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Draft Amendment to China's Copyright Law Gets 2nd Reading

On August 8, the Draft amendment to China's Copyright Law was submitted to the country's top legislature for a second reading.

The second draft refines the definition and type of works, defining "works" as intellectual achievements that are original and can be expressed in certain forms in literature, art, science and other fields.

In terms of improving protection of audiovisual works, the second draft adds if audiovisual works" do not constitute cooperative works or service works, the ownership of the copyright is determined by the agreement between the producer and the author. If there is no express agreement or the agreement is not clear, the producer shall claim the ownership, but the author has the right to exhibit his name and receive remuneration. If the producer's use of the audiovisual works specified in this paragraph exceeds the scope of the contract or industry practices, the author's permission should be obtained."

In addition, in response to the problems of copyright abuse, the second draft leans on the connection with the Civil Code, Anti-monopoly Law and other laws, deleting the expression "shall not abuse the right to affect the normal dissemination of the work" in the first draft and related provisions on related legal liabilities. At the same time, the second draft moderately expands the legal scope of the fair use of relevant works without permission from or remuneration to copyright owners.

<http://english.cnipa.gov.cn/news/officialinformation/1150861.htm>

SPC Issues Opinions to Strengthened Copyright Protection

On August 5, the Supreme People's Court (SPC) released Opinions on Strengthening Protection of Copyright and Copyright-related Rights (Draft for Comment) and asked for comments from the public.

The Opinions mentioned that rights protection should be strengthened in new areas of high-tech fields, such as the Internet, Artificial Intelligence and big data and that new types of cases related to live streaming of sports events and online games shall be appropriately handled.

The Opinions point out that if right holders may file an application for preservation to require the Internet service provider to take measures of deleting, blocking or disconnecting the links. If Internet service providers fail to take necessary measures in a timely manner, they should bear joint liability for part of the enlarged damage.

The Opinions make it clear that after the right holders completed the initial burden of proof, the court should presume that the copyright or copyright-related rights claimed by the parties exist in related works, performance, and sound recordings if the other party doesn't raise objections or has no evidence.

In terms of evidence, the Opinions demands to improve the rules of evidence for IPR litigation, support relevant parties to save, fix and submit evidence through blockchain, and time stamping and effectively solve the problem of difficulty for IPR holders in providing evidence.

The Opinions confirm that preliminary measures, such as behavior preservation, evidence preservation and property preservation apply to copyright-related cases. Multiple civil liability methods can be comprehensively applied, so that IPR holders can receive adequate right relief in civil cases.

The Opinions make it clear that dishonest litigation will be under crackdown. People's courts can take compulsory measures in accordance with the law, such as admonitions, fines and detentions towards dishonest litigation, such as filing forged or altered evidence, concealing or destroying evidence, making false statements, making false testimony and making fake identification.

<http://english.ipraction.gov.cn/article/ns/202008/319894.html>

CNIPA Clarifies Local Branches' Missions in Handling Oversea IP Disputes

The General Office of the China's National Intellectual Property Administration (CNIPA) recently updated its Working Rules for Local Branches of the National Oversea IP Dispute and Guidance Center (trial) as well as the Performance Evaluation Rules for Local Branches of the National Oversea IP Dispute and Guidance Center (trial), in a bid to beef up guidance of overseas IP disputes.

According to the Working Rules, local branches are established with the approval from the CNIPA, offering not-for-profit services to companies in dealing with overseas IP disputes. Their missions are collecting and reporting information of disputes, guiding companies to resolve disputes, offering training on risk prevention and control, coordination of resources available for dealing with disputes.

Last April, based on the principle of voluntary application, CNIPA certified the first group of ten local branches.

<http://english.cnipa.gov.cn/news/officialinformation/1150707.htm>

China to Further Shorten Trademark Review Period

China is to further shortening the process of trademark reviews to within four months.

The country's processing time for trademark applications has been reduced to less than 4.5 months, which is at the forefront globally, and will further be cut to within four months by the end of this year.

Apart from reducing the review period, the office will launch online application services for trademark oppositions and invalidations this year, and continue to crack down on malicious trademark filings for a fair market.

<http://english.ipraction.gov.cn/article/ns/202007/318983.html>

Alibaba Leads in Global Blockchain Patent Applications

Alibaba leads the global blockchain patent application list, with 1,457 applications in the first half of 2020.

Statistics show the number of blockchain patent applications by Alibaba in the first half of 2020 is close to the number for the entirety of 2019, which stood at 1,505.

As of May 14, Alipay, a division of Alibaba, obtained 212 authorized blockchain patents worldwide, with 126 from countries and regions outside China and the percentage of overseas authorizations exceeding 59%.

Tencent grabbed second place with 872 applications, followed by China's largest server maker Inspur Group with 274. IBM, with 251 applications, only got fourth place on the list.

Among the top 100 companies on the list, Chinese companies accounted for the largest proportion at 46%, followed by US companies with 25%.

<http://english.ipraction.gov.cn/article/ns/202007/318982.html>

SUPPLEMENTARY ISSUE

Court Sides with Irish Company on Revoking Namesake Trademark

Beijing High People's Court made a final judgment on the trademark revocation dispute over the trademark No. 686918 "CARLI and its figure" (the disputed trademark), granting the wish of Connery Ireland Limited of revoking the disputed trademark.

Chongqing Jingxuanjing Industrial Company filed an application for registration of the disputed trademark on February 11, 1993, and was approved to be used on Class 25 goods including clothing on April 21, 1994. In January 2005, the disputed trademark was approved for transfer to Shenzhen Carali Clothing Company by the Trademark Office (TMO) of the former State Administration for Industry and Commerce of China (SAIC) and would change hands again to Shenzhen Shengyaqi Clothing Company in January 2018. Connery requested the former TMO to cancel the disputed trademark claiming that the disputed trademark had not been used on the designated goods in a legal, true, and effective commercial manner for three consecutive years. Shengyaqi subsequently provided evidence of trademark use in a lease contract to prove that it had effectively used the disputed trademark on clothes during the specified period. The former TMO rejected Connery's request accordingly.

Connery immediately applied to SAIC's Trademark Review and Adjudication Board (TRAB) for a review. TRAB also made a decision to uphold the disputed trademark.

Connally was disgruntled with the ruling and brought the case to Beijing Intellectual Property Court, claiming that the evidence submitted by Shengyaqi was its actual use of the No. 6103451 "CARLI" trademark rather than the disputed trademark, unable to prove the actual authentic and effective use of the disputed trademark within the specified period.

Carali is the holder of the No. 6103451 trademark "CARLI" which was filed for registration on June 11, 2007 and would be approved for use on the Class 25 goods including clothes on August 21, 2016. Beijing IP Court held that although the trademark actually used by Shengyaqi during the designated period is not exactly the same as the disputed trademark, the distinctive identifying part is still the letters "CARLI", which is basically the same as the logo of the disputed trademark and has not changed the distinctive features of the disputed trademark, and therefore will not affect its recognition by the relevant public and can still be regarded as the use of the disputed trademark. Accordingly, the court rejected Connery's claims.

Connery then appealed to the Beijing High People's Court.

Beijing High held that considering the complexity of commercial activities, the use of trademarks that have not changed the distinctive features should also be regarded as the use of registered trademarks. However, in principle, the use of trademarks should be regulated. If a trademark has changed too much, it would not fall under the above-mentioned conditions, let alone the use of other trademarks to determine the use of the trademark. The holder of the disputed trademark owns multiple registered trademarks. Even if the trademark actually used is only slightly different from the disputed trademark, if it can be determined that the use is for other registered trademarks, the claims that the disputed trademark registration is upheld are generally not supported. In this case, the disputed trademark is a combination of figure and text, consisting of the letters "CARLI" and wavy line graphics. The relevant evidence submitted by Shengyaqi showed that it was the "CARLI" logo or "CARLI" on a dark background rather than the disputed trademark. Compounding the situation that Carali owns the No. 6103451 "CARLI" trademark that has been approved for registration on clothes, it should be determined that the use shown in the

evidence submitted by Shengyaqi is for other registered trademarks and cannot be regarded for the disputed trademark. In this connection, the appellate court held that the evidence submitted by Shengyaqi and Caralli cannot prove that the disputed trademark was legally, genuinely and effectively used on the designated good such as clothes within the specified period, and accordingly revoked the judgment of first instance and the ruling of TRAB.

<http://english.ipraction.gov.cn/article/tc/202008/319455.html>

Hennessy Awarded Injunction 500,000 Yuan in Paradis Bottle Copyright Dispute

Guangdong High People's Court made a final judgment on the dispute between Société Jas Hennessy & Co. and four local defendants, Guangdong Kalaer, Meizhou Zhongfa Brandy, Guangzhou Lishi Brother Trading and a Liquor Wholesale Shop (located in Dali Town, Nanhai District of Foshan) over its Paradis bottle's copyright ownership and held that Hennessy owns the copyright of the Paradis bottle. The brandy products carrying the brand of JOHNNYS BLUE XO SPECIA (the alleged infringing bottles) the four defendants produced and sold infringe Hennessy's reproduction, distribution and information network dissemination rights of the Paradis bottle, ordering the four defendants to cease infringement and indemnify Hennessy RMB 500,000 yuan in damages.

Hennessy was established in France on November 1, 1923, whose brands include Hennessy V.S.O.P, Hennessy X. O, Hennessy Paradis and Napoleon. On April 23, 2001, Hennessy filed a design patent application for the Paradis bottle and was granted the patent right. On January 15, 2015, the company registered copyright for the art work of the Paradis bottle in China. Hennessy found that the design of the alleged infringing bottles the four defendants produced and sold were similar to that of the Paradis bottle, having infringed its copyright. The company filed a law suit at Guangzhou IP Court.

Kalaer Company, Brandy Company and Lishi Brother Trading argued that the evidence can neither prove the art work belongs to Hennessy nor its copyright is owned by the company. Second, the alleged infringing bottles are neither identical nor similar to the Paradis bottle. Consequently, there is no infringement.

Guangzhou IP Court held that the overall design of the Paradis bottles embodied personalized expression of the designer in high artistry, creativity and aesthetics and it can be deemed as the art work protected by Chinese Copyright Law. The evidence cannot prove the art work belongs to Hennessy nor the copyright is owned by the company. Accordingly, the trial court eventually denied Hennessy's requests.

The disgruntled French company then brought the case to Guangdong High People's Court. During the trial, Hennessy submitted the copyright ownership statement of the Paradis bottle designer to prove it owned the copyright of the art work. Obviously, Guangdong High gave serious consideration to the evidence, finding the four defendants violating Hennessy's copyright, ordering them to indemnify Hennessy CNY500,000 yuan in damages.

<http://english.ipraction.gov.cn/article/tc/202008/320201.html>