

# W&B Legal Newsletter

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# INTRODUCTION

Watson & Band has flourished into a full-service law firm with more than 250 professionals around China. We provide the highest quality services for our clients and enjoy a nationwide reputation as one of the most prominent law firms in China. This excellence and breadth has made us the firm of choice for many world's leading companies and financial institutions as they seek sophisticated legal service. Based on its commitment of quality service, Watson & Band has retained a team of professionals to provide diversified service to its clients, which has won it the honor of China's Best Law Firm and Top-tier IPR Team.

## Watson & Band Law Offices

Established in 1995, Watson & Band is one of the oldest law firms in China that provide foreign-related legal services. Headquartered in Shanghai, Watson & Band maintains multiple branches or offices in Beijing, Hong Kong, Harbin, Lanzhou, Yantai, Guangzhou, Chicago and Tokyo.

For over decades our team members have collaborated to stay on top of IP and corporate issues, helping clients improve operations, reduce costs, limit risks, enforce rights and achieve common business goals. For these reasons, the firm and its professionals are consistently recognized in client and peer-reviewed industry awards and rankings as being among the best.

These superb services derive from a spirit of dedication that has brought Watson & Band the honor of being listed among "China's Best Law Firms". In past years our firm has received numerous awards from third-party ranking agencies such as "Top 10 IP Law Firm", "Recommended Law Firm". "China's Most Dynamic Law Firm" and "Premier IP Law Firm". Watson & Band Law Offices has also been named a "Key Shanghai Enterprise in Special Services Trades (Legal Services)" by the Shanghai Municipal Commission of Commerce and the Shanghai Judicial Bureau.

## Watson & Band Intellectual Property Agent Ltd.

Headquartered in Shanghai, W&B Agent Ltd. operates branch offices in Beijing and Lanzhou. Our patent agency services cover various technical fields such as chemistry, biology, medicine, mechanics, electronics, communication, optics and physics, as well as design patent, IP searches, patent validity analysis, infringement analysis, requests for patent invalidation declaration, litigation and patent consultation, etc. We have established a patent agency service department responsible for special clients. Agents from various technical divisions all have rich experience and are able to work with several languages.

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### Editor’s Note



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2017 was a landmark year in the legislative history of China, marked by the large number of significant cases that emerged one after another at a dizzying pace. 2017 also witnessed a drastic revision of substantive and procedural law including civil law, criminal law, administrative procedural law and unfair competition law, with legislative quality evidencing steady improvement. Looking ahead to 2018, we expect more legislation as well as tightened national policy in areas such as foreign investment; consequently, there will be even higher access threshold across areas including entertainment, real estate, and equity investment funds.

Meanwhile, driven by the Belt and Road initiative, Chinese enterprises are expected to make even greater outward strides and to see increasingly more investment opportunities. Consumer Protection Day on March 15th will also remind enterprises of the serious challenges they face with respect to product quality, business integrity and IP protection. Enterprises that wish to retain a strong position in the face of intensified market competition in their internationalized expansion must pay adequate attention to compliance, corporate governance and operational strategies.

### Disclaimer

- ◆ This Newsletter provides case brief only instead of formal legal opinion regarding any specific case.
- ◆ This Newsletter selects and summarizes official announcements, news and other public documents released by State Intellectual Property Office, China Trademark Office, National Copy-right Administration of China and other official institutions.
- ◆ This Newsletter has cited the source of the aforementioned official announcements, news and other public documents.

## Watson & Band Again Recognized as the 2017 Outstanding IP Services Team in China

The annual appraisal and selection of Outstanding IP Service Teams in China is hosted by China Intellectual Property magazine. In order to comprehensively and impartially evaluate the overall capacities of the candidate teams, this year's appraisal started with the practices and expertise advantages of candidate IP services teams, and it applied a method combining special index rankings with comprehensive interviews and reports. With its outstanding professional competency, broad expertise, superior research ability and strong team spirit, Watson & Band stood out from the other candidates and took home the award. In the future, the Watson & Band IP service team will continue its operational model of "service by teams and management by departments". It will also provide its clients with detailed investment strategies and superb legal services that are tailored to specific industries.





## Ministry of Finance and State Administration of Taxation Improve Income Tax Credit Policy for Foreign Enterprises

The Ministry of Finance and the State Administration of Taxation issued the Notice on Improvement of the Income Tax Credit Policy for Foreign Enterprises (the "Notice"), which became effective on January 1st, 2017.

The Notice provides that enterprises may calculate foreign income taxes in one of two different ways – they may calculate foreign income taxes in individual countries (regions); or they may calculate the income tax payable on their aggregate overseas income and then calculate allowable overseas income tax credits and credit quotas based on rates set out in Article 8 of Financial and Taxation [2009] Document No.125. The calculation method selected by an enterprise will apply for five consecutive years. Meanwhile, the Notice clarified that calculating the income tax credit and credit quotas for the overseas dividend income of an enterprise using the legally prescribed method shall apply to overseas enterprises with direct or indirect shareholding percentages of 20% or more. This provision applies only to five-tier enterprises defined by the means of shareholding stipulated by Article 6 of Financial and Taxation [2009] Document No.125.

(Source: State Administration of Taxation)

## Supreme People's Court Publishes Typical Cases on the Protection of Property Rights and the Legitimate Rights and Interests of Entrepreneurs

The Supreme People's Court (SPC), exercising a judicial function of the People's Courts, published its first group of seven typical cases on the protection of property rights and the legitimate rights and interests of entrepreneurs. The seven typical cases can be categorized into six types: contract performance, intellectual property rights, administrative authority, criminal offences, evidence and property preservation in litigation, and six types of state compensation. The six types of state compensation reflect the need for increasing the protection of intellectual property rights, promoting and safeguarding clean government, standardizing administrative actions, exercising caution in executing enforcement measures, remedying illegal enforcement actions and increasing the amount of state compensation, among other goals, for the purpose of protecting the rights of entrepreneurs as well as property rights and management autonomy of entrepreneurs.

(Source: MIIT Electronic IPR Center)

W&B has rich experience and insightful views in the corporate and commercial area. As one of the earliest firms providing foreign-related legal services, W&B has been covering the needs for various corporate and commercial services ever since 1995, and has throughout the years witnessed and participated in the booming development of the Chinese commerce and the rise of the Chinese brands.

As an A-Class firm providing foreign-related legal consulting services in Shanghai, W&B has attracted great attention and obtained high recognition from numerous world famous professional IP media and rating agencies, and has been listed by a number of them, including Chambers and Partners and Asia Pacific, as a noteworthy PRC firm in the corporate and commercial circle.

## SSE Promulgates Business Guidelines for the Contractual Transfer of Shares Issued by Listed Companies

The Shanghai Stock Exchange ("SSE") released the SSE Business Guidelines for the Contractual Transfer of Shares Issued by Listed Companies (the "Guidelines") on January 26, 2018 (effective on the issue date). The Guidelines were formulated, based on the relevant previous business guides, for the purpose of implementing the rules on shareholding reduction and further standardizing the business of the contractual transfer of shares issued by listed companies.

According to an SSE official, the new rules on shareholding reduction implemented in May 2017 have imposed new requirements on shareholding reduction by way of contractual transfer. For example, if one shareholder reduces his/its shares by contractual transfer, or if the transferor is no longer qualified as a major shareholder after the reduction, both the transferor and the transferee must comply with ratio reduction regulations within six months, which requirement must be stipulated and implemented in the process of contractual transfer. In addition, the SSE has established more specific business standards and procedures for the different types of share transfers that have occurred in recent years, and it will publish them in the form of business regulations governing the activities of certain market entities.

(Source: National Business Daily)

## Second Draft of Electronic Commerce Law Soliciting Public Comments to Strengthen Regulation of Platform Operator Obligations

The official website of the National People's Congress published the P.R.C. Electronic Commerce Law (Second Draft for Comments, hereinafter the "Second Draft") and solicited comments from the public until November 26, 2017.

According to the Second Draft, e-commerce operators shall not infringe upon consumers' right to know by means such as false advertising, fictitious transactions and/or fabricated user reviews. They should display search results to consumers in various sorting orders including prices and sales volume of the products or services, and credibility of the sellers. The word "advertisement" must be displayed in a prominent manner for products or services using the paid listing model. In addition, e-commerce platform operators may not impose unreasonable limitations or transaction conditions on the transactions and transaction prices of platform operators by means of their service agreements and transaction rules; nor shall they impose unreasonable fees on platform operators.

(Source: NPC's official website)

## NDRC Publishes Measures for the Administration of Overseas Investments by Enterprises

On December 26th, 2017, the National Development and Reform Commission (the "NDRC") published the Measures for the Administration of Overseas Investments by Enterprises (NDRC' Order No.11, hereinafter the "New Measures"), which will be implemented nationwide on March 1st, 2018. The Measures for the Administration of Project Approval and Filing for Overseas Investments (NDRC Order No.9, hereinafter the "Order No.9") will be simultaneously repealed.

The New Measures cancelled the project information reporting system and the local preliminary review and relay sessions, and they liberalized the deadline requirements for approval and filing procedures to be performed by investors. The New Measures incorporate overseas investments executed by overseas entities subject to control by domestic enterprises and natural persons into the regulatory framework, establish a coordinated supervision system over weak links in the regulation of overseas investments, improved punitive measures,

and establish a recording system for illegal conduct and irregularities involving overseas investments. The New Measures encourage investors to inquire about policies and seek information, report problems, and make suggestions and recommendations for the establishment of an overseas investment management and service network.

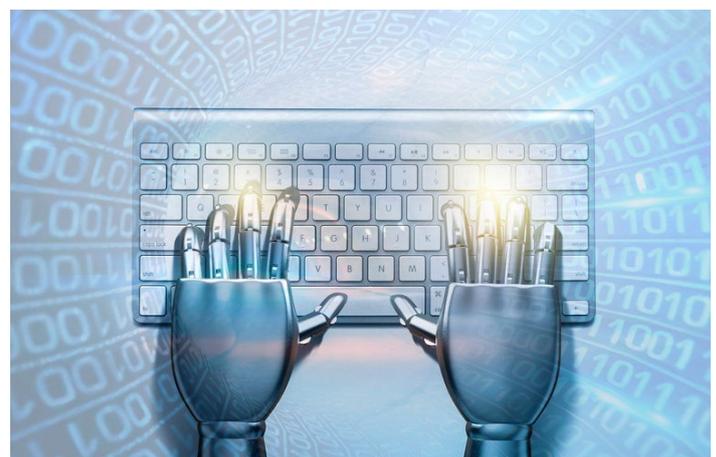
(Source: financialnews.com.cn)

## SIPO Issues Catalog of Key Industries Supported by Intellectual Property Rights (2018 Edition)

The State Intellectual Property Office ("SIPO") recently issued the Catalog of Key Industries Supported by Intellectual Property Rights (2018 Edition) (hereinafter, the "Catalog").

The Catalog identifies ten key industries, including "new generation information technologies", "smart manufacturing", "new materials", "clean energy and eco-environmental protection" and "modern transport technologies and equipment." It further classifies these key industries into 62 sub-categories, and it specifies major industries that the nation will prioritize and that are in urgent needs for support from intellectual property rights. In particular, the new generation information technologies cover nine areas of novel technologies including integrated circuits, new generation broadband and mobile communication networks, cloud computing and big data, artificial intelligence, and the Internet of things. The clean energy and eco-environmental protection industry also includes nine areas such as smart power grids, energy conservation in buildings and the efficient recycling of resources.

(Source: SIPO)



## **SFDA Promulgates Administrative Measures for the Food Safety Supervision of Online Catering Services**

The Administrative Measures for the Food Safety Supervision of Online Catering Services (the "Measures") were promulgated by the State Food and Drug Administration ("SFDA") and came into implementation on January 1st, 2018. According to the Measures, online catering service providers should have offline physical shops and obtain a license for food business in accordance with the law and shall not operate beyond the scope.

The Measures provide that the quality and safety of food sold through online catering services must be consistent with the quality of food sold in offline shops. When a food and drug administration bureau above the county level discovers that an online catering service provider has committed serious illegal conduct, the administration must order the third-party trading platform provider to immediately stop providing online trading platform services for the illegal catering service provider.

Moreover, third-party online catering service trading platform providers are required to establish food safety procedures; establish a special food safety management department; establish a full-time food safety manager(s); review, register and publish license information for online catering service providers; faithfully record online orders; conduct random inspections; and continue monitoring the operational activities of online catering service providers. The Measures also impose requirements on food couriers and the courier process, i.e. couriers must maintain personal hygiene, use safe and harmless food containers and prevent food contamination. (Source: pkulaw.cn)

## **AQSIQ Reform Will Limit Enterprises to Only One Production License for Industrial Products**

The General Administration of Quality Supervision, Inspection and Quarantine ("AQSIQ") recently issued Announcement [2018] No.10, which released the Plan for Executing the Reform of Limiting Each Enterprise to Only One Production License for Industrial Products (the "Plan").

The Announcement clearly specifies that the Plan was to be launched nationwide beginning on January 15, 2018. It covers 38 categories of products that are currently subject to administration through industrial product production licenses. The Plan also makes it clear that when a manufacturer holding a business license for manufacturing files multiple simultaneous applications for industrial product production licenses for various types of products enumerated in the Catalog for the Administration of Production Licenses for Industrial Products, the authority responsible for examining the applications and issuing the licenses will review all such applications together, issue a decision before the deadline, issue only one Production License for Industrial Products, and list the names of all licensed products on the duplicate license. Furthermore, the Plan notes that when an enterprise needs to deal with any of the six licensing items such as the issuance of a license, the renewal of a license or a change in the scope of a license, it may file a single combined application for this purpose under the principle of "one license per enterprise." Moreover, the "one license per enterprise" principle applies only to products subject to the approval authority at the same jurisdictional level.

(Source: AQSIQ)

## **CAC Releases Administrative Provisions for Information Services on Microblogs**

The Cyberspace Administration of China ("CAC") recently released the Administrative Provisions for Information Services on Microblogs (the "Provisions"), which will go into effect on March 20, 2018.

Incorporating a total of 18 articles, the Provisions cover the responsibilities of microblog service providers, verification of the truthfulness of identity information, administration by grade and category, mechanisms for refuting rumors, industry self-regulation, public oversight, administrative management and other issues. The Provisions further require microblog service providers to establish and optimize their systems for user registration, pre-publication examination of information, management of follow-up comments, emergency responses, education and training for practitioners, and the chief editor system. Additionally, the Provisions require microblog service providers to establish and maintain a mechanism for refuting rumors, stating that if a microblog service user is found publishing or spreading any rumor or false information, the service provider must take the initiative to disprove it. Furthermore, the Provisions state that before a microblog service provider applies new technologies or introduces new functions that can serve as tools to create new stories or public opinion or that can mobilize public support, it must report its intention to the cyberspace administration office at the level of the relevant province, autonomous region or state-administered municipality for a security assessment.

(Source: CAC)



## Implementing Regulations for the Environmental Protection Taxation Law Specify Scope of Taxation

The Implementing Regulations for the P.R.C. Environmental Protection Taxation Law (the “New Regulations”) came into implementation on January 1st, 2018.

The New Regulations, subject to the framework of the Environmental Protection Taxation Law, further detail these provisions with respect to tax collection and management, among other topics, by (i) stipulating the specific scope of “other solid waste” as set forth in the Tax Items/Amounts Table of the Environmental Protection Tax; (ii) clarifying the scope of the “urban and rural sewage centralized treatment sites established in accordance with the law”; (iii) clarifying issues related to the environmental protection tax levied upon scale breeding, i.e. where comprehensive utilization and bio-safety disposal are conducted for livestock and poultry waste under the law, such breeding shall not be deemed to directly discharge pollutants to the environment, and no environmental protection tax shall be levied. Meanwhile, the New Regulations also set out the duties of the tax authorities and the environmental protection authorities in the tax collection and management process, and they define the scope of information sharing.

(Source: People’s Daily Overseas Edition)

## New Regulations on Imported Cosmetic Products to be Implemented on March 1: Information Will be Traceable Throughout the Process

The Administrative Regulations on Domestic Recipients Filing, Import Records and Sales Records of Imported Cosmetic Products (2016 No.77 AQSIQ Announcement, hereinafter the “Regulations”) will be implemented on March 1st, 2018. The Regulations provide in detail for the filing, import recordation and sales recordation of imported cosmetic products by domestic recipients, indicating that the information required with respect to imported cosmetic products is the same as the requirements that apply to imported food, and must be traceable throughout the entirety of domestic processing.

According to the Regulations, a domestic recipient of imported cosmetic products must apply for filing with the Administration for Quality Supervision, Inspection and Quarantine (“AQSIQ”) in the jurisdiction where such recipient is registered. The contents of the filing include the recipient’s business license and enterprise quality and safety management regulations, etc. Meanwhile, the recipient is also required to establish a perfected recording system for the import and sale of cosmetic products. Import records must include the names, brands, specifications,

quantities, weights, values, batch numbers, best-before dates or manufacturing dates and warranty periods, place of origin, trading countries/regions, manufacturer names and information recording numbers, etc. The sales records must include the names, specifications, quantities and weights, batch numbers and best-before dates or production dates and warranty periods, as well as product sale dates, etc. The recall records must include the reasons for the recalls, self-inspections and analyses, emergency plans, follow-up improvement measures, etc. (Source: xinhuanet.com)

## Ministry of Environmental Protection Imposes First Fines of Over Ten Million RMB Against Illegal Enterprises after Implementation of New Air Pollution Control Law

On January 9th, 2018, the Ministry of Environmental Protection issued administrative penalty decisions against Shandong Kama Automobile Manufacture Co., Ltd. and Shandong Truck-King Automobile Co., Ltd. for violations of air pollution regulations. The two companies were penalized with fines in the amounts of 31,742,102.89 RMB and 7,036,317.64 RMB, respectively. The Ministry of Environmental Protection requires environmental protection bureaus at all administrative levels to fully comply with and implement the newly amended Law on Air Pollution Control, and it will severely penalize the manufacture of automobiles that exceed prescribed emissions controls and the fabrication of information on pollution-control devices. The two cases are the first penalties levied after the 19th CPC National Congress, and they are meant to set an example and strongly deter similar illegal environmental pollution activities.

The Ministry of Environmental Protection ordered Kama Company to suspend production in order to remedy its fabrication of information on pollution control devices, misrepresentation of substandard products as quality products, and falsification of its emission inspection results in order to market its products. All illegal gains were confiscated and a fine equal to double the value of the products was imposed. The confiscation and the fine amounted to a total of 31,742,102.89 RMB.

The Ministry of Environmental Protection ordered Truck-King Company to remedy its offense of manufacturing automobiles that exceeded emission control standards. It confiscated Truck-King Company’s illegal gains and imposed a fine equal to double the value of the products. The confiscation and the fine amounted to a total of 7,036,317.64 RMB. Mr. Weiyong Tian, Director of the Environmental Inspection Office of the Ministry of Environmental Protection, pointed out that the Ministry’s direct imposition of tens of millions of RMB in administrative penalties on the automobile manufacturers in these two typical environmental protection cases clearly demonstrates the Ministry’s “zero tolerance” policy toward illegal emissions. (Source: Legal Daily)



## “Permit/Licensing Separation” Pilot Reform Expanded to Promote Streamlined Administration

In an executive meeting, the State Council decided that after 116 approval items have been examined and approved in the early stages of the "Permit/Licensing Separation" pilot reform, and after they have been promoted in nationwide pilot free trade zones, the Shanghai's Pudong New District will direct and expand the pilot reform to another 47 approved items in 10 fields that do not require permits in addition to business licenses. These fields include commercial systems, medical care, investment, construction projects, transportation, commerce, agriculture, quality and technical supervision and culture and tourism.

Decisive action will be taken in the following three respects. First, preconditions for production licensing that do not relate to product quality, safety, and industrial policies will be cancelled. Second, formalities for issuing licenses to privately funded medical institutions that plan to hold large medical equipment of Category II and other items subject to approval will be cancelled; and eventually, profit-seeking public institutions funded by private investors will be able to decide in their own discretion how many sickbeds they will use. In particular, instead of being subject to approval, 16 items will be subject to the notification and commitment system including port operations licensing, the licensing of the qualifications of design entities for construction projects and the licensing of qualifications for foreign-funded construction enterprises. The conditions for approval of international ship transportation and printing businesses will be simplified. The market access period for pharmaceuticals and medical devices will be shortened, and consistent management will be applied to the establishment and supervision of pawn shops funded by either domestic or foreign entities. (Source: www.xinhuanet.com)

## “First Failure” for Guangzhou Pharmaceutical Holdings in a Series of Herbal Tea Lawsuits: Fujian Higher Court Rejects All Claims in Trial Proceedings

Guangzhou Pharmaceutical Holdings and Jia Duo Bao have been involved in disputes for years in areas ranging from trademark to advertising slogans, not to mention the “red bottle campaign”. Jia Duo Bao lost the first two rounds by losing 19 consecutive lawsuits. Nevertheless, Guangzhou Pharmaceutical Holdings recently suffered an adverse trial judgment from the Fujian Higher Court in a lawsuit against Jia Duo Bao concerning “the unauthorized use of the unique packaging decoration of well-known products” in which all of its claims were rejected by the court.

The action can be traced back to June 2015, when Guangzhou Pharmaceutical Holdings initiated a lawsuit against Fujian JDB

Beverage Co., Ltd. (hereinafter “Fujian JDB”), asking for a court order to compel Fujian JDB to immediately stop using packaging decoration identical or similar to the unique packaging decoration of “王老吉” herbal tea from Guangzhou Pharmaceutical Holdings, to stop manufacturing and distributing the alleged products, and to destroy all of the inventory.

This is the first failure for Guangzhou Pharmaceutical Holdings after a judgment by the Supreme People’s Court, and it was also the first failure for it in the series of actions involving “王老吉” and “加多宝”.

(Source: National Business Daily)

## Sina Weibo Summoned for Reprimand; “Top Searches” List and Other Features Suspended for Rectification

The Beijing office of the Cyberspace Administration of China (CAC) summoned Weibo’s CEO for a reprimand, denouncing Weibo for not fulfilling its duties of censorship against illegal information posted by its users and allowing misleading, vulgar, pornographic, and ethnically discriminatory information” to spread on its platform. CAC urged Weibo to conduct an immediate self-scrutiny and self-rectification to solve the problem and to remedy its mistakes completely and thoroughly.

In compliance with orders from the CAC, Weibo later posted that it would be taking several of its features offline for a week for rectification, including its rankings of top searches, hot topics, Weibo’s Q&A function, trending celebrities, and the emotions section in Square Headlines. (Source: www.xinhuanet.com)

*If you are interested in learning more legal information concerning compliance management in China, or if you have any query in that respect, please feel free to contact us. More W&B compliance lawyers will be ready to address your concerns.*



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Relying on its rich theoretical knowledge and practical experience, W&B is able to thoroughly understand the legislative trend in the anti-monopoly law. Meanwhile, with its close cooperation and active communication with the relevant administrative and judicial authorities, W&B is able to assist the clients by properly applying the anti-monopoly law system to effectively reduce the risk of occurrence of monopolistic and unfair competition acts, to provide prompt solutions in the event of legal issues or imminent legal penalties, and to adequately safeguard their legitimate rights and interests in the face of monopolistic or unfair competition acts of other business operators or competitors.

## Anti-Unfair Competition Law Goes into Effect -- Unfair advertising (including bogus orders for publicity purposes) will be sanctioned.

The new Anti-Unfair Competition Law modified Article 9 of the old law by further specifying exactly what constitutes false advertising. Specifically, in addition to prohibiting operators from engaging in false advertising for their products, other conduct such as helping others to place bogus orders for publicity purposes, deleting negative reviews and creating fictitious transactions will also be investigated and punished. In other words, illegal business operators such as China's "Online Water Army" and professional product trolls will be subject to punishment.

One of the highlights of this amendment to the Anti-Unfair Competition Law is the regulation of online unfair competition. This includes conduct that obstructs or prevents normal sales of Internet products or services that were legally provided by other operators, including "inserting URLs or automatic redirects from Internet products or services that were legally provided by other operators, without the consent of such operators".

In addition, the new Anti-Unfair Competition Law clarifies the connections among existing legal frameworks and thereby preserves consistency among legal provisions by effectively harmonizing various related laws.

First, it establishes a connection with the P.R.C. Trademark Law by deleting a provision related to trademark infringement and by adding regulatory provisions concerning Article 58 of the P.R.C. Trademark Law, i.e. using another party's registered trademark or well-known but unregistered trademark as its enterprise name for the purpose of misleading the public and

thereby committing unfair competition.

Second, it clarifies its connection to the P.R.C. Advertising Law by affirming that when an operator violates Article 8 of the new Anti-Unfair Competition Law by publishing false advertising, such operator will be punished in accordance with the relevant provisions of the P.R.C. Advertising Law.

Third, it clearly differentiates itself from the P.R.C. Anti-Monopoly Law by deleting provisions relating to restrictions on competition, administrative monopolies and below-cost sales by public utilities.

(Source: Xinhuanet)

## Apple Inc.'s MFi Certification Alleged to be Monopolistic

On January 8th, 2018, Guangdong Pisen Electronics Co., Ltd. (hereinafter "Pisen") filed complaints with the Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau of the State Administration for Industry and Commerce and the Price Supervision and Inspection and Anti-Monopoly Bureau of the National Development and Reform Commission, alleging that Apple Inc. and its affiliates Apple Computer Trading (Shanghai) Co., Ltd. and Apple Electronic Products Commercial and Trading (Beijing) Co., Ltd. violated the P.R.C. Anti-Monopoly Law.

Pisen alleged that during the MFi certification process, Apple Inc. committed the following monopolistic acts: (i) it charged MFi and related certification fees and withdrew a percentage of the money from sales revenue for the chips and data cables; (ii) it set terms on the unilateral cancellation of the MFi certification; (iii) it required data cable manufacturers with MFi certification to purchase chips and connectors only from its designated manufacturers; and (iv) it refused to grant Pisen MFi certification without due cause by exploiting ambiguities in the MFi certification standards.

"According to the P.R.C. Anti-Monopoly Law, operators with a dominant market position are prohibited from selling products at unfairly high prices, purchasing products at unfairly low prices or requiring without due cause a trading counterparty to trade only with it or its designated operators," said Mr. Liwei Jiang, Pisen's attorney, "Moreover, Apple Inc.'s fixing of the sales price of its chips is a form of vertical monopoly agreement prohibited by the P.R.C. Anti-Monopoly Law, which states that 'an operator and a trading counterparty may not fix the resale price of a product to third parties'."

(Source: Legal Weekly)



## Toutiao will Sue Baidu for Unfair Competition via Monopoly

Recently, the news app Toutiao announced that it will file a lawsuit against Baidu for unfair competition via monopoly. Toutiao said its users complained that when they searched for “Toutiao” on Baidu, the first result was an “old news article” published in the middle of December 2017 by an unofficial news source, e.g. Baidu’s content platform Baijiahao, about Toutiao being asked by regulator to suspend its news channel. The second result showed a security alert in red under Toutiao’s official website address, reminding the user that the webpage might be inaccessible due to unstable service functioning.

In response to Toutiao’s charges, Baidu claimed that its search engine takes into account various factors including user needs, relevance, timing and popularity. The search result identified by Toutiao as “old news” concerned government criticism and punishment against Toutiao for distributing “vulgar and low-quality” web content, which has been a hot topic recently. Baidu also said that Toutiao deliberately scrolled down the search page and ignored the section that displays Toutiao’s brand, which occupied nearly the entire page of search results and was sufficient to satisfy users’ needs for search and downloading of Toutiao’s products.

(Source: Antitrust Review WeChat account)

## Nanjing Wu Liang Cai Held Liable to Shanghai Wu Liang Cai for Trademark Infringement and Unfair Competition

“Wu Liang Cai” (Chinese “吴良材”) is a well-known and time-honored brand. The Shanghai Intellectual Property Court recently concluded a case involving both an infringement upon the trademark “吴良材” and unfair competition.

Reportedly, Shanghai Sanlian (Group) Co., Ltd. and Wu Liang Cai Glasses Company under Shanghai Sanlian (Group) Co., Ltd. jointly enjoy the exclusive right to use the registered trademark “吴良材”. It was discovered after an investigation that Nanjing Wu Liang Cai used “吴良材” as its trade name for a number of shops it opened inside and outside of Nanjing; and that Nanjing Wu Liang Cai Company, its branch offices and its authorized franchisees also used “吴良材” in their corporate registrations and business operations. Nanjing Wu Liang Cai Company asserted that it was developed based on the Nanjing branch office established by Shanghai Wu Liang Cai Company and “is therefore a century-old shop”. Sanlian Group and Shanghai Wu Liang Cai Company sued Nanjing Wu Liang Cai on the ground that this conduct infringed their exclusive right to use the registered trademark and constituted unfair competition. The lawsuit asked for a court order to cease the infringement and pay damages plus reasonable expenses, in the total amount of 3,000,000 RMB. The trial court and the appellate court both affirmed the plaintiffs’ claims.

(Source: www.xinhuanet.com)

## First Lawsuit Over Fair Competition Review Docketed: Shenzhen Company v. Jiangxi Provincial Department of Housing and Urban/Rural Construction and Bureau of Construction Costs

The first lawsuit involving a fair competition review in China was officially docketed at the Jiangxi Nanchang Railway Transport Court on January 25, 2018. Shenzhen Thsware Technology Co., Ltd. (hereinafter “Thsware”) sued the Jiangxi Provincial Department of Housing and Urban/Rural Construction and the Bureau of Construction Costs for suspected abuse of administrative power through its evaluation of engineering pricing software, establishment of indirect obstacles to entry into the engineering pricing software market, violation of the statutory procedure for fair competition review and dereliction of corresponding duties. Thsware alleged that its right to fair competition was thereby infringed.

This is reportedly the first case in which an administrative authority has been sued for violating the spirit of fair competition review since the State Council promulgated the Opinions on Establishing a Fair Competition Review System in the Construction of a Market System (known in the industry as File No.34).

(Source: www.thepaper.cn)

## Chinese Rapper Banned for Songs Promoting Drugs and Sexism

Recently, a number of Internet users reported the song Christmas Eve to the Central Committee of the Communist Young League (the "Committee"), asserting that the song's lyrics incite young people to use drugs and mistreat women. The Committee then posted a message stating that public figures should set good examples for the public on the Internet and should provide appropriate guidance to the young. The rapper for this song, PGone, is currently the subject of gossips of an extramarital affair. His music has all been removed from various music platforms in China. Performances, advertisements and online videos featuring this rapper have also been curtailed or cancelled.

(Source: Sohu News)

## Kuso Videos on Yellow River Cantata Deleted; Daughter of Xian Xinghai Intends to Sue to Enforce Her Father's Rights

In recent years, "kuso" videos adapted from the Yellow River Cantata (known as "fan fiction") appeared on occasions such as company annual meetings, college evening parties and even variety shows. They later became prevalent on the Internet, attracting great attention from the public. Recently Xian Nina, daughter of Xian Xinghai, the author of the Yellow River Cantata, took to the Internet to express her discontent towards these kuso videos and threatened legal actions against the infringement involved therein. Although some of the kuso videos were deleted in response to Xian Nina's complaint, a great many videos are still disseminated on the Internet.

Kuso videos based on classic works are likely to violate civil and administrative protections. Specifically, where KUSOers distort and manipulate classic literary works, they have infringed the right of integrity in the works; if the distorted works are further performed and disseminated on the Internet, they infringe the right of performance and the right of dissemination through information networks, for which the producers face civil liability including civil economic compensation and mandatory apology. Moreover, if the administrators of video (sharing) platforms possess clear knowledge of the infringing nature of the distorted works and do not take measures such as deletion and shielding, they can also be held liable for infringement.

(Source: www.bjnews.com.cn)

## Ministry of Culture Abolishes or Amends Certain Ministry Regulations

Recently the Ministry of Culture amended five of its ministry regulations including Detailed Implementation Rules for the Regulation of the Administration of Commercial Performances and the Interim Measures for the Administration of Online Games. According to the amended Measures, applications for engaging in operational Internet cultural activities must meet five requirements, including "using a definite domain name". Administrative Departments of Culture must issue a decision within 20 days of receipt of an application. Upon approval, the department must issue a Business License for Internet Culture and publicly announce the issuance of the license. If the application is rejected, the department must issue the applicant a written notification that includes the grounds for the rejection. The aforementioned Business License shall remain effective for three years after issuance.

(Source: Official website of the Ministry of Culture)

## Film Industry Operators Take Note: SAPPRT to Release Measures on Discretion in Administrative Penalties for Films

The State Administration of Press, Publication, Radio, Film and Television ("SAPPRT") recently drafted and released the Measures on Discretion in Administrative Penalties for Films (Draft for Comment) (the "Draft for Comment") released for public commentary until February 22, 2018.

The Draft for Comment, incorporating five chapters with a total of 29 articles, provides principles and procedures for discretion, standards of discretion, etc. The Draft for Comment clearly states that a party guilty of any of nine offenses, such as "where the film associated with the illegal act contains content specified in Article 16 of the Law on the Promotion of the Film Industry", will be severely punished in accordance with law. In addition, the Draft for Comment notes that a film authority, before making decisions regarding the imposition of administrative penalties, such as ordering the party concerned to suspend production and operations, revoking its business permit or license, or imposing a hefty fine, must guarantee the party's right to request a hearing. According to the Draft for Comment, if a film distribution enterprise, cinema, or other entity commits certain acts such as executing a bogus transaction, making a false report or concealing sales revenues, a fine of more than triple but less than five times the illegal gains may be imposed if the illegal gains exceed 500,000 RMB.

(Source: Legislative Affairs Office of the State Council)

## Supreme People’s Court Promulgates Judicial Interpretations to Specify Criteria for Identifying Matrimonial Debts

Recently the Supreme People’s Court promulgated the Interpretations on Issues Concerning the Application of the Law in the Trial of Disputes over Matrimonial Debts (hereinafter the “Interpretations”), which came into effect on January 18, 2018.

According to the Interpretations, debts based on shared intent to be bound, as evidenced by the signatures of both husband and wife or by one spouse’s subsequent affirmation, should be identified as matrimonial debts. The Interpretations provide that if a creditor claims rights based on matrimonial debts in the case of a debt incurred by a spouse in his or her own name (i) during the marriage and (ii) for the purpose of meeting the daily needs of the family, a People’s Court must uphold the matrimonial nature of the debts. The Interpretations also specify that a People’s Court should not affirm a creditor’s claim of the matrimonial nature of debts incurred by a spouse in his or her own name during the marriage that were not intended to meet the daily needs of the family, unless the creditor proves that (i) the debts were used for the couple’s life or business operations or (ii) the debts were incurred based on the mutual intent of the couple.

(Source: Supreme People’s Court)

## Supreme People’s Court Promulgates New Judicial Interpretations to Regulate the Means of Initiating Administrative Lawsuits

On February 7, 2018, the Supreme People’s Court officially promulgated the Interpretations of the Supreme People’s Court on the Application of the P.R.C. Administrative Procedure Law (hereinafter the “Interpretations”). The Interpretations further unify, clarify and detail the provisions on lawsuits filed by administrative counterparts against administrative authorities. The Interpretations clarify the eligibility of the following potential plaintiffs in such lawsuits: (i) complainants; (ii) creditors; (iii) non-profit legal persons; and (iv) those involved in the joint interests of landlords.

Nevertheless, the disposition of the case by the government office receiving complaints and visitors cannot become the subject of a lawsuit. The new Administrative Procedure Law specifies the limits of administrative acts that can be challenged in administrative lawsuits, i.e., where a citizen, legal person or other organization asserts that the administrative act of an administrative authority or its staff has harmed the complainant’s legitimate rights and interests, the complainant will be entitled to file a lawsuit with a People’s Court. Furthermore, a representative of the defendant administrative authority should appear in court if the case involves important public interests.

(Source: www.xinhuanet.com)

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