



China Updates

Vol. 2018/05



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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

Administrative Rules on the Road Testing of Intelligent Connected Vehicles (Trial) Take Effect on May 1, 2018

On April 12, 2018, the Ministry of Industry and Information Technology, the Ministry of Public Security, and the Ministry of Transportation jointly issued the *Administrative Rules on the Road Testing of Intelligent Connected Vehicles (Trial)* (the "Rules"), which took effect on May 1, 2018. Prior to the Rules, Beijing, Shanghai, Chongqing, Shenzhen, and other municipalities had issued relevant regulations and policies on road tests for intelligent connected vehicles. The Rules are the first nation-level set of regulations for road testing of intelligent connected vehicles in China.

Significant provisions of the Rules include:

(1) Definition of intelligent connected vehicles:

Intelligent connected vehicles (also known as smart cars or self-driving cars) are equipped with advanced on-board sensors, controllers, actuators, etc. and incorporate modern communication and network technologies to implement information exchange between vehicles and people, between vehicles and other vehicles, between vehicles and roads, and between vehicles and clouds. Intelligent connected vehicles perform functions of complex environmental perception, intelligent decision making, and cooperative control, providing safe, efficient, comfortable and energy-saving personal transportation, in the goal of leading to the development of a new generation of automotive technology that can function effectively without human operation.

(2) Requirements for the test vehicle: The Rules stipulate that the test vehicles shall pass the statutory testing requirements, shall be able to be steered manually and automatically, shall be able to switch between self-driving and manual modes, and shall have the functions of data recording and instant data return. The test shall be conducted in the designated areas.



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- (3) Requirements for the test applicant: According to the Rules, the Test applicant shall be a legal entity registered in China. In addition, the applicant shall have the remote monitoring ability and shall be able to record, and analyze the incident of the test vehicles. The Rules further require that testing applicant should have the financial capability on compensation for accidents during the testing and abide by relevant laws and regulations.
- (4) Requirements for test driver: The Rules require the driver to sign labor contracts or service contracts, undergo automatic driver training, and have not involved in any records of major traffic violation.
- (5) Revocation of the testing approval: The Rules provide that the authority shall have the power to revoke the testing approval under certain conditions.
- (6) Liability: The Rules stipulate that, in case of any traffic violation during the test, test driver shall be liable accordance with the laws and regulations on the road traffic safety. The administrative authority shall determine the liability of the parties involved in the accident and shall determine the damages in accordance with relevant laws.

Rules on the Administration of Road Testing of Intelligent Connected Vehicles (Trial) (in Chinese):

<http://www.miit.gov.cn/n1146295/n1652858/n1652930/n3757018/c6128243/content.html>



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II. Case Updates

Land Rover Trademark Infringement Dispute

The Land Rover trademark infringement dispute case represents the cross-class protection of well-known trademarks and was designated by the Supreme People's Court of China as one of the top ten intellectual property cases of Chinese courts in 2017.

Jaguar Land Rover Co. Ltd. ("Land Rover") is the owner of the Lu Hu (路虎) trademark in Chinese and the "LAND ROVER" trademark in English (jointly referred hereto as "Trademarks"), all of which were registered for use on Land-based Motor Vehicles. Subsequently, Guangzhou Fenli Foods Co., Ltd. ("Fenli") used the Trademarks in advertising and selling their product, Lu Hu Energy Drink. In response, Land Rover filed a lawsuit with the Intermediate People's Court of Guangzhou City (the "Court of First Instance") on the grounds that Fenli's actions constitute trademark infringement. The court of first instance decided that Fenli shall cease the trademark infringement and shall compensate Land Rover in the amount of RMB 1.2 million. The court of second instance dismissed Fenli's appeal and affirmed the original judgment.

The main issue of this case was whether the Trademarks shall be recognized well-known trademarks. According to Article 13 of the Trademark Law of the People's Republic of China ("Trademark Law"), owners of trademarks which are well known to the public may seek for protection of their trademarks in accordance with the provisions thereof. Article 14 of the Trademark Law states that the factors to be considered in the determination of a well-known trademark include the degree of public awareness of the trademark; duration of the use of the trademark; extent, and geographical scope of publicity of the trademark; and records of protection of the trademark as a well-known trademark, and other factors relevant to the determination of a well-known trademark.



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The court of second instance found that sales data, media reports and marketing data provided by Land Rover prove that Land Rover has sold its products across a large sales area and owns a large market share. Being well-known to the public, Land Rover also enjoys high reputation and extensive influence in the market. Therefore, the Trademarks were determined to meet the criteria of being well-known trademarks.

In regards to the cross-class protection of well-known trademarks, the court of second instance held that although the products on which Fenli has used the Trademarks are different from the products on which the Trademarks have been registered, the distinctiveness and the long-term substantial use of the Trademarks would cause the public to believe that the Trademarks have strong connections with Land Rover. Therefore, when the Trademarks were presented to the public by Fenli, the public could be misled that Fenli obtained permission from Land Rover to conduct its activities, or could falsely believe that Fenli had a considerable degree of correlation with Land Rover, such as Land Rover acts as a holding company of Fenli, makes investment in Fenli, or cooperates with Fenli. The distinctiveness and goodwill of the Trademarks as well-known trademarks were thus weakened, damaging the interests of Land Rover.



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III. Economic Updates

1. Zhejiang Province Introduces Major Measures to Open Local Economy

Zhejiang Province recently announced that it will launch a series of major reforms and measures to open up its economy under the guidelines of the Belt and Road Initiative. Specific measures listed in the announcement include reducing the list of prohibited oil products and establishing a major international oil trading center, leveraging the example of the highly-successful Hainan Boao Lecheng International Medical Tourism Pilot Zone to establish a similar zone for international medical tourism, and establishing an industrial park to encourage Chinese enterprises that have moved overseas to return to China. As an example of such measures, the Xinchang County in Shaoxing City has established an industrial park for attracting return of Zhejiang enterprises operating cross-border. Wanfeng, a Xinchang enterprise, has prepared to build an “aviation town” in Xinchang after entering the general aviation industry through its acquisition of the Canada Diamond Flight Centre flight school and the Czech DF company.

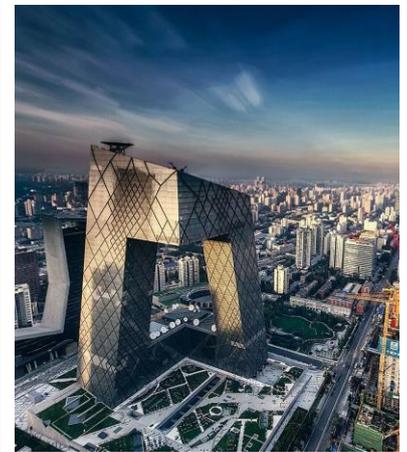


Economic Updates

2. Alibaba Acquired Daraz, Expanding Operations into South Asia

The South Asian and Southeast Asian markets have played an important role in Alibaba's global development strategy. On May 8, 2018, Daraz, a Pakistani e-commerce company, announced it was being fully acquired by the Alibaba Group. Daraz was founded by Rocket Internet in 2012 and today operates in countries such as Pakistan, Bangladesh, Myanmar, Sri Lanka and Nepal.

Alibaba Group also recently announced that it had increased its investment by USD 2 billion in Lazada Group, the largest online sales and shopping platform in Southeast Asia, and would continue to develop Lazada's multinational business. Lazada currently operates in Indonesia, Malaysia, Philippines, Singapore, Thailand and Vietnam. After completion of the deal, Alibaba's total investment in Lazada will reach USD 4 billion and its shareholding ratio will increase to 83%..



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IV. IP Updates

China to Adopt Punitive Damages System for Patent Infringement

China's Prime Minister Li Keqiang, in his 2018 Government Work Report, declared to "enhance the protection of intellectual property by implementing the punitive damages system against intellectual property infringement." This marks the first mention of a punitive damages system in the Government Work Report.

China currently adopts compensatory-damages system. No punitive damages system has been set in the laws, except for Trademark Law and Consumer Protection Law. Damages awarded to plaintiffs were, therefore, usually significantly less than what the plaintiffs' claimed in patent-infringement lawsuits. As a result, the existing compensatory-damages system failed to effectively deter intentional or recurring patent infringements. China's legislative body seeks to address the issue by importing a punitive damages system similar to those foreign jurisdictions in the proposed Amendment to the Patent Law ("Amendment"). By introducing the punitive damages, the Amendment aims to raise the upper limits of damage amounts in patent-infringement lawsuits to severely punish repetitive infringements or intentional infringements.

The punitive damages system does not only increase the potential cost for infringers by raising the amount of statutory damages, but also encourages would-be infringers to reach patent license agreements with patent holders, wherein the license fee would likely be significantly lower than potential statutory compensation. It is expected that the patent-licensing market in China will be stimulated by the proposed Amendment.



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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