



Administrative enforcement of intellectual property rights in China

An introduction for rights holders and practitioners

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This publication was prepared by the United States Patent and Trademark Office's Office of Policy and International Affairs. It is intended to provide general guidance for businesses and practitioners in better understanding the administrative enforcement of intellectual property (IP) rights in the People's Republic of China. It is distributed with the understanding that the authors, editors, and publisher are not engaged in rendering legal, accounting, or other professional services. Nothing in it should be understood as legal advice. When legal or other expert assistance is required, the services of a competent professional should be sought.

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For more information on China-related IP resources made available by the USPTO, please visit www.uspto.gov/ip-policy/china.

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Introduction

Before expanding into a foreign market, American companies should take care to protect their valuable intellectual property. Intellectual property rights (IPR) are territorial, meaning that a patent that the United States Patent and Trademark Office (USPTO) grants, or a trademark that it registers, has no effect outside the United States. Plans to secure and enforce IPR in a foreign jurisdiction should follow the laws and practices of that jurisdiction.

The USPTO's China intellectual property (IP) experts work closely with U.S. startups, small and medium-size enterprises (SMEs), and intellectual property practitioners. This guide builds on the USPTO's [China IPR Toolkit](#), a resource that provides practical information on protecting and enforcing IP in China, and supplements a variety of other China IP resources available from the USPTO.¹

This guide introduces a major feature of China's legal system that may be unfamiliar to U.S. practitioners: administrative enforcement. Administrative enforcement merits consideration as a complement to traditional civil, border, and criminal enforcement options.

What is China's administrative enforcement system?

Administrative enforcement is a means by which government agencies in China enforce a wide range of laws and regulations, often in response to petitions filed by aggrieved parties. As it applies to intellectual property, the administrative enforcement system allows rights holders and third parties to ask government authorities to investigate alleged acts of intellectual property infringement and impose limited sanctions if the allegations are confirmed. Administrative agencies in China also have the authority in some cases to initiate enforcement proceedings ex officio, or independent of petitions filed by aggrieved parties. Administrative enforcement does not involve proceedings before a judge and is separate from civil and criminal enforcement avenues. The government authority carrying out IP-related enforcement varies both according to the type of IP in question (trademark, patent, copyright, or trade secret) and where the infringing conduct occurs.

A typical administrative enforcement action begins with a right holder submitting evidence of the alleged infringement and a formal request to local enforcement authorities for an action against an alleged infringer. Enforcement authorities may ask for additional information, but they typically determine whether to accept the case within a relatively short time. An authority's investigatory powers include the authority to conduct unannounced on-site inspections, often known as raids. During such raids,

1. The USPTO's Office of Policy and International Affairs includes a China team, which meets with rights holders, engages counterparts in China, and provides free resources on China IP policy, links to government resources published by the United States and the People's Republic of China (PRC), and information on upcoming USPTO events and programs on China IP matters. See www.uspto.gov/ip-policy/china. The China IPR Toolkit is also available at STOPfakes.gov.

Expanding on the USPTO's updated China IP Toolkit, this guide examines China's distinctive administrative enforcement option.

the authority may confiscate suspected infringing goods and associated tooling and other means of production. In more complex disputes, such as those involving patents, the investigation may call for written submissions from the parties and a hearing. If the authority determines that infringement has occurred, it may impose a fine on the respondent and order it to refrain from future infringement.² Administrative enforcement authorities cannot award damages³ payable to the right holder. However, they can be persuasive in effecting a settlement that may include a payment to the right holder.

Considerations in choosing administrative enforcement

Administrative enforcement can be faster than civil enforcement, but damages are not available and fines may be small.

Administrative enforcement has advantages and disadvantages relative to civil enforcement. Administrative enforcement is generally faster and less expensive, but administrative enforcement authorities cannot award damages, and fines are frequently too small to have a deterrent effect.⁴ Administrative enforcers can also order the infringer to cease infringement (injunctive relief). The scope of such an order is limited to the geographic authority of the enforcement authority, such as a city or province, although in some cases more than one enforcement authority may coordinate and each issue orders. Local administrative enforcement authorities may have extensive expertise in certain types of intellectual property disputes, such as trademark counterfeiting, but not in others, such as complex invention patent disputes.

Companies and law firms operating in China often report that administrative enforcement is best suited to relatively straightforward cases of infringement, whereas more complex, persistent, or geographically widespread infringements may call for civil, or preferably, criminal action.⁵ Trademark counterfeiting is the most frequent target of administrative enforcement actions initiated by U.S. rights holders, according to a wide range of IP professionals active in China. Administrative enforcement can also be invoked in disputes over design patents, and to a lesser degree, utility model patents and simple mechanical invention patents.⁶ Rights holders have reported very long delays in some administrative enforcement matters, which they sometimes attribute to a given authority's lack of expertise.

2. See, e.g., Erica Liu, *Trade Mark Litigation in China: Overview* (Thomson Reuters Practical Law, October 1, 2021), available at [https://uk.practicallaw.thomsonreuters.com/w-010-4924?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-010-4924?transitionType=Default&contextData=(sc.Default)&firstPage=true). Administrative enforcement is distinct from administrative litigation, the latter term referring to actions filed in courts by private parties contesting an administrative action, such as the grant or denial of an application to register a trademark.

3. The term “damages” refers to compensatory payments to the right holder. Fines are paid to the government.

4. One source indicates that some administrations for market regulation have issued high fines on specific occasions, but that such instances “remain the exception, not the rule.” Dan Plane, “Procedures and Strategies for Anti-Counterfeiting: China,” *World Trademark Review*, April 23, 2021, www.worldtrademarkreview.com/anti-counterfeiting/procedures-and-strategies-anti-counterfeiting-china-1.

5. See, e.g., Brandy Baker Dao, *Quick Guide to China IP Protection: Trademark Edition* (Kangxin Partners, August 19, 2021), available at www.lexology.com/library/detail.aspx?g=1584678f-0bd3-4b48-8aec-ac609ddc6166.

6. See Sophia Hou, *Patent and Design Patent Administrative Enforcement in China* (Rouse, February 1, 2021), available at <https://rouse.com/insights/news/2021/patent-and-design-patent-administrative-enforcement-in-china/>, and August Zhang, *China: IP Litigation and Enforcement Guide* (Rouse, July 28, 2021), available at <https://rouse.com/insights/news/2021/china-ip-litigation-enforcement-guide>.

Another downside to electing to seek administrative enforcement in IP disputes is that transparency in administrative proceedings is often limited. The 2023 Special 301 report by the Office of the United States Trade Representative (USTR) notes that rights holders complain that administrative enforcement “authorities often fail to provide right holders with information regarding the process or results of enforcement actions.”⁷ In the same vein, comments submitted in the USTR’s Special 301 process for the following year called for greater transparency in administrative enforcement, “including [by] providing rights holders with timely and detailed information regarding the process and the results of administrative actions.”⁸

A further consideration that IP rights holders may wish to take into account is that administrative authorities are sometimes inclined to favor local entities over foreign litigants, particularly outside of China’s largest cities.⁹ More generally, administrative authorities may be reluctant to enforce IP rights, based on inclinations to protect illicit local employment and economic activity.¹⁰ Some rights holders report that administrative enforcement in China is essentially discretionary, as administrative authorities may postpone action indefinitely or resolve the investigation in favor of the alleged infringer on a questionable basis.¹¹

Many argue that administrative enforcement can complement civil and criminal enforcement. A drawback of China’s civil judicial system is the lack of a pre-trial mechanism requiring parties to disclose potentially adverse evidence. Although judges may order parties to share evidence during trial, the process is not as effective as the discovery process in U.S. litigation. Some rights holders pursue administrative enforcement in part to obtain evidence for use in a subsequent civil or criminal action. In some cases, administrative enforcers themselves transfer matters to the local public security bureau for possible criminal prosecution.¹²

U.S. rights holders should also be aware that the administrative enforcement system may be used against them. Due to unresolved weaknesses in China’s IP system, unscrupulous parties in China may be able to threaten or initiate enforcement actions based on IP rights of questionable validity. For example, an unusually high number

7. Office of the United States Trade Representative, *2024 Special 301 Report*, April 25, 2024, page 52, <https://ustr.gov/sites/default/files/2024%20Special%20301%20Report.pdf>.

8. See, e.g., January 30, 2024, submission of the International Intellectual Property Alliance in response to the request for comments and notice of public hearing regarding the *2023 Special 301 Review*, at 19, available at www.regulations.gov/comment/USTR-2023-0014-0014.

9. See, e.g., January 30, 2024, submission of the International AntiCounterfeiting Coalition in response to the request for comments and notice of public hearing regarding the *2024 Special 301 Review*, at 4, available at www.regulations.gov/comment/USTR-2023-0014-0052.

10. See, e.g. January 30, 2024, submission of the Footwear Distributors & Retailers of America’s *2024 Special 301 Review: Identification of Countries under Section 182 of the Trade Act of 1974* (docket number USTR-2023-0014), at 3, available at <https://www.regulations.gov/comment/USTR-2023-0014-0054>, and January 31, 2022, submission of the Footwear Distributors & Retailers of America in response to the request for comments and notice of public hearing regarding the *2022 Special 301 Review*, at 5, available at www.regulations.gov/comment/USTR-2021-0021-0043.

11. See, e.g., January 30, 2023, submission of the International AntiCounterfeiting Coalition in response to the request for comments and notice of public hearing regarding the *2023 Special 301 Review*, at 4, available at www.regulations.gov/comment/USTR-2022-0016-0029.

12. State Council of the People’s Republic of China, *Provisions on the Transfer of Suspected Criminal Cases by Administrative Organs for Law Enforcement (2020 Revision)*, Chinese text available at www.gov.cn/zhengce/content/2020-08/14/content_5534841.htm.

The pursuit of administrative enforcement can help obtain evidence for use in subsequent civil and criminal enforcement.

of trademarks are registered in China.¹³ However, as detailed in a USPTO report, Trademarks and Patents in China: The Impact of Non-Market Factors on Filing Trends and IP Systems, this is explained in part by the pervasiveness of *bad-faith* registrations.¹⁴ These are registrations that are issued to unscrupulous actors who assert, falsely, that they are the rightful owners of trademarks that are actually owned by others. These bad-faith actors can initiate administrative or civil enforcement actions against the rightful owners of the trademarks, based on their improperly acquired registrations. Alternatively, they can demand a “ransom” for the return of the trademark right to the legitimate party.¹⁵

A similar problem can arise in relation to patents. As discussed in a following section, China issues design and utility model patents without conducting full substantive examinations of the patent applications. As a result, some parties can acquire patents of little or no merit for the purpose of asserting them in administrative or civil enforcement actions.

Differences by type of intellectual property

Some aspects of administrative enforcement vary by the type of IP right asserted, including the government authority empowered to conduct administrative enforcement.

Trademarks

The IP-related administrative enforcement actions that U.S. and other foreign rights holders initiate in China generally involve trademarks rather than other types of IP rights. This is partly because of the sheer scale of trademark infringement in China, which has long been the source of most counterfeits seized by foreign customs authorities.¹⁶ Further, trademark disputes are often better suited for administrative enforcement, because they are often more straightforward than those involving patents, copyright, or trade secrets. Administrative enforcement officers in cities across China have substantial experience enforcing trademark cases and can often handle cases efficiently.

13. In 2022, China had “by far the highest number of trademark registrations in force,” in the world, at nearly 42.7 million. For comparison, the country with the second-highest number of registrations in force was the United States, at about 3.1 million. See World Intellectual Property Organization, *World Intellectual Property Indicators 2023* (2023), at 74, available at www.wipo.int/edocs/pubdocs/en/wipo-pub-941-2023-en-world-intellectual-property-indicators-2023.pdf.

14. USPTO, *Trademarks and patents in China*, January 2021, at 5–6, available at www.uspto.gov/sites/default/files/documents/USPTO-TrademarkPatentsInChina.pdf.

15. *Id.*, at 5.

16. See, e.g., OECD/EUIPO, *Global Trade in Fakes: A Worrying Threat*, Illicit Trade Series (Paris: OECD Publishing, 2021), at Figure 4.1, available at <https://doi.org/10.1787/74c81154-en>; U.S. Customs and Border Protection, *Intellectual Property Rights Fiscal Year 2023 Seizure Statistics*, available at www.cbp.gov/trade/priority-issues/ipr#:~:text=U.S.%20Customs%20and%20Border%20Protection%20%28CBP%29%20and%20U.S.,which%20equates%20to%20nearly%2023%20million%20counterfeit%20goods; and European Union Intellectual Property Office, *EU Enforcement of Intellectual Property Rights: Results at the EU Border and in the EU Internal Market 2022* (November 2023), available at www.euipo.europa.eu/en/publications/eu-enforcement-of-iprs-results-at-the-eu-border-and-in-the-eu-internal-market-2022-november-2023.

Nevertheless, observers generally recommend that, even where trademarks are concerned, rights holders pursue administrative enforcement only for relatively simple cases or when civil enforcement is too costly for the right holder.¹⁷

Authority to conduct trademark-based administrative enforcement

When the IP right in question is a trademark, the authority empowered to conduct administrative enforcement is the local administration for market regulation (AMR) for the area in which the alleged conduct occurs. China's various provinces, autonomous regions, directly-administered municipalities, other cities, and districts within larger cities generally have local AMRs, which are branches of the central-level State Administration for Market Regulation (SAMR). In addition, different counties may also have AMRs willing to pursue administrative enforcement.

Given the potential for overlapping authority, rights holders should consult a local law or investigatory firm on which AMR to approach. In more complex cases, AMRs may seek technical input or otherwise coordinate with local intellectual property administrations, which are branches of the central China National Intellectual Property Administration (CNIPA).¹⁸ Local authorities can also initiate trademark enforcement actions at their own initiative, exercising what are known as ex-officio powers.

Targeting and being targeted

Before approaching an AMR, rights holders should consider investigating if the products in question are offered online. Rights holders may wish to review online sellers or even meet with representatives of the e-commerce platforms on which the infringing products are sold.¹⁹ Many sales platforms will also have channels for registering online complaints of infringement, which can be a useful evidentiary device. By reviewing internal information, e-commerce platforms may be able to direct the right holder beyond a vendor of the goods to an upstream distributor or manufacturer.

Enforcement against counterfeiting, where the unauthorized party is using a mark identical to the genuine one, is often better suited to the administrative avenue than is enforcement against marks that are merely confusingly similar. Administrative enforcement is also disfavored if the unauthorized party is deeply entrenched and well-connected with local authorities.

17. See, e.g., Dominic Hui and Danny Tsui, "A Primer on Franchising in China," *Franchise Law Journal* 40 (Fall 2020): 293, www.americanbar.org/content/dam/aba/publications/franchising_law_journal/fall2020/huitsui.pdf ("... SAMR can only deal with relatively straightforward situations where the acts of infringement can be easily proved beyond reasonable doubt. When controversies arise, such as an outstanding contractual dispute, courts are a better venue to handle the situation.").

18. See the CNIPA's Measures for Patent Administrative Law Enforcement (2015 Amendment), Article 5 ("Where a patent administrative department has any difficulties during the patent administrative law enforcement, the State Intellectual Property Office shall give necessary guidance and support.").

19. Rights holders should consider online brand protection services offered by U.S. e-commerce platforms (such as Amazon and Ali Express International) for their U.S. intellectual property rights. For their intellectual property registered or granted in China, U.S. SMEs should also consider brand protection services offered by Chinese e-commerce platforms such as JD.com and Pinduoduo. One avenue to explore brand protection on the Alibaba family of e-commerce platforms selling in China (including Alibaba, Taobao, and Tmall) is the International AntiCounterfeiting Coalition's MarketSafe program. Information is available at <https://www.iacc.org/online-initiatives/marketsafe>.

Most patent-based administrative enforcement remains at the local level.

Due to weaknesses in China's trademark system, U.S. and other foreign companies may be targeted for spurious and opportunistic enforcement actions by Chinese parties, including via administrative enforcement. Although China has enacted amendments to its law—and taken other steps—to discourage such actions, unscrupulous parties continue to acquire trademarks in bad faith, often for the purpose of bringing baseless enforcement actions. Companies should consider in advance how they might respond to notices that they are the target of an administrative or civil trademark infringement enforcement proceeding. As suggested in the China IPR Toolkit, rights holders should register their trademarks—including Chinese-language versions—in China as early as possible to thwart bad-faith filers, and to arm themselves with rights to pursue infringers and counterfeiters.²⁰

Patents

Chinese law recognizes patents for inventions, designs, and—unlike in U.S. law—utility models. Utility model patents protect products with new shapes, structural physical features, or a combination thereof.²¹ Administrative enforcement is often better suited to straightforward design and utility model patent disputes, whereas a civil action may be better for more complex disputes.²²

Authority to conduct patent-based administrative enforcement

The government office having authority to conduct administrative enforcement against patent infringement²³ has traditionally varied by locality and as a function of whether the dispute is deemed to be of national significance. The CNIPA has authority over “patent infringement disputes that have significant influence nationwide.”²⁴ Disputes may have significant influence nationwide if they:

- Involve major public interests
- Significantly affect the development of an industry
- Are major cases involving cross-provincial administrative regions, or
- Otherwise “may cause significant impact.”²⁵

20. USPTO, *China IPR Toolkit*, at 10, available at www.uspto.gov/sites/default/files/documents/China_IPtoolkit_FINAL.pdf.

21. See USPTO, *China IPR Toolkit*, at 12, 15.

22. See, e.g., Hou, *Patent and Design Patent Administrative Enforcement in China*.

23. In contrast to administrative enforcement relating to patent infringement, in the case of patent passing off (the practice of attaching a patent number to an article without authorization of the patent owner to deceive the buyer as to the origin of the goods), administrative enforcement authority expressly falls to SAMR and local AMRs. U.S. rights holders have not reported instances of patent passing off to the USPTO to any significant extent.

24. China Patent Law, Article 70. Article 70 references the “patent administrative department of the State Council,” which is the CNIPA.

25. Administrative Adjudication Measures for Major Patent Infringement Disputes, Article 3 (effective June 1, 2021). Available at www.cnipa.gov.cn/art/2021/5/28/art_74_159727.html.

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On December 3, 2021, the CNIPA announced it had accepted the first two patent administrative enforcement disputes under its national authority.²⁶

Nevertheless, the bulk of patent-based administrative enforcement is conducted at the local level. Prior to 2023, responsibility for most patent administrative enforcement formally fell to local IP offices. In practice, however, a local IP office may have limited or no enforcement staff; in which case, the local AMR often conducted the investigation and enforcement. In some localities, the IP office was a bureau under the local AMR, while in others (such as in Shanghai), the local IP office is of equal rank with the AMR. In 2023, the State Council issued an institutional reform plan, providing in article 11 that enforcement of patents (and trademarks) “continues to be undertaken” by local AMRs, subject to “professional guidance” supplied by the CNIPA. It is not yet clear whether article 11 will result in less variation in local enforcement arrangements across jurisdictions.

Targeting and being targeted

The complexity of many patent infringement disputes may discourage the pursuit of administrative enforcement. Although recent amendments to Chinese laws and regulations encourage greater use of administrative enforcement tools,²⁷ China’s courts, particularly its specialized IP courts, offer greater expertise and more transparency, and are less susceptible to outside influences than administrative enforcers.

U.S. companies operating in China report being targeted by unscrupulous parties asserting design and utility model patents of questionable merit. They should plan in advance how to respond upon the receipt of a notice that it is the target of an administrative (or civil) patent infringement enforcement proceeding. In consultation with local counsel, rights holders should consider whether the asserted patent may be of questionable merit.

26. CNIPA, *CNIPA Accepts the First Batch of Administrative Adjudication Cases on Major Patent Disputes*, December 3, 2021, https://english.cnipa.gov.cn/art/2021/12/3/art_1340_171848.html.

27. See 2020 Patent Law amendments, expanding powers of administrative enforcement authorities in Article 69 and authorizing the Patent Administration Department of the State Council to hear certain administrative patent infringement enforcement disputes in Article 70.

Copyright

Relatively few smaller American companies pursue copyright-based administrative enforcement in China. A considerable number of disputes are brought before China's internet courts, and larger rights holders often seek administrative enforcement via annual "Sword Net" campaigns conducted by the National Copyright Administration of China²⁸ (NCAC), as discussed below.²⁹

Authorities conducting copyright-based administrative enforcement

The NCAC conducts copyright-based administrative enforcement at the national level in China, whereas local cultural enforcement departments, copyright bureaus, and IP offices handle enforcement at the local level.³⁰ In an exception, the city AMR conducts copyright-related administrative enforcement in Shenzhen.³¹ Proposed amendments to China's E-Commerce Law could, in the future, expand administrative enforcement powers.³²

Targeting and being targeted

The NCAC conducts annual "Sword Net" administrative enforcement campaigns, the focus of which varies annually.³³ The campaigns result in the deletion and disabling of a large number of infringing links, pirated websites, and apps, and lead to criminal prosecutions. The NCAC reportedly welcomes information about allegedly infringing sites relating to its annual focus, although some rights holders report that the NCAC generally targets "low-hanging fruit."³⁴ Another source reports that authorities are reluctant to accept complex cases, and advises that administrative enforcement is generally "not suitable for cases involving single or low-volume infringements; non-identical copying; indirect infringement (e.g. linking or P2P services); or technologically complex cases."³⁵ Still, copyright-based administrative enforcement can be a means to secure evidence for civil proceedings.³⁶

28. The NCAC has advised that, as a result of government reform in 2018, it is properly known as the Copyright Bureau of the Central Propaganda Department of the Communist Party of China. The USPTO acknowledges the change, but for the purpose of this report, uses the prior name that remains more familiar to many.

29. See USPTO, *China IPR Toolkit*, at 2 (on internet courts); see, e.g., January 30, 2024, submission of the International Intellectual Property Alliance in response to the request for comments and notice of public hearing regarding the 2023 *Special 301 Review*, at 19, available at www.regulations.gov/comment/USTR-2023-0014-0014.

30. Copyright law, at Article 7.

31. Sophia Hou, *Overview of Administrative Copyright Enforcement* (Rouse, March 1, 2021), available at <https://rouse.com/insights/news/2021/overview-of-administrative-copyright-enforcement-in-china>.

32. See draft amendments published for comment on August 31, 2021, by the State Administration for Market Regulation, notice in Chinese available at www.gov.cn/xinwen/2021-09/05/content_5635537.htm.

33. See, e.g., January 30, 2024, submission of the International Intellectual Property Alliance in response to the request for comments and notice of public hearing regarding the 2023 *Special 301 Review*, at 19, available at www.regulations.gov/comment/USTR-2023-0014-0014.

34. See, e.g., January 31, 2022, submission of the International Intellectual Property Alliance in response to the request for comments and notice of public hearing regarding the 2022 *Special 301 Review*, at 19–20, 23, available at www.regulations.gov/comment/USTR-2021-0021-0022.

35. Peter Ganea, Danny Friedmann, Jyh-An Lee, and Douglas Clark, *Intellectual Property Law in China*, Second Edition (2021), 523.

36. Sophia Hou, *Overview of Administrative Copyright Enforcement* (Rouse, March 1, 2021): "[I]t is far more effective to obtain evidence through this method than through private investigations." Available at <https://rouse.com/insights/news/2021/overview-of-administrative-copyright-enforcement-in-china>.

Trade Secrets

Given the complexity and fact-intensive nature of trade secret-related enforcement, rights holders have traditionally pursued relatively few enforcement efforts via the administrative avenue. Nevertheless, the SAMR has taken actions to make administrative enforcement more attractive to rights holders. In September of 2020, the SAMR issued draft “regulations on trade secrets protection” (a draft for comments). These regulations, when issued in final form, will provide additional guidance on administrative enforcement of trade secret cases. In early 2022, the SAMR issued a national work plan for an innovation pilot program for the protection of trade secrets and designated several cities through local government applications as pilot areas for trade secret protection and innovation. In 2023, the SAMR deployed a special nationwide law enforcement campaign to fight against unfair competition and identified trade secrets as a primary focus of the campaign.

Administrative enforcement of trade secret cases is handled by AMRs at or above the county level. Trade secret holders must provide evidence to prove the existence of the trade secret and its misappropriation when seeking an AMR’s investigation and enforcement action.³⁷

Under administrative enforcement procedures for trade secrets, AMR officials have the discretion to confiscate infringing products and issue fines. The amount of the fine does not need to be based on clear evidence. AMRs can make discretionary decisions within the legal limit based on all of the circumstances, means, and consequences. As in administrative enforcement cases for other forms of IP, illegal gains confiscated by administrative agencies in trade secret cases will not be returned to the right holder.

Administrative law enforcement authorities have discretion as to whether to accept cases of trade secret infringement. Under normal circumstances, administrative law enforcement authorities tend to accept simple cases where relevant laws can be directly applied. Given the complexity of many trade secret cases, obtaining relief through administrative proceedings may not be feasible. If either party is dissatisfied with an administrative decision, it can file a lawsuit in the people’s court at any time. Although the SAMR is making efforts to encourage more administrative enforcement related to trade secrets, most disputes of this sort are resolved through civil litigation.

37. See Several Provisions on Prohibiting Infringements upon Trade Secrets (98 Revision).

Conclusion

The adage that knowledge is power applies to U.S. rights holders planning to do business in China. As U.S. rights holders plan to protect and enforce their intellectual property rights in China, they must bear in mind substantial differences between the U.S. and Chinese intellectual property systems. The information offered here is no substitute for expert advice, but may help U.S. companies to ask some initial questions about the advantages and disadvantages of administrative enforcement options in China. With awareness and careful planning, U.S. rights holders can help position themselves to address intellectual property enforcement challenges in China.

