



Trademark Litigation Review

2025

**China: Comprehensive legislative
framework underpins domestic and
international IP protection**

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The second edition of the WTR Trademark Litigation Review casts an expert eye on some of the most pressing issues facing those involved in litigation on both sides of the divide, blending analytic insight with on-the-ground expertise from the key regions of the Americas, the Asia-Pacific, and Europe, the Middle East and Africa.

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China: Comprehensive legislative framework underpins domestic and international IP protection

Aimin Huo

CCPIT Patent and Trademark Law Office

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IN SUMMARY

This article provides a review of the key issues relevant to trademark-related litigation and practice in China.

DISCUSSION POINTS

- Highlights of judicial protection of trademarks in China
- Injunctions and tips on claiming damages
- Legislative framework and causes of action
- Administrative, civil and criminal litigation
- Forum shopping
- Damages and remedies
- Defences
- Appeals process
- Other noteworthy references

REFERENCED IN THIS ARTICLE

- Civil Procedure Law
- Trademark Law
- Annual Report on Intellectual Property Protection by Chinese Courts 2023
- Annual Report on Intellectual Property Protection in China 2023

INJUNCTIONS AT A GLANCE

Preliminary injunctions – are they available, how can they be obtained?	Motions for preliminary injunctions can be filed to the courts before or during litigation.
Permanent injunctions – are they available, how can they be obtained?	The courts grant permanent injunctions in verdicts rendered following litigation.
Is payment of a security/deposit necessary to secure an injunction?	Yes.
What border measures are available to back up injunctions?	Custom seizure actions.

HIGHLIGHTS OF JUDICIAL PROTECTION OF TRADEMARKS IN CHINA

In 2023, courts accepted 462,176 first instance civil IP cases and concluded 460,306, year-on-year increases of 5.4 per cent and 0.55 per cent respectively. Of those, 131,429 were trademark cases, which is an increase of 16.85 per cent year on year. The courts accepted

37,214 second instance civil IP cases and concluded 38,713, decreases of 24.79 per cent and 20.37 per cent respectively over 2022.

In 2023, punitive damages were applied in 319 IP litigation cases by the courts nationwide, a year-on-year increase of 117 per cent, with a total awarded amount reaching 1.16 billion yuan, an increase of 3.5 times from the previous year.

In 2023, the courts accepted 20,583 first instance administrative IP cases and concluded 22,340, a decrease of 0.28 per cent and an increase of 26.7 per cent respectively over 2022. Of those, 18,558 were trademark cases, a decrease of 0.97 per cent year on year. The courts accepted 10,053 second-instance administrative IP cases and concluded 9,259, increases of 54.64 per cent and 17.99 per cent respectively over 2022.

In 2023, the courts accepted 7,335 first instance criminal IP cases and concluded 6,967, with increases of 37.46 per cent and 27.69 per cent respectively over 2022. Of those, 6,634 were registered trademark infringement criminal cases, and 6,357 were concluded, increases of 33.45 per cent and 24.67 per cent respectively over 2022; the courts across the nation accepted 956 second instance criminal IP cases and concluded 965, decreases of 2.35 per cent and 1.23 per cent respectively over 2022.

The courts continued efforts in cracking down on bad-faith trademark filings, improving the quality of administrative trade cases and maintaining the order of legitimate trademark filings, and concluded 20,090 administrative cases of first instance involving trademark filings and registration. The courts made concerted efforts to explore the mechanism of sharing information on bad-faith trademark applicants to effectively curb malicious trademark hoarding.

In 2023, the Chinese Supreme Court heard the 'New Balance' trademark infringement and unfair competition case of New Balance and in consideration of the obstruction of evidence committed by the defendant, ordered the defendant to compensate the right holder 30.04 million yuan for economic losses and reasonable expenses. In the Panpan trademark infringement and unfair competition case, the Chinese Supreme Court applied four times the punitive damages and ordered the defendant to compensate the plaintiff 100 million yuan for economic losses and 650,000 yuan for reasonable expenses.

In 2023, the courts nationwide received 7,883 first instance cases involving trademark owners. In the Siemens trademark infringement and unfair competition case, the Chinese Supreme Court ordered the defendant to compensate the plaintiff, Siemens AG, with 100 million yuan for economic losses and associated reasonable expenses in light of multiple factors such as the reputation of the trade name and trademark 'Siemens', as well as the nature and circumstances of the infringement.

Regarding legislation, the Chinese Trademark Law, the Implementing Regulations of the Chinese Trademark Law, the Chinese Anti-Unfair Competition and the Chinese E-Commerce Law are pending amendments at present. The key proposed amendments to the Chinese Trademark Law are prohibition on repeated trademark filings, requirement to file a statement of use every five years after registration and a procedure to order the transfer of trademarks registered in bad faith to the legitimate owners.

INJUNCTIONS AND DAMAGES

Injunctions

Preliminary injunctions are an increasingly critical tool in litigation because an order on a preliminary injunction or property preservation (attachment of property), or both, helps trademark owners to stop ongoing acts of infringement, avoid or minimise irreparable harm pending litigation, enforce final verdicts and support claims for damages.

Courts will consider the following factors when granting such an order:

- the plaintiff's likelihood of prevailing on the merits;
- a demonstration of irreparable harm to the plaintiff if a preliminary injunction is not granted;
- the balance of interest and hardship between the plaintiff and the defendant; and
- whether the injunction may harm the public interest.

According to the Civil Procedure Law,^[1] a motion for an order on a preliminary injunction or preservation of property, or both, can be filed both before or during litigation. When necessary, the courts may decide to issue such an order on their own initiative. When the courts decide to grant an order, the applicants for preliminary injunctions or preservation of property, or both, are required to provide a security. The courts shall dismiss the motion if the applicant fails to provide the security at the request of the courts. Regarding pretrial injunctions, the courts shall revoke the order if the applicant fails to file a lawsuit or arbitration within 30 days of the date on which the courts issued the order.

Tips On Claiming Damages

According to the Trademark Law,^[2] the defendant in a trademark infringement lawsuit shall not be liable for paying damages in the following scenarios:

- In response to a defence put forward by the defendant that the plaintiff has not used the registered trademark or trademarks, the court may require the plaintiff to provide evidence showing the use of the registered trademark or trademarks during the three years prior to the lawsuit. The defendant shall not be liable for paying damages if the plaintiff is neither able to prove its trademark use during this time frame nor able to prove other losses suffered as a result of the trademark infringement.
- If a distributor raises the defence that it is unaware that the items offered for sale infringe upon a registered trademark or trademarks, is able to prove that the items were procured by legitimate means and provide information on the suppliers of the items, the distributor shall not be liable for paying damages.

It is therefore necessary for the plaintiff to collect and keep its evidence of trademark use on file to support claims for damages. The plaintiff should consider sending cease-and-desist letters to a distributor that commits trademark infringement before a lawsuit, after collecting and notarising the evidence of trademark infringement to further prove the distributor's bad faith and pave the way for claiming damages (particularly punitive damages).

LEGISLATIVE FRAMEWORK AND CAUSES OF ACTION

China has a comprehensive and integrated legal framework for trademark protection based on domestic legislation and international IP treaties and conventions.^[3] The Trademark Law and its implementing regulations are the primary sources of law on trademark protection in China.

In addition to the above, the following apply:

- the Civil Code;
- the Civil Procedure Law;
- the Criminal Procedure Law;
- the Anti-Unfair Competition Law;
- the Copyright Law;
- the E-Commerce Law;
- judicial policies, interpretations and guidelines issued by the Supreme People's Court (SPC);
- rules, regulations and guidelines on trademark protection issued by the competent authorities;
- guiding and typical cases published by the SPC; and
- reference cases published by local high courts.

As a general rule, only registered trademarks are protected under the Trademark Law. To protect unregistered trademarks, rights holders may:

- if the cited and infringed trademark has been used but not registered in China, seek well-known trademark recognition to stop the use of the infringing trademark on similar or dissimilar goods or services;
- file unfair competition litigation to stop the use of the infringing trademark in domain names, as the Anti-Unfair Competition Law prohibits the use of, among others:
 - influential trade dress;
 - product, trade, institutional and personal names (including pen, stage and translated names);
 - distinctive elements; and
- file copyright litigation if the unregistered trademark is subject to copyright protection.

In recent years, trademark squatters have initiated litigation to compel real trademark owners to either pay damages or purchase back trademarks registered in bad faith at very high prices. The courts have gradually developed a consistent practice of dismissing those cases on the grounds that such litigation constitutes an abuse of rights by trademark squatters.

The SPC has issued guidelines making it clear that if in an IP rights infringement lawsuit the defendant submits evidence to prove that the lawsuit filed by the plaintiff constitutes an abuse of rights and has damaged the defendant's legitimate rights and interests as prescribed by law, and the defendant requests the plaintiff to compensate for reasonable expenses, the court shall support the request. The defendant may also file a separate lawsuit to require the plaintiff to compensate for such reasonable expenses. The SPC guidelines aim to deter parties from filing trademark litigation in bad faith.

Administrative And Civil Litigation

Trademark litigation falls into various categories depending on applicable laws, procedures, nature and objectives.

Administrative litigation involves the judicial review of:

- decisions or rulings on official refusal, opposition, invalidation and non-use cancellation, among other things, rendered by the China National Intellectual Property Administration (CNIPA);
- other specific trademark-related administrative acts performed by the CNIPA and the State Administration for Market Regulation; and
- decisions or rulings on trademark infringement rendered by the local administration for market regulation (AMR).

Civil litigation involves:

- trademark disputes relating to:
 - infringement and unfair competition;
 - ownership; and
 - transfer, licensing and agency contracts;
- before or during litigation, motions for:
 - preliminary injunctions;
 - property preservation; and
 - evidence preservation;
- motions for non-infringement declaratory judgments; and
- other trademark-related disputes.

Criminal Litigation

The following acts carry criminal liabilities:

- passing off registered trademarks;
- selling goods on which registered trademarks owned by others are used; and
- illegally manufacturing the labels of registered trademarks owned by others or selling such illegally manufactured labels.

Criminal litigation is usually filed by the procuratorates after the Public Security Bureau (PSB) has completed its criminal investigations and handed over files and evidence to the procuratorates. The PSB may open criminal investigations on its own initiative, or in response to complaints filed by the rights holder or after the cases have been handed over to them by the AMR.

The SPC urges local courts to hold three-in-one trials for judicial efficiency and consistency if trademark issues are involved in simultaneous pending administrative, civil and criminal lawsuits.

ALTERNATIVE DISPUTE RESOLUTION

Trademark disputes can be resolved through negotiation and mediation during civil litigation. The court may act as a mediator or direct the parties to work with the court-designated external mediators or mediation centres. The SPC has been urging the courts to rely on alternative dispute resolution (ADR) mechanisms to deliver efficient and diversified IP protection. During civil litigation, the courts will always ask the plaintiffs and defendants whether they want to settle disputes through ADR.

Arbitration serves to resolve civil trademark disputes, provided that the parties agree in writing to arbitration. Mediation and arbitration are generally not employed in administrative and criminal trademark litigation unless the rights holder files an incidental civil litigation in combined criminal and civil proceedings, and the parties choose to mediate a settlement agreement on the civil claims over damages.

LITIGATION VENUE AND FORMATS

The courts in China have four levels of hierarchy:

- basic people's courts (eg, the people's courts at district or county level);
- intermediate people's courts, including the specialised IP courts in Beijing, Shanghai and Guangzhou;
- high people's courts in each province, autonomous region or municipality directly under the central government; and
- the SPC.

Some basic people's courts and intermediate people's courts have cross-regional jurisdiction over IP-related cases according to SPC guidelines.

Forum Shopping

Forum shopping is not available for administrative litigation.

Courts at the defendant's domicile, the locations where the infringing acts occur (ie, where the infringing acts or the outcomes thereof take place) or the locations where the infringing products are stored, seized or detained by administrative authorities (eg, the AMR, customs office or PSB) have territorial jurisdiction over infringement cases.

Specialised IP courts and IP tribunals have more expertise and experience in handling IP disputes. Courts in more economically developed provinces and areas are more pro-intellectual property and tend to grant higher damages. It is recommended that the plaintiff file trademark litigation with the specialised IP courts or tribunals. It is also an effective strategy to identify every player involved in the trademark infringement and select the court most preferred by the plaintiff to file the litigation.

Internet courts in Beijing, Hangzhou and Guangzhou have jurisdiction over disputes arising from online infringement and transactions. Almost all proceedings at the internet courts are conducted online for the convenience of all parties involved.

The courts at the defendant's domicile or the location of the server of an e-commerce trading platform have jurisdiction over litigation against an internet-based trademark infringement.

Jury Versus Bench

Trademark litigation is usually heard by a collegiate bench of three (most often) or five members. At the trial court, the collegiate bench may comprise judges only, or judges with one or two people's jurors. People's jurors are not included in a collegiate bench at the appellate courts.

DAMAGES AND REMEDIES

The following remedies are available in trademark infringement litigation:

- injunctions (preliminary and permanent);
- damages (including punitive damages); and
- public apologies or declarations aimed at undoing the negative effects of the infringing acts.

Damages for trademark infringement are calculated with reference to one of the following factors:

- losses of the plaintiff;
- profits of the defendant;
- a reasonable multiple of the trademark licensing fees when it is difficult to determine the plaintiff's losses or the defendant's profits;
- statutory damages of up to 5 million yuan when it is difficult to determine the plaintiff's losses, the defendant's profits or the trademark licensing fees; or
- punitive damages for grave trademark infringement in the amount of one to five times the base amount of damages determined with reference to plaintiff's losses, the defendant's profits or the trademark licensing fees.

Damages include reasonable expenses spent by the plaintiff on trademark enforcement actions.

The SPC has directed the courts to use market value as a benchmark for determining damages in IP litigation. It has also directed the courts to award punitive damages to ensure that the damages in total are commensurate with the market value of the IP rights in dispute and the punitive damages in particular can discourage trademark infringement. In response to requests from the plaintiff, the court may exercise discretion and impose punitive damages on defendants committing intentional and egregious trademark infringement and acts of unfair competition.

In light of present practice and the trend of courts awarding substantial damages, as well as punitive damage in some cases, the rights holders should consider relying more on litigation to obtain stronger protection and seek damages in China.

Trademark litigation holds more of a deterrent power if it can hold individuals liable for trademark infringement. In recent years, the courts have rendered verdicts that have held legal representatives and shareholders jointly or severally liable for infringements perpetrated by their companies, defeating their attempts to evade trademark infringement penalties by abusing the independent legal person status of the company or the limited liabilities of shareholders.

The courts have also rendered verdicts ruling that trademark agencies acting as co-defendants to aid the defendants in bad-faith trademark filings have committed an act of unfair competition and should pay compensatory damages to the plaintiff. The courts' verdicts offer rights holders new tools in the fight against bad-faith trademark filings and trademark-related infringements.

EVIDENCING THE CASE

According to the Civil Procedure Law, motions for preservation of property can be filed to the courts during litigation if it is likely that the evidence may be destroyed or lost, or it will be difficult to obtain the evidence later. In an emergency, motions for preservation of property can be filed to the courts before litigation or arbitration if it is likely that the evidence may be destroyed or lost, or it will be difficult to obtain the evidence later.

Investigations And First Steps

Investigations are necessary and can be vital. Investigations are conducted for multiple purposes, including:

- collecting facts and evidence to support the litigation;
- spotting the strengths and weaknesses of both the plaintiffs and the defendants to help the rights holder build a strong case, and an adequate and strong future trademark portfolio; and
- formulating well-informed trademark litigation strategies and tactics.

Legal counsel should always be closely involved when working with internal or external investigators by offering input into investigation plans and overseeing investigations to ensure that the evidence obtained complies with the rules of evidence.

Relevant and particularly important evidence must be notarised, and legalisation is also necessary if the evidence is collected outside China. Digital evidence must be collected in compliance with the courts' guidelines. Legal counsel must review and ensure the legality of the evidence obtained during investigations because evidence procured through dubious or illegal means may be excluded or compromise the case.

Survey Evidence

Survey evidence is not mandatory and is often challenged. In practice, survey evidence has been filed to the court in difficult cases for reference purposes. The SPC and local courts have accepted survey reports as evidence. The referential value of survey evidence for the judges to determine cases should not be ignored.

Use Of Expert Witnesses

Expert witnesses are permitted in trademark litigation cases and are often engaged to provide expert opinions, especially in cases of first impression. Courts may also consult experts for their opinions on difficult issues. Economic experts can be helpful in ascertaining payable damages. Expert opinions may not be cited by judges.

AVAILABLE DEFENCES

The following defences can be raised when facing trademark infringement charges:

- no trademark infringement;

- no likelihood of confusion because there are no similarities in terms of the trademarks, goods or services;
- the plaintiff's trademark is invalid or declared invalid owing to its noncompliance with the Trademark Law;
- legitimate, fair, prior, authorised or licensed rights (eg, use of prior trade names, copyrights or design rights) use;
- legitimate product source and no knowledge of trademark infringement;
- exhaustion of trademark rights;
- laches or loss of statutory limitations;
- no infringement in OEM cases where all the OEM products are exported only to a foreign country or region and the mark used on the goods is owned or duly registered by the party that has ordered the OEM products in the destined country or region;
- safe harbour for internet service providers;
- lack of standing to sue or be sued;
- lack of jurisdiction; and
- unclean hands or abuse of rights.

The SPC has dismissed trademark infringement lawsuits on the grounds of abuse of rights.

Appeals Process

A domestic party may file an appeal within 15 days of receipt of a first instance judgment, while a foreign party may file an appeal within 30 days. Parties may still file new and supplementary evidence to the appellate court.

The appellate court will review both factual and legal issues. It usually takes six to nine months for the appellate court to render its judgment, which is final and effective. The time frame for court proceedings will be longer if one of the parties is a foreign entity or national.

The plaintiffs or defendants may apply for a retrial of an effective judgment within six months of the effective date. The higher-level courts will review and decide whether to accept retrial applications. For a retrial application to be accepted, new and substantial evidence that could overturn the effective judgment or clear mistakes in procedural issues, fact findings or applications of law are usually required.

In rare circumstances, the people's procuratorates have powers to supervise the adjudication of civil cases and may do so ex officio or at the request of the parties involved in civil cases.

Any party can appeal before the appellate court.

OTHER NOTEWORTHY REFERENCES

On 7 November 2023, China joined the Convention Abolishing the Requirements of Legalization for Foreign Public Documents, commonly referred to as the Apostille Convention or the Hague Convention. The Convention requires member countries to recognise apostilles as sufficient evidence of the authenticity of the public documents, eliminating the time-consuming and conflicted legalisation of foreign public documents originating in all member states submitted for use in China.

Endnotes

- 1 The [Civil Procedure Law](#) can be accessed via the National Laws and Regulations Database. [^ Back to section](#)
- 2 The [Trademark Law](#) can be accessed via the Chinese government's website. [^ Back to section](#)
- 3 These include the [Annual Report on Intellectual Property Protection by Chinese Courts 2023](#) and the [Annual Report on Intellectual Property Protection in China 2023](#). [^ Back to section](#)



Aimin Huo

huoam@ccpit-patent.com.cn

10/F Ocean Plaza, 158 Fuxingmennei Street, Beijing 100031, China

Tel: +86 10 6641 2345

<http://www.ccpit-patent.com.cn>

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