



China Legal Update

July 27, 2018

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I. Legal News:

MOFCOM's major law enforcement tasks for this year primarily target record-filing affairs of foreign-invested enterprises

The general office of the Ministry of Commerce (MOFCOM), has issued the "Major Tasks on Law Enforcement for Commerce In 2018" and the "Special Scheme for Rectifying the Market Order in the Field of Law Enforcement for Commerce in 2018" (collectively as the "Major Tasks and Scheme") on 17th of July 2018.

According to the Major Tasks and Scheme, the special rectification actions will be particularly important in areas where there are frequent violations and illegalities that may endanger the general public's consumption security. Such areas include but not limited to single-purpose commercial prepaid cards, auto sales, household services or circulation of refined oil products. Supervisory inspections in foreign investment area will be carried out in conformity with Interim Administrative Measures for the Record-filing of the Incorporation and Change of Foreign-invested Enterprise (Interim Measures), mainly targeting the failure of foreign-invested companies or their foreign investors to perform their record-filing obligations under the Interim Measures

The Major Tasks and Scheme also indicates that the market supervision will be underpinned by the national credit system, with the full use of big data, cloud computing and the mobile internet to improve its supervision compacity and effectiveness.

(<http://sczxs.mofcom.gov.cn/article/cbw/cl/201807/20180702768973.shtml>)

The Supreme People's Court (SPC) issued judicial interpretations on the application of the limitation of action provided in the General Rules of the Civil law (GRCL)

On the 23rd of July, several interpretations from the SPC regarding issues on the application of the limitation of action provided in the General Rules of the Civil law entered into force (the "Interpretations").

The limitation of action has been extended recently from two to three years. The Interpretations provides that where the limitation of action commences after the entry into force of the General Rules of the Civil Law (GPCL) on October 1st 2017, provisions on the three-year limitation of action set out in article 188 of the same rules shall apply; However, if a litigant argues that provisions on the two-year or one-year limitation of action set out in the GPCL shall apply, the people's court (the "Court") won't support its argument. Moreover, the Interpretations also clarifies that if the two-year or one-year limitation of action set out in the GPCL has not expired yet when the GPCL becomes effective, then the Court will support a litigant who claims the application of the three-years limitation. However · if in the same situation the two-year or one-year limitation has already expired, then the Court won't support the litigant's claim.

It is noteworthy that the expansion of limitation of action from 2 years to 3 years only applies to the claims regulated by the GRCL, not binding for those embodied in special laws. For example, the limitation for the insured claiming indemnification from the insurer still remains 2 years, pursuant to the PRC insurance law. It is still waiting for the further codification of Chinese civil law to fill the gap.

(<http://www.court.gov.cn/fabu-xiangqing-108251.html>)

The Supreme People's Procuratorate (SPP) has issued Guidelines for Public Prosecutors of People's Procuratorates to Furnish and Challenge Evidence in Court (the "Guidelines")

The Guidelines will be effective from dates they were published, which is the 19th of July 2018.

It stresses that public prosecutors may adopt different strategies to provide and challenge evidence, depending on whether defendants plead guilty or not. If they do plead guilty and upon consensus between the prosecution and the defense and the approval of the court, the process may be simplified. However, as to a case in which the defendant refuses to plead guilty, all evidence shall be presented and fully examined.

It is also emphasized that if the judicial officer organizes a presentation of evidence during the pre-trial meeting, he must display the evidence that he plans to bring in the court trial and listen to the opinions raised by the defendant and his lawyer. The critical evidence, likely to affect the sentence, and the evidence in dispute between the prosecution and the defense shall be presented separately. If there is no oral confession, the critical evidence may be displayed first.

Eventually the Guidelines requires that each evidence must be examined and discussed individually. It also provides in detail for "arguments given in response to the evidence examination by the defense" and "challenge of evidence presented by the defense".

(http://www.spp.gov.cn/tt/201807/t20180719_385387.shtml)

II. Hot Topic

Vaccines Scandals in China Hit Public Concerns

Recently the vaccine scandal of a Jilin-based vaccine producer, Changchun Changsheng Bio-technology has caused tremendous public concerns. On July 15, the state drug administration revealed that after an unannounced inspection, Changchun Changsheng was found to have forged data and produced 113000 substandard rabies vaccines.

Five days later, the drug watch agency in Jilin province issued a punishment decision for the substandard DPT vaccines found last November. The Jilin-based company was fined and forfeited around 3.44 million RMB. At that time, the state drug supervisor investigated and revealed that there were around 252600 inferior DPT vaccines produced by Changchun Changsheng

and 400520 substandard DPT vaccines produced by another big vaccine maker, Wuhan Institute of Biological Products, which had been sold to Shandong, Hebei and Chongqing Centre for Disease Control and Prevention. Public anger aroused because of all those inferior vaccines that were not recalled effectively. It is unknown how many children were given the inferior vaccines, which were supposed to prevent three diseases – diphtheria, whooping cough and tetanus. Such a delayed and astoundingly light punishment is far from a satisfying response to this huge drug event.

According to Chinese legislation, namely Quality Control Standard of Pharmaceutical Production, Pharmaceutical Administration Law, those who produce and sell medicines of inferior quality shall have his unlawfully made and sold medicines and any unlawful income confiscated, and be concurrently fined the sum of money more than two but less than three times the value of the medicines unlawfully made or sold; if the circumstances are serious, the party shall be ordered to suspend production or business pending rectification, or have the pharmaceutical approval certificate revoked and his Pharmaceutical Production License, or Pharmaceutical Trade License or Dispensing Permit of Medical Organizations revoked. Those whose acts constitute a crime will be investigated for criminal liabilities.

For the time being · the Changchun Changsheng company has seen its production suspended and its production approval document and license revoked. Furthermore, 15 senior executives of the company have been criminally detained, and pursuant to Chinese criminal law, they would likely face the penalty ranging from 3 years in jail to life imprisonment, subject to the consequence seriousness.

France's world cup victory causes VATTI a 79-million-yuan loss and consumers' discontent

VATTI is a Chinese company selling built in electric oven products. The firm is an official sponsor of the French football team and it made a special offer during the football competition. An advertisement said that whoever would buy a "championship set", worth 4,999 yuan, between the 1st of June and the 3rd of July would get a complete refund in case of the French team's victory.

This promotion led to very good sells for the company. In the Brick-and-Mortar stores, they went up 20% while online the sale went up 30% compared to June 2017. This whole event attracted a lot of positive attention on the company, on the stock market VATTI's shares gained 4.45%.

However, customers soon started to complain about the difficulties met in the process of getting their money back. For people who bought the product online, they were first offered a gift card for the value of their expense, to be spent on different online platforms. Consumers argued that this is not the same as getting a refund. People who bought VATTI's products in Brick-and-Mortar stores faced difficulties too. Only the one who bought the "championship set", signed the refund agreement and kept the receipt will get their refund. Some consumers complained that they didn't even get the promotion's information when they bought the product.

A lot of the complaints, argued the company, were the result of consumers not reading their refund policy and not fitting the promotion criteria. Some bought outside of the time limit, some bought different products that the exact "championship set", some customers also asked for both the gift card and a refund.

According to a legal professor, there are two ways to interpret the case. The advertisement was as such: "If France wins, VATTI gives you a complete refund<". A literary interpretation leads to the conclusion that VATTI should return all payment in cash. However, VATTI's refund policy provides that refund means a gift card. The first interpretation favors the consumer whereas the second one favors the company.

On the 20th of July, the China Consumer Association published a document, inviting people who had problems with VATTI to write their complaints. Within 24hours they received 73 cases that they communicated to VATTI. As to the 24th of July, VATTI had refunded 79.3% of the online buyers, with a gift card, and 71.9% of the people who bought their set directly in the shops.

This promotion, at first was praised as a huge marketing success, but soon criticized by the public for the tricky refund policy. When doing marketing, companies must explicitly inform the consumer of the promoting policy, otherwise it can result into negative effect and even lead to civil complaints for misleading promotion.

<http://usa.chinadaily.com.cn/a/201807/16/WS5b4c122ea310796df4df6a57.html>

http://usa.chinadaily.com.cn/a/201807/19/WS5b5044c5a310796df4df77ad_2.html

<https://www.scmp.com/news/china/society/article/2155498/frances-soccer-win-chinese-home-appliance-brand-vattis-us43>

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