

W&B Legal Newsletter

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Spotlights

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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.

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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.

Watson & Band Listed in 2021 IAM Patent 1000 – The World’s Leading Patent Professionals

Recently, the authoritative international IP media Intellectual Asset Management (abbreviated as “IAM”) released its 2021 IAM Patent 1000 – The World’s Leading Patent Professionals. Watson & Band, with its outstanding and well-recognized performance in both patent prosecution and patent litigation areas, is again listed in these two areas this year.



Meanwhile, General Manager of Watson & Band IP Agent Ltd., Dr. Hua Xiao, with his excellent performance in the patent prosecution area as well as dispute resolution matters such as patent invalidation, is also listed among the World’s Leading Patent Professionals this year.

Watson & Band’s First “Counterclaim for Damages” for the Series of Trademark Infringement Cases Gets Fully Supported by the Court

Recently, Guangzhou Intellectual Property Court issued the appellate judgment for the case involving liability for damages arising from bad-faith litigation (hereinafter the “counterclaim for damages action”) that we initiated on behalf of the appellants Fast Retailing (China) Trading Co., Ltd. and Uniqlo Trading Co., Ltd. against the appellees Guangzhou Compass Exhibition Service Co., Ltd. and Guangzhou Zhongwei Enterprise Management Consulting Service Co., Ltd. (hereinafter “Compass Company” and “Zhongwei Company”). Said appellate judgment supported our counterclaim for damages in the full amount of over 4 million RMB.

The significance of this case lies in: (i) both the trial judgment and the appellate judgment hold that the 42 lawsuits initiated by Compass Company and Zhongwei Company should be identified as bad-faith litigation; and (ii) more importantly, the courts ascertained the legal expenses and travelling expenses that the appellants paid to respond to the bad-faith lawsuits, as well as the business profit loss that the appellants suffered from the infringement, and finally supported the counterclaim in full amount.

Latest Legal Developments

Personal Information Protection Law and Others Adopted by NPC Standing Committee

The 30th session of the Standing Committee of the 13th National People's Congress ("NPC") recently adopted the *Personal Information Protection Law of the People's Republic of China* (the "*Personal Information Protection Law*"), which shall come into effect from November 1, 2021.

The *Personal Information Protection Law* further improves the rules for personal information processing, particularly setting forth targeted provisions on excessive collection of personal information by Apps and the act of "offering differential treatment by means of big data". Meanwhile, any personal information of a minor under the age of 14 will be deemed as sensitive personal information and personal information processors are required to formulate special processing rules in this regard. The *Personal Information Protection Law* also improves the rules for cross-border provision of personal information, adds provisions on the right to data portability and perfects the provisions on protection of personal information of the deceased, among others.

(Source: Supreme People's Court)



SPC Seeks Comments on Judicial Interpretations on Anti-Unfair Competition Law

The Supreme People's Court ("SPC") recently issued the *Interpretations on Several Issues Concerning the Application of the Anti-Unfair Competition Law of the People's Republic of China (Draft for Comment)* (the "*Draft for Comment*") to solicit public comments by September 19, 2021.

The Draft for Comment sets out the interpretations on relevant provisions in Articles 2, 6, 8, 11 and 12 of the *Anti-Unfair Competition Law*. Among others, the *Draft for Comment* specifies that a target jump directly occurring without consent of other operators and the users will be deemed by the court to have constituted "compelling a target jump" stipulated in Item 1 Paragraph 2 Article 12 of the *Anti-Unfair Competition Law*. The *Draft for Comment* also makes clear that if an operator, in breach of the honesty and integrity principle and business ethics, and without authorization, uses any data with commercial value that are lawfully collected by another operator upon its users' consent, and is capable of materially replacing another operator in the provision of relevant products or services, thus harming the market order of fair competition, the court may determine that such act has constituted the act as specified in Item 4 Paragraph 2 Article 12 of the *Anti-Unfair Competition Law*.

(Source: Supreme People's Court)

Latest Legal Developments

MOFCOM Seeks Comments on Standards for Management and Services of Livestreaming E-commerce Platforms

The Ministry of Commerce (“MOFCOM”) recently issued the *Standards for Management and Services of Live Streaming E-commerce Platforms (Draft for Comment)* (the “*Draft for Comment*”) to solicit public comments by September 2, 2021.

The *Draft for Comment* describes the eco-system for live streaming e-commerce, and defines the relevant requirements for such roles as live streaming marketing platforms, live streaming entities (i.e., live streaming room) and e-commerce transaction platforms regarding the management and services in live streaming e-commerce. Among others, in terms of the live streaming marketing platforms, the *Draft for Comment* makes clear the qualifications, business conditions and basic compliance requirements to be met by them. They are required to perform their duties regarding the access and exit of merchants and live streaming entities, verification of product and service information, live streaming marketing management and service, users’ and live streaming entities’ account management and service. Moreover, they shall conform to the requirements for consumers’ privacy protection, transaction and after-sales service, and other matters in the protection of consumers’ rights and interests. Information security management requirements are also mentioned.

(Source: Ministry of Commerce)

SAMR Seeks Comments on the Provisions on Prohibition of Unfair Competition on the Internet

Recently, the State Administration for Market Regulation (“SAMR”) issued the *Provisions on Prohibition of Unfair Competition on the Internet (Draft for Public Comment)* (the “*Draft for Comment*”) for public comments by September 15, 2021.

The *Draft for Comment* states that business operators shall not adopt nine types of methods such as “engaging in fake transactions or organizing false transactions” to make false or misleading advertising about themselves or their products’ sales status, transaction information, operating data, and user evaluations, thereby deceiving and misleading consumers or the relevant public. The *Draft for Comment* underlines that, business operators shall not use data, algorithms and other technical means to commit traffic hijacking, interference, malicious incompatibility and other acts by influencing user choices or other ways, hindering or damaging the normal operation of network products or services legally provided by other business operators. The *Draft for Comment* also indicates that the market regulatory authorities may appoint expert observers to assist in the investigation of new-type cases and tough cases.

(Source: State Administration for Market Regulation)

MOJ Seeks Public Comments on Revising the Arbitration Law

Recently, the Ministry of Justice (“MOJ”) drafted the *Arbitration Law of the People’s Republic of China (Revision) (Draft for Comment)* (the “*Draft for Comment*”) for public comments by August 29, 2021.

The *Draft for Comment* introduces the amendments to improve the institutional rules in the General Provisions, the arbitration institution system, regulations on arbitrators and China Arbitration Association, provisions concerning arbitration agreements, the arbitration procedure specification, the system of revocation of arbitral awards and rendering a new award, the system of enforcement of arbitral awards, regulations on foreign-related arbitration and the ad hoc arbitration system that is newly introduced, and other issues that need to be clarified. Among them, with regard to the arbitration procedure specification, the *Draft for Comment* has made amendments in five aspects, including “adding five general provisions on due process and procedural autonomy, among others, and elevating the principle of arbitration confidentiality to general provisions on arbitration procedures”.

(Source: Ministry of Justice)

CNIPA Seeks Comments on Judgment Standards for General Trademark Violations

The China National Intellectual Property Administration (“CNIPA”) recently drafted the *Judgment Standards for General Trademark Violations (Draft for Comment)* (the “*Draft for Comment*”) to solicit public comments by October 1, 2021.

The *Draft for Comment* specifies that any of the ten acts violating trademark administration orders, such as “failing to use registered trademark where it must be used, in violation of Article 6 of the Trademark Law”, will constitute a general trademark violation as defined in the standards. The *Draft for Comment* further sets forth provisions regarding some specific contents, such as the act of registering and using a trademark without approval where such trademark must be registered, the judgment standards for prohibited use, the identification of the act of using unregistered trademark that is identical or similar with country name of China or other items. Among others, regarding the circumstances where there is anything fraudulent, the *Draft for Comment* makes clear that if an unregistered trademark that is being used involves any of the three circumstances, such as “easily misleading the public about the characteristics of a product or service such as main material, function, usage, weight and quantity”, such act shall constitute a fraud under Item 7 Paragraph 1 Article 10 of the *Trademark Law*.

Watson & Band, as one of China’s oldest intellectual property service providers with the qualifications as a foreign-related patent agency, maintains a leading position in the intellectual property industry due to its extensive experience. Watson & Band’s IP-related services cover agency and consulting services concerning trademarks, patents, copyrights and other new types of IP rights, enforcement and litigation services, and commercial IP-related legal services.

(Source: China National Intellectual Property Administration)

CNIPA Seeks Comments on the Draft Revision of the Guidelines for Patent Examination

The China National Intellectual Property Administration (“CNIPA”) recently issued the *Draft Revision of the Guidelines for Patent Examination (Draft for Comment)* (the “*Draft for Comment*”) to seek comments from all walks of life by September 22, 2021.

The *Draft for Comment* uses a comparison chart to showcase revisions, which include regulations pertaining to the improvement of the design system, the procedural regulations relating to the Patent Cooperation Treaty, the patent term compensation regulations, the open patent licensing regulations, regulations on the review of patent invalidity cases under the early resolution mechanism for drug patent disputes, and regulations on response to emergencies such as epidemics. Among them, the *Draft for Comment* states that, the regulations on the review of patent invalidity cases under the early resolution mechanism for drug patent disputes specify the submission of requests and certification documents, the review sequence, the review basis, the review status, and the notice of case closure. Regulations pertaining to response to emergencies such as epidemics establish grace period exceptions to lack of novelty and an ex officio extension of the period.

(Source: China National Intellectual Property Administration)

Data Protection and Network Security

SPC Issues Judicial Interpretation on the Trial of Civil Cases Relating to Facial Recognition Technology

Recently, the Supreme People's Court ("SPC") issued the *Provisions on Several Issues concerning the Application of Law in the Trial of Civil Cases Relating to the Use of Face Recognition Technology to Process Personal Information* (the "Provisions"), with effect from August 1, 2021.

The *Provisions* contain 16 articles in terms of tort liability, contract rules, legal proceedings, etc. Among them, Articles 2 to 9 of the Provisions clarify how to define the nature and responsibilities of the abuse of facial recognition technology to process facial information from the perspectives of personality right and tort liability; Articles 10 to 12 mainly respond to the issues of public concern from the perspectives of property services, validity of standard clauses and the responsibility for breach of contract. According to the *Provisions*, if information processors process facial information under any of eight scenarios, including "use of facial recognition technology to conduct face verification, identification or analysis in hotels, shopping malls, banks, stations, airports, stadiums, entertainment venues and other business venues, public places that violate the provisions of laws and administrative regulations, the court shall consider that they infringes upon the personality right of natural persons.

(Source: Supreme People's Court)

Three Authorities Issue Provisions on the Administration of Network Product Security Vulnerabilities

Recently, the Ministry of Industry and Information Technology ("MIIT") and two other authorities issued the *Provisions on the Administration of Network Product Security Vulnerabilities* (the "Provisions"), which shall come into effect on September 1, 2021.

The *Provisions* state that, no organization or individual may use network product security vulnerabilities to engage in activities that endanger network security, or illegally collect, sell, or publish information on network product security vulnerabilities. Anyone who knows that others use network product security vulnerabilities to engage in activities that endanger network security may not provide technical support, advertising, payment settlement and other assistance for them. According to the *Provisions*, network product providers, network operators, and platforms collecting network product security vulnerabilities shall establish and improve channels for receiving network product security vulnerability information and make such channels available, and retain network product security vulnerability information reception logs for at least six months. The *Provisions* also specify eight requirements for organizations and individuals engaged in activities such as vulnerability discovery, collection, and release, among others, they are prohibited from providing undisclosed vulnerabilities to overseas organizations or individuals other than product providers.

(Source: Ministry of Industry and Information Technology)

Data Protection and Network Security

CAC Seeks Comments on Measures for Cybersecurity Review

The Cyberspace Administration of China (“CAC”) recently issued the *Measures for Cybersecurity Review (Revised Draft for Comment)* (the “*Draft for Comment*”) to solicit public comments by July 25, 2021.

The *Draft for Comment* specifies that operators who procure any online product and service shall make a pre-judgement of the risks to national security brought by the use of such product or service. If the national security is affected or may be affected, operators shall declare to the Office of Cybersecurity Review for cybersecurity review. Operators that possess more than one million items of personal information shall be subject to cybersecurity review when listing abroad. Meanwhile, the *Draft for Comment* clearly stipulates that cybersecurity review shall focus on the possible national security risks that may be caused by procurement activities, data processing activities and listing abroad, with factors in seven areas to be considered, such as “the risk that any key information infrastructure is illegally controlled, disturbed or destroyed after the product and service is used.”

(Source: Cyberspace Administration of China)



CBIRC Issues New Administrative Provisions on Reinsurance Business

The China Banking and Insurance Regulatory Commission (“CBIRC”) recently issued the revised *Administrative Provisions on Reinsurance Business* (the “*Provisions*”), with effect from December 1, 2021.

The *Provisions* involve the revisions in eight aspects: (1) strengthening the top-level strategic management of reinsurance; (2) strengthening the supervision of the security of reinsurance business; (3) strengthening the supervision of the management of reinsurance contracts; (4) strengthening the management of direct insurance companies who carry out sub-business; (5) strengthening the supervision of reinsurance brokers; (6) supporting the development of the direct insurance market; (7) removing any content that is inconsistent with the existing regulatory policies; and (8) streamlining the information reporting. Among others, the *Opinions* specify that an insurer shall formulate reinsurance strategy and define the role of reinsurance in the company’s risk and capital management strategy. As for the branch office of a foreign reinsurance company, the formulation, implementation, evaluation and adjustment of its reinsurance strategy shall be subject to the approval of its senior management.

(Source: China Banking and Insurance Regulatory Commission)

PBC Issues the Revised Administrative Measures for Short-term Financing Bonds Issued by Securities Companies

The People’s Bank of China (“PBC”) recently issued the *Administrative Measures for Short-term Financing Bonds Issued by Securities Companies* (the “*Measures*”), with effect on September 1, 2021.

The *Measures* stipulate that short-term financing bonds are subject to balance management, and the sum of the outstanding balance of short-term financing bonds and other short-term financing instruments of securities companies to be repaid shall not exceed 60% of the net capital. Other short-term financing instruments refer to financing instruments with a maturity of less than one year (inclusive), including inter-bank lending, short-term corporate bonds, etc. The *Measures* specify that the PBC implements macro management of short-term financing bonds issued by securities companies, and may adjust the maximum ratio of the balance of short-term financing bonds issued by securities companies to the net capital as well as the maximum term to maturity, based on the liquidity of the money market and the operation of the financial market. The *Measures* also indicate that securities companies may not use funds raised from the issuance of short-term financing bonds for fixed-asset investment, business outlets development, stock market investment or other purposes.

(Source: People’s Bank of China)