

W&B IP Newsletter

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Trademark

State Council: Efficiency of Trademark Registration should be Further Enhanced

Recently China's State Council released the *Opinions on Implementation for Further Optimizing Business Conditions and Better Serving Market Entities*, in which the following Item 16 relates to intellectual property:

(16) Efficiency of trademark registration should be further enhanced. The frequency of update within the trademark online service system should be enhanced; the system's smart search function should be improved; and the online automatic comparison of trademark logos should be accomplished. The periods for review of trademark oppositions and review of trademark rejections should be further shortened, and the review results should be reported in time. By the end of 2020 the average period for review of trademark registrations should be shortened to less than four months. (National Intellectual Property Administration will be responsible for this.)

(Source: www.gov.cn)

Online Drawing Lots Adopted for Trademark Applications Filed on the Same Date for the First Time

Recently the online drawing lots and notarization system for trademark applications filed on the same date was officially launched. The first-day drawing lots has been successfully completed: 130 groups of over 270 trademarks were planned to be involved, among which 133 trademarks were approved as qualified; 108 trademarks were signed up and an actual number of 108 trademarks participated in the drawing lots.

According to the *P.R.C Trademark Law and the Implementing Regulations for the P.R.C. Trademark Law*, if two or more applicants apply on the same date for the registration of identical or similar trademarks for the same or similar kind of commodity, each applicant shall submit proof of the date when the trademark was first used prior to the application to the Trademark Office of the National Intellectual Property Administration (hereinafter the "Trademark Office"). In the event that the trademarks were first used on the same day, or that neither has yet been used, the applicants shall settle the matter through negotiations, and any such agreement shall be submitted to the Trademark Office in writing. If the parties refuse to negotiate or fail to reach an agreed settlement, the Trademark Office shall inform them to determine the official applicant by way of drawing lots, and subsequently the applications of other applicants shall be rejected.

(Source: National Intellectual Property Administration)

CNIPA: Agency of Abnormal Trademark Registrations Must be Cracked Down

Since China National Intellectual Property Administration released the *Notice on Deepening the "Blue Sky" Action and Promoting Healthy Development of the IP Service Industry* earlier this year, the Administration has consolidated planning and coordination, strengthened fulfillment of responsibilities and taken a series of measures to push forward the Blue Sky Action, one of which relates to the cracking down on agency of abnormal trademark registrations:

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CNIPA has delivered or transferred a total of 1,061 clues revealing suspected illegal agency of abnormal trademark registrations to the competent authorities, and guided the local administrations during the process of questioning for rectification and docketing for investigation and punishment. So far trademark agencies have contacted the relevant applicants and actively withdrawn over 800 suspected abnormal applications. Authorities in 24 provinces have questioned over 200 trademark agencies and docketed 101 cases.

(Source: National Intellectual Property Administration)

Copyright

Amendment of the P.R.C. Copyright Law Submitted for Second Review: Classified Protection Proposed to be provided for Audiovisual Works

On August 8, the *Amendment of the P.R.C. Copyright Law* (the “*Draft Amendment*”) was submitted to the Standing Committee of the National People’s Congress for second review. The *Draft Amendment* has perfected the definition for the term “work” and the types of works, and deleted the provisions on prohibition of abuse of rights that affect normal dissemination of works and the corresponding legal liability; also, the *Draft Amendment* has added new provisions on classified protection for copyrights of audiovisual works.

One of the spotlights in the *Draft Amendment* is the proposed classified protection for copyrights of audiovisual works. The Draft Amendment, in addition to “film works and TV drama works”, further provides as follows: in the event that other audiovisual works “constitute works of joint authorship or works for hire, the copyrights thereof shall be attributed in accordance with the relevant provisions under this Law”; in the event that they “do not constitute works of joint authorship or works for hire, the copyrights thereof shall be agreed between the producer and the author; and in the absence of such agreement or in case of ambiguity of such agreement, the copyrights thereof shall be attributed to the producer, while the author shall be entitled to the right of authorship and the right or remuneration; if the producer’s use of the audiovisual works prescribed herein goes beyond the agreement or the industry practice, he or it shall obtain the author’s permission.”

(Source: Xinhua News Agency)

Supreme People’s Court Solicits Comments on Judicial Document for Strengthening Protection for Copyrights

Recently the Supreme People’s Court published the *Opinions on Strengthening Protection for Copyrights and Copyright-related Rights (Draft for Comment)* for public comments by September 20.

Said *Draft for Comment* mainly includes the following spirits:

1. Effectively strengthen the protection for copyrights and promote prosperous development of socialist culture;
2. Fully apply the rule of presumption and ease the burden of litigation and enforcement on the rights holder;

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3. Combine features of different types of cases and effectively protect the legitimate rights and interests of the rights holders;
4. Eliminate risks of infringement and piracy and effectively prevent occurrence of infringement;
5. Impose severer punishments upon false lawsuits and promote to improve the mechanism of good-faith litigation.

(Source: Supreme People's Court)

Intellectual Property

China Customs: IP Rights Enforcement in the First Half of 2020

Through January to June, 2020, China Customs have continued tough cracking down on infringement of IP rights. Customs across China have actively carried out the IP protection action known as “Long Teng 2020”, the IP protection action “Blue Net” targeted at postal channels and the IP protection action “Clean Net” for export transshipment cargo. During these actions, the Customs have taken IP protection measures for 23,600 batches of cargo and detained 22,500 batches of suspected infringing cargo, and a total of 8,814,000 pieces of suspected infringing cargo were involved.

(Source: General Administration of Customs)

CNIPA and Other Sixteen Ministries/Departments: Costs for Application and Maintenance of IP Rights for Small and Medium-sized Enterprises should be Reduced

Recently the Ministry of Industry and Information Technology, the National Intellectual Property Administration and other sixteen Ministries/Departments published the *Several Opinions on Perfecting the Mechanism for Supporting Development of Small and Medium-sized Enterprises*, which mentions improvement of law, regulations and policies in connection with protection for IP rights, establishment and perfection of the punitive damages mechanism, and increase of the amount of statutory damages.

(Source: Ministry of Industry and Information Technology)