



MMLC Group 

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China Update

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Legal News

Intellectual Property

“Napa Valley” GI/Certification Used in Successful Opposition Action

Recently, the Beijing People's High Court made its final decision to repeal the Beijing First Intermediate Court's decision and order the TRAB to re-make its decision relating to the appeal of opposition against the No. 4662547 “螺旋卡帕 SCREW KAPPA NAPA” mark brought up by the Napa Valley Vintners Association (the plaintiff), which means that the “Napa Valley” mark finally obtains the protection upon years of dispute.

The plaintiff registered its No. 4502959 “NAPA VALLEY 100% and design” certification mark in relation to goods wine in class 33 on December 28, 2007 in China. It also obtained the protection of geographical indication of “纳帕河谷(Napa Valley)” from the AQSIQ. The No. 4662547 mark mentioned above was applied for registration by a Zhejiang company in relation to goods “fruit wine (alcohol); wine” in class 33 as well. After it was preliminarily examined and published, the plaintiff filed opposition against the said mark, on the ground that the No. 4662547 mark is confusingly similar with its mark and will easily cause confusion of the source of the goods. However, such claim was not supported by the CTO, the TRAB and in the first instance court.

Nevertheless, the Beijing High Court, upon trial, held that “纳帕河谷(Napa Valley)” is a geographical indication that has obtained protection in China. Although the No. 4662547 mark is composed of Chinese “螺旋卡帕” and English “SCREW KAPPA NAPA” and it only incorporates the English part of the said geographical indication, since “NAPA” is the most distinctive part of the indication, when the relevant public see the word “NAPA” on wine, they will connect such goods with the “纳帕河谷(Napa Valley)” geographical indications, and misidentify such goods are originated from the area where the geographical indication is marked. Thus, the application of the No. 4662547 mark violates Article 16 of the Trademark Law.

BEIJING

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

In accordance with Article 16 of the Trademark Law, *where a trademark contains a geographic indication of the goods in respect of which the trademark is used, the goods is not from the region indicated therein and it misleads the public, it shall be rejected for registration and prohibited from use; however, any trademark that has been registered in good faith shall remain valid. The geographic indications mentioned in the preceding paragraph refer to the signs that signify the place of origin of the goods in respect of which the signs are used, their specific quality, reputation or other features as mainly decided by the natural or cultural factors of the regions.*

First GUI Infringing Case Tried in Beijing

On September 21, 2016, the first Graphical User Interface (GUI) design patent infringement case was tried in the Beijing IP Court. The plaintiff, Qihu 360, claimed that it developed and designed the GUI for computer safety optimization in 2014, which displays the safety test status in a new way. The said GUI has been applied and granted multiple patent rights. At the end of 2015, the defendant Jiangmin Company adopted a GUI that is highly similar with that of Qihu 360 on its new product. The plaintiff claimed that such use was obviously infringing its patent right and caused great losses. Thus, the plaintiff requested the court to order the defendant to cease the infringement, eliminate effect and compensate the plaintiff losses amount to 15 million Yuan in total. Although the defendant applied for suspension of the trial on the ground that it had applied for invalidation of the plaintiff's design patent to the Patent Re-examination Board of SIPO, the Court considered the involved design patent right is stable and rejected the defendant's suspension request.

Foreign Investment

China Simplifies Administrative Procedures for Foreign Invested Enterprises

On September 3, 2016, the Ministry of Commerce (MOFCOM) released a draft of the Interim Measures for the Administration of the Recordation of Establishment and Changing of Foreign Invested Enterprises (the Interim Measures) for public opinion solicitation, as a supportive measure for the implementation of the reform in the establishment and changing of foreign related enterprises as well as Taiwan invested enterprises.

General Principle

The Interim Measures has five chapters, thirty five provisions; and it will be applied to the establishment and changing of foreign invested enterprises that do not involve implementation of special access management measures as prescribed by the state (the Negative List), including wholly-owned foreign invested enterprises, Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures, Hong Kong, Macao and Taiwan invested enterprises, as well as investment companies, startup investment enterprises and equity investment enterprises that are invested by foreign investors. MOFCOM and its local departments will be responsible for such recordation.

Recordal Procedure

It is worth of noticing that, for the establishment recordation, it can be filed after the proposal established enterprise obtaining the pre-approval of the enterprise name but prior to the issuance of the business license, or filed within 30 days after the issuance of the business license thereof. In other words, such establishment recordation is not a prerequisite for the AIC registration. As to the changing recordation, it shall be filed within 30 days after the

occurrence of such change. Both recordation for establishment and changing will be filed online through a system called the Foreign Investment Comprehensive Management Information System (“the System”).

For the foreign related enterprises already established prior to the issuance of the Interim Measures, in case of changing, such enterprise shall also file changing recordation through the System mentioned above. As the changing recordation is completed, its Certificate of Approval for Establishment of Enterprises with Foreign Investment will become invalid.

Upon submitting all the required materials to the System, the recordation department will conduct a formal check to the completeness and accuracy of the filed information and decide whether the filed information fall into the filing scope. If so, the recordation department shall finish the recordation within three working days, and issue a recordation confirmation receipt to the enterprises.

Supervision and Management

In accordance with the draft of the Interim Measures, the recordation departments shall supervise the implementation of the Measure by taking various inspections, including random-pick inspection, inspection upon report, inspection upon suggestion by relevant departments or judicial department, as well as inspection ex officio. In addition, the recordation departments will closely coordinate and share information with relevant administrative departments, such as public safety, national assets, customs, taxation, AIC, securities as well as foreign exchange and so on.

Legal Liabilities

The draft of the Interim Measures also lists four kinds of liabilities borne by the enterprises in case of violating the recordation obligation, violating the admittance license, investing in the prohibited fields, and refusing to cooperate with supervision and inspection. Under the circumstances, the violating enterprises may face the order to rectification within limited period, and a fine no more than RMB 30,000 Yuan.

It is estimated that the Interim Measures will become effective along with the Decision on October 1, 2016.

Dispute Resolution

Supreme People’s Court Issues Opinions to Streamline Legal Proceedings

On September 13, 2016, the Supreme People’s Court issued 21 measures to accelerate trial for simple cases, strictly regulate complicated case, and optimize judicial resources. In terms of increasing trial efficiency, the Court’s Opinions brings out measures in four aspects as followings: 1) improving servicing procedures, such as filling in service address confirmation form, promoting electric service and so on; 2) making use of pre-trial meeting to solve procedural matters, encourage settlement between concerned parties, confirm non-disputable facts and evidence and so on; 3) reforming the way of trial; and 4) promoting the separation of simple cases from complicated cases in terms of judgment delivery, which means that the judgment for complicated cases shall be argued and stated closely relating to the core dispute; whereas for simple cases, the judgment maybe simplified or no judgment being issued for enforcement in court.

Antitrust/Competition

MOFCOM Approves Marriott-Starwood Merge

On September 20, Marriott International Inc. announced that MOFCOM had approved its deal to purchase Starwood Hotels & Resorts Worldwide Inc, which cleared the last supervision hurdle for the merger. This March, Marriott successfully purchased Starwood with a price of \$13.6 billion. According to their agreement, the purchase will be carried out in the form of cash and shares. Shareholders of Starwood may obtain \$21 in cash, plus with 0.8 share of Marriot common stock for each share of Starwood. In this August, it was reported that MOFCOM requested an extension of examination to October 7. Now, since the last hurdle has been cleared, it is estimated that the deal may be finished soon.

Miscellaneous

Nuclear Security Law to be Reviewed by the End of the Year

According to the latest new, the draft of the Nuclear Security Law may be submitted to the Standing Committee of the National People's Congress for the first review by the end of this year. Currently, this ongoing law has been in the process of soliciting opinions from various parties. The Ministry of Environment Protection has made thorough research while drafting, in order to ensure the said law could reflect the common practice of international nuclear security, as well as the 30-year experience of nuclear security supervision in China. It is reported that the draft will involve content as followings: 1) the independence of the supervision, which to ensure that the supervision will independent from the nuclear development department and may make independent decision without being affected by any progress nor funding; 2) the primary liability borne by the operation unit for security; 3) the information disclosure, such as publishing the environment data to the public as much as possible.

Tesla China and its Distributor Sued for Deadly Autopilot Crash in China

Recently, the Beijing Chaoyang District People's Court tried a case against Tesla China and its distributor brought up by Mr. Gao Jubin, who lost his son in a deadly car crash this January. The plaintiff sued the defendants on the ground that the Tesla China and its distributor misled consumers during advertisement of its Autopilot's function, and therefore requested a compensation amount to RMB 10,000 Yuan (about \$1499).

On January 20, 2016, a Tesla car crashed into a road sweeper on the highway in Heibei Province. The car was damaged and the driver was killed in the accident. Although the police recognized that the driver should be mainly responsible for the accident, the plaintiff considered that the accident was caused due to the Autopilot function, since the driver was completely relying on the Autopilot for driving whereas the Autopilot system failed to identify the car in front of it. According to the police's investigation and the video recorded by the event data recorder, there was no emergency braking, nor avoiding measures taken when the car met the road sweeper in front of it, and the car directly crashed into the sweeper. Thus, it was inferred that the car was in the status of constant speed and the Autopilot system was activated. However, Tesla claimed that there was no evidence to prove that the Autopilot was activated during the accident.

Film Industry Boosting Law Submitted for a Second Review

Recently, the second draft of the Film Industry Boosting Law was brought up to the 22nd meeting of the 12th Standing Committee of the National People's Congress for reviewing. This second draft responded to some major issues after soliciting opinions for its first draft:

It is reported that the qualification permit for film making has been eliminated, however, any legal person or other organization who plan to shoot film, shall file recordal to the film department with a summary of the screenplay; in case the screenplay involve significant subject or content relating to national security, foreign affairs, ethnic groups, religion, military and so on, the screenplay shall be submitted for review in accordance with relevant laws. In order to regulate the film industry, the second draft strengthens the penalty for falsifying box office, which may be imposed a fine as high as RMB 500,000 Yuan. In addition, in order to promote and ensure the development of Chinese film industry, it states that cinemas shall reasonably arrange the number and time of playing films made by the domestic legal persons and other organizations, and the playing time shall not be less than two third of the annual total time of playing.

China Fights Against Privacy Crimes

In recent year, telecom and Internet frauds are quite frequent in China, and the leaking of personal information has become one of the major reason for such fraud. Starting from this April, the Ministry of Public Safety initiated a special action to fight against the crime of infringing citizen's personal information. By far, the Ministry of Public Safety has investigated and solved more than 1200 criminal cases, detained suspects more than 3300 person. Among those suspects, there are about 270 insiders worked in industries, such as banking, education, telecommunication, delivery, securities, e-commerce websites and so on. It is also said that it investigated and obtained 29 billion pieces of information, cleared 420,000 pieces of illegal information, and shut down almost 900 websites or programmes.

Business News

Apple's R&D Center Set Up in Beijing

According to the latest new, Apple, Inc. established its first directly invested R&D center in Zhong Guan Cun, Beijing. It is reported that registered capital of the center is RMB 100 million Yuan with a total investment amount to RMB 300 million Yuan. In future, the R&D center will be focusing on research and development of advanced technology in fields of computer, software, hardware, communicative audio and video equipment, consumer electric product technology, information technology and so on.

China Establishes Virtual Reality Alliance

On September 29, 2016, the Industry of Virtual Reality Alliance was co-initiated and established among major enterprises and research institutions (e.g. the China Center for Information Industry Development etc.). It is reported that there are 180 enterprises and institutions joined the Alliance, including but not limited to major enterprises in the VR field, such as Alibaba, HTC, Huawei, JD.com, Intel, as well as institutions, such as Beihang University, Chinese Academy of Sciences, Columbia University, Stanford University and so on. It is estimated that by the time of 2020, the

Chinese VR market will reach \$8.5 billion and may become the growing center of the global VR market.

Local Government Office Bans Galaxy Note 7

Recently, the Chengdu Government Affairs Service Center published a notice on its official Weibo, and said that since there is a risk that Galaxy Note 7 may be caught fire during or after charging, it is forbidden to use the Galaxy Note 7 within the Center, in order to protect personal and property safety within the Center. According to a later explanation, it is said that the said notice was an internal notice issued by the Chengdu Service Operation Center, other than the earlier Government Affairs Service Center, and it is only applied to personnel in the operation center, not for the citizens. Nevertheless, the Civil Aviation Administration of China issued a safety warning that forbidding the use of the Galaxy Note 7 on plane, nor checking it in the luggage.

Postal Savings Bank Listed in Hong Kong

According to the latest new, the Postal Savings Bank officially listed in Hong Kong Stock Exchange on September 28, 2016. By the end of the first listing day, the closing price increased 0.21% at 4.77 Hong Kong dollar. The total dealing amount is 4.615 billion Hong Kong dollar, which was the biggest at the Hong Kong Stock Exchange. It is reported that the price for such listing is 4.76 Hong Kong dollar per share and the net fundraising scale is 56.6 billion Hong Kong dollar, which becomes the biggest IPO in the world in the recent two years.

Major Construction of the World Longest Cross-sea Bridge Completes

On September 27, it is reported by the Xinhua News Agency that the world longest cross-sea bridge, the Hong Kong-Zhuhai-Macau Bridge, has its major construction completed upon 4 years' construction. The supporting construction work, such as bridge floor assembly and transportation, will start up subsequently. The Hong Kong-Zhuhai-Macau Bridge connects a 55-kilometer long mega cross-sea route, and the construction has entered the final stage.

China Plans to Enlarge Number of FTZ

Recently, the Minister of MOFCOM, Mr. Gao Hucheng, expressed in an interview that China is planning to add seven more Free Trade Zones (FTZ), which are Liaoning Province, Zhejiang Province, Henan Province, Hubei Province, Chongqing, Sichuan Province and Shan'xi Province. Plus with the four previously established FTZs (Shanghai, Guangdong Province, Tianjin and Fujian Province), there will eleven FTZs in China. It is worth of noticing that, in the 7 new planned FTZs, only Zhejiang Province and Liaoning Province locate at the coastal area, whereas the other five FTZs are all inland provinces. It is analyzed that such planning is considered as a requirement of balancing development of the coastal area and the mid-western provinces. The specific plan for the seven new FTZs has not been published yet, however, it is reported that each one of the new FTZ will serve different function which is closely related to the local economical and social development.

Board of Yum Brands Approves to Spin off its Chinese Operation

It is reported that the board of Yum Brands has approved to spin off Yum China, its Chinese operation; and it is estimated that the deal will be completed by the end of next month. Earlier this month, the Yum Brands reached a deal with Primavera Capital and the Ant Financial, which is an affiliate of Alibaba, to sell the shares of its Chinese operation with a value of \$460 million. It is

reported that Yum Brands operates more than 7,200 restaurants in China, and owns some most famous fast food brands in China, such as KFC and Pizza Hut.

Shanghai Backs to Top 20 of the Global Financial Centers

On September 26, the Global Financial Centers Index made by the GFCI was issued in Shanghai for the first time, and Shanghai ranks 16 out of 20, which increased 5 ranks compared to the last year and is the highest rank among Chinese mainland cities. It is reported that, as the most used financial centers index in the world, the GFCI is updated in every March and September to show the change of the competition of the global financial centers and it evaluates more than 80 financial centers. In this latest index, London, New York, Singapore and Hong Kong rank the top four cities.

China's Industrial Profit Increases the Most this August

According to the latest statistics issued by the State Statistics Bureau, in the first eight months this year, the industrial profit increased 8.4% year on year, and the profit increase in August is 19.5% year on year, which is not only 8.5% faster than that in July, but also the fastest increase this year.

Wanda Theme Park Challenges Disney

Within four months, subsequent to the opening of the Nanchang Wanda City, the second Wanda theme park "Hefei Wanda City" formally opened on September 24th. It is reported that the first stage of the Hefei Wanda City is planning to incorporate five sectors, including tourism, culture, sports, commerce and hotel with an area of 3 million square meters and an investment of 24 billion Yuan. The outdoor theme park, bar street as well as hotels have opened for operation. Among them, the outdoor theme park is an Anhui cultural theme park with a daily maximum capacity of 100,000 persons and annual capacity of 20 million persons. According to Mr. Wang Jianlin, the CEO of Wanda, Wanda has an obvious advantage over Disney in terms of operation cost, as an outdoor theme park, Wanda's cost is only one in eighth or ninth of that of Disney. In addition, Disney's management cost is five times of that of Wanda. It is reported that Wanda has five huge culture and tourism projects in operation. Two more, Harbin and Wuxi Wanda City will be opened in the next year. By the time prior to 2021, there will be at least six projects in Qingdao, Chengdu, Guangzhou, Chongqing, Guilin and Jinan are planned to be opened; and each one of them will be invested more than 10 billion Yuan.

Number of New Chinese Firms Rising in the First Eight Months

According to the latest statistics from the SAIC, from January to August this year, there are 3.56 million newly registered enterprises which is a 28.9% increase year on year; and it means that there is 14600 new enterprises established daily. By far, there are 82.58 million entities in various form in the market. According to the commercial environment report of the World Bank, China ranks at 84 out of 189 economical bodies, which is a 12 ranks increase, due to its simplified commercial mechanism reform.

Trade Volume between Taiwan and Mainland Decreases Greatly

According to the latest foreign trade statistics published by the Chinese Customs, the import and export trade volume between Taiwan and mainland China is \$95.55 billion in the first seven months, which is a 9.8% decrease year on year. It is reported that, from January to July, the exportation from mainland China to Taiwan is \$22.57 billion, a decrease of 12.7% year on year; whereas the importation from Taiwan to mainland China is \$72.98 billion, which decreases 8.8% year on year.

PWC: Beijing Ranked 3rd Place in Economical Clout

According to a research report issued by PWC, Beijing ranked the third place in the world's top cities in aspects of economical clout. In the comprehensive ranks, there are three Chinese cities in the chart, which are Hong Kong in 9th place, Beijing in 19th place and Shanghai in 21st place. It is said that Beijing has obtained obvious progress in terms of intelligence capital, innovation and technology maturity, and its cost dimension and commercial-friendly environment are good. However, Beijing's rank in health, safety and security, as well as sustainability and natural environment rank in the bottom ten, which has great room to be improved.

LeEco Auto Completes First Round Financing

Recently, the CEO of LeEco, Mr. Jia Yueting announced in a sales event that LeEco Auto has completed its first round of financing in value of \$1.08 billion. Mr. Jia announced that the core investors include State Grid Yingda Group, Shenzhen Capital Group, China Minsheng Trust, Macrolink Group, Liu Chuanzhi, Lu Zhiqiang and so on. It is said that this financing breaks the first round financing record in the global intelligent electric car industry. Meanwhile, it is reported that a sample car of the first LeEco Internet intelligent electric car has tested on road.

Alipay Obtains Third Party Payment Permit in Hong Kong

Recently, Alipay announced that it had obtained the third party payment permit from the Hong Kong Monetary Authority and became one of the first users to obtain such permit, along with Wechat payment. This permit will allow to upgrade its services in Hong Kong by providing mobile services, such as e-wallet, preferential to consumers. It is reported that Alipay entered Hong Kong market in 2007 and is the most used payment platform for Hong Kong citizens' online purchase in mainland China.

China's Service Trade Increases Greatly in the First Seven Months

According to statistics issued by the MOFCOM, the import and export of service trade reaches 3 trillion Yuan from January to July this year, an increase of 24.6% year on year. Such increase has been continued in a rate of double digit for a consecutive seven months. Among them, the increase rate during the period from March to July has kept an increase of more than 20%. Also, the percentage of the service trade in that of the foreign trade has been increasing to 18.2% in the first seven months, which is an increase of 2.8% compared to the data of the whole year in 2015.

Alibaba Becomes the Biggest Listed Company in Asia

By the time of September 16th, Alibaba's closing price at the NYSE was \$104.64 and the total value reaches about \$266 billion. Earlier in this September, Tencent just became the company with biggest value in Asia with a total value worth of 1.99 trillion Hong Kong dollar. However, 12 days later, Alibaba surpassed Tencent and became the No. 1 in Asia. According to the 1st quarter financial report of Alibaba, its quarterly revenue is \$4.8 billion, an increase of 59%, which has been its strongest increase since its listing and surpassed the market's expectation.

Audi Sees Great Sales increase in China

Recently, Audi announced its global sales of this August. It is reported that, in August, Audi delivered 132, 350 cars globally, which is an 2.9% increase compared to the 128, 647 cars year on year; and the total delivery in the first eight months this year has reached to the number of 1,234,900 cars around the world. It is worth of noticing that, as the biggest single market of Audi,

Chinese market contributed a delivery of 49,154 cars, which is an increase of 8.8% year on year. It is said that this figure is the biggest increase in all the single markets. From January to August this year, Audi has an accumulated sales amount to 385,734 in China, which is a 6.8% increase compared to the 361,315 cars year on year.

Starbucks Promotes Tea Drinks in China

Upon more than seven months' preparation, Starbucks formally promoted its "Teavana" tea drinks to the Chinese market. It is reported that Starbucks plans to increase its global tea drinks business to \$3 billion within five year. As the fastest growing market of Starbucks, China has a much bigger market for tea than coffee. It is said that the former market is 10 times bigger than that of coffee, and the Chinese tea drinks market is worth of about \$9.5 billion. It is estimated that by the year of 2019, the Starbucks in China will be increased to 3400.

Volkswagen Announces Plans with Jianghuai Automobile for Electric Cars Cooperation

On September 7, 2016, Volkswagen AG and Jianghuai Automobile signed a Memo and planned to negotiate for the establishment of a joint venture, in order to research, manufacture and sell electric cars. It is reported that China has the world number one new energy automobile market and the manufacturing and selling amount in 2016 is estimated as 700,000. This June, in the 2025 strategy issued by Volkswagen, it announced that it is planning to launch 30 brand new electric cars prior to 2025, and the global sales amount of its electric cars and plugging hybrid vehicles breaks the aim of 1 million. On the other hand, Jianghuai Automobile which is a state-owned enterprise, is one of the most important electric car manufactures in China. It was first focused on manufacturing commercial vehicles and obtained the electric car manufacturing permit in 2007.

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.