ADMINISTRATIVE IP ENFORCEMENT IN CHINA
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# Administrative Authorities

<table>
<thead>
<tr>
<th>Authorities</th>
<th>Responsible Areas</th>
</tr>
</thead>
<tbody>
<tr>
<td>IPOs Intellectual Property Offices</td>
<td>- Patent infringement and counterfeiting</td>
</tr>
</tbody>
</table>
| AICs Administrations for Industry & Commerce | - Trademark infringement and counterfeiting  
|                                    | - Unfair competition                                                   |
| CACs Copyright Administrations of China | - Copyright infringement and counterfeiting                             |
| Customs                           | - Patent infringement and counterfeiting  
|                                    | - Trademark infringement and counterfeiting  
|                                    | - Copyright infringement and counterfeiting                             |
IPO ENFORCEMENT
Patent Enforcement by IPOs

- Ex official and/or at request
- Raid and investigation
- Administrative punishment including
  - Administrative injunction
  - Confiscating and destroying infringing goods, producing equipment & molds
  - Imposing fine
### Patent Enforcement by IPOs

<table>
<thead>
<tr>
<th>Year</th>
<th>Infringement (entered)</th>
<th>Others (entered)</th>
<th>Counterfeit (entered)</th>
<th>Total</th>
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<td>100</td>
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<td>20601</td>
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*Data source: SIPO Patent Annual Reports*
Case 1. Honda Motorcycle Design Patent Enforcement

In 2017, Shanghai IPO, in response to the complaint of Honda, investigated the case of a Shanghai company suspect of infringing Honda motorcycle design patent and found all the design features of the patent involved were reflected in the alleged infringing products manufactured, sold and offered to sell by the Shanghai company. The Shanghai company was ordered to cease infringement immediately.
Patent Enforcement by IPOs

Case 2. Enforcement of Invention Patent Concerning “Product Quality Tracing & Anti-Counterfeiting System and Its Methods”

In 2017, Beijing IPO, in response to the complaint of an invention patent holder, investigated a liquor company and a local magazine, and found that the “product tracing platform” label used by the liquor company and the tracing & anti-counterfeiting method supported by a product tracing platform hosted by the magazine were identical with all the technical features of the claims of the patent involved. Thus the infringement constituted. Beijing IPO ordered the two parties to cease infringement immediately.
CAC ENFORCEMENT
Copyright Enforcement by CACs

- Ex official and/or at request
- Raid and investigation
- Administrative punishment including
  - Administrative injunction
  - Confiscating and destroying pirate goods
  - Confiscating illegal income
  - Imposing fine
Pirate Copies Seized by CACs (pieces)

Data source: Annual Copyright Enforcement Statistics on CAC Website
Copyright Enforcement by CACs

Data source: Annual Copyright Enforcement Statistics on CAC Website
Copyright Enforcement

Case 1. Copyright enforcement concerning movies and TV works

In March 2017, in response to the complaints of the Motion Picture Association of America (MPAA), Beijing Cultural Market Administrative Law Enforcement Team investigated against Beijing Orange VR Technology Co. and found the company provided on-demand films and TV series through their own VR APP without permission since July 2016. An administrative fine of 30,000 yuan RMB was imposed on the company.
Copyright Enforcement

Case 2. Copyright enforcement concerning written works

In December 2017, Shanghai Cultural Market Administrative Law Enforcement Team investigated against Shanghai Zhiqi Investment Consulting Co. Ltd. and found the company uploaded 45 official securities research reports onto its servers without permission of the right holders and earned over 280,000 yuan from readers who paid for the articles. An administrative fine of 100,000 yuan was imposed on the company.
AIC ENFORCEMENT
Trademark Enforcement by AICs

- Ex official and/or at request
- Raid and investigation
- Administrative punishment including
  - Administrative injunction
  - Confiscating and destroying infringing goods, producing equipment & molds
  - Imposing fine
Trademark Enforcement by AIC

Data source: Trademark Office of SAIC Annual Reports
Trademark Enforcement by AICs (Total v. Foreign Related)

Data source: Trademark Office of SAIC Annual Reports
Trademark Enforcement by AIC

1. Receive complaint from TM owner
2. Verify infringing facts
3. Conduct raid action
4. Issue detaining notice
5. Issue penalty decision
6. Dispose infringing goods
7. Transfer serious cases to PSB
AIC Raid Action
AIC Raid Action
AIC Raid Action
AIC Raid Action
AIC Raid Action

AIC Notice of Detainment
北京市工商行政管理局海淀分局
行政处罚决定书
京工商海处（2009）第126号

当事人：周某 性别：男 年龄：32岁 所在单位：无
住 址：北京市海淀区复兴路二街二区62号

违法事实：当事人于2009年12月10日在北京市海淀区海淀区大街某商
店销售无资质经营的电子商品，未办理营业执照，未依法取得经营许可，
未依法在商场显著位置明示经营场所名称、经营项目、营业执照号、
税务登记证号、许可证号等内容。当事人的上述行为，违反了《中华人民
共和国消费者权益保护法》第五条的规定，构成无照经营的违法行为。

根据《中华人民共和国消费者权益保护法》第五条的规定，决定给予当
事人以下处罚：
1. 没收非法所得80元。
2. 行政处罚决定书发出之日起十五日内到行政部门缴纳罚款。
3. 加处滞纳金。

当事人如对本处罚决定不服，可以在收到处罚决定书之日起十五日内
向北京市工商行政管理局申请复议，也可以在收到处罚决定书之日起
十五日内直接向人民法院起诉。
CUSTOMS ENFORCEMENT
Customs Enforcement

- Recordation of Chinese Registered IP rights
- Ex official and/or at request
- Administrative punishment including
  - Administrative injunction
  - Confiscating and destroying infringing goods, producing equipment & molds
  - Imposing fine
Customs Enforcement – ex official

1. Customs notify IP right owners for authentication
2. IP right owner applies for detainment in 3 business days & pay bonds
3. Customs investigate and make decision in 30 business days
IP right owners requests Customs to detain infringing goods

Customs issues detainment notice

Customs release the suspect goods if
- A court notice for detainment assistance is not received within 20 business days
- A counter bond is provided by the shipper or recipient
- No infringement is found
| 中华人民共和国义乌海关  |
| 处理结果通知书 |

义关知字（2010）第8-2号

北京集佳知识产权代理有限公司：

对深圳市拓金贸易发展有限公司出口的侵犯你公司（代理）“”商标权货物一案，我关经调查，已经作出没收侵权货物并处罚款人民币31000元的决定。现根据《中华人民共和国海关关于<中华人民共和国知识产权海关保护条例>的实施办法》第三十条的规定，将有关情况通知如下：

（一）货物名称和数量：太阳镜6000副；

（二）收发货人名称：深圳市拓金贸易发展有限公司；

（三）申报进/出口日期：2009年10月17日；

（四）海关扣税日期：2010年1月13日；

（五）海关行政处罚生效日期：2010年2月9日；

（六）货物启运地：浙江义乌；

（七）货物指运地：阿根廷。

特此通知。
PROS & CONS
<table>
<thead>
<tr>
<th>PROS</th>
<th>CONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Time saving (2-6 months)</td>
<td>• No damage granted to IP right owners</td>
</tr>
<tr>
<td>• Cost saving</td>
<td>• Not applicable for complicated infringement cases</td>
</tr>
<tr>
<td>• Evidence preservation for potential civil action</td>
<td>• Local Protection in some areas</td>
</tr>
<tr>
<td>• Inner incentives</td>
<td>• Customs – counter bond</td>
</tr>
</tbody>
</table>
Thank you!

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Partner  
Unitalen Attorneys at Law  
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Telephone: 925-789-7213