

## 1. Punitive damages in Chinese IP laws

Punitive damage is not a ~~typical~~common principle in Chinese ~~laws~~. ~~The main principal for law.~~ Generally, damages in China are for compensation and reimbursement ~~of the~~for losses ~~of suffered by~~ the plaintiff. ~~Only under~~There are very few ~~circumstances~~instances where punitive damages ~~could~~will be awarded.

~~In 2013~~Punitive damages ~~was for the~~were first ~~time~~ introduced into IP laws in 2013. ~~It was~~ in the amendment of trademark law. It states, “for seriously malicious infringement, the amount of compensation may range from one to five times that of the aforementioned amount determined in line with the preceding regulations~~for seriously malicious infringement, the amount of compensation may be between one to three times the aforesaid amount determined in light of the foregoing regulations.~~”

“The ~~aforesaid~~aforementioned amount determined” means the actual loss of the plaintiff or unfair gains by the defendant or royalties of the infringed IP rights. In 2019, the amendment raised ~~t~~the punitive damages in trademark law ~~was raised from one to three times the actual loss of the plaintiff or unfair gain of the defendant to one to five times that same amount~~to 1-5 times in the amendment in 2019.

~~From~~As of 1 January 2021, all ~~of the~~ IP-related laws ~~have introduced punitive damages~~, such as patent, copyright law, ~~copyright law~~, and anti-unfair competition law. ~~And, have introduced punitive damages. In all IP-related laws, the punitive damages in all of the IP-related laws are~~ 1-5~~one to five~~ times the plaintiff's actual loss ~~of the plaintiff.~~

~~In~~Over the last decade, ~~the courts all over in~~ China ~~and from all levels~~ ~~are receiving more and more~~ have received an increasing number of contentious cases regarding IP rights, mostly trademark pertaining to trademarks and copyright cases~~copyrights~~. However, since the concept of punitive damages is comparatively new in the IP field, the judges ~~did do~~ not apply this stipulation much very often. ~~Therefore~~As a result, in March of ~~2021~~, the ~~supreme court of China~~Chinese Supreme Court issued an explanation of ~~punitive damages~~, providing which provided detailed guidance on how to apply ~~the~~ punitive damages.

~~In~~There are two criteria to consider in determining whether punitive damages ~~shall~~should be rendered, ~~two criteria shall be considered. Firstly~~awarded. First, the infringer must ~~be aware of the infringed IP rights or have~~ knowledge or malicious ~~intentions~~. ~~Secondly~~intent that they're infringing IP rights. Second, the infringing action must be serious.

~~What~~ Watch our next video to learn more about what constitutes “being aware of the infringed IP rights or having malicious intentions” or to what extent an infringing action is considered serious. ~~Please watch our next videos.~~

## 2. Awareness and malicious intentions in determining punitive damages

In our last video about punitive damages in IP infringement cases, we ~~discussed the two criteria~~ ~~fortalked about the two criteria in~~ determining punitive damages, ~~one of which is awareness and malicious intentions of the infringer. In this~~ This video ~~we will have a look into~~ explores ~~one of the criteria,~~ the awareness and malicious intentions of the infringer.

Article 63 of Trademark Law stipulates that “**For seriously malicious infringement, the amount of compensation may be between one to five times that of the aforesaid aforementioned amount determined in light-line with of the foregoing preceding regulations.**”

Being aware of something and having malicious intentions are subjective ~~status.~~ ~~We can't~~ ~~concepts. It is impossible to~~ directly claim that someone is aware of something or having ~~certain~~ has specific intentions. We can only presume the awareness and intention from the actions someone has done. In the Explanation of Punitive Damages, the supreme court lists the following circumstances that can be considered as being aware and having malicious intentions:

- (1) The defendant continues to infringe the plaintiff's IP rights after being notified or warned by the plaintiff or the interested parties;
- (2) The defendant or its legal representative or manager is the legal representative, manager, or actual controller of the plaintiff or the interested parties;
- (3) The defendant had a business relationship with the plaintiff or the interested party, such as labor service, cooperation, licensing, distribution, agency, representative, etc., and had access to the infringed intellectual property rights;
- (4) The defendant had business contact with the plaintiff or interested parties or had negotiated for a business cooperation and had access to the infringed intellectual property rights;
- (5) The defendant had committed acts of piracy or counterfeiting of registered trademarks;
- (6) Other circumstances that can be determined as intentional.”

~~In addition to the above mentioned circumstances~~ Furthermore, if the infringed intellectual property is a well-known trademark or workwork that ~~enjoys high reputation~~ is highly regarded, the defendant ~~can~~ may also be presumed to ~~be aware of~~ know about the infringed IP rights or having to have malicious intentions.

~~That's all for~~ This concludes the discussion of awareness and malicious intentions in determining punitive damages. If you need any assistance in protecting your IP rights in China, please feel free to contact us.

### 3. What circumstances are considered serious in determining punitive damages?

As we ~~have~~ introduced in our previous videos, one ~~criterion for determining of the criteria to determine~~ punitive damages is that the infringement is serious. What circumstances are considered as serious? The courts' consideration ~~usually focus~~ extends to focus on the consequences of infringement. The following aspects have been ~~used~~ addressed in the precedent judgments:

- 1) The infringement is so ~~bad~~ severe that it has triggered ~~the~~ criminal laws ~~charges~~.
- 2) A long-lasting infringement action ~~has lasted for a long time or many times, or the a repeat~~ infringement ~~is repeated~~ after an administrative penalty or court ~~rulings~~ judgment.
- 3) The infringement was conducted in various methods and / or on a large scale, and / or the fake products had been distributed into a wide geographic area.
- 4) The ~~infringement conducted by the~~ infringer has caused huge extensive damage or negative impact ~~onto~~ the right holder, such as ~~the~~ their reputation, ~~or image of the right holder and /, or their~~ products.

~~In~~ According to the Explanation of Punitive Damages issued by the ~~supreme court it stipulates that Supreme Court~~, when the infringer has engages in the following behaviors, the infringement she/he has ~~conducted are~~ committed is considered serious:

- 1) The defendant takes infringing the other party' s intellectual property rights as a business; -
- 2) Falsifying, destroying, or concealing evidence of infringement;
- 3) Refusing to follow the orders for preserving relevant evidence in regard to the alleged infringement;
- 4) The infringement may cause damages to the national security, public interest, or health.

That' s all for the “serious circumstances” required for awarding punitive damages. If you need any assistance in protecting your IP rights in China, please feel free to contact us.

