



## WATSON & BAND NEWSLETTER

### 6bagXagf~

#### ?TgXfg~ ba~ JTgfba~ i ~ 5TaW

[Event] W&B' s China Law Salon Series Lecture "Avoiding and Countering Unfair Competition Disputes" P2

[Upcoming Event] Let' s Meet at the International Trademrk Association Annual Meeting in Orlando! W&B Welcomes You to Booth No. 1108. P2

Watson & Band Wins the Highest Honor Available to Chinese Law Firms P3

W&B Attorney Provides Compliance Training for Technicians in the Chinese Academy of Sciences P3

Mitigating P2P Risks: W&B Engaged to Provide Legal Services by Internet Debt Repayment Platform P3

#### ?XZT\_~ 7Xi X\_bc` Xagf~

Three Agencies Jointly Promulgate a New Policy for Cross-Border E-Commerce Retail Import Taxes P4

SAIC Promulgates Measures for Quality Supervision and Administration of Commodities in Circulation Prohibiting Six Types of Commodities from Sale P5

State Council Issues Several Provisions on the Implementation of the Law on Promoting the Transformation of Scientific and Technological Achievements and Establishes Incentives for Technological Achievements P6

#### <CE~ 7l aT` \Vf~

Supreme People' s Court Releases Interpretations on Issues Concerning the Application of the Law in the Trial of Patent Infringement Disputes (II) P7

Public Comments Sought for the Guidelines on Anti-Monopoly Measures for the Automobile Industry P8

"2015' s Top 10 Chinese Copyright Developments" Released P9

### [Event] W&B's China Law Salon Series Lecture "Avoiding and Countering Unfair Competition Disputes"

W&B's China Law Salon Series Lectures have been widely acclaimed by our clients. The spring 2016 lectures have been scheduled and we welcome you to sign up. If you have any related legal queries, please feel free to contact us at:

**Lei Feng**

**Tel: (86-21) 5292-1111\*121**

E-mail: lei.feng@watson-band.com.cn

Lecture 2: Avoiding and Countering Unfair Competition Disputes

Date: April 29<sup>th</sup>, 2016

Location: 26F, Wenxin United Press Tower, 755 Weihai Road, Shanghai

**Brief Introduction:** The lecture will provide a general explanation of the principle provisions of Article 2 of the *Anti-Unfair Competition Law*. The lecture will also interpret and elaborate on the rules applicable to unfair competition law by citing examples such as the Kelt Quota case, the unfair competition lawsuit filed by Baidu against Aoshang Company, the Blizzard Hearthstone case, and other cases.

**Lecturer:** Xiaobo He (Attorney at Law)

**Brief Introduction:** Mr. He has represented a number of domestic and foreign group companies and their subsidiaries or affiliates. He has won a number of complex and influential civil and commercial cases that involve trade secrets



and disputes over company names, and he has provided professional opinions for his clients. Mr. He is prudent in handling cases and has accumulated rich experience recognized by his clients. This rich experience in civil and commercial litigation enables him to better understand law and policy and to more prudently and practically apply them when providing legal services for his clients. In particular, when handling unfair competition disputes, Mr. He is skilled in formulating litigation strategies for new types of cases. Based on this approach, he has won many cases involving trade secrets for rights owners. In 2014 Mr. He acted on behalf of Blizzard Entertainment and won an unfair competition dispute concerning the famous game Hearthstone, which received wide attention in the legal profession.



### [Upcoming Event] Let's Meet at the International Trademark Association Annual Meeting in Orlando! W&B Welcomes You to Booth No. 1108.

W&B will attend the International Trademark Association (INTA) annual meeting in Orlando, Florida in the United States between May 21 and May 25, 2016. W&B will set up its regular exhibition booth, where we will address the latest developments in IP-related legal services in China and provide relevant consulting services to brand managers. W&B, as a senior INTA member and a top Chinese IP law firm, provides comprehensive IP and commercial legal services to various industries including the culture and entertainment industry, the high-tech industry, and the luxury products and manufacturing industries. We welcome you to take part in this extravaganza with us.

For details about our booth and the activities that will take place at the meeting, please consult our newsletter, official website and WeChat account.

### Watson & Band Wins the Highest Honor Available to Chinese Law Firms

W&B Editor: Following its success in winning the award “2005~2007 National Excellent Law Firm” in 2008, this year Watson & Band was named “2011~2015 National Excellent Law Firm” by the All-China Lawyers Association (the “ACLA”). This award is the highest honor that can be bestowed upon a Chinese law firm.

The Congress honored 100 “2011~2014 National Excellent Law Firms”. The jury for this greatest official honor in China’s legal profession was composed of authorities such as the Ministry of Justice, the ACLA, the Supreme People’s Court, the Supreme People’s Procuratorate and the Ministry of Public Security. Watson & Band’s performance stood out among more than 24,000 law firms around China – it was among only four per thousand of Chinese law firms selected for this honor. Watson & Band was among five out of over 1,400 Shanghai law firms to win this award.

Since its establishment in 1995, Watson & Band has grown into a law firm with over 200 professionals capable of providing comprehensive legal services. Its service philosophy of high quality and its extensive scope of services have made it the first choice for many world famous companies when they seek legal counsel on various matters.

Watson & Band will not “rest on its laurels”, however. In the future we will continue to cooperate with clients and partners within the legal profession who supported, are supporting and will support us in striving for even more ambitious goals.



### W&B Attorney Provides Compliance Training for Technicians in the Chinese Academy of Sciences

On the afternoon of March 31<sup>st</sup>, 2016, W&B attorney Yifan Shen was invited to provide training on government procurement at the Shanghai Institutes for Biological Sciences (the “SIBS”) of the Chinese Academy of Sciences. About 200 procurement staff members from the Scientific Research Management Department’s Technical Support Center and the various SIBS scientific research groups attended the training session.

Mr. Shen used professional and prudent language and detailed slides to explain complex government procurement issues in simple terms. He systematically elaborated on the basis requirements and rules on government procurement and illustrated these theories using case studies. Meanwhile, he also answered questions from the SIBS trainees with great patience. After the training, the trainees all provided positive feedback and expressed their gratitude to both Mr. Shen and Watson & Band.

### Mitigating P2P Risks: W&B Engaged to Provide Legal Services by Internet Debt Repayment Platform

Since private lending and Internet finance are growing rapidly in China, peer-to-peer (P2P) lending risks have been increasing. W&B was recently engaged by the Qingdaofu Debt Management Platform (established by Direct Invest Asset Management Co., Ltd.) to provide services to users from various sectors who seek legal help on the platform. W&B partner Min Zhu attended the platform launch and the signing ceremony on behalf of W&B.

As a Level I Bankruptcy Administrator appointed by the Shanghai High People’s Court, W&B is dedicated to providing flexible solutions and enforcement assistance in connection with liquidation and restructuring, winding up, consolidation and debt collection on behalf of various types of creditors, debtors and corporations. This engagement represents yet another example of participation in the “Internet Plus” initiative by W&B and a financial institution.

### Three Agencies Jointly Promulgate a New Policy for Cross-Border E-Commerce Retail Import Taxes

The Ministry of Finance, the General Administration of Customs, and the State Administration of Taxation jointly promulgated the *Circular on Cross-Border E-Commerce Retail Import Tax Policy* (the “*Circular*”) on March 24<sup>th</sup>, 2016. The *Circular* expressly provides for matters in connection with the cross-border e-commerce retail import tax.

The *Circular* provides more detailed trading limits for import commodities -- the trading limit for each cross-border e-commerce retail import transaction is set at 2,000 RMB, and the annual trading limit for each individual is set at 20,000 RMB. A zero Customs duty rate will apply to cross-border e-commerce retail import commodities within these limits. The amount that justifies exemptions from import value-added tax and consumption tax has been cancelled, and instead these taxes will be temporarily levied based on 70% of the statutory taxable amount. The full tax rate will apply to the following exceptions classified as general trade: (i) a single transaction that exceeds the limit for each transaction or that gives rise to an excess over the cumulative annual limit for each individual; and (ii) a single and inseparable commodity whose duty-paid price exceeds 2,000 RMB.

In addition, if any cross-border e-commerce retail import commodity is returned within 30 days after it is released by Customs, an application for a tax refund can be submitted, and the total annual trade amount for the individual will be adjusted accordingly.

(Source: *CAnet.com.cn*)



### SAIC Promulgates Measures for Quality Supervision and Administration of Commodities in Circulation Prohibiting Six Types of Commodities from Sale

The State Administration for Industry and Commerce recently deliberated and approved the *Measures for Quality Supervision and Administration of Commodities in Circulation Domains* (hereinafter the “Measures”), which will be implemented as of May 1<sup>st</sup>, 2016. The Measures provide for matters such as operators’ commodity quality obligations, supervision and inspection of commodity quality and legal liability, among other matters.

The *Measures* incorporate thirty-nine articles in five chapters, and they provide in detail for the obligations of commodity operators and distributors prescribed under the *Law on the Protection of Consumers’ Rights and Interests* and the *Product Quality Law*. The *Measures* deal mainly with the following matters: (i) the AIC’s principles for jurisdiction, and mechanisms for supervision and control concerning commodity quality control in the circulation domain; (ii) the quality responsibilities and obligations that operators must bear in operational activities concerning commodity sales, e.g. definitions of commodities that operators are forbidden from selling by means of a negative list, the operators’ obligations to resolve consumption related disputes, unshelving or return of commodities, notifying consumers of defective commodities as well as the quality obligations of parties providing transportation, preservation and warehousing services for commodity sales and other third-party operators; (iii) the AIC authority’s method and means for conducting commodity quality supervision and control, inspections by authorities, unshelving and tracking commodities, reporting and publication of enforcement-related information, and administrative guidance. The Measures also provide for the legal liability that operators must bear if they fail to meet quality responsibilities and obligations in accordance with the law, along with circumstances that justify lighter or mitigated penalties.

According to the Measures, six types of commodities are prohibited from sale -- specifically **(i) commodities not in compliance with national and/or industry standards ensuring personal health and personal and/or property safety; (ii) commodities not in compliance with the product standard labeling on their packaging, and/or commodities not in compliance with the quality status described by means of a product specification and/or a sample product, and/or commodities without the functional performance that they should have; (iii) commodities that the government expressly orders to eliminate and prohibit from sale; (iv) commodities that falsify the place of origin, falsify or pass off another party’s factory name and/or factory address, or falsify or pass off quality marks such as certification labels; (v) commodities that have expired their terms of validity or that have deteriorated; and (vi) commodities that manipulate the date of production.**

With the rapid development of online shopping in recent years, commodity quality problems are becoming increasingly obvious. The AIC authorities are constantly taking new measures to enhance the supervision and control over the quality of commodities sold over the Internet and to effectively ensure safety for online shopping consumers. The *Measures*, by adhering to the combined governance of both online and offline transactions, will combine both physical and online sale channels into a unified supervision and control regime. Meanwhile, commodity quality sampling inspection will be conducted both online and offline, and the results will be applicable in both circumstances. Also, the *Measures* require that the AIC authorities strengthen their information communication and enforcement coordination with related authorities, reinforce governance of commodity quality from the origins, exercise joint supervision and control, and jointly promote consistent enhancement of the overall quality of the commodities, so that a safe and secure consumption environment can be built.

(Source: [www.saic.gov.cn](http://www.saic.gov.cn))



### State Council Issues Several Provisions on the Implementation of the Law on Promoting the Transformation of Scientific and Technological Achievements and Establishes Incentives for Technological Achievements

The State Council issued the *Several Provisions on the Implementation of the Law on Promoting Scientific and Technological Achievements* (hereinafter the “*Provisions*”) on March 2<sup>nd</sup>, 2016. The *Provisions* establish more definite operational measures and emphasize the interconnection between science and the economy, promoting pioneering work and innovation among the public, and encouraging innovative actors and scientific researchers (including R&D institutes, higher education institutions and enterprises) to create scientific and technological achievements, thereby enhancing and upgrading quality and efficiency.

The *Provisions* encourage R&D institutes and higher education institutions to transfer scientific and technological achievements to enterprises or other entities by means of assignment, licensing or investment. R&D institutes and higher education institutions founded by the national government should establish and improve systems and mechanisms for technology transfers; i.e. they can decide in their own discretion whether to assign, license or invest based on their scientific and technological achievements, and no approval or recordation is required unless the achievement involves state secrets or national security.

According to the *Provisions*, no less than 50% of the total incentive for the creation of a scientific and technological achievement must be awarded to the person(s) who made significant contributions during the R&D process and the achievement creation process. The *Provisions* also provide incentives for leaders in scientific/technological achievements; specifically, they provide for the form in which such a leader can profit from the achievement. Where a scientific and technological staff member from a government-funded R&D institute or higher education institution has fulfilled his job duties and completed his own work, he can participate in the scientific and technological achievement creation activities of enterprises on a part-time basis, or temporarily quit his job and start his own business to engage in achievement activities, with his employment relationship unchanged for a period of up to three years in principle.

The *Provisions* also propose strengthening the support for R&D institutes and higher education institutions with outstanding performance in scientific and technology, as well as their personnel. Pilot tax policies should be implemented within the government’s independent innovation demonstration zones and promoted nationwide. Existing tax policies for promoting the transformation of scientific and technological achievements should be implemented, and the tax policies in support of such achievements among entities and individuals should be actively studied and explored. Various state and local authorities should concretely consolidate the organization and guidance for such achievements, research new circumstances and problems in a timely manner, strengthen coordination and cooperation for the relevant policies, optimize the policy environment, conduct monitoring and assessment, promptly summarize and distribute accumulated experience, enhance publicity efforts and upgrade the quality and efficiency of these achievements, thereby promoting the transformation and upgrading of the national economy and enhancing both quality and efficiency.

(Source: [www.news.cn](http://www.news.cn))



### Supreme People's Court Releases Interpretations on Issues Concerning the Application of the Law in the Trial of Patent Infringement Disputes (II)

The Supreme People's Court held a press conference on the morning of March 22, 2016 to announce that the *Interpretations on Issues Concerning the Application of the Law in the Trial of Patent Infringement Disputes (II)* ("Interpretations II") would take effect on April 1, 2016. Interpretations II consist of 31 articles and primarily touch upon certain important and difficult aspects of the trial of patent infringement disputes, including the **interpretation of claims, indirect infringement, the legitimate source defense, the cessation of infringing acts, damages calculation and the effects of patent invalidation on patent infringement litigation.**

Article 21 of Interpretations II provides for indirect patent infringement, thereby reinforcing protection for patent owners. Similar provisions were also included in the draft amendment of the Patent Law, which is currently in the public opinion solicitation phase. In practice, if an indirect infringer does not have a liaison with the infringer who eventually infringes the patented invention or creation, he/she cannot be held jointly liable. However, if an indirect infringer knowingly provides an infringer with parts and components that can only be used to manufacture infringing products, his/her culpability is obvious; and because the parts and components supplied are specific to the direct infringing act or because he/she actively induced others to commit patent infringement, such acts are regulated by Article 9 of the *Tort Law*.

To mitigate the difficulty of evidence production and to raise the amount of possible damages, Article 27 of *Interpretations II* further improves the rules of evidence in connection with the amount of damages available in patent infringement litigation. If preliminary evidence is provided by a patentee, and if relevant evidence is withheld by the alleged infringer, the burden of proving the profits of the alleged infringer can be shifted to the defendant, and this shift can be applied to the sequence of the alternate means of calculating damages set forth in Article 65 of the Patent Law.

To expedite the trial of patent infringement cases, Article 2 of *Interpretations II* provides that where a claim asserted by a patentee in a patent infringement lawsuit is declared invalid by the Patent Reexamination Committee, the People's Court adjudicating the patent infringement lawsuit may dismiss the lawsuit brought by the patentee based on the invalidated claim, rather than waiting for a final decision in administrative litigation. The patentee will then have to seek judicial remedy by filing another lawsuit. According to *Interpretations II*, a People's Court's dismissal is without prejudice because it is a procedural rather than a substantive decision, which means that if an invalidation decision is revoked by an administrative ruling, the patent owner is entitled to file another lawsuit.

Interpretations II also deals with issues such as closed claims for composition, a recent hot topic, including the rules of claim interpretation, functional features, standard essential patents, rules of estoppel and the duration of temporary protection for invention patents.

(Source: [www.chinacourt.org](http://www.chinacourt.org))



## Public Comments Sought for the Guidelines on Anti-Monopoly Measures for the Automobile Industry

The National Development and Reform Commission (“NDRC”) officially released the Anti-Monopoly Guidelines for the Automobile Industry (Draft for Comments) (hereinafter, the “Guidelines”). The Guidelines define a comprehensive set of vertical and horizontal monopolistic acts by automotive suppliers that will henceforth be prohibited. These acts include applying fixed resale prices and setting minimum resale prices, restricting sales regions and target markets, indirect application of vertical restrictions on after-sales repairs and parts circulation by amending warranty policies, and restricting sales and service functions offered by dealers and operators who provide repairs and maintenance.

The Guidelines focus primarily on monopolistic acts in auto supply and aftersales service, prohibiting specifically fixed resale prices and minimum resale price restrictions that obviously restrict competition. The following acts will be exempted from the restrictions, however: (i) fixed resale prices and minimum resale price restrictions during new energy auto promotion periods; (ii) resale price restrictions instituted by distributors who simply act as intermediaries; (iii) resale price restrictions in government procurement; and (iv) resale price restrictions in sales by automobile suppliers through e-commerce platforms. Furthermore, auto suppliers may not engage in geographical or consumer restrictions.

The Guidelines specify that auto suppliers may not institute vertical restrictions on aftersales service. To be specific: (i) auto suppliers may not fulfill their warranty obligations unless end users agree to rely on authorized maintenance stations for maintenance outside the scope of the warranty; (ii) for spare parts beyond the warranty, automobile suppliers may not fulfill their warranty obligations unless end users agree to use original spare parts for replacement; and (iii) automobile suppliers may not without justification prohibit their maintenance stations from providing after-sales maintenance to parallel imported cars.

Since auto suppliers often abuse their dominant market position, the Guidelines provide that auto suppliers may not (i) prohibit manufacturers of spare parts matched to initially-installed automobiles from producing double-labeled spare parts; (ii) limit the supply and circulation of after-sales spare parts without justification; (iii) prohibit distributors and maintenance suppliers from purchasing outsourced after-sales spare parts; or (iv) limit the availability of technological information for maintenance, test instruments, maintenance tools, etc.

In addition, the Guidelines state that administrative authorities and other organizations authorized by laws or regulations to regulate public affairs are prohibited from abusing administrative power to eliminate or restrict competition, including the following acts: (i) formulating regulations that restrict access to the automobile market or the free circulation of automobiles; (ii) limiting the relocation of used cars, namely requiring used cars to be traded in the location where they were originally registered; and (iii) overtly or covertly restricting operators from conducting automobile business by establishing business startup conditions or qualifications that have the effect of eliminating or restricting competition.

(Source: [www.xinhuanet.com](http://www.xinhuanet.com))





## “2015’ s Top 10 Chinese Copyright Developments” Released

The cultural industry plays a key role in China’s economic transition. Since 2015 this industry has been flourishing and attracting investment from all sectors of the economy. In the meantime, governments in various localities release a great number of incentives to encourage the development of the industry, resulting in phenomenal IP programs and record-breaking box-office receipts. Furthermore, as the *Administrative Provisions on Online Publishing Services* have been unveiled and the *Movie Industry Promotion Law (draft)* is being deliberated, China’s cultural industry is on the fast track towards development and maturation in terms of legislation and business models. Recently, the State Administration of Press, Publication, Radio, Film and Television released “2015’s Top 10 Chinese Copyright Developments” at the closing ceremony of the 2016 China Copyright Services Annual Conference, as follows:

- 1.The State Council released Several Opinions on Accelerating the Construction of National Strength in the Intellectual Property Rights Industry, which signifies that the transformation of China into a great IPR power is on the government’s agenda.
- 2.The National Copyright Administration issued the “strictest copyright order”, A Notice Ordering Online Music Service Providers to Cease Distributing Unauthorized Music, which resulted in great improvement in the online network music copyright industry.
- 3.The Fourth “WIPO Award for Copyright Golden Prize” awarded was granted in order to further inspire copyright creativity.
- 4.The special action “Sword Net 2015” enjoyed remarkable achievements and online copyright ecology has been further optimized. Across China, 383 administrative lawsuits in the amount of RMB 38.45 million were filed, among which 59 were transferred to judicial authorities for criminal investigation and prosecution. In addition, 113 websites were shut down.
- 5.The contribution of the copyright industry to China’s GDP increased to 7.27%. Research indicates that in 2013 the Chinese copyright industry’s added value exceeded 4.27 trillion RMB.
- 6.The National Copyright Administration and the World Intellectual Property Organization signed a Memorandum of Cooperation (the “Memorandum”) to open new chapter in international copyright cooperation. According to the Memorandum, the two sides will continue to promote high-level and working-level exchanges and communication, areas of cooperation will be further expanded, and the copyright communication mechanism will be normalized.
- 7.The auditing and examination of software used by government agencies has been intensified, and the software piracy rate has improved significantly. The rate of authentic software use by central and provincial government agencies has reached 96%.
- 8.The National Copyright Exchange Center Alliance has been founded in Beijing as a joint effort to establish a copyright exchange service system.
- 9.Qiong Yao prevailed in a plagiarism lawsuit against Yu Zheng, and judicial protection of copyrights has been stepped up.
- 10.As the IP era begins, the value of copyrights in literature and art is rapidly increasing..  
(Source: www.people.com.cn)

---

"Commercial financial support is enhanced. Although the proportion of direct and indirect financing in the cultural industry remains low, enthusiasm for commercial finance and investment is still high. Statistics show that the number of cultural and media companies listed in the OTC market reached 63 with a total market value of RMB 1.7 billion. The bond market for the cultural industry is also growing rapidly. By the end of April 2015, a total of 128 cultural enterprises issued 524 bonds through the inter-bank bond market in the total amount of 470.34 billion RMB. " 2015 Cultural Industry Capital Operation: Culture and Information Technology Integration Attracts Most Attention in Capital Markets" published in the Chinese Culture Daily December 27, 2015, reprinted by China Commercial Intelligence <http://www.askci.com/news/chanye/2015/12/27/947561c3h.shtml>

“Taking the special fund for the development of the cultural industry as an example, in 2015 the Ministry of Finance allocated 5 billion RMB to support 850 projects. The number of projects increased by 6.25% over 2014. This is the only fund specially allocated by the central government for the development of the cultural industry. As of now, special funds earmarked for China’s cultural industry development accumulated to 24.2 billion RMB, and over 4,100 projects were supported. The funds effectively bolstered the reform of the cultural system and the development of the cultural industry. ”