



China Updates

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In response to our clients’ needs for up-to-date information on the evolving legal and business environment in China, Lee and Li presents our monthly China Updates to assist our clients in understanding the latest legal and economic trends of China.

Lee and Li has provided legal services across the Greater China Area (Mainland China and Taiwan) longer than any other firm. In addition to decades of rich experience in legal services covering all disciplines, we have established the Greater China Strategic Alliance (L&L-Leaven, Attorneys-at-Law in Shanghai and Lee and Li - Leaven IPR Agency Ltd. in Beijing), providing our clients with the benefits of efficient and professional managing of legal and patent matters in the Greater China Area.

It is widely recognized by our clients that Lee and Li’s integrated legal perspective and unparalleled expertise in cross-strait services significantly reduce the time and effort that many companies expend seeking trustworthy Chinese lawyers. Misunderstanding and communication costs arising out of cultural differences in legal practices between the cross-strait legal systems are avoided as well.

I. Law Updates

1. Shanghai City Government Releases “Opinions for R&D Centers” Enhancing Support for Foreign Investment in R&D Center

In order to encourage foreign investors to establish and develop R&D centers in Shanghai, the Shanghai Municipal People's Government promulgated the Several Opinions on Further Supporting Foreign-invested Research and Development Centers to Participate in Shanghai's Construction of a Science and Technology Innovation Center with Global Influence (the "Opinions for R&D Centers").

The Opinions for R&D Centers, consisting of 16 articles, lay out the supporting policies offered to foreign-invested R&D centers, which include:

- (1) Providing funding to support the establishment of foreign-invested R&D centers: A global R&D center or an R&D center with independent legal personality having more than 100 R&D personnel will be eligible to receive funding to financially support start-up costs and lease expenses;
- (2) Encouraging foreign-invested R&D centers to cooperate with scientific research institutions, governments, enterprises, and financial institutions;
- (3) Enhancing protection of foreign-invested R&D centers' intellectual property, in particular, providing support for filing of PCT applications and domestic patent applications;
- (4) Foreign talents recruited by a foreign-invested R&D center may be entitled to preferential entry visa policies and measures; and
- (5) Simplifying the procedures for the import of samples and reagents used for research and development.

Opinions for R&D Centers (in Chinese):

<http://www.scofcom.gov.cn/zxxxgk/243111.htm>



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2. Guidelines on Deepening the Reform of the Review and Approval System and Encouraging Innovation of Drugs and Medical Devices

General Office of the Central Committee of the Communist Party of China and General Office of the State Council jointly promulgated the Guidelines on Deepening the Reform of the Review and Approval System and Encouraging Innovation of Drugs and Medical Devices (the "Guidelines"). The Guidelines are aimed at encouraging the reengineering of industrial structure and technological innovation in the sectors of drugs and medical devices, improving competitiveness in medical and pharmaceutical industries, and meeting the public health-care needs.

The Guidelines consist of 36 articles, focusing on reforms from six aspects: reform of management of clinical trials, acceleration of review and approval process, promotion of innovation on drugs and medical devices and development of generic drugs, strengthening the lifecycle management of drugs and medical devices, improvement of technical support capability, and strengthening the competitiveness.

For the acceleration of the review and approval process, the Guidelines provide that, for drugs or medical devices used for the treatment of severe life-threatening diseases, the review and approval of drugs and medical devices urgently needed for clinical practice shall be accelerated, and that in the event of material threat to public health, priority review status shall be granted to the drugs developed under a compulsory license.

As to promotion of innovation on development of drugs and generic drugs, the Guidelines emphasize that a catalog of drugs on the market and the patent linkage system shall be established. In addition, the Guidelines provide that, in cases where significant delay for market entry due to lengthy clinical trial and review and approval, an appropriate compensation may be provided for the entire term of the patent in consideration of such delay. The Guidelines also stipulate that the protection system for drug test data shall be improved and implemented, and the production of generic drugs shall be promoted.

Guidelines on Deepening the Reform of the Evaluation and Approval System and Inspiring Innovation of Drugs and Medical Devices (in Chinese):

http://www.gov.cn/zhengce/2017-10/08/content_5230105.htm



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II. Case Updates

Supreme People's Court Ruled that Two Herbal Tea Producers May Share Legal Rights in the Famous Trade Dress "Red Can"

On August 16, 2017, the Supreme People's Court ("SPC") ruled that Jia Duo Bao Beverage Co., Limited ("JDB") and Guangzhou Pharmaceuticals Holding Limited ("GPHL") - two direct competitors in the herbal tea drinks market - may share the exclusive right in the trade dress, including the iconic red can with the brand name "Wanglaoji" on it.

The Wanglaoji trademark was originally registered and owned by GPHL. In 1995, GPHL and JDB entered into an exclusive license agreement whereby GPHL granted JDB the exclusive right to use the Wanglaoji trademark. After the expiration of the license in May 2010, a series of disputes were raised between GPHL and JDB regarding the right to use the Wanglaoji trademark. In 2012, GPHL and JDB respectively sued each other, with both sides claiming that it owns the famous red can trade dress with "Wanglaoji" on the can package (i.e. trade dress at-issue involves the overall contents of colors and icons such as the yellow "Wanglaoji" text and the red background color, and the combination of all the aforementioned design arrangements).

The key issue of this case is exceptional. While GPHL owns the Wanglaoji trademark, the "Wanglaoji Red Can" as a unique trade dress was developed by the licensee, JDB, during the term of the license. The SPC found that, the right in such trade dress is closely connected to the use of the licensed trademark and also possess attributes of an independent right under the Unfair Competition Law, resulting in goodwill beyond the scope of the original trademark. In the present case, the rights associated with trade dress of the "Wanglaoji Red Can" was generated from the repetitive and stable operation of the licensee, JDB. The SPC further found that, as the entities that previously operated the business in regards to Wanglaoji herbal tea, JDB has also dedicated its efforts to enhance such product's public awareness.

Pursuant to the above findings, the SPC held that since both parties had contributed to the formation, development of the Wanglaoji trade dress and related goodwill, it would be unfair and detrimental to the public interest if the trade dress at issue was awarded to either one of the parties. The SPC emphasized that the purpose of the intellectual property rights system is to protect and encourage innovations. The law should protect the



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creation and accumulation of wealth conducted by people who work and operate their business honestly and fairly. Therefore, the SPC held that both parties shall share the famous trade dress of the "Wanglaoji Red Can."

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III. Economic Updates

1. Shanghai Plans to Establish a Free Trade Port

On October 26, the Ministry of Commerce revealed in a press conference that it is cooperating with Shanghai City and relevant departments to study and formulate plans of establishing a free trade port (the "FTP") in Shanghai.

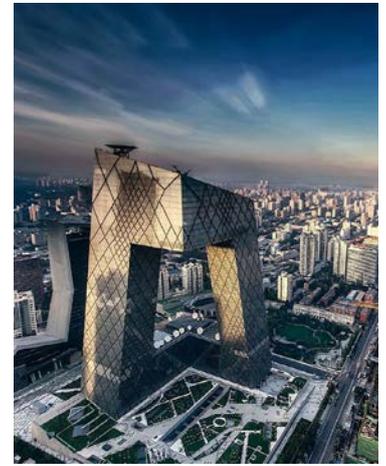
It is reported that the FTP may adopt the following open-up policies:

- (1) Free flow of goods: All enterprises registered in the FTP would not be required to undergo checkups or examination at the customs, inspection and quarantine departments. Only certain key categories of goods would be subject to sampling inspections.
- (2) Free flow of capital: the FTP would strive to realize "incremental" free movement of foreign exchange and reduce the income tax rate of the enterprises registered in the FTP.
- (3) Free flow of talent: the FTP's goal is to issue Chinese green cards to foreign personnel employed by FTP-based enterprises. There may also be further preferential measures to encourage non-local personnel employed by FTP-based enterprises to acquire Hukou (a household registration represents residency status) in Shanghai.

2. China's Internet giants rush to enter the insurance industry and capture the market of insurance brokerage

The three leaders of Chinese internet companies, Baidu, Tencent, and Alibaba, are actively developing insurance businesses with their own "big data" advantages. Given that the insurance industry has traditionally been highly dependent on customers' data, and internet companies hold a substantial amount of customer data and have conducted far more research on customer demands and consumer behaviors than traditional insurance companies, the "big data" advantages of the internet companies would meet the business needs of the insurance industry.

After Tencent obtained permission to set up Weimin Insurance Agency Limited, Baidu subsequently acquired Lianbao Longjiang Insurance Brokerage Co., Ltd, located in Heilongjiang



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Province in July. In addition, Alibaba gained control of Hangzhou Baojin Insurance Agency Company. It is expected that the three internet giants will take advantage of their user data and in-depth understanding of customer demands to capture every aspect of the insurance business from business development to sales.

3. Xiongan New District would potentially become China's Silicon Valley, and the future investment is predicted to reach 2.4 trillion RMB

In order to relocate Beijing's non-capital functions, the Chinese government has decided to establish the Xiongan New District (“Xiongan”) in Hebei. In response to the central government's policies, and attracted by various preferential policies, a first wave of 48 high-tech enterprises engaging in the fields of information technology, biotechnology, new energy and new materials have recently established operation in Xiongan to conduct investment and operation.

Tencent, for example, has already established a subsidiary in Xiongan while Alibaba announced that it will set up three subsidiaries in Xiongan to fully participate in the construction of "Smart Xiongan." According to the forecast released by Morgan Stanley, the total investment in Xiongan New District in the next 20 years may reach 2.4 trillion RMB, and Xiongan would potentially become China's high-tech innovation center.



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IV. IP Updates

Intellectual Property Notarization Service Platform Goes Online

The China Intellectual Property Notarization Service Platform ("Notarization Platform") has been online since late September 2017. The goal of the Notarization Platform is to increase access to notary services with standardized practices provided by certified notary public across the country. The Notarization Platform focuses on various aspects of intellectual property rights related services, including the identification, transfer, and protection against infringement of the intellectual property rights, allowing the online and offline notary services in China to be seamlessly integrated. Moreover, the services provided by the Notarization Platform pertain not only to patent, but to trade secrets, copyright and trademark related matters.

The notarization plays a role as precautionary measure in the judicial system, and provides the functions of service, communication, certification and supervision. As an important legal means widely adopted across the world for the development and protection of international intellectual property rights, notarization plays a unique role in the identification, guarantee for safety of transfer, and protection against the infringement of the intellectual property rights. The Notarization Platform leverages a new legal management model of "Internet plus Notarization," with its multi-place/multi-point collaborative service framework that seeks to facilitate collection of evidence by the interested parties, in order to mitigate problems arising from local protection for infringement of intellectual property rights, and transmission of evidence. In addition, the dynamic monitoring and big data analysis of information acquired on the Notarization Platform could provide basis to the Chinese government in formulating policies on intellectual property rights.

The China Intellectual Property Notarization Service Platform can be accessed through <https://right.egongzheng.com>.



IP Updates

The China Updates content on Chinese law and regulations is meant to provide an overview of the latest legal developments in China. Due to the generality of this overview, the information contained herein may not be applicable in all situations and should not be acted on or relied upon without specific legal advice. For more information or advice on specific legal issues, please contact Lee and Li directly. Our contact information is provided below.

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