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AMENDMENTS TO CHINESE CRIMINAL LAW CONCERNING INTELLECTUAL PROPERTY CRIMES

Introduction

The National People's Congress (NPC) adopted a new amendment to Chinese criminal law on December 26, 2020, which entered into force on March 1, 2021. It mostly concerns intellectual property crimes, including harsh punishments regarding trademark, copyright, and trade secrets infringements. Therefore, the new legislation not only strengthened punishments for IP crimes but also expanded their coverage. The article aims to examine the changes in Chinese criminal law and outline their influence on foreign companies investing or doing business in the People's Republic of China (PRC). The new provisions are particularly significant given the recently negotiated agreement between the European Union and China (the so-called Comprehensive Agreement on Investment), as well as the EU-China agreement on geographical indications (GIs), signed between the two parties on September 14, 2020. As a result of increasing economic relations between the European countries and China, there is a need to understand Chinese criminal law related to IP rights infringement. The amendment is a consequence of "Phase One" trade deal between the US and China, and thus concerns the "commercial espionage". The regulations regarding "commercial espionage" in Chinese legislations are based on the provisions provided in the US Economic Espionage Act of 1996. A better understanding of Chinese regulations is certainly important from

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the perspective of foreign companies investing and doing business in China given that they can encounter many practical problems related to IP rights infringement.

Intellectual Property Regime in China

The Chinese legislature adopted IP laws in the late 1970s based on the Western models. There were many domestic and international reasons in favour of such a solution. It is noteworthy, however, that the traditional Chinese legal system entrenched in the Confucian philosophy did not concern IP issues. The situation has changed at the end of the 1900s throughout the Chinese involvement and extending international contact with the dominant societies in the Western Europe and America. Those international relations significantly impacted the Chinese legal order. Burkitt emphasizes that, the “West has consistently sought to impose intellectual property laws on developing countries and indigenous populations with no notion of intellectual property as conceived in the West”². It is thus crucial to elucidate domestic and international reasons to legal transplant in China.

In terms of domestic approach, the economic reform, followed by the open-door policy introduced by Deng Xiaoping, had a crucial impact on the new IP regime within the Chinese legal system. The Chinese authorities realized through many international conferences the need to launch not only an IP system but also to accede the Paris Convention for the Protection of Industrial Property. Along with the market-oriented economic reforms initiated in 1978, the changes within domestic legal system became a natural consequence³.

In terms of an international approach, the beginning of the current IP regime dates back to the late 1970s. In the wake of the establishment of diplomatic relations between the US and the PRC, the American side negotiated agreement on high-energy physics and included a provision on IP issues. Hence, the Chinese authorities argued in favour of protection for copyrights and patents. The IP rights even became part of the Chinese open-door policy. Interestingly, even if the Chinese legal system lacked appropriate regulations on IP at that time, the Chinese government had no objection to include such a provision in the negotiated agreement with the US. Furthermore, the Chinese authorities deemed to guarantee the protection for IP rights. The following bilateral agreements concerning scientific, technological,

² Zhang Liguo, Niklas Bruun, *Legal Transplantation of Intellectual Property Rights in China: Resistance, Adaptation and Reconciliation*, “IIC – International Review of Intellectual Property and Competition Law” 2017, no. 48, p. 8; cf. Daniel Burkitt, *Copyrighting culture — the history and cultural specificity of the Western model of copyright*, “Intellectual Property Quarterly” 2001, no. 146, p. 175.

³ *Ibidem*, p 11.

cultural interchange, and trade relations signed between the two countries also contained provisions on IP protection. Likewise, the enhanced cooperation and trade agreement signed with Germany and Switzerland reflected the same trend and thus included similar provisions. The bilateral agreements had preceded the accession of the PRC to the World Intellectual Property Organization (WIPO) in 1980. The next step concerned the ratification of the Paris Convention in 1984 and the adoption of domestic laws on IP rights, namely the Trademark Law in 1982 and the Patent Law in 1984, respectively⁴. Finally, the Chinese standpoint on IP rights protection was significantly influenced by the accession to the World Trade Organization (WTO) in 2001. Initially China was blocked by other WTO member states due to the unsatisfactory level of IP protection within the domestic legal system. Nonetheless, the WTO TRIPS Agreement provides for the minimum standards in terms of availability, scope, use, and enforcement of IP rights. These standards are based on the binding IP international conventions. Hence, throughout the settlement of TRIPS enforcement disputes, the PRC has taken more advanced steps in promoting IP rights protection within its territory. Accordingly, the domestic laws, such as Patent Law, Trademark Law, and Copyright Law, were amended to comply with the international standards. The China's accession to the WTO should be regarded as a turning point that influenced the development and the improvement of domestic IP regime⁵.

Since the opening-up policy and reforms undertaken in 1970s, China has become a country with complex, multifaceted, and contentious environment regarding IP rights. One of the most significant changes concern the establishment of IP courts across China.

Significance of Intellectual Property Courts in China

The introduction of specialized IP courts is considered one of the most significant steps to enhance the protection of IP rights in China. According to previous solutions, the IP tribunals operated within the people's court. Nonetheless, the establishment of IP courts is a remarkable footnote in the history of IP protection in Mainland China. Therefore, this solution guarantees the rule of law in terms of governance of IP rights in the PRC⁶. The three specialized IP courts were

⁴ Ibidem, pp. 8–9.

⁵ Ibidem, p. 10.

⁶ Nari Lee, Zhang Liguo, *Specialised IP Courts in China – Judicial Governance of Intellectual Property Rights*, “IIC – International Review of Intellectual Property and Competition Law” 2017, no. 58, p. 900; cf. Magdalena Łągiewska, Kamil Zeidler, *Bruce Lee's Case: Intellectual Property*

launched based on the Decision issued by the Standing Committee of the NPC on August 31, 2014. Hence, the Decision formally confirmed the establishment of IP rights courts in Beijing, Shanghai, and Guangzhou, such as Beijing Specialized IP Court (BIPC), the Shanghai Specialized IP Court (SIPC), and the Guangzhou Specialized IP Court (GIPC)⁷. There were three reasons that marked the establishment of those courts: 1. the majority of IP disputes (up to 70%) have been submitted to the courts in Beijing, Shanghai, Guangdong province, Jiangsu province, and Zhejiang province; 2. these regions represent the most developed parts of Mainland China with high-tech companies; 3. they are significant in terms of foreign businesses and interactions. Hence, the newly launched IP courts are in line with the pro-innovation policy giving priority to the IP rights protection in China⁸. Some scholars emphasize, however, the following reasons for choosing those cities. Beijing is not only a capital city, but most importantly the political and cultural centre with a large number of IP cases (linked to patents and trademarks). Shanghai, in turn, is considered the economic and financial centre with many foreign companies. Finally, Guangzhou has already marked the IP landscape in China with a considerable number of IP cases, especially regarding patents. Hence, Beijing, Shanghai, and Guangzhou had been the first Chinese cities where IP trials were conducted⁹.

Given the features of IP courts in China, it is noteworthy that Chinese legislature profited from the American and Japanese experiences regarding such courts. Nevertheless, there are still some differences between the US, Japanese, and Chinese IP courts in terms of jurisdiction. China's Supreme People's Court (SPC) made it clear in the "Provisions on the Jurisdiction of the Intellectual Property Courts of Beijing, Shanghai and Guangzhou over Cases" issued in 2014. According to these provisions, specialized IP courts functioning in China are intermediate courts. Moreover, the People's High Courts in Beijing, Shanghai, and Guangdong province have the direct supervision over these IP courts. All IP courts in China have the original jurisdiction to handle civil or administrative cases on patents, new plant varieties, integrated circuit layout design, technical know-how, software, and the cases

vs. *Free Access to Culture and Protection of Public Interest*, "Archiwum Filozofii Prawa i Filozofii Społecznej Journal of The Polish Section of IVR" 2020, no. 3, pp. 79–94.

⁷ See Quanguo renmin daibiao dahui changwu weiyuanhui guanyu zai Beijing, Shanghai, Guangzhou sheli zhi shi chanquan fayuan de jue ding (2014 nian 8 yue 31 ri di shi'er jie quanguo renmin daibiao dahui changwu weiyuanhui di shi ci huiyi tongguo) [Decision of the Standing Committee of the National People's Congress on Establishing Intellectual Property Right Courts in Beijing, Shanghai and Guangzhou].

⁸ Jiang Jieru, *China Specialized IP Courts: Substance or Theater? Part I*, "Les Nouvelles – Journal of the Licensing Executives Society" 2019, no. LIV(1), p. 9. Available at SSRN: <https://ssrn.com/abstract=3317007>.

⁹ Cai Wanli, *Legal Systems and Practice of Intellectual Property Protection in Japan and China: A Comparative Analysis*, "Asian Journal of Innovation and Policy" 2018, vol. 7, no. 1, p. 196.

related to the certification of the well-known marks. Moreover, they have appellate jurisdiction over civil and administrative cases related to trademarks and copyright from basic people's courts of Beijing, Shanghai, and Guangzhou¹⁰.

However, there are two main distinctive differences between the US CAFC (Court of Appeals for the Federal Circuit)¹¹ and China's IP courts. First, compared to the US CAFC, which has nationwide appellate jurisdiction, the Chinese specialized IP courts have merely jurisdiction over IP cases of Beijing, Shanghai, and Guangdong province. Second, the US CAFC has jurisdiction to handle cases on patents or trademarks, whereas the Chinese IP courts handle cases related to the entire range of IP matters, thus their scope of jurisdiction is broader¹².

In Japan, the IP High Court, established in 2005, functions as a special branch of the Tokyo High Court. Nonetheless, there is a significant difference between court jurisdictions over multifarious types of IP infringement in Japan. In case of patent infringement, litigation starts in the Tokyo District Court or the Osaka District Court, and then the IP High Court has the appellate jurisdiction over all nationwide patent cases in Japan. In case of trademark or copyright infringement, the regional jurisdiction prevails. This entails that the IP High Court is competent to hear cases based on its geographical jurisdiction¹³.

Overall, given the scope of jurisdiction, the Beijing IP Court, compared to Shanghai and Guangzhou courts, has exclusive jurisdiction over administrative actions. Such actions include the authorization and affirmation of IP rights and compulsory licenses on patents, new plant varieties, and layout designs of integrated circuits that have been undertaken by the department under the State Council¹⁴.

Aside from the three IP courts in China, the fourth tribunal was launched by the "Decision of the Standing Committee of the NPC on the Establishment of the Hainan Free Trade Port Intellectual Property Court" on December 26, 2020. This decision came into force on January 1, 2021. The fourth IP court was created at Hainan Free Trade Port to "increase judicial protection of intellectual property rights, create a good business environment, and promote the construction of a free

¹⁰ See *Provisions of the Supreme People's Court on the Jurisdiction of the Intellectual Property Courts of Beijing, Shanghai and Guangzhou over Cases* promulgated on October 31, 2014, effective from November 3, 2014.

¹¹ The US Court of Appeals for the Federal Circuit was established in 1982 as a court of appeal handling all US patent cases. CAFC was created to ensure consistency in patent cases. See Rifat Atun, Ian Harvey, Joff Wild, *Innovation, Patent and Economic Growth*, in: *Innovation in the Biopharmaceutical Industry*, Atun R.A., Sheridan D. (eds.), London 2007, p. 74.

¹² Jiang Jieru, op. cit., p. 15.

¹³ *Ibidem*.

¹⁴ Matthews Duncan, *Intellectual Property Courts in China*, in: *Competition Law and Intellectual Property in China and the ASEAN*, Spyros Maniatis, Ioannis Kokkoris, Wang Xiaoye (eds.), Oxford University Press 2019, pp. 76–100.

trade port with Chinese characteristics”. Given the features of Hainan region, it is considered a new vector of economic development across China. Interestingly, the Chinese President Xi Jinping decided to create a Hainan Free-Trade Zone until 2050. One question that must be addressed concerns the reasons to select Hainan island for the seat of IP court. Zhou Qiang, who is the Chief of the SPC, explains three main factors, which predetermined choosing Hainan. First, pursuant to Xi Jinping’s stance, the establishment of IP court in Hainan is a prerequisite for the emergence of Hainan Free-Trade Zone. The Chinese government is aware of the necessity to guarantee the high level and transparency of the trial system, including the protection of IP rights, and attract both Chinese and overseas businesses. Hence, the Hainan FTZ and IP court launched therein are new factors for the sake of the international economic cooperation. Second, the Hainan region has already been concerned with IP issues. Accordingly, in 2009 the Hainan Higher People’s Court and intermediate courts launched “3 in 1” IP tribunals. It means that those tribunals have jurisdiction over civil, administrative, and criminal IP-related cases. Moreover, the Haikou Intermediate People’s Court simultaneously established another IP tribunal in 2019. Such a solution was crucial in view of centralized jurisdiction concerning IP disputes at the provincial level. The last, third reason to choose Hainan refers to the increasing number of IP-related cases within the Hainan courts. Therefore, judges and assistants unequivocally deemed the increasing significance of IP cases in the region¹⁵.

Given these aspects, the newly established IP court has the jurisdiction in the following cases: 1. Hainan Province’s first-instance IP civil and administrative cases involving patents, trade secrets, computer software, new plant varieties, integrated circuit layout designs, identification of well-known trademarks, and monopoly disputes, etc.; 2. first-instance civil, administrative, and criminal cases of IP rights under the jurisdiction of the Intermediate People’s Court of Hainan Province other than the provisions of the preceding paragraph; 3. cases of appeals and protests of civil, administrative, and criminal judgments and rulings on IP by the Hainan Provincial Basic People’s Court; 4. other cases under its jurisdiction as determined by the SPC. This court is also competent to hear the first-instance criminal IP cases that are further prosecuted by the First Branch of the Hainan Provincial People’s Procuratorate¹⁶.

¹⁵ Schmitt Orlov, *The fourth IP court established in Hainan free-trade zone*, Lexology 05.02.2021, <https://www.lexology.com/library/detail.aspx?g=071fa38b-2440-48ca-81e3-d8cad66fec43> [accessed 26.12.2021].

¹⁶ Quanguo renmin daibiao dahui changwu weiyuanhui guanyu sheli Hainan ziyou maoyi gang zhishi changquan fayuan de jue ding (2020 nian 12 yue 26 ri shisan jie quanguo renmin daibiao dagui changwu weiyuanhui di ershi ci huiyi tongguo) [Decision of the Standing Committee of the National People’s Congress on Establishing the Hainan Free Trade Port Intellectual Property Court. Adopted

Intellectual Property Crimes under Chinese Law

Considering the 11th Amendment to the Chinese Criminal Law, which entered into force on March 1, 2021, the Chinese legislature introduced noticeable changes regarding IP crimes. Those changes concern strengthening punishments for IP crimes and expanding its coverage. The amendment stems from the Chinese commitment to enhance the domestic IP regime. Such an improvement should be in line with the US-China “Phase One” trade deal signed between the two parties on February 14, 2020. This trade deal implies the need to constantly improve the IP system and increase criminal penalties in case of IP infringements¹⁷.

According to the new amendment to the Chinese criminal law adopted by the NPC on December 26, 2020, the Chinese legislature removed the two existing lenient penalties for IP crimes. Therefore, the detention up to six months and public surveillance cannot be imposed in case of IP crimes. In turn, the Chinese legislature increased the maximum sentencing for intellectual property crimes. Such harsh regulations aim to prevent potential infringement of intellectual property in the future. The changes in the Chinese legislation touch upon not only trademarks, copyrights, trade secrets, but also a new category similar to US commercial espionage (in case of China described as an economic espionage)¹⁸.

Interestingly, the Chinese law includes a specific threshold to determine whether an IP infringement could be classified as a crime. Therefore, it depends whether an IP infringement is “serious”, which means that the infringer’s illegal income is over certain amounts. For instance, regarding the trademark counterfeiting, such an illegal income should be equal to RMB 500 000. Furthermore, in case of regular “serious circumstances”, the Chinese court can impose a penalty of up to three years of imprisonment. The penalty can be even higher, if the infringer knowingly sells pirated goods with significant illegal income or committed the so-called “commercial espionage”. In such cases, the punishment can be even up to five years of imprisonment. Finally, if an IP crime is committed under “especially serious circumstances”, the punishment is equal to ten years of imprisonment. Aside from the penalties, the changes concern the possibilities for granting probation. Compared

at the 24th meeting of the Standing Committee of the 13th National People’s Congress on December 26, 2020)], http://www.gov.cn/xinwen/2020-12/27/content_5573689.htm [accessed 26.12.2021].

¹⁷ Xia Jerry, Du Simon, *China: Heavier Penalties for IP Crimes*, “International Trademark Association: Law & Practice”, 03.03.2021, <https://www.inta.org/perspectives/china-heavier-penalties-for-ip-crimes/> [accessed 27.12.2021].

¹⁸ Aaron Winingar, *China’s National People’s Congress Passes Amended Criminal Law Adding an Economic Espionage Article and Increasing Prison Time for Intellectual Property Crimes*, “The National Law Review”, 29.12.2020, <https://www.natlawreview.com/article/china-s-national-people-s-congress-passes-amended-criminal-law-adding-economic> [accessed 27.12.2021].

to previous regulations, the probation can be granted merely in case of detention or imprisonment up to three years¹⁹.

Overall, the amendments to the Chinese criminal law raised the maximum penalty for IP crimes from seven to ten years of imprisonment. In addition, the protection of “service marks” was added to the provisions concerning the crime of counterfeiting registered trademarks. It entails that the trademarks of companies doing business in the service industry would be also protected under Chinese law. Simultaneously, the recent amendment involves also the copyrights and the copyright-related infringements to comply with the Copyright Law of the PRC. The changes aimed to tackle the problem of excessive infringements of IP rights in China and better protect IP rights.

More specifically, in terms of trademarks, Article 213 of the Chinese criminal code stipulates that “when an offender uses an trademark identical with the registered trademark on the same goods or services without the permission of the owner of the registered trademark, and the circumstances are serious, he or she shall be punished with a fixed-term imprisonment of not more than three years together with a fine, or a separately imposed fine; if the circumstances are particularly serious, a fixed-term imprisonment of not less three years but not more than ten years shall be imposed, together with a fine”. Hence, the maximum fixed-term of imprisonment for using the same trademark as a registered trademark pertaining to the same kind of goods or services without the necessary permission of the registered trademark owner has been increased. Actually, the infringer can be sentenced up to ten years instead of the previous seven years in case of particularly serious circumstances. Furthermore, the solution extended the criminal sanctions on crimes of counterfeiting “service marks”, which had not been included in criminal code prior to its amendment.

Those who knowingly sell counterfeit trademark goods can be also sentenced up to ten years when the amount of illegal gains obtained during this procedure is huge or in case of particularly serious circumstances (Art. 214). Moreover, the same sanction has been implied in case of manufacturing counterfeit trademark products when the circumstances are serious (Art. 215). The regulations express the willingness of the Chinese legislation to enforce the protection of IP rights. It is worth adding that severe punishments were rooted in Chinese legal culture (namely legalism) for centuries and even nowadays, we can encounter a similar approach.

Given the copyright infringements, the Chinese legislation provides likewise the increasement of the maximum fixed-term of imprisonment from seven to ten years. Those regulations apply when a person infringed upon the IP rights for the sake of profit-making purposes. Furthermore, there are additional conditions that

¹⁹ Xia Jerry, Du Simon, *op. cit.*

should be met to apply such a punishment, namely the amount of illegal gains is huge or there are other serious circumstances of the case (Art. 217). It is noteworthy that the legislature has also replaced the wording. Instead of previously used “film, television and video works”, the term “audiovisual works” has been introduced to comply with the Chinese Copyright Law (revised in November 2020). Furthermore, under current legislation, it is also possible to prosecute a crime concerning “intentionally avoiding or destroying the technical measures for copyright protection taken by the right holder without the permission”. Hence, such actions can be prosecuted as crimes of copyright piracy. The amendment will have a significant impact on the software industry in China²⁰.

Regarding punishments, similar solution has been adopted in the case of trade secret infringements. Therefore, the maximum fixed-term of imprisonment is equal to ten years instead of seven years.

Aside from the amendment to Chinese criminal law, it is worth mentioning the Interpretations III on Certain Issues Relating to the Specific Application of Law in Handling Criminal Cases Concerning Infringement of Intellectual Property Rights issued by the SPC and the Supreme People’s Procuratorate (SPP) on September 12, 2020. This interpretation covers trademark, copyright, and trade secret crimes.

Regarding trademarks, the interpretation provides that the same trademark is regarded as already registered (pursuant to the Article 213 of the Criminal Law) in the following circumstances: 1. in case of changing the font, letter case, or text arrangement of a registered trademark, which is basically no different from that of a registered trademark; 2. while changing the spacing between words, letters, numbers, etc., of a registered trademark, which is basically no different from that of a registered trademark; 3. changing the colour of the registered trademark shall not affect the distinctive characteristics of the registered trademark; 4. only the addition of the general name and model of the goods to the registered trademark lacks significant characteristic elements, which does not affect those that reflect the characteristics of the registered trademark; 5. basically, such a trademark is no different from the three-dimensional signs and plane elements of a three-dimensional registered trademark; 6. other trademarks which are basically indistinguishable from registered trademarks and sufficient to mislead the public (Article 1 of the interpretation).

The interpretation covers also issues linked to the copyrights. Therefore, when a natural person, legal person, or an organization without legal personality signs her/its name in the usual way on a work or sound recording specified in Article 217 of the Criminal law, such a person shall be presumed to be the copyright owner or sound recording producer, and there are corresponding rights in the work or

²⁰ Ibidem.

sound recording, unless there is a proof to the contrary. Furthermore, where there are many kinds of works and sound recordings involved and the obligees are scattered, there is an evidence to prove that the copies involved are illegally published, copied, and distributed and the publisher and reproduction publisher cannot provide relevant evidence materials approved by the copyright owner and sound recording producer. Therefore, such actions should be identified as undertaken “without the permission of the copyright owner” or “without the permission of the recording producer” stipulated in the Article 217 of the Criminal Law.

Moreover, the interpretation explicitly refers to the trade secret infringement. Hence, “whoever steals trade secrets by means of illegal reproduction, unauthorized or unauthorized use of computer information systems shall be recognized as ‘theft’ as stipulated in Article 219 of the Criminal Law. Obtaining the trade secrets of the obligee by means of bribery, fraud or electronic intrusion shall be recognized as ‘other improper means’ under Criminal Law”.

The interpretation also enumerates the circumstances resulting in lighter punishment: 1. anyone who pleads guilty to punishment; 2. anyone who has already obtained the understanding of the obligee; 3. anyone who has shown signs of repentance; and 4. anyone who has not disclosed, used, or allowed others to use the trade secret of the obligee after obtaining such a trade secret by improper means (Article 9 of the Interpretation).

According to this interpretation, in case of the crime of trade secret infringement, the threshold has been reduced from RMB 500 000 to RMB 300 000. Furthermore, the interpretation provides two additional circumstances that cause serious losses to the trade secret holder. Those circumstances are as follows: 1. the serious losses directly resulted in the bankruptcy or lead to the closure of the business of the trade secret rights holder; 2. other serious losses occurred to the rights’ holder (Article 4 of the interpretation)²¹.

Finally, the Chinese criminal code also includes a provision on commercial espionage. Those regulations are similar to the US’ Economic Espionage Act. Accordingly, the commercial espionage should be defined under the Chinese law as follows: “Whoever steals, spies, buys, or illegally provides commercial secrets for institutions, organizations, or persons outside the country shall be sentenced to fixed-term imprisonment of not more than five years, and/or a fine; if the circumstances are serious they shall be sentenced to more than five years in prison and

²¹ Zuigao renmin fayuan renmin jianchayuan guanyu banli qinfan zhishi chanquan xingshi anjian juti yingyong falv ruogan wenti de jieshi (san) [Supreme People’s Court, Supreme People’s Procuratorate Interpretation on Several Issues Concerning the Specific Application of Law in Handling Criminal Cases of Intellectual Property Infringement (3)], <http://www.court.gov.cn/zixun-xiangqing-254891.html> [accessed 29.12.2021].

fined” (Art. 219). Given the term of imprisonment, the Chinese legislature advocated for an open-ended solution. It entails that there is no limit to the term-fixed imprisonment in such cases.

Trademarks Infringement on Ferrero Rocher Chocolates: Case Study

On August 19, 2020, the Shanghai Third Intermediate Court issued a precedent judgement on Ferrero Rocher Chocolates’ case. The court deemed that the process of repackaging chocolates including inside the printing of Ferrero Rocher labels without the necessary authorization cause criminal liability for trademark infringement. Given the background of the case, the defendant Liu bought high-count boxes of Ferrero Rocher chocolates (i.e., 96 count) and then repackaged them into smaller ones (such as 8 count). Interestingly, the Ferrero Rocher chocolates were genuine. However, Liu employed other persons to produce packaging of Ferrero Rocher without the consent and appropriate authorization of the right holder.

As a result of an investigation conducted between July and September 2020, the police found over 490 000 items suspected of counterfeiting outer packaging of those chocolates. Hence, the case touched upon more than 800 000 “Ferrero Rocher” trademarks used without the right holder’s authorization. From 2018 to July 2020, Liu employed others to manufacture false packaging materials, including Ferrero Rocher trade mark. Overall, more than 5,65 million labels were produced by illicit actions and resulted in paying over 1,7 million RMB to the employees. Even if the chocolates themselves were authentic, Liu infringed upon the rights holder. The Shanghai court acknowledged that Liu was guilty of committing a crime on trademark infringement by illegally manufacturing Ferrero Rocher packaging. Liu did not receive a harsh punishment because he voluntarily pleaded guilty, paid compensation to the right holder, and a fine equal to RMB 300 000 to the court. Therefore, instead of the term imprisonment, the court ruled a suspended sentence²².

The case confirms the increasing awareness of IP rights and the need to protect them within the domestic legal system. The operations undertaken by the police and then the court proceedings reflect a new, better standard of functioning Chinese IP courts.

²² Aaron Wininger, *Suspended Prison Sentence in Shanghai for Criminal Trademark Infringement For Repackaging of Authentic Ferrero Rocher Chocolates*, “The National Law Review”, 21.08.2021, <https://www.natlawreview.com/article/suspended-prison-sentence-shanghai-criminal-trademark-infringement-repackaging> [accessed 27.12.2021].

Conclusion

China's accession to the WTO in 2001 should be regarded as a turning point that has a significant influence on the development and improvement of domestic IP regime. Given the Western models and experiences linked to IP protection, China adopted new solutions to comply with international standards in terms of IP and became a country with complex, multifaceted, and contentious environment regarding IP rights. One of the most significant changes concern the establishment of four IP courts in China. They reflect a new value of handling IP disputes to guarantee the appropriate transparency and effectiveness. It is worth mentioning the case of Hainan IP Court launched to attract more parties (domestic and overseas) to do business there. The Chinese authorities chose this place, bearing in mind the plan to establish a Hainan Free-Trade Zone until 2050.

Overall, with respect to the amendments to the Chinese criminal law, it should be highlighted that the Chinese legislature raised the maximum penalty for IP crimes from seven to ten years of imprisonment. Furthermore, the protection of "service marks" was guaranteed and added to the provisions linked to the crime of counterfeiting registered trademarks. It means that the trademarks of companies doing business in the service industry would be also protected under the Chinese law. Simultaneously, the recent amendment involves the copyrights and thus the copyright-related infringements to comply with the Copyright Law of the PRC. The changes aimed to tackle the problem of excessive infringements of IP rights in China and better protect IP rights. Finally, according to current legislation, a crime concerning "intentionally avoiding or destroying the technical measures for copyright protection taken by the right holder without the permission" can also be prosecuted. Therefore, such actions can be classified as crimes of copyright piracy. The amendment in terms of copyrights will significantly influence on the software industry in the PRC.

However, one must note that along with the recent amendment to Chinese criminal law, more harsh punishments have been introduced. Such harsh regulations aim to prevent potential infringements of IP rights in the future. The recent changes to the Chinese legislation, mostly in terms of criminal law, are related not only to trademarks, copyrights, trade secrets but also to a new category similar to the US commercial espionage (given the Chinese approach, this crime is described as an economic espionage). Those regulations resemble the US' Economic Espionage Act. Hence, the economic espionage should be defined under the Chinese law as follows: "Whoever steals, spies, buys, or illegally provides commercial secrets for institutions, organizations, or persons outside the country shall be sentenced to fixed-term imprisonment of not more than five years, and/or a fine; if the

circumstances are serious they shall be sentenced to more than five years in prison and fined” (Art. 219). Regarding the term of imprisonment, the Chinese legislature advocated for an open-ended solution. It means that there is no upper limit to the term-fixed imprisonment in such cases.

The Chinese authorities become much more aware of need to increase the IP protection within the domestic legal system. It seems a prerequisite to attract more foreign parties to do business in China. The case study on Ferrero Rocher Chocolates confirms such a trend and reflects the increasing awareness of IP rights. The operations undertaken by the police and then the court proceedings should be regarded as a new, better standard of functioning Chinese IP courts.

Abstract

Amendments to Chinese Criminal Law Concerning Intellectual Property Crimes

Chinese authorities have taken decisive steps to tackle violations of intellectual property (IP) rights in the People’s Republic of China (PRC). The National People’s Congress (NPC) adopted a new amendment to China’s criminal law on December 26, 2020. These regulations entered into force on March 1, 2021. The article aims to draw attention to the recent developments and ways to fight against the IP infringement in China. The study focuses on the IP courts in China and then analyzes the recent amendment to Chinese criminal law. Therefore, it is based on the descriptive and dogmatic methods. The article seeks to answer the question of whether the regulations are effective and significantly prevent the spread of IP infringements in China. It brings us to the conclusion that China’s accession to the WTO was a turning point that influenced the development and the improvement of domestic IP regime. Hence, China became a country with complex, multifaceted, and contentious environment regarding IP rights. One of the most significant changes concern the establishment of IP courts across China. It is too early to determine whether these solutions are effective due to the ongoing COVID-19 pandemic in China.

Keywords: China, intellectual property, law, rights, crimes, amendment