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ADMINISTRATIVE PROTECTION OF INTELLECTUAL PROPERTY
IN CHINA IN 2005*

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* The views and opinions expressed in this paper are those of the author and not necessarily those of the World Intellectual Property Organization (WIPO) or its Member States.

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INTRODUCTION

Over the past few years, great progress has been made in the protection of intellectual property (IP) in China. In 2005, competent government authorities received over 470,000 patent applications of three categories (patents, utility models and industrial designs), as well as over 830,000 trademark applications for various purposes, out of which 664,000 were applications for trademark registration. Efforts on copyright protection were increasingly enhanced, whereas the customs achieved remarkable results in its protection of intellectual property. Government agencies for, among others, public security, industry and commerce, copyright and cultural affairs have increased their efforts to monitor and control IP related markets, by launching specialized campaigns against counterfeited goods, infringement and piracy, and focusing on combating criminal offenses in relation to intellectual property. These efforts have resulted in evident improvement of the market order.

In order to strengthen guidance to and coordination among government agencies having a responsibility in administrative enforcement of intellectual property, a National Working Group on the Protection of Intellectual Property was set up in March 2004, headed by Vice Premier WU Yi and composed of ministers of a dozen of ministries and commissions. This fully demonstrates the firm and strong determination of the Government of China to prioritize IP protection and severely crack down on criminal infringement of IP rights.

I. LEGAL SYSTEM AND PROGRESSIVELY DEVELOPMENT OF LAWS

In 2005, as part of its efforts to develop and improve the system for collective management of copyright, the State Council promulgated the Regulations on Collective Management of Copyright. Meanwhile, the National Copyright Administration and the Ministry of Information Industry jointly issued the Measures on Administrative Protection of Copyright on the Internet in order to protect copyrighted works in their transmission on the Internet. The State Intellectual Property Office released the Measures on Compulsory License of Patent Working in Relation to Public Health. In addition, legislation work has almost come to an end concerning the Regulations on the Protection of Rights of Communication on Information Networks, which will be shortly issued by the State Council for implementation.

The year 2005 saw strengthened collaboration and coordination between public security authorities and other government agencies such as the customs, industry and commerce administrations, and copyright administrations in developing various IP protection policies. For instance, in accordance with the Provisions on the Transfer by Administrative Enforcement Authorities of Cases concerning Suspected Crimes, the Ministry of Public Security has established the Interim Provisions on Collaboration and Coordination of Work in Combating Criminal Infringement of Exclusive Right of Trademarks, and the Interim Provisions on Collaboration and Coordination of work in Combating Criminal Infringement of Copyright, in cooperation with the State Administration for Industry and Commerce and the National Copyright Administration, respectively. The Ministry of Public Security has also

established, in cooperation with the China Customs, the Interim Provisions on Strengthening Collaboration in Enforcement of Intellectual Property Rights. Those Interim Provisions, specifying working procedures, materials needed for the transfer of cases, joint meeting mechanisms and so on in the collaboration between administrative enforcement administrations and public security authorities, will contribute to further increasing efficiency and accuracy in law enforcement, and will act as a strong deterrent to criminals infringing IP rights.

II. ADMINISTRATIVE ENFORCEMENT EFFORTS AND ACHIEVEMENTS

Intellectual property related work has become more and more important in China along with its economic and social development. As part of the efforts to comprehensively strengthen IP protection, the National Working Group on the Protection of Intellectual Property launched a nation-wide specialized campaign on the protection of intellectual property and the fight against counterfeit and piracy, which last for 18 months from August 2004 to December 2005 with remarkable achievements.

1. Trademark Protection

In 2005, administrations for industry and commerce at all levels across China joined efforts in implementing four rectification programs under the Action Plan on the Protection of the Exclusive Right of Registered Marks, focusing on infringement cases concerning trademarks for food, medicine and agriculture-related products and geographic indications. According to statistics, administrations for industry and commerce at all levels investigated and dealt with 39,107 cases in 2005 related to infringement and counterfeit of various kinds of trademarks, out of which 6,770 cases involved foreign companies or individuals, an increase of 23.2% as compared with the 5,401 cases in 2004. A total of 236 cases of suspected crimes concerning trademarks were transferred to the judiciary, involving 215 suspects, with both figures representing 2.5 and 2.6 times more than those of 2004, respectively.

In 2005, China continued its efforts in making known to the public government affairs concerning trademarks so as to increase transparency in trademark registration and administration. In December, the State Administration for Industry and Commerce launched on the web site of the China Trademark Office, for free access by the public, a search system on trademark registration information, publishing in real-time full trademark registration information. In the same month, the China Trademark Office under the State Administration for Industry and Commerce and the Trademark Review and Adjudication Board jointly released the Trademark Examination Guidelines.

2. Patent Protection

In recent years, patent offices at all levels increased their efforts in administrative enforcement of patent. Severe measures based on relevant laws regulations have been taken against all patent infringement behaviors in respect of food, medicine and other products that have a bearing on human life, focusing on the investigation and prosecution of patent infringement that involve core and key technologies or have significant implications. Conscientious efforts have been made to investigate and deal with patent infringement, counterfeit and pass-off cases concerning invention, utility models and industrial designs.

From January to December, 2005, competent authorities for patent administrative enforcement investigated and dealt with 4,767 cases of patent infringement, out of which 15 cases have been transferred to public security authorities for further action.

3. Copyright Protection

Copyright administrations and other relevant agencies in China launched three programs in 2005 with different focuses, namely, a Specialized Spring Action Combating CD Piracy, a Specialized Action Combating Piracy of Audio-Visual Products and a Specialized Action Combating Infringement and Piracy on the Internet. In 2005, copyright administrations at all levels across the country handled 9,644 cases in total, with 9,380 cases concluded, more than 107 million pirated products of various kinds confiscated and 17 illegal CD production lines closed down (a total of 224 such lines were closed down between 1996 and 2006), out of which, 366 cases of suspected crimes concerning copyright have been transferred to the judiciary for examination.

4. Intellectual Property Protection by the Customs

The China Customs has continued to reinforce its efforts in IP protection and made remarkable achievements. Through various means, it has enhanced its capability and efficiency in hunting down infringing goods and increased its accuracy in addressing importation and exportation of infringing goods. The year of 2005 saw 1,210 cases where customs all over China tracked down and seized infringing goods, worth of RMB 99.78 million *yuan* in value, representing 19% increase in cases and 18.5% increase in value, respectively.

III. PUBLIC AWARENESS AND PROMOTION/EDUCATION ACTIVITIES

A critical basis for IP protection lies in the improvement of public awareness, thus making consumers conscious of the importance of IP protection and the significant role that IP protection plays in promoting national economic development, to such an extent that they would conscientiously respect the intellectual creations and works of the mind of other people. Every year in China, on the occasion of the World Intellectual Property Day on April 26, governments at the central, provincial and municipal levels would organize a week-long promotion and education activities on the importance of IP protection. Taking various publicity forms such as public forum and lectures at open squares and in communities, mass signature, and promotion through newspapers and on television, these activities help to continuously enhance public awareness on the legal protection of intellectual property.

In 2005, for example, the National Office of Rectification and Standardization of Market Economic Order, the State Administration for Industry and Commerce, the National Copyright Administration, the State Intellectual Property Office, the Ministry of Public Security, the China Customs and seven other government agencies jointly organized a “Publicity Week of Intellectual Property Protection” from April 20 to 26. Opened in Beijing, this is the largest campaign that the Government of China has ever launched to promote and protect intellectual property targeting the whole nation. This opening ceremony in Beijing kicked off a campaign for “Passing-on Signatures of a Million People for Intellectual Property Protection”, where honored guests and leaders of relevant government agencies invited to the ceremony signed on a poster marking the words of “Protect Intellectual Property, Promote Innovation and Development”. This very poster was then passed on to the municipality,

various districts and counties in Beijing for public signature. In the meantime, similar activities were also undertaken in other big cities in China.

The Publicity Week has brought to a climax IP promotion activities China in 2005, which effectively started in February when relevant government agencies organized various activities, such as “Keeping Watch our Spiritual Home – Concert of a Hundred Singers”, “Say No to Piracy, Starting with Me – a Thematic Education Program on Copyright Protection for Middle School Students”, the “High-level Business Forum on Intellectual Property Protection”, the “Seventh National Promotion Activity on the Legal Protection of Audio-Visual Products”, a massive interview on the theme of “Our Intellectual Property Protection – in Action” collectively conducted by various parties of the media, a thematic program on “Youth and Intellectual Property”, and a theatrical festival on IP Protection – “Protect Innovation and Create the Future”. All these activities have received strong and favorable responses from the society at large. For example, “Keeping Watch our Spiritual Home – Concert of a Hundred Singers” attracted an audience of more than 30,000 people and was covered by 23 provincial televisions across the country. Around 360,000 middle school students took part in the program of “Say No to Piracy, Starting with Me – a Thematic Education Program on Copyright Protection for Middle School Students”, with over 20,000 essays answered to the call of essays made by the Program.

CONCLUSION

Efforts in recent years on thematic education and promotion, coupled with the improved public awareness on IP protection, have resulted in even better IP protection in China and increasing standardization of the market order. It is noted, however, that IP protection is a long-term and arduous task for China, which cannot be completed over night, but needs unremitting efforts and firm and unshakable determination of the Government in attaching equal importance to legislation and law enforcement. In this respect, a result-oriented approach will be taken, based on laws and regulations and implemented through effective enforcement. Synergies will be sought through better communication, strengthened collaboration and mutual support among various players such as the Government, the society and the international community, to make it an endeavor of the whole nation, targeting the society and the public at large through vigorous promotion and education programs. This, in fact, constitutes a key means through which fundamental change in the approach to copyright protection will be achieved. We have every reason to believe that with the common efforts of all stakeholders, intellectual property protection will be further improved and perfected in China, and will play an even more important role in encouraging innovation of its people and promoting development of its industries.

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