

# 中国特色审判监督程序 ——兼顾事实与法律审查

Adjudication supervision in China's judicial system  
—From the Perspective of Facts and Law in Adjudication  
Supervision

中华人民共和国最高人民法院民三庭 3rd Civil Division, SPC (Supreme People's Court)

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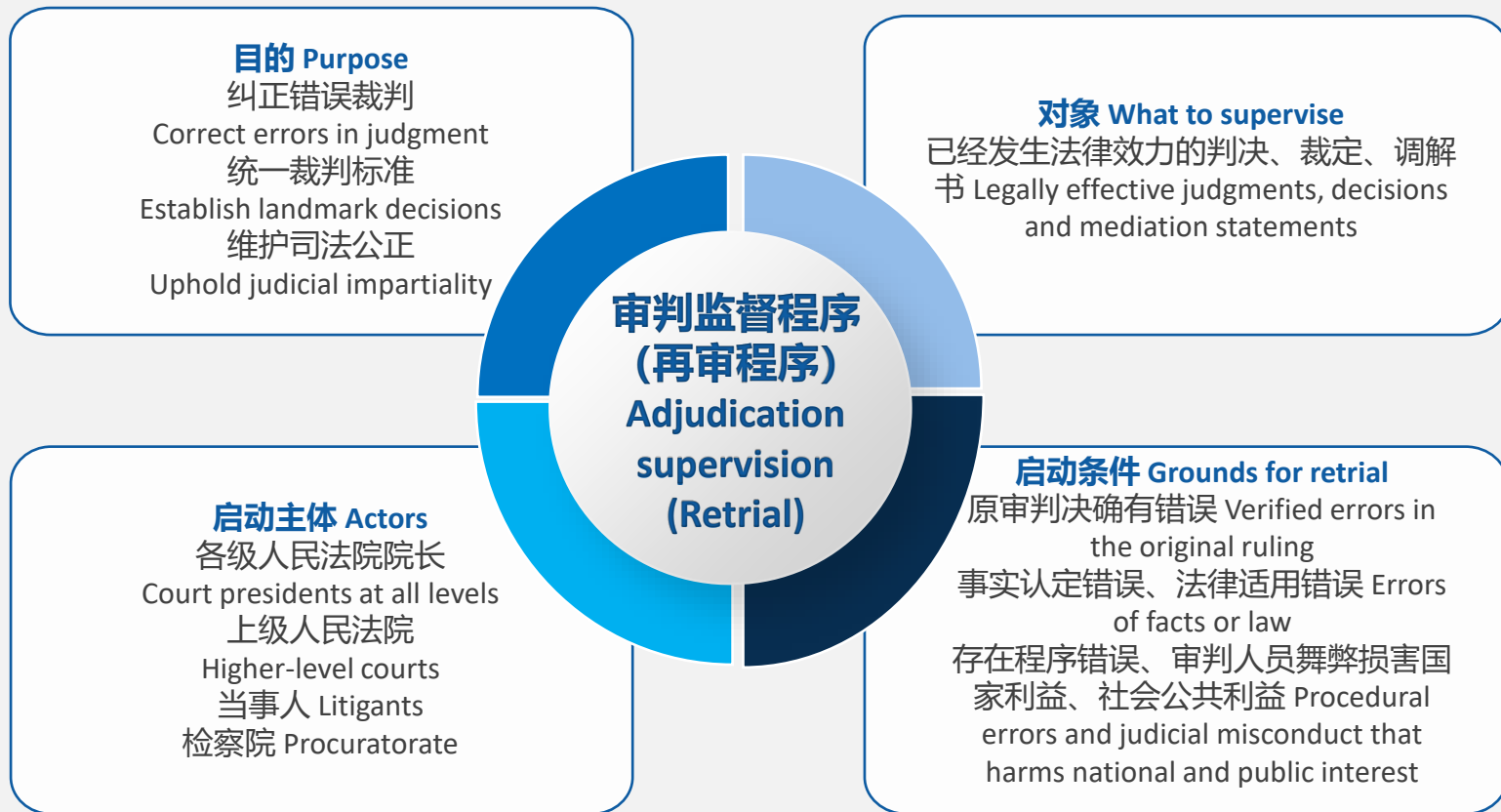
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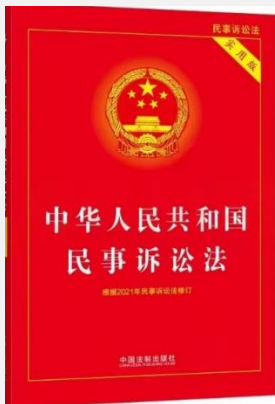
# 中国审判体系下的审判监督程序

## Adjudication supervision in China's judicial system

# ◆ 中国审判监督程序概述 Overview of adjudication supervision



# ◆ 审判监督程序的相关法律规定 Laws on adjudication supervision



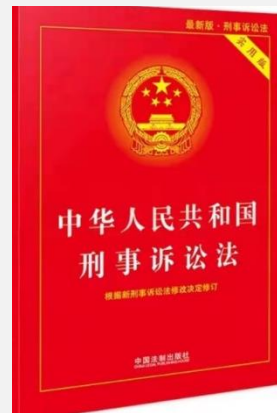
**民事诉讼法 (2021年修正)**  
**Civil Procedure Law (CPL)**  
**(2021 Revision)**

**第205—220条 Article 205-220**



**行政诉讼法 (2017年修正)**  
**Administrative Procedure Law**  
**(2017 Revision)**

**第90—93条 Article 90-93**



**刑事诉讼法 (2018年修正)**  
**Criminal Procedure Law**  
**(2018 Revision)**

**第252—258条 Article 252-258**

最高人民法院关于适用《中华人民共和国民事诉讼法》的解释 (2022年修正)

SPC Interpretation on the Application of CPL (2022 Revision)

最高人民法院关于适用《中华人民共和国民事诉讼法》审判监督程序若干问题的解释 (2020年修正)

SPC Interpretation on the Application of Adjudication Supervision in CPL (2020 Revision)

最高人民法院关于民事审判监督程序严格依法适用指令再审和发回重审若干问题的规定 (2015年实施) .....

SPC Provisions on the Application of Civil Adjudication Supervision to Retrial (Effective since 2015)...

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# 中国审判监督程序的主要路径

Main procedures of adjudication  
supervision

## ◆ 当事人主动提出机制 Petitioned by the litigant

### ➤ 再审申请的提出（民事诉讼法第206条） Petition for retrial (Article 206, CPL)

当事人对已发生法律效力判决、裁定，认为确有错误的，可以

If a litigant finds error in legally effective judgments or decisions, they may

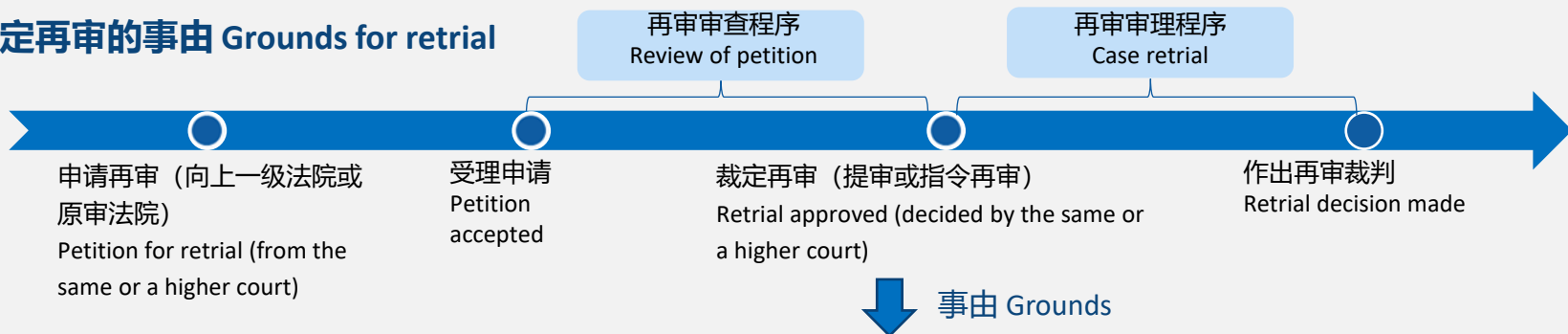
- 向上一级人民法院申请再审； Seek review from a higher court;
- 当事人一方人数众多或者双方当事人为公民的案件，也可以向原审人民法院提出 Appeal to the same court when one party is a group of people or both parties are citizens

### ➤ 再审的程序 Procedures of retrial



# ◆ 当事人主动提出机制 Petitioned by the litigant

## ➤ 裁定再审的事由 Grounds for retrial



### 与事实认定有关的: On Facts:

(1) 有新证据足以推翻原裁判; (2) 原裁判基本事实缺乏证据证明; (3) 原裁判主要证据为伪造; (4) 原裁判主要证据未质证; (5) 主要证据当事人因客观原因不能自行收集, 经书面申请, 原审法院未调查收集; (1) Conclusive new evidence to overturn the original verdict; (2) Finding of primary facts without evidence; (3) Main evidence was forged; (4) Main evidence was not cross-examined; (5) Failure of the court to investigate or collect the main evidence that the party was unable to collect themselves due to objective reasons after the party asked the court to do so in written form

• 与法律适用有关的: On Law: (6) 原裁判适用法律确有错误; : (6) Error of law;

• 与程序有关的: On procedures:

(7) 审判组织组成不合法、审判人员应回避而未回避; (8) 当事人、无诉讼行为能力人的法定代理人因不能归责于本人或者其诉讼代理人的事由, 未参加诉讼; (9) 违法剥夺当事人诉讼权利; (10) 未经传唤, 缺席判决; (11) 原裁判超判、漏判; (12) 据以作出原裁判的法律文书被撤销、变更; (7) Illegal composition of the trial panel, failure of the judge to withdraw as required by law; (8) Failure of the party or the legal representative of the party that lacks litigation capacity to attend the trial due to reasons not attributable thereto; (9) Illegal deprivation of the litigant's right of action; (10) Decision in absentia without summoning the litigant; (11) Decision beyond the claims or failure to decide on all claims; (12) The legal document on which the decision was based has been repealed or modified;

• 原审审判人员贪污受贿, 徇私舞弊, 枉法裁判 Judicial misconduct, incl. corruption, favoritism and abuse of power



# ◆ 审判监督程序的审理方式 How retrial works

## ➤ 民事诉讼法第214条第1款 Article 214.1, CPL

**发生法律效力判决、裁定  
由第一审法院作出**

The effective judgment or decision was made  
by a court of first instance

- 按照第一审程序审理 Retried in accordance with the first-instance procedures
- 所作的判决、裁定，当事人可以上诉 The litigant can appeal the judgment or decision

**发生法律效力判决、裁定  
由第二审法院作出**

The effective judgment or decision was made by  
a court of second instance

- 按照第二审程序审理 Retried in accordance with the second-instance procedures
- 所作的判决、裁定，是发生法律效力的判决、裁定（不可上诉） The judgment or decision is legally effective (not appealable)

**上级人民法院按审判监督程序提审**

A higher court retries the case in accordance  
with the procedures of adjudication  
supervision

- 按照第二审程序审理 Retried in accordance with the second-instance procedures
- 所作的判决、裁定，是发生法律效力的判决、裁定（不可上诉） The judgment or decision is legally effective (not appealable)

- **民事诉讼法第214条第2款：** 审理再审案件应当另行组成合议庭
- **Article 214.2, CPL:** A collegiate panel shall be formed to conduct the retrial

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# 审判监督程序中的“事实”和 “法律”

“Fact” and “law” in adjudication  
supervision

# ◆ 事实错误的判断及案例 Determination of error of facts and case study

- 与事实认定有关的再审情形（民事诉讼法第207条第一 — 五项）— 出现新证据、原审认定基本事实错误或不清 Retrial grounded on finding of facts (Article 207.1-5, CPL)—Discovery of new evidence or wrong finding of facts in the original decision

(1) 有新证据足以推翻原裁判; (2) 原裁判基本事实缺乏证据证明; (3) 原裁判主要证据为伪造; (4) 原裁判主要证据未质证; (5) 主要证据当事人因客观原因不能自行收集, 经书面申请, 原审法院未调查收集。 (1) Conclusive new evidence to overturn the original verdict; (2) Finding of primary facts without evidence; (3) Main evidence was forged; (4) Main evidence was not cross-examined; (5) Failure of the court to investigate or collect the main evidence that the party was unable to collect themselves due to objective reasons after the party asked the court to do so in written form

## ➤ 关于新证据 About new evidence

### 新证据足以推翻原裁判（《民事诉讼法》的解释第385条） Conclusive new evidence (Article 385, CPL Interpretation)

- 能够证明原判决、裁定认定基本事实或者裁判结果错误 Evidence that invalidates the finding of primary facts and the original decision
- 再审申请人应说明其逾期提供该证据的理由 The petitioner should justify the late submission of evidence

### 逾期提供证据的理由成立的情形（《民事诉讼法》的解释第386条） Admissible late-filed evidence (Article 386, CPL Interpretation)

- 在原审庭审结束前已经存在, 因客观原因于庭审结束后才发现 Evidence that existed before the conclusion of the trial but was only discovered afterwards due to objective reasons
- 在原审庭审结束前已经发现, 但因客观原因无法取得或者在规定的期限内不能提供 Evidence discovered before the conclusion of the trial but was not obtained or presented by the prescribed time due to objective reasons
- 在原审庭审结束后形成, 无法据此另行提起诉讼 Evidence formed after the conclusion of the trial that cannot be used to file a new case
- 在原审中已经提供, 原审法院未组织质证且未作为裁判根据 Evidence submitted at the trial but was not cross-examined or used as the grounds for the decision

# ◆ 事实错误的判断及案例 Determination of error of facts and case study

## ◆ 案例：原判决认定基本事实缺乏证据证明 Case study: Finding of primary facts without evidence

- 再审申请人（一审被告、二审上诉人）：A公司 Petitioner (defendant, appellant): Company A
- 再审被申请人（一审原告、二审被上诉人）：B公司 Respondent (plaintiff, appellee): Company B
- 案由：侵害作品信息网络传播权纠纷 Cause of action: alleged infringement on the right of dissemination via information networks

C公司公证其拥有附件中系列品牌的图像版权，并授权B公司担任其在中国境内的唯一授权代表，在中国境内展示、销售和许可他人使用附件所列出品牌的所有图像作品，并就第三方未经授权使用所述图像作品的行为采取法律行为。B公司向法院起诉A公司未经其授权在微信公众号上使用了上述附件所列出品牌的4张图片，侵害了其对涉案图片的信息网络传播权。一审法院认为，涉案图片上标注C公司的英文名称“\*\*\*\*”及网站“####”字样，该署名构成证明C公司与B公司享有图片著作权权属的初步证据。在A公司未提供有效相反证据的情况下，可以认定B公司享有涉案图片的著作权。在此基础上，判决A公司侵犯了B公司享有的涉案图片的信息网络传播权。A公司不服提起上诉，二审法院判决驳回上诉、维持原判。A公司向最高人民法院申请再审。

C was certified by a notary to own the copyright on the photographs of the brands in the appendix. C authorized B as the sole representative in China to display, sell or authorize third parties to use all the foregoing works in China and take legal actions against unauthorized use thereof. B sued A for infringing its right of dissemination via information networks by the unauthorized use of the 4 attached photos on WeChat Official Account. The court held in the first instance that C's English name "\*\*\*\*" and website URL "####" printed on the photos constituted the prima facie evidence of B and C's copyright ownership. If A did not argue otherwise with valid evidence, B was deemed the proprietor. The court therefore affirmed infringement. Dissatisfied, A protested to a higher court, which dismissed the appeal and upheld the judgment in the first instance. A then petitioned the SPC for review.

# ◆ 事实错误的判断及案例 Determination of error of facts and case study

## ◆ 案例：原判决认定基本事实缺乏证据证明 Case study: Finding of primary facts without evidence

### • 主要事实：Facts:

A公司在一审、二审期间提交了C公司回复邮件，C公司确认相关图片系由摄影师将自己的作品投稿给C公司销售，投稿的摄影师仍然保留图片的著作权。再审法院查明涉案图片1-4上除均标注“\*\*\*®”水印和图片编号外，还各有“####”等4个不同的水印。

During the first and second instances, A submitted email replies from C that confirmed the pictures were purchased from the photographer (who still retained the copyright). The SPC found in the review that all 4 pictures, apart from being numbered and watermarked with “\*\*\*®”, were also stamped with 4 other watermarks that read “####”.

### • 再审法院认定：Decision of the retrial:

案争议焦点在于B公司是否拥有涉案图片的著作权，而该权利的确认关键在于在案证据能否证明C公司享有相应图片的著作权。本案涉案图片在“\*\*\*®”水印外，还分别标注了其他水印，而且“\*\*\*”之后紧接注册商标标志“®”，因此，不能仅以此水印认定涉案图片的著作权属于C公司。C公司出具的《授权确认书》只能证明C公司向B公司进行授权的事实，其中的权利声明属于单方陈述，在缺乏其他证据印证的情况下，不能仅以权利声明确定著作权归属。在图片摄影师仍然保留著作权的情况下，B公司关于C公司拥有各涉案图片的著作权的主张不能成立。本案无法认定C公司取得了涉案图片的著作权，相应地，B公司关于其享有涉案图片著作权的主张亦缺乏事实依据。最高人民法院遂判决撤销一审、二审判决，驳回B公司的诉讼请求。

The main dispute was whether B was the copyright holder, which was to be determined by if the evidence in hand could establish C as the owner. The watermarks were not conclusive evidence as the photos were imprinted with other registered trademarks in addition to the “\*\*\*®” watermark. The Authorization Letter presented by C could only confirm the fact of authorization. The rights statement in the Letter was a one-sided declaration, which alone could not prove the copyright ownership. As the photographer retained the copyright, the court could not establish C to be the rightsholder as asserted by B. B’s claim of ownership was also without grounds. Therefore, the SPC overturned the decisions in the first and second instances and dismissed the claims of B.

# ◆ 法律错误的判断及案例 Determination of error of law and case study

- 与法律适用有关的再审情形（民事诉讼法第207条第六项）—原判决、裁定适用法律确有错误
- Retrial grounded on application of law (Article 207.6, CPL) —Error of law in the original judgment or decision

## ➤ 关于法律适用错误 About error of law

**适用法律确有错误的情形**  
**（《民事诉讼法》的解释第388条）**  
**Error of law in the judgment (Article**  
**388, CPL Interpretation)**

- 适用的法律与案件性质明显不符 Notable inconsistency of the laws applied with the nature of the case
- 确定民事责任明显违背当事人约定或者法律规定 Determination of civil liabilities in clear conflict with the agreements between the parties or the laws
- 违反法律溯及力规定 Violation of the non-retroactivity principle
- 违反法律适用规则 Violation of applicable legal rules
- 明显违背立法原意 Clear inconsistency with the legislative intent

# ◆ 法律错误的判断及案例 Determination of error of law and case study

## ◆ 案例：法律适用错误 Case study: Error of law

- 再审申请人（一审原告、二审被上诉人）：A公司 Petitioner (plaintiff, appellee): Company A
- 再审被申请人（一审被告、二审上诉人）：B公司 Respondent (defendant, appellant): Company B
- 案由：侵害商标权纠纷 Cause of action: alleged trademark infringement

A公司以侵害商标权为由向一审法院提起诉讼。一审法院一审认定构成侵权,判决B公司立即停止侵权行为并连带赔偿A公司经济损失人民币30万元,并驳回A公司的其他诉讼请求。B公司不服,提起上诉。二审法院认为不构成侵权,并判决撤销一审判决,驳回A公司的诉讼请求。A公司不服,向最高人民法院申请再审。最高人民法院于2018年9月14日裁定提审本案。

Company A sued Company B for trademark infringement. The court of first instance confirmed infringement, ordered B to stop infringing acts immediately, awarded A RMB 300K as compensation, and dismissed other claims of A. Dissatisfied, B appealed to a higher court, which found non-infringement and overturned the previous judgment, dismissing all the claims of A. A petitioned the SPC for review. On Sep 14, 2018, the SPC agreed to retry the case.

### • 主要事实: Facts:

再审申请人A公司B公司侵害商标权纠纷案中, 涉案商标包括三个商标, 权利人均为A公司。2016年6月30日, 海关查获恒B公司申报出口的标有“\*\*\*\*”标识的摩托车整车散件220辆。申报总价118,360美元, 目的地C国, 该批货物系由D公司授权委托B公司加工生产。

A was the rights holder of all three trademarks in dispute. On Jun 30, 2016, China Customs seized 220 motorcycle parts of B labeled with “\*\*\*\*” with a total declared value of USD 118,360. B had contracted with Company D to manufacture and export these products to Country C.

# ◆ 法律错误的判断及案例 Determination of error of law and case study

## ◆ 案例：法律适用错误 Case study: Error of law

- 再审法院认定：Decision of the retrial

最高人民法院经审理认为,《商标法》第57条第2项“未经商标注册人的许可,在同一种商品上使用与其注册商标近似的商标,或者在类似商品上使用与其注册商标相同或者近似的商标,容易导致混淆的”属于侵犯注册商标专用权。B公司在其生产、销售的被诉侵权的摩托车上使用“\*\*\*\*”文字及图形,并且突出增大“\*\*”的文字部分,缩小“\*”的文字部分,同时将\*字母和类似羽翼形状部分标以红色,与A公司请求保护的三个商标构成在相同或者类似商品上的近似商标。商标权作为知识产权,具有地域性,对于没有在中国注册的商标,即使其在外国获得注册,在中国也不享有注册商标专用权。与之相应,中国境内的民事主体所获得的所谓“商标使用授权”,也不属于我国商标法保护的商标合法权利,不能作为不侵犯商标权的抗辩事由。因此,判决撤销二审判决,维持一审判决。

The SPC cited Article 57.2, Trademark Law—“Using a trademark that is similar to a registered trademark for the same class of goods, or using a trademark that is identical with or similar to a registered trademark for a similar class of goods, which may cause confusion, without the authorization from the trademark owner” constitutes infringement on trademark right. The motorcycles manufactured and sold by B were printed with the texts and graphics of“\*\*\*\*”. B upsized the text “\*\*”, downsized the text “\*”, and marked the letter “\*” and the wing in red. B used a trademark that was similar to the three registered trademarks for the same or similar class of goods. Trademark is an intellectual property and thus territorial. Trademarks registered in other countries are not entitled to exclusive right to use within the territory of China. Accordingly, authorization obtained by persons of the civil law in China is not protected by Trademark Law and can not be used as a non-infringement defense. The SPC therefore overturned the judgment of the second instance and upheld the first-instance decision.



谢 谢 大 家

Thank you

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May 23, 2022