



IP NEWS

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THE THEME

Jiaquan is listed on the 2021 edition of the *WTR 1000*

LEGO vs. LEPIN - strong protection of intellectual property in China

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Queenie X. QIU

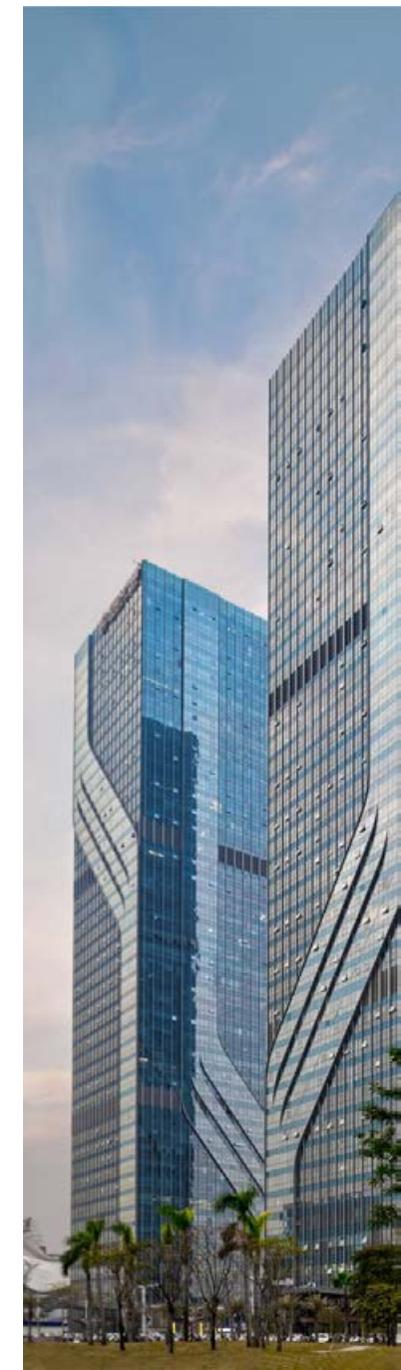
On 12 February 2021, World Trademark Review (WTR) published its lists of global recommended trademark firms of the year, the 2021 edition of the *WTR 1000*. With years of professional practice on trademark prosecution, Jiaquan IP Law is again listed in the field of “prosecution and strategy” among the 2021 recommended firms in China.

As our foreign associates commented, “*Jiaquan responds promptly to inquiries and offers meaningful recommendations on overcoming obstacles. Not only are they genuinely interested in developing a relationship with attorneys in other jurisdictions, they are willing to discuss legal or business matters in a collaborative fashion and offer insightful and constructive comments. If necessary, they will provide advice regarding issues that may be unique to Chinese law and point out potential problems.*” “*The team is thorough and well-informed, with excellent English language skills. Clear and competitive cost estimates are given too, and they offer preliminary advice without charge to assist clients in finalising their trademark strategy.*”

We will continue to provide clients with our best quality services.

Source:

<https://www.worldtrademarkreview.com/directories/wtr1000/rankings/china-and-sars-china-domestic>



LEGO vs. LEPIN - strong protection of intellectual property in China

Ying ZHENG



Ying ZHENG
Patent Attorney
Biology

Ying ZHENG
MS, Biotechnology, South China
Normal University
Attorney-at-Law, Patent Attorney
Practice Area: Patent Litigation,
Patent Invalidation, Trade Fair
Enforcement
Language: English, Mandarin

On 29 December 2020, Shanghai High People's Court ruled the final verdict on the "LEGO" infringement case, which involved a total amount of CNY330 million (USD51.1 million), to uphold the verdict in the first instance. The principal criminal Li and his accomplices were sentenced to fixed-term imprisonment and fines for copyright infringement. The verdict of this case undoubtedly proves to the public that China is determined to protect the rights and interests of intellectual property.

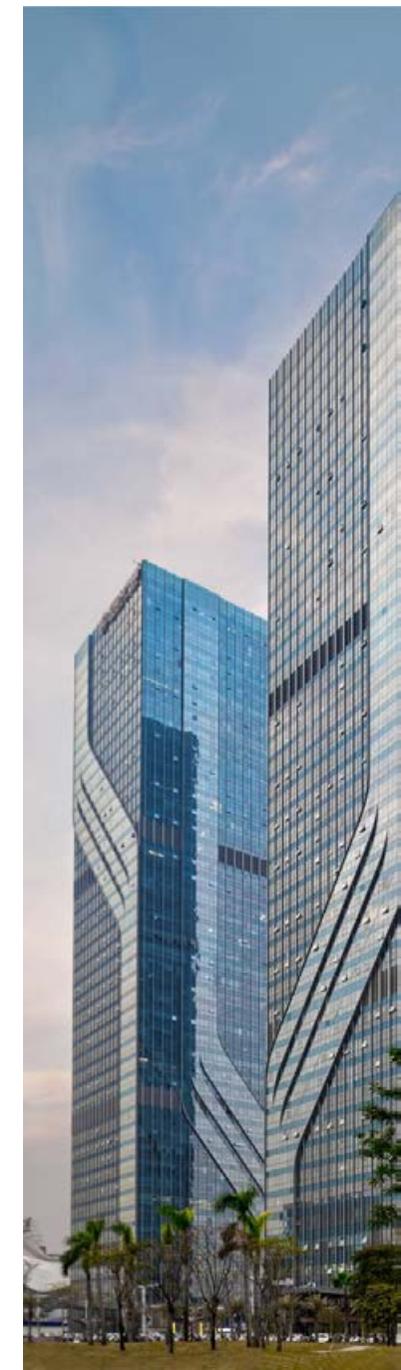
Case history

Since 2015, the principal criminal Li (founder of Company M), had incited Du, Yan, and other 6 people to buy new LEGO series of the toys and commission others to open the molds which copied the LEGO toys for the production and selling the infringing products with the brand "LEPIN" without permission of LEGO SYSTEM A/S. The Copyright Appraisal Committee of China Copyright Protection Center has identified that several series of "LEPIN" toys are copies of the products of LEGO SYSTEM A/S. From 11 September 2017 to 23 April 2019, Li et al gained illegal income CNY330 million (USD51.1 million) by producing and selling infringing products.

On 2 September 2020, Shanghai No. 3 Intermediate People's Court sentenced Li to fixed-term imprisonment of 6 years and a fine of CNY90 million (USD13.9 million) for copyright infringement; the remaining 8 accessories to fixed-term imprisonment of 6 months to 3 years with fines. Li and the other five of the accused disagreed with the verdict and appealed to Shanghai High People's Court.

On 29 December 2020, the appellate court ruled in the final instance that the appeal of Li and others was rejected and the original verdict was upheld.

Disputed issues



1. Do LEGO'S infringed assembled toys belong to works of fine arts?

Shanghai High People's Court held that the infringed three-dimensional assembled toy models were independently created by LEGO SYSTEM A/S and had originality and unique aesthetic significance, which belong to works of fine arts protected by *China's Copyright Law*.

2. Is the amount of illegal gains found by the first instance correct?

Since the verdict of the first instance was based on the judicial accounting appraisal opinion and other relative evidence, Shanghai High People's Court held that the amount of illegal gains from the crime of copyright infringement of CNY300 million (USD51.1 million) was correct and shall be confirmed. Although Li and his defender argued that the original verdict did not consider the return of goods and customers rebates, which have caused certain errors in the accounting appraisal result, they did not provide relevant evidence. The argument was dismissed by the appellate court.

3. Is Company M guilty of unit crime?

Shanghai High People's Court held that the offence in this case shall be determined as a joint crime rather than a unit crime based on two facts. First, Li intentionally made the decision to copy and produce the toys of LEGO SYSTEM A/S for sale, and other accomplices voluntarily cooperated to implement such decision. Second, according to the bank account details, the income and expenditure of production and sales of the said toys were through personal account rather than Company M's account.

4. Is the original verdict made by the court of the first instance appropriate?

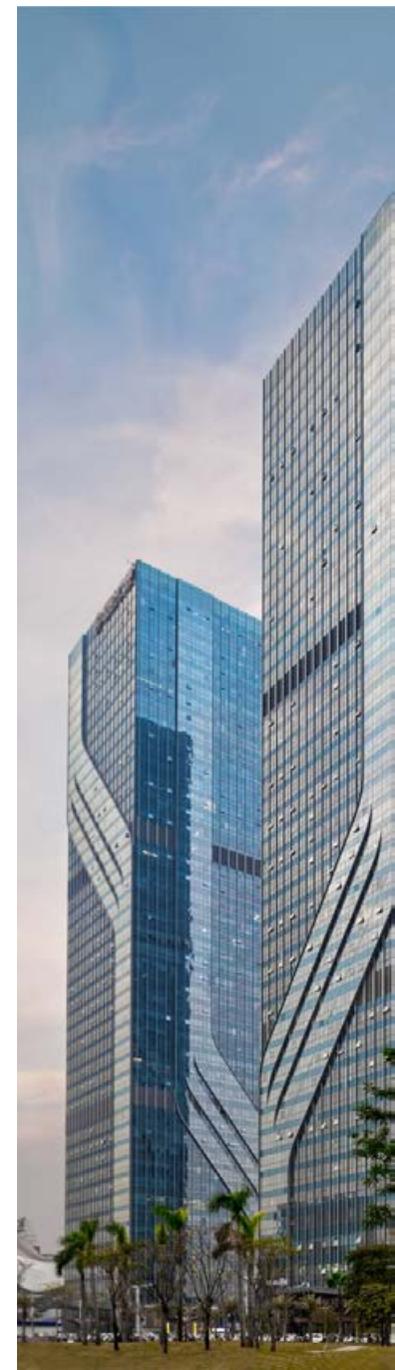
The appellant and his defender argued that the original verdict was too harsh and heavy, and the amount of fine was too high. Shanghai High People's Court held that this case was a joint criminal case of copyright infringement, which lasted for a long time and involved a huge amount of money, was under intentional organization and direction by Li and proceeded by his active participation with clear division covering design, production and selling together with other accomplices. Therefore, both the main penalty and the additional penalty in the first-instance judgment are in line with the crime and responsibility

Reflections on this case

1. China's determination and attitude to continuously strengthen intellectual property protection

On 26 April 2019, President Xi Jinping stated at the opening ceremony of the 2nd Belt and Road Forum for International Cooperation that, China is committed to creating a friendly business environment that respects the value of knowledge, to comprehensively improving the legal system for intellectual property protection by strengthening law enforcement and cracking down crimes of intellectual property infringement, and to creating a good ecological environment for innovation.

Meanwhile, *China's Trademark Law* and *Anti-Unfair Competition Law* amended and implemented in 2019, *China's Patent Law* and *Copyright Law* amended in 2020 and going to be formally implemented in 2021, have all added the punitive damage system and raised



the upper limit of statutory damages.

The verdict of the “LEGO” infringement case is undoubtedly a clear signal to the public that both individuals and enterprises should respect intellectual property rights and refrain from infringing on others’ intellectual property. Besides, enterprises are supposed to give more efforts on the construction of an independent intelligent property rights system and grow in competition with big international enterprises.

2. Measurement of punishment for crime of intellectual property infringement in this case, Li et al have produced and sold the infringing products since 2015. The crime lasted for a long time and involved a huge amount of money, which not only caused a great loss to the goodwill and economic interests of the right owner, but also destroyed the order of the socialist market economy. The crime is of serious social harmfulness and falls under Article 217 of the Criminal Law. The verdict on this case is reasonable and lawful.

The Amendment (XI) to the Criminal Law (effective as of 1 March 2021) has increased the sentencing range for the crime of copyright infringement from seven years to ten years, which provides a legal basis to enhance fighting against crimes of intellectual property infringement and to protect the rights and interests of intellectual property right owners.

Legal basis:

1. Article 4(8) of the Regulation for the Implementation of the Copyright Law of the People's Republic of China: works of fine art are two- or three- dimensional works

created in lines, colors or other medium which, when being viewed, impart esthetic effect, such as paintings, works of calligraphy, sculptures and works of architecture.

2. Article 30 of the Criminal Law of the People’s Republic of China and Article 3 of the Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Cases: a crime which is committed in the name of a unit and legal gains thereof belongs to said unit shall be considered to be a unit crime.

3. Article 217 of the Criminal Law of the People’s Republic of China: whoever, for the purpose of making profits, commits any of the following acts of infringement on copyright shall, if the amount of illegal gains is relatively large, or if there are other serious circumstances, be sentenced to fixed-term imprisonment of not more than three years and shall also, or shall only, be fined; if the amount of illegal gains is huge or if there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years and shall also be fined.

