



## IP Guide



## Interpretation of the Supreme People's Court on Issues Concerning the Application of Punitive Damages in Civil Cases Involving Intellectual Property Right Infringements

On February 7<sup>th</sup>, 2021, *Interpretation of the Supreme People's court on Issues Concerning the Application of Punitive Damages in Civil Cases Involving Intellectual Property Right Infringements* (hereinafter referred to as “*the Interpretation*”) was adopted at the 1831<sup>st</sup> Session of the judicial committee of the Supreme People's Court, which has come into force on March 3<sup>rd</sup>, 2021.

This article will introduce the system of punitive damages from the following 4 aspects: the background of the formulation, relevant articles in IP-related laws, main content of *the Interpretation* and typical cases.

### 1. The background of the formulation

In 2013, the amended *Trademark Law of the People's Republic of China* firstly established the system of the punitive damages in the field of legislation. After that, notable progress has been made in the law amendment and policy formulation of the system of the punitive damages. Several IP-related laws have added the articles of punitive damages, including the amended *Anti Unfair Competition Law of the People's Republic of China* in 2019, the amended *Patent Law of the People's Republic of China* and *Copyright Law of the People's Republic of China* in 2020. In the same year, the promulgation of the *Civil Code of the People's Republic of China* stipulates the system of punitive damages for intellectual property rights, which symbolizes the “full coverage” of punitive damages in the field of intellectual property. The promulgation of the *Interpretation* is an important measure to implement the system of punitive damages, which improves China's punitive damages system for intellectual property rights.

## 2. Relevant articles in IP-related laws

Laws	Articles
<b>Civil Code of the People's Republic of China</b>	<p>➤ Article 1185</p> <p>In case of an <b>intentional infringement</b> of another person's intellectual property rights, where the circumstances are <b>serious</b>, the infringed person has the right to request for corresponding punitive damages.</p>
<b>Patent Law of the People's Republic of China</b>	<p>➤ Article 71</p> <p>... For <b>intentional infringement</b> of patent right, where the circumstances are <b>serious</b>, the multiples amount of compensation may be determined within the range from <b>one to five times</b> of the amount determined by the above-mentioned principles....</p>
<b>Trademark Law of the People's Republic of China</b>	<p>➤ Article 63</p> <p>... Where an infringer <b>maliciously infringes</b> upon another party's exclusive right to use a trademark and falls <b>under serious circumstances</b>, the amount of damages shall be within the range from <b>one to five times</b> of the amount assessed by reference to the above calculation....</p>
<b>Copyright Law of the People's Republic of China</b>	<p>➤ Article 54</p> <p>... For <b>intentional infringement</b> of the copyright or a right related to the copyright, where the circumstances are <b>serious</b>, the multiples amount of compensation may be determined within the range from <b>one to five times</b> of the amount determined by the above-mentioned principles....</p>
<b>Anti Unfair Competition Law of the People's Republic of China</b>	<p>➤ Article 17</p> <p>... For <b>malicious trade secret infringement</b> by the operator, where the circumstances are <b>serious</b>, the multiples amount of compensation may be determined within the range from <b>one to five times</b> of the amount determined by the above-mentioned principles....</p>

### 3. Main content of *the Interpretation*

*The Interpretation* stipulates the determination of “**intentional**”, “**serious circumstances**”, “**a calculated basis**” and “**multiples**” of punitive damages in civil cases involving intellectual property rights.

#### 1.The determination of “intentional”

When determining “intentional” for infringing intellectual property rights, the people's court shall take following factors into consideration comprehensively, **the object types of the infringed intellectual property rights, the status of the rights, the popularity of the relevant products, and the relationship between the defendant and the plaintiff or the interested party.**

In the following circumstances, the people's court may preliminarily determine that the defendant intentionally infringes intellectual property rights:

- (1) The defendant continues to commit the infringing acts after being notified or warned by the plaintiff or the interested party;
- (2) The defendant or its legal representative or manager is the legal representative, manager or actual controller of the plaintiff or the interested party;
- (3) The defendant and the plaintiff or the interested party have the relationships of work, labor, cooperation, license, distribution, agency or representative etc., and has come into contact with the infringed intellectual property rights;
- (4) The defendant has business contact or has had consultations for reaching a contract, etc. with the plaintiff or the interested party, and has come into contact with the infringed intellectual property rights;
- (5) Where the defendant commits acts of pirating or counterfeiting a registered trademark;
- (6) Other circumstances which may be determined as “intentional”.

#### 2.The determination of “serious circumstances”

When determining the “serious circumstances” for infringing intellectual property rights, the people's court shall take following factors into consideration comprehensively, **the means and the frequency of the infringement, the duration, territory, scale and consequences of the infringing acts, and the acts of the infringer in the proceedings.**

If the defendant has the following circumstances, the people's court may determine the circumstances are serious:

- (1) Committing the same or similar infringing acts again after being subjected to an administrative penalty or bearing liability in a court judgment for infringement;
- (2) Engaging in infringing intellectual property rights;
- (3) Forging, destroying or concealing evidence of infringement;
- (4) Refusing to perform the ruling of preservation;
- (5) Great profits earned from the infringement or great losses suffered by the right holder;
- (6) The infringing acts may endanger national security, public interests or personal health;
- (7) Other circumstances which may be determined as serious.

### 3. The determination of “a calculated basis” and “multiples”

#### (1) The determination of “a calculated basis”

When determining the amount of punitive damages, the people’s court shall, in accordance with relevant laws, **take the amount of actual losses of the plaintiff, the amount of illegal earnings of the defendant or the profits earned from infringement as the calculated basis**; if the above-mentioned amount or the profits is difficult to calculate, the people’s court shall reasonably **determine the amount by reference to the multiples of the amount of the exploitation fee of that rights under a contractual license**, and take that as the calculated basis of the amount of punitive damages.

#### (2) The determination of “multiples”

When determining the amount of punitive damages, the people’s court shall take following factors into consideration comprehensively, **the subjective degree of fault of the defendant, the seriousness of circumstances of the infringing acts**, etc.

## 4. Typical cases

The Supreme People's Court released typical cases involving punitive damages in civil cases involving intellectual property rights on March 15<sup>th</sup>, 2021, which are summarized in the following table.

The Type of Case	Case No.	The Party Concerned	Judgment of Instance	The Multiples of Compensation
Technological Know-How Dispute	(2019) 最高法知民终 562 号	Guangzhou Tinci Materials Technology Co.,Ltd. etc. vs. Anhui Newman Fine Chemicals Co.,Ltd. etc.	Second Instance	Five times of the profits
Trademark Right Dispute	(2015) 京知民初字第 1677 号	Erdos Group vs. Beijing Miqi Trading corporation.	First Instance	Twice of the profits
Trademark Right And Unfair Competition Dispute	(2019) 苏民终 1316 号	Xiaomi Technology Co.,Ltd. etc. vs. Zhongshan Beves Appliance Co.,Ltd. etc.	Second Instance	Triple of the profits
Trademark Right Dispute	(2020)浙 01 民终 5872 号	Wuliangye Group vs. Zhonghua XU etc.	Second Instance	Twice of the profits
Trademark Right Dispute	(2020) 浙 03 民终 161 号	Adidas Group AG vs. Guoqiang RUAN etc.	Second Instance	Triple of the losses
Trademark Right Dispute	(2019) 粤民再 147 号	Oppl Lighting Co., Ltd. vs. Guangzhou Huasheng Plastic Products Co.,Ltd.	Retrial	Triple of the trademark royalties

### Newsletter from Tee & Howe Intellectual Property Attorneys

**Address:** Suite 5-12, 5th Floor, Tower W1, The Tower Offices,  
Oriental Plaza, No.1 East Chang'an Avenue, Dongcheng District,  
Beijing 100738, China

**Tel:**(86 10) 8529 5526

**Fax:**(86 10) 8529 5528

**Email:**[tee@teeandhowe.com](mailto:tee@teeandhowe.com)

**Website:**[www.teeandhowe.com](http://www.teeandhowe.com)

**Wechat Account QR Code:**



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