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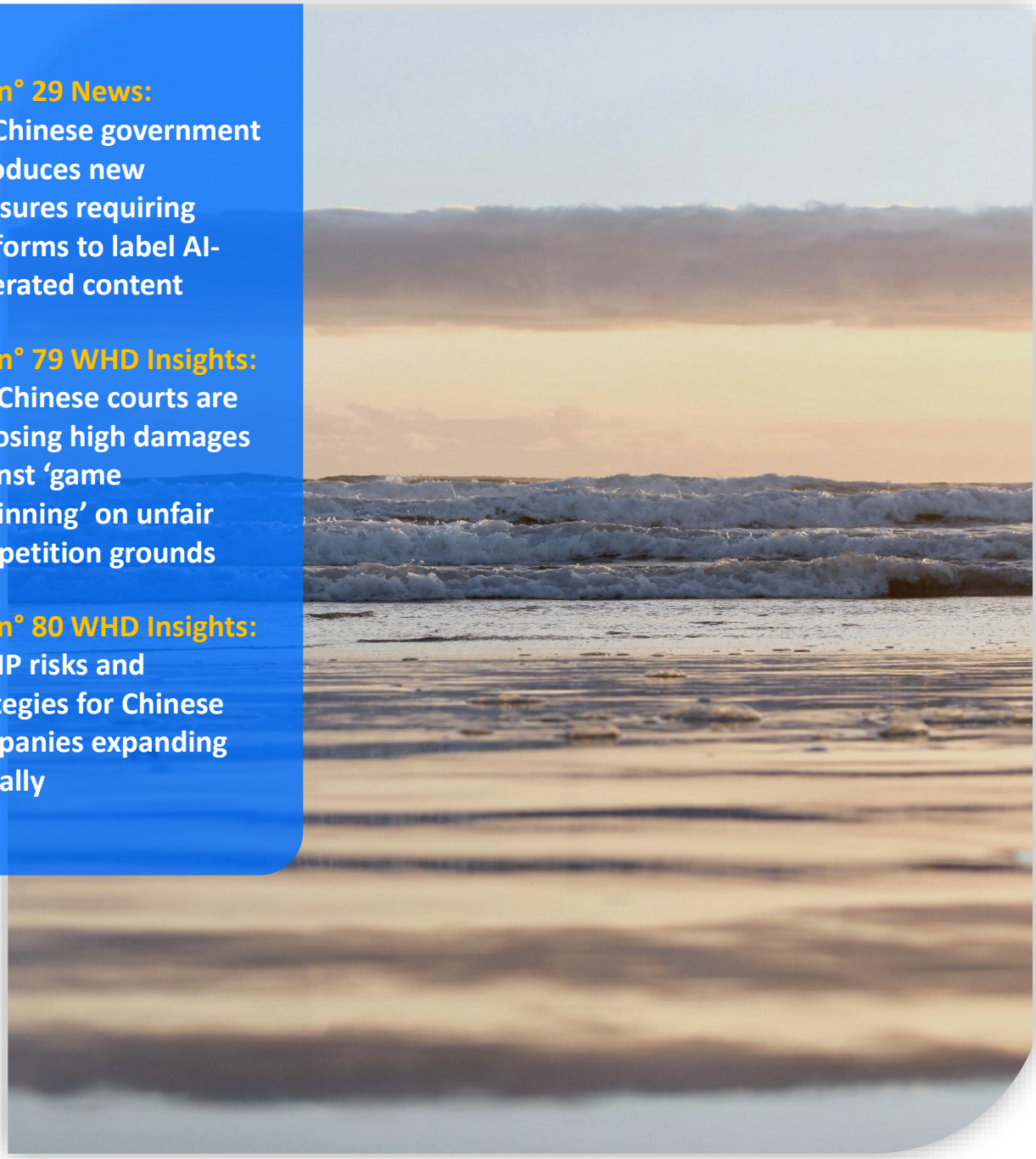
- **n° 29 News:**
  IP | Chinese government introduces new measures requiring platforms to label AI-generated content

- **n° 79 WHD Insights:**
  IP | Chinese courts are imposing high damages against 'game reskinning' on unfair competition grounds

- **n° 80 WHD Insights:**
  IP | IP risks and strategies for Chinese companies expanding globally



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n° 29 News: IP | Chinese government introduces new measures requiring platforms to label AI-generated content

02 April 2025, Zhigang Zhu and Paul Ranjard, first published by IAM

On 7 March 2025, the Cyberspace Administration of China, the Ministry of Industry and Information Technology, the Ministry of Public Security and the National Radio and Television Administration jointly issued the Measures for the Identification of AI-Generated Synthetic Content, which will take effect on 1 September 2025.

There seems to be no limit to what AI can do. In seconds, it can conduct research and provide answers to any question, summarise books, invent stories and produce images and music. The results are so convincing that it can be difficult to determine if something has been created by humans or AI.

This can present a danger to the public, since deepfakes could be produced that are essentially impossible to detect. The Chinese government is taking steps to address this issue.

Aim and requirements of the measures

The measures are issued in accordance with several laws and regulations:

- the Cybersecurity Law;
- the Regulations on the Management of Algorithmic Recommendations for Internet Information Services;
- the Regulations on the Management of Deep Synthesis for Internet Information Services; and
- the Interim Measures for the Administration of Generative Artificial Intelligence Services.

The objective is to inform the public when content – text, audio, video or graphical – has been generated or synthesised using AI technology.

This means that AI service providers (eg, DeepSeek or Midjourney) must insert an explicit warning notice or label that informs people about the AI-generated nature of the text, image or audio content. Depending on the content, the label may take a specific form, but in all cases, it must be prominently featured and visible at the beginning, middle or end of the content.

In addition, service providers must insert an “implicit label” in the form of a digital watermark embedded in the file header, containing technical information such as the file’s source, as well as the code and identification number of the organisation.

Providers that offer online content dissemination services (eg, TikTok or Weibo) must verify whether the content published on their platforms is generated by AI, and if so, they must then clearly mark it with the prominent advisory.

Even users who publish AI-generated content via these platforms should proactively declare when the content has been created using AI and use the relevant provider's labelling features.

Further, removing, concealing, altering or forging labels or providing tools or services to facilitate such activities is prohibited.

Unresolved issues and potential implications

Some concerns remain. First, it is unclear whether content that has been modified manually after being generated by AI still requires labelling – and this scenario is common. AI is frequently used as a tool to quickly create a first draft, which the user then modifies, resulting in the final form that gets published. Therefore, the question is where the boundary lies between AI-generated text and human-generated text.

Second, the measures will only prove to be efficient if clear sanctions are provided. Unfortunately, penalty provisions are formulated in general terms (eg, "punished according to the law") and rely on higher-level statutes for enforcement – such as the Civil Code, the Anti-Unfair Competition Law and IP laws – which may lead to a lack of cohesion when it comes to determining legal liability.

They could also have significant implications for IP strategies and policy. In an era where AI-generated content increasingly blurs the line between human creativity and machine assistance, companies might need to reassess their IP frameworks to better protect both human-generated and AI-assisted works. This could lead to a reevaluation of copyright eligibility, licensing agreements and enforcement mechanisms, potentially prompting policy makers to update existing IP regulations to address these emerging challenges.

Regardless, the issuance of the measures marks another welcome step by the Chinese government in regulating AI. It is hoped that, based on extensive practical experience, China will continue to enhance its governance framework through legal upgrades (eg, enacting dedicated AI laws) and the development of detailed supporting standards, thereby addressing the current issues of fragmented and scenario-specific legislation.

n° 79 WHD Insights: IP | Chinese courts are imposing high damages against 'game reskinning' on unfair competition grounds

Zhigang Zhu, 20 February 2025, first published by WTR

'Game reskinning' refers to the practice of replacing or modifying the visual elements of an existing video/online game (eg, art style, character designs, scene layouts and sound effects) while retaining its structure, system framework, numeric design and corresponding relationships (known as the 'game mechanics') in order to create a seemingly new game.

China, as a major player in the global gaming industry, has long faced frequent instances of game-related infringement. Recently, the Guangdong High People's Court used the Anti-unfair Competition Law to protect game mechanics, illustrating a new judicial approach to 'game reskinning' disputes.

Guangdong court sets three-prong approach for unfair competition in gameplay

In 2021, Lilith Games alleged that Jiujiu Company had systematically copied the game mechanics of Lilith's game Rise of Kingdoms in its game Commander, thereby constituting copyright infringement and unfair competition.

Lilith filed suit before the Shenzhen Intermediate People's Court.

First-instance court finds copyright infringement

The Shenzhen court held that with respect to visual expression, Commander made use of certain original design features from Rise of Kingdoms, although it modified certain elements (eg, character images, animation effects and music). These modifications allowed players to some extent to distinguish the two games from their overall appearance.

However, with regard to game mechanics, Commander comprehensively adopted those of Rise of Kingdoms. The court considered that since the representation of (invisible) game mechanics is made through the game's visuals, they are protected by Article 3 of the Copyright Law as "other intellectual achievements meeting the characteristics of works". Therefore, any changes made to the game visuals inherently affect the depiction of the game mechanics, thus infringing the copyright.

Since the court decided that copyright offered sufficient protection, Lilith's unfair competition claims were not addressed.

Jiujiu Company appealed the decision.

Second-instance court overturns and applies unfair competition

On 31 December 2024, the Guangdong High People's Court issued a final judgment overturning the finding of copyright infringement and instead holding Jiujiu Company liable for unfair competition.

The court stated that 'game mechanics' refers to the methods or rules by which a game is played (ie, the objectives, obstacles, rewards, punishments and other constraints preset by the developer to guide or limit player and non-person character behaviour). These game mechanics are essentially ideas, systems, processes or methods, which cannot be protected under copyright law. Only the specific expression (game visuals) of these game mechanics rules falls within the purview of copyright protection.

Extending copyright protection to game mechanics would confer a monopoly that impedes subsequent developers from innovating on the same type of mechanics, thereby undermining the gaming industry's overall inventive potential.

With respect to unfair competition, the Guangdong High People's Court emphasised that the mere act of imitating game mechanics does not necessarily amount to unfair competition. Judicial intervention is warranted only when such imitation exceeds reasonable limits and severely harms fair competition. In determining such reasonable limits, the following three key principles must be observed:

- The disputed game mechanics are unique and thus provide competitive interests to the plaintiff, which suffers substantial harm.
- The borrowing or imitation of the game mechanics surpasses what is generally deemed reasonable within the industry.
- The accused behaviour breaches the principle of good faith or recognised commercial ethics and adversely affects market competition.

Considering the specific facts at issue, Commander's game mechanics closely mirrored those of Rise of Kingdoms, while the game also made extensive use of art assets or resources from another well-known game, Age of Empires.

In other words, the 'bones' (mechanics) and 'skin' (visuals) were effectively 'grafted' or 'stitched' together from two different games. This indicated not only a lack of original development but also an unauthorised appropriation of others' art assets, violating basic good-faith principles.

Furthermore, Jiujiu Company used this 'reskinning and stitching' method to rapidly launch a new game, capitalising on the promotional momentum of Rise of Kingdoms, diverting potential players and undermining fair competition in the market. Notably, the company's blatant copying of large amounts of text and punctuation – even erroneous content – demonstrated a willful intent to expedite a competing product's release.

On this basis, the Guangdong High People's Court held that Jiujiu Company's actions violated Article 2 of the Anti-Unfair Competition Law and constituted unfair competition. It ordered the company to cease its infringing activities and pay Rmb10 million (approximately US$1.6 million) in damages plus Rmb500,000 (approximately

US$80,000) in reasonable legal expenses.

A timeline of courts applying copyright and unfair competition approaches

China's legal framework for protecting gaming products has evolved alongside changing forms of infringement.

To begin with, games were considered software and thus protected by copyright. In Chu Han Zheng Ba (2000), the court found the defendant had replicated the plaintiff's software based on the similarities in scenes, characters, sound design, and other visual features.

In Hearthstone (2014), the court ruled that the Hearthstone logo, interface layout and card designs qualified as artistic works, while the textual descriptions of cards and decks constituted a form of textual work. The defendant's copying of these works was found to be copyright infringement.

In World of Warcraft (2017), the court deemed the plaintiff's static drawings – lines, colours used in character designs, and dungeon maps – as artistic works. The defendant incorporated these exact elements throughout the accused game, leading the court to order the infringing game's takedown.

However, more complex 'reskinning' emerged, prompting rights holders to seek holistic protection of online games. This prompted the courts to adjust their analysis. Most the courts continued to reason within the framework of the Copyright Law. However, others opted for the Anti-Unfair Competition Law.

Miracle MU (2017) was the first case in China to recognise an online game as a work created by a method similar to cinematography. The Shanghai IP Court held that the defining feature of a 'cinematographic-like work' lies in its continuous sequence of moving images. Miracle MU presented a series of continuous frames during gameplay. Although each player's actions led to different visuals, such differences did not go beyond the game's pre-set content and thus remained within the scope of the 'cinematographic-like' creation.

The Jiangsu High People's Court expanded on this idea in Taichi Panda (2018). The game's character roles and interactions were equivalent to the creation process of a film script or storyline. Likewise, the game's overall running images – generated as a result of the player's operations – resembled the process of shooting and imaging in filmmaking, while remaining confined to the developer's preset boundaries. The game's continuous series of images, with or without audio, could be transmitted via computer or digital playback devices, thus qualifying it as a work created by a cinematographic-like method.

Subsequent rulings extended online game copyright protection from story-based role-playing games to competitive games in which the storyline was secondary. For instance, in Overwatch (2019), the Shanghai Pudong Court emphasised that, unlike other types of online games, first-person shooter games place a premium on perfect teamwork, precise strikes and efficient victories. The pure visual elements of the

game recede into the background. Instead, the critical game mechanics (eg, the positioning of shooting and hiding spots, the advantages or drawbacks of each character's abilities during a given match, and the interplay of one's own team's character choices) become more prominent and constitute the specific expression of the game's rules.

Stricter rules for copyright protection in game mechanics

Nonetheless, the practice of protecting game mechanics through copyright remains highly controversial. Some scholars argue that while game mechanics and storylines may be reflected in a game's visuals, they are fundamentally different from those visuals – just as a film script and a film's continuous visual presentation cannot be conflated. Writing a screenplay (ie, the plot) and creating a film (ie, a series of moving images) are distinct creative activities, each possessing its own originality. Consequently, protecting the copyright in a film does not mean automatically protecting the copyright in its screenplay.

Likewise, even if a game's visuals can be protected as a cinematographic-like work or audiovisual work, this does not imply protection of its game mechanics or storyline. Moreover, what is referred to as the game storyline is often merely the 'technical guide' of the game design, largely comprising ideas, rules or methods.

In 2020, the Guangdong High People's Court released its Trial Guidelines for IP Disputes in Online Games (Provisional), setting stricter standards for extending copyright protection to game mechanics.

Article 23 of the guidelines states that for games recognised as cinematographic-like works, whether the disputed game amounts to 'substantial similarity' should be assessed comprehensively, particularly focusing on:

- the proportion and importance of identical parts in the plaintiff's work; and
- whether the same expression could arise from legitimate reasons.

In a subsequent press conference, the Guangdong High People's Court reiterated that when assessing substantial similarity in continuous dynamic images, it is essential to distinguish ideas from expression. The court stressed avoiding comparisons at the level of creative concepts or emotions, and instead focusing on whether the work's choices, arrangement and design are similar at the level of concrete expression.

After the trial guidelines were released, the courts took a fresh approach. In Infinite Borders (2023), the Guangzhou Internet Court reasoned that a video/online game's originality arises from the design, selection and arrangement of its rules, assets and code, which are then reflected in the game's visuals. However, not all of the originality in those visuals necessarily originates from the game's developer, and the game's rules play a critical role in shaping its visual presentation.

Accordingly, the court held that Infinite Borders should not be classified in its entirety as an audiovisual work, but rather regarded – separate from the eight statutory categories of works – as a form of "other intellectual achievement meeting the

characteristics of a work".

Rise of Kingdoms among a growing unfair competition trend

It is clear that in Rise of Kingdoms, the Shenzhen Intermediate Court followed a similar line of reasoning as the Guangzhou Internet Court. This was overruled by the second-instance Guangdong High People's Court, which ultimately applied the Anti-Unfair Competition Law.

Rise of Kingdoms is not the first case to apply the Anti-Unfair Competition Law to protect gameplay. In Hearthstone (2014), the Shanghai No 1 Intermediate People's Court recognised that the plaintiff's game was a special intellectual creation requiring substantial investment of labour, capital and resources, representing significant commercial value.

Rather than conducting legal, independent R&D, the defendant had unfairly appropriated these efforts, promoting its product by highlighting stolen features. This conduct, which exceeded the bounds of permissible reference or imitation, contravened the principles of equality, fairness, good faith and widely accepted commercial ethics, thus constituting unfair competition.

Nevertheless, that case remained isolated until Minecraft (2022). In this case, the Guangdong High People's Court rejected the first-instance holding that granted copyright protection and instead recognised infringement under the Anti-Unfair Competition Law. The court found that both games' overall visuals could be classed as cinematographic-like or 'audiovisual' works under the new Copyright Law, but their similarities centered not on the continuous frames but on the design of in-game elements.

The court concluded that Mini World and Minecraft were nearly identical in gameplay rules and shared numerous overlapping elements, exceeding any reasonable scope of reference. By directly capturing core creative commercial value through copying, the defendant had unfairly seized commercial opportunities, constituting unfair competition.

In Rise of Kingdoms, the Guangdong High People's Court went even further, unequivocally declaring gameplay mechanics to be ideas, systems, processes or methods that do not fall under copyright protection, while also articulating a three-pronged standard for determining unfair competition in such disputes.

The importance of good faith

The Guangdong High People's Court's ruling aligns with the latest policies of the Supreme People's Court.

On 31 December 2024, the Supreme People's Court issued the Opinion on Safeguarding Technological Innovation through High-Quality Judicial Adjudications. Article 18 of the opinion underscores the importance of leveraging the catch-all and principle clauses of the Anti-Unfair Competition Law, guided by good-faith principles

and commercial ethics, to effectively curb new forms of free-riding and innovation-blocking acts, thereby fostering a fair and honest competition environment.

As game mechanics evolve and iterate, they become increasingly varied and complex. Relying solely on traditional copyright law for protection can be both controversial and limiting. The gaming industry must strike a balance between 'reasonable borrowing' and 'encouraging innovation'.

Going forward, the principle of good faith will continue to play a pivotal role in judicial practice. Whenever a business operator acquires or uses another party's gameplay mechanics or rules through improper means and disrupts normal market competition, the courts can intervene by invoking the Anti-Unfair Competition Law. This approach is crucial for sustaining a healthy gaming industry and ensuring a fair market environment.

n° 80 WHD Insights: IP | IP risks and strategies for Chinese companies expanding globally

Zhigang Zhu, Xiaoyang Yang, Feng Zheng April 14 2025, first published by MIP

Against a backdrop of rising global trade tensions, Chinese companies are increasingly turning their attention to international markets. Simply exporting their products abroad is no longer a sustainable strategy and they need to expand overseas. Globalisation has become a strategic imperative. However, as they expand their operations abroad, these enterprises need to deal with all the intellectual property (IP) challenges that are faced by any company going global.

They must secure the registration of their IP rights, according to the laws and regulations of the country where they are planning to invest and/or to sell, and ensure that they are not infringing another local IP right.

Registering IP rights

Disparities in IP protection systems

IP laws vary widely across jurisdictions. Civil law countries differ significantly from common law systems in areas such as patents, trademarks, and copyrights. For example, the US adopts a 'first-to-use' principle for trademark protection, whereas many other nations adhere to a 'first-to-file' rule. Such differences can place Chinese companies at a disadvantage if they are not familiar with local requirements.

Moreover, the level of IP protection and enforcement varies between developed and developing countries. In some emerging markets, the legal framework may be less robust, making it harder for businesses to safeguard their IP effectively.

Complexity in IP applications and global portfolio management

Navigating the maze of international IP requirements is no small feat. An ill-conceived strategy might leave key markets unprotected or lead to an inefficient use of resources in less critical areas. In addition, many countries require documentation in the local language. Any missteps caused by language barriers can jeopardise the application process. Cultural differences in understanding and interpreting IP rights can further complicate communications with local authorities.

Challenges in IP management and commercialization

Expanding into multiple markets brings with it the challenge of managing a diverse portfolio of IP assets. Companies must build a coordinated, global IP management system to ensure efficient protection and utilisation of their assets. However, differences in regional cultures and management practices can impede communication and reduce overall efficiency.

Furthermore, accurately assessing the market value of IP across different regions is a complex endeavour. Misjudgements in valuation can lead to poor strategic decisions, ultimately limiting the potential for monetisation through licensing or sales.

Risk of IP disputes

A limited understanding of local IP landscapes may inadvertently expose Chinese enterprises to infringement claims during product design, manufacturing, or sales. As global operations expand and supply chains become more complex, a lapse in managing the IP practices of suppliers or distributors could implicate the company, leading to legal disputes and reputational harm.

Cross-border litigation is also inherently challenging. Variations in judicial procedures and evidence rules across countries mean that even a favourable ruling might be difficult to enforce, ultimately diminishing the value of any legal victory.

IP protection in trade shows

For many Chinese companies, the first step to explore an overseas market is made by attending international trade shows. While trade shows provide good opportunities to establish contact with, and present products to, potential local customers, they also carry risks arising from IP infringement.

For example, Germany is one of the leading destinations for major international trade shows, attracting exhibitors from all over the world each year. However, Germany also has IP protection mechanisms applicable to trade shows that are peculiar to its legal system. For instance, German customs can be actively involved in enforcing IP rights at trade shows, confiscating infringing products and their promotional materials. Such customs actions can lead to criminal proceedings where infringement is confirmed.

It was reported that German customs conducted an inspection at a major trade show

in Frankfurt featuring consumer goods in early 2024 and confiscated 1,100 suspected infringing products, including toner cartridges manufactured by some Chinese companies. Those toner cartridges were designed to work with specific printer models and allegedly copied the designs of patented toner cartridges. German customs also removed infringing trademarks during the inspection. As a result of the customs action, 27 criminal proceedings were initiated and an amount of €41,500 was collected as security.

In general, criminal proceedings against exhibitors would not lead to serious consequences due to the minor nature of the infringement. Nevertheless, such customs actions could disrupt the original exhibition plan and result in negative publicity among the potential local customers, thereby undermining the purpose of attending the trade show in the first place. As such, Chinese companies planning to attend international trade shows are advised to go through their products to be exhibited in advance and remove those that could potentially prompt infringement accusations.

Trademark litigation

Whether the target country operates under a first-to-file or a first-to-use system, it is essential to be the first.

As early as 1999, the Chinese home appliance giant Hisense discovered that its name had been registered in Germany by a local company. This move effectively blocked Hisense from registering the 'HiSense' trademark in key European markets. Hisense was forced to adopt a new mark, 'HSense', in Europe. However, the company was subsequently sued in a German court by the German owner of the trademark. In response, Hisense initiated legal proceedings with the German Patent and Trademark Office, demanding the cancellation of the German 'HiSense' registration.

This protracted legal battle and the subsequent negotiations lasted six years. Ultimately, on March 6 2005, through mediation by the Chinese and German governments, Hisense acquired the 'HiSense' trademark for €500,000. This incident significantly disrupted Hisense's international expansion efforts, increasing its overseas development costs and market promotion challenges.

The most recent and widely publicised case involves the Chinese company Luckin Coffee and its logo representing a deer. Founded in 2017, the company rapidly expanded to many countries and achieved a record-setting IPO on the NASDAQ in May 2019. However, in Thailand, a local company established on March 28 2019 under the name Thai Luckin registered trademarks almost identical to Chinese Luckin.

The Thai company opened stores with logos, interior designs, and packaging that were nearly identical to those of Chinese Luckin – differing only by a mirrored version of the deer logo. On October 5 2021, Chinese Luckin filed a lawsuit in Thailand, asserting its prior rights to the creative deer logo and the 'Luckin Coffee' mark. The company accused the defendants of misusing their trademark registration rights in bad faith and requested that Thai Luckin's trademark be declared invalid, along with submitting a claim for damages. While the lower court initially supported Chinese

Luckin's claims, the appeal court dismissed them in September 2023.

On March 4 2024, Chinese Luckin adopted an entirely new litigation strategy and once again initiated legal proceedings in Thailand's Central Intellectual Property and International Trade Court, this time on grounds distinct from the previous case. On February 6 2025, the court confirmed that Chinese Luckin held priority rights to the 'Luckin' trademark and the deer logo, ordering the cancellation of the defendant's trademark registration in Thailand, mandating a change of the corporate name, and awarding a historic compensation of THB10 million.

In retaliation, Thai Luckin filed a lawsuit against Chinese Luckin. It alleged that even before a final court decision was reached, Chinese Luckin had repeatedly forced Thai Luckin to cease using the contested trademark and had seized its assets on several occasions, leading to substantial financial losses. Thai Luckin is now seeking compensation of THB10 billion.

The litigation is ongoing, and, as a result, Chinese Luckin's plans to enter the Thai market have been temporarily shelved.

Patent litigation

Patent litigation could be another challenge faced by Chinese companies seeking overseas business expansion. This is especially the case in the telecommunications field, where multiple parallel legal proceedings can take place simultaneously in various jurisdictions globally and navigating through different legal landscapes requires legal expertise and a global perspective.

The recent patent infringement disputes between Panasonic and OPPO and their settlement provide a glimpse of the challenge. Panasonic and OPPO are among the world's leading manufacturers of consumer electronics. In 2023, Panasonic lodged multiple infringement actions against OPPO in Europe, including a case before the UK High Court and a case before the Mannheim Local Division of the Unified Patent Court (UPC).

The hearing for the UPC case took place in early October 2024. The hearing for the UK High Court case was scheduled to take place later that month but was stayed as a result of de facto settlements. According to the information published by the UPC, OPPO sought also to stay the UPC case right before the issuance of its decision, but Panasonic did not agree. It appears that the settlement between the parties discussed in the UK High Court case had not been finalised by then and Panasonic saw the necessity to keep the pressure on.

As a result, on November 22 2024, the UPC issued its decision, holding that OPPO and OROPE, OPPO's German subsidiary, infringed a 4G standard-essential patent of Panasonic. Among other things, the UPC granted Panasonic an injunction that is enforceable against OPPO in UPC member states.

In January 2025, a settlement between the parties was officially announced, resolving all pending patent disputes in various jurisdictions. Panasonic and OPPO

acknowledged the contribution made by the other to the technical field and vowed to "work together on IP collaboration projects and to be more vocal about addressing IP issues with Asian sensitivities".

Strategic solutions

To address the above challenges, Chinese enterprises should adopt a multifaceted approach.

Develop a comprehensive IP strategy

Before entering a new market, companies should conduct detailed due diligence to understand local IP laws, policies, and the competitive landscape. Analysing competitors' IP portfolios can provide valuable insights. With this information, enterprises can design a forward-thinking global IP strategy that aligns with their international expansion goals. For example, technology-driven companies might prioritise filing patents to create effective barriers against competitors.

Enhance risk management

Establishing a proactive risk management framework is essential. By using specialised IP databases and monitoring tools, companies can keep abreast of changes and potential threats in their target markets. It is also important to educate employees about IP issues. Tailored training for R&D teams on patent procedures and for marketing teams on trademark protection can foster a culture of compliance throughout the organisation.

Streamline IP management

Implementing a unified IP management system helps to ensure that all global activities are coordinated efficiently. Clearly defined roles and processes across departments and regions can lead to more effective management of IP applications, maintenance, and commercialisation. Regularly evaluating the value of IP assets based on market conditions and competitive dynamics will support more informed decision making regarding licensing, acquisitions, or divestitures.

Adopt a proactive approach to disputes

When disputes arise, companies should be ready with a clear and structured response. Forming dedicated teams that include in-house legal experts, external counsel, and technical advisers can streamline the dispute resolution process. Whether through litigation, arbitration, or negotiated settlements, flexibility in resolving disputes can help to minimise disruption and cost.

Foster collaboration and alliances

Strengthening relationships with local IP professionals – such as law firms and IP agents – and participating in international industry associations can enhance a company's ability to manage IP challenges. These partnerships not only offer local

expertise but also contribute to the development and refinement of industry-wide IP standards, further protecting the interests of Chinese enterprises abroad.

Final thoughts on the role of IP in Chinese enterprises' global expansion

In today's competitive global market, IP is a cornerstone of innovation and long-term success. For Chinese enterprises venturing overseas, establishing robust IP strategies is essential for protecting innovations, securing market positions, and mitigating legal risks.

By combining comprehensive strategic planning, proactive risk management, efficient administration, and adaptive dispute resolution, Chinese companies can build a resilient IP framework that supports sustainable global growth. Through strategic alliances and local partnerships, they will be better positioned to navigate the complexities of international IP environments and thrive on the world stage.