

Monthly Newsletter

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2024 INTA Annual Meeting in Atlanta

May 18th marks the opening of the INTA Annual Meeting 2024 in the vibrant city of Atlanta. Chang Tsi is honored to be part of this prestigious event. This marks a significant opportunity for our team, with 15 of our experts specializing in trademarks, design, and corporate law actively engaging in seminars and table topic discussions.



The professional team of Chang Tsi & Partners share the insights with all our friends coming to the meeting.



During the 2024 INTA Annual Meeting, the renowned trademark AI search and analysis platform, MOZLEN, released the 2024 "MOZLEN 500" global list of Chinese foreign-related trademark agencies. Among nearly 40,000 trademark agencies registered with the China National Intellectual Property Administration, Chang Tsi & Partners was ranked in the "TOP10" of China's 500 foreign-related trademark agencies and awarded the "Diamond AAA+++" rating (the highest level). This recognition underscores Chang Tsi's outstanding international client trademark agency experience, comprehensive business strength, and international influence. Our firm also excelled in various key national business rankings and received notable recommendations.



Chang Tsi & Partners proudly participated in INTA's table topic discussions, an esteemed forum where leading minds in intellectual property law converge to share knowledge and insights. Our distinguished attorneys facilitated critical discussions on pressing issues in IP law:

- Table Topic by Ron Tsi: "Top Tips on Securing High Damages Awards in Trademark Infringement Cases in China"
- Table Topic by Emma Ma: "Discussion on Examination Opinions Issued for Trademark Applications Not Intended for Use Pursuant to Article 4 of Revised Trademark Law in China"
- Table Topic by Nana Zhang: "Strategies for Defending Against Non-Use Cancellations"
- Table Topic by David Liu: "Overall Analysis of Design Patents in the Auto Industry"
- Table Topic by Tracy Shen: "IP Border Protection"

These sessions were meticulously designed to provide participants with a wealth of practical knowledge and an edge in the dynamic field of IP law. Attendees engaged deeply with the content, gaining insider perspectives and enhancing their understanding of IP law.

On May 21, we hosted Chang Tsi & Partners Reception at the 2024 INTA Annual Meetings at Sun Dial Restaurant & View, Atlanta.



The event was a resounding success, uniting professionals and friends from all over the world. The event brought together numerous professionals and friends from around the world, creating an atmosphere of warmth and camaraderie. It provided an exceptional opportunity to connect with like-minded individuals, fostering meaningful conversations, sharing valuable insights on the latest trends in intellectual property, and building stronger bonds within our professional community.



Throughout the event, Chang Tsi & Partners engaged with peers, shared our expertise, and explored the latest developments in the field. Our participation not only reinforced our commitment to excellence in intellectual property law but also demonstrated our leadership in the industry. We look forward to continuing our contributions to the global IP community and fostering innovation and collaboration across borders.

China Releases New Regulations on Anti-Unfair Competition in the Internet Sector

Leslie Xu

On May 11, 2024, China's top market regulator, the State Administration for Market Regulation (SAMR) announced the **Interim Regulations on Anti-Unfair Competition on the Internet** ("the Regulation"), aimed at preventing and curbing unfair competition online and promoting the healthy development of the digital economy. The Regulation, which establishes and clarifies the "traffic light" rules for online competition behaviors, will take effect on September 1, 2024.

Before the announcement of the Regulation, the SAMR had released the Regulations on Prohibiting Unfair Competition on the Internet (Draft for Comments) on August 17, 2021, to solicit public opinions. As a supplementary regulation to the Anti-Unfair Competition Law, the Regulation is the first significant administrative regulation in the field of unfair competition since the enactment of China's first Anti-Unfair Competition Law in 1993, and it summarizes China's experiences in addressing online unfair competition since the law's amendment in 2017.

Currently, China is undergoing the third amendment of the Anti-Unfair Competition Law, which has been included in the legislative work plan for 2024 by China's national legislature, the Standing Committee of the National People's Congress for review. According to the Anti-Unfair Competition Law (Draft for Comments) published on November 27, 2022, one of the main contents of the third revision is the improvement of rules against unfair competition in the digital economy. The Regulation closely aligns with and responds to the trends of this new round of amendments, offering significant guidance and practical value.

The Regulation consists of five chapters and 43 articles, divided into General Provisions, Online Unfair Competition Behaviors, Supervision and Inspection, Legal Liabilities, and Supplementary Provisions. The main contents are as follows:

1. Detailed listing of online unfair competition behaviors. The Regulation categorizes and refines online unfair competition behaviors and establishes clear standards. It specifies new forms of traditional unfair competition behaviors such as passing off, confusion and false advertising in the online environment, and addresses hot issues like fake orders and manipulated reviews (sellers' deceitful techniques to boost ratings), fake reviews for cashback, and the fabrication of traffic and interaction data. Further, it details other forms of online unfair competition, listing behaviors such as traffic hijacking, intentional interference, and malicious incompatibility, along with the criteria for their identification. The Regulation also regulates new types of unfair competition conducted through technological means, such as illegal data acquisition and discriminatory treatment. Additionally, it includes a catch-all clause to provide a basis for regulating "other forms of online unfair competition."

2. Strengthening the responsibilities of platform operators. The Regulation emphasizes the responsibilities of platform operators, urging them to regulate competition behaviors within their platforms, take necessary measures against unfair competition, and report such activities. It also addresses issues such as platforms abusing data algorithms to gain competition advantages and using service agreements and trading rules to restrict transactions.



3. Optimizing enforcement and case handling

procedures. The Regulation clarifies the general jurisdiction principles for cases of online unfair competition and makes special provisions for the jurisdiction of significant cases based on the characteristics of online unfair competition behaviors. Additionally, the Regulation establishes an expert observer system to provide intellectual support and technical assistance for addressing complex issues.

4. Clarifying legal responsibilities. The Regulation links the legal liabilities of unfair competition behaviors to the Anti-Unfair Competition Law, E-commerce Law, Anti-Monopoly Law, and Administrative Penalty Law, enhancing the combined effect of legal regulations in market supervision. It also specifies the legal liability for confiscating illegal gains to strengthen regulatory effectiveness.

Overall, within the context of building a unified national market in China, the Regulation serves as an important institutional safeguard guiding businesses towards orderly competition and innovative development. It will also become a crucial legal basis for market supervision authorities in enforcing laws against online unfair competition.

Rights holders suspecting online unfair competition behaviors have the right to report to the market supervision authorities, which should respond promptly. In practice, courts have accepted most disputes over online unfair competition and have gradually accumulated trial rules. After the implementation of the Regulation, resolving disputes over online unfair competition through administrative channels may present a new scenario. Meanwhile, in traditional judicial channels, the Regulation may serve as one of the bases for adjudication reasoning in disputes over online unfair competition. Additionally, businesses involved in online activities are recommended to conduct compliance reviews in advance based on the Regulation and reassess online activities, to avoid compliance risks related to online unfair competition. For more information or comments, please contact lesliexu@changtsi.com.

4. The defendants are ordered to forfeit their illegal earnings - 60,000 RMB for Xu, 21,000 RMB for Lin, and 26,000 RMB for Hong - to the state treasury.

5. The seized counterfeit OREO biscuits and an iPhone 13 used in the criminal activities were disposed of by authorities.

6. Defendants Xu, Hong, and Lin must jointly compensate Intercontinental Great Brands LLC with a total of 225,700 RMB; Xu and Hong are further liable for an additional 54,300 RMB.

7. Defendants must publish a public apology in the "China Food Safety Daily". Non-appeal of the first-instance judgment has made it final and conclusive.

Against the backdrop of comprehensive strengthening of intellectual property rights, Chang Tsi & Partners successfully drove Intercontinental Great Brands LLC's Civil Case Attached to Criminal Case, ultimately achieving full protection of the involved intellectual property in both criminal and civil aspects within the same case.

Chang Tsi & Partners has maintained a leading position in the field of intellectual property litigation and dispute resolution, contributing a wealth of groundbreaking and innovative classic cases that drive the development of the intellectual property industry. For instance, in recent years, the case of invalidation of design patents represented by Michael Wu **has been recognized as one of the top ten annual patent invalidation cases by the National Intellectual Property Administration**. Chang Tsi & Partners will continue to strengthen its services in the field of intellectual property, align with development directions, strive for innovation, enhance core competitiveness, provide more professional services to clients, and contribute to the development of the intellectual property industry.

Claiming Damages in IP Criminal Cases in China: Three Pathways

Michael Fu

The People's Court of Huishan District, Wuxi City, issued the first criminal judgment on January 18, 2024, in *IGB v. Xu, Hong and Lin* with an attached civil lawsuit for counterfeiting a registered trademark in Wuxi.

This judgment quickly attracted the attention of all sectors of society and was widely publicized as a landmark case later in the year, on March 15, World Consumer Rights Day.

The case also reignited extensive discussions in the intellectual property (IP) community about how right holders can both crack down on infringements and obtain reasonable compensation from IP criminal cases. Chang Tsi & Partners represented the plaintiff in this case. Here, we will analyze and comment on the three main pathways for right holders to obtain compensation from IP criminal cases, based on our experience with this case and other IP criminal cases, as well as related judicial decisions and practices.

Pathway #1 | Issuing A Letter of Forgiveness and Obtaining Compensation in Criminal Cases

The right holder has a variety of choices and is not forced to resort to litigation duration and enforcement issues. Generally, if economic conditions permit, the infringer, in an attempt to seek a lighter punishment upon admitting guilt, would usually choose to communicate with the right holder, compensate them, and then have the right holder issue a letter of forgiveness to gain an opportunity for leniency. Judicial authorities strongly favor this pathway in IP criminal cases. Many judicial authorities believe that it can help right holders recover economic losses and repair social relations while combating crime.

Pathway #2 | Filing a Civil Lawsuit Separate from Criminal Cases

Right holders often use this pathway to obtain compensation.

On one hand, because evidence preserved in criminal cases can be utilized, it significantly reduces the burden on rights holder to collect evidence.

On the other hand, since this pathway is separate from the criminal case, it allows the right holder more flexibility in terms of timing for filing a lawsuit and is not overly influenced by the amount of the criminal fine, which can increase the compensation amount that the right holder may receive.

Pathway #3 | Criminal Incidental Civil Actions

For a long time, the difficulty of enforcing IP rights, as well as the long duration, the high cost, and the insufficient impact of enforcement have plagued right holders.

Criminal incidental civil action can address many of these challenges and resolve right holders' doubts about pursuing this pathway. It has many advantages, such as joint trial of criminal and civil cases, efficiency, short duration, no litigation fees, strong punitive force, and high social benefits. Breakthroughs on the Horizon

In recent years, with the strengthening and emphasis on IP protection, we have gradually seen the possibility of breakthroughs in the field of IP protection.

Right holders should also seize opportunities to participate in IP criminal cases, actively engage judicial institutions, and take advantage of the benefits of criminal incidental civil action as an effective compensation pathway.