

This is an ad-hoc newsletter to inform UK stakeholders of recent developments in the Chinese IP environment. The content is collected from publicly available sources, where information is often available in Chinese only. Please feel free to forward this newsletter, and contact Leo.Zhuang@fcdo.gov.uk to be added to/removed from the distribution list. A pdf version is available on the [Embassy's IP webpage](#)



Intellectual
Property
Office



British Embassy
Beijing



Department for
International Trade

China IP Newsletter (August 2021)

POLICY & GOVERNMENT

China released draft Patent Examination Guidelines

Following the roll out of the new Patent Law on 1 June, the China National Intellectual Property Administration (CNIPA) issued a draft amendment of the Patent Examination Guidelines on 3 August for public comment. The proposed amendment sets out the procedural details of various new systems previously introduced by the new Patent Law, including requirements for the new patent linkage system, partial designs and GUI applications, domestic priority, open licensing, etc. In addition, the new guidelines discourage the simultaneous filing of a utility model and an invention patent for the same invention by delaying the examination of the invention patent for four years in such circumstances.

[Read full text of the draft guidelines in Chinese.](#)

CNIPA calls for comments on the criteria for judging trade mark violations

To standardise regulating and policing trade mark use, the CNIPA published the draft Criteria for Judging General Trade Mark Violation on 17 August for comment. The Criteria, when finalised, will serve as technical guidance to be used by law enforcement agencies across the country. This is different to the guiding document for determining trade mark infringement released last year, since this Criteria focuses on the improper use of registered and unregistered trade marks that violates the general stipulation in China's Trade Mark Law 2019. This includes behaviours like using 'Well-Known Trade Mark' in the advertisement and commercial activities, mislabelling an unregistered trade mark with "®" to pass as a registered mark and trade marks registered in bad faith. Recently, the CNIPA rejected 109 bad faith trade mark applications related to names of Olympic medallists. [Read CNIPA's call for comment in Chinese.](#)

China to establish a list of untrustworthy entities that have intentionally infringed IP rights

China's State Administration for Market Regulation (SAMR) recently announced plans to create a list of untrustworthy entities who have seriously endangered people's health and safety, and seriously disrupt fair market competition. For IP specifically, this would include those who intentionally infringed others' IP rights, misappropriated trade secrets, filed abnormal patent applications and bad-faith trade mark applications, and engaged in illegal patent and trade mark agency activities. If an entity is heavily fined, has their permit or license revoked, or has their business operations shut down for engaging in the above illegal activities, it may be placed on the list and remain on it for up to three years. The entity will be subject to more stringent licensing review and more frequent inspections. [Read full official announcement in Chinese.](#)

After leaving CNIPA, Chinese patent and trade mark examiners must wait two years before working for an IP

According to a CNIPA notice published on 5 August, any staff who have worked as CNIPA trade mark or patent examiners, or in roles closely linked to such functions (e.g. administrative management), are prohibited from working or owning shares for any IP firms/agencies within two years from the date they left the CNIPA (including both resignation and retirement). For director levels and above, this period is extended to three years. If this regulation were violated, the CNIPA may confiscate the income earned during the restricted period and demand that the agency in question terminate the individual's employment. Agencies that do not comply may face fines. [Read the CNIPA regulation in Chinese.](#)

China orders Tencent to give up exclusive music licensing rights

China's antitrust regulator SAMR has ordered Tencent to give up its exclusive music licensing rights within 30 days and imposed a fine of RMB 500,000 (~£56,000) on the company. SAMR cited violations in Tencent's acquisition of China Music in 2016. Following that acquisition, Tencent owns more than 80% of exclusive music library resources, giving the company an advantage over its competitors in China. In addition to giving up its exclusive deals, Tencent is also required to report to the SAMR on its progress every year for three years, while the antitrust regulator will strictly supervise its implementation. In response, Tencent said in a statement it will "comply with all the regulatory requirements, fulfil social responsibilities and contribute to healthy competition in the market." [Read SAMR penalty decision in Chinese.](#)

China seeks to regulate live-streaming on e-commerce platforms

On 18 August, China's Ministry of Commerce (MOFCOM) published a draft industry standard aiming to regulate e-commerce platforms that engage in live-streaming in China, such as Taobao, Kuaishou, Douyin, and JD.com. The standard requires that platforms should establish a screening mechanism to check the trade mark and quality of the brand before agreeing to sell any products. Additionally, separate mechanisms should be set up to resolve disputes and ensure the protection of minors, consumers' rights, IP rights and personal information. The standard expressly prohibits any live-stream host or MCN organisations from promoting or selling products that infringe others' trade mark rights, copyrights, and patents. [Read full text from MOFCOM website in Chinese.](#)

JUDICIAL UPDATES

Court drafts new judicial interpretations on Anti-Unfair Competition Law

On 18 August, China's Supreme People's Court (SPC) launched a month-long public consultation on the judicial interpretation of the Anti-unfair Competition Law. It intends to replace the last iteration formulated in 2007 to better reflect the changes introduced when the law was revised in 2019. SPC clarified that 'logos that have a certain impact' refers to a label with a degree of market awareness and distinctive characteristics that distinguish the source of goods. Other highlights include the elaboration on the 'acts of confusion' that misleads individuals to believe a connection with another's commodity as well as the acts of unfair competition in the provision of internet service. Read [the SPC's draft judicial interpretation](#) and [the SAMR's call for comment](#) in Chinese.

CASE

Chinese police pulled the plug on Dyson counterfeits in Guangdong

The Guangdong Public Security Bureau recently reported the shutdown of a Chinese company which made and sold counterfeits of popular British brand Dyson hairdryers and placed 55 people in criminal detention. The investigation was quickly launched after the police received tip-offs from consumers and found the company had manufactured 47,728 counterfeit hairdryers and sold RMB 19 million worth of products since May 2020. The raid led to the seizure of a huge quantity of unsold counterfeits, semi-finished products, accessories, components, manufacturing machines and sales receipts carried out by officers from Shenzhen, Qingyuan, Dongguan in April this year. The total value of the case amounts to RMB 143 million. [Read case details from Guangdong Police website in Chinese.](#)

Shenzhen AMR issued China's first administrative injunction in IP cases

Shenzhen's Administration for Market Regulation (AMR) issued the first IP administrative injunction in China against the alleged infringement of a design. Due to the urgent nature of the case, the Shenzhen IP protection centre quickly reviewed the case and within two days issued their decision that infringement had occurred. . This became the basis for China's first IP administrative injunction. The injunction will effectively prevent the infringement from continuing before the dispute is resolved, saving right owners from any additional losses. This could potentially become an example of best practice for local administrative authorities in other cities and provinces. [Read media report of the case in Chinese.](#)

STATISTICS

Over 90% of IP infringement crimes are prosecuted in China in the first half of 2021

On 25 July, the Supreme People's Procuratorate (SPP) released statistics on IP cases handled by prosecutors across the country in H1 2021. Statistics show that from January to June 2021, prosecutors nationwide sought the arrest of 4,286 suspects for IP infringement, up 99% from H1 2020. 6,017 people were prosecuted during the period (up 12.6%), while 540 people saw charges against them dropped. The non-prosecution rate dropped by 2.6% to 8.2%, making the prosecution rate for IP crimes exceed 90%. The criminal charges involved in the prosecution cases are mainly the crime of counterfeiting registered trade marks and the crime of selling goods with counterfeit registered trade marks, which together account for 80% of all IP prosecutions. [Read SPP official statistics release in Chinese.](#)

If you would like any further information on any of the above matters or to discuss Embassy support for your company in China please contact Leo Zhuang (Leo.Zhuang@fcdo.gov.uk).