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In this edition, we scanned all the IP-related judgments and adjudications published at the Supreme Court's official website (<http://www.court.gov.cn/zgcpwsw/>) in December 2014, worked out the statistics based on all the IP-related judgments and adjudications published by the Supreme Court and the 32 Higher Courts, and shared with you our comments on some significant cases.



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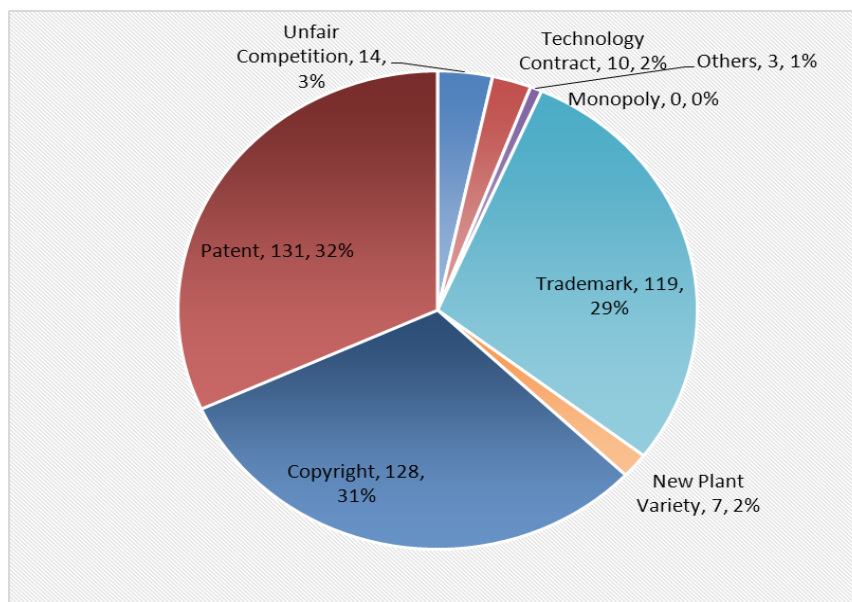
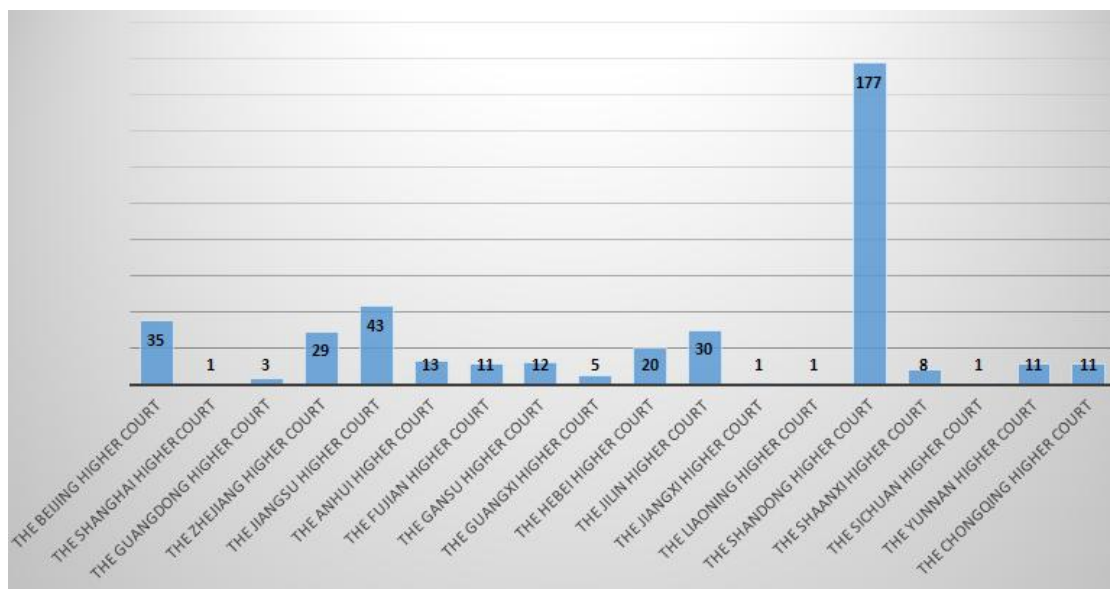
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I. Statistics

- In December 2014, the 32 Higher Courts published 412 IP decisions, while the Supreme Court published none. The Shandong Higher Court published 177 judgments, ranking No. 1 for the first time, and the Jiangsu Higher Court and the Beijing Higher Court followed and published 43 judgments and 35 judgments respectively.

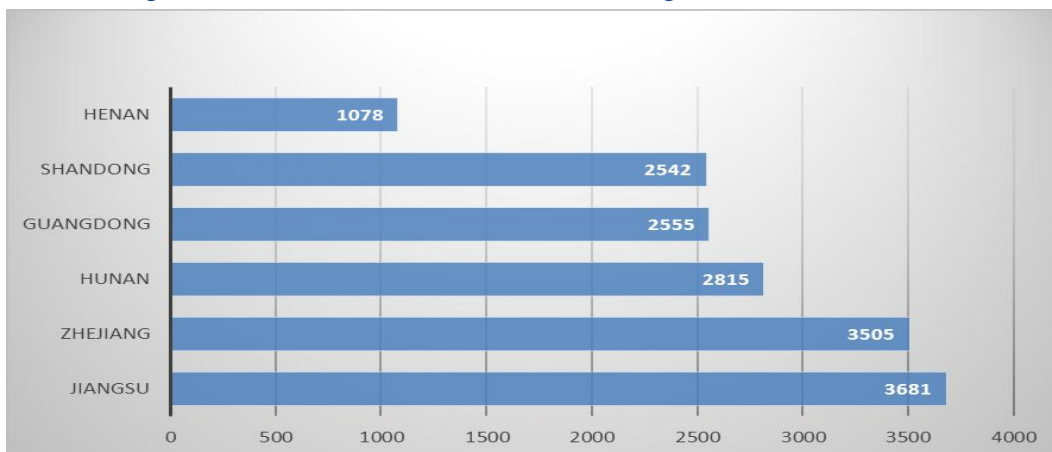


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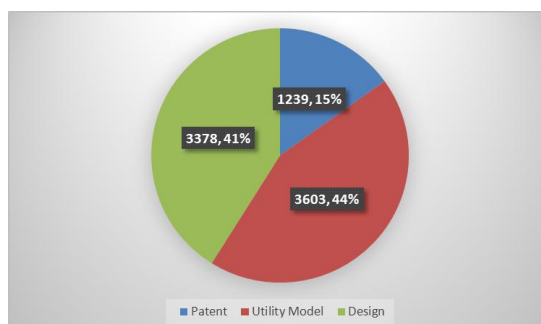
- 1) Decisions uploaded on the Internet are effective judgments and adjudications. The first-instance judgments in the on-going appellant proceedings are not uploaded.
- 2) Not all enforceable judgments and adjudications issued by the courts are uploaded. Cases involving trade secrets are not uploaded under the Exception Rule of the Supreme Court Regulations. Also, some courts have not uploaded judgments and adjudications so far due to technical incapability.

Comparison on the Patent Enforcement Action Data by the SIPO in 2013 and 2014

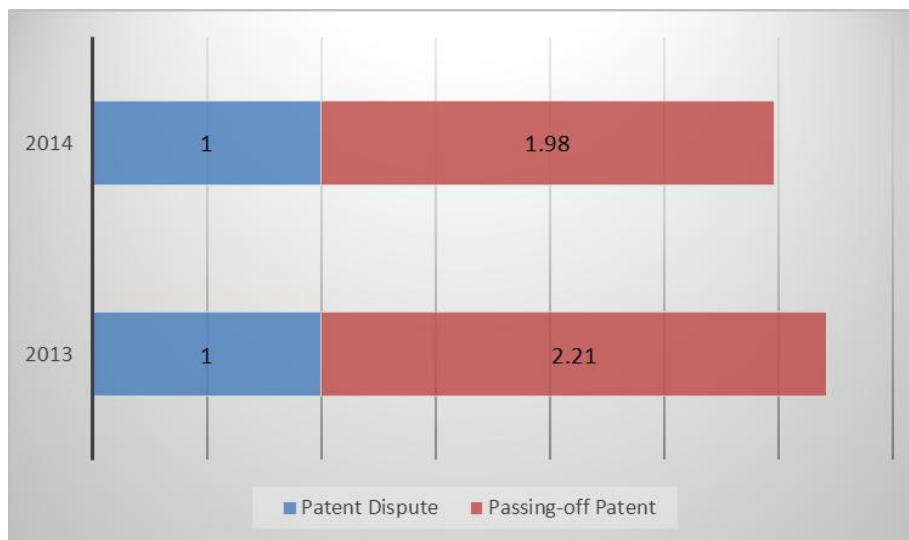
- In 2014, the total number of patent administrative enforcement cases reached 24,479, exceeding 20,000 for the first time and increasing by 50.9% compared with 2013. Among the 24, 479 cases, there were 8,220 patent dispute cases (including 7,671 patent infringement disputes) and 16,259 patent passing-off cases, increasing by 62.6% and 45.5% respectively compared with 2013.
- There are six provinces where over 1,000 patent enforcement cases were handled in 2014. The six provinces are Jiangsu, where 3,681 cases were handled, Zhejiang, where 3,505 cases were handled, Hunan, where 2,815 cases were handled, Guangdong, where 2,555 cases were handled, Shandong, where 2,542 cases were handled, and Henan, where 1,078 cases were handled. In 2014, patent enforcement cases increased in twenty-five provinces, among which the seven provinces/municipalities Zhejiang, Beijing, Tianjin, Guizhou, Guangxi, Ningxia and Qinghai witnessed a substantial growth of over 100%.



- Patent dispute cases handled in 2014 majorly involved utility model and design patent although invention patent cases increased. Among the 8, 220 patent dispute cases handled in 2014, 1,239 cases involved invention patent (taking up 15.1%), 3,603 cases were about utility model patent (taking up 43.8%), and 3,378 cases involved design patent (taking up 41.9%). Compared with 2013, when invention patent cases took up 11.1% and utility model patent cases took up 32.9% of the patent dispute cases, the proportion of invention patent cases and utility model patent cases increased considerably in 2014.



- Patent infringement cases involving foreign parties increased. In 2014, there were 524 patent infringement disputes involving foreign parties, taking up 6.8% of all the 7,671 patent infringement disputes. Compared with 2013, when there were 362 cases involving foreign parties, which took up 7.7% of the patent infringement cases, in 2014, patent infringement cases involving foreign parties increased by 43.9%, with a decrease by 0.9% however.
- In 2014, the ratio of patent dispute cases to patent passing-off cases handled by the SIPO was 1:1.98 (It was 1: 2.21 in 2013), which meant that in 2014 the SIPO handled more patent dispute cases, which are generally more difficult than patent passing-off cases.



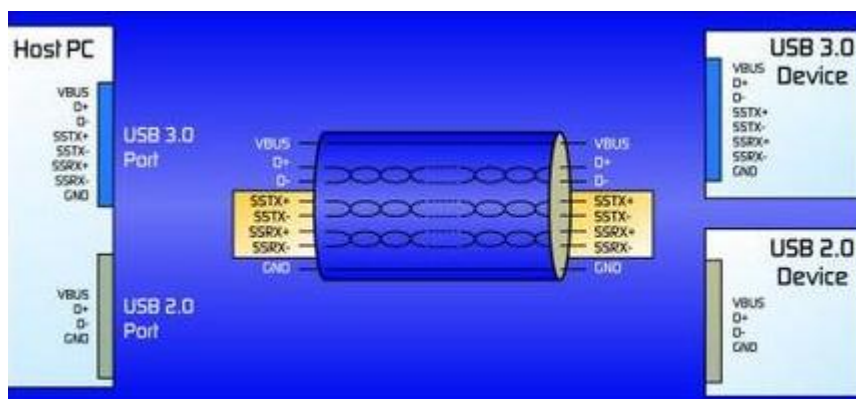
Source: The SIPO's website

II. Comments on Typical Cases

Patent

Deyi Precision Electronics (Suzhou) Ltd. vs. Foxconn (Kunshan) Computer Connector Co., Ltd., Jiangsu Provincial Intellectual Property Office

- Dispute over an administrative adjudication
 - The Jiangsu Higher Court [Case No.: (2014) Su Zhi Xing Zhong Zi No.4]
 - The Nanjing Intermediate Court of Jiangsu [Case No.: (2013) Ning Zhi Xing Chu Zi No. 5]
- ✓ This case was the first patent infringement administrative lawsuit concerning standard-essential patents in China.



Rule:

Patents that patentees submitted to standard organizations are not absolutely standard-essential patents or standard-essential patent claims. Infringement shall be established if infringers exploit non-standard-essential patents or technical solutions contained in non-standard-essential patent claims. RAND promises that patentees made to standard organizations shall not be deemed automatic patent licensing. Generally speaking, patent licensing still requires authorization from the patentees. The jurisdiction agreement reached by the licensor and the licensee in the standard agreement is not the absolute reason of suspension in the administrative procedure.

Remarks:

Honghai Precision Industry Corporation, parent company of Foxconn (Kunshan) Computer Connector Co.,Ltd., and Jiaze Terminal Corporation, parent company of Deyi Precision Electronics (Suzhou) Co. Ltd., are entrants and technical contributors of USB 3.0 Contributor Agreement and promised to comply with USB 3.0 Norm. Honghai once contacted Jiaze about the patent licensing of USB 3.0 and requested patent licensing from Jiaze, but their request was rejected by Jiaze, so Foxconn filed a request with the Jiangsu Provincial Intellectual Property Office for an administrative investigation of Deyi about the latter's infringement of their USB 3.0 patent. The Jiangsu Provincial Intellectual Property Office made an administrative decision confirming infringement. Deyi, dissatisfied with the decision, brought a lawsuit to the Nanjing Intermediate Court and later appealed to the Jiangsu Higher Court. On December 19, 2014, the Jiangsu Higher Court made a final judgment maintaining the first-instance judgment and the administrative decision of the Jiangsu Provincial Intellectual Property Office.

Two focusing points of this case:

1. **Whether the patent involved in this case is a standard-essential patent.** Both the Jiangsu Provincial Intellectual Property Office and the Nanjing Intermediate Court believed that USB 3.0 Norm only defines that the standard A type socket on the connector surface shall include two pairs of differential signal terminals, while specific technical features of such terminal as well as the part abutting or configuring the terminal are not stated, and the specific technical solutions concerning manufacturing plugs and sockets are not stated in the norm, either. However, claims 1 and 4 of the patent involved in this case not only possess such technical features as differential signal terminals but also possess other specific technical features which are not prescribed in the standard. These two claims are not absolutely infringed when the standard is carried out. Therefore, the two claims involved are not essential claims of the standard.
2. **Whether the case shall be suspended if the trial of it shall be based on the result of the other case that has not been concluded.** Deyi alleged that parent companies of both parties are entrants of USB 3.0 Contributor Agreement in which certain clauses have stipulated that any disputes arising in any way about the patent licensing of USB 3.0 series products shall be submitted to the New York state court and the U.S. federal court. However, that Jiaze has filed antitrust litigation with the New York state court was not a statutory reason of suspension of cases stipulated by the Chinese law. Therefore, the Jiangsu Provincial Intellectual Property Office and the two courts all believed that the reason of suspension of the captioned case was untenable and that the case should not be suspended

■ Copyright

[Qiong Yao vs. Yu Zheng, et al.](#)

- Copyright Infringement Dispute
- The Beijing No.3 Intermediate Court [Case No.: (2014)San Zhong Min Chu Zi No.7916]
- ✓ This case is deemed an IP case with crucial importance and guiding influence on the production and the development of domestic dramas in the future.



Rules:

Expression of a piece of work, including characters, relationship between the characters, settings, plots, plot developments, interactive relationship between characters and plots and conflicts, etc., generally integrates the author's creative wisdom and embodies the most striking/unique features of the work and shall be copyrightable and protected under the copyright law.

Remarks:

In copyright infringement cases, the most complex and difficult issue is to prove the existence of the act of plagiarism since it involves the determination of the boundaries between the ideas and the expression of the ideas. As there is not a clear delimitation of the scope of the rights as prescribed by the claims of a patent, boundaries between the ideas and the expression of the ideas for a piece of work are not preset and therefore need to be decided by the courts case by case. This case provides valuable guidance on the determination of the ideas and the expression of the ideas and the boundaries between them.

In this case, the court elaborated on how to differentiate the ideas and the expression of the ideas as follows:

Firstly, comprehensively compare the plots of a literary work with the composition of the source materials of a work to decide the similarity of the structures of the works. If the inner structures and the plots, etc. of the works are similar enough to give an impression that they are similar to each other as a whole, the latter work will be a reproduction or adaptation of the prior work, even though they are different in the arrangement of certain plots.

Secondly, if the plots and the arrangement of the plots are specific enough to create the perception of a particular source or origin instead of being narrative and general, the plots and the arrangement of the plots shall be deemed the expression of the ideas.

Thirdly, when deciding whether a piece of work and its content compiled basing on a particular circumstance, limited expressions and public materials are eligible for copyright protection, it is important to take into account whether the author has injected his creative expression so as to make the work original.

On the basis of the above, the trial court of this case concluded that, it is important to consider whether there exists a source and derivation relationship between the prior work and latter work when deciding the similarity of expressions. If the public is left an impression that the latter work is an adaption of the prior work, the two works shall be deemed similar, or the latter work shall be deemed originating from the prior work.

 **Trademark**

Jiangzhou Deing-ni Inkstone Institute vs. TRAB, Jiang Yi Yuan Yan She

- **Dispute over Trademark Opposition Review**
- **The Supreme Court [Case no.: (2014) Xing Ti Zi No. 6]**
- **The Beijing Higher Court [Case No.: (2011) Gao Xing Zhong Zi No. 176]**

	
<p>The Opposed Mark App. No.:3140747 Class 21 : Tile, Pottery, Porcelain</p>	<p>The Cited Mark Reg. No.: 948285 Class 16 : Inkstone</p>

Rule:

In the opposition to other's trademark application on the ground of the infringement of a well-known trademark, the well-known status of the trademark shall be decided based on the evidence generating before the filing date of the opposed trademark application, and evidence about the well-know status generating after the filing date of the opposed trademark application can be used as reference. In addition, the requirements on evidence of the well-known status of the trademark should not be too high.

Remarks:

Deng-ni inkstone, the only pottery inkstone of the four greatest ancient inkstones of China, has been lost to the world for a long time for historical reasons. In the late 1980s, **the Jiangzhou Deing-ni inkstone Institute** (hereinafter "**Institute**") in Xinjiang County, Shanxi Province successfully developed the craftsmanship of Deng-ni inkstone. This made the famous ancient inkstone appear again and achieve great success.

In February 1997, the **Institute** obtained the trademark registration No.948285 "Jiangzhou & Device" in respect of goods "inkstone" in Class 16. **Jiang Yi Yuan Yan She** (hereinafter "**Jiang Yi Yuan**") in Xinjiang County, Shanxi Province is an inkstone manufacturer locates in the same area as the **Institute**. For decades, **Jiang Yi Yuan** was fined by the administrative authorities many times for infringing the **Institute's** "Jiangzhou & Device" trademark.

In April 2002, **Jiang Yi Yuan** filed a trademark application for "Jiangzhou" in respect of goods "tile, pottery and porcelain", etc. in Class 21, which was opposed by the **Institute** after it was preliminarily approved and published by the Chinese Trademark Office (CTMO). In the opposition proceedings, the **Institute** successively claimed prior trademark registration (Article 28¹), well-known trademark (Article 13.2), prior use and certain reputation (Article 31)

The above claims were rejected by the CTMO, the TRAB, the Beijing No.1 Intermediate Court and the Beijing Higher Court during the opposition proceedings that lasted as long as ten years, which led to the approval of the opposed trademark application. Dissatisfied with the final judgment of the Beijing Higher Court, the **Institute** initiated a retrial request with the Supreme Court. The Supreme Court made the judgment in August 2014, rejecting the **Institute's** claim of prior trademark registration (Article 28) but supporting their claim of well-known trademark as well as prior use and certain reputation. In the judgment, the Supreme Court overruled the judgment made by the Beijing Higher Court and demanded the TRAB remake the decision.

In this judgment, the Supreme Court reaffirmed the rule made in "Quan You Well-known Trademark Case" (NTD IP Case Express 2014.03 Issue No.1), namely, **in the opposition to other's trademark application on the ground of the infringement of a well-known trademark, the well-known status of the trademark shall be decided based on the evidence generating**

¹ This case refers to the articles of the Chinese Trademark Law (2001).

before the filing date of the opposed trademark application, and evidence about the well-know status generating after the filing date of the opposed trademark application can be used as reference. In consideration of the fact that the **Institute's** prior mark was recognized as a famous trademark in 2003 in Shanxi Province, the Supreme Court held that the **Institute's** prior mark "has been in continuous use for a long time and has obtained certain reputation" before the filing date of the opposed mark. Combining this with other evidence, the Supreme Court finally decided that the prior mark "has achieved the fame a well-known trademark should have". From this judgment, it is clear to see that the Supreme Court holds such an attitude that the requirements on evidence of the well-known status of a trademark should not be too high.

Apart from the above rule regarding how to judge the well-known trademark, the Supreme Court defined two important proceeding rules:

1. If a party disputes the fact ascertained by the first-instance court and submits new evidence in the second instance, the second-instance court should hold a hearing.
2. Whether a party has claimed a certain article of the law as the legal basis in the proceedings with the TRAB, the first-instance court and the second-instance court shall be determined on a comprehensive analysis of the content of the claims submitted during the proceedings. Even though a party did not explicitly list the article of the law as the legal basis of their claims, the court can decide that the party listed the article of the law as the legal basis of their claims if it can be concluded from the context of their claims that the party has the such an intention of claiming the article of the law

Unfair Competition

Wong Lo Kat vs. Jia Duo Bao

- Dispute over Product Packaging & Decoration
- The Guangdong Higher Court [Case No.: (2013) Yue Gao Fa Min Chu Zi No. 1]
- The Guangdong Higher Court [Case No.: (2013) Yue Gao Fa Min Chu Zi No. 2]



Rule:

The unique packaging & decoration of a product under a famous brand (trademark) will be attributed to the trademark registrant after the trademark license agreement is terminated provided that the trademark had obtained high reputation in the market before the trademark license agreement was signed and later became the most eye-catching part in the packaging & decoration of the product to relevant public through the licensee's use.

Remarks:

Guangzhou Pharmaceutical Holdings Ltd.(hereinafter “Guangzhou Pharmaceutical”) brought a lawsuit against Guangdong Jia Duo Bao Beverage & Food Ltd.(hereinafter “Jia Duo Bao”) with the Guangdong Intermediate Court on July 6, 2012for the latter’s unauthorized use of the unique packaging & decoration of their famous product. On the same day, Jia Duo Bao sued Guangzhou Wong Lo Kat Health Industry Ltd. (hereinafter “Wong Lo Kat”) for the latter’s unauthorized use of the unique packaging & decoration of their famous product with the Beijing No.1 Intermediate Court. As appointed by the Supreme Court, the two cases were tried by the Guangdong Higher Court. On December 12, 2014, the Guangdong Higher Court made the decision that the rights and interests to the packaging & decoration of the red tin Wong Lo Kat herbal tea belong to the registrant of the “Wong Lo Kat” trademark, i.e., Guangzhou Pharmaceutical.

On March 28, 1995, Yangcheng Pharmaceutical, the predecessor of Guangzhou Pharmaceutical, licensed the trademark “Wong Lo Kat” to Hongdao Group (Jia Duo Bao’s affiliated company for the latter to produce herbal beverage in red tin. In the trademark license agreement, the ownership of the rights and interests to the packaging & decoration of the red tin Wong Lo Kat herbal tea was not stipulated. Both parties claim their rights and interests to the unique packaging & decoration of the red tin Wong Lo Kat herbal tea.

The Guangdong Higher Court held that the most eye-catching part of the unique packaging & decoration of the red tin Wong Lo Kat herbal tea to relevant public is the three yellow words “Wong Lo Kat” displayed vertically against a red background. The three words have been closely integrated with other packaging components of the Wong Lo Kat red tin and have become a very important part of the packaging & decoration, and relevant public would rather think that the famous product at dispute is closely related to Guangzhou Pharmaceutical than deliberately distinguish the differences between trademark right and unique packaging & decoration right from a legal perspective. Although it was Hongdao Group who entrusted others to design the unique packaging & decoration of the red tin Wong Lo Kat herbal tea and firstly put it into use, and it was Jia Duo Bao and its affiliated companies who made great contribution to the production, the sales, the promotion of the red tin Wong Lo Kat herbal tea, the resulting business reputation should

still be attached to the famous product Wong Lo Kat herbal tea and enjoyed by the trademark right holder Guangzhou Pharmaceutical which should have been foreseen by Hongdao Group when they signed the trademark license agreement.

As for the capital and advertising expenses that Jia Duo Bao and its affiliated companies invested for the red tin Wong Lo Kat herbal tea during the contract term, a huge amount of profit has been obtained by them during the trademark license period. Even if the investment has not been fully recovered, Jia Duo Bao and its affiliated companies should have anticipated this kind of situation when they signed the trademark license agreement. So, Jia Duo Bao and its affiliated companies should bear the relevant consequences on their own.

Anti-Monopoly

[Emiage.com vs. Qihoo 360](#)

- Dispute over Monopoly Issue
- Trial Court: the Beijing No. 2 Intermediate Court
- ✓ This case is referred as the first anti-monopoly case in China Mobile Internet.



Rule:

In the anti-monopoly cases involving mobile Internet, the determination of the relevant market should be based on a comprehensive consideration of the market situation, function, the use, the price, the quality, the substitutional relation, the supply and the consumption of the software. Generally speaking, PC-end software is not the replacement for the congener software of mobile terminal, so they do not share the same relevant market.

Remarks:

The 360 mobile phone security guard of the defendant, Qihoo 360, intercepted the short messages coming from *emipian* software of the plaintiff, emiage.com and completely covered *emipian* through caller ID, the software inbuilt *Call show*. Furthermore, the defendant bundled its *Call show* with 360 mobile phone security guard. The plaintiff claimed that the above acts of the defendant constitute *Abuse of Market Dominant Position* stipulated by the *Anti-Monopoly Law*.

Moreover, the plaintiff believed that the defendant's putting the short messages coming from *emipian* into the dustbin was malicious depreciation of *emipian* and constituted *commercial defamation acts* stipulated by the Anti-Unfair Competition Law.

The first-instance court, the Beijing No. 2 Intermediate Court held that the relevant market of this case should be mobile phone security software market in mainland China, where the existing evidence was not enough to prove the defendant had market ascendancy.

The court further held that the defendant did not abuse the market dominant position even though they had it:

Firstly, the defendant has reasonable grounds to intercept the short messages coming from the plaintiff as the short messages are easily recognized as commercial electronic information which usually should be intercepted. In addition, the defendant also supplied communication mechanism to remove the erroneous message interception.

Secondly, the defendant has reasonable grounds to cover *emipian*. For the users of 360 mobile phone security guard software, the demand for security is higher than the demand for social contact, so the security tips should take priority over the social function tips.

Thirdly, the defendant's supply of *Call show* doesn't constitute tied sale of it as caller ID is the essential function of mobile phone security software.

Finally, although the defendant put the short messages coming from *emipian* into the dustbin which might cause negative impact on the commercial reputation and economic benefits of the plaintiff, the defendant neither had the intention to slander the plaintiff subjectively nor fabricated or spread false facts objectively, thus, commercial defamation was not constituted.

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