

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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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.

Spotlight on China Shanghai International Arts Festival: Watson & Band Successfully Hosts the Session on Legal Issues in China's Cultural and Performing Arts Industry

Taking the honor of the grand opening of the 21st China Shanghai International Arts Festival (the "CSIAF"), Watson & Band cooperated with the CSIAF Organizing Committee Office and successfully hosted this year's Session on Legal Issues in China's Cultural and Performing Arts Industry at Intercontinental Jing'an on the afternoon of October 20.



Moments Review:

- Xiaosu Zhu, W&B Partner: Host of the Session
- Jingjing Zhu, W&B Partner: Legal Spectrum of Movie and TV Projects
- Yinghua Li, Senior Legal Manager, China Dream Live Entertainment: Immersive Theaters – Entering IP Rights
- Yongpei Liu, Director of Sub-center of KOGUAN School of Law, Shanghai Jiaotong University Education Development Center: Boundary between Right of Adaptation and Right of Integrity – Commentary on the Case "Chronicles of the Ghostly Tribe"
- Liming Zhang, W&B Partner: Trademark-related Risks in the Cultural and Performing Arts Industry
- Jun Xu, Chief Judge of IP Tribunal, Pudong District Court: A Primary Look into Copyright Fair Use Concerning Mixed Editing of Short Videos
- Panel Discussion: Legal Issues Involved in Musical Performances

The Session ended around 6:00 p.m. The guest speakers and the attendees had further communications after the session. An approximate presence of 90 attendees left barely any vacant seat in the meeting hall filled with an animated atmosphere. The attendees spoke highly of the session for its professionalism, practicability and operability.



Watson & Band: Ranked in 2018-2019 China Top 10 IP Agency Firms / Teams

Recently the two-month evaluation and selection of the award “2018-2019 China Top 10 IP Agency Firms / Teams” drew to an end. Watson & Band, with its long-term outstanding performance in the area of civil actions involving trademark disputes and its good reputation accumulated throughout the years among the clients, was ranked on the list “2018-2019 China Top 10 IP Agency Firms – Trademark Civil Actions”. Meanwhile, Watson & Band’s patent litigation team headed by Partner Mr. Jianguo Huang, also glittered on top of the Top 10 Civil Litigation Teams List.



IP Rights Go with the Pulse of the Times | Watson & Band Attends the 10th China Intellectual Property Annual Conference

On September 2nd and 3rd, Watson & Band’s IP service team went to Hangzhou International Exhibition Center to attend the 10th China Intellectual Property Annual Conference. Themed “IP Rights Go with the Pulse of the Times”, the Annual Conference was hosted by the Intellectual Property Publishing House Co., Ltd. and organized by Hangzhou Municipal People’s Government. The grand event attracted over 10,000 attendees from over 40 countries and regions from 5 continents around the globe.

Watson & Band’s IP service team attends the forums and participated in various seminars during the two-day event. In those activities, the team members discussed latest trends and hot issues within the IP practice area with colleagues from both home and abroad, and opened up new perspectives in the IP practices, all of which would ultimately contribute to the improvement of our IP services that cover various industry sectors.

Watson & Band Attends the 600-Day Countdown Meeting for the Tenth Flowers EXPO and the Certificate Awarding Ceremony for the Legal Service Providers



On September 30th, 2019, the 600-Day Countdown Meeting for the Tenth Flowers EXPO was grandly hosted in the conference hall of the Chongming Convention Center. Municipal and district leaders were present at the meeting. Detailed preparatory progress of the Flowers EXPO was reported at the meeting.

Watson & Band, after rounds of competitive exams and screening in the Government’s public tender process, finally had the honor to be a major legal service provider for the Flowers EXPO. At the meeting, Watson & Band’s Executive Managing Partner, Mr. Jeff Kong, attended the awarding ceremony for the Flowers EXPO’s legal service providers and received the Service Provider Certificate from the EXPO’s Organizing Committee.

Our professional legal team has the confidence and capability to provide cost-effective quality legal services for the Flowers EXPO. We will shoulder our social responsibility and contribute our strength to the 2021 Tenth Flowers EXPO, to the development of our beautiful city and to the 100th anniversary of our Communist Party.

Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of Hong Kong Effective from October 1, 2019

Recently, the Supreme People's Court ("SPC") officially released the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region (the "Arrangement") which was signed by both sides on April 2, 2019 and took effect from October 1, 2019.

The overall purpose of this Arrangement is to equate, in respect of interim measures, the arbitral proceedings in Hong Kong with the Mainland's arbitral proceedings, which enables a party to arbitral proceedings in Hong Kong to file an application for an interim measure with a people's court in the Mainland. Meanwhile, a party to the Mainland's arbitral proceedings may also apply to a court in the Hong Kong Special Administrative Region (HKSAR) for an injunction or interim measures. The Arrangement provides clarity on the scope of interim measures, the definition of arbitral proceedings in Hong Kong, procedures for applying for interim measures, processing of applications for interim measures, etc. Among others, Article 6 of the Arrangement defines Mainland's arbitral proceedings, under which applications may be filed with the courts of the HKSAR for interim measures, as the arbitral proceedings administered by a Mainland arbitral institution, regardless of whether the places of arbitration are set in the Mainland. The application filed by a party to the arbitral proceedings administered by a Mainland arbitration institution, with a HKSAR court for an interim measure, covers both the preservation claimed during the ongoing arbitral proceedings and the preservation claimed prior to the acceptance of an arbitration application.

(Source: The Supreme People's Court)

CNIPA Releases Administrative Measures for Intensive Examination of Patent Applications (for Trial Implementation)

The China National Intellectual Property Administration ("CNIPA") recently issued the Administrative Measures for Intensive Examination of Patent Applications (for Trial Implementation) (the "Measures"), immediately effective from the date of issuance.

The Measures provide that patent applications to undergo intensive examination should meet four conditions, including "relating to key advantageous industries of the country or having great significance for national or public interest". Further, the Measures clearly state that an applicant requesting intensive examination needs to submit to the examination management department of the CNIPA's Patent Office the application materials for intensive examination which should specify in detail the reasons for intensive examination, a list of all patent applications, one-on-one correspondence between each patent application and the patent application portfolio, signatures or seals of all patent applicants, and the liaison and his or her contact information. Moreover, the Measures note that the aforesaid examination management department will take charge of overall arrangement for and coordination of work on intensive examination. It will give comprehensive consideration to relevant factors, such as applicants' demands, examination sequence and the examination capability for the technical fields involved, and will generally initiate the intensive examination process after three months following the effectiveness of the substantial examination, and mark in the case source system those cases to undergo intensive examination.

(Source: China National Intellectual Property Administration)

CNIPA Decides to Revise Guidelines for Patent Examination

The China National Intellectual Property Administration (“CNIPA”) recently issued the Announcement on Revising the Guidelines for Patent Examination (the “Announcement”), with effect from November 1, 2019.

The Announcement outlines 23 revisions to the Guidelines for Patent Examination. For example, the provision, reading “and then determine what technical problems the invention will resolve in practice, according to the technical effects that such distinctive feature could create”, in the second sentence in Paragraph 1 under Item 2 of the Subsection 3.2.1.1 in Chapter 4 of Section II, is revised to read “and then determine what technical problems the invention will resolve in practice, according to the technical effects that such distinctive feature could create for the invention requesting protection”. Also, the provision, reading “may be supplemented on the day of outward remittance by facsimile or email. Where information on fee payment is made complete after the supplement, the day of outward remittance will be the date of fee payment.”, in Paragraph 1 of the Subsection 7 in Chapter 2 of Section V, is revised to read “shall be supplemented on the day of outward remittance by the means prescribed by the Patent Office and in accordance with its requirements”, and the Paragraph 2 is removed. Moreover, the title of Chapter 7 of Section V is revised from “Resumption and Suspension of Time Limits and Rights” to “Resumption and Suspension of Time Limits and Rights, and Examination Sequence”.

(Source: China National Intellectual Property Administration)



MIIT to Boost Industrial Big Data Development

The Ministry of Industry and Information Technology (“MIIT”) recently enacted and issued the Guiding Opinions on Industrial Big Data Development (Draft for Comment) (the “Draft for Comment”) for public consultation. Public consultation has ended.

The Draft for Comment sets the goal of basically establishing four systems in resources, integration, industry and governance regarding China’s industrial big data, creating a landscape of closed-loop development that integrates aggregation and sharing of data, data technology products, integrated data application, and data governance, greatly exploiting the potential values of industrial big data, and turning industrial big data into a key factor and innovative driver to high-quality industrial development, by the year 2025. With the focus on four major systems in resources, integration, industry and governance, the Draft for Comment maps out nine key tasks and three programs, expressly stating that actions will be taken to promote transfer and exchange of industrial big data, expand the application of emerging technologies, such as 5G and Narrow Band Internet of Things (NB-IoT), in industrial scenarios, advance the deployment of Internet Protocol Version 6 (IPv6), and transform and upgrade intranets and extranets of industrial enterprises. Furthermore, the Draft for Comment proposes five safeguard measures, including improving the mechanism for coordinated progress and giving stronger fiscal, tax and financial support.

(Source: Ministry of Industry and Information Technology)

MIIT Seeks Comments on Guiding Opinions on Promoting the Development of the Network Security Industry

The Ministry of Industry and Information Technology (“MIIT”) has recently drafted and issued the Guiding Opinions on Promoting the Development of the Network Security Industry (Draft for Comment) (the “Draft for Comment”) for public consultation. Public consultation has ended.

The Draft for Comment sets a clear development goal of “cultivating and creating an array of network security enterprises earning an annual revenue of over CNY2 billion each, forming several backbone network security enterprises with global competitiveness, and creating a network security industry with a market size of over CNY200 billion, by the year 2025”. To this end, the Draft for Comment outlines five major tasks which are making breakthroughs in key network security technologies, actively innovating the models of network security services, collaboratively creating an ecology for the network security industry, greatly promoting the application of network security technologies, and accelerating the building of network security infrastructure. Among others, the Draft for Comment provides that given the characteristics of network security, including high specialty, rapid technology evolution and difficulty in application, the “Security as a Service (SECaaS)” concept will be advocated, and network security enterprises will be encouraged to shift their business focus from supplying security products to offering security services and solutions.



(Source: Ministry of Justice)

Compliance, Management & Market Regulation

MCT to Strengthen Administration of Online Tourism Business and Services

The Ministry of Culture and Tourism (“MCT”) has recently enacted and issued the Interim Provisions on Administration of Online Tourism Business and Services (Draft for Comment) (the “Draft for Comment”) to seek public comments by November 10, 2019.

Major contents of the Draft for Comment touch upon the following aspects. The first is defining the scope of application and relevant subjects. The second is laying out the circumstances in which platforms shall be held jointly liable, and intensifying relevant requirements over platforms regarding qualification review, early warning and insurance, for instance, it is provided that “platform operators shall check and verify the qualification of business operators on their platforms and register their qualifications according to law” and that “a platform operator shall immediately activate the contingency plan, when it learns about any violation of the tourism contract”. The third is setting forth detailed provisions on fake bookings, unreasonably low-price tours, price discrimination (the big-data-based practice of offering higher prices to regular customers), credit regulation, among other social hotspots. The fourth is incorporating provisions on damage attributed to tourists themselves. Meanwhile, the regulation stresses the obligation of online tourism business operators to rescue tourists when a force majeure event takes place or the damage caused by a third party arises, adding that they shall bear joint and several liability for any extra damage arising from their failure to come to the rescue.

(Source: State Administration for Market Regulation)

SAMR Once Again Seeks Comments on Interim Measures for Disposition of Complaints and Reports

The State Administration for Market Regulation (“SAMR”) has recently issued the Interim Measures for Disposition of Complaints and Reports Concerning Market Regulation (Draft for Comment) (the “Draft for Comment”) to seek public comments once again. Public consultation has ended.

The Draft for Comment proposes that market regulators shall ramp up their efforts to build a consumption credit system, urge business operators to conduct business in good faith and according to law, instruct consumers to defend their rights in a legal and reasonable manner, and impose credit punishment against those discreditable behaviors, such as infringement of consumers’ rights and interests and malicious submission of complaints or reports. Meanwhile, the Draft for Comment expressly states that complaints lodged against e-commerce platform operators, and e-commerce business operators that sell products or offer services through their self-developed websites or other online services, will be dealt with by the county-level market regulators of the places where their respective domicile is located, while complaints made against business operators on the aforesaid e-commerce platforms will be processed

by the county-level market regulators of their actual places of business. Furthermore, the Draft for Comment provides that a market regulator shall make a decision on whether to accept or dismiss a complaint it has received, within seven working days from the date it receives the complaint, and also inform the complainant of its decision.

(State Administration for Market Regulation)

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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Private Placement of Convertible Corporate Bonds by Non-listed Companies Regulated

The Shanghai Stock Exchange (“SSE”) has recently formulated and issued, together with the National Equities Exchange and Quotations Co., Ltd. (“NEEQ”) and the China Securities Depository and Clearing Corporation Limited (“CSDC”), the Implementing Measures for Private Placement of Convertible Corporate Bonds by Non-listed Companies (the “Measures”), while the Shenzhen Stock Exchange (“SZSE”) has also distributed its counterpart measures. Both measures have taken effect immediately from the date of issuance.

Major contents of the Measures touch upon the following six aspects: 1. expanding the scope of issuers and the scope of application; 2. clearly specifying the forms of private placement; 3. clarifying the division of responsibilities and duties among all relevant institutions; 4. making clear the conversion procedures; 5. setting out definite requirements for information disclosure; and 6. providing clarity on the connection with the pilot scheme on convertible bonds offered by innovation-oriented firms and startups. According to the Measures, issuers eligible to offer convertible bonds are joint-stock companies that have not yet been listed on a stock exchange; limited liability companies may refer to the Measures for such private placement. Meanwhile, where convertible bonds are offered in a non-public manner, the number of shareholders of a joint-stock company and of a limited liability company should not exceed the upper limit of 200 and 50 respectively, both before the issuance of convertible bonds and after the conversion.

(Source: Shanghai Stock Exchange, Shenzhen Stock Exchange)

CSRC Unveils Guidelines for Regulation of Risk Funds of Stock Exchanges

The China Securities Regulatory Commission (“CSRC”) has recently issued the Guidelines for Regulation of Risk Funds of Stock Exchanges (the “Guidelines”), immediately effective from the date of issuance.

The Guidelines stipulate that the stock exchange shall formulate specific measures for management of risk funds, which should specify the body in charge of routine management of risk funds and its concrete responsibilities, inspections conducted by the supervision board to look at the use of risk funds, specific management approaches, etc. The Guidelines expressly state that the stock exchange shall submit, within 10 working days after the use of risk funds each time, a report on such use to the CSRC, adding that the report on use of risk funds should cover: 1. reasons why the risk funds is used, and the necessity of such use; 2. the amount of the used funds, and details about the use; and 3. the recovery scheme. Moreover, the Guidelines require that the stock exchange shall give relevant details about risk funds, specifically including the scale of risk funds, the withdrawal, the use, recovery status, and implementation of and improvement to relevant systems, in the annual report it submits to the CSRC.

(Source: China Securities Regulatory Commission)

Super-deduction VAT Policy for the Life Service Sector Clarified

The Ministry of Finance (“MOF”) and the State Taxation Administration (“STA”) have recently issued the Announcement on Clarifying the Super-deduction Value-added Tax Policy for the Life Service Sector (the “Announcement”).

The Announcement reads that, from October 1, 2019 till December 31, 2021, a taxpayer in the life service sector will be allowed to deduct from its payable tax the deductible amount of input value-added tax (VAT) for the current period, plus an extra 15% deduction. The Announcement further states that a taxpayer in the life service sector refers to the taxpayer whose sales amount derived from the provision of life services accounts for over 50% of its total sales amount. For a taxpayer established before September 30, 2019, the abovesaid 15% super-deduction VAT policy will apply from October 1, 2019, if its sales amount during the period between October 2018 and September 2019 (or the sales amount earned during the actual business period, if its business period is shorter than 12 months) satisfies the abovesaid requirement. As for a taxpayer that is established after October 1, 2019, the 15% super-deduction VAT policy will apply from the date when it is registered as a general taxpayer, if its sales amount achieved in three months from the date of establishment satisfies the abovesaid requirement.

(Source: Ministry of Finance)

Eight Authorities Ban Commercial Ads and Games in Education Apps

Eight departments including the Ministry of Education (“MOE”) have recently distributed the Opinions on Guiding and Regulating the Orderly and Healthy Development of Education Mobile Internet Applications (the “Opinions”).

According to the Opinions, actions will be taken to comprehensively rectify the chaotic situation for education mobile applications (Apps), fill the regulatory loopholes, standardize the lifecycle management, enhance the quality of App development and supply, and create a sound development ecology to boost the orderly and healthy development of education mobile Apps. It is anticipated to establish sound systems, norms and standards regarding administration of education mobile Apps, create the normalized regulation mechanism and preliminarily build a scientific and efficient governance system, by the end of 2020. To this end, the Opinions outline specific measures, including “establishing the record-filing system”, “strengthening content development”, “standardizing data management” and “ensuring network security”. Among others, the Opinions stress that administrative departments of education and schools shall standardize their management of the integration of education mobile Apps in school education, adding that no fees will be charged from students or their parents for those education mobile Apps that are used in a unified manner as teaching instruments or teaching management instruments, and such Apps should not contain any commercial advertisements or games.

(Source: Ministry of Education)



Final Judgment Issued for the Dispute over Packaging and Decoration of “Da Bai Tu” and “Ma Da Jie”

Recently, Beijing IP Court issued the final judgment for the case between the plaintiff Shanghai Guan Sheng Yuan Food Co., Ltd. and the defendants Beijing Kang Bei Er Food Co., Ltd. and Hebei Yan Yuan Food Co., Ltd., wherein the plaintiff claimed that the defendants used the unique packaging and decoration of its well-known products. The Court ruled that the defendants must immediately cease their use of the packaging and decoration on the disputed “Ma Da Jie” branded plum candy product that are similar to those of the plaintiff’s “Da Bai Tu – Tian Shan” or “Tian Shan” branded plum candy product. Further, the defendants must compensate the plaintiff for its economic losses and reasonable expenses in the total amount of 525,000 RMB.

(Source: Ministry of Education)

Shocker: 3,000,000 RMB Trial Judgment Granted for Shanghai’s First IP Infringement Case involving Punitive Damages

A foreign company sued a domestic sports equipment company in China, alleging that the defendant was suspected of manufacturing and distributing sports equipment that infringed upon its registered trademark. In addition to demanding that the defendant cease its infringement, the plaintiff also claimed economic losses of 3,000,000 RMB, including attorney’s fees and notarial fees.

On the afternoon of September 6, 2019, the Shanghai Pudong District People’s Court (hereinafter the “Court”) issued a judgment for this case. The Court ruled that the defendant had gained over 1,000,000 RMB from the infringement; further, since the defendant’s trademark infringement met the conditions for triggering punitive damages liability under the Trademark Law, the Court awarded the full amount requested by the plaintiff.

This is the first case in Shanghai in which punitive damages for the infringement of IP rights have been awarded. The Court’s judgment analyzed the conditions for punitive damages after the implementation of the amended Trademark Law in terms of eligibility for punitive damages as well as the base amount for assessing these damages. This case will likely serve as an important precedent for similar cases in future.

(Source: IPR Daily)

