

Assistant Judge Zhang Qian of the Beijing Intellectual Property Court Discusses Punitive Damages in Trademark Cases

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Recently, Zhang Qian, assistant judge of the [Beijing Intellectual Property Court](#), attended the online conference “Judicial Protection of Intellectual Property Rights on April 26, 2022” organized by the Beijing Intellectual Property Judicial Protection Research Society, and gave a symposium on legal publicity to relevant practitioners under the theme “Hot spots and difficulties in trademark protection practices of enterprises—Analysis of Typical Cases about Trademark Authorization and Determination.”

Article 63 of the [Trademark Law was amended in 2019](#) to increase punitive damages from up to treble to up to quintuple assessed damages when infringement is “committed in bad faith and the circumstance is serious.” In March 2021, China’s Supreme People’s Court [released a list of typical cases of punitive damages](#), which also helped explain when punitive damages are available. And, in April 2021, Zhejiang’s High Court affirmed a [punitive damages award in a trademark case for Wyeth](#) totaling 30.55 million RMB.

In this webinar, Judge Zhang and explained how to determine bad faith and serious circumstance based on past cases.

How to Determine the Bad Faith in “Punitive Damages”?

In practice, under any of the following circumstances, it may be determined that the defendant has bad faith: (1) the defendant, its controlling shareholder or legal representative, etc., repeatedly commits the same tortious act or unfair competition act or does so in a disguised form after an effective judgment is made; (2) The defendant, its controlling shareholder or legal representative, etc., still continues committing acts of infringement or unfair competition after being warned repeatedly by the rightsholder or punished by the administrative organs; (3) counterfeiting the registered trademark of the plaintiff (4) attaching to the reputation of the plaintiff’s well-known trademark and squatting on the well-known trademark of the plaintiff; (5) The defendant uses the well-known trademark of the plaintiff on identical or similar commodities. (6) The plaintiff and the defendant are related by labor or service, agency, licensing, marketing or cooperation, or have conducted negotiations, and the defendant is aware of the existence of intellectual property rights of others. (7) The defendant has

committed any of the acts of concealing the alleged acts and forging or destroying evidence of infringement; (8) the defendant refuses to honor the ruling on preservation of conduct; and (9) other defendants had malicious circumstances.

In trademark infringement cases, if “punitive damages” are applicable, how is the “serious circumstance” to be determined?

In practice, under any of the following circumstances, it may be determined that the circumstances of trademark infringement are serious: (2) The alleged conduct lasts a long time. (3) The alleged acts cover a wide region. (4) The amount of proceeds from the infringement is huge. (5) the alleged act also violates any law or regulation on food, drug, medical treatment, health, or environmental protection, which may endanger personal safety, damage environmental resources, or seriously damage public interests; (6) Any other serious circumstance.

The webinar also discussed other topics like three-dimensional marks, coexistence agreements, etc.

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