

Chinese IP Updates

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1. CNIPA rejects 109 squatting trademark applications for Olympic champions' names

During the Tokyo Olympic Games, the Chinese athletes performed well and encouraged the Chinese people. However, some enterprises and individuals filed squatting trademark applications for the successful athletes' personal names and related hot terms to take unfair advantage of others' reputation. The China National IP Administration (CNIPA) condemned the squatters and swiftly announced the rejection of the 109 squatting applications, with the squatters' and representing agencies' names listed.

According to the Chinese Trademark Law and other relevant regulations, the squatters and agencies shall be punished. The local Administrations for Market Regulation (AMR) will soon follow up by imposing penalties.

2. CNIPA suggests draft opinions on the revision of the Trademark Law

On August 25, the CNIPA officially responded to the All-China Federation of Industry & Commerce's (ACFIC) proposals and suggested the important directions of its research and draft opinions below on the next revision of the Chinese Trademark Law.

- 1) To limit the scope of entities qualified to file trademark opposition and invalidation in order to prevent bad-faith oppositions. The CNIPA suggests the possibility of permitting the third party's opinions and adding the non-use cancellation applicant's burden of proof;
- 2) To lift the threshold of opposition. The CNIPA will consult with other authorities about the fee structure for trademark matters and newly

- design liability of compensation;
- 3) To improve delivery procedure of opposition documentation;
 - 4) To publicize evidence and have hearings in oppositions; and
 - 5) To strengthen crackdown on bad-faith applications and representation and build fair, honest and creditable market environment.

The CNIPA's current fee rate is unprecedentedly low which is designed to lighten the applicants' monetary burden but turns out to give rise to huge number of trademark applications and piracy. The CNIPA has solicited the public opinions on fee structure for trademark matters and is possibly considering increasing the fees to increase the cost of bad-faith trademark filings and oppositions. It is thus advisable for the entities that have true need of trademarks in China to take earlier actions before the fee rise.

3. IPR abusers shall compensate defendants' reasonable expenses

On June 3, 2021, the Supreme People's Court (SPC) of China announced its official response to the Shanghai High People's Court's letter as Legal Interpretation No. 2021-11, applicable to all IPR infringement lawsuits in mainland China, effective as from the same day.

Pursuant to the Interpretation, where the defendant proves the plaintiff's accusation has constituted statutory abuse of rights and harm to its lawful rights and interests and claims the plaintiff's compensation for reasonable expenses on attorneys, transportation and accommodation etc., the courts shall sustain the claim. The defendant is also entitled to claim the reasonable expenses through separate lawsuits.

Comments: The Chinese authorities and courts are cracking down on bad-faith trademark applications. Nevertheless, some bad-faith applications had matured into registration, the owners of the defected trademarks sometimes "enforce" their pirated trademarks against the victims of the bad-faith applications. Such owners are categorized as IPR abusers. Now that the SPC permits the victims or defendants to claim compensation for their reasonable expenses, it will be harder for the abusers to profit from trademark squatting. Instead, the squatters shall compensate for the loss caused by the abuse if they maliciously initiate lawsuits. The Interpretation will make trademark squatting or IPR abuse less profitable or riskier, which is certainly helpful to purify the IPR environment in mainland China.