



WATSON & BAND NEWSLETTER

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### **W&B' s 2016 Spring China Law Salon Legal Practice Series Lectures Coming Soon! Welcome to Sign up**

W&B's China Law Salon legal practice series lectures have always been widely acclaimed by our clients. The lectures for the spring of 2016 have been put on schedule. We welcome you to sign up for the lectures. If you have a related legal issues, please feel free to contact us as follows:

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#### *Lecture 1: IP Right Enforcement Strategy against Online Distribution of Counterfeits*

Date: March 25<sup>th</sup>, 2016 (Friday)

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

Brief Introduction: The lecture will discuss the current situation and background of the online distribution of counterfeits, ways to define the scope of counterfeit goods and their specific forms, and countermeasures to the online distribution of counterfeits, all of which will be illustrated with pertinent examples. Examples include the CCTV investigation of the distribution of counterfeit luxury products that were found on a number of platforms including JMEI (only three of eight bottles of shampoo purchased online turned out to be genuine products); and the lawsuit filed by Kering Group against Alibaba for contributory distribution of counterfeits, among other examples.

Lecturer: Yizhou Liu (W&B Partner)

#### *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

Lecturer: Xiaobo He (W&B Partner)

### **Let' s Meet in Orlando! Welcome to W&B at the 138th INTA Annual Meeting**

W&B will attend the INTA annual meeting in Orlando, United States between May 21<sup>st</sup> and May 25<sup>th</sup>, 2016. W&B will set up its regular exhibition booth, booth NO. 1108,1110, 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 in various industries including culture and entertainment, high-tech, luxury products and manufacturing. 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 keep up with our newsletter, official website and WeChat account



### W&B Administers First Creditors' Meeting for Kubeiland

On the afternoon of Feb. 17th, the first creditors' meeting for the bankruptcy liquidation of Shanghai Kubeiland Corporate Management Co., Ltd. (the "Company") administered by the corporate liquidation team led by Xiaosu Zhu, an attorney from W&B was convened at the Shanghai Xuhui District People's Court (the "Court").

Kubeiland has a number of creditors and the claims involved are extremely complex. W&B was appointed by the Court to act as the liquidation administrator. Upon the appointment, W&B immediately took control of the Company's property and business operations, and initiated property investigation and acceptance of claims declaration procedures. Since the administrator was well-prepared for the meeting, the creditors' meeting proceeded in a smooth and orderly manner.

During the creditors' meeting, W&B, the administrator, presented an interim work report and answered creditor questions. At the administrator's request, the Court declared the company bankrupt. The creditors also accepted the company's asset management and asset conversion plans. In the next phase, the administrator will actively advance bankruptcy liquidation procedures and will perform its duties on the principle of protection of creditor interests.

As the Chinese economy enters into adjustment, enterprises are advised to work out a plan for business integration and resource liquidation as soon as possible, and to reduce debt by seeking a solution for non-profit subsidiaries or business areas in an active and efficient manner. If you have any questions regarding corporate liquidation or reorganization, please feel free to contact us.

*(Source: W&B official website)*

### Various Media Report the Successful "Six Major Schools" Case Handled by W&B Involving an Infringement of the Right of Adaptation of a Literary Work by an Online Game

Recently, W&B won a case that involved both copyright infringement and unfair competition committed by an online game named the "Six Major Schools". The case attracted extensive attention from various media.

The verdict in this case will play an exemplary role in regulating the operations of the video game industry, and it has caused huge repercussions in the computer game industry. The Shanghai Legal Daily (page A02/A03, February 2nd, 2016) and the People's Court Daily (page 3, February 6th, 2016) devoted more than half of the related pages each to the "Six Major Schools" case by reporting in detail on case facts, the major issues in controversy and the final verdict. The news reports emphasized that in the current environment of significant homogenization of mobile gaming apps, a severe crackdown on "shanzhai" IP infringement is needed. Any party wishing to adapt an original means of expression included in another party's work into a computer game must respect the copyrights in the original work.

This case represents another breakthrough and success of W&B in terms of IP right enforcement practice in the gaming industry. Yizhou Liu, a Partner from W&B's Copyright & Trademark Litigation Department and acting on behalf of the plaintiff in this case, formulated a detailed plan for evidence collection and infringement comparison before the hearing.

It has become a new trend in the mobile game industry for mobile apps to cooperate with media such as film and television, literature and animation to attract fans by virtue of popular intellectual property. It is advisable that practitioners of the gaming industry contact professional copyright lawyers before carrying out any intended adaptation of their games, so as to eliminate potential risks of infringement.

*(Source: W&B official website)*



### W&B Receives Silver Ranking in 2016 WTR 1000—The World’s Leading Trademark Professionals; George Fu Honored as Individual

In February 2016 the World Trademark Review (“WTR”), an authoritative publication in the global IP industry, released its latest global ranking entitled *WTR 1000-The World’s Leading Trademark Professionals 2016*. W&B received a silver ranking in *Trademark Protection and Litigation* for its outstanding performance. George Fu, W&B’s Managing Partner, was also included in the silver ranking for individuals in the Trademark Protection and Litigation category.

The WTR 1000, which focuses on the trademark industry, has been issuing the World’s Leading Trademark Professionals rankings of trademark practitioners and firms for the past 6 years. The rankings incorporate surveys and selections of IP litigation and non-litigation firms across 71 key jurisdictions throughout the world. During the selection process, WTR 1000 conducted qualitative surveys and collected comprehensive and accurate feedback mechanisms using stringent research methods. The expertise and reputation of the candidates were also taken into consideration to ensure that every winner deserves to its honor.

WTR 1000’s review on W&B reads “The combined strength of its dedicated IP and litigation wings gives clients all the firepower needed for even the trickiest mandates.”

Each and every lawyer and agent in W&B fully understands our clients’ needs and handles every task efficiently, professionally and smoothly. The trademark profession involves, *inter alia*, the filling, transfer, confirmation and enforcement of trademarks. Our litigators and agents have achieved positive outcomes in a large number of cases involving design patent invalidation and trademark disputes, thereby accumulating extensive experience.

(Source: W&B official website)

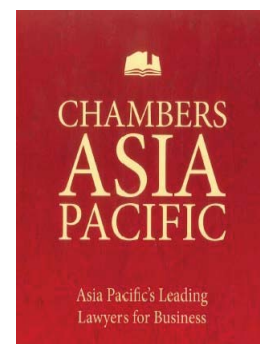


### Worldwide Renowned Legal Rating Agency Chambers and Partners Honors W&B as a “Leading IP-Oriented Litigation Law Firm” and Names George Fu an “IP Industry Dignitary”

On February 5th, 2016, the world-renowned legal ratings agency, Chambers and Partners, published its 2016 Asia-Pacific Guide. W&B was honored as a “Leading IP-Oriented Litigation Law Firm” in the China legal service market, because of its excellent performance and client reputation. Moreover, W&B’s Managing Partner, George Fu, was named an “IP Industry Dignitary”.

In 2015, W&B has also received awards and honors from various world-renowned legal industry rating agencies and publishing houses including Asian Legal Business, Intellectual Asset Management, AsiaLaw Profiles, the Legal 500, the WTR 1000, Managing Intellectual Property and LEGALBAND, which represents its recognition worldwide.

(Source: W&B official website)



### Supreme People's Court Promulgates Judicial Interpretations for the P.R.C. Property Law (I)

The Supreme People's Court promulgated the *Interpretations on Several Issues Concerning Application of the P.R.C. Property Law (I)* (hereinafter the "SPC Interpretations"). The SPC Interpretations incorporate a total of 22 articles and will be implemented on March 1<sup>st</sup>, 2016.

The SPC Interpretations address the following six issues: 1) disputes over real estate registration and the confirmation of property rights or basic property relationships; 2) the validity of advance notice registration; 3) *bona fide* third parties in special movable property assignments; 4) legal documents issued by People's Courts or arbitration commissions that may result in the alteration of property rights; 5) judicial protection of the preemptive right of several co-owners; and 6) the system of *bona fide* acquisitions. The SPC Interpretations provide details on *bona fide* third parties in special movable property assignments. Article 6, oriented by the types of rights conflicts that frequently occur in practice, follows the property law rule for the alteration of property rights in special movable properties, and provides its content by defining the "third party" stipulated in Article 24 of the P.R.C. Property Law as exclusive of the creditors of the assignor. In addition, the SPC Interpretations also provide details for the system of *bona fide* acquisition. Specifically, it provides that "when an assignee receives a real estate or a movable property, if he does not know that the assignor has no right to dispose of the same and is not involved in gross negligence, he shall be deemed a *bona fide* assignee. If the real rights holder asserts that the *bona fide* designation should not apply, he bears the corresponding burden of proof."

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

### Thirteen Administrative Licenses by Departments under the State Council are Cancelled

The State Council recently issued its *Decision on the Cancellation of Thirteen Administrative Licenses by Departments under the State Council*, according to which a number of administrative licenses were cancelled.

The administrative licenses cancelled involved ten departments under the State Council under the following circumstances: (1) all licenses were cancelled instead of being delegated to a lower-level administrative authority. (2) some of the cancelled licenses were of a higher "gold content"; specifically, over 80% of the licenses cancelled this time involved streamlined administration and institute decentralization in the finance industry, individual or enterprise qualification certifications and enterprise operational activities. For example, the "approval for price evaluator registration" cancelled by the National Development and Reform Commission (NDRC) once enjoyed an average registration volume of 4,000 registrants per year, and the "recognition of qualification to engage foreign expert enterprises" cancelled by the State Administration of Foreign Experts Affairs (SAFEA) involved over 9,000 enterprises. Cancellation of these licenses will help stimulate market vitality and will enhance the momentum of development. (3) Strict assessment and demonstrations were conducted regarding the security risks of the cancelled licenses; in particular, rigorous debates were held over the cancelled licenses involving public security from the perspective of risk control, so that no security issues would arise due to the cancellations.

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



### Shanghai Determines the Specific Duration of Marital and Maternity Leave and Adjusts the Corresponding Family Planning Policy

Shanghai passed its *Amendment to the Population and Family Planning Rules* (hereinafter the “*Amendment*”) on February 23<sup>rd</sup>, 2016, which went into effect on March 1<sup>st</sup>. According to the *Amendment*, citizens whose marriage conforms to the relevant legal provision shall be entitled to enjoy an extra seven-day leave in addition to the marital leave provided by the government, which means that new couples in Shanghai will all be entitled to a marital leave of ten days. The *Amendment* also provides for maternity leave for the “second child of a family”; specifically, “a woman giving birth to a baby in compliance with the relevant legal provisions shall be entitled to an extra thirty-day leave in addition to the ninety-eight days provided by the government. Moreover, the *Amendment* grants a ten-day paternity leave for fathers.

With the amendment to China’s family planning law, new local rules concerning marital and maternity leave are gradually being unveiled. Enterprise HR departments should clarify their regulations and employee handbooks as soon as possible, and should design appropriate HR procedures to prepare for the upcoming “two child” era.

(Source: Adapted from information available on [www.shanghai.gov.cn](http://www.shanghai.gov.cn))

### SAFE Reforms the Foreign Exchange Administration System Concerning Qualified Foreign Institutional Investors

Recently the State Administration of Foreign Exchange (“SAFE”) promulgated the *Regulations for Foreign Exchange Administration Concerning Domestic Securities Investments by Qualified Foreign Institutional Investors* (hereinafter the “*Regulations*”), which went into effect on the date of promulgation.

The *Regulations* mainly address the following issues: (1) The maximum investment permitted to each qualified foreign institutional investor (hereinafter “QFII”) has been broadened. Specifically, no unified maximum investment amount is applied to each institute; instead, the institute’s assets scale or a certain proportion of the assets scale under the institute’s management is now used as the basis for determining the institute’s investment amount (the baseline amount). (2) The examination and approval and the administration of maximum investment amounts have been simplified. Specifically, a QFII’s maximum amount application not exceeding the baseline amount will be subject to management through filing only, and SAFE’s examination and approval will be necessary only when application amount exceeds the baseline amount.

(3) Capital import and export has been further facilitated; specifically, there is no longer any time limit on the import of the QFII’s investment capital, and the subscription and redemption of QFII open-ended funds on a daily basis will be permitted. (4) The lock-up period has been shortened from one year to three months, while the requirements on capital exports in batches and by installments has been maintained. The total amount of capital exported by a QFII on a monthly must not exceed 20% of its assets inside of China.

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



### Legislative Affairs Office Releases a Circular for Public Comment on Anti-Unfair Competition Law (Revised Draft for Review)

The Legislative Affairs Office of the State Council is soliciting public opinion on the *Anti-Unfair Competition Law (Revised Draft for Review)* until March 25, 2016.

The prevailing *Anti-Unfair Competition Law* consists of 33 articles divided into 5 chapters. In the Revised Draft for Review (the “Revised Draft”), 30 articles were modified, including 7 that were removed and 9 that were added, for a total of 35 articles. In addition, several sections have undergone substantial revision. For example (i): in the General Principles section, the term “business operator” was defined; (ii) the scope of the law was extended to render it basically consistent with the pertinent provisions of the *Anti-Monopoly Law*; and (iii) the general jurisdiction of the Administration for Industry and Commerce over unfair competition and the jurisdiction of other authorities over supervision and examination have been improved.

Additionally, in the unfair competition section, the Revised Draft echoes the *Trademark Law* and the *Advertising Law* by specifying the scope of a portion of the originally stipulated unfair competitive practices, complemented by two new types of acts: (i) acts of unfair trade by business operators that enjoy a comparatively advantageous position rather than a dominant market position; and (ii) interfering with, restricting or influencing other business operators on the Internet using technical means such as software.

Moreover, the Revised Draft also increases penalties on business operators for unfair competitive practices. Depending on the circumstances, a fine in the amount of RMB 100,000 to RMB 3,000,000 will be assessed. For business operators that knowingly assist in illegal practices by offering promotional and network services will also be subject to a fine of between RMB 100,000 to RMB 1,000,000.

W&B is adept at enforcing its clients’ legal rights and interests under the Anti-Unfair Competition Law. This particular law, functioning as a “fallback provision” in the IP field, oftentimes determines the success of enforcement actions. For example, in the most recent case represented by W&B, we effectively protected the rights and interests of Blizzard Entertainment, the rights owner of *Hearthstone: Heroes of Warcraft*. This victory serves as a landmark precedent representing the creative and innovative combination of the application of the Copyright Law and the Anti-Unfair Competition Law. We will continue to pay attention to the revision of the law and we will offer relevant analyses and lectures in the future. Should you have any questions, please feel free to contact us.

(Source: Circular for Public Comment on the Anti-Unfair Competition Law (Revised Draft for Review) Released by the Legislative Affairs office of the State Council)



## Administrative Provisions on Online Publishing Services Takes Effect on March 10th, 2016

The Ministry of Industry and Information Technology recently announced the full text of the *Administrative Provisions on Online Publishing Services* (the "Provisions") for implementation on March 10, 2016. The Provisions provide that an Online Publishing Service License must be obtained as a prerequisite for offering online publishing services, and that online publishing service providers are subject to annual verification and examination.

The Provisions, which will take effect on March 10th this year, set forth the following key requirements: (i) an entity engaged in online publishing services must obtain an Online Publishing Service License; (ii) publishers of books and audio-visual and electronic publications, as well as newspapers and periodicals undertaking online publishing services, shall have specified domain names for websites used for online publishing services, intelligent terminal applications or other publishing platforms; these parties must have a defined scope of online publishing services and must be equipped with necessary technical facilities for online publishing services, with the relevant servers and storage equipment physically located within China; (iii) entities providing online publishing services shall not lend, lease or sell their Online Publishing Service License; and (iv) before online release, online games must be reported to copyright administrative authorities at the provincial, autonomous regional or municipal level for examination and approval before submitting the same to the State Administration of Press, Publication, Radio, Film and Television ("SAPPRFT") for examination and approval. The Provisions, formulated in accordance with the *Administrative Regulations on Publication, the Administrative Measures for Internet Information Services* and other relevant statutes and regulations, are designed to standardize the order of online publishing services and to promote the healthy and orderly development of the online publishing services industry.

The Provisions also identify content that may not be contained in online publications. For the purpose of protecting the legal rights and interests of minors, online publications may not include any information that contribute to the delinquency of minors; terroristic or brutal content; content that threatens the mental or physical health of minors; or information that violates the privacy of the minors. In addition, where an entity providing online publishing services publishes any content involving national security, social stability or other important topics, it shall complete recording procedures in accordance with the provisions in the SAPPRFT on the management of important topics. Content involving important topics that are not filed recorded not be published.

Moreover, the Provisions specify that entities providing online publishing services shall record the contents, publication date, URL or domain name of the works they publish, keep these records for 60 days, and offer the same to relevant governmental departments for inquiries in accordance with the law. If an entity violates the Provisions, the competent telecommunications authority at the provincial level shall order it to remedy such violation according under Article 21 of the *Administrative Measures for Internet Information Services*; in serious cases, the offending entity shall be ordered to suspend its operations during the remedial period or to temporarily shut down its website.

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





## **Circular on Issuing the Operating Guide for Patent-related Administrative Enforcement is Released by State Intellectual Property Office**

To implement strict IPR protection and support the newly amended Measures for Patent Administrative Law Enforcement, the State Intellectual Property Office recently revised and issued the Operating Guide for Patent-related Administrative Enforcement (the “Guide”).

The Guide consists of two sections: the patent administrative enforcement procedures and the appended forms for patent administrative enforcement. Compared with the previous version, the revised Guide includes one additional chapter entitled The Handling of Patent Infringement Disputes in Exhibitions and e-Commerce. The chapter “Enforcement Management” was also redacted. The Guide adds the Forms for Patent Administrative Enforcement, originally a stand-alone publication, to the main body of the provisions as an appendix, with terms and expressions corresponding to those used in the main text. Improvements are made to the first chapters that relate to statutory functions, including the investigation and handling of patent infringement disputes, patent counterfeiting and the mediation of other patent disputes. The requirements for patent administrative law enforcement and case handling are further elaborated upon.

*(Source: State Intellectual Property Office)*

## **Multiple Authorities Release Draft Guidelines for the Application of the Law in Anti-Monopoly Matters**

Recently, the National Development and Reform Commission (the “NDRC”) and the State Administration for Industry and Commerce (“SAIC”) released two consecutive guidelines for the application of the law seeking public comments: (i) *Guidelines for the Application of Lenient Treatment Rules in Horizontal Monopoly Agreement Cases (Draft for Comment)* (the “Guidelines for Lenient Treatment”); (ii) *Guidelines for Operator Commitment in Anti-monopoly Cases (Draft for Comment)* (the “Guidelines for Operator Commitment”); and (iii) *Guidelines for Anti-monopoly Law Enforcement in the Abuse of Intellectual Property Rights (Seventh Draft of the State Administration for Industry and Commerce)* (the “Guidelines for Anti-monopoly Law Enforcement”).

Among the foregoing documents, the NDRC’s drafts of the *Guidelines for Lenient Treatment* and the *Guidelines for Operator Commitment* contain detailed provisions, including the wording “an operator involved in a monopoly agreement may take the initiative to report to the competent anti-monopoly law enforcement agency under the State Council for lenient treatment before any measure specified under Article 39 of the Anti-monopoly Law is taken by the agency” and a description of the primary obligations of a business operator involved in an anti-monopoly case. The seventh draft of the *Guidelines for Anti-monopoly Law Enforcement* released by the SAIC includes 32 Articles divided into 7 Chapters. These provisions establish the fundamental principles for anti-monopoly law enforcement in the realm of intellectual property, and set forth the nine factors to be considered in order to analyze and identify the impact of a business operator’s exercise of IP rights on competition such as “the market positions of the business operator and the other party(s) involved in a transaction”. In particular, the Guidelines for Anti-monopoly Law Enforcement emphasize that if a business operator is found to abuse intellectual property rights or to exclude or restrict competition, the anti-monopoly law enforcement under the State Council shall investigate and pursue legal liability against the operator in accordance with the Anti-Monopoly Law.

*(Source: A summary and adaptation of information disclosed by the NDRC and the SAIC)*