



Data Analysis of Trademark Lawsuits
in Chinese Courts in 2016

**DATA ANALYSIS OF TRADEMARK LAWSUITS IN
CHINESE COURTS IN 2016**

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Definitions

- 1) winning rate = number of cases where the plaintiff's claims have been supported or partially supported / number of cases concluded with a judgement
- 2) withdrawal rate = number of cases withdrawn / total number of cases
- 3) revoking rate = number of cases where administrative decisions have been revoked / number of cases concluded with a judgement
- 4) averaged awarded damages = the average of awarded damages in cases where the plaintiff claimed damages and the court supported such claim
- 5) median = the median of awarded damages in cases where the plaintiff claimed damages and the court supported such claim
- 6) awarded damages rate = the average of awarded damages in cases where the plaintiff claimed damages and the court supported such claim / the average of the plaintiff's claimed damages

I. Overall Figures

China is a large country, even trademark-wise. As of the end of the year 2016, the cumulative number of trademark applications in China has reached some 22,094,100, among which valid registrations amount to 12,376,400. For 15 consecutive years, the number of China's yearly trademark filings has topped the world. The details of China's trademark filings in the recent five years are as follows:

Year	Number of filings (10 thousand)	Growth rate
2012	164.8	16.3%
2013	188.15	14.1%
2014	228.54	21.5%
2015	287.6	25.9%
2016	369.14	28.4%

Source: *China's Intellectual Property Protection (2012-2016)* issued by the State Intellectual Property Office of PRC

Along with the rocketing of new filings and the cumulative total, the number of trademark-related lawsuits has also seen overall growth. The table below shows the statistics on the trademark lawsuits of first instance admitted by Chinese courts in the recent five years:

Year	Civil lawsuits of first instance		Administrative lawsuits of first instance	
	number	growth	number	growth
2012	19,815	52.53%	2,150	21.9%
2013	23,272	17.45%	2,161	0.5%
2014	21,362	-8.21%	9,305	330.6%

2015	24,168	13.14%	7,477	-19.7%
2016	27,185	12.48%	5,990	-19.9%

Source: Intellectual Property Protection by Chinese Courts (2012-2016) issued by the Supreme People's Court of PRC

This data analysis is based on the judgements and decisions of trademark cases tried and concluded by Chinese courts from January 1, 2016 through December 31, 2016 (“the Sample Statistics”) collected by www.iphouse.cn, aiming at interpreting the updated status of Chinese trademark lawsuits from the statistical approach

2016 China’s trademark lawsuits by numbers, collected by IP House

Nature	First instance	Second instance	Retrial
civil	11501	1681	123
administrative	4611	2544	203
sum	16112	4225	326

Source: China Intellectual Property Judgements and Decisions Database (www.iphouse.cn) by Beijing IP House Network Technology Development Co., Ltd.

II. Civil Lawsuits

i. First Instance

The Sample Statistics contains a total of 11,501 civil trademark lawsuits of first instance, including 11,366 ownership and infringement-related cases and 135 contractual cases.

1. Trial Courts

The table below demonstrates the top 10 courts with the most concluded

civil suits of first instance in 2016, over half of which are from coastal regions, Zhejiang and Guangdong Provinces in particular. Topping the list is Hangzhou of Zhejiang Province, China's newly emerging capital of e-commerce. As China's No. 1 hub of small commodity trade, Yiwu of Zhejiang Province is prone to trademark infringements, hence Yiwu People's Court is also ranked high on the list. Shenzhen, a burgeoning metropolis of consumption, manufacture and e-commerce in China, sees the concentration of trademark lawsuits in the fields of trade and e-commerce, with two of its courts among the top-10 list.

Trial court	Number of cases
Yuhang District People's Court, Hangzhou, Zhejiang Province	484
Changsha Intermediate People's Court, Hunan Province	328
Yiwu People's Court, Zhejiang Province	193
Nanning Intermediate People's Court, Guangxi Zhuang Autonomous Region	186
Zhengzhou Intermediate People's Court, Henan Province	175
Nanjing Railway Transportation Court, Jiangsu Province	163
Xigang District People's Court, Dalian, Liaoning Province	153
Wuhan Intermediate People's Court, Hubei Province	151
Futian District People's Court, Shenzhen, Guangdong Province	147
Baoan District People's Court, Shenzhen, Guangdong Province	146

2. Judgements and Rulings

Of the first instance cases from the Sample Statistics, 3,228 were concluded with judgement, among which the courts support or partially support the plaintiff's claims in 3,024 cases, with the plaintiff's winning rate at 93.7%. The plaintiff withdrew the suits in 8,050 cases at the withdrawal rate of 70.0%.

The figures above indicate that in the concluded trademark civil suits in 2016, the settlement and withdrawal takes up a larger percentage. In the un-withdrawn cases, the plaintiff (right-holder) stands a significantly higher winning chance.

3. Awarded Damages¹

The average amount of awarded damages for trademark infringement lawsuits of first instance concluded in the year 2016 was RMB46,374 , with the awarded damages rate of 26.9%. The median amount of awarded damages was RMB10,730, and the maximum amount awarded was RMB10,000,000. The table below shows the number of cases and awarded damages rates in various ranges of awarded damages.

Distribution of awarded damages in various ranges

Awarded damages (RMB)	Number of cases	Awarded damages rate
≤20000	2,040	20.7%
20,000-50,000	436	20.0%
50,000-100,000	193	15.7%
100,000-200,000	95	28.8%

¹ This part addresses the decisions of infringement lawsuits only where the court has awarded damages.

200,000-500,000	66	23.3%
500,000-3,000,000	20	39.9%
≥3,000,000	6	73.2%

As can be seen from the above, the awarded damages of most trademark infringement lawsuits in China are below RMB20,000, the percentage of which exceeds 70% of the total.

In the meantime, however, there are 6 cases with awarded damages that have broken through the “RMB3,000,000” ceiling for statutory damages set by the current *Trademark Law*, with the awarded damages rate of over 70%. Of the 6 cases, the damages in 3 were determined by the defendant's illicit profit from infringement, while those in the other 3 were based on the court's discretion on the disputed mark's reputation, the defendant's bad faith, duration of infringement and geographical scope of infringement, etc. It can thus be revealed that in order to obtain higher amount of damages, the plaintiff could provide sufficient evidence on the infringer's illicit profit, the reputation of the plaintiff's mark or the defendant's bad faith.

4. Classes of Goods/Services

According to the *Guide on the Classification of Goods and Services*, the top 10 classes where most disputed marks in the Sample Statistics belong are as follows:

Class	Number of cases	Specifications of goods
33	463	alcoholic beverages (except beer)
3	346	bleaching preparations for laundry use, cosmetics, hair lotions, etc.

9	333	scientific apparatus and instruments, computer and computer software, etc.
11	279	apparatus for lighting, heating, cooking, refrigerating, drying, ventilating, etc.
25	200	clothing, footwear, headgear
28	147	games, playthings, sporting articles, etc.
16	134	paper, printed matter, office requisites, instructional and teaching material, etc.
30	131	coffee, tea, rice, starch, etc.
18	105	leather, imitations of leather, fur skins, etc.
29	104	meat, fish, eggs, milk and milk products, etc.

As can be seen from above, the trademark infringement lawsuits of 2016 are mainly concerned with the industries of consumer products, food, and clothing. In the meantime, the number of cases involving Class 9 is increasing remarkably, which reflects China's accelerated development in the area of computer, computer software, telecommunication and instruments in recent years.

5. Internet-Related Lawsuits

Recent years witness the rapid development of China's Internet industry, especially of e-commerce, causing more commonly seen infringement cases over the online shopping platforms. In the year 2016, Internet-related trademark infringement lawsuits stands at 1,087, accounting for 9.5% of the total cases in the Sample Statistics. Among all the Internet-related cases, 566 are concerned with infringement on on-line shopping platforms, taking up 52.1%.

Different from the physical space, the on-line space has its own particularities such as the fast communication and update, huge volume, timeliness and technicalities of information. These characteristics make the evidence in Internet infringement cases vulnerable to deletion and alteration. Therefore, the right holders should preserve their evidence immediately upon noticing infringing activities, in case the loss of the evidence would jeopardize their positions.

In respect of the obtainment of evidence, to cater to the characteristics of on-line infringement, electronic evidence depository could serve as an approach in addition to the traditional notary service. In multiple trademark infringement cases in 2016 that involve e-commerce platforms, the plaintiffs resorted to electronic evidence depository.

6. Cases Involving Foreign Parties

In 2016, a total of 350 foreign-related cases of first instance were concluded, accounting for 3% of all first-instance cases.

1) Court Distribution

The table below shows the top 10 courts with the most concluded foreign-related cases of first instance. It can be seen that most foreign-related cases concentrate in Shanghai, Guangdong and Zhejiang, which are economically developed regions with a high degree of openness.

Top 10 Courts with the most lawsuits involving foreign parties

Court	Number of cases
Shanghai IP Court	47

Chaoyang District People's Court, Beijing	26
Yiwu People's Court, Zhejiang Province	25
Yuhang District People's Court, Hangzhou, Zhejiang Province	25
Zhengzhou Intermediate People's Court, Henan Province	24
Futian District People's Court, Shenzhen, Guangdong Province	18
Yangpu District People's Court, Shanghai	13
Yuxiu District People's Court, Guangzhou, Guangdong Province	12
Baoan District People's Court, Shenzhen, Guangdong Province	9
Huangpu District People's Court, Shanghai	8

2) The Litigious Position of the Foreign Party

It can be seen from the table below that the foreign parties are mostly plaintiffs, which indicates the relatively advantageous position of foreign parties IP-wise in the Chinese market.

Distribution of cases with various positions of the foreign parties

Position	number of cases
Plaintiff	341
Defendant	8

Third party	1
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3) Judgements and Rulings

135 cases were concluded with the court's decision with the foreign party as the plaintiff, of which 127 are successful, making the winning rate as 94.1%. 200 cases were withdrawn, with the withdrawal rate of 57.1%.

6 cases were withdrawn with the foreign party as the defendant. The withdrawal rate is 75.0%.

The figures above indicate that as plaintiff the foreign party enjoy higher winning rate, above the national average, and with foreign party as defendant the withdrawal rate is higher.

4) Awarded Damages

In 2016, the average amount of awarded damages in cases of first instance with foreign party as plaintiff² is RMB208,141. The awarded damages rate is 34.5%, 7.6% higher than the national average. The median amount of awarded damages is RMB50,000, and the maximum amount awarded is RMB5,368,756.

Judging from the average awarded damages, the median damages and the awarded damages rate, the awarded damages for cases of first instance involving foreign parties are above the overall national level. In ranges above RMB100,000, the awarded damages rate in each range is higher than the

² There is only one case with foreign party as defendant that damages were awarded, which is hence not within the scope of discussion of this report.

national average.

Distribution of awarded damages with foreign party as plaintiff

Awarded damages (RMB)	Number of cases	Awarded damages rate
≤20,000	30	12.7%
20,000-50,000	33	13.7%
50,000-100,000	26	11.5%
100,000-200,000	12	30.2%
200,000-500,000	14	24.2%
500,000-3,000,000	6	63.7%
≥3,000,000	2	99.9%

5) Classes of Goods and Services

In foreign-related cases, according to *the Guide on Classification of Goods and Services*, the top 10 classes in trademark cases are as follows.

Class	Number of Cases	Specification of goods
25	38	clothing, footwear, headgear
18	30	leather, imitations of leather, fur skins, etc.
9	27	scientific apparatus and instruments, computers, computer software
42	20	scientific service, design and development of computer hardware and software, etc.
7	9	machine and machine tools, motors and engines (except for land vehicles), etc.
8	8	hand tools, table cutlery, table forks, etc.

16	8	paper, printed matter, teaching materials, etc.
14	6	precious metals and their alloys, jewelry, precious Stones, horological and chronometric instruments, etc.
43	4	providing food and drink, temporary accommodation
35	4	advertising, business management, etc.

As can be seen from the statistics, foreign-related trademark cases concluded in Chinese courts in 2016 mainly concentrated in the industries of clothing, leather, scientific apparatus and scientific services, etc., which reflects the foreign trade structure of China.

6) Duration of Lawsuit

The average duration of a foreign-related lawsuit is 233 days.

7) Foreign Countries

As can be seen from the statistics, foreign enterprises involved in lawsuits in China mainly come from the United States, the European Union and the neighboring countries of China, showing coherence with the foreign trade structure of China.

Distribution Table of Main Foreign Countries

Country	Number of Cases
The United States	117

France	58
Germany	50
Republic of Korea.	29
Switzerland	24
The Netherlands	17
Japan	16
The United Kingdom	12
Italy	13
Singapore	3

ii. Second Instance

1. Changing rate

Based on the Sample Statistics, there were 848 civil trademark cases in second instance concluded with judgements, among which 135 cases were changed in judgement, with the changing rate of 15.9%, showing that Chinese courts at different instances tend to concur in the same case.

2. Changing rate for Second-Instance Cases with Foreign Appellant

The changing rate in foreign-related cases at second instance is 26.1%. Thereinto, in cases with foreign appellants, 27 cases were concluded by judgements wherein 17 cases were changed in judgement, with a changing rate of 63.0%. Compared with the aggregate statistics, the changing rate in foreign-related cases is higher than the nationwide changing rate, especially for cases concerning foreign appellants, showing that Chinese courts at different instances have wider differences in their criteria in foreign-related cases.

III. Administrative Cases

i. First Instance

1. Judgements and Rulings

4233 trademark administrative cases were concluded by judgements, wherein there were 1305 cases concerning revocation of administrative decisions, with a revoking rate of 24.5%.

2. Regional Distribution of Parties

Administrative cases concerning trademarks are cases of administrative authorization or determination of trademark right mainly. As shown in the table hereinafter, the interested parties (except for administrative agencies) are mainly from Guangdong, Beijing, Zhejiang, Shanghai, Fujian and other coastal regions, among which the number of cases in Guangdong is the largest. Developed economy in those regions leads to a massive number of registered trademarks and trademark applications, which explains why there are more disputes concerning trademark authorization or determination of trademark right.

Regional Distribution of Parties in Administrative Trademark Cases

Region	Number of Cases
Guangdong	909
Beijing	636
Zhejiang	413
Shanghai	397
Fujian	308
Jiangsu	219

Shandong	191
Sichuan	182
Hebei	119
Henan	117

3. Classes of Goods and Services

Class	Caseload (case)	Content
25	400	clothing, footwear, headgear
9	389	scientific apparatus and instruments, computers, computer software, etc.
35	358	advertising, business management, etc.
3	338	bleaching preparations for laundry use, cosmetics, hair lotions, etc.
33	229	alcoholic beverages (except beers)
41	196	education, providing of training, entertainment, sporting and cultural activities
11	188	apparatus for lighting, heating, cooking, refrigerating, drying, ventilating
42	172	scientific and technological services, design and development of computer hardware and software, etc.
43	151	services for providing Food and drink, temporary accommodation
32	149	beers, mineral and aerated waters and other non-alcoholic beverages, etc.

It can be seen from the statistics that among the administrative cases, Class 25 and Class 9 were the top two classes of goods and services in cases closed by Chinese courts in 2016, which reflects the structure of China's

economy.

4. Analysis on Foreign-Related Cases

In 2016, 1481 administrative foreign-related trademark cases of first instance were concluded by Chinese courts and all were related to administrative disputes of trademark application. These cases accounted for 32.1% of the total administrative cases of first instance. Details of the foreign-related parties are as follows.

Foreign-related Parties	Number of cases
Plaintiff	1096
Third Party	337
Plaintiff and Third Party	48

1) The Litigious Position of Foreign-Related Parties

To explore the position of foreign entities in foreign-related trademark administrative cases, we analyzed 1275 cases with a single party concerning foreign affairs (the plaintiff or third party) and distinguished whether the foreign entities were the applicant or registrant of trademark or the opponent.

The Distribution Table of Litigious Position of Foreign Parties

Type of Cases	Position of Foreign Parties	Number of Cases
Review of the Refusal	Applicant	729
Other Administrative Disputes	Petitioner ⁴	489
	Applicant/Registrant	57

⁴ Including the Opponent, the Petitioner of Invalidation request and the Petitioner of Cancellation.

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It can be seen from the statistics that in the cases concerning Review on Non-Registration (Opposition Review), Invalidation (Dispute), Review of Cancellation involving the petitioner in lawsuits, foreign-related parties generally were petitioners, and there were less cases that the foreign-related parties were opposed as the applicant or registrant of trademark, showing that the foreign-related parties actively safeguarded legal rights in most cases.

2) Judgments and Rulings

The table below is about winning details concerning foreign-related parties as different status.

Winning Details of Foreign-related Parties

Parties	Caseload Number of Winning Cases	Winning Rate
Plaintiff	319	31.6%
Third party	210	79.6%

3) Classes of Goods and Services

Class	Caseload (case)	Content
25	223	clothing, footwear, headgear
9	174	scientific apparatus and instruments, computers, computer software, etc.
3	132	bleaching preparations for laundry use, cosmetics, hair lotions, etc.

³ Including the cases concerning Review of Opposition, Review of Rejection Decision, Invalidation and Review of Cancellation involving the petitioner in lawsuits.

18	88	leather and imitations of leather, furs ,etc.
35	81	advertising, business management, etc.
1	77	chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry, etc.
12	62	vehicles, apparatus for locomotion by land, air or water, etc.
5	60	pharmaceuticals, medical and veterinary preparations, etc.
7	53	machines and machine tools, motors and engines (except for land vehicles), etc.
11	48	apparatus for lighting, heating, cooking, refrigerating, drying, ventilating, etc.

It can be seen from the statistics above that trademarks applied by foreign parties mainly concentrated on three classes: Class 25, Class 9 and Class 3.

4) Duration of lawsuit

The average duration of trial of the administrative cases was 230 days.

5) Main Countries

The following chart is about the main nationality distribution of foreign parties in administrative cases concerning foreign affairs. According to it, the cases concerning American parties occupies the biggest proportion, accounting for 34.8% of administrative cases concerning foreign affairs.

Main Regional Distribution Chart of Foreign Parties

Nationality	Number of cases
The United States of America	515

Germany	158
France	125
Japan	116
The United Kingdom	113
Italy	55
Switzerland	53
Republic of Korea	48
Singapore	38
Canada	33

ii. Second Instance

1. Changing rate

There were 2492 administrative lawsuits of second instance that were concluded by judgement, wherein the judgements in 366 cases were changed, with the changing rate of 14.7%.

2. Changing rate for Second-Instance Cases with Foreign Appellant

The changing rate for second instance of foreign-related cases was 21.4%. Among them, there were 743 cases concerning foreign appellant that were concluded by judgement, wherein the judgements in 180 cases were changed, with the changing rate of 24.2%. Compared with the aggregate data, the changing rate of foreign-related cases was higher than that of the whole country, and the changing rate of cases concerning foreign appellant was even higher, suggesting that there was greater difference in judgement standards of cases concerning foreign affairs among courts of different levels of trial, which was consistent with the situation of civil cases.

IV. Analysis on Squatting of Foreign Trademarks

Among the concluded first instance cases on authorization or determination of trademark right in China in 2016, there were 379 cases concerning trademark squatting, wherein 215 of them involve foreign parties, accounting for 56.7% of judgements concerning foreign parties.

There were 203 foreign-related cases of trademark squatting where a foreign party raised the “trademark squatting” issue as counterargument or reason for opposition, taking up 94.4% of cases of trademark squatting concerning foreign affairs.

Among cases where a foreign party claimed for “trademark squatting”, there were 14 cases where the foreign party, as trademark applicant, claimed that the cited trademark should not be regarded as the obstruction to its own trademark registration due to trademark squatting, but none of them was supported by the court; and there were 189 cases where the foreign party, as opponent, claimed for the trademark right that is rush registered, wherein there were 76 cases where the acts of trademark squatting were affirmed and all those trademarks that were rush registered were protected by law.

As can be seen from the aforesaid data:

i) The issue of “trademark squatting” is an important topic in trademark administrative lawsuit concerning foreign affairs settled by Chinese courts in 2016, which is worthy of wide attention;

ii) Among all the trademark squatting cases concerning foreign affairs, most of the foreign parties are the owners of the trademarks that were rush

registered, which alerts foreign enterprises to pay more attention to the protection of trademark and brand in China;

iii) According to the “principle of first-to-file”, in the process of applying for trademark registration in China, if a foreign company believes that a trademark is a “squatting” against its own trademark not yet registered in China, the company should proactively petition for opposition or invalidation to clear the obstruction of priority rights;

iv) Chinese courts are determined to fight against trademark squatting activities. Once the acts of trademark squatting are affirmed, they will be fiercely suppressed, which is good news for owners whose trademarks are rush registered. Therefore, as for the trademark owners, it is crucial for them to provide sufficient evidence to prove the counterparties have acts of trademark squatting.

V. Conclusion

According to the above data analysis, we can conclude features of trademark lawsuit of Chinese courts in 2016 as follows:

i) With the increase of the amount of trademark filings and the cumulative amount year by year, the amount of trademark lawsuits is also rapidly increasing correspondingly, causing the amount of first instance cases that were newly docketed in 2016 to exceed 33,000;

ii) Intellectual property is the barometer of national economic development. By analyzing trademark lawsuits in China, we can reach the latest and general

conclusion on China's economic development;

iii) In general, the protection of intellectual property rights in China has made considerable and continuous progress in recent years, and even goes into the forefront of the exploration of international judicial protection of intellectual property rights in some respects such as the online infringement cases and the development of electronic evidence depository.

iv) Chinese courts tend to give rather strong protection to foreign trademark owners. Therefore, if foreign enterprises encounter infringement of intellectual property in China, they should proactively seek for the juridical protection.



In this report, you are able to visualize an overview of the current status of trademark cases closed by the Chinese courts in 2016, especially the litigation status of civil trademark cases involved foreign parties, and the status of cases closed on preemptive registering foreign trademarks.

The translation of this report is prepared by kingwood:



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