

China Competition Policy & IP

MONTHLY UPDATE

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Meetings/Seminars/Projects

President Xi Emphasizes Antitrust Regulation in Speech to the 20th National Congress of CPC

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On October 16, 2022, President Xi Jinping, on behalf of the 19th Central Committee, presented a speech to the 20th National Congress of the Communist Party of China (CPC). In the fourth part of the speech, “Accelerating the Creation of a New Development Pattern and Pursuing High-Quality Development,” President Xi underlined the importance of anti-monopoly and anti-unfair competition regulation.

Specifically, President Xi pointed out that the CPC will continue its efforts to build a large, unified national market, deepen market-oriented reforms, and build a high-standard market system. In terms of market regulation, anti-monopoly, and anti-unfair competition, the CPC will continue refining property rights protection, market access, fair competition, and social credit to improve the business environment. President Xi also emphasized stronger action against monopolies and unfair competition, breaking up local protection and administrative monopolies, and conducting law-based regulation and guidance on the healthy development of capital.

SPC Highlights Judicial Protection of Intellectual Property Rights

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On October 19, 2022, the press center of the 20th National Congress of the CPC held a press conference where multiple officials shared insights on the construction of the rule of law in China. Rong He, Deputy President of the Supreme People’s Court (SPC), answered journalists’ questions regarding the judicial protection of intellectual property rights (IPR) by the people’s courts in the past decade.

According to Mr. He, the people’s courts have adhered to the high-level protection of intellectual property rights following the law and effectively served innovation-driven development and the construction of a technologically powerful country. This has included four overarching achievements in the last decade:

1. The scope and intensity of judicial protection have continuously increased. Since 2013, 2.738 million first-instance intellectual property cases have been concluded, with an average annual growth rate of 24.5%.

2. The ability and effect of stimulating innovation and creation have become more prominent. The SPC has issued judicial interpretations involving new plant variety rights, trade secret protection, punitive damages, and more, with ongoing protection of the legitimate rights and interests of inventions and innovation subjects and a severe crackdown on counterfeiting and infringement. The people's courts have been strengthening anti-monopoly and anti-unfair competition justice to maintain a market order of fair competition, hearing multiple cases that have included disputes over "either-or" conduct and big data discriminatory pricing by e-commerce platforms. The people's courts have also continued to reinforce the protection of legitimate rights and interests of workers and consumers in new forms of business and promote the standardized and healthy development of the digital and platform economies.
3. The specialized trial system and protection mechanism have been further improved, giving full play to the functions of the SPC's specialized Intellectual Property Court (SIPC) and all local SIPCs, including those in Beijing, Shanghai, Guangzhou, and Hainan Free Trade Port. Meanwhile, the mechanism for bridging administrative enforcement and the judiciary has also been reinforced to promote the protection of intellectual property.
4. The international influence of judicial protection in China continues to increase. China has been equally protecting the legitimate rights and interests of Chinese and foreign rights holders in accordance with the law, fulfilling international treaty obligations, and cooperating deeply with the World Intellectual Property Organization on IPR protection. More and more foreign companies have chosen to come to China to resolve intellectual property disputes.

After recapping the achievements of the people's courts over the past decade, Mr. He also outlined the work ahead for judicial protection. The judiciary will continue to strengthen and improve the judicial protection of intellectual property rights, especially in the fields of big data, artificial intelligence, and genetic technology. The judiciary will further strengthen anti-monopoly and anti-unfair competition justice and regulate and guide the healthy development of capital in accordance with the law. Administration, enforcement, and justice will be better articulated to comprehensively protect intellectual property rights.

Regulatory News

State Council Issues Regulations Promoting the Development of Individual Industrial and Commercial Households

[Read the Chinese version here](#)

On October 1, 2022, the State Council issued the “Regulations on Promoting the Development of Individual Industrial and Commercial Households,” which went into effect on November 1, 2022.

The regulations were enacted to encourage, support, and guide the healthy development of the self-employed economy, safeguard the legitimate rights and interests of individual industrial and commercial households, stabilize and promote urban and rural employment, and give full play to the important role of individual industrial and commercial households in the national economy and social development.

Article 25 of the regulations focuses specifically on the digital economy, putting forward that the government should guide and support individual industrial and commercial households to accelerate the digitization of their businesses or services. In addition, it stipulates that platform operators shall support the online operation of individual businesses with regard to entry conditions, service rules, and charging standards. Platform operators are prohibited from imposing unreasonable restrictions, attaching unreasonable conditions, or charging unreasonable fees on individual industrial and commercial households within the platform by utilizing service agreements, platform rules, data algorithms, technology, or other means.

Industry Updates

SPC Articulates Four Elements for Finding Tacit Collusion Under Antitrust Law

[Read the Chinese version here](#)

On June 24, 2022, the SPC handed down the second-instance judgment in a case brought by a consumer, Li Binquan, against Hunan Xiangpintang Industry and Trade Co. and four other operators selling bottled mineral water at Changsha South Railway Station for tacit collusion.

The plaintiff claimed that the defendants leveraged their dominance in the drinking water consumption market in the second-floor waiting hall area of Changsha South Railway Station to collude with each other in raising and fixing the price of 555ml C'estbon mineral water at RMB 3 per bottle, compared to RMB 2 in other areas of Changsha.

The court of first instance held that the relevant product market should be defined as drinking water, and the relevant geographic market should be defined as the second-floor waiting hall of Changsha South Railway Station. If passengers waiting for their trains in the waiting hall on the station's second floor choose to leave the waiting hall, they need to go through security checks again under the relevant regulations of railway management. Given this, people who would like to buy drinking water will usually not choose to leave the waiting hall to do so.

The first-instance court acknowledged that the pricing behavior of each accused operator was consistent. However, the rent in this area of the train station is higher than the rent in the general market, leading to higher costs and a higher price set by these five operators, which does not presume that there is a horizontal price-fixing conspiracy. In addition, no evidence submitted shows that the five accused operators had intentional contact or information exchange. Thus, the court of the first instance held that the existing evidence could not prove that the five accused operators reached a monopoly price-fixing agreement.

The plaintiff then filed an appeal to the SPC. The SPC held that the Anti-Monopoly Law does not prohibit operators from conducting market behaviors independently based on market and competition conditions, including following and imitating the same market behaviors taken by other competitors. The court pointed out that operators must clearly mark the price of goods sold – meaning that operators in the same area may know the prices of the same products from competitors – and that, since the mineral water involved in the case is a mass consumer good, ordinary consumers have a general understanding of whether the price is reasonable. Therefore, it is hard to prove that the operators communicated intentions or exchanged information to fix prices just because they charged the same price for the same mineral water in a narrow area.

In this case, the SPC clarified for the first time the four elements of determining “other concerted practices” – namely, tacit collusion: 1) whether the market behavior of the operators is coordinated and consistent; 2) whether there has been any communication or information exchanged among operators; 3) the market structure, competition conditions, and market changes of the relevant markets; and 4) whether operators can give a reasonable explanation for similar behavior. The plaintiff shall provide preliminary evidence for the first three elements to support the allegation of concerted practices. The SPC, accordingly, made a final judgment, dismissing the plaintiff’s appeal and affirming the original judgment.

Tencent Wins Information Network Dissemination Rights Infringement Case Against Douyin

[Read the Chinese version here](#)

On October 26, 2022, the Xi’an Intermediate People’s Court ruled on the dispute over the infringement of the web series *Yunnan Worm Valley* and unfair competition.

The plaintiffs are Shenzhen Tencent Computer System Co., Ltd. and Tencent Cloud Computing (Xi’an) Co., Ltd., the operators of the long-form video platform Tencent Video. The defendants are Beijing Microseeding Horizon Technology Co., Ltd. (Microseeding Horizon), the operator of the short-form video app Douyin, and Xi’an Shanyou Network Technology Co., Ltd, which assisted in the distribution of the Douyin app.

The plaintiffs found that, since the exclusive broadcast of *Yunnan Worm Valley* began on Tencent Video on August 30, 2021, a large number of clips from the web series had appeared on the Douyin platform. Therefore, Tencent filed a lawsuit with the Xi’an Intermediate People’s Court on September 22, 2021, demanding that Douyin immediately take effective measures to delete, filter, and block the relevant clips and compensate for economic losses and reasonable costs of RMB 10 million. In April 2022, Tencent changed the claim amount to RMB 90 million since Douyin was still disseminating the infringing content. However, Microseeding Horizon asserted that Douyin had fulfilled its obligations as a platform by clearly stipulating in its user agreement that users should not upload infringing content and by setting up a convenient infringement complaint channel.

The court held that Microseeding Horizon had unquestionable management and control over the Douyin platform and that the user agreement did not absolve it from its management obligations. Microseeding Horizon was aware that many Douyin users were actively infringing the information network dissemination rights of the series in question and failed to take appropriate measures to control and manage the infringing content on the platform. Therefore, the court ruled that Microseeding Horizon’s conduct constituted contributory infringement.

The court ruled that Microseeding Horizon should immediately stop infringing on the information network dissemination rights of the web series *Yunnan Worm Valley*. Taking into account the type of products involved, the plaintiff’s potential loss and expected earnings, the scale and duration of the

defendant's infringement, and Douyin's subjective malice and the potential earnings, the court determined damages of RMB 2 million per episode. This amounted to a total of RMB 32 million for 16 episodes; Microseeding Horizon must compensate the plaintiffs the RMB 32 million plus RMB 426,931 for reasonable costs of protection fees.

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