the importance of knowing what protection suits each product.

WeChat Trademark Dispute Accepted by Higher Court

On 5 May, the Beijing Higher Court officially accepted the second instance case on the trademark WeChat dispute between Tencent Inc. (Tencent) which developed the mobile phone software WeChat and Trunkbow Asia Pacific (Shandong) Co., Ltd. (Trunkbow) which filed the WeChat trademark first. On 11 March, the Beijing IP Court issued its first instance judgement, supporting the Trademark Review and Adjudication Board's decision to refuse to register the trademark applied by Trunkbow in class 38 on the ground its application violated Item 8, Paragraph 1 of Article 10 of the Trademark Law which provides that the trademark shall not cause confusion among its consumers and it shall not have an unhealthy influence on the public, even if Trunkbow filed the application to register the WeChat trademark two months before Tencent publicly released WeChat 1.0 in January 2011.

At first instance, it was held both parties applied for and used the WeChat trademark without knowledge of the other's use. Although Trunkbow completed a 'WeChat system' there was no evidence that the trademark was used in a business context and known to the public, whereas there was evidence supplied by Tencent that its WeChat instant message service application was launched and highly successfully with users reaching more than 800 million by November 2014, therefore gaining high visibility and influence in the market as consumers associated the WeChat trademark with the instant message service application.

Therefore, deeming Trunkbow's the WeChat trademark may confuse consumers, who are the main focus in considering trademark disputes in that the objective of such disputes are to ultimately eliminate the possibility of confusion on commercial signs and provide for clarity in the marketplace.

The decision made by new Beijing IP Court may raise some hope for international brand owners. It seems the new court is willing to be more progressive in recognizing what counts as unhealthy influence, which means Item 8, Paragraph 1 of Article 10 of the Trademark Law may be completely revived to combat bad faith trademarks. The final decision is expected to be issued by the Higher Court in July.

Michael Jordan to Take Trademark Case to China's Highest Court

Michael Jordan will take a trademark dispute with a Chinese sports firm to China's supreme court, escalating one of several cases accusing local firms of illegally imitating global brands. The former Chicago Bulls star sued Qiaodan Sports in 2012, saying the sportswear firm located in southern Fujian province had built its business around his Chinese name and famous jersey number "23" without his permission. Earlier this year, a court ruled in favor of Qiaodan over the trademark dispute, and this ruling was recently upheld by the Beijing Higher Court. Jordan's case is one of several involving foreign firms facing trademark tangles in China.

Court Recognises Heinz Chinese Trademark as Well Known

In 2006, a Chinese individual applied to register the trademark □□, which is identical to the Chinese equivalent of HJ Heinz Company's house mark HEINZ, in respect of goods including "feeding bottles; condoms" in Class 10, for which Heinz did not hold prior registration. The application was published in 2008 and Heinz filed opposition with the CTO. One of the major grounds of the opposition was the violation of Heinz's rights in its Chinese trademark, which had become well known before 2006. Despite substantial evidence on the use and reputation of Heinz's Chinese trademark being submitted, the CTO refused the opposition and rejected Heinz's well-known trademark claim. This decision was supported by both the TRAB and Beijing No.1

Intermediate Court. In 2014, Heinz appealed to the Beijing Higher Court. Based on the evidence of use and reputation of Heinz's Chinese trademark previously submitted in the opposition proceedings, the court held that the rejection of Heinz's well-known mark claim by the TRAB and the lower court was erroneous. Instead, the court held that the evidence filed proved the high market share, extensive sales region and long-term promotion of Heinz baby food, which demonstrated that Heinz's Chinese trademark had attained a high reputation in the Chinese market and become well known in China. Use of the application in respect of the applied-for goods by the applicant would thus damage Heinz's interests. Accordingly, the Higher Court set aside the lower court and TRAB decisions and ordered the CTO to re-issue the decision on the opposition.

Advertising Law

China's Advertising Laws

China's top legislative body, the Standing Committee of the National People's Congress, have recently updated its advertising law in an attempt to strengthen consumer protection, effective as of September 1, 2015. The legislation significantly expands the regulation of advertisements for specific products, including the specific regulation of the following:

- (a) medicine, medical treatment and medical devices;
- (b) pesticides, veterinary medicine, fodder and fodder additives;
- (c) tobacco and alcohol;
- (d) education and training;
- (e) products or services that promise return on investment;
- (f) real estate and listings; and
- (g) seeds for cultivation and animals for breeding.

In comparison to the current law where it merely states a false advertisement is one that deceives or misleads consumers, or damages consumer interests, with no further clarification or definition, the new advertising law further provides four main types of false advertisements, with the key element remaining that the advertisement is false if it damages the interests of consumers by being misleading or false, adding the list is open-ended, including:

- (a) advertisements for non-existing products or services;
- (b) claims about the product or services that do not conform to the actual situation and carry substantive influence on the buying decision (e.g. regarding price, product origin, ingredients, producer, function, performance);
- (c) using data, results of scientific research or surveys, quotes, or statistics that are falsified, fictitious or cannot be verified; and
- (d) fabricating the results of using the product of service.

Furthermore, the penalties for running a false advertisement include fines, revocation of business licenses, damages for civil liability, and criminal prosecution.

The new advertising law further provides for the Administration for Industry and Commerce (AIC) to be tasked with supervising the advertising industry with its far-reaching powers, which include the power to:

- (a) inspect the premises of a company suspected of breaking the law;
- (b) question the company's legal representative and staff members mainly responsible for the suspected behaviour, and investigate other personnel;
- (c) demand the company suspected of misbehaviour surrender documents before a certain date;

- (d) view and confiscate copies of contracts, receipts, advertisements, records and other documentation;
- (e) seal or seize advertisements, tools and equipment; and
- (f) close down suspected operation.

In an effort to regulate and enforce on China's advertising area, China's legislators have updated their advertising law to increase protection for consumers and have further ensured the proposed regulations are supported by strict penalties and further enforcement powers granted to the AIC.

Taxation & Customs

China Cuts Import Taxes Further

In order to increase domestic consumption and in response to wealthier consumers shopping abroad, China has cut import tariffs by approximately 50% on consumer goods, including imported skin-care products, clothing, and footwear. However, cutting tariffs alone may only have a limited effect in boosting domestic consumption, as tariffs only comprise a small portion of the final product price, and value-added tax, consumption tax, distribution costs and the brand's pricing strategy play a greater role in the price of imported goods. Therefore while cutting tariffs on imported goods is a step closer to boosting domestic consumption, China will have to further set in place other mechanisms to achieve their objective.

Elimination of Tax-related Administrative Approvals in China

The State Council of China has recently issued several decisions for the purpose of further decentralization and the abolishment of tax administrative approval and registration requirements. The Decision of the State Council to Abolish Certain Administrative Approval Requirements or to Delegate Certain Items to Lower Authorities, and the Decision of the State Council to Abolish and Adjust Certain Administrative Approval Requirements were issued in order to eliminate four administrative approvals requirements and further adjust approval authority for certain administrative approval items in relation to cross-border tax.

The State Administration of Taxation (SAT) further issued Bulletin No.22 [2015] to amend previous SAT documents to adapt to the elimination of the four administrative approvals requirements and to strengthen any follow-up management issues, including the following:

- (1) amended Article 9 of Administrative Measures for the Assessment and Levy of Enterprise Income Tax on Non-Resident Enterprises so as to make it easier for non-resident enterprises to submit an Identification Form on time;
- (2) amended Article 5 of Administrative Measures for the Administration of Income Tax of Overseas Chinese Funded Holding Residents Enterprises to clarify the competent tax authorities to refer to tax authorities where major investors of overseas Chinese-funded holding residents' enterprises are registered; and
- (3) amended Article 7 of the State Administration of Taxation on Issues concerning the Application of Special Tax Treatment in the Equity Transfer of Non-Resident Enterprises to assist non-resident enterprises conducting cross-border transactions when applying for special tax treatment and to regulate over competent tax authorities and their duties in relation to reviewing and informing taxpayers conducting necessary registration procedures.

Man Fined US\$90,000 for Smuggling Luxury Bags into China

A court in Ningbo has fined a man RMB550,000 for smuggling luxury bags into China from overseas. The man was also sentenced to 18 months in prison, suspended for two years, by the city's intermediate court, for smuggling bags worth more than 1.2 million yuan and evading more than RMB350,000 in tax over about two years. He established a shop in Haishu district in 2009 and two years later started buying luxury brands such as Prada and Louis Vuitton.

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.