GossIP

April 2022

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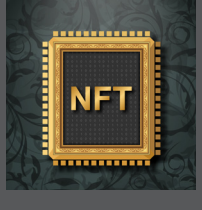

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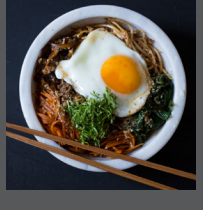

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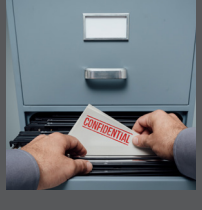

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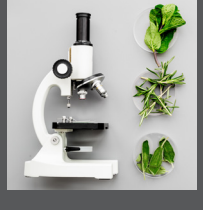

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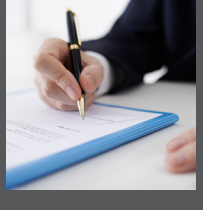

P11 NEWS
International Design: China joins The Hague System

Dear readers,

We are writing and editing the current issue of gossIP *"working from home"*. The city of Shanghai is facing a big flare-up of Covid19 cases and therefore it is implementing a very strict lockdown.

The first article talks about a very hot topic: the metaverse and its IP implications. In fact, Banksy's work has been tokenized as a unit of data stored on a blockchain, and the *"infringer"* is not even afraid of being sued. Why? We give our explanation on this issue.

Getting stocked with food for your lockdown? Make sure you buy the original South Korean food, as some Chinese companies made knockoffs that look very similar or even nearly identical to the original Korean products. A number of key South Korean food companies have formed a joint consultative body to file a lawsuit.

And talking about food, we have some head ups for you about the National Food Security Standard, which is crucial to anyone who works in the food industry: many people are not clear about the classification of National Standard, which is important to foreign exporters.

But before that, in the third article we give you guidelines to companies on how to collect, store and process employees' personal information under the Personal Information Protection Law ("PIPL").

We end the April issue with a hot news: The 1999 WIPO's Hague System Act will enter into force in China on May 5, 2022. Do you know what it means for Chinese companies and designers?

Stay safe everyone,

enjoy the spring,

read GossIP!

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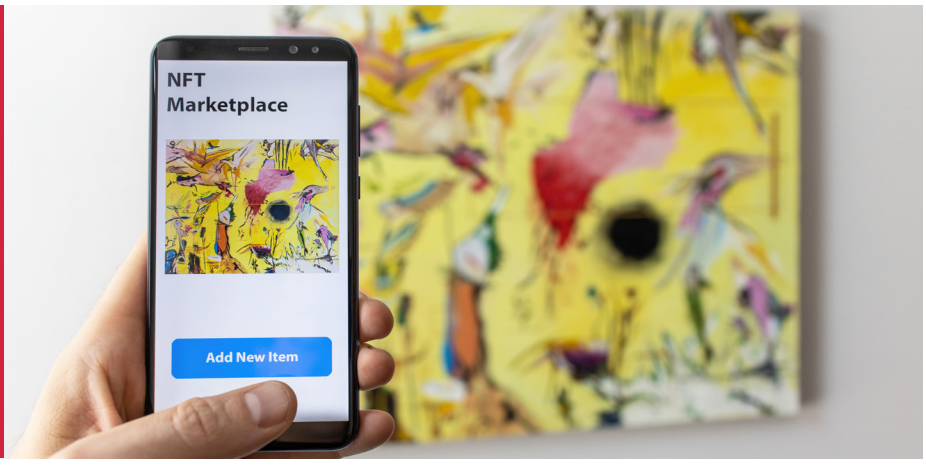
IP Culture

Mr. Lin mints NFT of Banksy: forger or genius?



Digitalising real-world object as NFTs on the blockchain becomes popular with the concept of metaverse growing mature. An NFT, non-fungible token, is a form of digital ledger which is non-interchangeable and can be traded in the Metaverse. The digital asset can be anything, from a piece of artwork to a piece of land, and is having an emerging market.

Where there is a hype, there are counterfeits. A growing number of artworks have been sold as NFTs, many of which are not from the original work owner. Recently, Mr. Mike Lin, who called himself *"the Banksy of trademarks"*, has revealed an NFT collection illuminating well-known Banksy's works.[1]

Mr. Lin has also shown his carefree of getting into legal troubles during his interview with World Trademark Review.[2] In other words, Banksy's work has been tokenised as a unit of data stored on a blockchain, and the "infringer" is not even afraid of being sued.

This is not the first time that fake Banksy's work is being traded as NFTs in the market. In 2021, Banksy's website has been hacked and a fake Banksy NFT was sold through the artist's website.[3] Later, the hacker has returned all the money to the buyer except for the transaction fee of around £5,000.[4]

Based on Banksy's high reputation, there might be further similar copycats in the future. It is hard to tell whether Banksy will take actions against Mr. Lin, because Banksy is famous for his slogan *"Copyright is for losers"*[5]. As we saw, in 2018 Banksy still defended its trademark rights through his handling service *"Pest Control"*. The action was taken by a handling service because Banksy wants to stay anonymous.

For street artists, staying anonymous could be a way of protecting themselves. However, this might also be the reason why Mr. Lin shows no care about infringing Banksy's copyright: because even if claiming rights through a company, the risk of disclosing identity increases.

Apart from staying anonymous, protecting rights in the metaverse itself is a new challenge, especially for Intellectual Property Law, as almost all kinds of works (photos, literary, music, etc) can be digitalised and sold on marketplaces.

Metaverse complicates the protection of IP rights because the author of the work, the owner of the NFTs, the creator of the NFTs and the owner of the copyright can all be different persons or entities which enjoy various rights and obligations.

Under the current IP law system, unless the author clearly states that the ownership of the copyright is transferred to the buyer, the author owns the copyright when a real object is transferred to an NFT. This is to say that when you buy an NFT, you don't really own all the rights related to it. For instance, the ownership of the IP rights related to NFTs is not transferred by default.

Even under the situation that the copyright is transferred to the owner, the author is unchanged and all the moral rights, such as the right of modification, always stay with the owner.

A more common scenario is that the owner of a copyright licenses a third party to make a work as an NFT. Under such a situation, both the licensor and licensee should be careful about the clauses of the license contract because at present Chinese law does not clearly define the legal attributes of NFT and its legal application.[6]

NFTs in China is more like a piece of an asset but not a kind of currency. In case of IP infringement, under Article 1195 of the Civil Code, if an NFT platform does not provide tokenisation services for NFTs, but only trading services, the platform should forward the notice of infringement in time to the relevant user who uploaded the NFTs and take the necessary measures based on the prima facie evidence of infringement and the type of service provided.

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The necessary measures should be technically achievable, reasonable and without being excessive. As the NFT itself is a unique code on the blockchain, the most feasible measure is to remove NFT purchase links from the platforms.

For example, if Mr. Mike Lin plans to sell the Banksy work on a Chinese platform, what Banksy can do is to prove that he is the owner of the artwork and request the platform to delete the link.

The existence of NFTs, as an intangible economic asset, offers interesting possibilities for the development of IP law. In a world in which attention has become a currency, proving and protecting the identity of NFTs is essential.

The legal system on NFTs is still being built, and NFTs has not been addressed by legislation in most countries. Although it remains uncertain what will happen for Mr. Lin's fake Banksy NFTs, the critical dialogue they have generated will remain.

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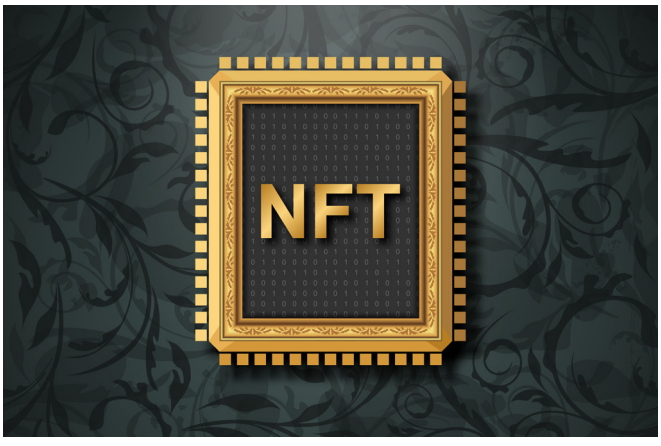

[1] https://www.worldtrademarkreview.com/enforcement-and-litigation/banksy-nft-collection-launch-notorious-multimillionaire-trademark-filer

[2] Ibidem

[3] https://www.bbc.com/news/technology-58399338

[4] ibidem

[5] https://www.hfgip.com/zh/node/13677

[6] Article 3 of the Announcement on Preventing the Financing Risks of Initial Coin Offerings issued by the People's Bank and seven other departments on 4 September 2017

IP Law

South Korean food companies fight Chinese imitators

A number of key South Korean food companies, including Samyang Food Co., CJ Cheiljedang Corp., Daesang Corp. and Ottogi Co., have formed a joint consultative body to file a lawsuit against two largest Korean food imitators, Qingdao Taeyangcho Food and Zhengdao Food Co., from China, on the grounds of imitating their products and violating intellectual property rights.

The consortium, which has acquired the assistance from the Korean IP Office and the Korea IP Protection Agency, claimed that the Chinese defendants have been producing and selling counterfeit products imitating their trademarks and packaging designs.

The knockoffs look very similar or even nearly identical to the original Korean products. The products have been wildly sold online and offline across China. Many distributors even display both the original products and the knockoffs in the same area with the latter much cheaper than the former.

The comparison of the instant noodle products,
photo from http://koreabizwire.com/

With the increasing popularity of the Korean food in China, there is a growing distribution of copycat products. There have been some individual administrative crackdowns or lawsuits involving Korean business owners and Chinese imitators, but this is the first time for the Korean companies to join forces to file a trademark lawsuit on IP rights violation.

According to a report issued by the Korea Herald, the number of cases of corporate trademark violation in China has increased by 350% from 2017 to 2021. Korean companies suffered about $27.8 million in damages due to the unauthorized use of trademarks or trademarks preemptively registered with bad faith by Chinese imitators.

Customers easily get confused with those knockoff products, and the distribution of them could cause severe damage to these companies' images and reliabilities.

The industry experts believe that the joint lawsuit will not only raise the awareness and the IP value of Korean food products, but also send out a warning message to potential imitators in China.

Many international companies have encountered cases of malicious trademark squatting in China. While many of them have had invested lots of manpower and resources in fighting against those imitators or bad-faith registrations, some have unfortunately lost to their copycats.

When foreign companies make plans to develop the Chinese market, it is extremely important to understand how IP assets are protected in China and register, manage and protected their trademarks properly.

Left: original products, right: imitating products,
photo by Korea Food Industry Association

Crystal Zhang
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Labor Law

How to deal with employees' personal information

Regardless of their size, enterprises unavoidably will collect, store and process their employees' personal information. Such process falls within the scope of *"personal information processing"* under PRC Personal Information Protection Law (*"PIPL"*).

How to deal with employees' personal information in compliance with the PIPL?

Collection of personal information

When processing employee's personal information, employers should be guided by three main principles, requiring that the information be processed:

- in accordance with the principles of lawfulness, legitimacy, necessity and good faith, and not in any manner that is misleading, fraudulent or coercive;
- for a specified and reasonable purpose, directly relevant to the purpose of processing and in a way that has the least impact on personal rights and interests; besides, collection of personal information must be limited to the minimum scope necessary for achieving the purpose of processing and shall not be excessive;
- in accordance with the principles of openness and transparency, with the rules of processing of personal information disclosed, and the purpose, method and scope of processing expressly stated.

Generally speaking, in relation to the processing personal information, the employees must be informed of the specific scope and purpose of the processing (and such purpose has to be reasonable and the minimum necessary) and the collection and processing can only be initiated after the employee's consent has been obtained.

However, there are circumstances where consent is not required, namely:

(i) where it is necessary for the conclusion or performance of a contract to which the employee is a contracting party;

(ii) where it is necessary for carrying out human resources management under an employment policy legally established or a collective contract legally concluded;

(iii) where it is necessary for performing a statutory responsibility or statutory obligation;

(iv) where it is necessary for responding to a public health emergency, or for protecting the life, health or property safety of a natural person in the case of an emergency;

(v) where the personal information is processed within a reasonable scope to carry out any news reporting, supervision by public opinions or any other activity for public interest purposes;

(vi) where the personal information, which has already been disclosed by the individual or otherwise legally disclosed, is processed within a reasonable scope and in accordance with the law.

Circumstances listed under (i) and (ii) particularly apply where employees are concerned.

Transferring personal information abroad

Personal information collected within the territory of China is, in principle, required to be stored in China. In practice, many foreign-invested companies normally transfer the personal information of their employees to their headquarters abroad or give them or their foreign affiliates access to their employees' database.

The law establishes clear rules for cross-border transfer of personal information.

The following requirements must be met:

→ the transfer has to be necessary;

→ basic information of the foreign recipient must be given and consent to the cross-border transfer must be separately and expressly given by the employees before the transfer;

→ the employer has to adopt such mandatory security measures as required by the law;

Continue reading

- the country where the personal information is to be transferred must not be a foreign destination prohibited by China; and
- the foreign entity to which the personal information is to be provided cannot be a foreign judicial or law enforcement body.

In addition to the legal requirements, the Cyberspace Administration of China (*"CAC"*) released draft Measures for Security Assessment of Cross-border Data Transfer in October 2021.

Although such measures are not effective yet, it is worth mentioning that in these measures an application to CAC for security assessment is required in any of the following circumstances:

- **personal information and important datails collected and generated by an operator of critical informationin frastructure;**
- **the data to be transferred overseas contains important data;**
- **the data processor transferring the personal information overseas has processed personal information of one million individuals or above;**
- **the personal information of more than 100,000 individuals or the sensitive personal information of more than 10,000 individuals has been transferred overseas on a cumulative basis.**

Given the potential impact of the provisions of the CAC draft measures, it will be interesting to verify whether the provisions referred to above will be adopted as they are or further amended, and monitor the enactment of any future regulatory provisions by CAC on the subject matter.

Sharing personal information

Many employers nowadays enlist the services of external professional consultants to assist in their daily operation, including human resource management. How should employers deal with it properly in the PIPL era?

In this aspect, a distinction should be made between commissioning to contracted parties and providing to third parties.

When an employer needs to provide personal information of its employees to a third party due to the outsourcing of some management functions, such as commissioning a headhunter to recruit staff or a bank to pay salaries on its behalf, the employer should abide by the following special rules:

- comply with its obligation to inform;
- implement a personal information protection impact assessment; and
- enter into a contract with the contracted parties, agreeing on the purpose, period, and method of the processing, the type of personal information to be processed, any protection measure to be taken, and the rights and obligations of both parties, and implementing supervision of the contracted parties' processing activities.

Under other scenarios where personal information is provided to other third parties (e.g., sharing information with or transferring information to commercial partners), employers should not only follow the aforementioned steps, but also expressly inform the employees the recipient's name, contact information, purpose of processing, method of processing and type of personal information, and obtain separate consent from the employees concerned.

Some suggestions

In light of the PIPL's impacts on the management of employees, we would recommend that employers conduct a full and comprehensive assessment on their data compliance to identify possible non-compliance issues, formulate appropriate solutions and adopt measures in order to meet the PIPL's requirements.

In particular, we would recommend the following actions.

Sorting and classifying employees' personal information

Employers should carry out a comprehensive classification of their employees' personal information to verify which types of personal information are processed (distinguishing personal information and personal sensitive information), identify the information that should be timely deleted (because collected in excess or no longer needed), arrange for data safety measures to be set up and establish different authorization levels in the corporate internal management.

Establishing regulations on the protection of employees' personal information

Employers should also add a specific section on the protection of employees' personal information in their employees' handbook, or establish a separate policy for the protection of employees' personal information.

Regarding employees who are authorized to access the personal information that is processed, specific contractual provisions should be entered to with such employees, clarifying and regulating the authorization scope and relevant responsibilities and obligations.

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Signing consent letters with the employees and adding data chapter in the labor contract template

As mentioned above, notwithstanding the legal basis for handling employees' personal information, employers are still recommended to inform employees of the purpose, manner and scope of personal information processing.

In this connection, it is highly recommended to have consent letters signed by the employees regarding the personal information processing. In particular, if processing of personal sensitive information is required, or if any personal information is to be shared with third parties or transferred overseas, additional separate consent of the employees must be obtained.

Claire Fu
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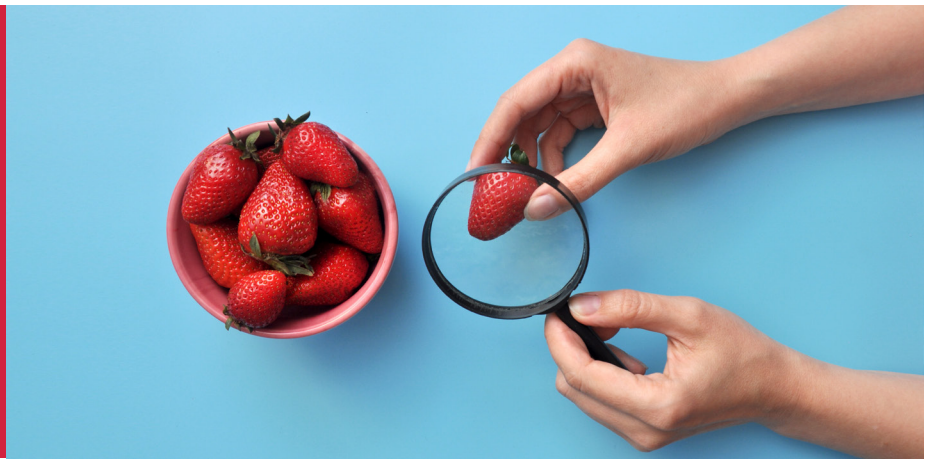
Food Law

Talking about the National Food Security Standard



National Food Security Standard (hereinafter referred to as the *"National Standard"*) is crucial to anyone who works in the food industry. However, many people are not clear about the classification of National Standard, which is important to foreign exporters.

Let's start with the Food Safety Law, which is the fundamental law of food safety. According to the Food Safety Law, Chapter 3 Food Safety Standards, Article 25:

Food safety standards shall be standards for mandatory execution. No mandatory food standards other than food safety standards may be developed.

Article 26. Food safety standards shall contain:

- ✔ limits of pathogenic microorganisms, pesticide residues, residues from veterinary medicines, biological toxins, heavy metals, and other pollutants, and other substances hazardous to human health in food, food additives, and food-related products;
- ✔ varieties, range of application, and dosages of food additives;
- ✔ nutritional composition requirements for staple and supplementary food exclusively for infants and other particular groups of people
- ✔ requirements for labels, marks, and instructions related to health, nutrition, and other food safety requirements;
- ✔ hygienic requirements for the process of food production or trade;
- ✔ quality requirements related to food safety;
- ✔ food inspection methods and procedures related to food safety; and
- ✔ others which need to be developed into food safety standards.

Obviously, the upper rank law has provided a clear position and scope for the national standard of food safety, so next step we will explain in detail the specific classification of national standards.

The first category is common criteria

Common criteria refer to standards that are widely used and have broad guiding significance as the basis of other standards within a certain range.

In another word, all food products, no matter what category they belong to, shall comply with the common criteria.

For example, if there is no corresponding food product standard for a food product imported from abroad, you can find the corresponding common criteria according to the food category of the product and comply with the safety requirements for the food category in the standard.

In this way, the national standard problem in food import can be solved.

There are 13 common criteria as the list below:

1	National standard of food safety-Limits of mycotoxins in foods	GB 2761-2017
2	National standard of food safety-Limits of contaminants in foods	GB 2762-2017
3	National standard of food safety-Maximum residue limits of pesticides in food	GB 2763-2021
4	National standard of food safety- Maximum residue limits for veterinary drugs in foods	GB 31650-2019
5	National standard of food safety-Limit of pathogen in prepackaged foods	GB 29921-2021
6	National standard of food safety-Limits of pathogenic bacteria in bulk ready-to-eat food	GB 31607-2021
7	National standard of food safety-Standard for use of food additives	GB 2760-2014
8	National standard of food safety-Standards for uses of additives in food contact materials and their products	GB 9685-2016
9	National standard of food safety-Standard of use of nutritional fortification substances in foods	GB 14880-2012
10	National standard of food safety- General standard for the labelling of prepackaged foods	GB 7718-2011

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11	National standard of food safety- Standard for nutrition labelling of prepackaged foods	GB 28050-2011
12	National standard of food safety- Food labeling of prepackaged special diet	GB 13432-2013
13	National standard of food safety- General rule of designation of food additives	GB 29924-2013

Among the 13 general standards, the following standards are most commonly used:

- ✓ General standard for the labelling of prepackaged foods GB 7718-2011
- ✓ Standard for nutrition labelling of prepackaged foods GB 28050-2011
- ✓ Standard for use of food additives GB 2760-2014
- ✓ Limits of contaminants in foods GB 2762-2017
- ✓ Limit of pathogen in prepackaged foods GB 29921-2021

Due to space reasons, the content of the standard will not be explained in detail here. Readers can search about the detailed standard and find the explanation by the professional practitioners of food regulation in accordance with specific situation.

It is hereby noted that clarified that the use of *"most"* and other superlatives in this article is to impress the readers and not the absolute words.

The second category is standard of food products

A total of 70 national standards are formulated for major food categories (important to people's livelihood), such as various dairy products, rice and flour products, meat products, candy products, seasoning products, etc.

The third category is special dietary food standards, which is used for specific consumer groups such as infant formula and other special food. Relevant national standards shall be abided by. There are 10 standards in total.

1	National standard of food safety-Infant formula	GB 10765-2021
2	National standard of food safety-Older infant formulas	GB 10766-2021
3	National standard of food safety-Young children formula	GB 10767-2021
4	National standard of food safety- Cereal-based complementary foods for infants and young children	GB 10769-2010
5	National standard of food safety- Canned complementary foods for infants and young children	GB 10770-2010
6	National standard of food safety- General standard for infant formula for special medical purposes	GB 25596-2010
7	National standard of food safety- General principles for formula foods of special medical purposes	GB 29922-2013
8	National standard of food safety- Complementary food supplements	GB 22570-2014
9	National standard of food safety- General standard for sports nutrition food	GB 24154-2015
10	National standard of food safety-Multi-nutrient supplementary food for pregnant and lactating women	GB 31601-2015

The fourth category is quality specifications and relevant standards of food additives

This category has the most national standards, 646 in total. All the food additives shall abide by this kind of standard, which will not be listed here due to space reasons.

The fifth category is quality specification and standard of food nutrition fortifier

There are 53 standards in total. All the food nutrition fortifier shall abide by this kind of standard, which will not be listed here due to space reasons.

The sixth category is food related product standards

There are 15 standards in total. Food related products refer to food packaging materials, containers, detergents, disinfectants, etc. and there are 3 important standards:

- ➤ detergent GB 14930.1-2015
- ➤ disinfectants GB 14930.2-2012
- ➤ General safety requirements on food contact materials and articles GB 4806.1-2016

The seventh category is production and operation specifications and standards

There are 34 standards in total, which shall be abided by during the production and operation of the food. There are two important standards:

- ➤ General hygienic standard for food production GB 14881-2013
- ➤ Code of hygienic practice in food business process GB 31621-2014

The remaining standards are various test methods, including 234 physical and chemical test methods, 32 microbiological test methods, 29 toxicological test methods and procedures, 120 pesticide residue test methods and 74 veterinary drug residue test methods.

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Conclusion

The above analysis is based on the announcement of the Food Safety Standards Monitoring and Evaluation Department of National Health Commission in February 2022, which is the latest official announcement.

It is hoped that the popularization of science will help nonprofessionals of food regulation to have a preliminary understanding of national standards of food safety.

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News

International Design: China joins The Hague System

China is the 94th Country to join the Hague System for the international protection of Designs. On February 5th, 2022 China deposited its instrument of accession to the 1999 Geneva Act of the Hague Agreement and now China is a contracting party on the 1999 Act and a member ofthe Hague Union.

The 1999 WIPO's Hague System Act will enter into force in China on May 5, 2022.

WIPO's Hague System provides a unique international mechanism for securing and managing design rights simultaneously in 94 Countries through one application, in one language with one set of fees.

Thanks to China accession to the Hague System, companies and designers in China will be able to apply for international protection of their designs in all 94 Countries covered by the Hague System, facilitating them in international markets.

As non-resident in China, from May 5th 2022 companies and individuals will be able to guarantee the international protection of designs also in China, facilitating the expansion of their business in one of the largest and most dynamic markets in the world.

IMPORTANT: The instrument of accession also specified that the 1999 Act will not be applied in the Hong Kong Special Administrative Region or the Macao Special Administrative Region of the People's Republic of China until otherwise notified by the Government of the People's Republic of China.

Read the full news here: China Joins the Hague System (wipo.int)

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