

# W&B Legal Newsletter

April 2022 / Vol.26

## Spotlights

### The Latest from Watson & Band

Watson & Band's Case involving Compensation for Malicious IP Litigation selected into 2021 Top 10 Exemplary Cases by Guangzhou Intellectual Property Court

Watson & Band's Procuratorial Supervision Case Selected as an Exemplary Case Reflecting Protection for IP rights to Safeguard Innovation-driven Development by the Supreme People's Procuratorate

### Latest Legal Developments

China's SPC Releases Judicial Interpretations on Anti-Unfair Competition Law

SPC Issues the Judicial Interpretation on Cases Involving Online Consumer Disputes

### Intellectual Property

CNIPA Continues to Severely Combat Malicious Trademark Registration

Two Authorities Set Annual Fee and Individual Designation Fee Standards for Design Patents

### Cyber Security and Data Protection

CAC Seeks Comments Once Again on the Regulations on the Protection of Minors Online

MIIT Issues Guide to the Building of the Framework of Network Security and Data Security Standards for Internet of Vehicles

### Banking and Finance

CSRC Revises Administrative Measures for Initial Public Offerings and Listing of Stocks

# 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: 0535-2118687

### 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



# Catalogue

## THE LATEST FROM WATSON & BAND

|   |   |
|---|---|
| Watson & Band's Case involving Compensation for Malicious IP Litigation selected into 2021 Top 10 Exemplary Cases by Guangzhou Intellectual Property Court .....  | 4 |
| Watson & Band's Procuratorial Supervision Case Selected as an Exemplary Case Reflecting Protection for IP rights to Safeguard Innovation-driven Development by the Supreme People's Procuratorate ..... | 4 |

## LATEST LEGAL DEVELOPMENTS

|  |   |
|--|---|
| China's SPC Releases Judicial Interpretations on Anti-Unfair Competition Law .....       | 5 |
| SPC Issues the Judicial Interpretation on Cases Involving Online Consumer Disputes ..... | 5 |
| Negative List for Market Access (2022 Version) Issued by Two Authorities .....           | 6 |

## INTELLECTUAL PROPERTY

|  |   |
|--|---|
| CNIPA Continues to Severely Combat Malicious Trademark Registration .....                        | 7 |
| Two Authorities Set Annual Fee and Individual Designation Fee Standards for Design Patents ..... | 7 |
| SAMR Launches National Pilot Program for Innovative Protection of Trade Secret .....             | 8 |

## CYBER SECURITY AND DATA PROTECTION

|   |    |
|---|----|
| CAC Seeks Comments Once Again on the Regulations on the Protection of Minors Online .....   | 9  |
| MIIT Issues Guide to the Building of the Framework of Network Security and Data Security Standards for Internet of Vehicles ..... | 9  |
| CAC Seeks Comments on Administrative Measures for Internet Pop-up Push Services .....   | 10 |

## BANKING AND FINANCE

|   |    |
|---|----|
| CSRC Revises Administrative Measures for Initial Public Offerings and Listing of Stocks ..... | 11 |
|---|----|

## 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's Case involving Compensation for Malicious IP Litigation selected into 2021 Top 10 Exemplary Cases by Guangzhou Intellectual Property Court**

On April 24, with the 22<sup>nd</sup> World Intellectual Property Day approaching, the Guangzhou Intellectual Property Court published its *White Paper on Intellectual Property Protection and Top 10 Exemplary Cases for the Year 2021*.

Said top 10 exemplary cases published this year cover various areas including overseas intellectual property protection, trade secret protection, emerging service industries, punitive damages and regulation on abuse of rights, and involve different case categories such as patent, computer software and know-how. Among them is the case involving compensation for damages arising from malicious IP litigation that Watson & Band's Partner Joe Liu and his team represented for the rights holder. This case studied on how the rights holder could seek further economic remedies after it encountered malicious litigation by the other party, and explored a referential approach for similar cases in future.

---

## **Watson & Band's Procuratorial Supervision Case Selected as an Exemplary Case Reflecting Protection for IP rights to Safeguard Innovation-driven Development by the Supreme People's Procuratorate**

On April 25, before the 22<sup>nd</sup> World Intellectual Property Day, in order to fully implement the CPC's decision and arrangement on strengthening protection for IP rights, to further advance comprehensive duty performance in procuratorial work for IP rights and to better serve and safeguard China's innovation-driven development, China's Supreme People's Procuratorate published Exemplary Cases Reflecting the People's Procuratorates' Protection for IP rights to Safeguard Innovation-driven Development.

Said eleven cases include five criminal cases involving trademark infringement, two criminal cases involving trade secret infringement, one criminal case involving copyright infringement and three civil procuratorial cases involving IP rights. Among them, the procuratorial supervision case over a retrial judgment of a trademark infringement case that Watson & Band's Partner Joe Liu and his team represented for the rights holder is listed as the No.9 case. It is the first time in China to initiate retrial procedure through the prosecutorial supervision procedure against a case that has already been retried.



## China's SPC Releases Judicial Interpretations on Anti-Unfair Competition Law

The Supreme People's Court ("SPC") recently released the *Interpretations on Relevant Issues Concerning the Application of the Anti-Unfair Competition Law of the People's Republic of China* (the "Interpretations").

The *Interpretations*, consisting of 29 articles and based on the revised *Anti-Unfair Competition Law*, mainly detail Article 2 of the *Anti-Unfair Competition Law*, and address such issues as counterfeit and confusion, false publicity, and unfair competition behaviors online. Among others, regarding the "counterfeit and confusion", the *Interpretations* offer 11 articles to provide detailed interpretations on the "counterfeit and confusion", as specified in Article 6 of the *Anti-Unfair Competition Law*, from the following three perspectives. Firstly, Article 4 of the *Interpretations* clarifies the definition of the mark with "influence to a certain extent", and the factors to be considered when identifying such mark. Secondly, Article 7 of the *Interpretations* stipulates that if a mark is among those prohibited from use and registration under the Trademark Law, it will not be protected under the *Anti-Unfair Competition Law*. Thirdly, by following Article 2 of the *Administrative Regulations on the Registration of Market Entities*, the *Interpretations* refine the scope of the market entities whose names can be protected.

(Source: Supreme People's Court)

---

## SPC Issues the Judicial Interpretation on Cases Involving Online Consumer Disputes

Recently, China's Supreme People's Court ("SPC") issued the *Provisions on Several Issues Concerning the Application of Law in Hearing Cases Involving Online Consumer Disputes (I)* (the "Provisions"), with effect on March 15, 2022.

The *Provisions*, consisting of 20 articles, mainly regulate the rights and obligations of online consumption contracts, the identification of responsible subjects, the civil liability in livestreaming marketing, the civil liability in takeaway catering, among other matters. Among them, the *Provisions* clarify the responsibilities of livestreaming marketing platforms, including the responsibilities of such platforms for their self-operated business and the first payment responsibilities in case of failure to provide the real information of the livestreaming room operators, the joint and several liability for failing to fulfill the duty to examine food operation permits, and the joint and several liability in the case that the unlawful practice is known or should be known. The *Provisions* also state that, if a provider of an online catering service platform fails to conduct real-name registration or to review licenses of an online catering service provider, or fails to perform duties of reporting or of suspending the provision of services on the online trading platform, thereby causing damage to consumers, the consumers has the right to claim that the provider of the online catering service platform and the online catering service provider shall bear the joint and several liability.

(Source: Supreme People's Court)

## Negative List for Market Access (2022 Version) Issued by Two Authorities

Recently the National Development and Reform Commission (“NDRC”) and the Ministry of Commerce (“MOFCOM”) jointly issued the *Negative List for Market Access (2022 Version)* (the “List”), with a circular being simultaneously distributed to arrange for relevant work. The List shall become effective from the date of issuance.

The *List* provides a total of 117 matters, six matters less than the 2020 version, of which there are six prohibited access matters and 111 approved access matters. The *List* is divided into two categories, namely, prohibited matters and approved matters. For prohibited access matters, market players shall not engage in them, and administrative organs shall not examine or approve them or handle the relevant formalities. For industries, areas and businesses beyond the List, all kinds of market players may enjoy equal access pursuant to the law. The circular specifies the requirements for relevant work in five aspects, such as strictly implementing the administrative requirement of “one list nationwide”, earnestly fulfilling the regulatory duties of the governments, and establishing a system for collecting and reporting cases involving violation of the negative list for market access.



(Source: National Development and Reform Commission)

---

# Intellectual Property

## CNIPA Continues to Severely Combat Malicious Trademark Registration

On April 13, the China National Intellectual Property Administration (“CNIPA”) released the *Circular on Continuing to Severely Combat Malicious Trademark Registration* (the “Circular”).

The *Circular* sets forth requirements in eight aspects, such as “stressing the key tasks to crack down on typical behaviors”, “enhancing monitoring and early warning to realize precise identification”, and “strengthening systematic governance and lawfully imposing severe punishments”. The *Circular* calls for greater attention to the concerns of the people and the focus of public opinions. Based on the several circumstances of malicious trademark registration without serving the purpose of use as specified in the *Guide on Trademark Examination and Adjudication*, efforts shall be made to strengthen the measures against the behaviors of trademark speculation and squatting, which mainly manifest in the form of “hoarding trademarks”, “impersonating famous brands”, “making free-ride registration” and “latching on to hotspot issues”, and to combat 10 typical types of illegal behaviors which violate the principle of good faith, public order and good customs, seek improper gain, and disrupt the order of trademark registration, including “maliciously registering trademarks with the words specially used in major sensitive events and emergencies, such as major public health events”.

(Source: China National Intellectual Property Administration)

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.

## Two Authorities Set Annual Fee and Individual Designation Fee Standards for Design Patents

Recently the National Development and Reform Commission (“NDRC”) and the Ministry of Finance (“MOF”) jointly issued the *Circular on Issues Relating to the Annual Fee and Individual Designation Fee Standards for Design Patents* (the “Circular”), effective from May 5, 2022.

The *Circular* states that: (1) The annual fee standard for design patents in the 11<sup>th</sup> through 15<sup>th</sup> years of patent term shall be CNY3,000 per year. (2) The individual designation fee standards shall be: CNY4,100 for the first stage (1<sup>st</sup>-5<sup>th</sup> years), CNY7,600 for the second stage (6<sup>th</sup>-10<sup>th</sup> years), and CNY15,000 for the third stage (11<sup>th</sup>-15<sup>th</sup> years). (3) Any entity to collect the fees shall strictly implement the above provisions, and must not add fee items, expand the scope of fees to be charged or change the fee standards without proper authorization. (4) The price, finance and market regulation authorities shall step up the supervision and inspection of the implementation of this Circular, and impose legal penalties on those who fail to follow the fee standards as required.

(Source: National Development and Reform Commission)



## SAMR Launches National Pilot Program for Innovative Protection of Trade Secret

The State Administration for Market Regulation (“SAMR”) recently released the *Work Plan for the National Pilot Program for Innovative Protection of Trade Secret* (the “Plan”).

According to the *Plan*, a number of areas will be selected to carry out the pilot program for innovative protection of trade secret; the governance level and the effectiveness of protection will be continuously improved in a three-year period to bring the trade secret protection to a new stage. To this end, the *Plan* sets forth tasks in six aspects, including strengthening the innovation of the trade secret protection system, improving the working mechanism for trade secret protection, and strengthening the supervision and law enforcement of trade secret protection.



Among others, the *Plan* calls for perfecting the systems and rules. Pilot areas are required to study and introduce the protection systems and rules that meet their development needs based on their respective economic development trends and features. Efforts shall be made to enhance the protection for key industries and characteristic industries, especially for new economies, new industries, new forms, and new models; and to enhance the protection for knowledge-intensive enterprises, technology-intensive enterprises, innovative enterprises, and time-honored enterprises. All localities shall form a uniform and standardized guide to trade secret protection nationwide based on their practice.

(Source: Cyberspace Administration of China)

---



# Cyber Security and Data Protection

## CAC Seeks Comments Once Again on the Regulations on the Protection of Minors Online

Recently, the Cyberspace Administration of China (“CAC”) issued the *Regulations on the Protection of Minors Online (Draft for Comment)* (the “*Draft for Comment*”) to seek public comments once again.

The *Draft for Comment*, consisting of 67 articles in seven chapters, calls for increased efforts on improvement of internet literacy of minors, standardization of network information, strengthened protection of minors’ personal information, and prevention and control of minors’ internet addiction. Among them, the *Draft for Comment* requires that providers of network services such as online game, livestreaming, online audio and video, and online social networking should take measures to set a reasonable limit on the amount of single consumption and cumulative amount of consumption in a single day for minors when they use online products or services, and such providers may not provide minors with paid services incompatible with their capacity for civil conduct. In addition, the *Draft for Comment* also stipulates corresponding legal liability for relevant violations.

(Source: Cyberspace Administration of China)



## MIIT Issues Guide to the Building of the Framework of Network Security and Data Security Standards for Internet of Vehicles

The General Office of the Ministry of Industry and Information Technology (“MIIT”) recently issued the *Guide to the Building of the Framework of Network Security and Data Security Standards for Internet of Vehicles* (the “*Guide*”).

The *Guide* envisions that, by 2025, a relatively sound framework of network security standards and data security standards for internet of vehicles (IoV) will be established. The research and development of more than 100 standards will be completed, the coverage of standards in subdivided fields realized, service capabilities for standards enhanced, and the level of standard application raised, so as to support the safe and healthy development of the IoV industry. The *Guide* clarifies that, the contents to be developed include a diagram for the framework of standards, key areas and directions, which can be divided into six parts, namely, general and basic commonality, terminal and facility network security, network communication security, data security, application service security, and security guarantee and support. Among others, data security standards mainly focus on the data security and personal information protection requirements for intelligent connected vehicles, IoV platforms and in-vehicle application services. They include five types of standards, namely, general requirements, grading and classification, cross-border transfer security, personal information protection, and application data security.

(Source: Ministry of Industry and Information Technology)

# Cyber Security and Data Protection

## CAC Seeks Comments on Administrative Measures for Internet Pop-up Push Services

The Cyberspace Administration of China (“CAC”) recently drafted the *Administrative Measures for Internet Pop-up Push Services (Draft for Comment)* (the “*Draft for Comment*”) to solicit public opinions.

The *Draft for Comment* specifies that internet pop-up push services shall not set up algorithm models that violate laws and regulations or violate ethics and morality to induce users’ addiction and excessive consumption; shall not abuse personalized pop-up windows or use algorithms to block or excessively recommend any information; shall not abuse algorithms to create portraits for minor users or push any information to minor users that may affect their physical and mental health. Meanwhile, the *Draft for Comment* stresses that, to use pop-up window to push any advertisement information, content compliance review must be passed, and it shall not violate relevant national laws and regulations; it shall be identifiable, with the text “advertisement” being noticeably marked and explicitly shown to users; efforts shall be made to ensure that any pop-up advertisement can be closed with only one click. Furthermore, it is prohibited to present any third-party link, QR code and other information that maliciously attracts traffic and causes a redirect by means of pop-up information push; or to use pop-up information push to induce users’ click throughs to falsify viewer-ship data and commit traffic hijacking.

(Source: Cyberspace Administration of China)



## CSRC Revises Administrative Measures for Initial Public Offerings and Listing of Stocks

On April 11, the China Securities Regulatory Commission (“CSRC”) issued the *Decision on Revising the Administrative Measures for Initial Public Offerings and Listing of Stocks* (the “*Decision*”), with effect from the date of issuance.

According to the *Decision*, the guiding principle underpinning the revised measures is to revise Paragraph 1 of Article 9 thereof by unifying the application of the “three-year establishment period for an issuer” in the main boards, the ChiNext Board and the SSE STAR Market, without altering the stock issuance approval system adopted by the main boards of the Shanghai Stock Exchange (“SSE”) and the Shenzhen Stock Exchange (“SZSE”). Upon revision, the overall framework of the measures will remain unchanged, which still consist of 59 articles in six chapters, namely, general provisions, issuance conditions, issuance procedures, information disclosure, regulation and punishment, and supplementary provisions. The revision involves Paragraph 1 of Article 9, which is revised to read: “An issuer shall have more than three years of continuous operation upon its establishment of a joint stock limited company”.

(Source: China Securities Regulatory Commission)

