



I. Legal News:

1. FDI: Stricter Rules to Be Implemented on Illegal Ads for Medical Aesthetics Products

The State Administration for Market Regulation has recently released the Guidelines for Law Enforcement regarding Advertising in the Medical Aesthetics Sector<sup>1</sup> (The Draft for Comment), which will focus on addressing those Ads problems that pose great harm and have attracted a lot of public complaints (the "Draft").

(1) Ads for medical aesthetics products shall not create "anxiety over one's looks"<sup>2</sup>

The Draft lists ten circumstances that Ads for Medical Aesthetics shall not contain. One of the major circumstances to be forbidden is "Ads for creating anxiety over one's looks". It means that Ads shall not improperly link a person's poor looks with negative factors to judge the person as incompetent, lazy, poor etc., or improperly link a person's good looks with positive factors to judge the person as high functioning, hardworking, successful, etc.

(2) Relevant license and certificate must be obtained before publishing ADs<sup>3</sup>

The Draft also provides that, to publish ads for medical aesthetics products, medical institutions must obtain the License for Practicing of Medical Institutions, as well as an advertisement review certificate.

(3) Circumstances involving "doctors" in ads for medical aesthetics products<sup>4</sup>

For a person who does not have a registered doctor's license, if in an ad he was introduced as a doctor, or he/she wears a doctor's cloth, such ad shall be deemed as illegal.

The Draft requires that market regulation authorities at all levels should supervise network platforms to establish a sound internal review mechanism to block illegal ads for medical aesthetics products when they publish ads and provide Internet information services. Any network platform operator who fails to perform its responsibilities will be investigated and severely dealt with by market regulation authorities.

[http://www.samr.gov.cn/hd/zjdc/202108/t20210827\\_334129.html](http://www.samr.gov.cn/hd/zjdc/202108/t20210827_334129.html)

II. Case:

IP Infringement: AMR imposes Administrative Fine on Schneider Counterfeits

Recently, Administration for Market Regulation in Wuxi Jiangyin District ("Wuxi AMR") imposed an administrative fine amounting to RMB 210,000 yuan on a Chinese mechanical equipment installation company who sold Schneider counterfeits (the "Infringer").

The Infringer tried to sell the circuit breakers which had similar logo with a registered trademark of "Schneider" without being licensed by Schneider Electric SA. When going on site for investigation, Wuxi AMR found that among the circuit breakers, 251 "Schneider" circuit breakers had been installed already and remaining 4,746 of them were still stored in the warehouse. The total value of the counterfeits was RMB 348,970. However, since the infringer had not been paid yet, there is no illegal revenue yet.

Legal grounds of this case:

(1) Article 57 (3) of PRC Trademark Law

Selling goods that infringe on the exclusive right of trademark owner to the use of a registered trademark shall constitute a **trademark infringement**.

(2) Article 60 of PRC Trademark Law

A **trademark infringement dispute** prescribed in article 57 of the Trademark Law shall be settled by the parties concerned through consultation. If the parties concerned are unwilling to engage in consultation or a consultation has failed, the trademark registrant or an interested party may bring a lawsuit to court or **request the relevant AMR to address the dispute**.

Once the trademark infringement is confirmed by AMR, relevant AMR shall order the infringer to cease the infringement, confiscate and destroy the counterfeits as well as impose administrative fines based on the illegal revenue obtained by the infringer:

Illegal revenue	Fine to be imposed by AMR
Revenue < RMB 50,000	Fine ≤ RMB 250,000
Revenue ≥ RMB 50,000	Fine ≤ 5 times of illegal revenue

Wuxi AMR decided that:

(1) The infringer should be fined RMB 210,000.

(2) 4,997 infringing products should be confiscated.

From this case, it is noteworthy that for a potential trademark infringement dispute, if there is no illegal revenue obtained by the infringer, the trademark owner, in addition to filing a litigation at court, can also request relevant AMR to handle the dispute.

<http://scjgj.wuxi.gov.cn/doc/2021/02/24/3202812.shtml>

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

1. Guidelines for Law Enforcement regarding Advertising in the Medical Aesthetics Sector 国家市场监督管理总局 2021-08-27

2. Article 5 of the Draft

3. Article 3 of the Draft

4. Article 8 of the Draft

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