



MMLC Group 

北京铭辉达知识产权代理有限公司

China Update

Lawyers and Consultants

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BEIJING
1209 Tower W3
The Towers
No.1 East Chang An Avenue
Dongcheng District 100738
Beijing, China
北京东城区东长安街1号东方广场
西三办公楼1209室, 邮编100738
writer's p: +86 10 8515 1091
f: +86 10 8515 1089
w: mmlcgroup.com

Legal News

Intellectual Property

TRAB continues to publish decisions at random

Since the TRAB first published its trademark review decisions on its official website on December 15, 2016, it has published around 500 decisions in total to date. The published TRAB decisions were chosen randomly each month. It is reported that the 500 published decisions include various types of cases, such as rejection appeal decision, invalidation decision, cancellation decision and so on. According to personnel from the TRAB, such publication is aimed at promoting fairness and openness of its work, as well as the unification of its review standards.

China promotes trademark strategies

Recently, the SAIC issued an Opinion of the State Administration for Industry and Commerce Regarding the Deeper Implementation of a Brand Strategy so as to give Impetus to the Construction of Chinese Brands. According to this Opinion, the government will continue to promote to simplify the trademark registration, such as leading and promoting electronic receiving and sending notices, promoting the use of electric registration certificate etc., to actively promote the trademark assistant examination center pilot work outside Beijing, to enhance the protection of well-known marks and prevent bad faith squatting and so on.

China Customs initiates IPR protection action

Starting from September 1, 2017, China Customs started a three-month IPR protection special action nationwide for exporting IPR advantage enterprises, and the action was named as Longteng. It is reported that the Customs initiated its special action focusing on traditional advantageous goods, such as small home appliance, cell phone electrical products, engineering machinery, daily

BEIJING

With support offices in Brisbane

Matthew Murphy Ellen Wang Hong Mei Yu Du Xia Yu
Sarah Xuan Fei Dang

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goods, holiday products, special goods and so on that are exporting to countries in Africa, Middle East, Latin America and those alongside the “One Belt One Road” routes.

China launches campaign to protect WFOEs’ IPRs

According to Xinhua News, the Chinese government has initiated a campaign to protect WFOEs’ IPRs. Such campaign will mainly focus on the fields, such as trademark registration and imitation in bad faith, online IPRs/patent rights/plant variety rights infringement, as well as industrial espionage. The campaign will last from this September to December, and will be a joint action by 12 governmental departments, including but not limited to SIPO, the Ministry of Public Safety, the Ministry of Agriculture, MOFCOM, GACC, SAIC, SPC and so on. Many have queried why this needs to be a special program, since it is basically just enforcing the law anyway.

China's SAIC Issues Second Draft of Proposed Amendments to its Law against Unfair Competition

On 5 September 2017, the National People’s Congress (NPC) issued a Second Draft for Review of the Anti-Unfair Competition Law (Second Draft for Review), which is open for public comment until 25 September 2017. The draft contains further modifications and improvements, including but not limited to further clarification of the scope of commercial bribery (Article 7 of the Second Draft for Review), further clarification of the provisions of the violation of trade secrets (Article 9 and 10 of the Second Draft for Review), adding of general provisions and miscellaneous clauses on unfair competition in the internet field (Article 12 of the Second Draft for Review), increase in the amount of statutory damages (Articles 17 – 25 of the Second Draft for Review).

SAIC issues rules concerning regulating enterprise name registration

Recently, the SAIC issues the Rules on Prohibition and Restriction on Enterprises Name Registration. According to the SAIC, the issuances of the Rules was to regulate enterprise name review and approval, establish and improve the enterprise name comparison system, so as to provide more convenient enterprise name registration and approval service to the applicants. The review and approval personnel will review the enterprise name application on the basis that whether the application contains relevant prohibited and restricted content and then make the decision accordingly. The prohibition rules include but not limited to, having the same name as that of the enterprise in the same industry, containing content and words that will damage the state and social public interest, containing content and words that may deceive or mislead the public, containing the name of foreign countries (areas), international organization and so on. The restriction rules include but not limited to, similar to the name of having the similar name as that of the enterprise in the same industry (excluding those with investing relations), containing other non-profit legal person’s name, containing other enterprise’s name and so on.

Competition

Three Chinese enterprises fined 34 million Yuan for price monopoly violations

Recently, three Chinese PVC manufacturers received penalty notices from the NDRC for reaching price monopoly agreements. It is reported that those enterprises were not only reaching the price monopoly agreements through industrial meeting, but also via WeChat. Accordingly, the NDRC considered that it fell in to the behavior of reaching price monopoly agreement with competitors, by using electric communication (e.g. WeChat etc.) to discuss commodity price information and

reaching unanimous opinion to increase the price with competitors. The three manufacturers were respectively fined 16.01 million Yuan, 7.91 million Yuan and 10.21 million Yuan.

China is to revise the Anti-Monopoly Law for the first time in ten years

According to the latest news, the current Anti-Monopoly Law is expected to be revised for the first time since it came into effective on August 1, 2008. It is reported that the NDRC has initiated the revision and research work of the Anti-Monopoly Law, and the draft may be submitted to the State Council for review by the end of September.

It is expected that this revision will legalize the fair competition review system, which is required by the Opinion on Establishing Fair Competition Review System in the Market System Establishment issued by the State Council in June 2016. The Opinion states that it shall establish the fair competition review system, in order to regulate relevant government behavior, prevent from issuing policies that exclude/restrict competition, and gradually clean and repeal regulation or method that hinder national unified market and fair competition.

Currently, there are three governmental institutions in charge of different fields of monopoly cases, which are the National Development and Reform Committee (“NDRC”) for the price monopoly cases, the Ministry of Commerce (“MOFCOM”) for the concentration of undertakings cases, and the State Administration of Industry and Commerce (“SAIC”) for administrative monopoly cases.

MOFCOM approves HP acquisition with conditions

On October 5, 2017, the MOFCOM stated that it had approved the partial acquisition of Samsung Electronic Co., by HP Inc. with restrictive conditions. MOFCOM started the examination on June 21, 2017. Upon examination, it is found that HP Inc. will take up more than 50% market share of A4 laser printers in China after the deal and will have the dominant market place in the market. In order to avoid any exclusion and restriction of competition by taking advantage of such dominant market place, the deal was approved with restrictive conditions.

MOFCOM solicits opinions for undertaking concentration review amendments

On September 8, MOFCOM issued an amendment draft of the Measures of Reviewing the Undertaking Concentration for public opinion. According to the draft, it proposes to state that newly established joint ventures and partial acquisitions may constitute undertaking concentration. Among them, the former refers to the circumstances that upon newly establishing a joint venture, two or more undertakings co-control such joint venture. Whereas the latter refers to the circumstance where an undertaking acquires another undertaking’s partial property, business and right that could operate in a market and generate turnover. The draft also proposes to specify the circumstances and factors to judge the obtaining of the control rights, clarifies the concept of undertakings that are involved in a concentration, as well as detailing how to calculate “turnover” when carrying out reviews

Data Protection/Privacy

China-US law enforcement and cyber security dialogue held in Washington

On October 4, the first round of the China-US law enforcement and cyber security dialogue was held in Washington D.C. The dialogue was co-held by the Chinese State Councilor GuoShengkun, the U.S. Attorney General Jeff Sessions and Acting Secretary for Homeland Security Elaine Duke.

It is reported that this dialogue is one of the four high rank dialogues between the two countries. Both countries will enhance their cooperation in terms of anti-terrorism, combating transnational crimes, pursuing those who have fled abroad and recovering ill-gotten gains, forbidding drugs, as well as judicial assistance.

China's government Ministries commence audit of major consumer applications for data protection

On 24 August, 2017, a review team established by China's top internet regulators including the Cyberspace Administration of China, Ministry of Industry and Information Technology, Ministry of Public Security and the Standardization Administration, announced that they had finished their first round of checks on the implementation of the PRC Cyber Security Law by China's major network operators in terms of their personal information protection responsibilities.

The initial examination focused on whether the privacy policies of ten popular mobile applications such as WeChat, Sina Weibo, Taobao, JD Mall, Alipay, Amap, Baidu map, DiDi, Umetrip and Ctrip comply with the requirements of the Law; regulating their behavior on collection, preservation, use and transfer of personal information; and urged the rectification of illegal terms in their privacy policies. The problems found included - some users of some of the applications were not allowed to cancel their own accounts, personal information was not deleted within a reasonable period for receipt, and privacy policies of some network operators were not easy to be understood by users.

In accordance with the interpretation on how to comply with the requirements on personal information protection provided by the Law from the experts of the review team, the privacy policies must be explained explicitly to users, and the users are able to select "agree" or "disagree" on the privacy policies after fully understanding thereof. Although the inspection has been completed, the inspection results will be published in late September this year in order to leave time for these network operators to correct their improper behavior and policies in relation to the handling and management of personal information.

It is noted that shortly after this news release was issued by the government departments, JD, Taobao and Alipay adjusted their privacy policies accordingly. The new versions of their privacy policies are much clearer in terms of the purposes for collection and use of personal information. In addition, a 30 day cooling-off period during which users are allowed to cancel their accounts has been established by JD.

A specialized privacy/data protection law hasn't been established in China as yet, like it has in other countries and regions. The relevant legal basis for personal information protection and management are scattered in many laws and regulations including the Cyber Security Law, The Constitution, General Provisions of the Civil Law, the Criminal Law, Administrative Measures for the Security Protection of Computer Information Networks Linked to the Internet, the Law on Resident Identity Cards, the Law on the Protection of Consumers Rights and Interests, Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Cases involving Civil Disputes over Infringements upon Personal Rights and Interests through Information Networks, Provisions on Protecting the Personal Information of Telecommunications and Internet Users and the Law.

China issues new Measures to handle online security threats and attacks

On September 13, 2017, the Ministry of Industry and Information Technology (“MIIT”) issued the Measures of Monitoring and Handling Cyber Security Threat in Public Internet (“Measures”). This article reviews these Measures.

The Measures contain 15 articles and stipulates contents from basic definition, delegation of governmental responsibility, working principle, and so on. More specifically, the cyber security threat in the public network is defined as network resource, bad faith program, hidden security danger or security incident that are existed or broadcasted in the public network and are possible to cause or have caused danger thereto. Such threats include bad faith IP address/domain name/URL/electronic information that are used for cyber attack, bad faith program that is used for cyber attack, hidden security danger existed in network service and products, cyber security incidents that network service and products are illegally invaded or controlled, and other circumstances that threaten the cyber security or exist hidden security danger.

The MIIT will be in charge of organizing the work of monitoring and handling cyber security threat in the public network nationwide, whereas the provincial level departments of the MIIT will be in charge of the relevant work within their respective jurisdiction. Also, the MIIT will establish a platform to co-share cyber security threat information, which will be used to collect, store, analyze, report and publish cyber security threat information; and such platform will be established and maintained by the National Computer Network Emergency Response Technical Team/Coordination Center of China (“CNCERT or CNCERT/CC”).

In addition, it also requires that relevant professional institution, basic telecommunication enterprises, cyber security enterprises, Internet enterprises, domain name registration, management and services institutions and so on shall strengthen its monitoring and handling work for cyber security threat, specify its responsible department, official and contacts. In case a threat is discovered by the relevant institutions mentioned above and it involves other parties, such relevant institutions shall report to the MIIT and its relevant local departments for further handling measurements. In case of failure of taking the advised handling measurements, such relevant institutions may face administrative punishment, such as warning, fining etc, in accordance with the Cyber Security Law. The Measures will come into effect on January 1, 2018.

Dispute Resolution

CIETAC’s arbitration rules for investor-state disputes comes into effective

On October 1, 2017, the CIETAC International Investment Dispute Arbitration Rules (Trial) became effective. According to the said Arbitration Rules, they will be applied to international investment dispute that involving investors and state/governmental organizations/governmental bodies and arising from the basis of contract, treaty, laws and regulations or other documents. The Arbitration Rules is consisted of 58 articles in six chapters, as well as two annexure which are arbitration fee form and emergency arbitrator procedure. The CIETAC (Beijing) and the CIETAC (Hong Kong) will both be able to handle the cases. The arbitration tribunal may be composed with one or three or any other arbitrator of odd number upon concerning parties’ agreement. It also provides that the third party funding is available, which refers to the circumstance that natural person or entity outside the concerning party can bear partial or all arbitration fee for one party participated in the dispute by agreement.

Business News

Service sector activity weakens in September

According to a Caixin survey, China's services activity expanded at its weakest rate in the recent two years this September. It is said that the Caixin China General Services Business Activity Index dropped to 50.6 from 52.7 in August, which is the lowest since December 2015. Furthermore, the Caixin China Composite Output Index covering manufacturing and services companies, also dropped to 51.4 from 52.4 in August. It is analyzed that the slowdown of the expansion in the manufacturing and services sector in September indicates that the pressure on economic growth going slow may re-emerge in the fourth quarter.

China to carry on reform in public hospitals

According to the Premier Li Keqiang on October 9th, China will continue to carry out its reform to public hospital in order to optimize medical care resources for the public. It is reported that pilot cities will be chosen for medical insurance payment reform, and more than 100 disease categories for an insurance payment by-category reform will be designated by the government. The latest round of healthcare reform started in 2009 and its core objective was to offer healthcare services to all people as a public goods.

Weibo orders users to register their real name

According to the latest news, Sina Weibo, the Chinese Twitter-like website, required all its users must finish their real name verification prior to this September 15, otherwise users would not be able to send comments and issue new Weibo. In accordance with the Rules on Online Comments Service Management published by the the Cyberspace Administration of China on August 25, 2017, website shall verify its registered users' real identity information in accordance with the principle of "back desk real name, front desk volunteering", and shall not provide users comment service without such verification.

Two Chinese Internet giants to share music copyrights

Recently, the Chinese Internet giants Alibaba and Tencent announced that their respective music divisions will share millions of music copyrights, including works from some very famous musicians in China, such as Big Bang, Mayday and Jay Chou.

China and Australia signs MEMO concerning e-commerce

Minister of the MOFCOM and the Australian Minister for Trade, Tourism and Investment co-signed a Memo regarding e-commerce cooperation in Beijing. According to the Memo, both parties will enhance communication on policy communication, public and private talks and industry interaction, as well as cooperation concerning ecommerce topics in the relevant international organization.

China plans more pilot zones for transborder e-commerce

According to the latest news from the State Council, China is planning to establish new pilot zones for cross border e-commerce in cities that have development potentials. China approved its first pilot zone more than two years ago, and it has led to accumulation of valuable experience to be

applied nationwide. It is also reported that the transition period for supervision of cross-border e-commerce retail imports will be extended to the end of 2018.

BYD unveils the largest electric bus factory in North America

It is reported on October 6 that the Chinese auto manufacturer BYD revealed its expanded battery electric bus factory in southern California, which is the largest in North America. This expanded factory is an addition of its new wing to the current BYD Coach and Bus space. It is said that it will bring the total manufacturing facility to nearly 42,000 square meters, which quadruples the size of its facility from its initial size. BYD (“Build Your Dreams”) is the world’s largest manufacturer of rechargeable batteries. Its electric bus is able to run over 248 km after one single charge.

China to double its new energy cars development goal by 2020

According to an official from the Ministry of Transportation, the number of new energy cars in China’s transportation sector will break 300,000 units by the end of 2017. The new target for the new energy cars development is setting to increasing to 600,000 units by 2020. It is reported that the country had 205 million registered cars at the end of this June and the registered new energy had surpassed 1 million at the end of this August.

Mobike enters the United States market

On September 20, Mobike, one of the biggest sharing bike brands in China, announced that it has entered the US market. The Mobike with its signature color of orange has already appeared on the street of Washington D. C. It is reported that in order to provide better service to the local riders, it has cooperated with US telecom company AT & T and Qualcomm. The United States is Mobike’s seventh overseas market, after Britain, Italy, Japan, Singapore, Thailand and Malaysia.

Agricultural Bank of China introduces facial recognition

Recently, Agricultural Bank of China introduced facial recognition technology at its automatic teller machines. According to the personnel from the said bank, in case of petty deposits and withdrawals, no cards are needed anymore. The customers could finish the process with following steps: pressing the facial withdrawal button, scanning the face in the camera, entering the phone number or ID number, and entering the transaction amount and password. It is said that such technology can eliminate the risk of having bank cards illegally copied and lower the possibility of cards being eaten by the ATMs. The Agricultural Bank of China is planning to install the facial recognition technology to its 24064 outlets across the country.

JD.com to form JVs with Central Group

According to China Daily’s report, JD.com, China’s second biggest e-commerce company will jointly invest 500 million USD with Thai retailer Central Group to set up two JVs for e-commerce and fintech services in Thailand. Both parties will invest 250 million USD each to the JV; among them, for JD.com, the money will come from itself, JD Finance as well as its strategic partner Provident Capital. It is reported that JD.com will provide technology, e-commerce and logistics support as well as its knowledge to the two JVs, whereas the Central Group will leverage its retail resources. It is also said that the Central Group will open multiple flagship stores online for its department stores and key retail chains.

China encourages foreign insurance companies to further enter specialized fields

On September 5, the China Insurance Regulatory Commission (CIRC) invited 10 foreign invested insurance companies for a meeting. According to the deputy chairman of the CIRC, Mr. Chen Wenhui, China will further open its insurance industry. For those already entered into the Chinese market, China will encourage those foreign invested companies into specialized fields, such as health insurance, endowment insurance, catastrophe insurance and so on; for those have not entered into China, it will further optimize its entry policy. By far, there are 57 foreign invested insurance companies from 16 countries and regions, with 1800 branch offices across China. In addition, all foreign insurance companies listed in the Fortune 500 have entered China market already.

China's FDI inflow rises in August

According to data from the MOFCOM, the foreign direct investment (FDI) into China mainland reached 62.52 billion Yuan (USD 9.6 billion) in August, which is a 9.1% rise year on year. It is also reported that the FDI dropped to 547.94 billion yuan, a decrease of 0.2% year on year, in the first eight months this year.

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.