

IP Laws Development

I. The Beijing Higher People's Court has published the Guidelines for the Trial of Copyright Infringement Cases, which sums up previous relevant documents and practice.

The guidelines, comprising 160 articles in 11 chapters, include the topics as follows: investigation of objects of rights; investigation of ownership; determination of infringement of moral rights, property rights, and neighboring rights; investigation of defenses; determination of legal liabilities; determination of infringement of the right of communication via the internet, and determination of infringement of copyright in cinematographic works, and copyright in computer software.

II. To improve the administrative efficiency and to achieve more streamlined management of patents and trademarks, China trademark office will be merging with China's State Intellectual Property Office (SIPO). SIPO, which previously acted as a patent office only, will additionally combine the functions of managing trademarks and geographical indications of origin (GIs), which were previously administrated by separate administrative organs. The restructured SIPO will be part of a newly created agency named "State Administration for Market Supervision", which will consolidate IP, antitrust and various other regulatory powers.

News of Entertainment Sector

On June 3, 2018 China's State Authority of Taxation ordered Jiansu local tax bureaus to investigate so-called "Yin-Yang contracts" after Yongyuan Cui, the previous most popular TV presenter revealed contracts information about China's highest-paid actress Bingbing Fan.



"Yin-Yang" contracts refer to double contracts among which one contract sets out agreed payment terms and the other provides for a lower figure which is reported and declared to the tax authorities in order to avoid payment of tax. Over the internet, Cui's initial disclosure showed Bingbing Fan had been paid RMB10 million however a second contract for the exact same work indicated a payment of RMB 50 million. If RMB 10 million "Yang" contract was used to pay taxes and the remaining 50 million "Yin" contract signed was unreported to the tax authority, the female star may face criminal charge in addition to making up tax underpayment as the amount of tax evasion is so great. By making an announcement through her workshop, Ms. Fan has denied any improper acts.

Fan has appeared in "X-Men: Days of Future Past" and "Iron Man 3."

On April 4, 2018, China's broadcast regulator demanded that two of the country's most popular media platforms, live-streaming app Kuaishou and Jinri Toutiao, to put a freeze on video uploading services for new account holders and be subjected to a correction of existing programs. According to the official notice, Jinri Toutiao and Kuaishou shall take rectification measures including i) comprehensive inspection of existing contents with pulling offline of programs with any indecent , violent , bloody , pornographic or otherwise harmful contents ; ii) blocking of all accounts that have uploaded harmful or illegal programming.

In early June, 2018, Tencent and Bytedance, the maker of China's most popular news app Toutiao, and one of China's fastest-growing start-ups sued each other. Bytedance accused Tencent of blocking its content from Douyin, a short video app, from Tencent's various social media platforms including WeChat. Bytedance thought these actions taken by Tencent aimed in eliminating competition in the market through abusing Tencent's leading position. It demanded a public apology and a compensation of 90 million yuan . In contrast,



Tencent accused Toutiao of slander through its news-aggregating app. It demanded a public apology and 1 yuan in compensation for defamation. The lawsuits signal the escalation of the legal battle between the two major internet companies, which likely inserted an influence on the entire digital media industry in China.

First Administrative Lawsuit on Sound Trademark

On May 4, 2014, Tencent Company filed an application for the mark “DiDiDiDiDiDi”, a notification sound upon arrival of a message during the running of Tencent QQ application, but its application was denied. Tencent appealed to TRAB who sustained the refusal on April 18 2016. TRAB took a view that i) the sound was too simple to have an originality; ii) the sound only represented one of functions that the software contained; iii) the sound could hardly distinguish the source of service because the beeping sound lacked distinctive traits.

Dissatisfied with TRAB’s decision, Tencent filed a lawsuit with the Beijing Intellectual Property Court (“ Beijing Court”) on the ground that i) Tencent QQ’s application is a popular instant messenger with the notification sound used to identify the arrival of messages ii) the beeping sound has been used for a long time and consumers could directly link the sound to Tencent’s QQ product or services; iii) the sound composed of six same signals, which was neither too long nor too simple, is distinctive enough to distinguish Tencent’s service from other service sources; iv) TRAB has no legal basis to use “originality” as a criteria for examination of sound trademark.



On April 27, 2018, the Beijing Court rendered a judgment in favor of Tencent. Beijing Court ruled that the evaluation of distinctiveness of non-traditional marks such as sound marks should take into consideration additional factors such as complexity of elements and duration of the sound mark. Although the sound element "di" is simple, the sound composed of six high-pitch "di" as a whole had sprightly, quick and continuous auditory perception, which is uncommon in daily life. As a result, it is not a "simple" sound.

The Court further ruled that through its long-term and extensive use, the software QQ has a very large market share with high reputation, which helps to enhance the distinctive character of the sound. The public has come to immediately link such sound with Tencent's QQ app, and thus has acquired distinctiveness through use. Accordingly, holding that the sound can function to identify the "messaging" service, the Court revoked the TRAB's decision. (The end.)

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For more information visit www.goldengatelawyers.com

Suite 2311, The Spaces International Center No.8 Dongdaqiao Road,

Chaoyang District Beijing, China 100020

Email: mail@goldengatelawyers.com

Tel: +8610 5870 2028

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