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In the fast lane: an introduction to China's intellectual property transformation

Already the IP powerhouse of the BRICS bloc, China now has an ambitious goal of global IP leadership. Flora Fang of Rouse and Robert Zang of Lusheng look at how the country is developing its IP landscape to achieve this vision.

China is a hub of innovation and opportunity, with an IP ecosystem that has developed at an astonishing pace over the past 30 years. Rouse has been in China since 1993. Over the decades we've witnessed China's IP legislation and practice transforming to world-class sophistication. Now China is the IP powerhouse of the BRICS partnership, and the country is stating its ambitions for IP leadership in the wider world too.

China is currently ramping up efforts to ensure that IP protection is a central part of its new development strategy. Following the approval of its 14th Five Year Plan in 2021, the Chinese government also released a 15-year plan for developing the country into an Intellectual Property leader. According to the plan, by 2025 China aims to have improved the value of its patent-intensive industries to 13% of GDP and its copyright industries to 7.5% of GDP. The country expects flows of IP royalties to reach CNY 350 billion, while targeting the development of 12 high-value inventions per 10,000 citizens. These changes will be driven by measures to improve IP protection and the competitiveness of brands.

By 2035, China aims for its IP competitiveness to be among the best in the world. The country's IP system is then set to be a complete framework for multi-level participation and international cooperation in the global governance of IP. To support the speed of this development, China has amended and enacted a number of IP-protection laws in trademarks, patents, competition, eCommerce, trade secrets, and more. With these new laws – and more on the horizon – IP protection in China has improved significantly in recent years.

China improves trademark protection from registration to enforcement

For a long period, the key focus of China's trademark authorities was to tackle the bad-faith trademark squatters that have traditionally plagued the country's



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trademark registration system. While challenges persist, the China National Intellectual Property Administration (CNIPA) has made significant progress in its efforts to crack down on these bad-faith filings.

Based on statistics from CNIPA annual reports, the overall supporting rate of registry enforcement actions has increased year by year. For example, the supporting rate of opposition increased from 40.8% in 2018 to 56.9% in 2022. The supporting rate of invalidation has consistently been above 70% over the past four years, with a peak of 75% in 2022.

The CNIPA has also had success in rejecting bad-faith trademark applications. Just over two million trademarks were registered in 2023 – a drop of more than 45% compared to a year earlier. This drop was the result of a reduction in applications filed by both bad faith and legitimate applicants. Bad faith applicants are severely discouraged by the government's restriction measures, while legitimate applicants see less need to file a large number of defensive applications.

Market enforcement in China has also improved significantly. Administrative enforcement actions via local government authorities are typically considered the most cost-effective approach for resolving market infringements. These authorities have traditionally been most inclined to act when cases are straightforward, but in recent years officers have started taking on more difficult cases too.

Market supervision departments across the country have witnessed a rise in the number of trademark infringement cases investigated, from 31,900 in 2019 to 37,500 in 2022. At the same time, the overall value of these cases has nearly tripled within a three-year span, reaching an impressive CNY 1.4 billion in 2022. Such figures highlight the growing magnitude of these cases and underline the Chinese government's attitude to fighting IP infringement.

Civil litigation remains the main tool to crack down on complex infringement and claim damages. To bring IP-infringement cases to trial, China has estab-



lished four IP Courts, one IP Chamber in the Supreme People's Court (SPC), and 27 specialized IP Chambers in local courts.

The nationwide number of newly filed first-instance Intellectual Property civil cases rose by almost 55% between 2018 and 2021. The peak was reached in 2021 when more than 550,000 cases were recorded. Notably, two to three times higher damages are now being granted to brand owners than in earlier times. Punitive damages of up to five times the compensation against bad faith infringers have also been widely applied by local courts.

The vicious suits raised by bad faith parties to attack legitimate brand owners are now hard to win, as courts will examine how trademark rights were acquired. This trend has upset bad faith filers from pirating other parties' trademarks or from trying to sue legitimate brand owners.

The positive impact of eCommerce enforcement

There has also been a shift in the approach taken by China's popular eCommerce platforms, which play a vitally important role in IP protection in China. In earlier days, these online platforms often viewed complaints about counterfeits as a threat to their sales. But they've now recognized the increased risk of assuming joint liabilities for infringement if they do not take down fake goods.

Some of the more sophisticated platforms have also established comprehensive IP-rights protection systems. These 'Notice and Takedown' solutions enable brand owners to file online complaints directly with the platform in question. Such solutions are often the main channel for online complaints.

Pursuant to the requirements of China's eCommerce Law and Civil Code, all online platforms should have a 'Notice and Takedown' channel to deal with online complaints. This makes online enforcement the quickest of all enforcement solutions for removing on-

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line infringements. The typical timeframe is between three and 15 working days.

A brand owner can simply notify a platform with preliminary evidence against a seller's infringement. The platform then communicates the complaint to the seller for clarification. Failure to provide a reasonable explanation or a counterargument to the infringement claim most likely results in the platform taking down the products to avoid the joint liability of infringement.

How to avoid absolute-grounds refusal during trademark registration

Despite much progress in developing its frameworks for IP protection, challenges remain with registering trademarks in China. Standards have in fact become much stricter in recent years.

The CNIPA commonly refuses trademark applications on absolute grounds based on two primary reasons: lack of distinctiveness and misleading issues. There has also been an increase in refusals based on the potential negative social impact of a trademark. Together these refusals seem to be an effective attempt at slimming China's overcrowded trademark register, which already has more than 44 million marks.

The mark *Kim's Kitchen* was rejected due to the fact that the brand owner also provided other services beyond restaurants, such as running day-care establishments. In another example, the trademark for *Teas of the World* was rejected for using the slogan: *The finest teas of the world*. Again, this was deemed to be misleading to Chinese consumers.

It should be noted that if a mark is deemed as misleading in China, it's very difficult to overturn the decision. The success rate is less than 20%.

The same refusal risk is present for any marks containing words with a sexual or immoral connotation. The *MLGB* streetwear brand was not allowed to register, for example, as the name coincides with the initials of a commonly used four-letter vulgar term in the Chinese language.



As local counsel, Rouse typically assesses the risk of rejection and advises our clients accordingly before they file an application. If there is a risk, it may be better to not file the application at all. This is because a rejection creates a public record. Local enforcement authorities may then use this data against the use of a mark that has been rejected on absolute grounds.

Patent examinations aligned with international standards

One of China's key strategic goals is the promotion of innovation as a means of ensuring sustainable economic development. In this context, the country amended its patent law in June 2021 and joined the Hague Agreement Concerning the International Registration of Industrial Designs in May 2022. The aim is to provide more comprehensive protection in alignment with international practices.

China introduced partial design and prolonged the protection duration of a design patent from 10 years to 15 years in order to align with the Hague Agreement. This alignment also provides increased protection scope and a longer duration for patent owners.

In addition, China has introduced an 'open license' system. With this, a patentee makes a statement to the CNIPA that anyone wishing to implement the patented subject matter can obtain a license to do so by paying the prescribed license fee. This system will encourage technology transfer and the use of patented technology to the benefit of both patentees and potential licensees.

A copyright-protection system that keeps pace with the times

China's copyright industry has also recently flourished and achieved significant results. The year 2021 marked the 30th anniversary of the implementation of the Copyright Law of the People's Republic of China. This newly amended Copyright Law – which came into force on 1 June 2021 – aims to solve the outstanding problems in practice, improve the definition of works and the means of enforcement, and better balance the interests in the dissemination of works. It also aligns China with the international conventions, laws, and regulations to which the country has acceded.

It has now become a basic consensus in China to strengthen IP protection and increase the cost of infringement. The country's newly amended Copyright Law has raised the maximum statutory damage from CNY 500,000 to CNY 5 million, setting a minimum statutory damage of CNY 500. The mechanism of punitive damages has also been introduced in response to the need for greater IP protection.

In order to build a convenient and user-friendly copyright public-service system – and to promote the modernization of the copyright-governance system – the China Copyright Protection Centre implemented online copyright registration on 10 May 2022. Appli-

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cants no longer need to submit hard copies of registration application materials to the Centre. Instead, they can complete the whole registration process online – greatly improving efficiency.

In 2022, the total number of copyright registrations in China was 6.4 million – a year-on-year increase of 1.4%. Among them, the number of registered works was 4.5 million, and the number of computer-software copyright registrations was 1.8 million.

The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled entered into force in China on 5 May 2022. The implementation of the treaty in China has better safeguarded the rights and interests of the vast number of people in the country who have print disabilities. It also creates conditions for China to provide accessible format versions to people abroad. This is of great significance in promoting the international dissemination of China's outstanding works.

With all these changes, it's clear that China is transforming its IP landscape to create an environment conducive to technology transfer and where brands can thrive. Businesses are urged to increase their confidence in China's IP protection measures, as the country has plans in place to keep building on the strong progress it has already made.

The key to IP success in China lies in collaborating with local experts who understand the nuances of the ever-evolving landscape. By creating a strategy for protection and enforcement in China, businesses can secure their place in this IP powerhouse of BRICS and beyond.

Résumés

Flora Fang is a Senior Manager at Rouse's office in China. Flora has been practicing IP laws for over 17 years. She advises on a wide range of IP issues, in both contentious and non-contentious matters, including filing applications, oppositions, cancellations, reviews, availability searches and clearance opinions, renewals, infringement opinions, and overall IP protection strategies for both domestic and foreign companies. In particular, she has handled the IP portfolios of a range of US (and EU) MNCs in the technology, pharmaceuticals, life sciences, FMCG, and retail industries.

Robert Zang is a Senior Attorney at Lusheng Law Firm (Rouse's Strategic Partner in China). He has been practicing IP laws for over 12 years, providing consulting services on intellectual property

protection strategies and dispute resolution for the world's leading technology, fashion, entertainment, hotel, and sports brands. Robert has rich experience in client management and the experience in handling various difficult cases. In a complicated trademark invalidation case, his team successfully overcame several serious legal challenges, and this case was selected as one of the Top 10 Trademark Review cases in 2019.

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