

# W&B Legal Newsletter

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# INTRODUCTION

Watson & Band has flourished into a full-service law firm with more than 400 pro-fessionals 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, Zhengzhou, Chengdu, 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 re-sponsible for special clients. Agents from various technical divisions all have rich experience and are able to work with several languages.

## CONTACT US

### Shanghai Office

**Address: 26<sup>th</sup> Floor, The Center, No.989 Changle Road, Shanghai 200031 P.R.C.**

Tel: (86-21) 5292-1111; (86-21) 6350-0777

Fax: (86-21)5292-1001; (86-21) 6272-6366

E-mail: [mail@watsonband.com](mailto:mail@watsonband.com) ;

[mail-ip@watsonband.com](mailto:mail-ip@watsonband.com)

### Beijing Office

**Address: 5C, D Block, Fuhua Mansion, No. 8 North Chaoyangmen Street, Dongcheng Dis-strict, Beijing 100027 P.R.C.**

Tel: (86-10) 6625-6025 Fax:(86-10) 6445-2797

E-mail: [beijing@watsonband.com](mailto:beijing@watsonband.com);

[mail-ip@watsonband.com](mailto:mail-ip@watsonband.com)

### Harbin Office

**Address: Room A2, Madi-er Shopping Center No.37 West Badao Street, Daoli District, Harbin 150010 P.R.C.**

Tel: (86-451) 8457-3032; (86-451) 8457-3032

E-mail: [harbin@watsonband.com](mailto:harbin@watsonband.com)

### Gansu Office

**Room 1823, Real Estate Tower, No.1 Tongwei Road, Lanzhou, Gansu Province, 730000, P.R.C.**

E-mail: [gansu@watsonband.com](mailto:gansu@watsonband.com)

### Yantai Office

**B3-703, Donghe Science and Technology Park, South Tongshi Road, Zhifu District, Yantai, Shandong, 264000**

E-mail: [yantai@watsonband.com](mailto:yantai@watsonband.com)

Tel: 0535-2126272

### Guangzhou Office

**Room 3708, Fuli Yingtong Building 30 Huaxia Road, Tianhe District, Guangzhou**

E-mail:[xuefeng.xie@watson-band.com.cn](mailto:xuefeng.xie@watson-band.com.cn)

Tel: +020-85647039

### Zhengzhou Office

**12B, Building A, Kineer IFC, East Jinshui Road, Zhengdong New District, Zhengzhou**

Tel: 0371-86569881

### Suzhou Office

**Room 507, Building 5, No.9 Xuesen Road, Science and Technology City, High-tech District, Suzhou**

Tel: 0512-68431110

### Chengdu Office

**2203-2204, Tower 3, Chengdu Yintai Center, No.1199, Tianfu Avenue North, High-tech District, Chengdu**

Tel: +86-13398190635



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## 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 National Intellectual Property Administration of China (CNIPA), Trademark Office of CNIPA, National Copyright Administration of China and other official institutions.
- ◆ This Newsletter has cited the source of the aforementioned official announcements, news and other public documents.

## Bankruptcy-related Essay written by Watson & Band Partners won Second Prize in the Contest hosted by Shanghai Bankruptcy Administrators Association

Recently Shanghai Bankruptcy Administrators Association hosted the second session of its first general meeting in Shanghai. At the session, authors and institutions of “Excellent Essays by Bankruptcy Administrators” were praised. The essay jointly written by Watson & Band Managing Partner Frank Qian and Partner Xiaosu Zhu, entitled “Influences on Enterprises Bankruptcy Practice by the Several New Rules under the General Provisions of the Contract Chapter of the P.R.C. Civil Code”, received the second prize.



## Watson & Band Wins Nomination for Shanghai Firm of the Year in the 2021 ALB China Law Awards

On April 16, Asian Legal Business officially published the name of finalists for the 2021 ALB China Law Awards, in which Watson & Band won nomination for the award “Shanghai Firm of the Year”.

It is said that the ALB China Law Awards aim to present the pioneering law firms, excellent in-house teams and outstanding legal professionals, as well as big deals in the preceding year, with the ultimate goal to encourage more legal teams and practitioners to make greater contributions to their respective areas.

As a Shanghai-based full-service firm, Watson & Band has been making its dedication to the urban construction of Shanghai. Our legal service escorted significant projects such as the “East Bank Public Space Connection Project” and the “10<sup>th</sup> China Flower EXPO Project” throughout the process and witnessed each page of Shanghai’s new achievements and glories.

## China IP New Year Forum: Watson & Band Awarded an “Outstanding China IP Services Team for the Year 2020”



On the evening of April 17, the 11<sup>th</sup> China IP New Year Forum, also the 2021 China IP Managers Annual Meeting and Award Ceremony, was grandly hosted in St Regis Hotel, Beijing. At the ceremony, Watson & Band IP Services Team was again awarded “Outstanding China IP Services Team for the Year 2020”.

The annual evaluation of “Outstanding China IP Services Teams” is hosted by the journal *China Intellectual Property*. This year’s evaluation starts from the service scopes and specializations of the candidate IP services teams, and adopts the evaluation method combining special indicator rankings and comprehensive interviews and reports, so as to provide comments on the comprehensive capabilities of the candidate teams on a broader basis.

# Latest Legal Developments

## State Administration for Market Regulation: Five IP-related Legislation Projects are Underway in 2021

Recently, State Administration for Market Regulation published *the Legislation Work Plan for the Year 2021*, in which a total of 67 legislation projects are released, including six drafts of laws or administrative regulations to be submitted for approval, and 61 regulations at ministry / administration level to be formulated or amended. In order to strengthen the protection for IP rights, work plans for five IP-related legislation projects were submitted to the State Council, namely, *the Implementing Rules for the P.R.C. Patent Law*, *the Measures for the Administration of Trademark Agency*, *the Several Provisions on Regulating Patent Applications*, *the Provisions for Identification and Protection of Well-known Trademarks*, and *the Measures for Registration and Administration of Collective Marks and Certification Marks*.

(Source: State Administration for Market Regulation)



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## SPC Issues Judicial Interpretations on Ascertainment of Liability for Emotional Distress Damages in State Compensation Cases

The Supreme People's Court ("SPC") recently promulgated the *Judicial Interpretations on Several Issues concerning the Application of Law in the Ascertainment of Liability for Emotional Distress Damages in the Trial of State Compensation Cases* (the "*Interpretations*") for implementation as of April 1, 2021.

The *Interpretations* consist of 14 articles to mainly address five contents: claim for emotional distress damages and the acceptance thereof; the criteria for ascertainment of causing emotional distress with serious consequences; applicable rules for the forms of liability; the standards for and payment of emotional distress compensation; and other provisions. For the first time, the *Interpretations* make clear the objective circumstances for "causing serious consequences" and link the degrees of consequences resulted from "causing emotional distress" (namely, causing mental distress, causing serious consequences and causing particular serious consequences) and the forms of liability with corresponding payment standards for emotional distress compensation. Furthermore, the *Interpretations* set out several considerations for determining the amount of emotional distress compensation.

(Source: Supreme People's Court)

## Supreme People's Court Promulgates Judicial Interpretations on Punitive Damages in Civil Cases Involving Infringement of IP Rights

Recently, the Supreme People's Court promulgated the *Interpretations on the Application of Punitive Damages in the Trial of Civil Cases Involving Infringement of IP Rights* (hereinafter the “*Interpretations*”), which came into effect on March 3, 2021.

The *Interpretations* stipulated in detail the scope of application of punitive damages in civil cases involving infringement of IP rights, the standard for identifying intent and seriousness, as well as the base amount and multiple for the calculation of the damages. The *Interpretations* aim to guide the courts at all levels to correctly apply the punitive damages and impose punishments upon serious infringement of IP rights with the clarified standards for adjudication under the Interpretations. The promulgation of the *Interpretations* is an important step for implementing the mechanism of punitive damages and demonstrates the determination of the People's Courts in comprehensively strengthening the judicial protection for IP rights, and is therefore of great significance for further optimization of the legal environment supported by scientific innovation.

(Source: Supreme People's Court)

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## CNIPA Launches Special Action against Malicious Preemptive Trademark Registration

The China National Intellectual Property Administration (“CNIPA”) recently circulated the *Special Action Plan for Cracking down on Malicious Preemptive Trademark Registration* (the “*Plan*”) to centrally carry out a special action against the act of malicious preemptive trademark registration from March 2021.

According to the *Plan*, the special action will focus on acts including malicious and preemptive registration of trademarks, seeking illegal benefits, disrupting the order of trademark registration and administration and causing relatively major adverse social influences, which can be divided into 10 types, such as “maliciously and preemptively registering the name of any major national or regional strategy, major event, major policy, key projects or key technological project as a trademark”. The *Plan* also makes clear five measures, such as enhancing targeted crackdown and adopting comprehensive strategies. For example, it is required to include the records of administrative punishment against malicious preemptive trademark registration into the national public credit information directory as well as the credit file, to take more severe measures to crack down on the malicious preemptive trademark registration by trademark agencies, and to suspend their license for trademark agency business in case of serious circumstances.

(Source: China National Intellectual Property Administration)

## SAMR Releases Measures for the Supervision and Administration of Online Transactions

The State Administration for Market Regulation (“SAMR”) recently issued the *Measures for the Supervision and Administration of Online Transactions* (the “Measures”) for implementation from May 1, 2021.

The *Measures* consist of 56 articles in five chapters, including general provisions, online transaction operators, supervision and administration, legal liability, and supplementary provisions. Regarding the protection of consumers’ rights and interests, the *Measures* require that operators shall not make tied sale as an option for a consumer’s consent by default, or set the option adopted by a consumer in a previous transaction as his or her default option; operators providing automatic extension or renewal service shall give a notice to the consumers in an obvious way and allow them to make independent choice before they accept the service and five days prior to such extension or renewal respectively. Moreover, the *Measures* set out clear provisions on such key issues as the registration of online operation entity, the regulation of new business forms, the primary responsibility of platform operators and personal information protection.

(Source: State Administration for Market Regulation)

## Four Authorities Promulgate Rules on the Scope of Necessary Personal Information for Common Types of Mobile Internet Applications

Recently, the Secretariat of the Cyberspace Administration of China (the “CAC”) and other three authorities jointly promulgated the *Rules on the Scope of Necessary Personal Information for Common Types of Mobile Internet Applications* (the “Rules”), which will come into force on May 1, 2021.

The *Rules* define the scope of necessary personal information for each of 39 common types of mobile Internet applications including maps and navigation apps, online ride-hailing apps and instant messaging apps, and require that operators of these apps shall not refuse basic app functions and services to users because of their refusal to provide their personal information that is not necessary. According to the *Rules*, the basic functions and services of residential real estate leasing/sales apps include the “posting of information on personal residential property for rent or sale, for which the necessary personal information include: (1) mobile phone number of the registered user; (2) basic information of the property including its address and floor area/floor plan, and the expected purchase or rental price. The basic function and service of online audio/video apps is to “search and play videos or music”, and personal information should not be required for the use of this basic function and service.

(Source: Cyberspace Administration of China)



## CSRC Issues the Revised Administrative Measures for Information Disclosure by Listed Companies

The China Securities Regulatory Commission (“CSRC”) recently released the *revised Administrative Measures for the Information Disclosure by Listed Companies* (the “Measures”) for implementation from May 1, 2021 and on.

The *Measures* mainly make the following revisions: (1) improving the basic requirements for information disclosure, adding clear and easy-to-understand principles, and detailing the standards and requirements for voluntary disclosure; (2) improving the regular reporting system and making targeted improvement to the system for objection by directors, supervisors and officers of listed companies; (3) providing detailed rules for ad hoc reports, supplementing the provisions on major events and clarifying the time of disclosure for major issues; (4) perfecting the administrative system for information disclosure, adding provisions to require listed companies to establish a system for registering and managing the persons with insider information and adding provisions to standardize the external communications by directors, supervisors and officers; and (5) perfecting the type of regulatory measures and specifying the legal liability for abusing the objection system.



(Source: China Securities Regulatory Commission)