



China IPR News for U.S. Industry August 13, 2008



Disclaimer: The China IPR News for U.S. Industry is a summary of publicly available information prepared by the United States Government and is intended for informational purposes only. The views and opinions expressed herein do not state or reflect those of the United States Government. The China IPR News for U.S. Industry may contain material subject to copyright; further reproduction and distribution shall be conducted in accordance with applicable copyright rules.

China IPR News for U.S. Industry is compiled by USPTO-China staff with support of the U.S. Mission IPR Task Force, the International Trade Administration, Office of China Economic Area and other colleagues in Washington, DC and in industry.

Subscription: If you would like to be added or deleted from the distribution list, or have questions, comments, or requests, please send to: Chinaiprnews@mail.doc.gov. Kindly indicate in the subject line: "China IPR News for U.S. Industry". Past issues are available at http://www.export.gov/china/archive_ipr_news.asp

PATENTS

1. Hebei Provincial Court Rules Against Fiat in Design-Patent Case: The Shijiazhuang Intermediate People's Court in Hebei Province has dismissed Italian vehicle maker Fiat's claim that Great Wall Motor Co., China's largest maker of sports utility vehicles, copied a Fiat model. According to the Shijiazhuang Court, Great Wall's model, the "GWPeri," contained "remarkable differences" from Fiat's design patent, concerning the frontal, left, and right views of the vehicle. The Court ordered Fiat to pay Great Wall RMB 8,800 in costs (USD \$1,300). Earlier this month, an Italian court in Turin, Fiat's base of operations, handed a victory to the vehicle maker, banning Great Wall from selling the "GWPeri" in Europe because of similarities to Fiat's

"Panda" model. Foreign auto makers have been taking legal steps to defend design patents as Chinese rivals have been expanding their overseas sales presence. (Source: *Shanghai Daily*, August 1, 2008, http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=228250&col_no=927&dir=200808.)

TRADEMARKS

2. Counterfeiters Receive Jail Time and Are Fined in Shanghai: In June, the Shanghai No. 2 Intermediate Court ordered three defendants to serve 12 years, 3½ years, and 3 years (with 3 years of probation), respectively, for selling counterfeit cigarettes. In April, the same court sentenced a defendant to two years in prison for selling counterfeit Viagra® through the internet. Separately, in January 2006, the Shanghai No. 2 Intermediate Court handed down a sentence of 3 years (with 4 years of probation) to a Qipu-Market seller of counterfeit Levi's denim jeans. In June 2007, Levi Strauss and Co. filed a civil lawsuit against the seller. In August 2008, the Court found in favor of Levi Strauss, levying a fine of RMB 500,000 in damages. (Source: *China IP News*, Pages 7 and 9, July 25, 2008.)

3. Diageo Sues Chinese Distiller for Confusingly Similar Packaging: Diageo, the maker of Johnnie Walker® Whisky, has sued a local wine company, alleging unfair competition and packaging violations, and seeking RMB 2 million (USD \$291,971) in compensation. The Shanghai No. 2 Intermediate People's Court has heard the case but has not rendered a verdict. Diageo accuses the Blueblood (Shanghai) Wine Co., Ltd. of using packaging on its Polonius Whisky that is similar to Johnnie Walker Black Label. Diageo claims the following: Blueblood's Polonius brand uses the same square bottle as Johnnie Walker; Polonius' three labels, in black and gold, are attached in the same positions as that of Johnnie Walker Black Label; both products use similar caps with the same color and font.

Diageo accuses Blueblood of confusing consumers by misappropriating the image of Johnnie Walker in on-line advertising and sales of Polonius Whisky. In response, Blueblood argues the designs on its packaging are original, and that the company had been using the design elements before Johnnie Walker Black Label entered the Chinese market. Blueblood also told the court it had stopped production of the Polonius brand of whiskey. (Source: *Shanghai Daily*, August 5, 2008, http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=229071&col_no=927&dir=200808.)

COPYRIGHTS

4. NCAC Announces Heightened Web-Site Monitoring Against Illegal Olympic Broadcasting:

Vice Minister Yan Xiaohong of the National Copyright Administration of China (NCAC) announced that authorities will maintain a close watch on 216 Chinese web sites to thwart unauthorized transmissions of Olympic events. A surveillance team has been established to detect and block webcasts of events, except those that the International Olympic Committee or CCTV.com, the official on-line broadcaster, authorize. On receipt of a complaint, the NCAC monitoring center will review the transmission to determine its legality. If the broadcast is deemed illegal, the NCAC will trace its origin and inform the relevant Copyright Bureau, which will either order the web site to remove the illicit content, or request the local Internet Supervision Management Department to close it down. In addition to NCAC, the surveillance team will include staff from the Ministry of Industry and Information Technology, the State Administration of Radio, Film, and Television, the State Council Information Office, the Beijing Organizing Committee of the Games of the 29th Olympiad, and CCTV.com. (Source: *China Daily*, August 5, 2008, http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=229017&col_no=925&dir=200808.)

5. End-User Pirates Face Prison and Fines in Shanghai:

The Shanghai Pudong New District People's Court convicted two suspects of infringing Microsoft's software copyright by revising open-volume licensing contracts without authorization, which gave them RMB 290,000 in illegal gains. The court sentenced one infringer to 3 years' imprisonment and levied a fine of RMB 140,000, while the other received a 2 ½-year sentence, and was ordered to pay a fine of RMB 150,000. In addition, defendants forfeited their illegal gains to Microsoft. (Source: *China IP News*, July 25, 2008, Page 9.)

ENFORCEMENT

6. MofCOM and SAIC Clamp Down on Counterfeit and Pirated Products During Olympics:

China's Ministry of Commerce and the State Administration for Industry and Commerce (AIC) issued a joint notice, ordering local Market Order Rectification Offices and local AIC branches in Beijing, Shanghai, Tianjin, Qingdao, Shenyang, and Qinhuaudao to prevent street vendors from selling pirated and counterfeit products during the Olympic Games. (Source: *China IP News*, August 1, 2008, Page 9.)

7. China's First Anti-Monopoly Law Takes Effect:

Effective August 1, China's first Anti-Monopoly Law attempts to promote fair-market competition and curb monopolistic activities. Proposed fourteen years ago, the new law purportedly will build an open, transparent, and uniform market. The State Council recently established an Anti-Monopoly Committee to research relevant laws, monitor enterprises, assess competition in the market, and cooperate with other government bodies to enforce the law. The National Development and Reform Commission (NDRC), the Ministry of Commerce (MofCOM), and the State Administration for Industry and Commerce (SAIC) will coordinate to implement and enforce the law. The SAIC will investigate and punish those engaged in unfair competition, commercial bribery, smuggling and other economic offenses. The NDRC, China's top economic regulator, has finished drafting an anti-price-monopoly regulation, which will be a component of the Anti-Monopoly Law. The draft regulation will punish those enterprises seeking to monopolize markets through price controls, product dumping, and market-price manipulation. (Source: *Xinhua*, August 4, 2008, http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=228494&col_no=925&dir=200808.)

8. IPR Tribunals to Hear Civil Disputes Concerning Anti-Monopoly Law:

The Supreme People's Court (SPC) recently issued a notice, restating that IPR tribunals at all levels will hear civil disputes based on anti-monopoly-law violations. (Note that this announcement does not appear to affect administrative jurisdiction.) The SPC has stated that the Anti-Monopoly Law, which became effective on August 1, has a close relationship with protecting IPR and stopping IPR abuse, and is similar to the Anti-Unfair Competition Law. The SPC's "Cause of Action of Civil Cases," effective as of April 1, includes IPR actions based on monopoly and unfair-competition grounds. For these reasons, the Court determined that the IPR tribunals would be best suited to hear trials concerning civil disputes

based on the Anti-Monopoly Law. (Source: *China IP News*, August 6, 2008, Page 1.)

9. Zhejiang Province Re-Organizes its IPR Trial-Court System: On July 1, Zhejiang Province re-organized its IPR trial-court system, designating six intermediate courts in Hangzhou, Ningbo, Wenzhou, Jinhua, Taizhou, and Shaoxing to handle patent matters. Thirteen basic-level courts, such as those in the Binjiang District of Hangzhou and Ruian District of Wenzhou, can hear trademark, copyright, and anti-unfair competition cases for which the amount in dispute is under RMB five million. (Source: <http://www.zjpat.gov.cn/yaowen/0807101.html>, July 10, 2008.) [Note: Most foreign-related IPR cases are heard at the intermediate-level courts. End note.]
