



# THE IP DIGEST BY TENGYU



January, 2025

## About Tengyu

Beijing Tengyu Law Firm is a Chinese local general firm with over decade's history. Starting with practices in Intellectual Property, Tengyu gradually became a law firm who not only capable of providing legal services for both contentious and non-contentious IP issues, but also commercial dispute resolution, regulatory compliancy, civil and criminal liability etc.

In the past years, Tengyu has made many significant achievements and breakthroughs, including recently listed as one of the "2025 ALB China Firms to Watch". We continue to explore new areas of business, enhance our lawyers' and experts' capabilities, and actively participate in social welfare activities. These efforts not only bring new business opportunities to our firm but also bring more value to our clients and society.

At this new starting point, we will continue to uphold the professional, efficient, honest service concept, continue to explore new service models, to provide better legal services for both our clients locally and abroad. Going forwards, we will share with you the most updated Chinese IP Laws and Practices, as well as the latest developments and successful experiences of our firm.

## Our Practice

### Highlights of Our Services- Infringement Monitoring System

In China, trademark related infringement is still an issue which bothered both domestic and foreign owners. To efficiently stop infringement, the pre-action investigation to understand an overall situation and thus come out a strategy is very important. To assist our clients in regard, our infringement monitoring system is now ready and already served several local clients to take down the counterfeits within Chinese mainland.

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The monitoring system covers most of the important aspects of this huge market, including those corners that you might not expect. Using this system, we can monitor in real time the most important e-commerce platforms in China, such as Taobao, Tmall, Jingdong, etc., which aggregate information on hundreds of millions of products. At the same time, it can also track developments on social media, especially those short video platforms with high popularity, as well as relevant reports in online newspapers. The system can quickly recognize and warn of any suspected infringing products. Further, in addition to online channels, it is also able to monitor physical stores that sell suspected goods, whether they are brick-and-mortar or online, so that we do not miss a single clue of potential infringement. Once an infringing product is found, this system will reveal a great deal of detailed information, which includes specific details about the product - such as the link address, photos, public sales volume, and the address and pictures of the physical store or factory. What's more, the search result page will also present the distribution of the monitored factories across the country in the form of a map, so that the data dimension makes the whole infringement clear at a glance.

For clients, this system also provides an additional service - collecting and organizing evidence of use. In the process of intellectual property litigation, the use evidence is crucial and can strongly prove the brand's usage and popularity, providing solid support for winning the case. In short, this infringement monitoring system is like an experienced detective, which not only catches the traces of infringement in time but also provides detailed data to support the defense work. Whether you are an IP lawyer, a brand owner or a corporate legal officer, this system will bring great convenience and efficiency to your work.

In the future, as technology advances and market demand changes, the system will be updated and iterated to adapt to a more complex and changing market environment. However, for users nowadays, the one-stop solution it provides is sufficient to meet various challenges, help you safeguard your rights and interests, and protect your innovations from being infringed upon. So, if you are interested in this system, you may want to keep an eye on it, and perhaps in the near future, it will become your right hand in protecting your intellectual property rights. We look forward to exploring the unlimited potential of this system with you and working together to create a fairer and healthier market environment.

## Law Express

### **Draft Amendment to PRC Anti-Unfair Competition Law: adding unfair competition activities under intellectual property perspective**

The State Administration for Market Regulation released the draft amendments to Anti-Unfair Competition Law of the People's Republic of China (hereinafter refers to "Draft Amendment"), seeking public comments on December 25, 2024.

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The Draft Amendment consists of five (5) chapters and forty-one (41) articles, covering general requirements for Anti-Unfair Competition, department responsibilities, specific unfair competition activities, supervision and penalties for Anti-Unfair Competition activities.

- Improving the rules for fair competition in the digital economy
- Supplementing manifestations of unfair competition
- Strengthening the legal responsibility for anti-unfair competition and intensifying the crackdown of unfair competition activities

From an intellectual property perspective, we will mainly focus the changes and amendments on confusing activities and false advertisement.

New confusing activities added under Article 7:

- Using without permission a label or page identical or similar to the principal part of a domain name, a website name, web design, a self-media name, an application software name or an icon with certain influence, among others, of another person.
- Setting without permission the commercial label of another person with certain influence as a search keyword to mislead the relevant members of the public.
- Unauthorized setting other people's influential commercial logos as search keywords, thereby misleading the relevant public.
- A business shall neither sell confusing commodities as specified in paragraph 1 of this article nor provide facilitative conditions such as storage, transport, mail, printing, concealment, and business premises for the commission of confusing acts.

Amendments on false advertisement under Article 9:

- A business shall not conduct any false or misleading commercial publicity in respect of the performance, functions, quality, **categories, origins**, sales condition, user reviews, honors received, **transaction information, operating data, eligibility and qualifications**, and other relevant information of **commodities or commodity distributors**, to defraud or **mislead the relevant members of the public**.
- **For the purposes of the preceding paragraph, "commercial publicity" shall mainly include commercial publicity campaigns that do not constitute advertisements such as exhibiting, demonstrating, stating, explaining, promoting or placing writing on commodities by business premises, exhibition, website, self-media, telephone, leaflet, or any other means.**

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- A business shall neither help another business conduct any false or misleading commercial publicity by organizing false transactions, **fabricating reviews**, or any other means nor provide planning, production, publishing, and other services for false publicity.

From the Draft Amendment, we can see much improvement, especially in the specific regulation of confusing activities. The Draft Amendment not only applied some views of judicial interpretations but also considered the new situations and new problems that have emerged in market practice in recent years. The Draft Amendment will provide market players with clearer and operational legal guidance. However, as this is the Draft Amendment only, there may be still some updates for the final version, and will also specify and illustrate the classification of new media account names, the regulation of search keyword settings, and the citation of judicial interpretations etc. We foresee that many parties will involve discussing and communicating for more scientific and reasonable improvement of PRC Anti-Unfair Competition Law, so as to more effectively maintain the fair competition order of the market and protect the legitimate rights and interests of operators and consumers.

## Case Sharing

### **Tengyu Represented the Right Owner at Chinese Court to Cancel CNIPA's Approval of a Trademark Assignment without Registrant's Permission**

- *Case brief*

Without Registrant's permission, a third party fabricated the trademark assignment documents and thus filed an assignment application before China National Intellectual Property Administration ("CNIPA") by illegal means including imitating client's signatures.

In this case, the client (i.e. the Registrant) claimed that though they have the intention to transfer the trademark registration to this third party, they have not executed any assignment documents yet. The filed documents are forged without the Registrant's true intention. In practice, CNIPA will examine the completeness and execution of the documents and approve the trademark assignment. At the court, our lawyer carefully checked the signatures on the assignment document and identified and pointed out to the Court that the signatures are not handwriting of the signatory but by means of technical imitation or directly copy and paste. We also submitted legal opinions and solid evidence to prove non-authenticity of this trademark assignment application. The court fully considered the false points of the assignment documents and our opinions and finally canceled the Approval Notice of the trademark assignment issued by the CNIPA.

- *Our further thought on this case*

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From the trademark assignment process, there seems to be no obvious formality defects of the entire set of assignment documents, the third party has perfected their imitation acts, whilst the apparent perfection will lead to imperfect. The typical significance of the case is Tengyu's continued effort and strong ability to control the whole case and keep the right direction, tailored strategy in advance and strict execution of the strategy. We finally received favorable decision and won the consent and trust from the client.

### **General Provisions Provides Protection to Apparel Styles in Chinese Mainland**

Recently, Shanghai Intellectual Property Court (hereinafter refers to "Shanghai IP Court") issued a judgement for imitation of apparel styles based on general provisions (i.e., Article 2) of Anti-Unfair Competition Law of the People's Republic of China.

- *Case brief*

Six entities (both individuals and companies - hereinafter refer to "the Appellants") imitated 56 apparel styles of Guangzhou Gefeng Apparel Co., Ltd. (hereinafter refers to "the Appellee"), manufactured and distributed the apparels with the same and similar apparel styles through online and offline shops.

Here below are part of the apparel styles from both parties for comparison:

Appellee's original designed apparel style	Imitated apparel style by Appellants
	
	
	
	

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By 1<sup>st</sup> and 2<sup>nd</sup> instance court hearing, Shanghai IP Court finally issued the judgement that the questioned apparel styles have not reach to the threshold of influential and/or reputable commercial signs through extensive use, thus cannot be protected based Article 6.4 (confusing activities) of PRC Anti-Unfair Competition Law. However, the questioned apparel styles are not the alleged common apparel styles, which included the Appellee's style selection, cutting and splicing, and other elements collocation. Therefore, the Appellee's apparel styles have commercial value and competitive advantage. The launch of the apparel styles in question by the Appellants will damage Appellee's competition advantage. Furthermore, the imitation of commercial achievement will negatively influence the innovation and creation of society, also damage the consumers' overall welfare. Additionally, the apparel styles are time-sensitive, and which should get rewards within a short period of time (i.e., 6 months), outside the hot season, the value of the apparel styles will be considerably reduced. Therefore, the apparel styles in question launched in the same season will squeeze the Appellee' market share and reduce the commercial revenue, therefore, the Appellants activities distorted the fair market order. In this regard, the imitation of the apparel styles by the Appellants will also damage the market competition order. Based on above, the Shanghai IP Court decided that the Appellant's activities constituted unfair competition and imposed a compensation of CNY 700,000 to the Appellants.

- *Significance of the Case*

The market order is composed of several market competition mechanisms. Imitation of apparel styles is breaching one of the market competition mechanisms, which should be regulated and no disclaimer thereto.

Imitating apparel styles and launching the same into the market will damage the original design, damage the original designers' interests and competitive advantages, decrease in the original designers' revenue, damage the original designer's expected benefits within a reasonable cycle. It is necessary to regulate unfair competition by imitating originators' apparel styles. Therefore, the general provisions of the PRC Anti-Unfair Competition Law are providing protection to the apparel styles.

**[END]**

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