

China Competition Policy & IP

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Meetings/Seminars/Projects

SAMR: Intensify Anti-Monopoly Supervision and IP Protection, Prevent Disorderly Capital Expansion

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On March 12, 2021, the State Administration for Market Regulation (SAMR) held a large meeting to study General Secretary Xi Jinping's recent instructions. Zhang Gong, Group Secretary of the Party and Director of SAMR, hosted and spoke at the meeting.

According to Zhang Gong's remarks, the government work report not only lays out the major tasks for economic and social development in 2021, but also specifies the main objectives and tasks for the next five years, many of which involve market regulation. Zhang Gong also conveyed SAMR's determination to ease market access, intensify supervision on fairness, strengthen anti-monopoly regulations, contain the disorderly expansion of capital, and promote intellectual property protections. SAMR will actively reform and innovate the working methods and pay closer attention to work implementation to ensure the fulfillment of market supervision responsibilities.

Regulatory News

SPC Issues Judicial Interpretation of Punitive Damages for Intellectual Property

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On March 3, 2021, the Supreme People's Court (SPC) issued the "Interpretations on the Application of Punitive Damages in the Trial of Civil Cases of Intellectual Property Infringement" (the "Interpretations"). The Interpretations specify the application scope of punitive damages in civil cases of intellectual property infringement, determination of intentional and serious circumstances, the calculation of damages, and more. By clarifying the judgement standards, the Interpretations aim to provide guidance for courts at all levels to apply the punitive damages appropriately and punish serious intellectual property violations. As a major initiative to implement the punitive damages system, the Interpretations demonstrate the government's determination to

comprehensively step up the judicial protection of intellectual property. Additionally, the Interpretations are of great significance for further optimization of the legal environment for scientific and technological innovation.

Below are some highlights from the Interpretations:

- The Interpretations clarify the explanations of “malicious” and “intentional.” The meaning of “intentional” in the Interpretations is consistent with “malicious” as stipulated in the Trademark Law and the Anti-Unfair Competition Law.
- The Interpretations clarify the criteria for identifying serious circumstances. The SPC shall comprehensively consider the method, frequency, duration, geographical scope, scale, consequences of the infringement, and behavior of the infringer in the lawsuit.
- They also clarify the calculation methods of punitive damages. When determining the base amount, the SPC shall use the plaintiff’s actual loss, the defendant’s illegal gains, or the defendant’s benefits from the infringement. Where any other law provides otherwise for the base amount, such special provisions shall prevail. When determining the multiplier, the SPC shall comprehensively consider factors such as the degree of the defendant’s subjective fault and the severity of the infringement.

SPC’s Intellectual Property Court Releases Annual Report

[Read the Chinese version here](#)

On February 26, 2021, SPC’s Intellectual Property Court (the “IP court”) released its Annual Report summarizing the number and characteristics of cases in 2020. Some of the key antitrust-related findings are summarized here.

Among the 1,948 newly accepted civil substantive cases of second instance, there were 435 invention patent infringement disputes, 754 utility model patent infringement disputes, 163 patent application rights and patent ownership disputes, 360 disputes over computer software, 67 technical contract disputes, 44 trade secret disputes, 40 new plant variety rights disputes, 30 monopoly disputes, 5 disputes over the layout design of integrated circuits, and 50 other disputes.

Compared with the previous year, the number of civil substantive cases of second instance increased by 102%. The number of disputes over patent application rights and patent ownership surged from 9 in 2019 to 163 in 2020, jumping to become the fourth-highest type of dispute. The number of professional and technical disputes – such as trade secret disputes, new plant varieties disputes, monopoly disputes, and integrated circuit layout design disputes – was also significantly higher than that of the previous year. Monopoly disputes increased from 9 cases in 2019 to 30 cases in 2020, of which 25 were substantive cases.

Moreover, the cases exhibited characteristics such as variety and relations to a wide range of industries. Both traditional and modern technology fields were involved, covering pharmaceuticals, computers, electricity supply, information network, construction materials, security supplies, and other fields. Among them, monopoly disputes involving information and communication technology were the most common. There were 8 disputes over abuse of market dominance and 6 disputes over monopoly agreements, as well as 16 other monopoly-related disputes.

In terms of legislation, the IP court continued to unify the judicial standards and completed 4 clean-ups of judicial interpretations, including in the areas of monopoly and new varieties of plants. The IP court also strengthened collaboration with administrative departments by accepting the SAMR's invitation to exchange views on the Anti-Monopoly Law (AML) and providing lectures for the local IP staff.

In addition, the IP court focused on cases involving key areas and core technologies. Regarding the field of standard essential patents (SEP), the IP court creatively applied the behavior preservation system and approved Huawei's application for behavior preservation. This was the first behavior preservation of an anti-suit injunction in China. The court also further clarified the criteria for determining jurisdictions of foreign-related patent cases and monopoly cases.

SAMR Issues the Measures for the Supervision and Administration of Online Transactions

[Read the Chinese version here](#)

SAMR promulgated Measures for the Supervision and Administration of Online Transactions (the "Measures") on March 15, 2021, in order to regulate online transactions, maintain the order of online transactions, protect the legitimate rights and interests of all parties involved in online transactions, and promote the sustainable and sound development of the digital economy. The Measures consists of 5 chapters and 56 articles, and specifies rules for registration of online operation entities, supervision on new business modes, main responsibilities of platform operators, protection of consumers' rights and personal information, legal liability, and by-laws. The Measures clarify that the supervision of network transactions must adhere to the principles of encouraging innovation, tolerance, and prudence.

Below are highlights of the Measures:

- **Scope of Application**

Apart from the typical e-commerce platform operators, the Measures also apply to operators who carry out online transaction activities through new e-commerce modes such as social networking and livestreaming. Apart from fulfilling the responsibilities of online trading platforms in accordance with the law, these operators are required to expressly display information about the goods or services, their actual operators, and after-sale services, or a link to such information.

- **Responsibilities of Platform Operators**

The Measures emphasize the platform's obligation to review the authenticity of the business operators' information and prohibit platforms from interfering with the independent operation of the transaction operators on the platform.

- **Relevant Obligations of Transaction Operators**

Unlicensed business operations are prohibited. Transaction operators shall register in accordance with the law, except for operators providing convenience services to the public, such as cleaning, washing, sewing, and hairdressing. Additionally, transaction operators are required to publicize their main information or links to such information.

- **Personal Information Protection**

The collection of personal information must follow the principles of legitimacy, rightfulness, and necessity. Transaction operators who collect and use such information shall expressly state their purposes, methods, and scope of information collection and use, and only collect it after obtaining consumers' consent. Transaction operators shall keep personal information confidential and are prohibited from providing such information to any third party without consumers' consent.

- **Consumer Rights Protection**

Operators who carry out activities such as bundling and automatic renewal need to remind consumers directly and clearly. Unfair and unreasonable provisions, such as the unilateral right of interpretation or final interpretation enjoyed by operators of online transactions, are prohibited.

SPC: Ensure the Uniform and Correct Implementation of the Civil Code

[Read the Chinese version here](#)

"In the process of implementing the Civil Code, we always adhere to five principles," said He Rong, Deputy Group Secretary of the Party and Executive Vice President of the SPC. He Rong introduced the five principles in the process of implementing the Civil Code, including Xi Jinping's Thought on Socialism with Chinese Characteristics for a New Era, people-centered philosophy, maintaining fairness and justice, uniform application of law, as well as problem-oriented and demand-oriented approaches. He also stressed that the SPC should give full play to its judicial functions to ensure the uniform and correct implementation of the Civil Code and protect the rights and interests of the people in accordance with the law.

To improve the quality of civil trials and judicial credibility, SPC will focus on civil trial work in 7 areas, one of which involves intellectual property rights. More specifically, it will increase the judicial protection of intellectual property rights in core technologies, critical areas, and emerging industries; accelerate the implementation of the punitive damages system for intellectual property rights; promote the independent and orderly flow and efficient allocation of innovation factors; promote technological innovation capabilities of enterprises; and improve the institutional mechanism for

scientific and technological innovation. Moreover, the SPC will strengthen the area of anti-monopoly and unfair competition justice – especially in the platform economy – to guide the development of innovation in line with the law. To increase the work quality in intellectual property trials, it will promote the reform of the “three-in-one” trial mechanism, as well as actively explore trial rules and adjudication methods in compliance with laws involving intellectual property cases.

SAMR Imposes Penalties in 10 Cases for Illegal Concentrations in the Internet Sector

[Read the Chinese version here](#)

On March 13, 2021, SAMR made administrative decisions on 10 cases of illegal concentration of undertakings in the internet sector, according to the AML, fining twelve involved companies RMB 500,000 each.

SAMR found that the undertakings failed to file the concentration before SAMR in 10 cases:

- Acquisition of Kai-Yuan Commercial Co., Ltd.’s equity by Yintai Commercial (Group) Co., Ltd.
- Acquisition of APES, Inc.’s equity by Tencent Holdings, Ltd.
- Acquisition of Wangjiahuan Agricultural Products Group Co., Ltd.’s equity by Chengdu Meigengmei Information Technology Co., Ltd.
- Acquisition of Jiangsu Five Star Appliance Co., Ltd.’s equity by Suqian Hanbang Investment Management Co., Ltd.
- Acquisition of Xiaoyu Group's equity by Baidu Holdings, Ltd.
- Acquisition of Shanghai Botai Yuezhen Electronic Equipment Manufacturing Co., Ltd.’s equity by Suning Rundong Equity Investment Management Co., Ltd.
- Joint venture between Didi Chuxing Technology Co., Ltd and SoftBank Corp.
- Acquisition of DaDa Education Group Ltd.’s equity by The Future Education Group Inc.
- Joint venture between Shanghai Dongfang Newspaper Co., Ltd. and Beijing Quantum Leap Technology, Ltd.
- Acquisition of Hebei Baoduitong E-commerce Co., Ltd.’s equity by Beijing Nucarf Network Technology Co., Ltd.

According to the investigation, the above 10 cases constituted illegal implementation of the concentration of undertakings and violated the AML. The assessment, however, did not find that they eliminated or restricted competition.

Six Cement Manufacturers and an Industry Association Fined for Monopoly Agreement

[Read the Chinese version here](#)

On March 18, 2021, Sichuan Provincial Administration for Market Regulation (Sichuan AMR) made an administrative penalty decision on the Sichuan Cement Association (the “Association”) for organizing six cement operators to reach and implement a monopoly agreement. The Association was fined RMB 500,000 by Sichuan AMR, and five cement companies were fined over RMB 59 million cumulatively.

In July 2017, the Sichuan Provincial Development and Reform Commission received reports that the Association organized cement operators to jointly raise the price level. After the institutional reform, Sichuan AMR continued to investigate this case. According to the investigation, in October 2016, the Association organized six cement manufacturers – including Sichuan Southwest Cement Co., Ltd, Sichuan Esheng Cement Group Co., Ltd, Sichuan Yadong Cement Co., Ltd., Sichuan Shuangma Cement Co., Ltd., Sichuan Xingchuancheng Cement Co., Ltd., and Sichuan Emeishan Foguang Cement Co., Ltd. – to reach and implement a monopoly agreement that coordinated the timing of price increases and the range of price adjustment for bulk cement. This made it difficult for cement companies and downstream users in other regions to substitute for the supply and demand of the cement.

In view of the circumstances of the violation, the above-mentioned monopoly agreement seriously excluded and restricted competition in the bulk cement market in Chengdu. This prevented the timely elimination of relatively backward production capacity, which was detrimental to the long-term development of the industry. In addition, the Association organized six cement operators to take measures to cut off supply to downstream enterprises who did not accept the increased price, adding to the burden of downstream enterprises and causing tension in cement supply. The Association also failed to take the initiative to eliminate or mitigate any harmful consequences of the monopoly agreement. Therefore, the Sichuan AMR decided to order the Association to cease the illegal conduct and imposed a fine of RMB 500,000.

Industry Updates

First Case of Unfair Competition Related to Smartphone Screen-Jacking Was Declared

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On March 19, the Hangzhou Internet Court (the “Court”) held a public hearing on the first case of an unfair competition dispute over smartphone hijacking in China. The plaintiffs are Guangdong Oppo Mobile Telecommunications (OPPO) and Guangdong Huantai Technology Co., Ltd. (Huantai). The defendant is a Ningbo technology company that develops and operates the app “HiLaiDian.” OPPO develops ColorOS, an Android-based mobile operating system. HiLaiDian is designed to provide personalized incoming videos and ringtones.

OPPO found that HiLaiDian had overridden its ColorOS system by popping up advertisements when a phone was in lock-screen mode, before or after closing HiLaiDian. HiLaiDian also imitated OPPO’s lock-screen function features, including the “swipe right to unlock” feature. Doing so caused consumers to mistakenly think that OPPO was providing these advertisements. OPPO sued HiLaiDian for this hijacking practice before the Hangzhou Internet Court, claiming damages of RMB 4.9 million and asking for injunctions against HiLaiDian’s accused activities. The defendant argued that the accused app did not use improper technical means to obstruct or disrupt the normal operation of OPPO, and the “swipe right to unlock” function would not cause confusion to consumers.

According to the Court, the alleged conduct in this case fully complied with “using technological means,” so it violated Article 12 in the Anti-Unfair Competition Law prohibiting the use of technical means to interfere with the normal operation of others’ products. The Court also pointed out that HiLaiDian impaired the legitimate rights and interests of OPPO and its mobile phone users, and disturbed the normal order of competition.

After reviewing the evidence and testimony, the Court analyzed the facts and held that HiLaiDian’s forcible pop-up advertisements were anti-competitive activities. Without enough evidence to determine either OPPO’s loss or HiLaiDian’s gain, the Court considered all available factors and ordered HiLaiDian to pay OPPO a total amount of RMB 3 million.

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