



Trademark Litigation Review

2025

**Key infringement cases highlight
Chinese courts' approaches to
damages**

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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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Key infringement cases highlight Chinese courts' approaches to damages

Yuan Yuan and Yanwen Yin

LexField Law Offices

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IN SUMMARY

Damages awards are key issues that right holders care about, especially after Chinese courts have implemented punitive damages since 2013. Recently, there have been some major cases in China that have been granted a very high number of damages awards. This article mainly introduces some typical cases in the past year and the Chinese laws and regulations on damages awards and punitive damages, which are helpful for rights holders to collect evidence and claim punitive damages in a trademark infringement civil lawsuit.

DISCUSSION POINTS

- Recent trademark infringement cases in China with high damages awards
 - Methods of calculating benefits obtained by the infringers in trademark infringement cases
 - Considerations of Chinese courts on damages awards
 - Application of punitive damages
 - Evidence collection to prove damages in practice
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REFERENCED IN THIS ARTICLE

- Chinese Trademark Law
 - Supreme People's Court Interpretation on the Application of Punitive Damages in Civil Cases of Intellectual Property Infringement
 - Supreme People's Court Provisions on Several Issues Concerning Evidence in Civil Litigation of Intellectual Property Rights
 - *Chateau Lafite*
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-

Article 63 of the Chinese Trademark Law stipulates the following ways to calculate damages: the actual losses suffered by the rights holder, the benefits gained by the infringers due to the infringement and a reasonable multiple of the trademark licensing fee. The above calculation methods should be applied in order and are subject to five times of punitive damages at most if the infringement is severe and of bad faith. If all methods are not able to determine the damages, the court shall award compensation by discretion in the range of under 5 million yuan (statutory damages).^[1]

In practice, statutory damages are mostly applied. After 2019, punitive damages have increasingly been applied by the courts. When calculating damages, the most commonly applicable method is calculating the benefits gained by the infringers. In the past year, there were several high damages awards cases in China, and they applied different methods to calculate the damages amounts, which demonstrates the current judicial trend towards

punishing and deterring infringers. Below are three typical cases, which were listed in the national top 10 of intellectual property cases or the local top 10 of intellectual property cases.

CHATEAU LAFITE CASE

The plaintiff was the trademark holder of 'LAFITE' and 'CHATEAU LAFITE ROTHSCHILD' for wine.^[2] The infringers registered and used the trademarks 'CHATEAU LAFITE in Chinese' and 'LAFEI MANOR' for wine. The Court decided that both marks were similar to the plaintiff's marks and such use constituted trademark infringement.

As for the damages awards, the plaintiff claimed to calculate them based on the benefits gained by the infringers, namely, sales volume times profit rate, and claimed punitive damages. The Court thoroughly examined all the evidence submitted by each party and made the following calculation.

First, based on the sales invoices and customs declaration forms of importing wine, the Court calculated the whole sales volume of the infringing goods.

Second, the Court needed to calculate the profit rate by comparing the infringing goods' selling price and cost price. As the infringing goods were sold in different units, such as bottle, box and set, etc, the Court decided to calculate the same per bottle, which is the minimum selling unit, by dividing the whole sales volume and number of sold bottles extracted from invoices.

The cost price of infringing goods was calculated based on the customs declaration forms as the wine was imported to China. Pursuant to the price of each litre of imported wine and the fact that each bottle of wine contains 0.75 litre, the Court was able to calculate the cost price per bottle. Therefore, the profit rate equalled to:

$$\frac{\text{(Selling price per bottle - cost price per bottle)}}{\text{Selling price per bottle}}$$

The benefits the infringers gained could then be calculated accordingly.

Finally, as for the claim of punitive damages, the Court considered the high reputation of LAFITE, the extensive sales scales of the infringers and the misleading advertising of taking a free ride on LAFITE's reputation, and granted two times the punitive damages.

PAN PAN CASE

The plaintiff was the trademark holder of 'Pan Pan', which is a reputable brand of security doors in China, and its house logo is a panda.^[3] The infringers registered a company with the trade name 'Xin Pan Pan' engaging in the same business of construction materials, including security doors and windows. The infringers also prominently used 'Xin Pan Pan' as a trademark extensively, including in the domain name, website, WeChat account, app, advertising brochures and offline shops. The Court decided that both parties' marks were similar and were used on similar goods. The infringers' behaviour easily caused confusion and constituted trademark infringement.

In this case, the plaintiff was not able to collect the infringers' sales data, and the infringers stated there were no proper financial documents to calculate their profits during the infringing period (2017–2019). Under this circumstance, although the evidence submitted

by the plaintiff was not very sufficient or accurate, it could be used as valid evidence of the infringers' profits.

The evidence submitted by the plaintiff mainly included advertising material in 2018 in which the infringers declared they would reach one billion yuan in production value and a 50 per cent growth rate per year in the next five years. Based on the aforesaid statistics, the Court was able to figure out the total sales volume from 2017 to 2019 to be 361 million yuan. As for the profit rate, the Court adopted a national average profit rate of 7.5 per cent in the furniture manufacturing industry in 2017. Therefore, the profit gained from the infringement was 27.075 million yuan (361 times 7.5 per cent).

The Court granted four times the punitive damages in this case, due to the following considerations:

- the legal representative of the infringers had business relationship with the plaintiff and should have known about 'Pan Pan' trademark;
- the infringers not only plagiarised the 'Pan Pan' mark, but also used a similar panda logo;
- the infringers sometimes omitted the 'Xin' character and directly used 'Pan Pan';
- even after the 'Xin Pan Pan' mark was invalidated, the infringers still continued the infringement; and
- the infringers' business expanded to 12 provinces and 180 distributors and nearly 100 offline shops.

The damages awards were determined to be 108.3 million yuan (27.075 times 4) and more than the plaintiff's claim of 95 million yuan. Therefore, the plaintiff's claim was fully supported by the court.

SIEMENS CASE

Siemens is a famous brand of household electric appliance. The infringers used 'Shanghai Siemens Electrics Co, Ltd' (a shell company registered in Seychelles) on its washing machines. The Court decided the above company name was used as a trademark with the function of identifying the source and 'Siemens' was the distinctive part, which was identical with the plaintiff's mark. Such behaviour constituted trademark infringement and the use of 'Siemens' as trade name constituted unfair competition.^[4]

The plaintiff claimed damages awards of 100 million yuan based on the infringers' benefits due to the infringement.^[5] However, the plaintiff failed to submit financial information of the infringers to prove this. The Court demanded the infringers submit their account books to ascertain the facts, but the infringers did not cooperate. The Court thus considered the following points to determine the damages:

- Siemens was an enterprise in the Fortune Global 500 and its trademark had acquired a high reputation.
- The infringers obviously acted in bad faith as they should have known about Siemens, and they also plagiarised other brands, such as Philips and AO Smith.
- The scale of infringement was extensive, considering the plaintiff discovered infringing washing machines in many provinces, and the infringers claimed to have

more than 1500 distributors, with sales volumes of 1.5 billion yuan per year, and their business lasted for around five years.

- Referring to the annual reports of other peer operators in the industry of washing machines, the Court admitted an average profit rate of 35 per cent. Out of the total sales volume of 1.5 billion yuan for all washing machines, the Court decided 1/15 of them were branded with an infringing mark by discretion. Hence, the infringers' benefits would be 1.5 billion times 1/15 times 35 per cent times 5, namely, 175 million yuan, which was beyond the plaintiff's claim.
- Based on the above, the plaintiff's claim of 100 million yuan should be fully supported.

CALCULATION OF BENEFITS OBTAINED BY INFRINGERS

Damages awards are an important part of increasing the deterrence of civil action. If infringers could make more profits than damages awards, civil action would certainly not be able to stop infringement. On the other hand, Chinese laws follow the Principle of Indemnity that damages awards should cover the right holders' losses but should not be more, to prevent malicious lawsuits. In practice, it has always been a challenge for right holders to collect sufficient evidence to accurately calculate infringers' benefits, and the court is usually inclined to decide damages awards by discretion, which is easier without many calculations.

The above three cases share the following common points that allow the court to determine very high damages awards: the right holders had some basic evidence to prove the infringers' benefits, such as invoices, customs declaration forms, statements from the infringers in some advertising materials; and the benefits were clearly much more than the statutory amount (5 million yuan). Under such circumstances, it would be unconscionable to decide the damages awards under the range of 5 million yuan.

There is another productive way for right holders to claim damages by requiring infringers to provide financial statistics. The Chinese Trademark Law stipulates that:

In order to determine the amount of damages, when the right holders have made every effort to provide evidence, and the account books and materials related to the infringement are mainly in the possession of the infringers, the court may order the infringers to provide such account books and materials related to the infringement; if the infringers do not provide the same or provide false accounts and materials, the court may refer to the rights holders' claims and provided evidence to determine the amount of damages.^[6]

Furthermore, the Supreme People's Court Provisions on Several Issues Concerning Evidence in Civil Litigation of Intellectual Property Rights stipulates that:

The court, in accordance with the law, requires the parties to submit relevant evidence. If a party refuses to submit without justifiable reasons, submits false evidence, destroys evidence, or engages in other acts that render the evidence unusable, the court may presume that the claims of the other party concerning the matters to be proved by such evidence are established.^[7]

The above laws and regulations basically form the system of proof impairment in China and are very helpful for right holders to reduce their liability of proof. With the above support, the right holders first collect some basic evidence of the infringers' profits, such as: sales data displayed on e-commerce platforms; the infringers' self-admission at some event or in advertising materials (especially TikTok videos and Little Red Book posts); and the average rate of profit in the industry. Based on this evidence, the right holders further file a request with the court for account books and materials related to the infringement from the infringers. If the infringers do not cooperate with the court's order, they shall bear the negative consequences, and the right holders' evidence and calculations will be very likely to be admitted by the court.

PUNITIVE DAMAGES

Punitive damages are a relatively new system in China.^[8] They are predicated on the plaintiff's request, and the court must not apply punitive damages on its own initiative. Punitive damages must be claimed before the conclusion of the court debate in the first instance. Applying punitive damages requires two preconditions: the infringement is severe and in bad faith (intentional). The Supreme People's Court Interpretation on the Application of Punitive Damages in Civil Cases of Intellectual Property Infringement (the Judicial Interpretation on Punitive Damages) explains in detail the application of punitive damages.

In 'severe' cases, the Judicial Interpretation on Punitive Damages lists the following conditions:

- committing the same or a similar infringement again after being administratively penalised or adjudicated by the court for infringement, the infringer again commits the same or a similar infringement;
- engaging in the infringement of intellectual property rights as a business;
- fabricating, destroying or concealing evidence of the infringement;
- refusing to comply with preservation rulings;
- the profits obtained from the infringement or losses suffered by the right holder are substantial;
- the infringement may endanger national security, public interest or personal health; and
- other circumstances that can be determined as severe.^[9]

In bad faith cases, the Judicial Interpretation on Punitive Damages lists the following conditions:

- the infringer continues to commit the infringement after being notified or warned by the right holder or an interested party;
- the infringer or its legal representative or administrator is the legal representative, administrator or actual controller of the right holder or an interested party;
- there exists a labour, service, cooperation, licensing, distribution, agency, representation or other such relationship between the infringer and the right holder or an interested party, and the infringer has had access to the infringed intellectual property;
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there have been business dealings or negotiations for the purpose of reaching a contract between the infringer and the right holder or an interested party, and the infringer has had access to the infringed intellectual property;

- the infringer engages in piracy or counterfeiting registered trademarks; and
- other circumstances that can be deemed as bad faith or intentional.^[10]

If a trademark infringement case meets the above requirements, then punitive damages can be considered. The punitive damages are calculated by base number times a multiple. As mentioned above, the base number should be determined by the actual losses suffered by the right holder, the benefits gained by the infringer due to the infringement and a reasonable multiple of the licensing fee for the trademark. As for the multiple, the Judicial Interpretation on Punitive Damages stipulates the factors to consider, namely, the degree of the infringers' subjective fault and the severity of the infringement act, etc.^[11] These considerations are quite general, so in practice the multiple is mainly decided discretionarily by the court, and the multiple does not have to be an integer, according to the understanding and application of the Judicial Interpretation on Punitive Damages.^[12]

Technically, punitive damages only apply when the damages can be calculated by the actual losses suffered by the right holder, the benefits obtained by the infringer due to the infringement or the multiple of the licensing fee for the trademark. If the court applies statutory damages, punitive damages should not be adopted. This is mainly because of the consideration that when the court decides the amount of statutory damages within the 5 million yuan limit, it should have considered the factors of the reputation of the right holder, the severity of the infringement and the bad faith of the infringer, etc, which already include the factors of punitive damages.

In the past few years, there have been some cases that adopt punitive damages and statutory damages at the same time. That is to say, for the damages that can be calculated and ascertained (with evidence such as sales data), the court calculates the same and rules punitive damages accordingly; for the damages that cannot be accurately calculated (without sufficient evidence), the court decides the amount at its discretion. The final damages awards will be the sum of the above two parts.^[13] This mainly happens when the infringement is severe, and each part of damages alone may not be able to cover the right holders' losses or to deter the infringers. This is a new and meaningful exploration of the damages awards system that can help the right holders to reduce their burden proof and better defend their interests. As we know, it is challenging for right holders to have the exact financial information of the infringers, especially considering that many infringers in China are rather small-scale, with no standardised financial management. Therefore, with this new tendency, punitive damages can be used more often and play a more important role in future trademark infringement cases.

Currently, the examination criteria of damages awards and punitive damages still varies in different provinces and courts in China, especially when the evidence is insufficient to calculate the damages from infringers' benefits accurately. Some courts stick to the statutory damages and have a high standard for evidence, some are more open to discretionary damages and are willing to apply punitive damages when there is only basic evidence. For rights holders, it is advisable to arrange a thorough investigation against the infringers before initiating the lawsuit and try to establish jurisdiction in the more open courts.

Here are two insights for the right holders in defending their rights through the above three typical cases and the judicial interpretation on punitive damages:

- They should actively defend their rights, such as filing oppositions or invalidations against malicious trademarks, or sending demand letters to infringers, because these measures can lead to the infringers' activities being considered repeated infringements, which can then be subject to punitive damages.
- They should fully utilise sales data disclosed by infringers through their website and other public channels to prove infringers' profits.

Endnotes

- 1** Article 63 of the Chinese Trademark Law. [^ Back to section](#)
- 2** One of the national top 10 intellectual property cases in China in 2023, [2022] Zui Gao Fa Min Zhong No. 313. [^ Back to section](#)
- 3** One of the top 10 intellectual property cases in Jiangsu Province in 2023, [2022] Zui Gao Fa Min Zhong No. 209. [^ Back to section](#)
- 4** One of the national top 10 intellectual property cases in China in 2023, [2022] Zui Gao Fa Min Zhong No. 312. [^ Back to section](#)
- 5** The plaintiff claimed damages based on unfair competition, not the trademark infringement. But considering the spirit of trademark law and anti-unfair competition law on damages awards is the same, and this case is rather representative, it is included in the article. [^ Back to section](#)
- 6** Article 63 of Chinese Trademark Law. [^ Back to section](#)
- 7** Article 25 of the Supreme People's Court Provisions on Several Issues Concerning Evidence in Civil Litigation of Intellectual Property Rights. [^ Back to section](#)
- 8** Punitive damages were included in Chinese Trademark Law in 2013 when the multiple was three times at most. In 2019, the Chinese Trademark Law was amended, and the multiple was raised up to five times. In 2021, punitive damages were added into Civil Code. [^ Back to section](#)
- 9** Article 4 of the Judicial Interpretation on Punitive Damages. [^ Back to section](#)
- 10** Article 3 of the Judicial Interpretation on Punitive Damages. [^ Back to section](#)
- 11** Article 6 of the Judicial Interpretation on Punitive Damages. [^ Back to section](#)
- 12** <https://www.court.gov.cn/zixun/xiangqing/297121.html>. [^ Back to section](#)

13 [2022] Hu 73 Min Zhong No. 187. [2020] Yue 0104 Min Chu No. 46217. ^ [Back to section](#)



Yuan Yuan
Yanwen Yin

yuan.yuan@lexfieldlaw.com
yanwen.yin@lexfieldlaw.com

Suite 1009, China Life Tower, 16 Chao Yang Men Wai Street, Chaoyang District, Beijing
100020, China

Tel: +86 10 8525 3366

<http://lexfieldlaw.com>

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