

I. MAINLAND CHINA

A. Notable Court Decisions

With an established statutory and regulatory system for protecting intellectual property, attention now turns to how the courts of China handle disputes and enforcement of the laws. Most Provincial High Courts, and significant Intermediate courts, like those handling IP cases in Beijing and Shanghai, publish summaries of notable cases so that citizens can better understand the legal system.

1. Remediation for Damage to Reputation Caused by Misleading Trade Name

Plaintiff Foshan Haitian Seasoning Co. Ltd. (“Haitian Seasoning”) owned the trademark registration for WEI JI “威极” for soy sauce since 1994. Defendant, Wei Ji Seasoning Co., Ltd. (“WJS”), registered a corporate name using the same characters in its corporate name, established 4 years later. WJS also advertised using the name Wei Ji on signs and in print.

In around 2012, it was revealed that WJS had been using industrial salt to make its soy sauce. The news damaged the reputation of soy sauces bearing the trademark WEI JI. Haitian Seasoning suffered lost profits and filed suit against WJS, claiming trademark infringement and unfair competition. Haitian Seasoning requested RMB 10 million in damages, an apology, and an injunction on further infringement.

After trial of the evidence, the Foshan Intermediate Court agreed that WJS infringed on Haitian’s trademark and such use was also unfair competition. The Court also found that the shareholders of WJS had experience working in the same industry as Haitian before founding WJS and concluded they had deliberately infringed on Haitian’s trademark in order to mislead consumers. Such action constituted malice and merited a heavier penalty. The Court ordered an injunction for WJS to change its company name, cease infringement, and awarded damages of RMB 6.55 million (Roughly US\$1 million), including lost profits and the cost of corrective advertising to repair the reputation of Haitian’s mark. WJS filed, but then withdrew, an appeal.



The case shows that government authorities can impose effective penalties if they believe a case is serious. Selection of the case in a government report also shows that consumer harm will cause authorities to take a case seriously. Food safety has been a major political issue in China in recent years.

Wang and Wang partner Laura Wen-yu Young will speak at INTA, Monday 10:15 am, on Doing Business in China.

2. Trademark Licensor Found Liable for Anti-Trust Violation

智慧財產權保護

The plaintiff, Rui Bang Company, had long been a licensed distributor of Johnson & Johnson (“J&J”) medical equipment bearing the ETHICON trademark. The terms of the license included a minimum price provision. After Rui Bang won a bid to supply a Chinese hospital, bidding a price lower than its minimum under the distribution contract, J&J terminated the distribution agreement on the grounds that Rui Bang reduced the price without J&J’s permission in violation of the distribution agreement. J&J stopped accepting orders for medical supplies from Rui Bang, and later refused to renew the distribution agreement.

Rui Bang filed suit with the Shanghai No. 1 Intermediate Court claiming J&J’s minimum price provision established a vertical monopoly agreement, prohibited by the Anti-Monopoly Law of China. Rui Bang requested compensation for economic losses totaling RMB14 million.

Rui Bang lost the suit and appealed to the Shanghai High Court. The Court determined that the key issue was the definition of the market related to surgical stitching supplies in mainland China. The court found that competition in the market is low and J&J holds strong market power. The Court found the minimum price provision in the distribution agreement exerted a negative effect of excluding and limiting competition and showed no obvious benefit to promoting competition. The Court concluded the agreement effected an impermissible monopoly, not justified by J&J’s legitimate trademark monopoly. The acts of cancelling the distributorship and terminating the supply of stitching products constituted acts of monopoly control prohibited by the Anti-Monopoly Law of China. Therefore, the Court ruled that J&J should compensate Rui Bang RMB530,000 (approximately US\$87,000) for lost profits from 2008.

This case is a milestone in the development of anti-monopoly law in China. It is the first case in which a plaintiff won a final judgment after a trial finding a vertical monopoly agreement.

B. Administrative Matters

1. China Again Leads World in Most Patent and Trademark Applications

Worldwide, the number of trademark and patent applications grew steadily in past decades, with the greatest growth in China. China has become the largest processor of patent and trademark applications. 2013 saw a total of 2.377 million patent applications filed and 1.88 million trademark applications filed. There was a 16% increase in patent applications and a 14% increase in trademark applications over the prior year.

That compares with the USPTO’s total of 433,654 trademark applications and 601,317 patent applications filed in 2013. An even greater difference appears for any European national patent

and trademark office. Processing the EU community wide, the European Patent Office received 265,690 patent applications in 2013, and OHIM received only 109,343 trademark applications in 2012, the latest figures available.

II. TAIWAN

1. Customs to Increase Seizures of Patent Infringements

On March 24, 2014, Taiwan started enforcement of amendments added to border protection provisions pursuant to Article 97 of the Patent Law. Patent holders may now apply to Taiwan's Customs to seize imported goods that may possibly infringe on patent rights. The amendments also provide for circumstances under which Customs shall revoke the seizure. If a court decides that the detained goods do not infringe Taiwan patent rights, the applicant's bond shall be used to compensate the owner of the detained goods for injury from wrongful detention. The applicant's bond is normally set at the taxable value of the goods assessed by Customs.

2. Copyright Law Updated to Increase Disabled Access

Taiwan's Legislative Yuan approved amendments to its Copyright Law to increase access by handicapped people to copyrighted works. The amendments were made to provisions that state a published work may be reproduced exclusively for use of the visually impaired, learning disabled, hearing impaired, or other consciousness impaired persons. It also provides for the distribution and public broadcast of these reproductions. The amendments added exceptions to the prohibitions on copyright, plate right, and anti-circumvention of technological protection measures. (Copyright Law Article 80-2.)