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## **The Supreme People's Court Interpretation Concerning Application of Punitive Damage in Civil Cases of Intellectual Property Right Infringement**

**(#Fashi 2021-4)**

(Passed at the 1831st Session of the Judicial Committee of the Supreme People's Court on 7 February 2021, effective as from 3 March 2021)

For the purpose of correctly implementing the system of punitive damage in intellectual property right cases, lawfully punishing severe infringement of intellectual property right, fully strengthening the protection of intellectual property right, according to such relevant laws as the Civil Code, Copyright Law, Trademark Law, Patent Law, Anti-Unfair Competition Law, Seed Law and Civil Procedure Law, in combination with the trial practices, this Interpretation is made.

**Rule 1** Where a plaintiff sues a defendant for willful infringement of its legitimate intellectual property right in severe scenarios and petitions for punitive damage, the people's court shall review and process it according to the law.

"Willful" in this Interpretation includes the bad faith prescribed in Article 63.1 of the Trademark Law and Article 17.3 of the Anti-Unfair Competition Law.

**Rule 2** Where the plaintiff petitions for punitive damage, when filing the lawsuit, the plaintiff shall clarify the amount of damage, ways of calculation, and the facts and reasons based on.

Where the plaintiff petitions for increase of punitive damage before the first-instance court debate ends, the people's court shall permit. Where petition for increase of punitive damage is raised in the second instance, the people's court shall mediate between the parties under the principle of voluntariness. Where the mediation fails, the parties shall be notified to file a separate lawsuit.

**Rule 3** In determining willful infringement of intellectual property right, the people's court shall put into comprehensive consideration such factors as the type of the infringed intellectual property right, the status of the right, the fame of the relevant product, the relationship between the defendant and the plaintiff or the interested party.

In scenarios listed below, the people's court may preliminarily determine the defendant's willful infringement of intellectual property right.

- 1) The defendant continues infringement after the plaintiff or interested party's notification or warning;
- 2) The defendant or its legal representative or manager is the plaintiff or interested party's legal representative, manager, or actual controller;
- 3) The defendant has such relationship as labor, employment, cooperation, license, distribution, agent, or representative with the plaintiff or the interested party and had gotten in touch with the infringed intellectual property right;
- 4) The defendant had business contact with the plaintiff or the interested party or had negotiation in order to reach agreement and got in touch with the infringed intellectual property right;
- 5) The defendant has conducted piracy or trademark passing off; or
- 6) Other scenarios that can be determined as willfulness.

**Rule 4** In determining severe scenarios of infringement of intellectual property right, the people's court shall put into comprehensive consideration such factors as the way of infringement, times, duration, geographical area, scale, consequence, infringers' conducts in trial.

Where the defendant has any of the circumstances listed below, the people's court may determine a severe scenario.

- 1) Conducting the same or similar infringement again after administrative punishment or judicial ruling of liability because of infringement;
- 2) Living by infringing intellectual property right;
- 3) Forging, destroying, or hiding evidence of infringement;
- 4) Refusing to fulfil the preservation decision;
- 5) Huge profit from infringement or huge loss of the right owner;
- 6) Infringing conducts possible to harm national security, public interests or human health; or
- 7) Other circumstances that can be determined as severe scenarios.

**Rule 5** When deciding the amount of punitive damage, the people's court shall accord with the relevant laws and make calculation on the basis of the plaintiff's actual loss, the defendant's illicit revenue, or benefit obtained from infringement. The basis shall not include the plaintiff's reasonable expenses for stopping the infringement. Where the law provides other rules, the rules shall be accorded with.

Where the actual loss, illicit revenue, benefit obtained from infringement mentioned in the preceding paragraph are all difficult to calculate, the people's court shall reasonably decide by referring to the multiples of royalty of the right and take it as the basis for calculating punitive damage.

Where the people's court orders the defendant to submit the account books or materials related with the infringement in his control and the defendant refuses to submit without justifiable reason or submits fake account books or materials, the people's court may refer to the plaintiff's claims and evidence to decide the calculating basis for punitive damage. Where a scenario prescribed in Article 111 of the Civil Procedure Law arises, legal liability shall be pursued according to the law.

**Rule 6** When determining the multiples of punitive damage according to the law, the people's court shall put into comprehensive consideration such factors as the degree of the defendant's subjective fault or the severity of infringement.

Where administrative or criminal fine has been imposed and collected for the same infringing act and the defendant requests for reduction or exemption of punitive damage, the people's court shall not agree, but may put into comprehensive consideration when deciding the multiples mentioned in the preceding paragraph.

**Rule 7** This Interpretation shall take effect as from 3 March 2021. Where the judicial interpretations released by the Supreme People's Court are inconsistent with this Interpretation, this Interpretation shall prevail.

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**Note:** This is not the Supreme People's Court's official translation. If discrepancies arise, the original official Chinese version prevails.