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AFD China Awarded 2019-2020 Beijing Excellent Patent Agency and Director Long Hong Awarded Excellent Agent

According to the Beijing Patent Attorneys Association's announcement of the annual Double Excellence Selection, our firm AFD China Intellectual Property Law Office was awarded Beijing Excellent Patent Agency 2019-2020 for the innovative abilities comprehensively presented in our services and firm management. It has been the fourth time that we received the honor.

Our Domestic Technical Director Mr. Long Hong has been recognized as an Excellent Patent Agent in Beijing in the same selection.

<http://afdip.com/index.php?ac=article&at=read&did=3764>

AFD China Recognized as a Leading Firm in IP by the Legal 500

The Legal 500, a world-renowned guide to legal firm has issued 2021 Leading Firms in Asia-Pacific region on January 14, 2021. AFD China has earned a Tier-3 ranking as a leading firm in non-contentions intellectual property for the first time. Our attorneys Xia Zheng, Hong Long and Jingjing Wu are among the recommended lawyers by the Legal 500 for their outstanding professional performance and practical experience in patent and trademark affairs.

<https://www.legal500.com/c/china/intellectual-property-prc-firms/>

China Mulls Heavier Criminal Penalties for IPR Infringements

The recently-passed Amendment XI to its Criminal will provide stricter punishment for intellectual property crimes from March 2021.

The maximum prison term for trademark and copyright infringements will be increased from seven years to 10 years.

Whoever, without permission of the owner of a registered trademark, uses a trademark which is identical to the registered one on the same kind of commodities or services shall, if the circumstances are especially serious, be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined.

Convicted criminals who knowingly sell commodities bearing counterfeit registered trademarks, who forge or make representations of registered trademarks without authorization or sell such representations shall be jailed for 3-10 years and fined, if the amount of sale is huge or if the circumstances are especially serious.

Those who commit acts of infringement on copyright or other rights related to copyright for the purpose of making profits shall be sentenced to 3-10 years of imprisonment and fined, if the amount of illegal gains is huge or if there are other especially serious circumstances.

<http://english.ipraction.gov.cn/article/ns/202012/331309.html>

18 IP-related Judicial Interpretations Amended in accordance with the Newly-effective Civil Code

At the end of December 2020, the Supreme People's Court organized the 1823th Judicial Committee meeting and released the amendments of 18 judicial interpretations relating to Intellectual Property (IP) practice to make sure that they are in accordance with the coming Civil Code.

We have finished the translation of the two regarding patent law

- Several Provisions of Supreme People's Court on Issues Concerning the Application of Law in the Trial of Cases Involving Patent Disputes (2021.1.1)
- Interpretation (II) of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Disputes over Infringement of Patent Rights (2021.1.1)

and published it on our website.

The Civil Code and the judicial interpretations has come into force on 1 January 2021.

<http://afdip.com/index.php?ac=article&at=list&tid=91>

SPC's Intellectual Property Appellate Court Established for Two Years Concluded more than 4,000 Cases

Two years ago, the Supreme People's Court Intellectual Property Court was inaugurated in Beijing on January 1. Since then, the Court hears civil and administrative appeals cases involving patents and monopolies nationwide.

It has accepted 5,104 cases and concluded 4,124 cases over the two years. A total of 111 meetings of professional judges were held, and 418 specific rules for the application of laws were formed.

The court currently has 38 judges and 44 of their assistants, with 42 percent of the judges

holding a doctorate, 37 percent with science and engineering backgrounds, and 21 percent with overseas qualifications.

<http://english.ipraction.gov.cn/article/ns/202012/331697.html>

SPC and CNIPA Established Online Litigation and Mediation Coordination Mechanism

The SPC and the China National Intellectual Property Administration announced establishing a settlement mechanism for IP disputes, and carrying out online 'litigation and mediation' coordination of IP disputes.

The platform allows parties of a dispute to submit the dispute mediation application to the court; the court will appoint and entrust the mediation case to the relevant mediation organization or mediator based on the mediation platform; the mediation organization and mediator log in to the mediation platform to accept appointment, entrust, and carry out mediation work. After mediation is completed, enter the mediation results into the mediation platform and inform the relevant courts. The parties can also directly submit a mediation application to the appropriate mediation organization through the mediation platform.

In the successful mediation cases, the mediator organizes both parties to sign an online mediation agreement. Both parties can jointly apply for online judicial confirmation or issue a mediation agreement. The court will conduct online judicial confirmation of the mediation agreement through the mediation platform, or issue a mediation statement after the case is filed; the court shall follow the law to register the case or continue the trial.

For cases that are mediated offline by the mediation organization and can be judicially confirmed, an online judicial confirmation can be made through the mediation platform.

<http://english.ipraction.gov.cn/article/ns/202101/332926.html>

Added Value of Copyright Industry in China Exceeds Seven Trillion Yuan

The added value of China's copyright industry reached 7.32 trillion yuan (\$1.12 trillion) in 2019, registering a year-on-year increase of over 10 percent, according to the Chinese Academy of Press and Publication.

From 2016 to 2019, the added value of the copyright industry has grown from 5.46 trillion yuan to 7.32 trillion yuan, with an increase of 34 percent, showed a report recently issued by the academy.

The proportion of the copyright industry in China's GDP also increased from 7.33 percent in 2016 to 7.39 percent in 2019, said the report.

<http://english.ipraction.gov.cn/article/ns/202101/332223.html>

China-EU Landmark Geographical Indications Agreement to Propel Trade of High-quality Products to New Highs

The start of 2021 is distinguished by the implementation of the landmark China-European Union (EU) bilateral agreement on protecting 100 European Geographical Indications (GIs) in China and 100 Chinese GIs in the EU against usurpation and imitation.

According to the agreement, the Chinese GI products protected in the EU include Pixian Dou Ban (Pixian bean paste), Anxi Tie Guan Yin (Anxi oolong tea), Panjin Da Mi (Panjin rice) and Wu Liang Ye (Wuliangye liquor), while the EU list protected in China includes Cava (a wine from Spain), Champagne (a wine from France), Feta (a cheese from Greece), Irish whiskey, Munchener Bier (a beer from Germany).

Thanks to the agreement, GIs from both sides are protected in both markets where consumers can buy authentic Chinese or EU local products, most of which are wines, spirits and agricultural food products.

Besides the reciprocal trade benefits as well as introducing consumers to quality products from both sides, the agreement's implementation is expected to propel bilateral trade of high-quality products to new highs.

<http://english.ipraction.gov.cn/article/ns/202101/332920.html>

Shenzhen Remains Mainland's Leader in PCT and Trademark Filings

Dubbed China's Silicon Valley, Shenzhen has seen remarkable growth in innovative companies in a wide range of fields in recent years, including artificial intelligence, new-generation information technology and biomedicine, driving demand for intellectual property protection.

In 2019, scientific research and development input in Shenzhen hit nearly 133 billion yuan (\$20.3 billion), accounting for 4.9 percent of the city's GDP, a level matching some developed countries.

According to official statistics, a total of 28,000 companies filed 219,000 patent applications in Shenzhen in the first three quarters of this year, posting a year-on-year increase of nearly 17.2 percent. At the same time, about 164,000 patents were granted domestically, up about 34.5 percent from a year before. Both ranked first among big cities in China.

The city's international applications filed via the Patent Cooperation Treaty continued to grow during the period from January to September this year, up 22.7 percent from a year before. The city currently ranks in first place among major mainland cities for PCT filings, the 16th consecutive year it has done so.

Meanwhile, the city's trademark applications have surged by roughly 20 percent year-on-year, the official figures show.

https://english.cnipa.gov.cn/art/2020/12/24/art_1347_155842.html

SUPPLEMENTARY ISSUE

NBA Star Michael Jordan Name Right Dispute Case First Instance Sentenced

On December 30, 2020, the Shanghai Second Intermediate Court issued a verdict of the first instance in the case of former American professional basketball player Michael Jordan v. Qiaodan Sports Company and Bairen Trading Company for name rights disputes. So far, the dispute between the NBA basketball star Michael Jordan and the domestic sports brand ushered in a new litigation result. Since 2012, there have been several rounds of disputes between the two sides around trademark dispute.

From the perspective of name rights, this case affirmed the popularity of the basketball star Michael Jordan, and stepped up efforts to protect the personality rights of overseas celebrities and related property rights.

After the trial, the Shanghai Second Intermediate People's Court held that the Jordan Sports Company, knowing that Michael Jordan has a high reputation, still chose the word "Jordan" for trademark registration without authorization and registered the company name "Jordan". In addition, Jordan Sports Company also registered Michael Jordan's former jersey number "23" and the Chinese translations of his two sons Marcus Jordan and Geoffrey Jordan as trademarks, which are very direct and sufficient. It was determined that it had the intention to cause or allow the public to cause confusion, so Qiaodan Sports Co. Ltd. constituted an infringement of the plaintiff's name right. The seller Bairen Trading Company does not have a common intent to infringe, but in the future it shall not sell infringing products. Since some of the "Jordan" trademarks registered by Qiaodan Sports Company have already exceeded the five-year dispute period in the "Trademark Law" and have become irrevocable trademarks, reasonable measures should be taken to prevent the public from relating the original and defendant. This association of relevance not only achieves the purpose of stopping the infringement of economic losses, the Court only made judgments on the plaintiff's claim for mental damage relief and reasonable expenditures in the litigation. the plaintiff's name rights, but also takes into account the legislative purpose of the "Trademark Law" regarding the five-year dispute period. Since the plaintiff clearly stated in this case that it does not claim

Accordingly, the Shanghai Second Intermediate Court ruled in accordance with the law that Qiaodan Sports Company publicly apologized to the plaintiff in newspapers and on the Internet, and clarified the relationship between the two; Qiaodan Sports Company stopped using the

"Jordan" business name in its corporate name; Qiaodan Sports Company should stop using trademarks involving "Jordan", but for trademarks involving "Jordan" that exceeds the five-year dispute period, reasonable methods including distinctive signs shall be used to indicate that it is not related to former American basketball player Michael Jordan; Jordan Sports Company shall compensate the plaintiff with RMB 300,000 for mental injury; Jordan Sports Company shall compensate the plaintiff with RMB 50,000 for reasonable expenses incurred in the litigation in this case; other claims of the plaintiff are rejected.

<http://english.ipraction.gov.cn/article/tc/202101/332441.html>

Bayer: Successfully Protected Legal Rights of "Kangwang" Trademark

Recently, two civil mediation documents put an end to a three-year "Kangwang" trademark infringement and unfair competition case.

Under the preside of the Shanghai Intellectual Property Court, Shanghai Runfu Biotechnology Co., Ltd., Shanghai Meihao Investment Holding Co., Ltd., and Gansu Kangwang Pharmaceutical Co., Ltd. jointly worked with the trademark owner, Bayer's Dianhong Pharmaceutical Group Co., Ltd. reached a mediation agreement, promising to immediately stop trademark infringement and related unfair competition, compensate Dianhong for economic losses of 1 million yuan, and publish a statement of apology on Toutiao and its WeChat official account.

As a well-known brand of anti-dandruff medicinal lotion, "Kangwang" has a history of nearly 25 years. It became a brand under Bayer in 2014, following Bayer's successful acquisition of Dianhong Pharmaceutical Group Co., Ltd. As Bayer's flagship brand rooted in the Chinese market, "Kangwang" has always received significant attention from the company and continues to rank first in the anti-dandruff medicinal lotion market.

In 2017, Bayer noticed the appearance of "Baikangwang" shampoo on the market. After investigation and evidence collection, the product was produced and sold by Dianhong's former distributor Company A and its subsidiary Company B. In response to the malicious infringement of the above persons who knew that the "Kangwang" brand has belonged to Bayer but still deliberately registered and used the "Baykangwang" trademark, Bayer filed an administrative complaint with the Shanghai Qingpu District Market Supervision Bureau, and finally received a penalty decision in 2019: the two companies A and B were judged to immediately stop the infringement and imposed a fine of 200,000 yuan.

However, in 2018, the company started operating a new infringing product "Likangwang" shampoo, and at the same time sold online and offline channels, publicized the product in the media and pharmaceutical exhibitions, and invited public figures to endorse it. Its affiliated company "C Company" also used the word "Kangwang" in the name of the company, calling itself "Kangwang Pharmaceutical", which constituted an act of unfair competition.

In response, Bayer filed a civil infringement lawsuit against "Baikangwang" and "Likangwang" to the Shanghai Intellectual Property Court, and finally accepted a settlement on the premise of the defendant's immediate suspension of infringement, compensation, and apology after mediation in December 2020. On the basis of covering all litigation claims, the settlement matters also included the defendant's other unfair competition acts, and resolved all infringements in a package to the fullest extent, preventing the defendant from other free-riding actions in the future.

<http://english.ipraction.gov.cn/article/tc/202101/333801.html>

Alibaba sued Tencent for Copyright Infringement, Tencent Judged to Compensate 432,000 yuan

Recently, according to a civil judgment published by China Judgments Online, Tencent was sued by Alibaba for infringing on the information network dissemination rights of music works such as Mayday, Liang Jingru, Pinguan, and was sentenced to compensate RMB 432,000 in the first instance.

The above-mentioned judgment of the first instance shows that the plaintiff Alibaba Culture Media Co., Ltd. alleged that Tencent Technology Company, Tencent Computer Company, and Tencent Music Company used the "Tencent Dingdang Smart Audio-visual Screen" and the supporting "Tencent Dingdang" App to inform users without authorization, providing the musical works involved in the case constituted infringement.

The reporter learned that Tencent Dingdang smart audio-visual screen is the first smart speaker product with a screen released by Tencent on December 18, 2018. After users download the Tencent Dingdang App and connect it to the smart audio-visual screen, they can use the screen to play music works through the App search.

It is reported that there are 72 musical works involved in the case, which were included in ten albums by singers such as Mayday, Pin Guan, Guangliang, Liang Jingru, Ren Xianqi, Xin Xiaoqi and others. From November 1, 2018, to October 31, 2021, Rolling Stone International Music Co.,

Ltd. authorized the plaintiff to enjoy the exclusive information network dissemination rights of the above-mentioned musical works, that is, the right to take legal measures against infringing third parties.

The defendant argued that after the user instructed the speaker, the speaker would send a request to the qq.com server, and the whole process was completed directly in the Dingdang speaker and the App. Since users do not need to call or access QQ Music software during the entire process of playing music, Tencent Music is not a qualified defendant.

Similarly, Tencent Technology is only a hardware manufacturer of Tencent Dingdang smart audio-visual screens and did not provide users with online dissemination services of the music works involved. Therefore, the defendant believes that the company should not be liable for infringement.

Tencent Computer Company stated that the evidence submitted by the plaintiff shows that the software download source and service subject of the Tencent DingDang smart audio-visual screen music service are all from the qq.com domain name and website, which means that the music service provider, in this case, is Tencent Computer Company. The plaintiff's listing of Tencent Music as a co-defendant was essentially false defendant, deliberately created a jurisdiction junction.

After trial, the Court found that Tencent Technology Company and Tencent Computer Company directly infringed the plaintiff's network information dissemination rights through different work divisions based on the purpose of joint cooperation, based on the liaison of common will. According to the 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 stipulates that tort liability shall be jointly assumed. Tencent Music Company cannot prove that it has committed joint infringement due to insufficient evidence, and shall not bear joint infringement liability. In accordance with the "Copyright Law" and other relevant regulations, the Court ruled that the defendant should immediately stop the infringement. In addition, considering factors such as the popularity and influence of the musical works involved, the scale of speaker sales, duration, and consequences, the Court determined that the defendant must compensate the plaintiff for economic losses based on 6,000 yuan per song, that is, the defendant must compensate 432,000 yuan.

<http://english.ipraction.gov.cn/article/tc/202101/334048.html>