

Simplified Analysis of Trademark Litigation Involving U.S. Enterprises in China

1. Executive Summary

For U.S. companies, China offers a huge market but also significant intellectual property (IP) risks. This report examines trademark issues U.S. firms face there. China uses a strict "first-to-file" trademark system: whoever registers a mark first owns it, regardless of prior use. This makes early registration crucial for U.S. companies to avoid problems like bad-faith trademark squatting, infringement, and counterfeiting.¹

Litigation in China has challenges, like complex evidence rules (no U.S.-style discovery) and strict requirements for foreign documents.¹³ Enforcing judgments, especially foreign ones, is also tough.²⁴ However, China is improving its system with specialized IP courts and new laws targeting bad-faith filings and increasing penalties for infringement, including punitive damages.²⁸

Studies show foreign companies, including those from the U.S., often win IP cases in China.²⁸ Damage awards, while historically low, are increasing.⁶¹ Cases involving Michael Jordan, New Balance, Under Armour, Lego, Burberry, and Manolo Blahnik show that success is possible but requires persistence.⁷⁵

A good strategy involves prevention (early/broad registration, monitoring, customs recordal, strong contracts)⁸⁹ and smart enforcement choices (administrative vs. judicial, venue, evidence) when problems arise.⁹ Despite challenges, China's IP environment is strengthening.

2. Introduction

Context

China is a massive, fast-growing market crucial for U.S. companies.⁸⁹ Success there depends heavily on protecting intellectual property (IP), especially trademarks, which define brand identity and trust.¹³⁵

The Challenge

China's IP environment is tough.¹³⁵ U.S. firms often face trademark infringement, bad-faith registration (squatting), and counterfeiting.¹ China's "first-to-file" trademark system is a key vulnerability.¹ Historically, enforcement has been seen as weak.¹³⁵ These issues are a major point of friction in U.S.-China trade relations.² U.S.

government reports consistently raise concerns.²

Report Purpose

This report analyzes China's trademark litigation landscape for U.S. businesses. It covers the legal framework, common disputes, litigation challenges, outcomes, and strategies. The goal is to provide actionable insights for navigating risks and opportunities in China's evolving IP environment.

3. The Chinese Trademark Legal and Regulatory Landscape

Understanding China's trademark laws and administration is vital for U.S. companies.

Governing Laws & Administration

The main law is the **Trademark Law of the People's Republic of China**, updated several times (most recently in 2019).²⁹ Its goals include protecting trademark rights and consumer interests.²⁹

The **China National Intellectual Property Administration (CNIPA)** oversees IP. Its **Trademark Office (CTMO)** handles registrations.²⁹ The **Trademark Review and Adjudication Board (TRAB)** handles disputes like refusals and invalidations.²⁹ CNIPA also issues guidelines.¹⁵²

Key Principles

1. **First-to-File:** China grants trademark rights to the first entity to file, not the first to use (unlike the U.S.).¹ Early filing is essential. Prior use only offers protection in limited cases (e.g., well-known marks).⁴
2. **Territoriality:** U.S. trademarks offer no protection in China.⁷⁵ You must register in China (nationally or via Madrid Protocol).⁹⁰
3. **Good Faith:** Recent changes emphasize good faith.³ Article 4 allows rejection of bad-faith applications not intended for use.²⁹

The Registration Process

- **Eligibility:** Marks must be distinctive and capable of distinguishing goods/services.⁹ Certain signs (like state flags without permission, deceptive or generic terms) are prohibited.¹⁴⁵ Sound and 3D marks can be registered under certain conditions.³⁰
- **Filing Routes for Foreign Entities:**
 - **National Route:** File directly with CNIPA via an approved local agent (mandatory for foreign entities without residence/business in China).⁹⁰

Process involves search, application (in Chinese), classification, examination, publication (for opposition), and registration.⁹⁰ Takes about 12+ months.⁹⁰

- **Madrid Protocol:** File internationally via WIPO, designating China.⁹⁰ Can be slower (18+ months)⁹⁴, offers less control over subclass selection¹⁷⁶, and doesn't automatically provide a Chinese certificate.⁹⁰ Many prefer the national route for China.¹⁵⁹
- **Classification System:** China uses the Nice Classification (45 classes) plus a crucial **subclass system**.⁹³ Protection scope is determined by subclasses, not just the main class.¹⁵⁹ Failing to cover all relevant subclasses creates risks.¹⁶⁰ Requires careful planning and local expertise.¹⁰⁸ Class 35 (advertising, business services) needs special attention.¹⁵⁴
- **Chinese Language Marks:** Register Chinese versions (translations, transliterations, nicknames) alongside English marks.⁹ Failure to do so allows others to register potentially harmful Chinese versions.⁹⁶

Use Requirements and Maintaining Validity

- **Term and Renewal:** Registration lasts 10 years, renewable indefinitely.⁹⁰ Renew within 12 months before expiry (plus 6-month grace period).⁹⁰
- **Non-Use Cancellation:** Marks unused commercially in China for 3 consecutive years can be cancelled by third parties.⁸⁹ Recent changes require stronger proof of genuine use from registrants and potentially preliminary non-use evidence from petitioners.¹⁵²
- **Proposed Use Requirement Changes:** Draft amendments may require use statements every 5 years and declarations of use/intent at filing.³²

Protection for Well-Known Trademarks

China offers stronger protection for "well-known" marks.⁹

- **Criteria:** Based on public recognition *in China*, use duration, promotion efforts, etc.⁹
- **Scope of Protection:** Can prevent registration/use of similar marks on similar goods (if unregistered) or even dissimilar goods (if registered and likely to mislead/dilute).¹⁴⁵ Proposed changes may broaden this.³²
- **Challenges:** Achieving well-known status is hard, requiring strong evidence of fame *in China*.⁴ It's usually determined case-by-case during disputes ("passive recognition").¹⁸¹

Recent Amendments (Post-2019) and Proposed Changes

Recent changes focus on strengthening enforcement and curbing bad-faith filings.

- **Combating Bad Faith:** 2019 amendment (Article 4) allows rejection of bad-faith applications not intended for use.²⁹ CNIPA guidelines define bad faith indicators (hoarding, copying famous marks, extortion intent).³ Agencies assisting bad-faith filings face penalties.³⁰
- **Increased Penalties:** Higher administrative fines (up to 5x illegal revenue/RMB 250k)³⁰ and statutory damages (up to RMB 5 million).³⁵ Punitive damages (1-5x base amount) available for malicious/serious infringement.³²
- **Strengthened Enforcement:** Authorities can confiscate/destroy infringing goods/tools.³⁰ E-commerce platforms have greater responsibility.¹³⁸
- **Proposed 2023 Draft Amendments:** Include prohibiting repeat filings, mandatory use statements, mandatory transfer of bad-faith marks, higher fines for bad faith, shorter opposition period, direct court appeals for oppositions, broader well-known mark protection.³²
- **Ongoing Revisions:** CNIPA aims to accelerate Trademark Law revisions, focusing on use obligations and malicious registration.¹⁵³

While laws are strengthening ², the first-to-file system still enables squatting.¹ Stricter non-use cancellation rules might also inadvertently help some bad-faith actors.¹⁵²

Table 1: Recent Key Amendments and Proposed Changes to China Trademark Law (Post-2019)

Feature/Area Addressed	Specific Change Introduced	Effective Date/Status	Key Snippets
Bad Faith Filings	Art. 4 explicitly allows rejection of bad-faith applications not intended for use.	2019 Amendment	29
	CNIPA Guidelines detail factors/circumstances constituting bad faith (e.g., volume, copying known marks, targeting entities).	2021 Guidelines	3
	Proposed: Mandatory	2023 Draft	32

	transfer mechanism for certain bad-faith marks back to rightful owner.		
	Proposed: Explicit list of circumstances constituting bad faith filing.	2023 Draft	32
	Proposed: Prohibition on repeated filings of identical marks by the same applicant.	2023 Draft	32
Use Requirements	Stricter review in non-use cancellations; higher burden on registrant to prove genuine commercial use across subclasses; petitioner may need preliminary non-use evidence.	Recent Practice	152
	Proposed: Mandatory statement of use (or justification for non-use) every 5 years post-registration.	2023 Draft	32
	Proposed: Applicant must "use or promise to use" the mark at filing.	2023 Draft	32
Penalties & Damages	Increased administrative fines (up to 5x illegal revenue or RMB 250k).	2019 Amendment	30

	Increased statutory damages cap in civil litigation (up to RMB 5 million for trademarks).	2019 Amendment	35
	Introduction of punitive damages (1-5 times base amount) for malicious/intentional & serious infringement.	2019 Amendment	33
	Proposed: Increased fines specifically for bad-faith registration (up to RMB 250k).	2023 Draft	32
	Proposed: Compensation may be awarded to genuine owner for losses caused by bad-faith applications; potential criminal liability.	2023 Draft	32
	Proposed: Fines (up to RMB 100k) for fabricating evidence/concealing facts in proceedings.	2023 Draft	32
Well-Known Marks	Proposed: Codification that well-known status is determined case-by-case ("on demand").	2023 Draft	183
	Proposed: Scope/intensity of	2023 Draft	183

	protection commensurate with distinctiveness/popularity (varying degrees).		
	Proposed: Removal of distinction between registered/unregistered well-known marks for cross-class protection against confusingly similar marks.	2023 Draft	183
	Proposed: New factors for determination (domestic/overseas registration status, value of mark).	2023 Draft	32
Opposition Procedure	Proposed: Opposition period shortened from 3 months to 2 months.	2023 Draft	32
	Proposed: Elimination of administrative appeal (at CNIPA level) against opposition decisions; appeals go directly to court.	2023 Draft	32
Agency Regulation	Stricter rules and penalties for trademark agencies assisting in bad-faith filings or engaging in prohibited practices (e.g., filing based on internet buzz).	2019 Law, 2022 Rules	30

Administrative Efficiency	New regulations allow suspension of certain trademark review cases pending related procedures (e.g., invalidation/cancellation of cited marks).	Recent Regulations	97
Ongoing Revisions	CNIPA/State Council signal intent to accelerate revision of Trademark Law and implementing regulations, focusing on use obligations and curbing malicious registration.	Ongoing	153

4. Prevalent Trademark Disputes Encountered by U.S. Enterprises

U.S. companies in China commonly face these trademark issues:

Infringement by Local Entities

- **Standard Infringement:** Unauthorized use of identical/similar marks on similar goods/services, causing confusion.¹⁵¹ Includes making, selling, importing/exporting infringing goods.¹⁵¹
- **OEM Manufacturing Issues:** Complex situation where Chinese factories make goods for export under a foreign brand's mark (authorized outside China). If a Chinese entity holds a conflicting registration in China, they might sue the manufacturer or block exports.⁹ The legal status is unclear, with conflicting court rulings (e.g., *Pretul vs. Honda*).¹⁹⁴ Lack of a Chinese registration by the U.S. brand creates risk.⁹
- **Supply Chain Risks:** Partners (distributors, licensees, manufacturers) may exceed authorization or infringe directly.³ Former employees can also become infringers.⁴⁸

Bad-Faith Trademark Squatting

A major challenge due to the first-to-file system.

- **Definition and Motivation:** Registering another's mark (often foreign) in bad faith without intent for legitimate use.⁷⁵ Motives include extortion (selling mark

back), blocking market entry, or shielding counterfeit sales.⁷⁵

- **Prevalence:** Widespread problem reported by U.S. companies and government.⁷⁵ CNIPA acknowledges rejecting many bad-faith applications.¹⁰⁶
- **Squatter Tactics:** Registering English marks, Chinese versions, logos; filing across many classes/subclasses; re-filing to avoid non-use cancellation; filing malicious complaints on e-commerce platforms; interfering with manufacturing/exports.³
- **Legal Challenges:** Combating squatting involves opposition, invalidation (within 5 years, or longer for well-known marks/bad faith), or non-use cancellation.³ Can also use prior rights (copyright, prior use with influence) or unfair competition claims.³ Proving bad faith requires evidence.¹⁰ Courts increasingly scrutinize applicant intent and patterns of behavior.³

Counterfeiting

China is the top source of counterfeit goods globally.¹³⁵

- **Scale and Scope:** Affects many industries (luxury, electronics, apparel, pharma).⁵
- **Methods and Channels:** Ranges from crude fakes to sophisticated replicas.⁶ Increasingly sold online via e-commerce, social media, using complex logistics and AI.⁸⁹ Physical fake markets also exist.⁷
- **Impact:** Causes lost sales, brand damage, high enforcement costs, and consumer safety risks.⁷⁵

Link between Squatting and Counterfeiting: Squatters often use their registered Chinese trademarks to legitimize the sale of counterfeit goods, making it harder for the real brand owner to stop them.³ The brand owner must first invalidate the squatter's registration before tackling the counterfeits.³

5. Navigating Trademark Litigation in the Chinese Judicial System

Litigating in China requires understanding its unique judicial system.

Procedural Overview

- **Enforcement Routes:** China has a "dual-track" system:¹³⁰
 1. **Administrative Route:** Complaints to authorities like AMR/SAMR or CNIPA.¹³
 2. **Judicial Route:** Civil lawsuits in People's Courts.⁹ Criminal prosecution is also possible.⁹
- **Court System and Jurisdiction:** Four court levels (Basic, Intermediate, High, Supreme).¹¹⁷ IP cases often heard in designated Basic/Intermediate courts or specialized **IP Courts** (Beijing, Shanghai, Guangzhou, Hainan) and IP Tribunals.²⁸

These specialized courts handle complex civil cases and administrative appeals.¹¹⁷ Appeals in major tech cases go to the **SPC IP Tribunal**.⁴³

- **Timeline:** First instance cases can be relatively fast (6-12 months)³⁶, but appeals and related actions can extend timelines significantly.⁹⁸

Evidence Gathering Challenges

This is often the biggest hurdle.

- **Burden of Proof:** Plaintiff usually bears the burden.¹⁵
- **Lack of U.S.-Style Discovery:** No broad pre-trial discovery makes getting evidence from the defendant difficult.¹³ Court-ordered evidence production is more limited.¹⁵
- **Notarization and Legalization/Apostille:** Evidence from outside China (POAs, corporate documents) usually needs notarization and legalization or, since Nov 2023, an Apostille (simpler process for Hague Convention members like the U.S.).⁹⁷ Evidence gathered *within* China (e.g., notarized purchases) is preferred.¹⁰⁵
- **Admissibility Standards:** Courts favor documentary evidence over testimony.¹⁵ Notarized evidence is highly credible.¹³² Rules for electronic evidence are developing.⁵¹

These challenges require a strong pre-litigation evidence strategy, focusing on admissible evidence gathered within China.¹²⁹

Enforcement of Judgments

- **Domestic Judgments:** Generally enforceable within China.
- **Foreign Judgments:** Very difficult to enforce U.S. judgments in China due to lack of treaty and reliance on uncertain reciprocity.²⁴ Public policy or procedural issues can block enforcement.²⁰³ Getting a judgment *in China* is usually necessary. Arbitration awards under the New York Convention are easier to enforce.²⁵

The Judicial Environment

- **Improvements and Specialization:** China has invested heavily in its IP courts, creating specialized bodies with more expert judges.²⁸
- **Fairness and Protectionism Concerns:** Concerns about bias towards local companies persist, especially in lower courts or less developed areas.⁹¹ Transparency can be limited.¹⁴ New regulations potentially add political dimensions.⁶⁴
- **Evidence vs. Perception:** Despite concerns, studies show foreign plaintiffs often have high win rates (70-85%+) in Chinese IP courts, sometimes exceeding

domestic plaintiffs.²⁸ High-profile wins by foreign firms also support this.⁷⁶ While risks remain, the judicial environment, especially in specialized courts, seems increasingly impartial.

6. Analysis of Litigation Outcomes for U.S. Companies

Understanding potential outcomes helps U.S. firms decide on enforcement actions.

Success Rates

- **General Trend:** Foreign plaintiffs, including U.S. firms, generally achieve high success rates (often 70-85%+) in Chinese IP courts.²⁸
- **Specific Data:** High win rates reported in patent (77-78%)⁴⁸, software copyright (85%+)³⁶, and general IP/trademark cases (e.g., 77% in Beijing Chaoyang Court).⁵⁷
- **Factors:** Success often depends on choosing the right venue (specialized IP courts)²⁸, strong admissible evidence³⁶, valid IP rights, and good local lawyers.⁸²

Damage Awards

Securing large damages has been historically harder, but is improving.

- **Calculation Methods:** Damages based on right holder's losses, infringer's profits, reasonable royalties, or statutory damages (up to RMB 5 million for trademarks).¹³ Proving losses/profits is difficult due to lack of discovery, so statutory damages are common.¹³
- **Punitive Damages:** Now available (1-5x base amount) for intentional/serious infringement.¹⁴⁶ Application is increasing.³⁷
- **Reasonable Expenses:** Courts usually award costs like attorney fees.³⁵
- **Trend Towards Higher Awards:** Damage awards are clearly increasing due to legal changes and greater judicial recognition of IP value.³⁴ Recent high-profile cases show multi-million RMB awards.⁶¹
- **Persistent Challenges:** Difficulty proving actual loss/profit remains an obstacle, often leading to reliance on statutory damages which may not fully compensate.¹³

While winning on liability is common, financial recovery might not always meet U.S. expectations due to evidence challenges.¹³ Punitive damages offer potential for higher awards in serious cases.³⁵

Impact of Recent Legal and Policy Developments

- **Anti-Bad Faith Measures:** Stronger laws help invalidate squatter registrations.¹⁴³
- **Increased Penalties:** Higher fines and damages increase risks for infringers.³²
- **USTR Scrutiny & Trade Agreements:** International pressure (e.g., USTR reports)

pushes China on IP issues, though implementation can be slow.²

- **E-commerce Platform Liability:** Platforms have more responsibility to fight counterfeits.⁵

7. Strategic Recommendations for U.S. Enterprises

Success requires proactive prevention and smart enforcement.

Proactive Trademark Protection (Prevention)

- **File Early and Broadly:** Register in China *before* market entry, using the national route for better control.³
- **Register Chinese Language Marks:** Secure appropriate Chinese versions (translations, transliterations).⁹
- **Master the Subclass System:** File in all relevant subclasses with local expert help.¹⁵⁴
- **Consider Defensive Registrations:** File in related classes or for mark variations to deter squatters.⁹¹
- **Implement Trademark Monitoring:** Watch for infringing applications and uses online/offline.⁸⁹
- **Utilize Customs Recordal:** Register IP with China Customs (GACC) to enable seizure of infringing goods at the border.¹
- **Implement Strong Contractual Protections:** Use China-specific, bilingual contracts (NNN agreements, manufacturing/distribution agreements) with clear IP clauses, governed by Chinese law.¹⁰³
- **Conduct Due Diligence:** Vet potential Chinese partners thoroughly.¹¹⁸

Effective Litigation & Enforcement Strategies

- **Choosing the Right Enforcement Path:**
 - *Administrative (CNIPA/AMR):* Faster, cheaper, can stop infringement and issue fines, but no damages for rights holder.¹³ Good for clear cases or quick action.¹⁴
 - *Judicial (Civil Lawsuit):* Can award damages (compensatory & punitive), handles complex cases, preferred for seeking full remedies.⁹ Slower, more expensive.¹⁴
 - *Multi-pronged Strategy:* Often best to combine methods (letters, administrative action, civil suit, customs).⁹
- **Strategic Venue Selection:** Prefer specialized IP Courts (Beijing, Shanghai, Guangzhou, Hainan) or reputable courts in other major cities for expertise and impartiality.⁹

- **Developing a Coherent Claim Strategy:** Combine trademark claims with unfair competition or copyright claims where applicable.³ Assert all grounds against squatters (prior rights, bad faith).³
- **Prioritizing Evidence Gathering:** Collect strong, admissible evidence *within China* before filing (notarized purchases/website captures, investigations, evidence preservation orders, administrative raid evidence).¹²⁹ Ensure foreign documents are properly authenticated.¹⁶
- **Leveraging Well-Known Trademark Status:** Argue for this status if applicable, providing strong evidence of fame *in China*.¹⁴⁸ Can lead to broader protection and higher damages.⁷⁸
- **Seeking Preliminary Relief:** Apply for preliminary injunctions to quickly stop damaging infringement pending final judgment.⁷⁸ Requires showing likelihood of success, irreparable harm, urgency, and providing a bond.¹⁷⁰ Courts are increasingly granting these.⁷⁸

Table 2: Comparison of Administrative vs. Judicial Trademark Enforcement Routes in China

Feature	Administrative Route (e.g., CNIPA/AMR)	Judicial Route (People's Courts)
Authority	CNIPA, State Administration for Market Regulation (SAMR), local AMRs	People's Courts (Basic, Intermediate, High, Supreme); Specialized IP Courts/Tribunals
Speed	Generally faster (3-6 months often cited for simpler cases) ¹⁴	Generally slower (First instance 6-12+ months, appeals add significant time) ³⁶
Cost	Lower cost ¹³⁰	Higher cost (court fees, extensive legal fees, evidence costs) ¹⁹³
Available Remedies	- Order to cease infringement (injunction) ¹³ - Fines against infringer ³⁰ - Confiscation/destruction of infringing goods & tools	- Order to cease infringement (injunction) ¹⁶⁸ - Compensatory damages (based on loss, profit, or royalty) ¹³ - Punitive

	³⁰ - No damages awarded to rights holder ¹³	damages (1-5x base for malicious/serious cases) ³² - Recovery of reasonable enforcement expenses ³⁵ - Destruction of infringing goods ¹⁶⁸
Complexity Handling	Best suited for relatively straightforward, clear-cut infringement cases ¹³	Capable of handling complex legal and factual issues, including validity challenges (via parallel administrative process) ¹³
Evidence Gathering	Authorities have investigation powers (inquiry, inspection, seizure). ³⁰ Can be used strategically to obtain evidence for court. ¹¹⁶	Plaintiff bears primary burden; no U.S.-style discovery; strict rules for admissibility, notarization/legalization. ¹⁴ Court can order evidence preservation. ¹⁵
Transparency	Often limited; rights holders may not receive detailed updates or results. ¹⁴	Generally higher transparency through public court proceedings and published judgments (though access to databases can be an issue). ⁵⁹
Potential Bias	Concerns about local protectionism, especially by local-level authorities. ¹³	Concerns exist, but improving, especially in specialized IP courts/higher courts; high foreign plaintiff win rates reported. ²⁸
Strategic Considerations	Useful for quick action, simpler cases, evidence gathering, lower-budget enforcement, or as part of a multi-pronged approach. ¹³⁰	Necessary for seeking damages, handling complex disputes, establishing binding legal precedent; preferred route for most foreign companies seeking full remedies. ¹³

8. Illustrative Case Studies: Landmark Trademark Litigation

Notable cases show trends and potential outcomes:

- **Michael Jordan vs. Qiaodan Sports:** Long battle over the Chinese transliteration "乔丹" (Qiaodan).⁷⁶ Jordan won partial victory at SPC recognizing prior name rights for Chinese characters, but not Pinyin "QIAODAN" due partly to time limits.⁷⁷ *Significance:* Affirms protection for famous foreign names (transliterated) but highlights need for timely action and registering phonetic versions.⁷⁷
- **New Balance vs. Various Infringers (New Boom, New Barlun):** Fought multiple copycats.³ Won significant damages (RMB 10M vs. New Boom ⁶¹; RMB 30M+ vs. Xinbailun Lingpao ⁶⁸). *Significance:* Shows potential for large damage awards, especially with reasonable calculation methods, but also risks if local names aren't secured early.¹⁹⁷
- **Under Armour vs. Uncle Martian:** Sued for blatant logo/name imitation.⁷⁶ Won preliminary injunction and final judgment with damages (RMB 2M) and injunction, upheld by SPC.⁸³ *Significance:* Key case showing willingness to grant preliminary injunctions against bad-faith infringement and value of registered rights (including Chinese name).⁸³
- **Apple vs. Proview Technology (iPad):** Apple paid USD 60M settlement for "IPAD" mark registered first by Proview.⁴ *Significance:* Stark warning on securing rights *before* launch and doing due diligence on acquisitions.¹⁶²
- **Apple vs. Xintong Tiandi Technology (IPHONE):** Lost case over "IPHONE" mark registered by another company for leather goods, as Apple couldn't prove sufficient fame *in China* for those goods before the filing date.⁷⁶ *Significance:* Shows limits of well-known status for cross-class protection without strong, early proof of fame in China.⁷⁶
- **Lego vs. Lepin:** Multi-year battle against imitation toys.⁶¹ Won significant victories via civil (copyright/unfair competition, damages) and criminal enforcement (fines, raids, prison sentences).⁶¹ *Significance:* Example of successful, comprehensive enforcement using multiple legal avenues against major counterfeiters.⁶¹
- **Burberry vs. Baneberry:** Successfully sued for infringement of check pattern/logo and unfair competition.⁷⁸ Won preliminary injunction and final judgment invalidating Baneberry's older marks based on bad faith/prior well-known status, awarded RMB 6M damages.⁷⁸ *Significance:* Reinforces court willingness to grant injunctions and use bad faith exception to invalidate older squatted marks.⁷⁸
- **Manolo Blahnik vs. Fang Yuzhou:** Won 22-year battle at SPC to invalidate "MANOLO&BLAHNIK" mark from 1999 based on prior name rights.⁷⁵ SPC took pragmatic view on evidence of fame.⁸⁷ *Significance:* Major win against entrenched

squatter, showing SPC flexibility on name rights/evidence, but highlights extreme persistence needed.⁸⁶

These cases show Chinese courts (especially specialized ones) are increasingly sophisticated and willing to protect foreign rights, grant injunctions, invalidate bad-faith marks, and award higher damages. However, success requires strong evidence (especially of prior rights/fame in China), strategic litigation, and proactive registration.

9. Conclusion

China's trademark landscape offers U.S. companies both opportunities and significant risks. The "first-to-file" system necessitates early, broad registration (including Chinese names and relevant subclasses) to counter widespread trademark squatting, infringement, and counterfeiting.

Litigation presents challenges like difficult evidence gathering (no discovery, strict formalities) and historically modest (though rising) damage awards. Enforcement of foreign judgments remains problematic.

However, China's IP environment is improving. Specialized IP courts, stronger laws against bad faith, higher penalties (including punitive damages), and increased foreign plaintiff success rates signal a positive trend.

Success requires a proactive strategy: diligent prevention (registration, monitoring, contracts, customs recordal) combined with smart enforcement choices (administrative vs. judicial routes, venue selection, evidence strategy, preliminary relief). While challenges remain, well-prepared U.S. companies with a clear understanding of the system are increasingly able to protect their trademarks in China.

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