

New Types of Unfair Competition and Emerging IP Rights for Data in China

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Unfair Competition in the Field of Data.

Case Handled by Myself: McGraw-Hill v. Jin Kai Xun(2005).

Beijing First Intermediate People's Court Mediation Decision (2005)

Min Chu Zi No. 12811



Background

- McGraw-Hill is a world-renowned information service provider and publisher. Its subsidiary, Platts, provides services related to energy price assessments, industry data, research, and consulting.
- The energy information provided by Platts, particularly in the context of global energy assessments, is one of the standards for determining global energy prices.
- In 2001, the plaintiff discovered that the first defendant, Beijing Jinkai Xun Information System Co., Ltd., was using over 20 types of Platts price information without authorization in their "Jinkai Xun Oil Price" service.
- The second defendant, Beijing Jinkai Xun Tong Information System Technology Co., Ltd., was established in 2003 and provides the Jinkai Xun petrochemical financial information system to clients.

Data Protection related Unfair Competition

- **Lawsuit**

The plaintiff filed a lawsuit in May 2006, alleging that the defendants infringed upon the plaintiff's copyright and that their actions of providing data to the plaintiff's clients constituted unfair competition.

- **Claims:**

1. Cessation of infringement.
2. Compensation of 1.5 million yuan.
3. Reimbursement of 600,000 yuan for reasonable expenses.
4. Publication of an apology statement in the "Beijing Daily."

- **Key Issues:**

1. Whether the database qualifies as a work protected by copyright law.

Plaintiff's Argument: The data was purchased from major global oil markets and compiled, researched, and edited, including prices from Brent, New York, Dubai, and London, to form Platts prices.

2. Whether the database is eligible for protection under anti-unfair competition law.

Outcome: Settlement by Mediation of Court

Jinkai Xun and Jinkai XunTong acknowledged the follows.

1. Both Jinkai Xun and Jinkai XunTong admitted that the "price assessments, market reports," and other materials created or assigned by Platts are protected under Copyright Law. Any unauthorized reproduction or network dissemination of such materials constitutes a violation of copyright law.
2. Jinkai Xun and Jinkai Xun Tong must not publish information without the plaintiff's permission, including:
 - (1) Platts price assessment information
 - (2) Price information that corresponds to or can be inferred from Platts prices
 - (3) Any information obtained through reproduction or translation of Platts prices
3. Jinkai Xun and Jinkai Xun Tong will compensate the plaintiff for economic losses.

Data Protection related Unfair Competition

- **Anti-Unfair Competition Law, Article 12 (“ Internet Clause”)**

Operators engaged in production and business activities using the internet shall comply with the provisions of this law.

Operators shall not use technical means to implement the following actions that hinder or destroy the normal operation of network products or services legally provided by other operators, either by influencing user choices or through other means:

1. Inserting links or forcing redirection in the network products or services legally provided by other operators without their consent;
2. Misleading, deceiving, or coercing users to modify, disable, or uninstall the network products or services legally provided by other operators;
3. Maliciously rendering the network products or services legally provided by other operators incompatible;
4. Any other actions that hinder or disrupt the normal operation of the network products or services legally provided by other operators.

- **Anti-Unfair Competition Law, Article 2 (“Good faith Principle”)**

- Operators in production and business activities shall adhere to the principles of voluntariness, equality, fairness, and honesty, and shall comply with laws and commercial ethics.
- The term "unfair competition behavior" as used in this law refers to actions by operators in production and business activities that violate the provisions of this law, disrupt market competition order, and harm the legitimate rights and interests of other operators or consumers.
- The term "operators" as referred to in this law includes natural persons, legal persons, and unincorporated organizations engaged in the production and operation of goods or providing services (hereinafter referred to as "goods," including services).

Data Protection related Unfair Competition

- The infringement of data related rights is primarily protected through claims of unfair competition or copyright infringement. Notable cases include "Weibo Shijie Technology v. Chuangrui Technology for Unfair Competition," "Taobao v. Meijing Company," and "Hantao Company v. Baidu," where judges generally ruled based on unfair competition principles.
- Additionally, protection can also be sought through compiled works under copyright law or trade secret protections under AUCL, as seen in copyright cases (such as "Hantao Company v. Sohu for Copyright Infringement" and "Foshan Dingrong v. Jinan Baitou") and trade secret cases (like "Wanlian Company v. Zhou Huimin," etc.).
- Judicial remedies primarily focus on regulating behaviors and providing damage compensation through judgments to protect the data interests of enterprises.

Data related Unfair Competition

Draft Amendment to the Anti-Unfair Competition Law Published by the SAIC (State Administration for Market Regulation) (2022.11)

Article 18

Operators shall not engage in the following behaviors that improperly acquire or use the commercial data of other operators, harm the legitimate rights and interests of other operators and consumers, or disturb the order of fair market competition:

1. By means of theft, coercion, fraud, electronic intrusion, and other methods, undermining technological management measures to improperly acquire the commercial data of other operators, unreasonably increasing the operating costs of other operators, or affecting the normal operation of other operators;
 2. Violating agreements or reasonable and legitimate data scraping protocols to acquire and use others' commercial data, which is sufficient to substantially replace the related products or services provided by other operators;
 3. Disclosing, transferring, or using commercial data of other operators obtained through improper means, which is sufficient to substantially replace the related products or services provided by other operators;
 4. Improperly acquiring and using others' commercial data in violation of good faith and business ethics, severely harming the legitimate rights and interests of other operators and consumers, and disturbing the order of fair market competition.
- The **commercial data** referred to in this law is defined as the data that operators collect in accordance with the law, that has **commercial value**, and that employs corresponding **technological management measures**.
 - The acquisition, use, or disclosure of information that the public can use for free is not considered improper acquisition or use of other operators' commercial data as defined in the first paragraph of this article.

Current Anti-Unfair Competition Law

Article 9

Operators shall not engage in the following behaviors that infringe upon trade secrets:

1. Acquiring the trade secrets of the rights holder by theft, bribery, fraud, coercion, electronic intrusion, or other improper means;
 2. Disclosing, using, or allowing others to use the trade secrets of the rights holder obtained by the means mentioned in the preceding item;
 3. Violating confidentiality obligations or the rights holder's requirements for maintaining trade secrets by disclosing, using, or allowing others to use the trade secrets in their possession;
 4. Instigating, enticing, or assisting others in violating confidentiality obligations or the rights holder's requirements for maintaining trade secrets, resulting in the acquisition, disclosure, use, or allowance of others to use the rights holder's trade secrets.
- Any other natural persons, legal entities, or unincorporated organizations that engage in the illegal acts listed in the preceding paragraph shall be regarded as infringing upon trade secrets.
 - If a third party is aware or should be aware that the employee, former employee, or other units or individuals of the trade secret rights holder are engaging in the illegal acts listed in the first paragraph of this article, and still acquires, discloses, uses, or allows others to use that trade secret, this shall be regarded as infringing upon trade secrets.
 - In this law, the term "trade secrets" refers to technical information, business information, and other commercial information that is not known to the public, has commercial value, and for which the rights holder has taken corresponding confidentiality measures.

Franchising related Unfair Competition Case

Case handled by Myself : Tupperware v. Li Xiang-rong

Determination of Unfair Competition Behavior in the Context of Commercial Franchising

- **Regulations on the Administration of Commercial Franchising, Article 3**
Commercial franchising ("franchising") refers to a business activity in which an enterprise (the "franchisor") possesses operational resources such as registered trademarks, business logos, patents, and proprietary technologies, and licenses these resources to other operators (the "franchisees") through a contractual agreement. The franchisees conduct their business under a unified business model in accordance with the terms of the contract and pay franchise fees to the franchisor.
- The plaintiff, Tupperware (China) Co., Ltd., was established in 1995 and is a franchisor registered with the Ministry of Commerce of China, with a registration number of "0440100700900047." The registered brand is "Tupperware," and the main products include kitchenware, cups, storage containers, and other kitchen and household goods. Tupperware has over 3,000 stores nationwide, all under unified management and following a consistent business model, which meets the requirements for commercial franchising.
- Li Xiangrong signed a franchise agreement with Tupperware on August 3, 2011, specializing in the sale of Tupperware brand kitchen and household products.

5.4 甲方应为乙方开展特百惠业务提供必要的培训和支持；

5.5 甲方免费提供乙方经营特百惠专卖店的授权证书，并将根据业务需要提供最新的特百惠产品信息和促销资料及物品；

5.6 甲方将向乙方免费提供特百惠专卖店选址要求和标准、装修标准及商品陈列标准指导；

Franchising related Unfair Competition Case

Case handled by Myself : Tupperware v. Li Xiang-rong

Determination of Unfair Competition Behavior in the Context of Commercial Franchising

Franchise Agreement b/t Tupperware and Li Xiang-Rong : Excerpts from the franchise agreement, including clauses regarding the sale of only Tupperware products, the prohibition of selling competing products, and post-termination obligations of prohibition of continuing use of Tupperware related name and logos, etc.

6.10 乙方专卖店内不得销售任何非特百惠产品，如果乙方店面有其他楼层，其他楼层可用于特百惠产品的仓库，但不可用于经营其他非特百惠产品，或从事与特百惠无关的盈利活动，不得经销非甲方生产和非依本合同约定途径进货提供的特百惠产品，亦不得对外出口，否则应支付甲方不低于叁万圆的违约金，如不足补偿甲方损失的，应继续负责赔偿，直至完全补偿为止；性质严重者，甲方有权取消乙方特百惠加盟店的经营权。

6.19 乙方不得在任何其他场所、以任何方式，经营与特百惠产品相类似或有竞争性的其它公司/品牌的产品，否则甲方有权取消其经营资格。

7.4 合同到期不再延期或提前终止时，乙方应完成以下所有事项：

a. 停止使用甲方任何商标、商号、商誉及一切相关标识。停止使用并立即退回、或依甲方指示销毁所有甲方提供的促销资料，停止使用特百惠优惠顾客名单，停止以任何方式经营任何特百惠业务，并停止以任何明示或暗示方式对外表明或宣称其有权继续经营任何特百惠业务或与甲方有任何关系；否则，乙方应支付甲方不低于人民币伍万圆的违约金，如不足以补偿甲方损失的，应继续负责赔偿，直至完全补偿为止。

Case handled by Myself : Tupperware v. Li Xiang-rong

Determination of Unfair Competition Behavior in the Context of Commercial Franchising

- Plaintiff's investigation revealed that, starting in 2021, Li Xiangrong began selling competing products under the Ysuper brand within Tupperware franchise stores. Specifically, Li Xiangrong:
 - Sold Ysuper products alongside Tupperware products in Tupperware stores, using the Tupperware ("Tupperware") signage.
 - Used Tupperware-branded packaging to sell Ysuper products.
 - Used the Tupperware slogan, "Make it healthier yourself," (or a similar translation of "自己做更健康") to market Ysuper products.
 - Used the "Tupperware" name to recruit franchisees for Ysuper products within WeChat groups.
- Regarding Ysuper, there were significant overlaps with Tupperware:
 - **Personnel:** Ysuper was established by former Tupperware employees.
 - **Geographic Area:** Both brands operated in the same geographic areas.
 - **Business Scope:** Both brands operated in the same business sector (kitchenware/housewares).
 - **Business Model:** Both brands utilized similar business models.

Franchising related Unfair Competition Case



欢迎大家进我们新建的大家庭! 🌸🌸🌸 🌱🌱🌱



向荣 特百惠.招加盟店

4-30 17:42

悠闲水杯，年轻的潮流，
国际的标准，亲民的价格。

Ysuper

我认可的生活态度!



详情



向荣 特百惠.招加盟店

🔥 优尚水杯排排站，男神女神这边看👀 本月新品火爆来袭🔥 食品级材质，宝宝都能用哦❤️❤️ 原价119元1只，上市预订排单中：

!!! 138元/2只!

!!! 138元/2只

!!! 138元/2只



13:53

🗨️ 旋子特百惠 10分钟前



你还干特百惠吗



向荣 特百惠.招加盟店

1分钟前

回复旋子特百惠: 同时做



旋子特百惠

1分钟前

回复向荣 特百惠.招加盟店: 公司允许吗😂

评论



Franchising related Unfair Competition Case

Case handled by Myself : Tupperware v. Li Xiang-rong

Legal questions surrounding a franchisee continuing business operations after a franchise agreement expires.

- **1. Contractual Status Post-Expiration:**

- **Contract Validity:** Once the franchise agreement expires, it is generally no longer in effect. The franchisee's continued use of the franchisor's trademarks, branding, and business model after the expiration date would not be legally protected under the terms of the expired contract. It becomes a matter of whether their actions constitute a new, separate contract (implied or otherwise), or a violation of intellectual property rights.
- **Contractual Constraints:** Any actions taken *after* the contract's expiration are not bound by the original contract's terms. However, contractual clauses like non-compete agreements or confidentiality provisions may still apply depending on their wording and duration, potentially extending beyond the initial franchise term.
- **Contract Type:** The nature of the relationship shifts. It's no longer a franchise agreement; it could potentially be considered a separate sales contract if there's evidence of a new agreement to supply goods, but this is unlikely given the context of unauthorized use of trademarks. The most likely legal characterization would be unauthorized use of intellectual property and potentially unfair competition.

Franchising related Unfair Competition Case

Case handled by Myself : Tupperware v. Li Xiang-rong

2. Classification of Contract Violations (If Applicable):

- The franchisee's actions are best analyzed not as breaches of an expired contract but as potential infringements of intellectual property rights and unfair competition:
- **Trademark Infringement:** Using "Tupperware" (name and logo) without authorization is a clear violation of trademark rights. This is a strong basis for a lawsuit.
- **Passing Off/Trade Dress Infringement:** Using Tupperware's packaging also constitutes infringement, as consumers are likely misled into believing they are purchasing Tupperware products.
- **3. Actions Not Explicitly Covered by the Contract:**
- Using "Make it healthier yourself" ("自己做, 更健康") without authorization falls into the realm of unfair competition, specifically potentially misleading advertising. This claim is independent of any breach of contract.

Franchising related Unfair Competition Case

Case handled by Myself : Tupperware v. Li Xiang-rong

3. Actions Not Explicitly Covered by the Contract:

Using "Make it healthier yourself" ("自己做, 更健康") without authorization falls into the realm of unfair competition, specifically potentially misleading advertising. This claim is independent of any breach of contract.

4. Legal Strategy:

- **Breach of Contract vs. Infringement(UC):** This scenario primarily involves trademark and trade dress infringement and unfair competition. While there *might* be arguments for breach of contract regarding non-compete clauses or confidentiality if such clauses exist and are applicable beyond the contract's term, the stronger claims relate to IP infringement and unfair competition.
- **Choice of Defendants:** The lawsuit should name both the franchisee (Li Xiangrong) and Ysuper as defendants, as they are jointly participating in the infringing activities.
- **Damages:** This includes lost profits, damage to brand reputation, and legal fees.
- **Non-Contractual Actions:** These are handled under unfair competition laws (misleading advertising, etc.).
- **Unfair Competition Lawsuit:** This provides the broadest grounds for legal action, encompassing the unauthorized use of trademarks, trade dress, and misleading advertising.
- In summary, while the expired franchise agreement itself ceases to be the primary legal basis, the actions of the franchisee after expiration give rise to strong claims for trademark and trade dress infringement and unfair competition. A well-constructed legal strategy will leverage these stronger claims for the most effective remedy.

Franchising related Unfair Competition Case

Summary of the court proceedings in the Tupperware v. Li Xiangrong case

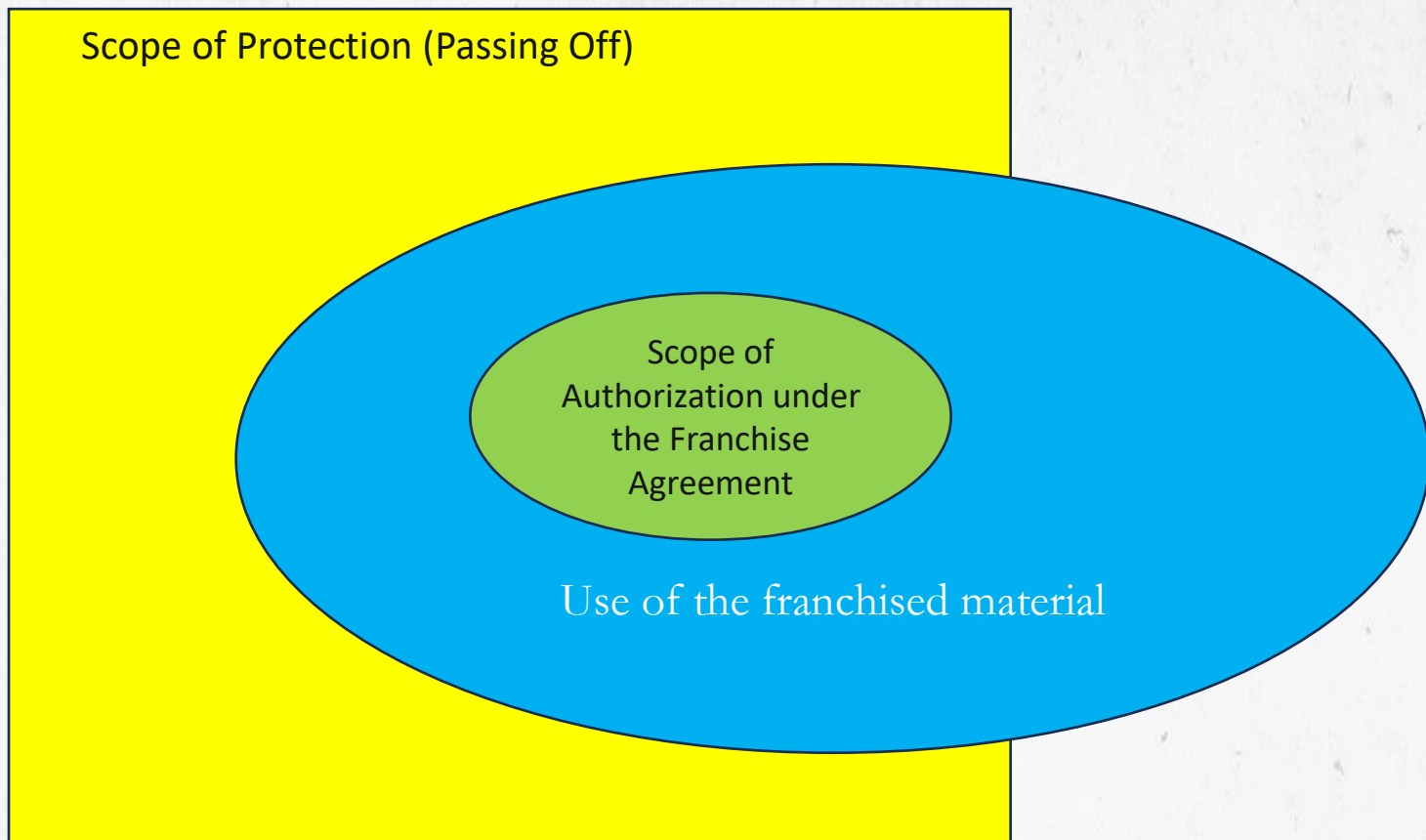
- **Initial Lawsuit (2021):** Tupperware (China) initiated legal action against Li Xiangrong in the Xi'an Intermediate People's Court.
- **First-Instance Verdict (April 20, 2022):** The court found Li Xiangrong liable for infringement and unfair competition.
- **Court Order:**
 - **Cessation of Infringing Activities:** Li Xiangrong was ordered to immediately cease all unfair competitive activities against Tupperware (China) upon the judgment's finalization.
 - **Monetary Damages:** Li Xiangrong was ordered to pay 60,000 yuan (approximately \$8,600 USD as of October 26, 2023) in compensation for economic losses.
- **Rejection of Joint Liability:** The court did *not* find Ysuper (the competing brand) jointly liable with Li Xiangrong for the infringement.
- **Appeal:** Both parties subsequently appealed the verdict to the Shaanxi Higher People's Court.

Franchising related Unfair Competition Case

- **Appeal Ruling (November 7, 2022):** The Shaanxi Higher People's Court rejected Li Xiangrong's and Ysuper's appeals, upholding the original verdict.
- **Expanded Liability for Ysuper:** Crucially, the appellate court *added* a finding of joint liability against Ysuper. The court determined that Ysuper, knowing Li Xiangrong was a Tupperware franchisee, collaborated with him in a way that caused consumer confusion (selling competing products in a Tupperware store, using Tupperware branding and marketing). This active participation led to the finding of joint responsibility for the infringement.
- **Retrial Request (January 2023):** Ysuper filed a request for a retrial with the Shaanxi Higher People's Court.
- **Retrial Denial (July 2023):** The Shaanxi Higher People's Court rejected Ysuper's retrial request.
- **Final Outcome:** Tupperware achieved a complete victory after the three court instances (first instance, appeal, and retrial). The court found both Li Xiangrong and Ysuper liable for the unfair competition.
- This final decision demonstrates the court's broader interpretation of liability, extending it to Ysuper for their role in facilitating the infringing behavior. The rejection of the retrial request solidified Tupperware's victory.

Franchising related Unfair Competition Case

Summary and Consideration



Franchising related Unfair Competition Case

Considerations

- Does selling of non-franchise brand products within a franchise store constitute confusion and unfair competition?
- Direct Confusion (Source Confusion) vs. Indirect Confusion (Association Confusion)
- Initial Confusion vs. Subsequent Confusion:
- The *Dazhong Banchang* Case 大众搬场案 (2007)
- Characteristics of Franchising and Commercial Practices



Questions and Thoughts: Initial Confusion

- Grotrian, Helfferich, Schults., Th. Steinweg Nachf. v Steinway & Sons

On appeal, 2nd Circuit Judge [W. H. Timbers](#) confirmed the opinion of Judge [L. F. MacMahon](#) that “misled into an initial interest, a **potential Steinway buyer may satisfy himself that the less expensive Grotrian-Steinweg is at least as good, if not better, than a Steinway.**” (第二巡回法庭：初始利益混淆，潜在买家会认为更加便宜的格鲁-斯坦维格**Grotrian-Steinweg**的产品至少与斯坦威相似的品质，如果不是更好的品质。)

The Appellate Court, however, recognized the likelihood of confusion **may not exist at the time of purchase**, because **those who buy expensive pianos can be considered to be well informed**. Instead, the Court held that actual or potential confusion at the time of purchase did not need to be demonstrated in this case. **上诉法院：可能不会混淆，因为购买昂贵钢琴产品时其已经充分了解信息。**

The motivation behind that decision was that “**the Grotrian-Steinweg name would attract potential customers based on the reputation built up by Steinway in [the United States] for many years**”. The Court concluded that Grotrian was attempting to increase their sales based on the strength of the name of “Steinway” and that “such *initial confusion* works an injury to Steinway”. (上诉法院：在实际购买时并未发生混淆，但是斯坦威的名称可以基于其商誉吸引潜在消费者，因此产生对斯坦威的伤害。)

- "Public Moving v. Baidu Case (2008, Shanghai No. 2 Intermediate Court, Shanghai High Court)
Bidding Ranking Services

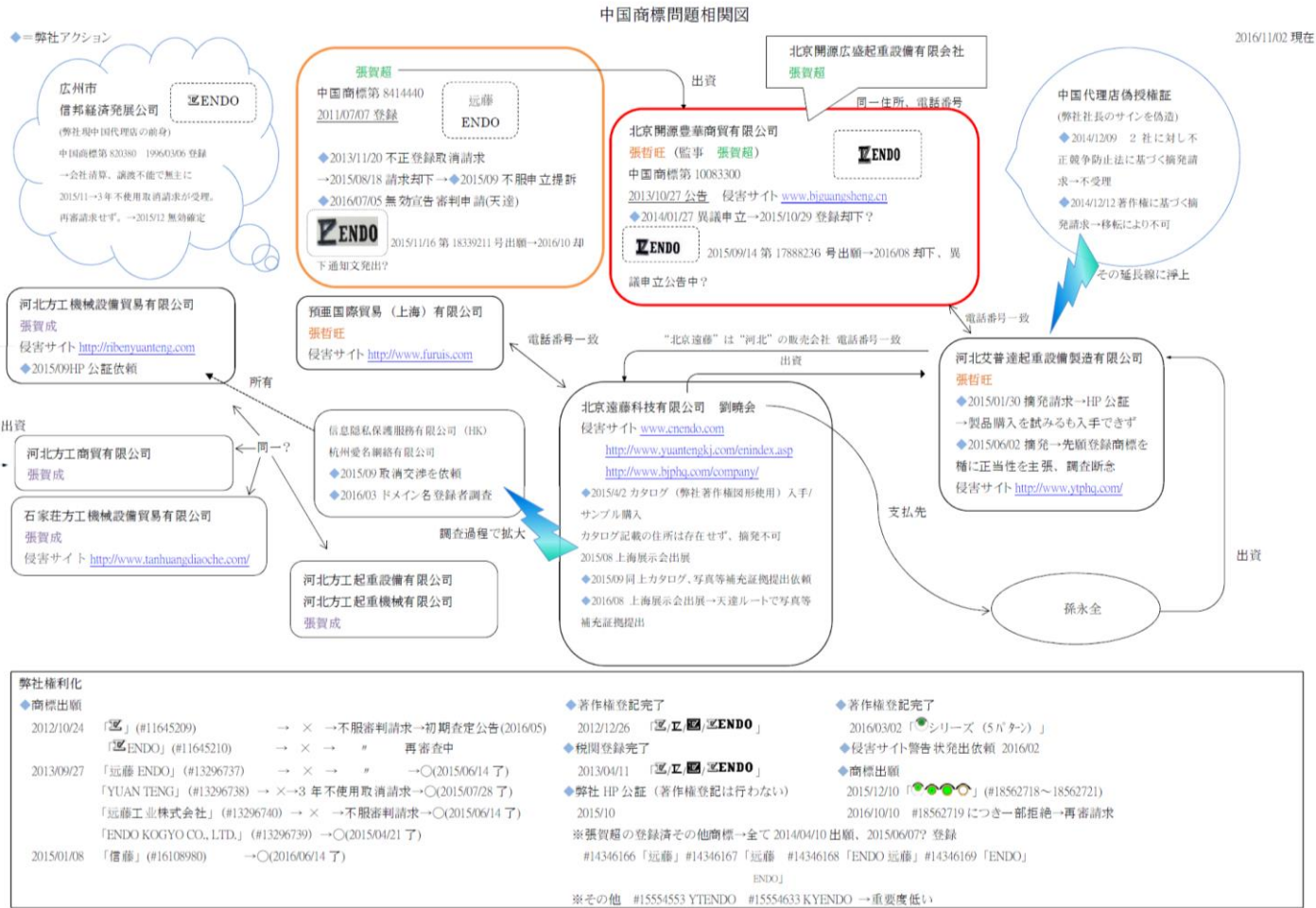
Franchising related Unfair Competition Case

Questions and Thoughts: Issues of Joint Liability

- Do manufacturers of infringing products (licensors of infringing products) constitute joint infringement?
- Four Overlap
Presumption of Subjective Awareness, Knowing Awareness
- Joint Fault Does Not Equal Joint Intent
 - Joint Intent
 - Joint Negligence
 - Intentional + Negligent

Trade dress Related Unfair Competition

ENDO Kogyo v. Zhang hechao and Fanggong

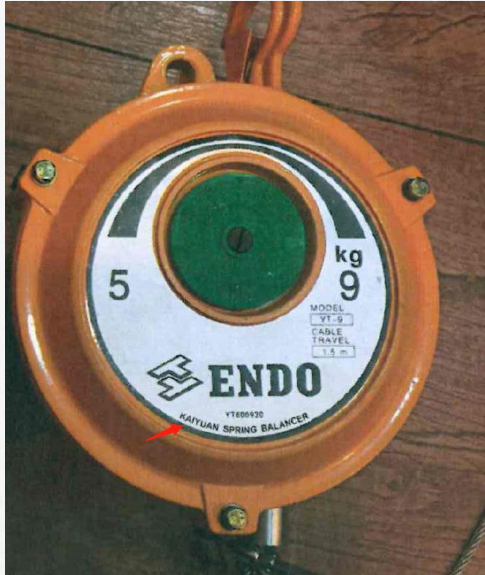


Trade dress Related Unfair Competition

| | | | | | | | | |
|----------------|---|----------------|-----------------------|----------------------------------|-------------------------|-------------------------|-------------------|----------------------------------|
| 1 [↵] |  | 7 [↵] | 17888236 [↵] | 北京开源丰华商 贸有限公司 [↵] | 2015-09-14 [↵] | / [↵] | 0734 [↵] | 千斤顶(机器) [↵] |
| 2 [↵] |  | 7 [↵] | 10083300 [↵] | 北京开源丰华商 贸有限公司 [↵] | 2011-10-19 [↵] | / [↵] | / [↵] | / [↵] |
| 3 [↵] | ENDO [↵] | 7 [↵] | 29101052 [↵] | 张贺超 [↵] | 2018-02-02 [↵] | / [↵] | / [↵] | / [↵] |
| 4 [↵] | ENDO [↵] | 7 [↵] | 14346169 [↵] | 张贺超 [↵] | 2014-04-10 [↵] | 2015-06-07 [↵] | / [↵] | / [↵] |
| 5 [↵] |  | 7 [↵] | 18339211 [↵] | 张贺超 [↵] | 2015-11-16 [↵] | / [↵] | 0734 [↵] | 千斤顶(机器);运输机 (机器) [↵] |
| 6 [↵] | ENDO远藤 [↵] | 7 [↵] | 14346168 [↵] | 张贺超 [↵] | 2014-04-10 [↵] | 2015-06-07 [↵] | / [↵] | / [↵] |
| 7 [↵] | 远藤 ENDO [↵] | 7 [↵] | 8414440 [↵] | 张贺超 [↵] | 2010-06-23 [↵] | 2011-07-07 [↵] | / [↵] | / [↵] |

All of the bad faith registrations are invalidated via invalidation proceeding or ensuing administrative litigation

Trade dress Related Unfair Competition



Trade dress Related Unfair Competition

- Article 6, Item (2) of the Anti-Unfair Competition Law provides that operators shall not use identical or similar marks to those of others with a certain influence on commodity packaging, decoration, etc., in a way that may cause the public to mistake them for someone else's goods or believe that there is a specific connection with others.
- According to Article 3 of the former State Administration for Industry and Commerce's "Several Provisions on Prohibiting Unfair Competition Behaviors of Imitating the Unique Names, Packaging, and Decoration of Famous Goods," the unique decoration of famous goods refers to the text, patterns, colors, and their arrangements and combinations added to the goods or their packaging for the purpose of identifying and beautifying the goods.
- In Guiding Case No. 47 of the Supreme People's Court, known as the "Ferrero Case" ((2006) Min San Ti Zi No. 3), the Supreme People's Court held that the packaging, including containers for holding or protecting goods, as well as the text, patterns, colors, and their arrangements and combinations added to the goods or their packaging, constitute decorations that are protected under the Anti-Unfair Competition Law when they can distinguish the source of the goods



Trade dress Related Unfair Competition

- In the “Chen Guang Pen” case ((2010) Min Ti Zi No. 16) adjudicated by the Supreme People's Court, it was further held that, generally speaking, any decoration that serves to beautify the goods and is externally visible falls within the scope of commercial decoration (“trade-dress”). In terms of scope, commodity decorations can generally be divided into two types: one type is text and pattern decoration, which refers to the text, patterns, colors, and their arrangements and combinations that are external to the goods; the other type is shape and structure decoration, which pertains to the overall or partial appearance structure of the goods themselves that is internal but has decorative functions.
- In summary, the decorations of commodities with a certain influence that are protected under the Anti-Unfair Competition Law include not only the text, patterns, colors, and their arrangements and combinations that are external to the goods but also the overall or partial appearance structures of the goods themselves that serve a decorative purpose.

- Distinctiveness
- Non-functionality



Trade dress Related Unfair Competition

| Trade Dress | 形状、构造 | 文字、图案、色彩及其组合 |
|--------------------------------|-------|--------------|
| Packaging, Container | V | V |
| Main body | V | V |
| Decoration in Service industry | | V |

Trade dress Related Unfair Competition



(小规格弹簧平衡器)




(高规格弹簧平衡器)










- (1) **Packaging Decoration of Small-Sized Spring Balancers:** The overall shape of the balancer is round, and it has attached text, patterns, colors, and their arrangements, including: an orange-colored shell, a white faceplate, with large black numbers prominently displayed at the top of the faceplate to indicate the weight capacity of the balancer; a green dot in the center of the faceplate with a yellow ring surrounding it; below the faceplate is the plaintiff's "I-beam" series artistic work and the English logo "ENDO," with a large font size.
- (2) **Packaging Decoration of High-Specification Spring Balancers:** The overall shape of the balancer is also round, with attached text, patterns, colors, and their arrangements, including: an orange-colored shell, a white faceplate, with a black arc at the top of the faceplate, which has black numbers on both sides to indicate the weight capacity of the balancer; below the arc is a green circle with a black dot in the center; below the green circle is the plaintiff's "I-beam" series artistic work, and at the bottom of the faceplate is the plaintiff's English logo "ENDO."
- The packaging decoration of the plaintiff's "Endo/ENDO" brand spring balancer products is uniquely created by the plaintiff and does not belong to any existing designs or common design techniques within the industry, demonstrating strong inherent distinctiveness. Additionally, through more than thirty years of practical use and promotional activities, this brand has gained high recognition and influence among the relevant public, establishing a stable association with the plaintiff and serving to indicate the source of the goods, constituting a decoration of goods with a certain influence.

Trade dress Related Unfair Competition



Filing of case : 2019/1 Judgement of first instance: 2021/11 Final Judgement 2022/10

一、本判决生效之日起，被告张哲旺、被告翟月芳立即停止侵害原告远藤工业株式会社对涉案美术作品（“”、“”、“”、“”、“”、“”、“”、“”、“”）

享有的著作权的行为（立即停止销售使用涉案美术作品的产品，停止在相关网站上使用相关美术作品）；



二、本判决生效之日起，被告河北方工商贸有限公司立即停止侵害原告远藤工业株式会社对涉案美术作品（“”、“”、“”、“”、“”、“”、“”、“”、“”）享有的著作权的行为（立即停止销售带有涉案美术作品的产品）；

三、本判决生效之日起，被告张哲旺、被告翟月芳立即停止使用原告远藤工业株式会社（ENDOKOGYO CO.LTD）及“ENDO”、“远藤/ENDO”字号；

四、本判决生效之日起，被告张哲旺、被告翟月芳立即停止销售与原告远藤株式会社涉案产品包装装潢（“”、“”）相同或近似的弹簧平衡器产品并立即停止涉案虚假宣传行为；

- Cease to use the artwork
- Cease to use the tradename
- Cease the use of trade dress
- Cease of false advertisement

Trade dress Related Unfair Competition

五、本判决生效之日起，被告河北方工商贸有限公司立即停止销售与原告远藤株式会社涉案产品包装装潢（“”、“”）相同或近似的弹簧平衡器产品；

六、本判决生效之日起7日内，被告张哲旺、被告翟月芳连带赔偿原告远藤株式会社经济损失及维权合理支出300000元；

七、本判决生效之日起7日内，被告河北方工商贸有限公司赔偿原告远藤株式会社经济损失及维权合理支出80000元；

- Compensation of CNY 300K
- Compensation for reasonable cost of CNY 80K

| Law | Right Basis | Whether registration is pre-requisite | Term of Protection | Scope and Characteristic of Protection | Characteristic | Legal liability |
|-----------------------------|------------------|---|--------------------|---|--|--------------------------|
| Trademark Law | Trade mark Right | Yes | 10Ys and renewable | <p>Article 57 Any of the following acts shall be deemed as infringement of exclusive rights to use registered trademarks: (1) use of a trademark identical to a registered trademark on the same type of commodities without authorization by the trademark registrant; (2) use of a trademark similar to a registered trademark on identical goods without authorization from the trademark registrant, or use of a trademark identical or similar to the registered trademark on similar goods which easily causes confusion; (3) distribution of goods which infringe upon exclusive rights to use registered trademarks; (4) forgery or unauthorized manufacture of labels of other's registered trademark or sale of forged or unauthorized labels of other's registered trademark; (5) change of a registered trademark without the consent of the trademark registrant, and sale of commodities bearing the changed trademark in the market; (6) intentionally facilitating infringement of other's exclusive rights to use trademarks, assisting others in implementation of infringement of exclusive rights to use trademarks; or (7) causing harm to other's exclusive rights to use registered trademarks.</p> | Identical or similar goods-Nice Classification (cross-class protection only for well-known mark) | Civil and administrative |
| Patent Law | Design Patent | Yes | 15Y/not renewable | Following the grant of design patent rights, no organisation or individual shall implement the patent without authorization from the patentee, i.e. shall not manufacture, offer to sell, sell or import the design patented products for manufacturing and business purposes. | Identical or similar products | Civil and administrative |
| Anti-Unfair Competition Law | Trade dress | No | No limitation | <p>Article 6 Business operators shall not commit the following acts to mislead others to misidentify their goods as others' goods or to associate their goods with others: (1) unauthorized use of signs which are identical or similar to the name, packaging, decoration etc. of other's goods that are influential; (2) unauthorized use of other's influential enterprise name (including abbreviation, brand name etc.), social organization name (including abbreviation etc.) and name of individual (including pen name, stage name, translated name etc.); (3) unauthorized use of main part of other's domain name, website name, web page etc. that are influential; or (4) any other acts which can mislead others to misidentify their goods as others' goods or to associate their goods with others.</p> | Identical or similar goods(emphasis on competition order and flexible in restriction of classes than trademark rights) | Civil and administrative |
| Copyright Law | Copyright | No (recordation is available and useful in legal actions) | Life+50 years | <p>Article 53 Persons who have committed any of the following infringing acts shall bear civil liability stipulated in Article 52 hereof as the case may be; where the infringing act also harms public interest, the competent copyright authority shall order the persons to stop the infringing act and give them a warning, confiscate illegal income, confiscate and render innocuous destruction of the infringing replicas and materials, tools, equipment, etc. used mainly for manufacturing of the infringing replicas; where the illegal turnover is 50,000 yuan or more, a fine ranging from one to five times the illegal turnover may be imposed on them; where there is no illegal turnover or the illegal turnover is difficult to compute or is less than 50,000 yuan, a fine of not more than 250,000 yuan may be concurrently imposed on them; if the case constitutes a criminal offence, criminal liability shall be pursued in accordance with the law: (1) reproduction, distribution, performance, screening, broadcasting, compilation or dissemination to the public through information network of a work without the consent of the copyright holder, unless otherwise stipulated in this Law; (3) reproduction or distribution of an audio or video recording of a performance or dissemination to the public through information network of a performance without the consent of the performer, unless otherwise stipulated in this Law; (4) reproduction or distribution of an audio or video recording or dissemination to the public through information network of an audio or video recording without the consent of the producer, unless otherwise stipulated in this Law;</p> | Cross-class protection theoretically | Civil and administrative |

- **Dishonest and Mistrust Related Unfair Competition**
- **Article 2 of AUCL**
- Operators in their production and business activities shall adhere to the principles of voluntariness, equality, fairness, and good faith, and comply with the law and business ethics.
- The term "unfair competition behavior" as referred to in this law means the actions of operators in their production and business activities that violate the provisions of this law, disrupt the order of market competition, and harm the legitimate rights and interests of other operators or consumers.
- **Article 3 of Judicial interpretation of AUCL**
- Behavior norms that are widely followed and recognized in specific business sectors may be recognized by the people's courts as 'business ethics' as stipulated in Article 2 of the Anti-Unfair Competition Law. The people's courts shall combine the specific circumstances of the case and comprehensively consider factors such as industry rules or commercial practices, the subjective state of the operator, the willingness of the trading counterpart, the impact on consumer rights, the order of market competition, and social public interests, in order to judge whether the operator has violated business ethics. When determining whether an operator has violated business ethics, the people's courts may refer to the industry guidelines, technical standards, self-discipline agreements, and other regulations established by industry regulatory authorities, industry associations, or self-regulatory organizations."

**2016.04.13 Guidelines
for the Trial
of Internet
Intellectual
Property
Cases by the
Beijing High
People's
Court**

Article 35

If the defendant engages in any of the following behaviors through information networks, which are sufficient to harm the legitimate rights and interests of the plaintiff, disrupt normal market operations, violate the principles of fair competition, and breach the principles of good faith and recognized commercial ethics, such behaviors may be deemed as unfair competition acts as defined in Article 2 of the Anti-Unfair Competition Law:

- Using, without authorization and without legitimate reasoning, website content that could increase the plaintiff's transaction opportunities and competitive advantages, and is sufficient to replace consumers' access to the original website;
- Using, without authorization and without legitimate reasoning, commercial identifiers of the plaintiff that are not stipulated in Article 5 of the Anti-Unfair Competition Law, leading to consumer misidentification;
- Modifying, without authorization and without legitimate reasoning, the drop-down suggestion terms in the plaintiff's search bar, which directly affects the plaintiff's transaction opportunities;
- Inserting advertisements on the interface, without authorization and without legitimate reasoning, utilizing the traffic of the plaintiff's website;
- Interrupting, blocking, or otherwise disrupting the operating activities of the plaintiff without legitimate reasoning;
- Other circumstances that constitute a case as specified in Article 2 of the Anti-Unfair Competition Law.

2020.04.12

Guidelines for the Trial of Civil Dispute Cases Involving Online Games related Intellectual Property Rights cases (Trial)

Article 28 [Application Rules for General Provisions of the Anti-Unfair Competition Law]

When hearing cases involving unfair competition disputes in online games, if the plaintiff claims that the defendant's actions violate Article 2 of the Anti-Unfair Competition Law, the court should focus on examining whether the accused behavior violates the principles of voluntariness, equality, fairness, and good faith, as well as business ethics, disrupts the competitive order of the online gaming market, and damages the legitimate rights and interests of the plaintiff.

In determining whether there has been a violation of business ethics, the court should refer to the business ethics that are commonly recognized and accepted by operators in the online gaming and related industries, in accordance with the legislative purpose outlined in Article 1 of the Anti-Unfair Competition Law. The following factors can be referenced to determine business ethics:

- Industry practices of the online gaming and related industries;
- Professional norms or self-regulatory agreements established by industry associations or self-regulatory organizations;
- Technical standards of the online gaming and related industries;
- Other industry practices, professional norms, or self-regulatory agreements that have reference value.

Article 30 [Unfair Competition Behaviors Involving Game Live Streaming or Recording]

If the defendant engages in any of the following live streaming or recording activities of online games without permission and without legitimate reasoning, which harms the legitimate rights and interests of the plaintiff, disrupts normal competitive order, violates the principles of fair competition and integrity, and breaches business ethics, such behaviors may be deemed unfair competition as defined in Article 2 of the Anti-Unfair Competition Law:

- Organizing or providing live streaming or recording of online games for commercial profit, improperly seizing the competitive advantage of the plaintiff, and affecting the plaintiff's transaction opportunities and market share;
- Live streaming or recording of electronic sports events organized by the plaintiff, or unlawfully retransmitting live programs provided by the plaintiff, thereby occupying the plaintiff's market share and causing the plaintiff to suffer economic losses;
- Disrupting, interrupting, or otherwise improperly hindering or damaging the plaintiff's gaming live streaming or recording activities.

Characteristics of AUCL

- **Comprehensiveness and Supplementation**
- **Innovativeness, Forward-looking, and Transitional**
- This section refers to cases involving unfair competition in the internet context, such as "choose one of two" practices by e-commerce platforms, "fake traffic generation" online, and the blocking of browser advertisements. It also discusses the adjudication of cases related to voice command instructions for intelligent products, aiming to sanction malicious confusion and misleading behaviors in the artificial intelligence market. Additionally, it covers cases involving group control software and improper competition regarding data rights, where a reasonable division of data rights and boundaries is established to protect user data rights and privacy.
- There is a strong emphasis on severely sanctioning behaviors such as excessive collection and use of personal information, implementing price discrimination and pricing fraud through algorithms, and handling cases related to data rights confirmation, transactions, services, and privacy protection in a proper manner. The goal is to explore and improve the rules for protecting data intellectual property rights, guide operators in creating healthy competition through technological innovation, purify the market environment, stimulate market vitality, and standardize market order.
- **Principled**
- **Behavioral**

Significance of the Anti-Unfair Competition Law for Enterprises (Rights Holders):

1. Supplementation for Insufficient Protection of Exclusive Rights

The law provides additional protection beyond patents, trademarks, and copyrights, serving as a flexible means of enforcement (behavioral law).

2. Protection of Special Subject Matter

The law includes the protection of trade secrets and trade dress, etc.

3. Infringement on Data and other New Technological Fields

The law addresses violations related to data and other new technologies, including the internet, as outlined in Article 12 and Article 2.

Backgrounds

- In December of 2022, the Central Committee of the Communist Party of China and the State Council issued the Opinions on Building Basic Systems for Data to Better Give Full Play to the Role of Data Resources (**Twenty Data Measures**), proposing twenty measures for the establishment of a property system, a circulation and trading system, an income distribution system, and a governance system. The Twenty Data Measures aim at fully leveraging China's abundant data resources and rich application scenarios, tapping into the potential of data resources, and shedding light on Chinese-style data governance.
- The Chinese government believes that data serves as the foundation of digitization and national development. Therefore, increasing the capacities of data elements and improving the digital economy as much as possible should ensure stronger economic growth and a competitive edge on a global level.
- First of all, working out a data property right to safeguard rights and interests of users. Secondly, **creating an efficient and protected data circulation and transportation system**, allowing for a better cross-border use of data and a safer transfer of data. Thirdly, the adjustment of the distribution system for data elements revenue, so that more people can benefit from the financial advantages. Lastly, building a multi-party governance model which clarifies obligations and rights and improves the digital market.

Data as a Emerging Type of IP in China

- On 12 May 2023, the Beijing Municipal Intellectual Property Office issued the ‘Beijing Municipality Measures for the Registration and Administration of Data Intellectual Property (Trial) (Draft for Comments)’ (the Beijing Measures), which aim to regulate data intellectual property registration within the administrative jurisdiction of **Beijing**. Following **Shenzhen** City of Guangdong Province, **Zhejiang** province and the **Jiangsu** province, Beijing is another region to have enacted data intellectual property registration-related legal framework.
- The Beijing Measures not only respond to the requirements in the ‘Opinions on Constructing a Basic System of Data and Better Utilizing Data Factors’ (the Twenty Data Policies) issued by the State Council in December 2022, which called for the establishment of a data property rights system and the exploration of new methods for data property rights registration, but also represent Beijing’s efforts as a **pilot area for national data intellectual property work in exploring the implementation of the data intellectual property registration system**.

- **Coordination and administration of data intellectual property registration in Beijing**
- Hu Wenhui, the Deputy Commissioner of the China National Intellectual Property Administration (CNIPA), introduced at a press conference of the Chinese State Council Information Office: “**CNIPA currently regards data processors as the main subjects of protection and regards datasets that have undergone processing according to certain rules and are in an undisclosed state as the object for protection. Through registration, data processors are granted certain rights.**” This reflects the data property rights management and protection model promoted by the CNIPA. This model of management and protection is different from the one used in Shenzhen, where the Development and Reform Commission is the main coordinating department and established a registration system for the circulation value of data elements and dividing data property rights into three categories via the classification and confirmation of data rights.
- According to Article 4 of the Beijing Measures, the **Beijing Intellectual Property Office** is the authority responsible for the management of data intellectual property registration, which is essentially the same as in the Zhejiang and Jiangsu provinces. The fact that the management of data intellectual property in Beijing is led by the Intellectual Property Office indicates that Beijing relies on the intellectual property protection system for the management and protection of data property rights. Beijing views data processors as the main applicants for registration, and data products are included in the scope of intellectual property protection as the objects of protection.

- **Data intellectual property registration belongs to registration in terms of ownership**

The mechanism for protecting data rights and interests by confirming data intellectual property rights through the intellectual property protection system is registration in terms of their ownership.

- **The subject for registration is the data holder and processor**

Article 2 of the Beijing Measures expand the registration subject to include **data holders and processors**. Based on the characteristics of data intellectual property protection, the expansion of the registration subject directly leads to the expansion of the scope of data objects included in the registration protection. As a result, more data can be registered and traded, increasing the possibility of registration for confirming rights, as well as circulation and trade.

- **Emphasizing the commercial value of data and its undisclosed status in terms of objects of registration**

The data intellectual property registration system is established to encourage data circulation, guide data transactions and maximize and safeguard data assets. Therefore, it is of practical significance to emphasize the commercial value of registered data to guide companies in considering whether to register data with a purpose-oriented approach. In addition, many companies view their undisclosed data as their core competitive resources and invest heavily in collecting, processing and presenting this data, making it an essential data asset with high significance for rights confirmation and registration protection. This point is often confirmed by courts in judicial cases, such as the Weibo v Toutiao case. In judicial practice, the courts also tend to grant companies the right to disclose data. Therefore, **registering and confirming important data assets** in an **undisclosed state** is beneficial for companies to obtain protection and relief when facing infringement, and also for companies to benefit from data resource circulation.

Data as a Emerging Type of IP

- **Requirements for data intellectual property registration**

According to Article 9 of the Beijing Measures, data intellectual property registration requires that the data has been **certified or notarized and that there is no dispute over ownership**. The data registration authority does **not provide substantive examination of data ownership confirmation**.

- **Downplay data ownership and emphasize data usage rights**

The Beijing Measures specify that data holders and processors are the registered objects. Any data holder or user **who obtains data usage rights through legal regulations or contract agreements in various links of data circulation has the right to register data intellectual property rights**.

Based on Article 13, **the holder of the data intellectual property registration certificate** has the right to process and use the data and gain profits. In addition, Article 15 specifies that data intellectual property rights can be **traded, pledged and licensed**, and provides a registration and filing system for changes. Moreover, when the applicant unit undergoes mergers, divisions, dissolution or bankruptcy, or when the natural person applicant deceased, changes to registration can also be made. This series of measures promotes and safeguards the circulation and use of data as a property right in the market.

- **Exploring the controversial issues of the data intellectual property registration system of current concern through the Beijing Measures**
- **Issues related to the nature of data rights**
- There have long been disputes in both theory and judicial practice over the nature of data rights, which related to what kind of legal rights can be utilized to protect data resources. In practice, when data assets are infringed upon, companies usually seek judicial relief by claiming unfair competition (such as in the *Weibo Vision Technology v Chuangrui Technology* unfair competition case and the *Hantao v Baidu* unfair competition case), or by treating databases as copyrighted works or trade secrets, and filing lawsuits for copyright infringement (such as in the *Hantao v Sohu* copyright dispute case and the *Quzhou Wanlian v Zhou Huimin* trade secret infringement case) or for trade secret infringement (such as in the *Quzhou Wanlian v Jinan White Rabbit* trade secret infringement case).
- Precedents have been established where companies have successfully obtained court confirmation using the claim of unfair competition, which has been more widely applied and received greater attention from regulatory authorities. The Anti-unfair Competition Law of the People's Republic of China (Draft Amendment for Comments) released by the State Administration for Market Regulation in November 2022 establishes in Article 18 that the market regulatory department has the power to impose administrative penalties on enterprises that disclose, transfer or use other operators' business data obtained by unfair means, resulting in substantive substitution of related products and services, as a response to this issue.

Data as a Emerging Type of IP in China

Exploring the controversial issues of the data intellectual property registration system of current concern through the Beijing Measures

- Judicial relief for data rights focuses on behaviour regulation, and the establishment of data rights is often completed through effective judgments. When exploring pre-emptive **defense mechanisms** against infringement of data rights outside of the judicial process, **the Twenty Data Policies proposed a new approach to data rights identification and property registration.**

- However, the construction of data rights identification and storage registration mechanisms involves issues related to the **nature of data rights** and the **choice of protection models**, which has led to ongoing theoretical differences resulting in different legislative choices for data rights protection systems, with the main approaches being **ownership (property rights) protection, intellectual property protection, creditor protection and new rights protection.**

- This has given rise to two different approaches and directions for constructing data property rights: after the Twenty Data Policies, the **National Development and Reform Commission (NDRC) has focused on the new property rights approach**, emphasizing the rights of all participants in the entire process of data collection, acquisition, processing, use, transaction and application, and classified rights to establish registration systems suitable for each stage of circulation. This approach has led to the establishment of the **‘three rights separation’ (Ownership, Utilization and Commercialization)** of data resource ownership, data processing and use rights, and data product operation rights, which will be implemented through the January 2023 policy document ‘Accelerating the Construction of China’s Unique Basic Data System to Promote the Development Dividend of Digital Economy Shared by All People’. The Shenzhen Measures are the initial results of exploring this approach, which focused on two registration objects: data resources and data results. It confirms three types of rights, namely data resource ownership, data processing and use rights, and data product operation rights, and carries out registration for initial registrations, as well as permits, transfers, changes, cancellations, objections, etc, ultimately resulting in the issuance of data resource registration certificates, data resource licensing certificates and data product registration certificates.

- The Beijing Measures, Zhejiang Measures and Jiangsu Measures** rely on **the intellectual property protection approach** and apply the intellectual property protection model, which focuses on data processors and registers their rights, bringing data into the scope of intellectual property protection.

- **Issues related to the mechanism of examination and registration**
- When registering data property rights, there has been a long-standing controversy over whether the registering agency should conduct substantive examination or examination of forms. Currently, the registration rules in four regions all require the registering agency to conduct **formal examination** and have an obligation to review **the completeness and legality of the application materials**. In particular, the Beijing Method refers to the Copyright Law where **voluntary registration** is adopted and substantive examination is not required. Similarly, data intellectual property registration is also based on **formal examination**.
- However, the choice of registration system depends on the legislative orientation and the purpose of protecting registration rights. Data property registration aims to improve the data disclosure system and promote the flow of data and ensure the security of data transactions. Therefore, when selecting examination standards, both **transaction security and efficiency should be considered**. At the same time, considering that data products have high technical requirements, whether it is necessary to examine the authenticity of the data, the **legality of the source and the compliance of the data content and processing, and whether the examining boundaries of the registering agency will change**, still needs to be addressed by relevant laws and regulations.
- The Shenzhen Method entrusts the obligation of substantive examination to a third-party agency, referring to the 'Provisions of the Supreme People's Court on Several Issues concerning the Trial of Cases by Internet Courts', which **requires evidence to be authenticated through designated technical means or evidence preservation platforms (time stamp and blockchain tech)**. This may indicate a similar trend in the future development of substantive examination of data property rights. In terms of the legality of data sources and the compliance of data content and processing, a legal team may be used to provide examination opinions in conjunction with technical personnel.

- **Issues related to the effectiveness and function of data property rights registration**
- As mentioned earlier, the Beijing Measures emphasise granting data holders and processors intellectual property certificates similar to those given for traditional forms of intellectual property, while **downplaying data ownership and emphasising data usage rights, to protect the interests of data holders and processors in terms of using and profiting from data processing** (Article 13). Through data property registration and other measures such as extension and alteration registration, the Beijing Measures also protect the security of transactions and promote the flow and exchange of data. In many articles, the Beijing Measures encourage the development and use of data, promote the flow of data and realise the commercial value of data.
- Furthermore, according to the Beijing Measures, data property registration certificates will also be **actively used in administrative law enforcement and judicial trials in the future**, fully demonstrating their evidentiary value. This is in line with the goal and purpose of the structural separation of data property rights led by the NDRC.
- Currently, the Shenzhen Measures aim to promote the opening and flow of data and the development and utilisation of data. **Data property rights** registration certificates and licences obtained can be used in data transactions, accounting and other businesses, and in the future, data can also be used as a production factor for enterprise asset accounting and financing mortgages, as well as an important basis for dispute arbitration (Article 6 and Article 8, Clause 6).
- In **December 2022, Shenzhen city issued intellectual property data registration certificates** to the first batch of enterprises that applied for data property rights registration, including Shenzhen Qianhai Data Services Co, Ltd, and Guangdong Kunyu Shuju Technology Co, Ltd. This marks an **important step forward in the pilot work of data intellectual property registration**, which solves the problem of unclear ownership of data and improves the current situation where enterprise data resources ‘cannot be traded’ or ‘dare not be traded’. Currently, Shenzhen city and Zhejiang province have established data intellectual property registration systems, and more regions will establish similar systems in the future. Through more detailed legislation, they will actively promote the application of intellectual property registration certificates and their use in judicial evidence recognition, allowing data intellectual property certificates to be used in enterprise operations and data market transactions.
-

- **Issues related to the effectiveness and function of data property rights registration**

- Recent Judicial Practice

Shujutang v. Yinmu Judgement of Beijing IP Court

No. (2024) Jing 73 Minzhong 546

- The Beijing Intellectual Property Protection Center registers and issues the "Data Intellectual Property Registration Certificate" to the plaintiff.
- Both the Beijing Internet Court and the Beijing Intellectual Property Court held that, in the absence of contrary evidence, the "Data Intellectual Property Registration Certificate" can preliminarily prove that the registrant is the legal holder of the dataset, and the registrant has the right to assert rights over the data interests of the registered dataset.

PART 1

LAW FIRM PROFILE

TAHOTA
泰和泰

A few words on TAHOTA

2000

Founded

26

Offices

3500+

Registered
Lawyers

4500+

Professional
Staffs

PART 1

LAW FIRM PROFILE

TAHOTA
泰和泰

5

The 5th Largest
Comprehensive
Law Firm in China

ALB 2023

50

Top 50
Asian Law Firms

100

Top 100
Global Law Firms

PART 1

LAW FIRM PROFILE

TAHOOTA
泰和泰



We are one of the Top 5 law firms in China with 4300+ legal professionals and able to provide legal services in regard to Intellectual Property, Data Compliance, Dispute Resolution and Foreign Investment, etc. in China and other major jurisdictions. We are able to work in Chinese, English, Japanese, French, German and other major languages.

PART 1

LAW FIRM PROFILE

TAHOTA
泰和泰

600+

Partners

100+

PH.D
degree

1300+

Master's
degree

300+

Overseas study
and working
experience

PART 2

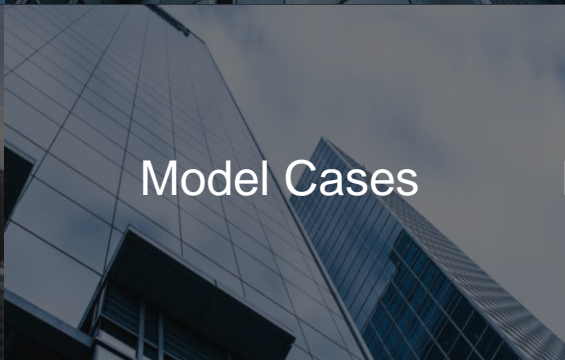
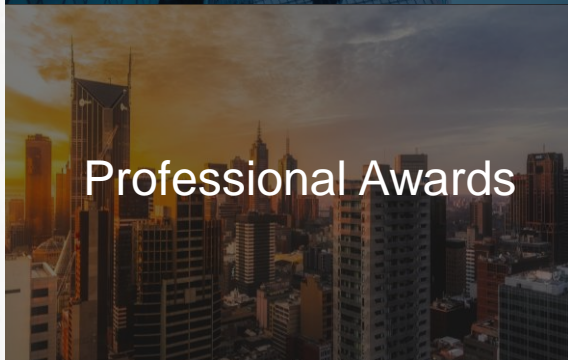
LEGAL SERVICE

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PART 2

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PART 2

LEGAL SERVICE

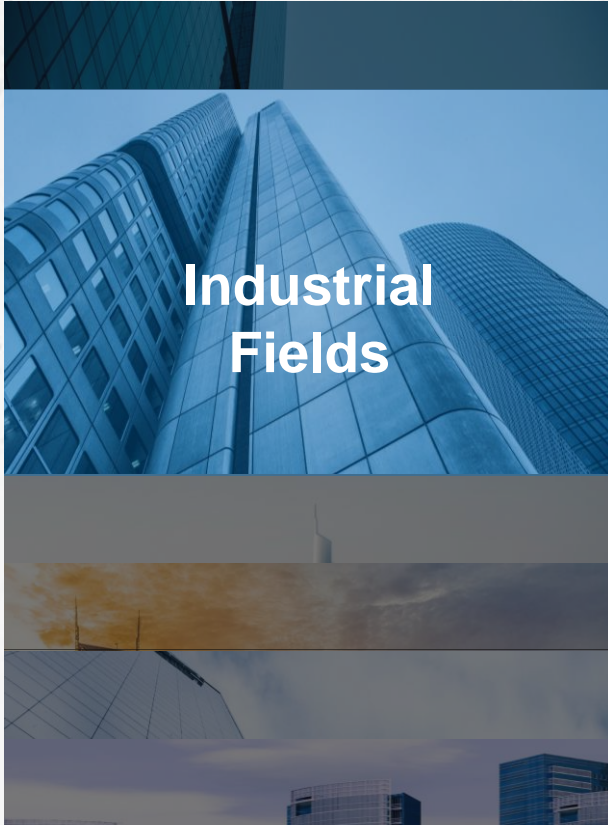


Professional Fields

- Real Estate & Construction
- Banking, Finance & Trust
- Corporate Business, M&A and Bankruptcy
- Securities Listing and Capital Markets
- **Intellectual Property**
- **Cybersecurity and Data Protection**
- Government & Public Affairs
- Human Resources & Employment
- **Foreign Investments**
- **Dispute Resolution**
- Health Care
- Maritime & Marine Affairs
- Environmental Protection
- Marriage and Family-related Wealth

PART 2

LEGAL SERVICE



Industrial Fields

- Real Estate & Construction
- Engineering Energy and Resources
- Financial Institution
- Mining
- Industry & Manufacturing
- Hotel & Catering
- Private Equity
- Agriculture & Food
- Culture & Sports
- National Defense
- Telecommunication, Media & Internet
- Transportation
- Medical Health & Medicine
- Consumer Goods & Retail

PART 2

LEGAL SERVICE

TAHOTA
泰和泰



Industrial Awards

- National Outstanding Law Firm
- American Lawyer GLOBAL 100
- ALB Top 50 Asia Pacific Law Firms
- ALB China Best Employer
- Chambers & Partners Asia Pacific Guide
- The Legal 500 Asia Pacific
- IFLR 1000 International Financial Law Review Annual List
- Asialaw Profiles Notable Law Firm
- Benchmark Litigation China-Regional Ranking
- HRTier Top Tier Employers PRC Law Firms
- IFLR 1000 International Financial Law Review China Edition
- LEGALBAND China Lwa Awards
- China Business Law Journal Best Overall Law Firms

PART 2

LEGAL SERVICE

TAHOTA
泰和泰

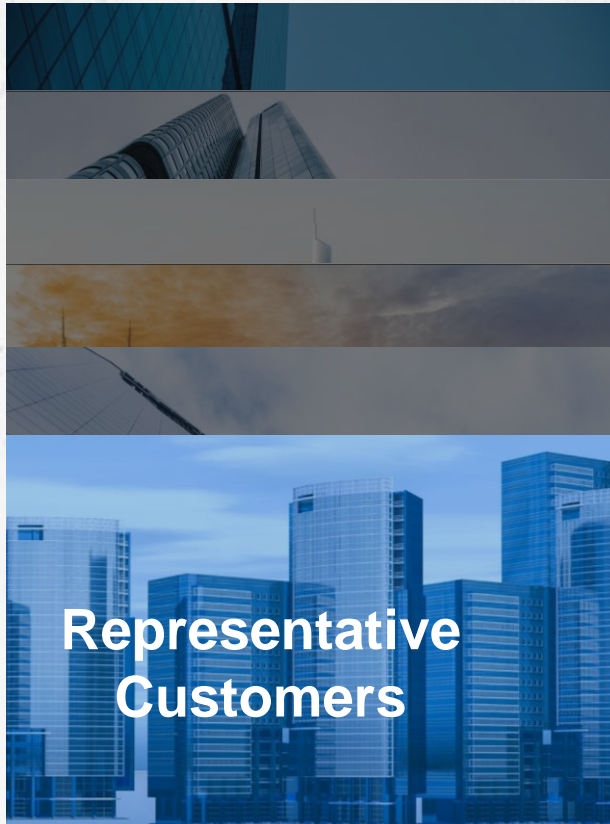


Professional Awards

- ALB Real Estate Law Firm Nominees
- ALB Intellectual Property Law Firm Ranking
- ALB Labor & Employment Law Firm Awards Nomination
- ALB Intellectual Property Law Firm Award Nomination
- CHAMBERS Outstanding Law Firm in Real Estate Law
- CHAMBERS First Place Firm in China for Corporate/Commercial Law
- CHAMBERS Highlighted in Labor Law
- CHAMBERS Asia's Leading Business Law Firms
- CHAMBERS China Medical Law - Tier 3
- China Business Law Journal Outstanding Transactional Firm of the Year
- China Business Law Journal Awards in Education, Fintech and Blockchain
- China Business Law Journal Excellence Award in Real Estate Investment and REIT Funds
- IFLR1000 Banking & Finance / Capital Markets (Equity) / Capital Markets (Bond) / Private Equity / M&A
- Corporate INTL Corporate Finance Law Firm of the Year Award
- The Legal 500 Capital Markets / Dispute Resolution / Healthcare & Life Sciences Recommended List Global Law Experts
- Global Law Experts Best Corporate Finance Law Firm of the Year in China
- Asia Law Profile Banking & Finance / Capital Markets / Labor & Employment / Real Estate / Intellectual Property / Pharmaceutical & Life Sciences

PART 2

LEGAL SERVICE



Representative Customers

- Ministry of Transport of the PRC
- Japan Tobacco International
- China Technology
- Forbidden City Museum
- Shiseido
- Import & Export Group
- China State Grid Corporation
- Advance Publishing Group
- BOC
- China Construction Group
- COFCO
- ICBC
- China Railway Construction Group
- Tsinghua University
- ABC
- Vanke Group
- Martell
- Ping An Bank
- Longhu Group
- Chivas
- Minsheng Bank
- John Deere
- Safran, France.....

Lawyers and agents specializing in trademarks, copyrights, etc.

| | | |
|--|---------------|---------------|
| Lawyers handling trademarks, copyright matters | More than 400 | More than 675 |
| Trademark agents | Around 240 | |
| Translator | Around 15 | |
| Executive staff | Around 20 | |

Lawyers and patent agents

| | | |
|-------------------------|---------------|---------------|
| Patent agents | More than 100 | More than 210 |
| Lawyers & patent agents | More than 60 | |
| Technical Engineer | More than 50 | |
| Executive staff | More than 20 | |

PART 3

REPRESENTATIVE CASES

TAHOTA 
泰和泰

商标业务 Trademark Practice

1、商标保护策略咨询;

Consultation of trademark protection strategy;

2、商标保护战略制定;

Development of trademark protection strategy;

3、商标申请注册前查询;

Before registration inquiry of trademark application;

4、商标国内及国际注册申请;

Application for domestic and international trademark registration;

5、商标异议、驳回复审、无效和撤销;

Trademark opposition, appeal, invalidation;

6、商标变更、补正和续展;

Change of trademark registration information, supplementary

documents and renewals;

7、商标转让与使用许可;

Trademark assignment and license;

8、驰名商标的申请;

Application for the "Well-Known Trademark";

9、代理商标行政和刑事查处;

administrative and criminal raids;

10、代理商标侵权民事、刑事及行政诉讼

Civil and Criminal litigation regarding trademark infringement; as well as administrative proceedings;

11、其他应客户要求而进行的商标事务。

Other trademark-related matters.

版权业务 Copyright Practice

1、版权咨询：包括版权授权、版权管理、出版合约、纠纷处理、调查取证等；

Copyright inquiry: including copyright authorization, copyright management, publication contract, dispute resolution, investigation and evidence collection;

2、版权登记业务：(1)计算机软件著作权登记；(2)计算机软件著作权转让或专有许可合同登记；(3)计算机软件著作权质权登记；(4)作品著作权登记；(5)著作权合同备案登记及著作权质押合同登记；

Copyright registration: (1) computer software copyright registration; (2) transfer of computer software copyright or registration of exclusive license contract; (3) computer software copyright pledge registration; (4) Registration of copyright of works; (5) other copyright contract registration;

3、调查取证：帮助客户在第一时间取得合法、有效的证据，为客户制止侵权、维护自身合法权益打好基础

Copyright infringement investigation and evidence collection services.

4、纠纷调处谈判：在法律允许的范围内，以解决纠纷为出发点，通过灵活的方式进行调处，促使双方自愿、公平地达成和解；

Dispute mediation negotiations

5、民事、刑事及行政诉讼代理：针对纠纷类型及案件具体情况，为客户分析案情、确定合理的案件处理方案，并代理客户以协商、行政投诉或诉讼的方式解决纠纷。

Civil and criminal litigation regarding copyright infringement; as well as administrative proceedings.

专利业务 Patent Practice

1、资质：国家知识产权局颁发的专利代理资质

Patent Agent License issued by SIPO

2、专业人员：具有专利代理人资格

Professionals: attorneys with patent agent licenses

3、业务范围 Services Area

3.1 专利申请类业务 Patent Prosecution

◆ 专利申请前检索，及对检索结果进行分析、评价 Pre-application search, and analysis, comment of the search result;

◆ 专利申请文件的撰写及递交 Patent application;

◆ 答复审查意见 Response to Office Actions;

◆ 专利复审 Patent reexamination

◆ 专利年费缴纳及时限监控 Payment of annual patent fee and supervision of the expiry date;

◆ PCT国际申请以及进入国家阶段 PCT International application and national phase

3.2 专利无效宣告程序及其后续的行政诉讼

Patent invalidation declaration and subsequent administrative proceedings

3.3 专利侵权诉讼类业务 Patent infringement

◆ 专利侵权分析，侵权调查、取证、谈判

Patent infringement analysis, infringement investigations, forensics, negotiations;

◆ 专利侵权民事及行政诉讼；

Civil and administrative litigation regarding patent infringement

3.4 其他专利相关类业务

◆ 专利保护策略咨询；

Consultation of patent protection strategy;

◆ 专利申请权、专利权转让或实施许可合同谈判 Patent applications, patent assignment or license contract negotiations;

◆ 担任企业专利法律顾问；

Commissioned as patent legal adviser;

Cybersecurity and Data Protection Compliance

• Data Transfer Cross-border Compliance matters

- PI cross-border transfer

| 英彼克 (IPCO) |

网络安全及数据合规风险评估重点问题摸底问卷

**IPCO Cybersecurity and Data Compliance Risk Assessment
Key-Issues Mapping Questionnaire**

←

一、企业基本情况⁴²

(一) 组织架构和业务基本情况⁴²

1. → 请提供公司及其所有境内下属单位的股权结构图，以及公司及下属单位的业务描述。⁴²
2. → 请提供公司章程、公司董事会议事规则、公司董事会风险合规委员会议事规则(如有)。⁴²
3. → 请说明截至目前公司是否收到关于公司被认定为“关键信息基础设施的运营者”的通知。⁴²

I. Basic situation of the enterprise⁴²

(I) Organizational structure and basic business information⁴²

1. Please provide a diagram of the shareholding structure of the company and all its domestic subsidiaries, as well as a business description of the company and its subsidiaries.⁴²
2. Please provide the Articles of Association, Rules of Procedure of the Board of Directors of the Company, Rules of Procedure of the Risk Compliance Committee of the Board of Directors of the Company (if any).⁴²
3. Please indicate whether the company has received any notification that it has been

| 英彼克 (IPCO) 数据安全及跨境传输风险评估 |

调查及材料准备⁴²

**IPCO Data Security Management and Cross-border Transmission
Risk Assessment Investigation and Material Preparation⁴²**

←

一、请 IPCO 参考以下问题，提供信息及材料，协助我们了解企业作为数据处理者的相关信息：⁴²

I. IPCO is requested to refer to the following issues and provide information and materials to assist us in understanding information about the enterprise as a data processor:⁴²

1. Information on the data processor (materials related to basic information on the enterprise and business information)⁴²

| | | | |
|------------------------|---------------|---------------------|---------------|
| 单位名称 ⁴² | ⁴² | 单位性质 ⁴² | ⁴² |
| 单位注册地 ⁴² | ⁴² | 办公所在地 ⁴² | ⁴² |
| 有效期 ⁴² | ⁴² | 邮政编码 ⁴² | ⁴² |
| 注册资金 ⁴² | ⁴² | 员工数量 ⁴² | ⁴² |
| 主营业务 ⁴² | ⁴² | | ⁴² |
| 统一社会信用代码 ⁴² | ⁴² | | ⁴² |

←

| | | | |
|----------------------------|---------------|----------------------------|---------------|
| Name of unit ⁴² | ⁴² | Type of unit ⁴² | ⁴² |
|----------------------------|---------------|----------------------------|---------------|

PART 4

TRADEMARK CASES

SERVICE MODE

TAHOTA 
泰和泰

PART 5 | Personnel introduction

Dr. Shoutai Cheng

Chief Partner

Phd in Law

Vice President of All China Lawyers

Association

Arbitrator of China International Economic and Trade Arbitration
Commission

CHAMBERS Outstanding Commercial Lawyer

ALB Top 10 Most Influential Lawyers in China



Mr. Zhijun Shen

Director of Tahota Beijing Office

University of Northumbria at Newcastle

LLM with distinction of English Law

Member of the Legal Committee of DAB, Chaoyang District

Deputy Director of Competition Law, Beijing Lawyers Association

Member of Beijing Competition and Anti-monopoly Committee

Member of the Intellectual Property Committee of the All-China
Lawyers Association



Director of International Business Department, Head of Digital Economy Law Center

PART 5 | Personnel introduction

TAHOTA
泰和泰



Education background

B.A., China Foreign Affairs University
LL.M, China Foreign Affairs University
LL.M, Duke University, United States

Mr. Feng is a reputable IP and data law expert with substantial experience on intellectual property law, data protection law and anti-trust law with reputable international law firm and Chinese law firms, focusing on IP litigation and enforcement, trademark and patent portfolio management, as well as data protection and cyber security related legal practice. Mr. Feng has represented numerous foreign clients from US, EU and Japan at various levels of courts as well as administrative organs in China. Mr. Feng is particularly experienced in addressing clients' commercial needs in the areas of IP litigation, arbitration and prosecution, including patent, copyright, trademark, and domain names, unfair competition, trade secrets. He has also been involved in IP transactional work, including the drafting, negotiation and enforcement of IP assignment or licensing agreements. Besides, he also represented a number of multinationals in dealing with legal matters in relation to cyber security, personal information and data protection.

EU Chamber of Commerce, Intellectual Property Expert
Guiding Case Research Center of Supreme People's Court of China, Consultant Expert
China Intellectual Property Law Association, Standing Committee Member
International Trademark Association Trademark Office Practice Committee, Expert
Beijing Bar Association, Member of Antitrust and Unfair Competition Law Committee

Charles FENG
Tahota (Beijing) Law Firm
Senior Partner

Email: charlesfeng@tahota.com;
Fchao7847@hotmail.com;
Cell: 86-13910336970

Working Language:
Chinese/English/Japanese

Director of International Business Department, Head of Digital Economy Law Center

PART 5 | Personnel introduction



Charles FENG
Tahota (Beijing) Law Firm
Senior Partner

Email: charlesfeng@tahota.com;
Fchao7847@hotmail.com;

Cell: 86-13910336970

Working Language:
Chinese/English/Japanese

- *Chambers and Partners* Listed Top IP Lawyer (2024)
- *Managing IP*, IP Stars (2022-2024)
- *Asia IP*, Top 100 China IP Law expert. (2020-2024)
- *World Trademark Review*, Top trademark litigation lawyer (*Silver*) (2020-2024)
- *World Trademark Review*, Top trademark non-litigation lawyer (*Bronze*) (2020-2024)
- *Legal 500*, Listed IP lawyer (2022-2024)
- *Asia Business Law*, A-List Lawyer (2024)
- *EXTERRO*, Top 20 Data & Privacy Lawyer (2022)
- *LEGALBAND*, Excellent Cyber Security and Data Protection lawyer (2018 -2024)
- *LEGALBAND*, Excellent IP litigation lawyer and Excellent IP Non-Litigation Lawyer, (2020-2024)
- *Asian Legal Business*, Top 15 China IP Lawyer (2015).
- *LEGALBAND*, Top 15 IP Versatile Practitioners (2021)
- *China IP Forum*, Top Antitrust Lawyer (2019)

We are one of the Top 5 law firms in China with 4300+ legal professionals and able to provide legal services in regard to Intellectual Property, Data Compliance, Dispute Resolution and Foreign Investment, etc. in China and other major jurisdictions. We are able to work in Chinese, English, Japanese, French, German and other major languages.

PART 5 | Personnel introduction



Charles FENG
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Senior Partner

Email: charlesfeng@tahota.com;
Fchao7847@hotmail.com;

Cell: 86-13910336970

Working Language:
Chinese/English/Japanese

Director of International Business Department

PUBLICATIONS (Selected)

In English:

- ① For meta or worse: China warms to trademark protection in NFTs, January, 2023 [For meta or worse: China warms to trademark protection in NFTs | Managing Intellectual Property \(managingip.com\)](#)
- ① Brief Analysis on Measures for the Standard Contract for Outbound Transfer of Personal Information (europa.eu) EU Commission Official website, April, 2023 [Brief Analysis on Measures for the Standard Contract for Outbound Transfer of Personal Information \(europa.eu\)](#)
- ① From Muji to Manolo, the unpicking of China's first to file system, Managing IP, August 2022 [From Muji to Manolo: unpicking China's first-to-file system | Managing Intellectual Property \(managingip.com\)](#)
- ① Analysis on Regulation regarding standard contract for outbound cross-border transfer of personal information, EU Commission Official website, July, 2022 [Analysis on Regulation on Standard Contract for Outbound Cross-Border Transfer of Personal Information \(europa.eu\)](#)
- ① Brief analysis on revision of PRC Anti-Monopoly Law and its implication, EU Commission Official website, June, 2022. [Brief Analysis on Revision of PRC Anti-Monopoly Law and its Implication \(europa.eu\)](#)
- ① Employee Inventions in China Chambers and Partners, November 2016, Chambers and Partners [Employee Inventions In China | Article | Chambers and Partners](#)
- The Application And Limits Of First-Sale Doctrine Against The Distribution Of Unauthorized Alteration Of Products *mondaq* February 2016
- ① Final draft of proposed PRC Copyright Law amendment released by NCAC, *North Carolina Bar Association Periodical*, May, 2014
- ① Better and Quicker Enforcement of Copyright in China, *Managing Intellectual Property*, March 2, 2013
- ① Light at the end of the tunnel: Zippo recognized as a well-known trademark, *Lexology*, April 11, 2013
- ① MAYBE Not: use of registered mark outside scope of protection is infringing, *International Law Office*, June 2012
- Setting Precedents in IP Law, *China Law and Practice*, June, 2012
- ① Case illustrates Application of Article 41(1) of PRC Trademark Law, *World Trademark Review*, March 7, 2012

PART 6 | PROFESSIONAL ACTIVITY

Seminar for DKPTO Delegation in Beijing 2019



PART 6 | PROFESSIONAL ACTIVITY

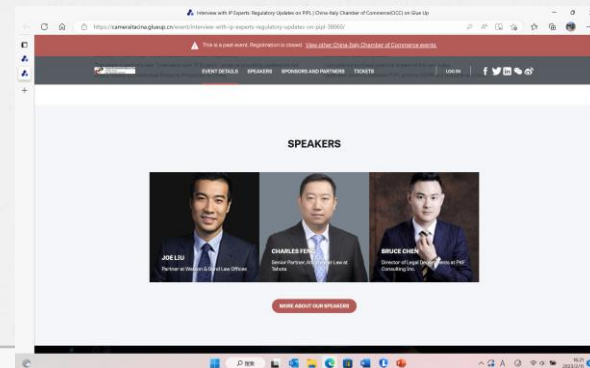
In 2016, 2018 and 2019, as invited by the Danish Intellectual Property Office, Mr. Charles Feng went to Copenhagen and Ikast, Denmark to conduct a series of lectures on the topic of intellectual property protection in China for the participants. Mr. Charles Feng gave in-depth lectures on China's trademark law, patent law and trade secrets, and was highly appreciated by the participants.



4. At the invitation of China-Italy Chamber of Commerce (CICC) and the Intellectual Property Working Group (IPWG), Mr. Charles Feng, Senior Partner and Attorney-at-Law at Tahota as well as IP expert in European Chamber of Commerce, attended the online event “Interview with IP experts: regulatory updates on PIPL” on September 29, 2022. Experts in this webinar gave their insights and lively discussed on three hot issues: new development on security assessment and cross-border transfer of personal information model contract, compliance and best practice impact of the new rules, and potential conflicts between PIPL and the GDPR and possible solutions.

By giving a talk on the topic of “Compliance and Best practice of the new rules of PIPL”, Charles Feng introduced in detail the key point of compliance in cross-border transfer of data and local information storage after the promulgation of PIPL and put forward some precautionary tips in practice as well.

Link: <https://cameraitacina.glueup.cn/event/interview-with-ip-experts-regulatory-updates-on-pipl-38060/>

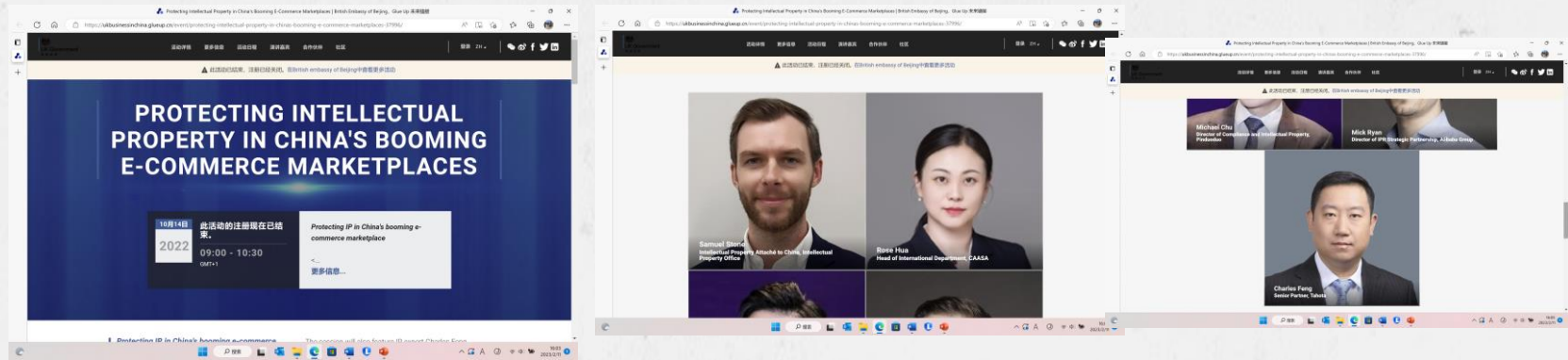


PART 6

PROFESSIONAL ACTIVITY

3. On October 14, 2022, Mr. Charles Feng, Senior Partner and Attorney-at-law of Tahota Law Firm was invited by the UK Intellectual Property Office and the UK Embassy to China to give a speech on Secondary liability of Online IP infringement in China. In this session, Feng analyzed the relevant provisions of IP and e-commerce related laws and regulations, illustrated some typical cases and shared the optimal practice suggestions on law enforcement as well as litigation in China in the online intellectual property area.

Link: <https://ukbusinessinchina.glueup.cn/event/protecting-intellectual-property-in-chinas-booming-e-commerce-marketplaces-37996/>



PART 6

PROFESSIONAL ACTIVITY

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Coinciding with Intellectual Property Month, the International Trademark Association ("INTA") and the Trademark Office of the China National Intellectual Property Administration successfully held a policy dialogue on April 4, 2023 to discuss the latest changes in the practice of trademark examination and adjudication. Mr. Charles Feng, Senior Partner and Director of the International Business Department of Tahota (Beijing) Law Firm, was invited to participate in this meeting, together with the leaders of the examination departments of the Trademark Office of the China National Intellectual Property Administration and members of the Trademark Office Practice Committee ("TOPC"), discussed in depth and exchanged experiences on the representative cutting-edge issues in the current IP practice area.

PART 6

PROFESSIONAL ACTIVITY

TAHOTA
泰和泰

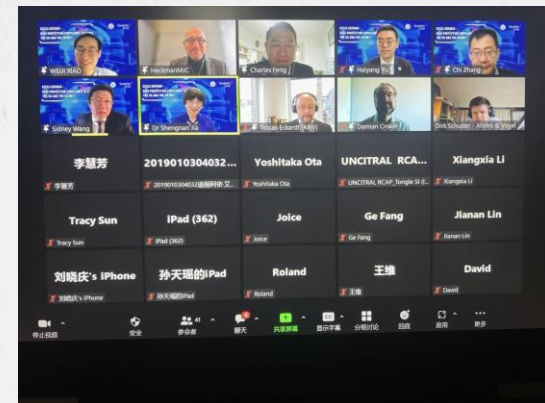
5. The first conference of a new series of seminars, “Tahota CECCA Seminar – Data Protection Compliance in China, EU and UK” was hosted by Tahota jointly with CECCA on November 22, 2022. Several seasoned lawyers and scholars from China, the UK and EU countries were invited to share their understandings on issues in data protection compliance based on their working experience.

In the first part of the session, Mr. Charles Feng, IP expert in European Chamber of Commerce and senior partner at Tahota, provided an introduction on the new rules of PIPL and its impact. Mr. Gang Wang and Mr. Weiji Xiao at Tahota Guangzhou office shared their views and opinions on the practice of corporate data protection compliance in China.

Therewith in the second part, experts from EU countries and the UK, Mr. Tobias Eckardt, Mr. Dirk Schuster at Ahlers & Vogel Rechtsanwälte PartG mbB and Ms. Madeleine Shanks at Clyde & Co LLP shared respectively the issues on the interaction between the EU GDPR and non-European countries and on the requirements of the GDPR when responding to cyber incidents.

The speech delivered by Charles Feng received unanimous compliments from experts such as Mr. Damian Croke, Arbitrator of DC Arbitration and Mediation and Dr. Matt Heckman, Chief Lecturer of Zuyd University of Applied Sciences.

Link: <https://mp.weixin.qq.com/s/uzA7EIM6rmcqFk2LhRqNKg>



PART 6 | PROFESSIONAL ACTIVITY

6. On February 3, 2022, the Berkeley Center for Law&Technology (BCLT) at the University of California Berkeley Law School, hosted an online intellectual property roundtable event on the “Draft Amendment to the Trademark Law of the People Republic of China”, the event was moderated by Mr. Mark A. Cohen, a Senior Fellow at BCLT's Asia IP Project, former counsel at the U.S. Patent and Trademark Office and Intellectual Property Attaché at the U.S. Embassy in China. Mr. Charles Feng, Senior Partner and Attorney at Law, Director of International Business Department at Tahota, Beijing was invited to attend and gave a special speech on the latest modifications of this Draft Amendment and his proposals. After the event, the participants actively interacted and exchanged views with Mr. Charles Feng, who answered and solved the questions raised by the participants one by one. The roundtable discussion was highly praised by all the participants.

Link : <https://chinaipr.com/2023/01/27/bclt-forthcoming-roundtable-on-proposed-trademark-law-revisions/>



PART 6

PROFESSIONAL AWARDS

TAHOTA
泰和泰

Charles Feng Retaining the Title in the List of “Top 100 China IP Experts” by Asia IP 2020-2023

Charles Feng was ranked as Top China IP lawyer by Chambers and Partners in 2024

Chambers
AND PARTNERS



Charles Feng consecutively selected on the Professional List of “Trademark Enforcement and Litigation” and “ Trademark Prosecution and Strategy ” by World Trademark Review

Worldwide famous and professional media of trademark law, World Trademark Review published the World's Leading Trademark Professionals, 2023 (“WTR 1000”). Mr. Charles Feng, Senior Partner and Attorney at Law, Director of International Business Department at Tahota (Beijing) Law Firm has been listed as a professional in both the rankings of “Trademark Enforcement and Litigation” and “Trademark Prosecution and Strategy”. Mr. Feng receives individually SILVER recommendation in “Trademark Enforcement and Litigation” and Bronze recommendation in “Trademark Prosecution and Strategy” simultaneously for four consecutive years.

WTR commented that Mr. Feng is “a very influential intellectual property expert in China”, WTR further commented that “having recently joined Tahota Law Firm from East & Concord, courtroom sharpshooter Charles Feng is the preferred choice of many multinationals for complex cross-border IP litigation and arbitration.”





Thank you !!!

Charles Feng

Senior Partner
Director of International Business
Department

Tahota(Beijing) Law Firm

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EXCELLENCE PROFESSION VISION COOPERATION