

China: Unfair Competition Law Amended

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More

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- **Product name and trade dress** (defined as packaging and decoration): The criteria for determining infringement have been broadened. Previously, the product had to be famous and the name and trade dress had to be unique. Now, the name and trade dress must have "certain influence" and the allegedly-infringing product must potentially cause confusion or be misleading. Moreover, "confusion" now includes "special association" such as licensing. But the new law notably does not specify "product shape" as part of trade dress.
- **Trade name:** As for product names, the criteria for determining infringement include certain influence and confusion. If a trade name is found infringed, the company name registry will replace it with social credit numbers (the company code for the identity and credit record) before a new name is adopted, so as to prevent the infringer from delaying or refusing to change its name. Trade names include pen and stage names, translated names, the dominant part of a domain name, and website or web page names.
- **Misrepresentation:** The scope of actionable misrepresentation has been enlarged. Under the old law, business operators could not promote products by providing "false and misleading statements." The new law prohibits "false or misleading statements." The new law arguably enables action against misleading practices.

- **Internet practices:** Unfair competition behaviors over the Internet are now specified, whereas previously they were adjudicated under the general principle of good faith. The specific prohibited conduct include –
 - Inserting a link or forcing a URL redirection for a product or service legally provided online by another business without consent;
 - Misleading, defrauding, or forcing users to alter, shut down, or uninstall a product or service legally provided by another business; and
 - Causing in bad faith incompatibility with an online product or service legally provided by another business.
- **Enforcement agency powers:** The amended law enhances the powers of law enforcement agencies, such as the power to detain infringing goods and to search infringers' bank accounts. The latter power is not provided under trademark or copyright law. Further, the penalties that law enforcement agencies may impose are now significantly increased. In a recent and anticipated decision issued by the

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