



Legal News:

I. Administrative Sanction against Malicious Preemptive Trademark Registration¹

On March 24, the Special Action Against Malicious Preemptive Trademark Registration (the "Action") was launched by the China National Intellectual Property Administration (the "CNIPA").

1. Target of the Action: Malicious preemptive registration of the following words/signs: ²

- (1) the name/title of national or regional strategies, major activities, major policies, or major projects;
- (2) the words/signs related to public emergencies (such as natural disasters, major accidents and disasters, major public health events and social security events);
- (3) the names/signs of major matches or exhibitions with high popularity;
- (4) the names of administrative divisions,³ mountains, rivers, scenic spots, buildings or other public resources;
- (5) the common names or trade terms of goods or services;
- (6) the names of celebrities,⁴ well-known works or characters with high popularity;
- (7) trademark or other commercial mark with high popularity or strong significance of others, and therefore damaging the prior rights and interests of others;
- (8) words/signs violating public order and good customs, causing significant negative social impact on China's political, economic, cultural, religious, ethnic and other social public interests and public order⁵;
- (9) words/signs obviously violating the principle of good faith (Catch-all Term).

2. Sanction: Credit black records⁶

China has gradually set up a social credit system to evaluate citizens and enterprises based on their social, political, commercial and legal activities.

Under the Action, administrative punishments⁷ for malicious trademark registration will be added to people's or entities' social credit records.⁸

Further, the Action regulates trademark agencies committing malicious preemptive trademark registration by suspending the agencies' license for trademark agency business in case of serious circumstances.

Administration for Market Regulation (the "AMR") sanctions come after the trademark registration department decides that the trademark registration is malicious. To be specific, the trademark registration department (Trademark Office, or, Trademark Review and Adjudication Board) decides whether the preemptive registration is malicious upon receiving the opposition or invalidation against the concerned registration/application; where the target of the action occurs, the trademark registration departments may make internal referral to local AMRs for further administrative punishment against the applicant.

(http://www.cnipa.gov.cn/art/2021/3/24/art_75_157972.html)

II. SPC Targets to Improve Judicial Service and Guarantee in Beijing FTZ⁹

On March 26, the Opinions on Provision of Judicial Service and Guarantee by the PRC Courts for the Development of the Beijing National Comprehensive Demonstration Zone for Expanding the Opening-up of the Service Industry and the China (Beijing) Pilot Free Trade Zone (the "Opinions") was issued by the Supreme People's Court (SPC).

The Opinions provides a general guideline to further improve the judiciary's capacity in Beijing FTZ in the following aspects: 1) promoting the construction of Beijing as an international science and technology innovation center by strengthening the trial function of IP related cases; 2) ensuring the opening up of service industry, such as setting up Beijing Financial Court; 3) supporting the development of digital economy by properly handling cases involving online education, online health care, telecommuting, and cloud exhibition; 4) building better international business environment by improving the mechanism for international commercial disputes resolution; 5) participating in social governance by adopting modern technologies in the judicial field, such as 5G, AI, big data, etc.

Here are some interesting contents around foreign investment/foreign investor:

- (1) Properly adjudicating property right disputes and commercial disputes (including disputes related to foreign invested companies, business, and partnership) involving foreign investors pursuant to PRC Civil Code;¹⁰
- (2) Reasonably judging the effectiveness of contracts involving foreign investment and business activities in various transaction modes and transaction structure innovation;¹¹
- (3) Strengthening the protection of foreign-invested enterprises, especially small and medium-sized enterprises, and foreign investors;¹²
- (4) Optimizing the centralized jurisdiction of foreign-related commercial cases;¹³
- (5) Improving the legal database of foreign laws and cases for accurate identification of foreign laws;¹⁴
- (6) Encouraging foreign mediators to participate in dispute resolution;¹⁵
- (7) Simplifying notarization and legalization requirements of extraterritorial evidence;¹⁶
- (8) Supporting well-known overseas arbitration and dispute settlement institutions to set up business organizations in Beijing FTZ to carry out arbitration business on civil and commercial disputes in international business, investment and other fields;¹⁷
- (9) Supporting and guaranteeing the application and execution of property preservation, evidence preservation and behavior preservation of foreign parties before and during arbitration proceedings;¹⁸
- (10) Promoting recognition and enforcement of foreign arbitral awards in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards;¹⁹
- (11) Facilitating online case filing for cross-border litigants.²⁰

(<http://www.court.gov.cn/fabu-xiangqing-292921.html>)

Although the Opinions is merely an outline guidance, it indicates the inclination of judiciary to capture the newly emerging commercial activities and support a fair, innovative, and organized business environment in Beijing. Asiallians will keep track of the coming judicial practice involving Beijing under the Opinions.

Should you have any inquiry about the News, please contact us at asiallians@asiallians.com.

As always, Asiallians remains at your service and our teams are currently mobilized in all our offices in Mainland China, in Hong Kong and in Taipei.

¹ Malicious Preemptive Trademark Registration deserves the attention from foreign companies. For example, **trademark squatting** referring to trademark squatter or someone else registers your trademark in China is specially a huge threat to foreign companies dealing with Chinese partners (importer, distributor, agent, franchisee, etc.) given they have to go through exhausting process (filing opposition or invalidation) to win their trademarks back when they need to use their own trademark/brand in China.

² Article 2 of the Action

³ Under Article 10 of PRC Trademark Law, the geographical names of administrative divisions at or above the county level and foreign geographical names well-known to the public shall not be used as trademarks, except for geographical names that contain other meanings or constitute parts of a collective mark or certification mark.

⁴ In recent years, some Chinese celebrities' names were maliciously preemptively registered by someone, for example, Huang Bo (黄渤), a Chinese famous actor, Tu Youyou (屠呦呦), a Chinese Nobel Prize winner.

⁵ It is also regulated under Article 10 of PRC Trademark Law, the following signs shall not be used as trademarks: 1) Those identical with or similar to the PRC's state name, national flag, national emblem, national anthem, military flag, army emblem, military songs, medals etc.; those identical with the names and signs of PRC central state organs, names of the specific locations thereof, or those identical with the names or device of landmark buildings; 2) Those identical with or similar to the state names, national flags, national emblems or military flags of foreign countries, unless permitted by the government of the country; 3) Those identical with or similar to the names, flags, or emblems of international inter-governmental organizations, unless permitted by the organization concerned or unlikely to mislead the public; 4) Those identical with or similar to an official sign or inspection seal that indicates control and guarantee, unless it is authorized; 5) Those identical with or similar to the names or signs of the Red Cross or the Red Crescent; 6) Those of discrimination against any race; 7) Those of fraud that may easily mislead the public in the characteristics such as the quality of goods, or place of production; and 8) Those detrimental to socialist morals or customs, or having other unhealthy influences.

⁶ Article 3 of the Action

⁷ The administrative punishments, such as order to rectify, warning, fine, are made by AMRs at or above the county level in the place where the trademark agency is located or where the malicious registration takes place. Article 12 of Several Provisions on Regulating the Application for Registration of Trademarks.

⁸ The portals for checking the credit record of an entity mainly include: CreditChina (<https://www.creditchina.gov.cn/?navPage=0>), it lists out administrative license, administrative punishment, award for trustworthy, penalty for dishonesty, risk indications, qualification, etc. of the entity, National Enterprise Credit Information Publicity System (<http://www.gsxt.gov.cn/corp-query-homepage.html>), it provides very comprehensive overview of each entity's social credit information.

⁹ Beijing FTZ was set up according to PRC State Council's policy issued on September 21, 2020. For more information, please kindly see the previous Asiallians LU at <http://asiallians.com/zh-hans/legal-news-prc-adopted-export-control-law/>

¹⁰ Article 11 of the Opinions

¹¹ Article 11 of the Opinions

¹² Article 11 of the Opinions

¹³ Article 18 of the Opinions

¹⁴ Article 18 of the Opinions

¹⁵ Article 18 of the Opinions

¹⁶ Article 18 of the Opinions

¹⁷ Article 19 of the Opinions

¹⁸ Article 19 of the Opinions

¹⁹ Article 19 of the Opinions

²⁰ Article 23 of the Opinions

Feel free to contact asiallians@asiallians.com for more information.

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