

INTA Issues Report on the Implementation of China's Amended Trademark Law (2021)

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INTA's Trademark Office Practices Committee, China Subcommittee, has issued a *Report on the Implementation of China's Amended Trademark Law*. It provides critical insights into the impact on the pace and shape of intellectual property (IP) rights protection in China since the 4th Amendment of the Law came into force in 2019.

The four-section Report involved two years of work by Subcommittee members and is based on an analysis of feedback provided by 100 INTA members—brand owners and practitioners—in China and globally who responded to a survey sent out by the Subcommittee. The Report focuses on the main policy changes contained the 4th Amendment, namely: trademark warehousing, trademark squatting, trademark agency discipline, and increased penalties against IP infringement.

Marking the most significant finding, the Report reveals that the amended law and relevant corresponding provisions have offered powerful tools to curb trademark warehousing. This is illustrated by evidence that the top trademark filers have expressed genuine interest in using their marks in commerce.

Although trademark warehousing and skyrocketing trademark filings in China—up from 7.5 million in 2019 to 9.3 million in 2020—are not innately or causally linked, it remains to be seen whether the efforts to curb trademark warehousing will continue to act as a strong deterrent to the proliferation of trademark filings in the future.

Regarding trademark squatting, survey respondents were generally optimistic that the amended law would result in a decrease in bad-faith filings.

Although the squatters are becoming more cunning in how they cover their tracks, which imposes more difficulties on brand owners for investigation and evidence collection, the survey reveals that the success rates in opposition and invalidation cases have been significantly improved in recent years. Notably, since earlier this year, there has been an increase in cases where penalties are equivalent or almost close to what the law allows.

The Report notes that the amended law and other administrative regulations and rules more closely regulate trademark agencies—important players in the trademark ecosystem. On one hand, the respondents agree that stricter regulation on agencies implemented in the 4th Amendment is necessary and helpful. On the other hand, they expressed concern about over-demanding restrictions, such as the circumstances in which the agencies are held contributorily negligent and therefore liable for alleged bad-faith filings, and to what extent the supervisory authorities, including local Administrations for Market Regulations, can regulate trademark agencies.

Furthermore, while the amended law raises the statutory damages to RMB 5 million (approximately US \$780,000) from RMB 3 million (approximately US \$470,000), the respondents believe there is more to be done. More than half (52.6 %) believe the effect on the court's post-amended law rulings on compensation amounts are "average." Nonetheless, since then, there has been a clear increase in court cases upholding punitive damages, and the Supreme People's Court and the Beijing High Court have issued judicial guidance on calculation methods for punitive damages.

The Report provides an overview of the legislative changes, analysis, and comments on the survey results, and draws conclusions based on court judgments and local enforcement punishment records. It also offers practice tips to help brand owners and practitioners globally navigate the IP system in China.

The Report, which represents a milestone of successful committee advocacy work, will help guide INTA in its policy work on future revisions of China's Trademark Law.