AFD China
INTELLECTUAL PROPERTY LAW OFFICE

Newsletter
December, 2022

Table of Contents

Patent Law Regulation Amended to Improve IP Protection System

Revision to guarantee implementation of rules, remedy practical challenges

A regulation on helping implement the Patent Law is being amended in an effort to improve the legal system and promote high-quality development in this regard, an official from China's top intellectual property regulator said.

"A new chapter concerning design applications will be added in the regulation to align with international rules, facilitating higher efficiency and quality in the patent review process," said Zhang Peng, head of the department of treaty and law with the China National Intellectual Property Administration (CNIPA).

She released the information at a news conference on Wednesday, adding that the administration had formed a draft amendment to the regulation and submitted it to relevant authorities for review after soliciting public opinions.

The regulation, which features specifics on solving practical problems, if completely revised, will better guarantee the implementation of the Patent Law and take the country's patent industry to the next level, she added.

The administration is also planning to curb malicious trademark registration by optimizing its authorization procedures, with more research to establish rules for digital IP protection, according to Zhang.

In the past decade, China has seen progress in the rule of law in the IP field. IP protection as a major principle was highlighted in the Civil Code, the nation's fundamental law for regulating civil activities, and punitive damage was also supported in relevant IP laws, including the Patent Law and the Trademark Law.

In the face of the country's rising IP disputes, the administration has encouraged its sub-offices to resolve cases by mediation.

https://fanyi.sogou.com/text?keyword=Patent%20Law%20regulation%20amended%20to%20improve%20IP%20protection%20system&transfrom=auto&transto=zh-CHS&model=general

Trademark Office of CNIPA Cracks Down on World Cup Trademark Squatting

On Dec 2, Trademark Office of CNIPA announced the Notice on Cracking Down on Malicious Registration of Trademarks such as “World Cup” and “Raib” per the law. According to the Notice, a small number of enterprises and natural persons maliciously registered trademarks of hot words and logos such as “World Cup,” names of famous football stars, and World Cup mascots “LAEEB” and “Raib,” which violated social and public interests. Accordingly, CNIPA rejected

26 relevant trademark registrations and canceled 1 trademark.

http://www.chinaipmagazine.com/en/news-show.asp?id=12695

Huawei and OPPO Sign Global Patent Cross-licensing Agreement

On Dec 9, Huawei and OPPO announced the signing of a global patent cross-licensing agreement, which covers standard essential patents (SEPs), including 5G. "After more than 20 years of continuous innovation, Huawei has developed multiple high-value patent portfolios in the global marketplace in domains like 5G, Wi-Fi, and audio/video codecs," said Huawei. According to industry insiders, Huawei is a major contributor to 5G SEPs, and OPPO has also contributed its share in the field of wireless standards. The signing of the agreement between the two sides is a positive signal of China's intellectual property protection system to become mature and is conducive to the sound development of China's domestic innovative technology market. It is reported that in 2022, nearly 20 global manufacturers in the field of smartphones, smart cars, and IoT industries with about 350 million 5G phones and 15 million connected vehicles will be licensed by Huawei.

http://www.chinaipmagazine.com/en/news-show.asp?id=12696

NetEase Wins 50 Million RMB in Minecraft Infringement Litigation

On November 30, the Guangdong Higher People's Court awarded NetEase 50 million RMB (over $7 million USD), the highest damages award in China for game infringement, and an injunction in an unfair competition case against Shenzhen Mini Play Company involving Minecraft and Mini Play's similar sandbox game Mini World. NetEase has the exclusive right to operate Minecraft in China since 2016. In 2019, NetEase filed a lawsuit against Mini Play, claiming that Mini World copied several core basic elements of Minecraft, constituting copyright infringement and unfair competition.

http://www.chinaipmagazine.com/en/news-show.asp?id=12692

China IP Growth Tops Globe

China surpassed the United States to become the top jurisdiction in terms of the number of patents in force last year — 3.6 million — the World Intellectual Property Organization said.

Patents in force worldwide grew by 4.2 percent last year, with China registering the fastest growth in this regard, according to the WIPO's World Intellectual Property Indicators Report 2022, which was issued on Monday.

The report showed that China's IP office received 1.59 million patent applications of the 3.4 million filed worldwide in 2021, which is similar in number to the combined total of the next 12 offices ranked from the second to 13th.

While seeing a rise in patents, the WIPO, which compiles the latest data from 150 national and regional IP registers, said that China also witnessed growth in other IP sectors, including trademarks, industrial design, plant varieties and geographical indicators.

There were an estimated 73.7 million active trademark registrations at 149 IP offices last year — up 14.3 percent on 2020, with 37.2 million in China alone, followed by 2.8 million in the US and 2.6 million in India, it said.

China's IP office received applications containing 805,710 designs and 11,195 plant varieties last year respectively, corresponding to 53.2 percent and 44.2 percent of the world total, it said.

Additionally, China also reported 9,052 geographical indicators in force last year —

the largest number in this field around the world, it added.

https://english-ipraction.samr.gov.cn/NEWS/art/2022/art_6cd1603279db49dc967c72da20e0ca1c.html

China is Soliciting Public Opinion on its Anti-Unfair Competition Law

The State Administration for Market Regulation is soliciting public opinion on a draft amendment to the Anti-Unfair Competition Law, which focuses on digital economy, according to its official website on Tuesday. The draft aims to improve the anti-unfair competition rules for the digital economy, with operators being prohibited from engaging in unfair competition by using data, algorithms and platform rules. According to report, the draft comes amid rapid development of the new economy along with various new industrial forms, resulting in the need to rein in new types of unfair competition involving data, algorithms and platform rules. The draft also listed new types of unfair competition into the law, including acts that harm the legitimate rights and interests of small and medium-sized market entities, added the administration.

http://www.chinaipmagazine.com/en/news-show.asp?id=12691

China Continues to Invest in Domestic Brands

China will constantly raise the competitiveness of domestic brands and promote them into world-famous brands, as more Chinese brands are going global, government officials and industry leaders said during the 2022 China Brand Forum organized by People's Daily in Beijing on Dec. 8.

In the past few years, the influence of Chinese brands has steadily increased, and they are playing an increasingly leading role in promoting the upgrading of the supply and demand structure. China should continue to promote its transformation from a country with a large number of brands to a brand power, said Baimachilin, vice-chairman of the Standing Committee of the National People's Congress.

China has continued to relax market access of foreign investments, optimize business environment, improve brand standard systems and promote innovative development of time-honored brands, according to the Ministry of Commerce.

"We have promoted the building of national brands and held a number of exhibitions to help drive consumption growth. The ministry has promoted the building of five domestic cities as international consumption centers to further stimulate consumption potential, and encouraged premium Chinese brands to invest overseas," Sheng Qiuping, China's vice-minister of commerce, delivered a speech via the video link.

Tuo Zhen, publisher of People's Daily, said Chinese enterprises have strengthened their brand awareness and seized growth opportunities, and the country has created a group of outstanding brands with strong competitiveness.

He added that time-honored Chinese brands have upgraded their strategies, and a number of new-energy vehicle and mobile phone brands have made their names at home and abroad. Media organizations have played an important role in showcasing Chinese brands.

In addition, top executives from major Chinese enterprises of different sectors demonstrated their achievements during the forum. Those companies include State Grid, Agricultural Bank of China, China National Nuclear Corp, and Chinese white spirit brand Kweichow Moutai.

https://english-ipraction.samr.gov.cn/NEWS/art/2022/art_6709727223024cc28c6152d20e2e2367.html

SUPPLEMENTARY ISSUE

AFD China Once Again Recommended as a Leading Firm in Non-Contentions Intellectual Property (Tier 3) by The Legal 500

On November 13, 2022, The Legal 500, a world-renowned guide to law firms, released its Asia Pacific 2023 edition, in which AFD China was once again ranked as a leading firm in Tier 3 for its outstanding performance in non-contentions intellectual property. Xia Zheng, the founder of AFD China, Hong Long, the domestic patent officer of AFD China, and Jingjing Wu, the management officer of Trademark and Legal Department of AFD China, were also specially recognized for their rich experiences and achievements in the relevant fields.

The Legal 500 is committed to providing open, fair, impartial and objective assessment of the strengths of law firms in various practice areas across the world, so as to offer its users reliable information on law firms. Its assessment of law firms is based on a series of criteria, including the firms' sizes, client feedback, representative cases, service philosophy, service characteristic, latest changes, etc., thereby fully demonstrating the comprehensive strength of each firm.

Since our participation in the Legal 500's rankings, our firm has been continuously ranked as a leading firm by virtue of high requirements on service quality and positive feedback from clients. Taking this opportunity, we would like to express our sincere gratitude to our clients who have been supporting and trusting us. Our gratitude also goes to our colleagues who have been forging ahead together with AFD China. Without their efforts, AFD China can never make such achievements with steady and continuous growth.

In response to the changing market demand and examination practice, our firm has been constantly exploring, hoping to help clients better protect their rights and interests through our analysis and communication, and also summarize more practical experience to improve own professional capabilities. In the future, we will continue to maintain sensitivity to changes in the industry and sensitivity to new procedures and regulations, and provide clients with timely and quality agency services with professional opinions and suggestions. Taking clients' needs as a starting point, we will make full use of procedures and provide targeted solutions to safeguard our clients' intangible assets.

The Supreme People's Court Releases 2022 Typical Anti-unfair Competition and Anti-monopoly Cases

In November 2022, the Supreme People's Court (SPC) released Typical Anti-unfair Competition Cases of the People's Courts and Typical Anti-monopoly Cases of the People's Courts, through which the rules for determining new situations and problems encountered in trial practice were clarified. The relevant rules are hereby briefly organized for reference.

Typical Anti-unfair Competition Cases:

1. "Accompanied" live broadcast unfair competition dispute case: The operators of two professional live broadcast platforms for sports events used "the Olympic Games is being broadcast live" as keywords for Baidu promotion without the permission of CCTV. After attracting users to visit its website and download the "Live TV Browser", the platforms guided users into a

special live broadcast room that presented the content of CCTV's broadcast of the Olympic Games in a "nested" way, which provided users with "live broadcast" of the Olympic events accompanied by anchors, thereby making profits. The court ruled that, with the purpose of "hitchhike," the platforms' behavior of obtaining improper commercial interests and competitive advantages through the implementation of the alleged infringement constituted unfair competition.

2. "Non-stick pan" commercial defamation dispute case: The defendant in this case believed that the plaintiff's product infringed its patent right. In addition, the defendant expressed or hinted at the plaintiff's infringement by hosting Weibo Topic Discussions and holding press conferences on multiple media platforms. The plaintiff, on the other hand, believed that the defendant's behavior damaged its business reputation and constituted commercial defamation and thus initiated a legal action before the court. The court held that the defendant publicized and disseminated the undecided state as a settled fact. The defendant's claim of the plaintiff's imitation of its patent was beyond the scope of legitimate rights protection, which constituted commercial defamation. At the same time, the court determined that the dissemination channels of commercial defamation include not only conventional media, but also online channels such as Weibo and live broadcast.

3. "King of Comedy" unfair competition dispute case: The defendant used "King of Comedy" on Weibo to promote the allegedly infringing TV series "King of Comedy 2018" without permission, which constituted an unfair competition act that uses a certain influential product name and false publicity without authorization. The People's Court, in the process of examining and determining the popularity of the title of the film work in question, not only comprehensively examined the evidence related to its box office revenues and promotional efforts during its theatrical release in Hong Kong, but also fully considered the online play and CD sales after the movie in question was removed from theaters, the continued coverage and promotion of the movie by the relevant media, and other factors, which effectively stopped the "hitchhike" behavior in the film market competition.

4. "App wake-up strategy" unfair competition dispute: In this case, the defendant set up a link in its App that was consistent with the Alipay App, causing users to be redirected to the defendant's App when they chose to settle payments through the Alipay App. The unfair competition damaged the plaintiff's economic interests and business reputation, and the court ordered the defendant to eliminate the impact and compensate the plaintiff for economic losses and other reasonable costs. Adhering to the principle that the interests of operators, consumers and the public interest of society should be protected as a whole, this decision effectively stopped the unfair competition on the Internet that illegally interferes with the operation of others' software, and promoted the efficiency and security in the field of electronic payment and receipt in the technology and financial services market.

5. "WeChat lottery" prize sales administrative penalties: The plaintiff filed an administrative lawsuit against the administrative penalty imposed by the Market Supervision Bureau. The plaintiff held a lottery event on its WeChat official account, and the winner of the prize, after receiving the prize, found that the prize was highly inconsistent with the picture released by the WeChat official account and therefore reported to the Municipal Supervision Bureau, who then made corresponding administrative sanctions. The court held that, although the plaintiff did not specify the price, brand and other specific information of the prize on the promotion page, which may cause the divergence of consumers' perception of the actual price of the prize, the purpose, although not premised on consumption, was to expand the company's popularity, promote goods or services, explore potential customers, and obtain greater profits, and it was essentially a sales activity with prize, which shall be subject to anti-unfair competition law. The court ultimately determined that the WeChat lottery for the purpose of intercepting network traffic and gaining a competitive advantage was a sale with a prize, and thus upheld the administrative penalty. This

case was of positive significance for the establishment of an honest and creditable, fair and orderly market order for Internet services and the protection of consumer interests.

6. "Click farming" unfair competition dispute case: The defendant in this case used the issuance of red packets to induce consumers to like, rate, review, and favorite specific merchants. As a consequence, the merchant's evaluation did not match the actual evaluation of the consumers, creating a distortion of the data displayed on the plaintiff's platform, which affected the credit system of the platform and disrupted the competition order of merchants on the platform. The court determined that the conduct constituted an act of unfair competition. By stopping the use of the "click farming" behavior to help other operators carry out false propaganda and other unfair competition, this decision protected the legitimate rights and interests of operators and consumers, strongly maintained and promoted the healthy development of the network ecology, and helped to form a market environment that respects, protects and promotes fair competition.

7. "Zhang Bai Nian" counterfeit confusion dispute: In this case, the alleged infringing goods were of the same category and name as the goods produced and sold by the plaintiff, with similar outer packaging and the plaintiff's business name being used. The plaintiff filed a lawsuit on the grounds that the defendant committed trademark infringement and unfair competition. The first-instance and second-instance courts determined that the infringement act constituted an infringement of the exclusive right to use a registered trademark, but rejected the plaintiff's claims related to unfair competition. The plaintiff requested the Supreme Court for a retrial, and the Supreme Court held that the sued infringing goods were highly similar to the plaintiff's influential goods and packaging, and were labeled with the business name of the plaintiff, which would easily cause the public to misunderstand that the goods came from the plaintiff or had a specific connection with the plaintiff, and thus the act constituted an act of unfair competition by counterfeiting and confusion. Therefore, the defendant was ordered to stop the act of unfair competition and jointly compensate the plaintiff for economic loss and reasonable expenses of CNY 300,000 yuan. This case has positive significance for unifying the standard of adjudication of such cases.

8. Unfair competition dispute case of false publicity of engineering pictures: In this case, the plaintiff and the defendant were operators in the same industry. The plaintiff believed that the defendant printed 8 engineering cases of the plaintiff as successful cases of the defendant in its own product brochures to conduct false publicity, deceive and mislead consumers, which constituted unfair competition, and therefore initiated a legal action before the court. However, both the first instance and the second instance ruled to dismiss the plaintiff's claim. The plaintiff applied to the Supreme Court for a retrial, and the Supreme Court, after arraignment, determined that the defendant's conduct constituted unfair competition by false propaganda, and changed the judgment to order the defendant to stop the unfair competition and compensate for damages. This case fully reflects the judicial orientation of the People's Court to resolutely stop unfair competition such as false propaganda and defamation of goodwill, to maintain voluntary, equal, fair and honest market competition order, to purify the market environment and to guide operators to engage in healthy competition.

9. "Guanidineacetic acid" technical secrets infringement dispute: In this case, the plaintiff owns a compound protected as a technical secret, which is used to prepare feed additives. The plaintiff and the defendant signed a strategic cooperation agreement and a consignment processing agreement for the project of developing feed additives using the technical secret ingredient. The contract period and confidentiality period was 3 years. After the parties terminated their cooperation, the defendant's affiliates advertised and sold their feed additive products containing the same ingredients, claiming that the production process came from the plaintiff or the defendant or was related to the two companies. At the same time, the product analysis report

issued by the affiliated company showed that the quality of the products it sold was consistent with the strategic cooperation agreement between the plaintiff and the defendant. The plaintiff then filed a lawsuit, claiming that the defendant and the defendant's affiliates infringed its technical secrets and ordered them to stop the infringement and jointly and severally compensate for economic losses and reasonable costs. The court of the first instance determined that the acts of the defendant and the defendant's affiliates constituted the use and disclosure of the technical secrets involved in the case, and ruled to stop the infringement and jointly compensate the plaintiff for economic losses. The defendant, after losing the case, filed an appealed, and the Supreme Court held that after the expiration of the confidentiality period agreed in the technology secret license contract, the licensee's agreed confidentiality obligations terminated, but it still shall be obliged to refrain from infringing the legitimate rights and interests of others and maintain confidentiality based on the principle of good faith. Therefore, the defendant can only use the relevant technical secrets themselves, and may not license others to use or disclose the relevant technical secrets. Therefore, the defendant was ordered to stop allowing others to use the technical secrets involved, and the defendant's affiliated companies was also ordered to stop using the technical secrets involved, and to jointly compensate the plaintiff for economic losses.

10. "Chip mass production test system" infringement of technical secrets preservation measures case: In this case, the individual defendant once worked in the plaintiff's company and participated in the research and development of the technical information involved in the case, and then left to work in the defendant's company. The plaintiff filed a lawsuit for infringement of its technical secrets by the two defendants, and the court of the first instance dismissed all its claims on the grounds of lack of evidence. The plaintiff appealed to the Supreme Court, and at the same time filed an application for behavior preservation ordering the two defendants not to disclose, use or allow others to use the technical information involved. Based on the existing evidence, the Supreme Court held that the technical information involved in the case may indeed be illegally held, disclosed and used, and while remanding the case back to the first-instance court, the Supreme Court ruled that the two defendants should not disclose, use or allow others to use the technical information involved in the case before an effective judgment was made. This decision reflects the active exploration of the people's court to strengthen the judicial protection of intellectual property rights, and taking temporary behavior preservation measures while remanding the case effectively reduces the risk of the technical information involved in the case being illegally disclosed and used again, thereby providing strong protection for the trade secret rights holders.

Typical Anti-monopoly Cases:

1. Horizontal monopoly agreement dispute on "Driving School Joint Venture": 15 driver training schools in Luqiao District, Taizhou, Zhejiang Province, signed a joint venture agreement and a self-regulatory convention, agreeing to jointly fund the establishment of a joint venture company, fix the price of driver training services, and restrict the flow of coach vehicles and instructors between driver training institutions. The original scattered auxiliary services (such as registration, medical examination, card making, etc.) of the 15 driver training schools were uniformly handled by the joint venture company at the same site, and the joint venture company correspondingly charged a service fee of 850 yuan. Wherein, Article 3 of the joint venture agreement specifies the registered capital and share capital structure for the establishment of the joint venture company. Two of the 15 driving schools sued to the court on the grounds that the 15 driving schools constituted a monopoly operation, requesting that the joint venture agreement and the self-regulatory convention be recognized as invalid. The first instance affirmed the invalidity of the relevant provisions of the joint venture agreement and the self-regulatory convention in question

that constituted a horizontal monopoly agreement, but at the same time held that the joint venture company's collection of service fees qualified for exemption from the monopoly agreement. The two driving schools appealed against the ruling, requesting that the ruling be reversed to confirm the invalidity of the equity structure clause in the joint venture agreement and that the reasons for the exemption of the fixed price agreement could not be established. The Supreme Court held in the second instance that if an operator of a monopoly agreement wishes to claim exemption on the grounds that the agreement has the circumstances mentioned in Article 15(1)(a) to (5) of the Anti-Monopoly Law, which came into force in 2008, he should provide sufficient evidence to prove that the agreement has the positive competitive or economic and social effects referred to under one of the above five statutory circumstances. In addition, the effects should be concrete and real, and cannot rely on mere general speculation or abstract presumption. The Supreme Court also held that the terms of the agreement were in principle invalid for violating the anti-monopoly law's prohibition of monopolistic acts; if the invalid part of the agreement would affect the validity of the other parts, the other parts shall also be invalid. When judging whether a contract or contract clause is invalid due to violation of the anti-monopoly law, the need to eliminate and reduce the risk of monopolistic acts should also be considered to achieve the legislative purpose of the anti-monopoly law to prevent and stop monopolistic acts. The Supreme Court finally ruled that the first instance judgment was reversed and confirmed the invalidity of the joint venture agreement and the self-regulatory convention.

2. Horizontal monopoly agreement dispute on "No Excitation Switch Patent Infringement Settlement Agreement": The plaintiff and the defendant reached a "settlement agreement" on the plaintiff's infringement of the defendant's patent rights. The plaintiff claimed that the settlement agreement was a monopoly agreement and violated the anti-monopoly law. The court of first instance held that the "settlement agreement" was not a monopoly agreement and ruled that the plaintiff's claim was dismissed in its entirety. The plaintiff then filed an appeal. The Supreme Court held in the second instance that if a patentee exceeds its exclusive rights and abuses intellectual property rights to exclude or restrict competition, it is suspected of violating the anti-monopoly law. The settlement agreement in question lacks substantial relevance to the scope of protection of the patent right in question, and its core does not lie in the protection of the patent right, but in the exercise of the patent right as a cover for actually pursuing the effect of excluding and restricting competition, which is an abuse of the patent right. The settlement agreement in question constitutes a horizontal monopoly agreement that divides the sales market, limits the number of goods produced and sold, and fixes the price of goods, which is in violation of the mandatory provisions of the Anti-Monopoly Law. The SPC ruled that the first instance verdict was reversed and confirmed that the settlement agreement was null and void. This case is of positive significance for regulating the legitimate exercise of rights by patentees and raising the awareness of anti-monopoly in the whole society.

3. "Kindergarten" horizontal monopoly agreement dispute: The plaintiff and the four defendant kindergartens jointly entered into a cooperation agreement, agreeing that the parties to the cooperation would settle their income and expenses jointly and share their profits equally, and that the four defendants would compensate the plaintiff for the reduction in the number of kindergartens and their not opening kindergartens in a specific area. As the four defendants failed to pay the compensation as agreed, the plaintiff brought the case to court. The first-instance and second-instance courts found that the agreement in question expressly agreed to fix and increase prices and to withdraw individual operators from the relevant market, which not only obviously had the purpose of excluding or restricting competition, but also actually produced the effect of excluding or restricting competition, and the agreement in question should be found invalid because it violated the anti-monopoly law. The plaintiff's demand for the defendant to pay compensation and liquidated damages is in essence a demand for the division of monopoly

benefits, which the court does not support. This case highlights the legislative purpose of the anti-monopoly law, which confirms that proceeds generated by monopolistic acts should not be protected by law.

4. Invention patent infringement dispute on "Reverse payment agreement for drug patent involving saxagliptin tablets": The plaintiff in this case owned a patent for a pharmaceutical invention related to the treatment of diabetes, and the defendant filed a request for invalidation of this patent. In order to avoid invalidation of the patent, the plaintiff and the defendant reached a settlement agreement, agreeing that if the defendant withdrew its request for invalidation of the patent, then the defendant and its affiliates would be allowed to enforce the patent more than five years before the expiration of the protection period of the patent (in essence, a "drug patent reverse payment agreement"). Later, the defendant's affiliated company implemented the patent in question and the plaintiff sued it for infringement. The first instance ruled to reject all the plaintiff's claims, and the plaintiff appealed against the ruling, and then requested to withdraw the appeal at the second instance stage on the grounds that the parties had reached a settlement. The Supreme Court held that the request for withdrawal of appeal should be examined in accordance with the law, and the Settlement Agreement in question was in line with the appearance of the so-called "drug patent reverse payment agreement", and the People's Court should generally examine whether it violated the anti-monopoly law to a certain extent before deciding whether to approve the withdrawal of appeal. This case is the first case in which the Chinese court conducts an anti-monopoly review of a "drug patent reverse payment agreement". Although it was only a preliminary anti-monopoly review in response to the withdrawal of the appeal, and ultimately did not clearly characterize whether the settlement agreement in question violated the anti-monopoly law in light of the specific circumstances of the case, the decision emphasized the need for a timely and appropriate anti-monopoly review of the agreement on which the parties based their claims in the trial of non-monopoly cases, and indicated the review limit and basic path for "drug patent reverse payment agreement". It is of positive significance for enhancing the anti-monopoly compliance awareness of enterprises, regulating the order of competition in the pharmaceutical market, and guiding the people's courts to strengthen the anti-monopoly review.

5. "Yan'an Concrete Enterprise" contract dispute and horizontal monopoly agreement dispute case: The plaintiff and the defendant in this case signed a concrete supply agreement, and then the defendant made a joint statement with 9 local concrete companies to increase the price of concrete. Then the plaintiff and the defendant made an oral agreement on the price of concrete, and then the defendant was reported for alleged monopoly but it did not inform the plaintiff of the relevant matters. The following year, the plaintiff and the defendant again reached a supplementary agreement on the increase in the price of concrete. The defendant was later subject to administrative penalties for implementing a monopoly agreement. When the plaintiff and the defendant finished the supply and organized the settlement, the plaintiff learned that the defendant was punished and therefore filed a lawsuit and demanded that the defendant compensate for the corresponding losses. The court held that the formal freedom of contract between the parties cannot be a legal cloak for the illegal behavior of the party implementing the monopolistic behavior. If the operator reaches a price increase agreement which causes damage to the counterparty of the transaction, it shall bear the corresponding civil liability. With regard to damages for horizontal monopoly agreements, for goods that are difficult to be separated from the local supply market or that have a high demand for technical support, the difference between the price fixed by the monopoly agreement and the price of the product previously agreed with the counterparty in free market competition shall be used for calculation. On such basis, the Court made a judgement accordingly.

6. Dispute on abuse of market dominance involving photos from the Chinese Super League The defendant in this case obtained the right to acquire exclusive operation of the Chinese Super League photo resources by wining in a public bidding. The plaintiff did not win the bid, but sent people to enter the site of the Chinese Super League to take pictures and sell them for distribution, during which the CFA issued a statement to stop it in order to defend the defendant's exclusive rights. The plaintiff believed that Chinese Super League Company and the defendant abused their market dominance to limit the transaction counterparty to only conduct transactions with the defendant, which constituted a monopoly, and filed a lawsuit, requesting an order to stop the monopolistic behavior, eliminate the impact, and compensate for economic losses and reasonable expenses. The Supreme Court held in the second instance that the anti-monopoly law prevents and stops the abuse of rights to exclude or restrict competition, but the "monopoly state" formed by the inherent exclusivity of rights is not an abuse of rights. The defendant's acquisition of exclusive rights was the natural result of competition and was reasonably justified, and did not have an anti-competitive effect. At the same time, the user (demand side) of the pictures of the Chinese Super League can only buy the pictures of the tournament from the defendant, which is based on the operation right legally enjoyed by the original operator, the CFA, and is a result of authorization. This is reasonable and is in accordance with the law, and there are legitimate grounds for the limited transaction situation. The final judgment of the Supreme Court rejected the appeal and affirmed the original judgment. This case makes it clear that it is the improper exercise of exclusive civil rights that may be the object of prevention and suppression by the anti-monopoly law, while the exclusivity of civil rights or the exclusive civil rights themselves are not the objects of prevention and suppression by the anti-monopoly law. This case is of great value for clarifying the boundary of the exercise of exclusive civil rights and protecting the legitimate operation of enterprises.

7. Dispute on abuse of market dominance by "Weihai Water Group”: This case is a real estate development company suing against a local water group for its abuse of dominant market position, i.e., there is a restricted transaction behavior. The first instance dismissed the plaintiff's claim on the grounds of lack of evidence. The Supreme Court in the second instance found that the water group not only exclusively provide urban public water supply services, but also undertake water supply facilities audit, acceptance and other public utility management responsibilities. It has a higher duty of special care not to exclude or restrict competition when competing in the market for the construction of water supply facilities. When accepting the water supply and drainage municipal business, the water group only indicated the contact information of its company and its subordinate enterprises in the list of business handling service procedures, but did not inform or remind the counterparty of the transaction that it can choose other enterprises with relevant qualifications. It is an implicit restriction that the counterparty of the transaction can only conduct transactions with its designated operators, which constitutes a restricted transaction behavior. However, because the plaintiff did not provide sufficient evidence on the transaction price and other factors, the Supreme Court finally changed the judgment that the water group should compensate the plaintiff for the reasonable expenses it paid for investigating and stopping the monopolistic behavior. This case clarifies that a restricted transaction act under anti-monopoly law can be expressed and direct, or can be implied and indirect. It clarifies that the focus of identifying the act of restricted transaction is to examine whether the operator has substantially restricted the right of free choice of the counterparty to the transaction, and provides guidelines for operators with exclusive market position, especially public enterprises, to engage in market operation activities in accordance with the law. At the same time, this case clarifies the criteria for determining the damages caused by the monopolistic act of restricted transactions and the allocation of the burden of proof, which provides guidelines for determining the liability for damages for monopolistic acts in the trial of such cases, and also

provides rules for the victims of monopolistic acts to actively seek remedies by filing anti-monopoly civil lawsuits.

8. Anti-monopoly administrative penalty case regarding "horizontal monopoly agreement of Hainan fire inspection enterprises": The main point of contention in this case is the interpretation of "sales in the previous year" as the base for anti-monopoly fines - whether it shall only refer to the sales revenue obtained from the implementation of the monopoly agreement or shall also include the sales revenue obtained without the implementation of the monopoly. In this case, the Supreme Court determined that it is reasonable to interpret "sales in the previous year" as the total sales in principle in light of the legislative purpose and the principles of general law application. At the same time, the final judgment will be made based on the principle of proportional punishment and in combination with factors such as the time, nature, and circumstances of the implementation of the monopoly agreement.

9. Anti-monopoly administrative penalty case regarding "horizontal monopoly agreement of Maoming concrete enterprises": This case involves the determination of "other coordinated behavior ", because it is not directly reflected in a clear agreement or decision, but is relatively concealed, and there are difficulties in administrative supervision and judicial determination. This case clarifies that the two factors of consistent market behavior and information exchange can prove the existence of "other coordinated behavior", and then it is up to the operators to give a reasonable explanation for the consistency of their behavior. This layered identification method helps to clarify the specific application of legal norms and reasonably allocates the burden of proof of litigants. At the same time, this case provides a principled interpretation of the "previous year" in the "sales in the previous year" as the base for anti-monopoly fines. In this case, the sued act occurred in 2016 and ceased at the end of that year, and the anti-monopoly enforcement agency initiated an investigation in 2017. Therefore, using 2016 sales as the benchmark for calculating the fine is closer to the actual operating condition of the involved enterprises when the illegal act occurred, which is consistent with the basic spirit of law enforcement practice, i.e. calculating the operator's sales based on the last fiscal year when the monopoly act ceases, and is also in line with the principle of proportional punishment. This not only respects the exercise of administrative discretion by administrative organs in accordance with the law, ensures the effectiveness of administrative enforcement, and maintains the deterrent effect of anti-monopoly law enforcement, but also provides guidelines on the discretionary benchmarks and methods for administrative organs to make administrative penalty decisions in accordance with the law.

10. Anti-monopoly administrative penalty case regarding "Huizhou Motor Vehicle Inspection Industry Association": In order to resist the price reduction or disguised price reduction of individual testing units, Huizhou Motor Vehicle Inspection Industry Association formulated the "Work Plan" and passed a "Convention", requiring all members not to reduce prices or reduce prices in disguised form in the name of industry self-discipline. In order to ensure that the implementation is in place, all members were also required to pay a deposit. Due to the collective simultaneous and unified price increase and the large price increase, this matter aroused local heated discussions and media attention. After an anti-monopoly investigation, the Guangdong Provincial Market Supervision Bureau found that the above-mentioned behavior of the Huizhou Motor Vehicle Inspection Industry Association violated the relevant provisions of the Anti-Monopoly Law and imposed a fine of 400,000 yuan on it. Huizhou Motor Vehicle Inspection Industry Association refused to accept the administrative penalty decision and filed a lawsuit with the Guangzhou Intellectual Property Court, requesting to revoke the penalty decision. After the trial, the court determined that the above-mentioned behavior of the industry association was a monopolistic behavior of eliminating or restricting competition, and the administrative penalty was appropriate, and rejected all the claims of the Industry Association. This case analyzes the nature

of the accused industry association implementing the monopolistic behavior through collective decision-making, which is of positive significance for regulating industry associations to strengthen self-discipline and guiding them to prevent monopoly risks.

Details of related cases can be found at:

https://www.court.gov.cn/zixun-xiangqing-379711.html

https://www.court.gov.cn/zixun-xiangqing-379701.html

Holiday Notice 2023

Please kindly be informed of the Chinese public holidays in 2023 as well as the working-day adjustment as follows:

Holiday/ Working-day Adjustment	Date	Office status
New Year Day Holiday	Dec 31, 2022 - Jan 2, 2023	closed
Chinese New Year Holiday (Spring Festival Holiday)	Jan 21 - Jan 27	closed
Adjusted Working days	Jan 28 (Saturday) Jan 29 (Sunday)	*open*
Qingming Festival Holiday (Tomb Sweeping Day)	Apr 5	closed
Labor Day Holiday	Apr 29 - May 3	closed
Adjusted Working days	Apr 23 (Sunday) May 6 (Saturday)	*open*
Dragon Boat Festival Holiday	Jun 22 - Jun 24	closed
Adjusted Working days	Jun 25 (Sunday)	*open*
Mid-Autumn Festival Holiday Chinese National Day Holiday	Sep 29 - Oct 6	closed
Adjusted Working days	Oct 7 (Saturday) Oct 8 (Sunday)	*open*

The CNIPA and our firm will close during the holidays and you may check if any important deadlines in 2023 fall in the holidays.