

Online IP enforcement and developments in China from a EU perspective



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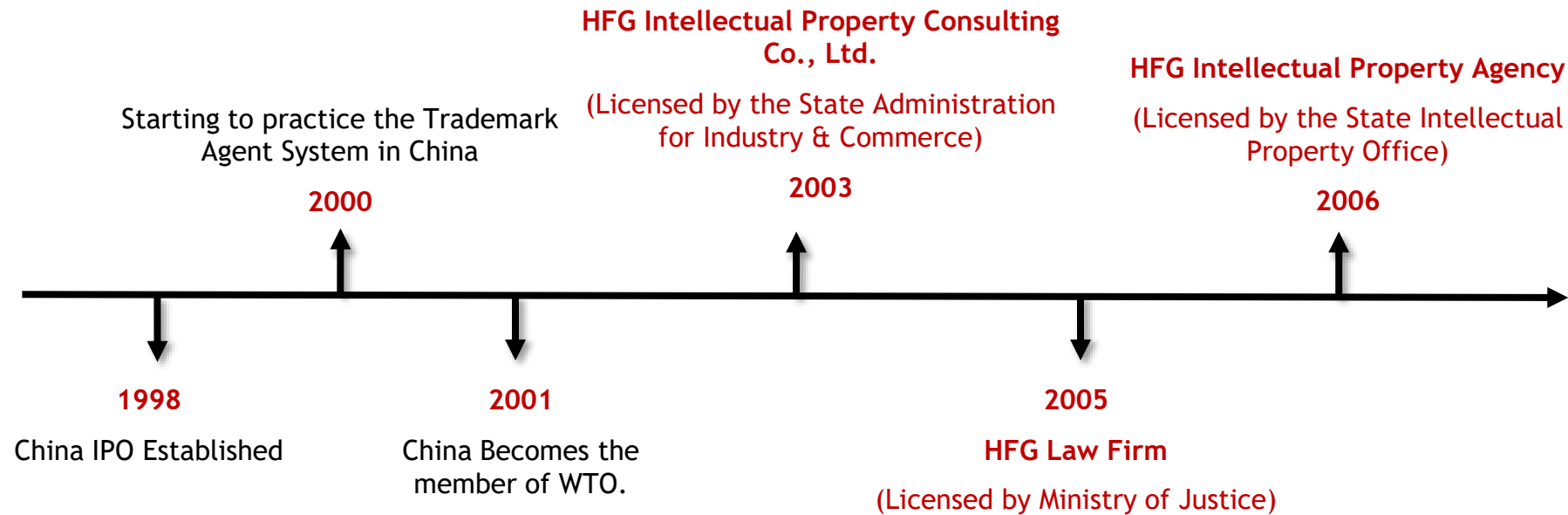
Reinout van Malenstein



- Senior Counsel at HFG Law & Intellectual Property in China
- Former National Vice-Chair of European Chamber IPR Working Group
- Secretary of MARQUES China team
- Qualified Dutch lawyer
- Bachelor and Master of Laws degrees in Dutch IP and EU IP law Utrecht University
- Master of Laws degree in Chinese IP law at Peking University
- Studied Chinese language and culture at Tsinghua University
- 15+ years of IP and China experience

HFG - law firm, IP agency, IP consulting

HFG consists of three integrated entities with different IP licenses.



ABOUT HFG



China Offices

- Shanghai
- Beijing



HFG Professionals

- 60 professionals with legal/scientific background
- Multi-national team
- Depth of experience (average 15 years)
- Languages spoken: EN, CH, FR, IT, JP, ES, RU



Client Base

- Multinational companies
- Small/medium enterprises
- Law firms
- IP agents/firms

Importance enforcement IPR on e-commerce (EU Customs report)

- China is the EU's biggest source of imports and its second-biggest export market
- China and Europe trade over €1 billion a day
- Detention of counterfeits increases at EU borders
- 84% from courier and postal traffic
- Of all detentions around 82% from China
- Enforcement in China important

Challenges for EU companies in China

Unfamiliarity with Chinese legal system

Challenges for EU companies at filing stage in China:

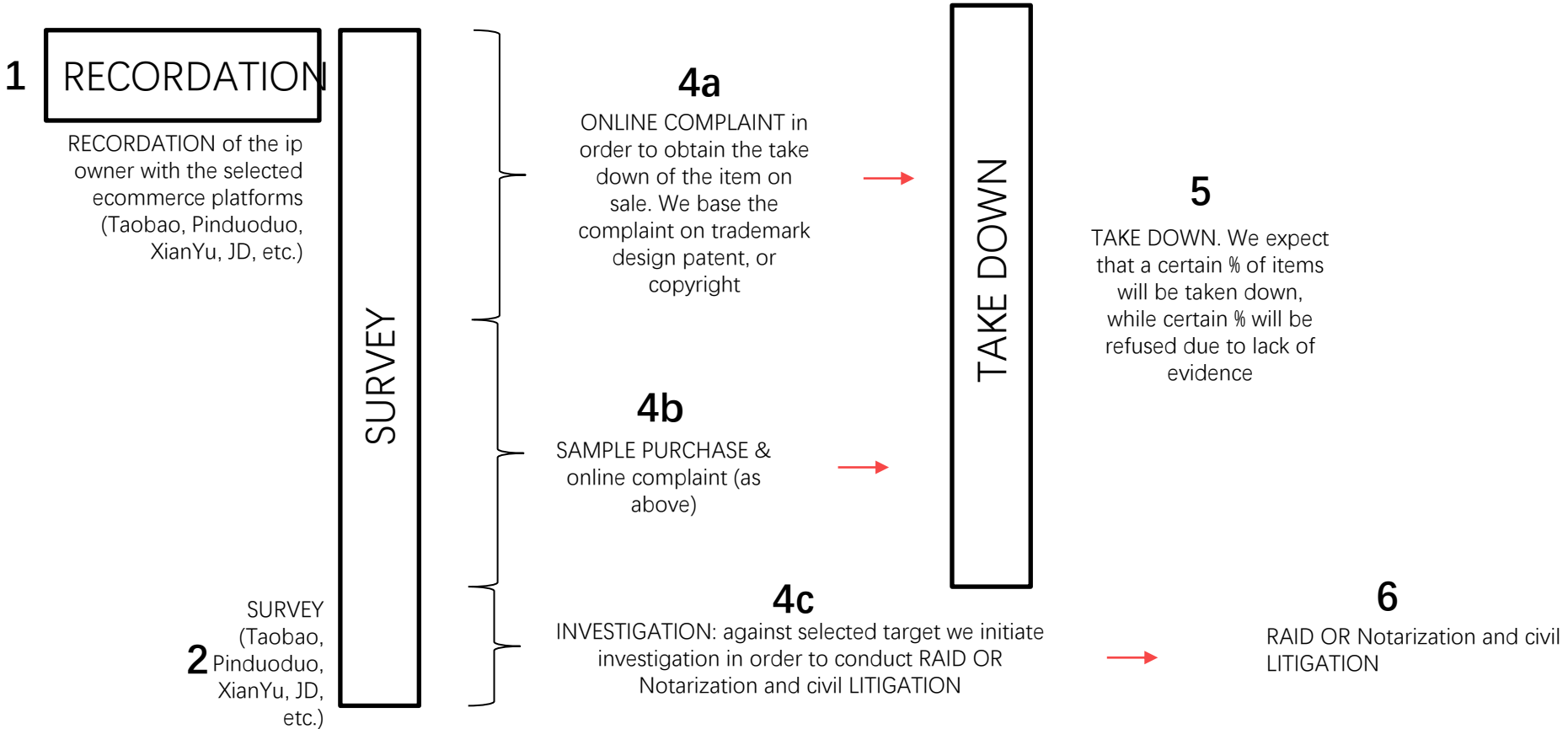
- EU trademark does not give protection for China
- Classes and subclasses
- The need for a Chinese language trademark
- China has put design right law under the patent law
- Prior rights can be used to get back tm

Challenges for EU companies with enforcement in China:

- In practice: Chinese certificates needed with e-commerce platforms
- Notarisation of evidence is needed in China
- Notarised and legalised PoA needed for action

ONLINE ANTI-COUNTERFEITING CHINA

3 SELECTION: based on our experience divide targets in groups: (1) we can immediately initiate the online complaint; (2) for others we shall make sample purchase ;(3) for certain target we do investigation in order to collect evidence and launch more aggressive actions such as raid action or litigation



Enforcement

Step 1: Notarised evidence in China by Chinese notary

Step 2:

E-commerce complaint

Administrative enforcement

Civil enforcement

Criminal prosecution

Customs protection



To enforce or not to enforce?

- Brand stores on various e-commerce channels
- Seemingly counterfeiting goods
- After investigation:
 - turns out it buys all goods from Flagship store
- Good for business versus brand store management?

Where is it all heading to?

Opinions of the Supreme People's Court on Strengthening the Trial of Cases Involving Intellectual Property Rights in the New Era (September 2021)

7. **Intensifying the protection of IPRs in emerging sectors** and supporting the sound and healthy development of new sectors and new business forms.

The **accurate application of the Personal Information Protection Law and the Data Security Law** shall be ensured to strengthen the judicial protection of IPRs in new sectors and new business forms such as the Internet, big data, artificial intelligence, and gene technology.

Judicial protection rules for IPRs in algorithm, business methods and artificial intelligence products shall be improved.

The **legal responsibility of entities** in the new economy and new business forms **shall be determined in a reasonable manner to meet the needs for the judicial protection of IPRs in new technologies, new industries, new business forms and new models.**

In the meanwhile, efforts shall be made to strengthen the trial of and research on cases involving data cloud storage, data open source, confirmation of rights to data, data trading, data services, and unfair competition in the data market, effectively protect data security, and provide legal support for the building of Digital China.

20. Strengthening the construction of **smart courts**, and **improving the information-based trial of cases involving IPRs.**

Solid steps shall be taken to promote the integration of information technologies and the rule of law. The application of the Internet, artificial intelligence, big data, cloud computing, block-chain, 5G and other modern technologies shall be actively promoted. Smart trial, smart enforcement, smart services, and smart management shall be strengthened in an all-round manner so as to support the integration of information technologies and the trial of IPR cases.

In order to ride on the trends of the information era, efforts shall be made to explore more established and **new online litigation models** and online mediation rules, actively promote the establishment of a **cross-regional remote litigation platform for IPR cases**, and strengthen sufficient gathering, intelligent analysis and effective use of judicial big data.

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New developments

- Geo-blocking: territorial access restriction.
 - Can EU courts make Chinese ISP and/or e-commerce platforms block access of counterfeiters to EU as market - based on EU IP infringement?
 - Will Chinese ISP and/or e-commerce platforms comply?
- Liability issue: Telecommunication service or e-commerce platform?
 - If there is ecommerce on a platform that calls itself a telecommunication service, should they have the same liability as e-commerce platform?

Interesting to hear views of panellists on these two issues



Thank You!

Further contact:

Reinout van Malenstein

Senior Counsel

Shanghai | Beijing

rvanmalenstein@hfgip.com

