

APOLOGY AS AN INTELLECTUAL PROPERTY REMEDY IN CHINA: A PRELIMINARY EXAMINATION OF AMERICAN LITIGATION EXPERIENCES

Robert H. Hu[†]

ABSTRACT

Seeking and receiving an apology from the wrongdoer is a ubiquitous social phenomenon in Chinese culture and society. In recent years, litigation and apologies appear to be natural elements of contemporary life in China. Apologies as a legal remedy in Chinese laws and regulations have become prevalent for nearly four decades. In particular, in intellectual property law, the last thirty years have witnessed an explosion of apology cases. In such litigation, plaintiffs seek (and sometimes obtain) apologies from the defendants as a statutory remedy besides injunction and damages. American businesses operating in China increasingly take to the Chinese courts to protect their intellectual property, and seeking apologies during litigation is deployed as a useful strategy to curb intellectual property thefts.

This article explains the legal remedy of apologies popular in China but not commonly understood outside of the country. The essay discusses the evolution of Chinese apology laws and examines in depth apologies as a legal remedy in intellectual property laws and litigation. Based on more than a dozen judicial opinions, this essay considers the experiences of American corporations seeking apologies in Chinese courts and analyzes the facts and issues of such litigation. Some preliminary assessments and recommendations are made following this examination with the hope of providing useful guidance.

[†]*Professor of Law and Director of the Institute on Chinese Law and Business, St. Mary's University School of Law, Texas. I acknowledge and express my sincere gratitude to my colleagues and friends for their assistance and support during the research, drafting, and editing of this article: Dr. He Yudong (和于东), Professor of Law at Beijing University of Chemical Technology, China; Ms. Guo Ye (郭叶), Vice President of Chinalawinfo, Beijing; Craig Joyce, Professor of Law at University of Houston (retired); Librarian Stacy Fowler and St. Mary's University Law Library; Chenglin Liu, Professor of Law at St. Mary's University; and Mikaela Mandola, Law Student and Research Assistant. All mistakes and omissions are mine, and I apologize for them.*

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INTRODUCTION: “AN APOLOGY PHENOMENON IN CHINA”

These days civil disputes and apology lawsuits are a constant occurrence in China.¹ The explosion of apology litigation, the so-called “apology phenomenon,” is deeply rooted in the Chinese tradition of self-pride and dignity but is largely driven by the legislation of “personality rights.”² Recent statistics indicate that as many as 192,675 “personality rights” cases were filed with the Chinese courts in 2021, representing a sharp 19.2% increase over the previous year.³ People from all walks of life—authors, entertainers, athletes, academics, scientists, businessmen, and government officials—are involved in “personality rights” lawsuits that seek and may result in an apology judgment. Examples of these lawsuits are numerous. An author whose novel was plagiarized by another well-known writer, sued the plagiarizer, demanded, and obtained

¹ China, as used in this article, refers to the People’s Republic of China (PRC), which was founded in 1949 by the Chinese Communist Party. At present, the PRC government controls and governs the country’s territory comprising of the mainland, plus Hong Kong, and the Macau Special Administrative Regions. For purposes of this article, China refers to the mainland only, excluding Hong Kong, Macau, and Taiwan. Historically, the Republic of China (ROC), founded in 1911 by the Kuomintang-led Chinese Nationalists, ruled China until 1949. They retreated to Taiwan after losing the Chinese civil war to the Communists. The ROC still exists and governs Taiwan today. Although the PRC has never exercised political or legal controls over Taiwan, it considers Taiwan part of China’s territory that must be reunited with the mainland, by force if necessary. See Central Intel. Agency World Factbook, *China* Central Intel. Agency (Mar. 22, 2024) available at <https://www.cia.gov/the-world-factbook/countries/china/#military-and-security> (last visited Apr. 1, 2024).

² See generally “Personality rights” 【人格权】 stand for the right(s) enjoyed by a natural or legal person regarding his (or its) life, body, health, name, image, honor, reputation, and privacy. Personality Rights (【人格权】) Civ. Code of the People’s Republic of China (2020) § Art. 991, 178.

³ See Shi Zhipeng, *Using Judicial Power to Protect Personality Rights*, PEOPLE’S DAILY (Jun. 6, 2023), (on file with author).

damages along with a public apology.⁴ A young woman was turned down twice as a candidate for a job and was told that her failures were due to her origins from a province of poor reputation. Outraged and humiliated, she filed a lawsuit against her would-be employer and demanded a public apology plus payment for her humiliation. And she prevailed in court.⁵ Moreover, a prestigious university filed a defamation lawsuit against a former employee who falsely accused the school of having widespread sexual abuses and harassments on female employees by male administrators. The university won a judgment of an injunction and a public apology against the false accuser.⁶

In many civil disputes of the type involving “personality rights,” plaintiffs will demand that the defendants offer an apology, a statutory remedy provided.⁷ If they prevail, the courts will order that the defendants apologize, in addition to the ordinary measures, such as an injunction or monetary compensation. A large and rising number of apology judgments ironically opened up opportunities for business. For instance, a company has created a national apology inquiry website where people can conveniently post legally required apologies, and the platform charges \$500 per announcement.⁸ There were nearly two dozen apology letters displayed on the website as of early July 2023. However, in most cases, a formal apology typically will be published in a newspaper for public viewing. The following example is the true copy of an apology printed in the *Legal Daily* years ago.

⁴ See *Duan Ping v. Ye Xin, et.al.*, Kun Min Liu Chu Zi No. 13 (2005)

【段平诉叶辛等著作权纠纷案, (2005) 昆民六初字第13号】 available at Chinalawinfo.com (ID: CLI.C.76833). See also Wang Wengyang Dai Yan, *Ye Xin, Vice Chairman of the Chinese Writers Association, Paid 90,000 Yuan for Infringement*, LEGAL INFO. NETWORK (Dec. 24, 2005), available at <https://rb.gy/u2i95> (last visited Apr. 16, 2024).

⁵ See China Daily, *The Court Spoke - Girl Job Candidate Was Twice Turned Down Just Because She Was from Henan Province*, CHINA DAILY (Nov. 27, 2019), available at <https://rb.gy/6tnv4> (last visited Apr. 1, 2024).

⁶ See Legal Network, *The Court Publishes Judgment to Enforce Apology on Zhou Hengpu*, LEGAL NETWORK (Mar. 2, 2016), available at <https://rb.gy/xgpvv> (last visited Apr. 16, 2024).

⁷ Article 179 enumerates “apologies” among eleven forms of remedy for civil liability, including cessation of injury, restoration, restitution, compensation, elimination of adverse effects, reparation of reputation, and so forth. Civ. Code of the People’s Republic of China, (2020) § Art. 179, 33.

⁸ See National Apology Inquiry Forum, available at <https://shuzigonggao.com> (last visited Apr. 16, 2024).

Figure 1. A Letter of Apology⁹

Statement of Apology

The book *Liang Qichao and His Famous Family* (edited by Ding Yu and Liu Jingyun) and published by our agency copied about 22,000 words from the book *Liang Qichao and His Sons and Daughters* (written by Wu Liming). Because our agency failed to uncover the plagiarized text during the review, we violated the copyright of Ms. Wu Liming. For this reason, our agency apologizes to Ms. Wu Liming!

China Industry and Commerce United Publishing House
July 26, 2003

Source: LEGAL DAILY, July 26, 2003

Many American companies, for example, Apple, Budweiser, Microsoft, Nike, and Walt Disney, operate in China, and are not immune from this cultural shift in society. These entities play an important role in the Chinese “apology phenomenon.” Collectively, American businesses in China make plenty of apologizing as things go awry. For instance, Apple apologized to Chinese consumers for its arrogance in disregarding Chinese consumers’ opinions and feedback;¹⁰ Budweiser offered apologies to the Chinese government and the public for running a TV commercial containing bloody and violent scenes;¹¹ and Coach apologized for offending China and hurting Chinese people’s feelings because some Coach t-shirts mistakenly displayed Taiwan and Hong Kong

⁹ The apology letter here is a translation from the original document in Chinese (on file with author).

¹⁰ Apple’s apology states in part: “We realize that insufficient communications with the public led to the impression that Apple is arrogant and does not care about, or pay attention to, the consumers’ feedback. We sincerely apologize to consumers for any of their concerns or misunderstandings so caused.” See *Apple Issues Apology Letter to Chinese Consumers on Official Website*, CONSULATE GEN. OF THE PEOPLE’S REPUBLIC OF CHINA IN N.Y. (April 1, 2013), available at <https://rb.gy/sdypb>, (last visited April 16, 2024).

¹¹ Budweiser’s apology reads in part: “On October 21, 2020, the company posted a Halloween promotional announcement on our official Weibo account, and a video clip of 2 minutes plus 5 seconds long embedded in the promotion showed bloody, horrific, violent scenes. . . . We apologize for having caused unhealthy emotions and impact.” See *Right Now, Budweiser Apologizes*, DAILY ECON. NEWS (May 17, 2021), available at <https://rb.gy/wzsfu>, (last visited April 16, 2024).

as independent sovereignties outside China.¹² On the other hand, American companies (or at least some of them) seem knowledgeable of Chinese apology customs and practices, who often resort to and demand apologies as part of the remedy package against defendants in civil and intellectual property litigation (see Table 5 for examples).

This article will investigate and analyze apologies as a legal remedy and how it plays out in intellectual property litigation in China. This paper will focus on American experiences as seen from over a dozen Chinese court decisions. Part I is an introduction to Chinese apology culture to show its popularity and prevalence. Part II briefly discusses apologies as an intellectual property remedy under Chinese law and explains key terms and phrases used in this article. Part III offers an overview of Chinese apology law in general, explaining the relevant historical context, recent developments in judicial practice, and theoretical discourse. Chinese apology law scholarship will be compared with the American counterpart as well. Part IV deals with American IP apology litigation in China and examines a collection of selected decisions rendered by Chinese courts. A careful analysis of those American apology cases will end up with some personal insights and observations. The last section of the article, Part V, will draw conclusions and offer some suggestions for American businesspeople and intellectual property lawyers on how to take advantage of apology laws in China.

I. INTELLECTUAL PROPERTY LAW AND APOLOGIES

A. *Dominant Economic Force and the Implications for American Businesses*

China's superpower and dominance in the world economy is undisputed—its GDP is approximately 18% of the global GDP, and its economy contributes 30% of the world's economic growth.¹³ Undoubtedly, what happens in China profoundly impacts the U.S. and the world. However, the growing impact of China goes beyond economics, technology, and diplomacy. Increasingly, Chinese culture, customs, and law affect and shape business behaviors, policies, and strategies of American firms operating in China. Chinese people take great pride in their tradition,

¹² Coach's apology reads in part: "In May 2018, Coach discovered a grave mistake in the designs of several T-shirt styles. Coach deeply realizes the seriousness of this matter. Coach expresses its very profound apology to the consumers for hurting their feelings." See *Coach Publicly Apologizes and Vows to Respect and Preserve Chinese Sovereignty and Territorial Integrity*, SOHU.COM (Aug. 12, 2019), available at <https://tb.gy/nibkq>, (last visited April 16, 2024).

¹³ See Li Qiang, *Opening Remarks at the 14th Annual Summer Davos Forum*, PEOPLE'S DAILY (Overseas Ed.), June 28, 2023 (on file with author).

culture, and personal dignity (often referred to as the “Face”), and people are very much accustomed to demanding apologies when they suffer a loss of the Face or humiliation in interpersonal relations and business dealings. In recent decades, society and daily life have endured seemingly endless apology episodes playing out in public view and on social media. As a result, civil and intellectual property disputes seeking an apology remedy have seen a steady upward trend in China, resulting in a huge amount of apology litigation and judgments. From 1990 to July 2023, Chinese courts decided 62,677 civil apology cases, 27,093 IP and unfair competition apology cases, 6,142 administrative apology cases, 3,353 criminal apology cases, and 1,261 state compensation apology cases, according to a leading Chinese law database.¹⁴ Among the 27,093 apology cases in the IP and unfair competition category, 1,160 cases involved foreign litigants.¹⁵ Given this cultural landscape, American businesses operating in China must pay greater attention to Chinese ways of doing things in order to be effective and successful.

B. “An Intellectual Property Powerhouse,” and the Chinese IP System

China’s economic dominance in the world is fueled by its technology superpower rooted in the global innovation hub. In 2021, China ranked first in the world for the most patents in force (3.59 million) and the most patent applications filed globally (1.58 million), according to the United Nations’ World Intellectual Property Organization (WIPO).¹⁶ The Global Innovation Index 2022 published by the WIPO ranks China 11th among 132 countries, moving up three years in row since 2020.¹⁷ Without a doubt, “China is an intellectual property powerhouse,” as characterized by Dr. Francis Gurry, Director General of the WIPO.¹⁸

¹⁴ These statistics, for instance, 27,093 IP and unfair competition apology cases decided, are the result of an investigation conducted in Chinalawinfo.com on and about July 30, 2023.

The subfile selected was Judicial Cases (司法案例), the specific field chosen to search was Remedies Sought (诉讼请求), and the term Apology (赔礼道歉) was the query used in the field.

¹⁵ *Id.* Note: Foreign cases don’t account for cases in which litigants from Hong Kong, Macau, and Taiwan participate.

¹⁶ See *Intellectual Property Statistical Country Profile 2021 – China*, WIPO (2022) available at <https://rb.gy/lf0xk>, (last visited April 16, 2024).

¹⁷ According to the WIPO, “The Global Innovation Index (GII) ranks world economies according to their innovation capabilities. Consisting of roughly 80 indicators, grouped into innovation inputs and outputs, the GII aims to capture the multi-dimensional facets of innovation.” See *The Global Innovation Index 2022*, WIPO (2022) available at <https://rb.gy/stq8z> (last visited April 16, 2024).

¹⁸ See *WIPO Collection of Leading Judgments on Intellectual Property Rights: People’s Republic of China (2011-2018)*, Foreword at 7, WIPO (2019), available at <https://tind.wipo.int/record/40570> (last visited April 16, 2024).

The explosive economic growth and broad technology revolution have rapidly transformed China's legal system. Comprehensive laws and regulations have been enacted to encourage innovation and protect intellectual property in the form of patents, copyrights, trademarks, and trade secrets. Numerous international treaties and agreements have been negotiated and executed to safeguard foreign patents, copyrights and trademarks in China. Also, the courts and legal institutions have been set up to handle and adjudicate intellectual property disputes. After more than four decades of innovation and endurance, a modern system of intellectual property rights (IPR) has been established in China as the country becomes a global leader of manufacturing and innovation.¹⁹ Nowadays Chinese citizens and foreign businesses readily apply, acquire, and own an enormous amount of intellectual property in China, which is protected by the courts and administrative agencies.²⁰ Hundreds of thousands of IPR cases are filed with and adjudicated by Chinese courts every year, making China the busiest place in the world for IPR litigation and protection.²¹ Despite much progress, the Chinese system of IP protection remains a source of dissatisfaction with the U.S. government.²² The Sino-U.S. tensions on intellectual property rights are ongoing and can flare up periodically.²³ Some U.S. politicians are proposing more severe steps to sanction China on IP violations.²⁴

¹⁹ For an overview and assessment of the Chinese IP system, see Peter Yu, *When the Chinese Intellectual Property System Hits*, 35 *QUEEN MARY J. OF INTEL. PROP.* 3, 3-14 (2018).

²⁰ Chinese administrative agencies, such as the National Copyright Administration, and the State Administration for Market Regulation, are responsible for implementing respective IP laws and rules. These bodies are authorized to take administrative actions, e.g., raids, seizure of counterfeits, and imposition of fines, against law breakers.

²¹ In year 2022 alone, Chinese courts adjudicated 543,379 IP cases. See Table 2, *Adjudication of Intellectual Property Cases by Chinese Courts in 2022*.

²² See, e.g., Peter Yu, *Still Dissatisfied after All These Years: Intellectual Property, Post-WTO China, and the Avoidable Cycle of Futility*, 34 *GA. J. OF INT'L & COMP. L.* 143-58 (2005).

²³ For example, in 2018, President Trump imposed tariffs and trade sanctions against China partly due to theft of American intellectual property by Chinese actors and China's forced technology transfers by U.S. companies. The negotiations led to the conclusion of the U.S.-China Economic and Trade Agreement in January 2020, which has an entire chapter to address IP protection processes and measures.

²⁴ See Alex Leary, *DeSantis Says He Will Weigh U.S. Ban of TikTok if Elected President*, *WALL ST. J.* (July 31, 2023), available at <https://rb.gy/f3ie9> (last visited Apr. 1, 2024). For example, Ron DeSantis, a Republican presidential candidate for the 2024 election, is calling for extreme measures to punish China, which include "revoking China's permanent normal trade relations status and banning the import of Chinese goods made from stolen intellectual property."

C. Apologies as Intellectual Property Remedy

Apologies are a statutory remedy in Chinese intellectual property law and there is a prevalent legal apology culture in China today. In intellectual property infringement and other civil lawsuits, plaintiffs often seek a statement from the defendants expressing their “regret” or remorse about intentionally offending the plaintiffs or violating their rights. The requested apology, usually in writing and to be published in print and/or digital formats for a fixed period of time, is part of the remedies that courts will consider for approval along with other measures like damages and fines. Apologies are written into important Chinese legislation, for example the Civil Code,²⁵ the Copyright Law, and the Regulation for the Protection of Computer Software, which all specifically recognize and adopt apologies as a form of legal measures for civil liability. Consequently, plaintiffs in IP litigation frequently seek, in addition to an injunction and damages award, an apology from the defendants as a way of psychological reparation, perpetrator shaming, and repetition deterrence.²⁶ Chinese courts routinely grant plaintiffs’ request for apologies. Without doubt, apologies as an intellectual property remedy are pervasive and impactful in the Chinese system and will continue to play an influential role in protecting IPRs in Chinese business and society.²⁷

Interestingly China’s apology law, especially in the intellectual property domain, is little known or understood in the United States even though China and the U.S. are big trade and investment partners and their

²⁵ See Civil Code of the People’s Republic of China, Third Session of the Thirteenth National People’s Congress, art. 1000, May 18, 2020, available at <https://regional.china-daily.com.cn/pdf/CivilCodeofthePeople’sRepublicofChina.pdf> (last visited Apr. 16, 2024) (stating “[a]n actor shall bear civil liability such as elimination of adverse effects, rehabilitation of reputation, or extension of apologies. . . .” The Civil Code, promulgated by the Thirteenth National People’s Congress on May 28, 2020, is a comprehensive and systematic body of legislation. Within seven titles and 1,260 articles, the Code regulates and governs all civil legal matters and human relations in the society, such as legal capacity, agency, contracts, torts, property, marriage and divorce, inheritance, wills and estate, civil liability and remedies. The Civil Code was approved in May 2020, and became effective on January 1, 2021. The Code absorbs and replaces pre-existing laws including: the Marriage Law (2001), the Inheritance Law (1985), the General Principles of the Civil Law (1986), the Adoption Law (1998), the Guarantee Law (1995), the Contract Law (2012), the Property Law (2007), the Tort Law (2009), and the General Provisions of the Civil Law (2017). The Civil Code is a fundamental body of law in China. The drafting and enactment of the Civil Code, which took more than three decades to accomplish, is truly a milestone event in the progress of China’s legal system.

²⁶ See Wu Xiaobin (吴小兵), *Peili Daoqian de Heli Xing Yanjiu* (赔礼道歉的合理性研究) [*Study on the Reasonableness of Apology*], *Qinghua Faxue* 《清华法学》 [Tsinghua L. J.], no. 4, 2010, at 144, 146.

²⁷ See *infra* Section D(1): Evolution of Chinese IP Law of Apologies.

economies are highly integrated with each other.²⁸ In 1986, apologies were first introduced into legislation as legal remedies. Since then, apologies have often been applied to civil and IP litigation in tens of thousands of cases. However, American legal commentators have written very little on this topic. A brief literature review identifies only a handful of articles, all written by one scholar.²⁹ A better knowledge, and appreciation, of this important legal measure by a wider community can help American IP owners and their lawyers deal with Chinese intellectual property challenges more effectively.

D. Key Terms and Phrases Explained Bilingually

It is critical to clarify some key terms and phrases and their translations used in this article at the outset. Chinese language is a character-based writing system, which is entirely different from the Romantic alphabet-based spelling system of English. To be authentic of and consistent with the Chinese concepts and their connotations in English translations, it is essential to see Chinese terms and phrases spelt out in vernacular form. For these purposes, the Chinese legal terms for *apology* and some relevant words are described and explained below:

1. Apology (赔礼道歉)

The Chinese term 赔礼道歉 (pronounced *pei li dao qian*), a string of four characters, is translated into “apology,” or “apologize” in English. The first two characters (赔礼) in the string literally suggest “to make amends,” whereas the last two words (道歉) in the set mean “to apologize.” Put together, the phrase stands for “make amends and apologize.”

²⁸ Based on U.S. government data, U.S. trade in goods with China in 2023 totaled \$575 billion. See *Trade in Goods with China*, U.S. CENSUS BUREAU, available at <https://www.census.gov/foreign-trade/balance/c5700.html> (last visited Apr. 16, 2024); In addition, U.S. foreign direct investment (FDI) in China (stock) was \$126.1 billion in 2022, whereas China’s FDI in the United States (stock) was \$28.7 billion in the same year. See *The People’s Republic of China*, OFFICE OF THE U.S. TRADE REPRESENTATIVE, available at <https://ustr.gov/countries-regions/china-mongolia-taiwan/peoples-republic-china> (last visited Apr. 16, 2024).

²⁹ Xuan-Thao Nguyen, UNIV. OF WA. SCHOOL OF LAW, available at <https://www.law.uw.edu/directory/faculty/nguyen-xuan-thao> (last visited Apr. 16, 2023). Between 2012-2014, Professor Xuan-Thao Nguyen published three pieces on Chinese apologies as remedies in intellectual property law, which introduced Chinese apology law to the U.S. These articles are: *Trademark Apologetic Justice: China’s Trademark Jurisprudence on Reputational Harm*, 15 UNIV. OF PA. J. OF BUS. L. 131-68 (2012); *Apologies as Intellectual Property Remedies: Lessons from China*, 44 CONN. L. REV. 883-923 (Feb. 2012); and *China’s Apologetic Justice: Lessons for the United States?*, 4 COLUMBIA J. OF RACE AND L. 97-128 (2014).

In Chinese usage, the same phrase 赔礼道歉 can represent either a noun (apology), or a verb (apologize), depending on the context.

As shown in the subsequent pages, “apology” frequently appears in Chinese laws, regulations, and court judgments.³⁰

2. *Statement (声明)*

The Chinese term 声明 (pronounced sheng ming), a phrase of two characters, is the English equivalent of a statement, declaration, notice, or announcement. The same phrase 声明 can be used as a noun (statement or declaration) or a verb (declare or announce), depending on the situation. Under Chinese laws and regulations, a public statement is a form of civil remedy, which may be imposed on the wrongdoer to clarify certain facts and clean up adverse effects on the victim’s honor and/or reputation caused by the wrongdoer’s conduct.³¹ See the term Elimination of Adverse Effects (消除影响) for further explanation.

3. *Apologetic Statement, or Apologetic Declaration (致歉声明-道歉声明)*

The Chinese phrases 致歉声明 (pronounced zhi qian sheng ming) and 道歉声明 (pronounced dao qian sheng ming) are synonyms. With nearly identical spellings, both terms denote a formal, public apology made by the offender, which may be ordered by the court as a legal relief under the proper conditions (Figure 1 is an example of a court-ordered public apology.) This type of announcement is ordinarily in writing and published in a news outlet or social media platform appointed by the

³⁰ For instance, *see* art. 45 of the Copyright Law of The People’s Republic of China (1990) [hereinafter Copyright Law (1990)], which reads in part: “Anyone who commits any of the following acts of infringement shall bear civil liability for such remedies as ceasing the infringing act, eliminating the effects of the act, *making a public apology* or paying compensation for damages, depending on the circumstances, and may, in addition, be subjected by a copyright administration department to such administrative penalties as confiscation of unlawful income from the act or imposition of a fine:

- (1) plagiarizing a work created by another;
- (2) reproducing and distributing a work for commercial purposes without the consent of the copyright owner;
- (3)–(7) (omitted)”

For examples of cases imposing an apology remedy, *see infra* part IV. Apologies in IP Litigation: American Experiences.

³¹ For examples, Article 15 of the *Tort Law* (2009) states in part: “The methods of assuming tort liability shall include: 1. cessation of infringement; 2. removal of obstruction; 3. elimination of danger; 4. return of property; 5. restoration to the original status; 6. compensation for losses; 7. apology; and 8. *elimination of consequences and restoration of reputation* . The above methods of assuming the tort liability may be adopted individually or jointly.” For cases imposing an elimination of adverse effects remedy, *see infra* part IV. Apologies in IP Litigation: American Experiences.

court. In Chinese judicial practice, the spelling of致歉声明 (zhi qian sheng ming) seems to be more common usage than the alternative spelling 道歉声明 (dao qian sheng ming). Although both phrases have the identical meaning and are used interchangeably by litigants and judges, their slight variations can make a difference in retrieving judgments and articles from online searching in Chinese, depending on which spelling is used. To ensure most complete search results, both spellings should be employed.

4. *Elimination of Adverse Effects (消除影响)*

The Chinese term 消除影响 (pronounced xiao chu ying xiang) stands for “elimination of adverse effects” (EAE), a phrase often seen in the context of bearing civil liability.³² The same phrase may be deployed either as a noun (elimination of adverse effects), or a verb (to eliminate adverse effects) depending on the context. This remedy is usually granted by the courts in trademark infringement and unfair competition violations: the wrongdoer is mandated to publicly state or clarify certain facts in order to help restore the plaintiff’s personal or commercial honor and/or reputation damaged by the wrongful act. An EAE measure is an independent legal remedy authorized by the law, which may be meted out in lieu of, or in combination with, an apology relief, as an individual case’s circumstances warrant.³³

II. LAW OF APOLOGIES: A CHINESE EXPERIMENT

A. 负荆请罪: “Proffer a birch and ask for punishment by flogging.”³⁴ *Apologies Are a Way of Life and Culture*

Chinese society and culture are full of well-known apology stories. Chinese people are proud of their tradition of being a civilized nation that respects and affords dignity to all humans. Personal pride and dignity, the so called “the face,” is highly prized and valued; it is very natural of ordinary people to ask for apology when they feel shamed or insulted by another (i.e., losing “the face”). The phrase, 负荆请罪, comes from a legend of two thousand years ago, touting the virtue of sincerely apologizing for one’s transgression in the hope of receiving forgiveness. Asking for an apology, and making one in response, permeates many aspects

³² *Id.*

³³ *Id.*

³⁴ This Chinese idiom means to offer a humble and sincere apology.

of the social life in China.³⁵ In other words, apology is deeply rooted in Chinese culture but has only recently been codified.³⁶

Paradoxically, refusal to apologize is also common in China and always co-exists with rendition of apology. 负荆请罪³⁷ (pronounced *fu jing qing zui*), that is, to offer a humble and sincere apology for one's guilt, represents behavior at one end of the spectrum; people who do so are considered noble and moral citizens. By contrast, 死不认错 (pronounced *si bu ren cuo*), which literally means "to refuse to admit one's mistake until his death," represents people who absolutely refuse to apologize for their wrongs under any circumstances.³⁸ Such behavior often invites negative publicity and even societal condemnation.

B. A Brief Survey of Chinese Law of Apologies

As a cultural phenomenon, apology, used in the ordinary sense of the term, belongs to the class of ethics and morality. By contrast, apology, used in the legal sense, such as in the Chinese Civil Code and other laws,³⁹ falls within a category of statutory remedies, which are to be meted out by the courts under certain conditions. In other words, apologies as an ordinary expression of some ethical behavior differs from apologies used as a form of legal measure for civil liability. The legal measure of this term is the primary focus (meaning) in this article.

³⁵ See Fan Jiqiang, *Apologies as Civil Remedy: A Judicial Dilemma and Resolution*, 3 CHINESE APPLIED LEGAL SCI. 186-200 (2018), at 186. 【Chinese citation: 范纪强: “赔礼道歉”民事责任的司法困境及其破解, 《中国应用法学》2018年第3期, 186-200页, 第186页】

³⁶ Huang Zhong, *A Forgotten “Oriental Experience: Further Discussion on the Legalization of Apologies*, 33 TRIBUNE OF POLITICAL SCIENCE AND LAW 115-28 (2015), at 116. 【Chinese citation: 黄忠: 一个被遗忘的“东方经验” – 再论赔礼道歉的法律化, 《政法论坛》2015年第33卷第4期115-128页, 第116页】

³⁷ This Chinese phrase “*fu jing qing zui*” literally means to “proffer a birch and ask for punishment by flogging,” as told by an ancient legend.

³⁸ See Ge Yunsong, *Apologies Application as Civil Remedy*, 5 JURISPRUDENCE 93-105 (2013), at 105. 【Chinese citation: 葛云松:

赔礼道歉民事责任的适用, 《法学》2013年第5期93-105页。第105页】

³⁹ See Civil Code of the People's Republic of China [hereinafter Civil Code] (promulgated by the STANDING COMM. NAT'L PEOPLE'S CONG., May. 28, 2020) 2020 STANDING COMM. NAT'L PEOPLE'S CONG. (China); see Tort Law of the People's Republic of China (promulgated by the STANDING COMM. NAT'L PEOPLE'S CONG., Dec. 26, 2009) 2009 STANDING COMM. NAT'L PEOPLE'S CONG. (China); see Copyright Law of People's Republic of China (promulgated by the STANDING COMM. NAT'L PEOPLE'S CONG., Sept. 7, 1990) 1990 STANDING COMM. NAT'L PEOPLE'S CONG. (China).

1. Apology Legislation, and the Judicial Practices

Historically, apologies as a civil legal remedy can trace back as far as the common customs practiced during China's Qing Dynasty (1644-1911), as offered by some commentators.⁴⁰ Under the draft Great Qing Civil Code of 1911, the court could order a tortfeasor to publish an apology in the local newspaper to restore the damaged reputation of the plaintiff.⁴¹ Before the founding of the People's Republic of China (PRC) in 1949, apologies were widely used in civil mediations in the Communist Party controlled territories. Such measures proved to be effective in solving civil disputes between individuals.⁴²

In contemporary China,⁴³ scholars generally agree that apologies initially entered intellectual property law in 1990, the year when the Copyright Law⁴⁴ was passed in response to China's growing demands for economic modernization and opening up to the outside world. As ordinary legal remedies, however, apologies had been adopted much earlier. For instance, when the initial Criminal Law was enacted in 1979, apologies were made a penal measure.⁴⁵ Afterwards, apologies were placed in the Civil Code (draft version) in 1981, and such measures also showed up in the other drafts of the *Civil Code* under consideration.⁴⁶ Subsequently, in 1986, the General Principles of the Civil Law was passed, formally ushering in apologies as an independent form of civil remedy.⁴⁷ Thereafter, apologies were adopted in additional laws and regulations, such as the landmark legislation Tort Liability Law of 2009.⁴⁸ Finally, apologies

⁴⁰ See Huang Zhong, *Take Apologies Seriously*, 5 LEGAL SCIENCE 73-80 (2008), at 73.

【Chinese citation: 黄忠: 认真对待'赔礼道歉',《法律科学》2008年第5期第73页】; Civ. Code of the People's Republic of China, *supra*, note 3, (stating that apology is a customary practice in solving civil disputes in the Qing Dynasty of China).

⁴¹ See Huang Zhong, *supra* note 37, at 116.

⁴² *Id.*

⁴³ Contemporary China refers to the Chinese nation beginning in 1911, the year when the Republic of China was established following the overthrow of the Qing Dynasty (1644-1911), the last dynasty in China's long feudal history.

⁴⁴ See Copyright Law (1990), *supra* note 31, arts. 45-46.

⁴⁵ See Criminal Law of The People's Republic of China (1979), art. 32, which reads: "If the circumstances of a person's crime are minor and do not require punishment, he may be exempted from criminal sanctions; however, he may, according to the different circumstances of each case, be reprimanded or ordered to make a statement of repentance, *offer an apology* pay compensation for the losses or be subject to administrative sanctions by the competent department." See also Huang Zhong, *supra* note 37, at 116 (discussing the history of apology legalization in contemporary China.)

⁴⁶ See Huang Zhong, *supra* note 37, at 117.

⁴⁷ See General Principles of the Civil Law (1986), arts. 118, 120, 134.

⁴⁸ See Tort Liability Law of The People's Republic of China (2009), art. 15, which reads: "The methods of assuming tort liabilities shall include: 1. cessation of infringement; 2. removal of obstruction; 3. elimination of danger; 4. return of property; 5. restoration to the

were codified in the Civil Code promulgated in 2020.⁴⁹ For a comprehensive summary of the progress of apology laws in China, see Appendix A. Making of Apology Laws in China 1979-2020: A Chronology.

Today, apology remedies are ubiquitous in Chinese laws and regulations due to efforts of the previous decades. These measures are applied to a broad range of cases in civil disputes, torts, intellectual property, unfair competition, state compensation, criminal liability, consumer protection, and regulation of judges and prosecutors. In particular, tens of thousands of civil and intellectual property cases are litigated every year, where an apology remedy is sought after and decided.⁵⁰ Apology judgments and episodes of celebrities and ordinary people are shared, discussed, and argued over all the time among commentators, bloggers, and citizens on the internet and social media.⁵¹ The far-reaching influence of Chinese apology law and jurisprudence cannot be underestimated. It is widely believed among Chinese jurists that legalizing apologies for civil liability is an unprecedented innovation of China, which contributes to progress of the world's legal systems.⁵²

2. *Legal Scholarship, and a Theoretical Framework*

A meaningful discussion of Chinese apology laws should start with the 1986 passage of the *General Principles of Civil Law* (hereafter GPCL), a landmark event in China's legal history. That legislation was significant for several reasons. First, it was the first attempt in modern China to draft a systematic Code to regulate all civil matters - rights and obligations, which would take decades to make. Second, the GPCL was

original status; 6. compensation for losses; 7. *apology*; and 8. elimination of consequences and restoration of reputation. The above methods of assuming the tort liability may be adopted individually or jointly.”

⁴⁹ See Civil Code, *supra* note 40, art. 1000 (promulgated by the Thirteenth Nat'l People's Cong., May 28, 2020), which states: “[a]n actor shall bear civil liability such as elimination of adverse effects, rehabilitation of reputation, or extension of apologies . . .”

⁵⁰ 62,677 civil apology cases and 27,093 IP apology cases were decided by Chinese courts from 1990 to July 2023. See Chinalawinfo.com, *supra* note 15.

⁵¹ Well-known cases in recent years include famous author Zhen Kaige (陈凯歌), who fought a defamer and obtained an apology from him and former law dean of Shandong University, who successfully held a female lawyer accountable for falsely accusing him of sexual assaults on his female colleagues. Additionally, a well-known playwright, Yu Zheng (于正), was sued for plagiarizing famous author Quang Yao's fiction, while Guo Jingming (郭敬明) was brought to court for copying and altering author Zhuang Yu's work. Both Yu and Guo were ordered by the court to apologize to the original authors and copyright owners, but they refused. However, they eventually apologized after 5 or 6 years.

⁵² See Duan Weili, *On Apologies as Legal Remedy in Civil Law*, 21 PRIV. L. STUDY 17, at 18 (2017) (stating that apology as an independent form of civil remedy is China's innovation in civil legislation, and that it is rare to see this remedy applied to civil infringement liability).

the first national legislation to introduce apologies into civil remedies, legalizing what is always deemed moral norms, with considerable controversy. Third, the inclusion of apologies in the GPCL laid the ground work for such remedy to be adopted into intellectual property laws and other rules.

For nearly thirty years following the GPCL's passage, scholars have undertaken a robust discourse on legalized apologies in China, producing a rich body of apology law literature. An inquiry of China-based legal periodicals conducted in the summer of 2022 retrieves over forty articles and writings, covering the earliest pieces published in 1994⁵³ and the latest in 2022.⁵⁴ These writings examine apology law's application and challenges in various disciplines: civil, criminal, intellectual property, unfair competition, environmental, consumer protection, and state compensation. Theoretical and practical approaches are taken in analyzing the law of apologies. From the theoretical angle, commentators look at the conceptual, ethical, and psychological and other dimensions of apologies. By contrast, empirical investigations⁵⁵ address particular issues and concerns in judicial practice, such as the legal standard for apology approvals, modes of performance, and enforcement measures. The works of two

⁵³ See He Linglong & Yao Dexiang, *Unsuitable to Order an Apology*, 1 J. OF LEGAL JURIS. 42, (1994). 【Chinese citation: 何玲龙, 姚德祥, “不宜判决”赔礼道歉.”《法学杂志》1994年第1期42 – 页。】

⁵⁴ Zhai Xiaobo, *The Concept of Apologies: Some Preliminary Thoughts*, 4 SJTU L. REV. 6, 6-16 (2023); Gan Lihao, *On Institutionalization of Apologies in the Modern Society Management*. 1 NEW MEDIA AND THE SOCIETY 303, 303-418 (2021); Zhang Yuan, *Comprehension and Application of Apologies as Civil Liability*, 1 GUANGHUA LEGAL JURIS. 144, 144-57 (2021). 【Chinese citation: 翟小波: *道歉的概念: 一些初步的思考*.《交大法学》2023年第4期第6-16页。】

【Chinese citation: 甘莅豪: *论现代社会治理中的道歉制度化*.《新媒体与社会》2021年第1期303-318页】 【Chinese citation: 张源,

“赔礼道歉”民事责任的*理解与适用*.《光华法学》2021年第1期144-157页】

⁵⁵ See, Fan Jiqiang, *supra* note 36.

commentators—Huang Zhong⁵⁶ and Ge Yunsong,⁵⁷—appear to command much attention overall. For apologies in intellectual property law, there are merely a handful of articles on point. Two pieces deal with apologies in copyright cases—the appropriateness of granting apologies in copyright infringement lawsuits,⁵⁸ and approving apologies in successive copyright infringement cases.⁵⁹ Two other writings discuss apologies in relation to a legal person's commercial reputation harm, whether and how apologies should be applied to a legal person's reputational harm,⁶⁰ and the differences between an apology remedy and an elimination of adverse effects (EAE) remedy in commercial defamation lawsuits.⁶¹ Last, one comment attempts to distinguish and ascertain the apology remedy from the EAE measure in intellectual property infringement

⁵⁶ Huang Zhong, *Take Apologies Seriously*, 5 LEGAL SCI. 73, 73-80 (2008) 【Chinese citation: 认真对待 赔礼道歉: 《法律科学》2008年第5期第73-80页】; Huang Zhong, *Legalization of Apologies: Why It Is Possible and How It Is to Be Implemented*, 2 LEGAL SYSTEM AND SOCIAL DEV. 118, 118-128 (2009) 【Chinese citation: 赔礼道歉的法律化: 何以可能及如何实践。《法制与社会发展》2009年第2期118-128页】; Huang Zhong, *A Forgotten "Oriental Experience"*, 33 TRIBUNE OF POLITICAL SCIENCE AND LAW 115, 115-128 (2015). (Huang Zhong (黄忠) is a law professor at Southwest University of Political Science and Law, Chongqing, China.) 【Chinese citation: 一个被遗忘的“东方经验”——再论赔礼道歉的法律化,《政法论坛》2015年第33卷第4期115-128页】

⁵⁷ Ge Yunsong, *Apologies as Civil Liability and Its Compulsory Enforcement*, LEGAL RESEARCH 2 (2011); Ge Yunsong, *Apologies and Its Application as Civil Liability*, JURISPRUDENCE 5 (2013) (Ge Yunsong (葛云松) is a law professor at Peking University, Beijing, China. Between 2011 and 2013, he published two essays on apology law, which were frequently cited by Chinese commentators.

⁵⁸ See Zheng Xiaohong, et al., *An Exploration of the Apology Liability and Its Application Issue*, CHINA COPYRIGHT 3. 【Chinese citation: 郑晓红, 韦之, 杨德嘉: “赔礼道歉”责任与适用问题探讨。《中国版权》2019年第3期81-85页】。

⁵⁹ See Xia Shuping, et al., *The Legal Application of Apologies in Infringement Cases of Copyright Inheritance*, INTEL. PROP. 1 (2004).

⁶⁰ See Cai Lidong & Yang Ye, *Apologies as Civil Liability and Relief for the Reputational Harm of Legal Persons*, 1 GUANGDONG SOCIAL LAW SCIENCE, 247-56 (2016). 【Chinese citation:

蔡立冬, 杨晔: 赔礼道歉责任与法人名誉权的救济。《广东社会法学》2016年第1期, 247-256页】。

⁶¹ See Li Guoqing, *On Apologies and Elimination of Adverse Effects Liability in Commercial Defamation Litigation*, INTELLECTUAL PROPERTY 6 (2014), available at <<https://www.faxin.cn/lib/Flwx/FlqkContent.aspx?gid=F365620&libid=040101>> (last visited Apr. 17, 2024). 【Chinese citation: 李国庆:

论商业诋毁诉讼的赔礼道歉和消除影响责任。《知识产权》2014年第6期50-57页】。

cases.⁶² The following paragraphs give a summary of the academic literature on apology law in China.

3. *Question of Definition*

Apology in the ordinary sense means to affirm one's fault and express his guilt for committing the wrongful act, according to the Chinese dictionary.⁶³ What is an apology in law? Chinese laws and regulations offer no definition, although this measure has been widely adopted by legislation and frequently enforced by the courts. Scholars hold different views of what apology means. Some believe that apology offers a civil remedy intended to protect a person's dignity, whereby an injured person has the wrongdoer admit a fault and show his remorse for damaging another's personality right.⁶⁴ Others think that apology is a form of civil remedy designed to make an infringer compensate for his victim's emotional harm by publicly admitting fault, showing regret, and begging for forgiveness.⁶⁵ Still, others consider apology a legal remedy that forces a wrongdoer to admit his responsibility to the injured, orally or in writing, in order to receive forgiveness, and as such is applied primarily to a minor violation of so-called "personality rights."⁶⁶ Despite the divergent definitions, commonalities lie in these elements: (1) apology is a type of civil remedy against the wrongdoer; (2) apology requires the wrongdoer to admit fault and express a sense of guilt to the injured; and (3) apology is granted by the court to resolve a dispute quickly and sometimes amicably.⁶⁷

⁶² See Zhang Xiudu, *Between Apology and Elimination of Adverse Effects: Ascertaining Civil Liability Remedies in Intellectual Property Infringement*, CHINA PATENT AND TRADEMARK 4 (2004), available at <http://www.shangbiao-law.com/cn/rights/detail.asp?id=560#> (last visited Apr. 17, 2024). 【Chinese citation: 张晓都: *知识产权侵权民事责任中消除影响与赔礼道歉责任方式的确定*.】

《中国专利与商标》2004年第4期21-25页】

⁶³ See Hu Yan, *Legalization of Apologies in Our Country's Civil Law Domain*, CHINA CIVIL AND COMMERCIAL LAW, available at <<https://civillaw.com.cn/zt/t/?id=30108>> (last visited Apr. 17, 2024).

⁶⁴ Xu Jing, et al., *Exploration of Apologies as Civil Liability Remedy*, 11 HUBEI POLICE U. J. 86, 86-89 (2014).

⁶⁵ See Huang Zhong, *supra* note 41, at 73.

⁶⁶ See Min Wan (闵婉), Lun Peili Daoqian Minshi Zeren (论赔礼道歉民事责任) [On Apology as a Remedy of Civil Liability], Hubei Jingguan Xueyuan Xuebao

《湖北警官学院学报》 [HUBEI POLICE U. J.], no. 2, Feb. 2014, at 119-21.

⁶⁷ *Id.*

4. *Purposes and Function*

Broadly speaking, a legal apology's purposes are to protect the legal rights of citizens, educate wrongdoers, relieve civil disputes, and promote social stability and harmony.⁶⁸ By contrast, when it comes to the function served by apologies, commentators hold divergent and sometimes conflicting views, including: releasing a victim's anger,⁶⁹ reparations for a victim's mental suffering,⁷⁰ punishing the offender,⁷¹ smoothing the process of mediation and settlement,⁷² offsetting the offender's psychological guilt, and restoring social morale.⁷³ Nevertheless, most commentators believe that a legal apology can calm down and comfort someone suffering mental distress caused by harm to his personality right(s), and that the positive effects of an apology cannot be replaced by any other remedy.⁷⁴ One scholar concludes that apology's benefits can be viewed in three points: for the injured, apology serves a need for emotional or psychological reparation; for the offender, apology acts as a self-redemption and moral restoration; and for society at large, apology works to rehabilitate the broken morale and reestablish the law's authority through punishment and education.⁷⁵

5. *Scope of Application*

Given the omnipresence of legal apologies, the probability of abuse in practice is very real. What are the proper boundaries for this measure? Little guidance in the law exists. However, a general agreement among scholars is that apologies may (or should) be applied only in three types of violations: Personality Rights (人格权), Intellectual Property Rights, and Special Property Rights.⁷⁶ First, personality rights include a person's rights to life, health, and dignity.⁷⁷ An apology remedy should be granted

⁶⁸ See Huang, *supra* note 41, at 73.

⁶⁹ See Xu Jing, *supra* note 65, at 87.

⁷⁰ See Ge Yunsong, *supra* note 39, at 93.

⁷¹ Fu Cui-ying, et al., *On the Application of Apology in Civil Liabilities*, 26.4 HEBEI L. SCI. 133, 133-141 (2008).

⁷² See Huang Zhong, *supra* note 37, at 121.

⁷³ See Xu Jing, *supra* note 65, at 87.

⁷⁴ See Wan Min, *On Apology as a Remedy of Civil Liability*, 2 J. HUBEI U. POLICE 119, 119-121 (2014).

⁷⁵ See Wu Xiaobin, *Study on the Reasonableness of Apology*, 4 TSINGHUA L. J. 144, 144, 146 (2010).

⁷⁶ See Fan Jiqiang, *supra* note 36, at 196.

⁷⁷ "Personality rights are the rights of life, inviolability and integrity of person, health, name, likeness, reputation, honor, and privacy, among others, enjoyed by parties to civil legal relations. Besides the personality rights prescribed in the preceding paragraph, a natural person enjoys other personality rights based on personal freedom and personal dignity." Di Jiubai Jiushi Tiao (第九百九十条) [Art. 990 Civ. Code] (2020).

when an offense happens in that situation. Second, intellectual property rights cover copyright and related neighboring rights, like the dignity and integrity of the author and/or his works. An apology should be approved when an infringement of this kind occurs. However, since patent and trademark rights are purely property rights with no personality element, they are ineligible for an apology measure unless the right owner's name, reputation, or honor is collaterally damaged under special circumstances.⁷⁸ Third, an apology should be awarded to protect special properties. There may be a unique or sentimental value to the owner in special property. For example, a personal gift or object may embody emotional quality or characteristics special to the owner. When such an interest gets damaged permanently or perishes due to the wrongdoer's act, the owner should be entitled to an apology, in addition to monetary compensation.

6. *Performance and Formality*

How is an apology to be performed? Chinese laws remain silent on specific requirements. In trials, apologies ordinarily are to be delivered in one of two ways—orally or in writing. Several possible scenarios can play out depending on the case: (1) the defendant is ordered to make an oral apology to the plaintiff in court; (2) the defendant is ordered to orally apologize to the plaintiff in front of a named person and/or at a fixed venue; (3) the defendant is directed to hand-deliver a written apology to the plaintiff; and (4) the defendant is required to publish an apology letter in a designated newspaper, a trade journal, and/or a digital platform for a fixed period of time, and the letter's content must be approved by the court. In the last scenario, the court will publish key portions of the judgment at the defendant's expense should the defendant fail to comply with the apology order.⁷⁹ Although uncommon, in some regions, courts may allow a defendant to apologize to his victimized recipient by bowing, offering tea or cigarettes, or setting off firecrackers.⁸⁰

7. *Enforcement and Compulsion*

How do courts enforce apologies if defendants refuse to carry out the measures? Should courts compel defendants to apologize against their will? These are some of the most difficult and controversial questions regarding legal apologies. On the theoretical level, opponents of

⁷⁸ See Ge Yunsong, *Apologies as Civil Liability and Its Compulsory Enforcement*, 2 *Legal Rsch.* 113, 114 (2011) (stating that apologies are not applicable to patent and trademark rights since the courts consider such as property rights only).

⁷⁹ *Id.*

⁸⁰ See Ge Yunsong, *Apologies' Application as Civil Remedy*, 4 *LEGAL SCI.* 119, 119-21 (2015).

legalized apologies argue that this measure should not be written into law in the first place since apologies belong to the domain of ethics and morality, not law.⁸¹ They believe that any benefits of an apology, if forced or compelled by courts, will diminish, or completely disappear as a forced apology goes against the essence and objectives of apologies. They strongly object to compulsive enforcement because a court-forced apology necessarily violates the defendant's freedom of conscience and constitutional right to free speech (or to remain silent).⁸² Some commentators suggest abolishing legal apologies on these grounds.⁸³ On the practical level, opponents point to issues such as abuse of this measure in judicial proceedings and challenging aspects in enforcement.⁸⁴

Regardless of philosophical objections and real obstacles, apologies as a civil remedy have taken root and thrived in China as a natural development of a traditionally effective legal remedy. The legislation and judicial practice over the last four decades have settled the academic debate in favor of apology legalization and court-compelled performance (usually in the form of publishing the judgment in a news outlet at the defendant's expenses). However, scholars undoubtedly will continue to discuss and argue over many of the same difficult questions.

8. *Apology v. Elimination of Adverse Effects (EAE)*

Confusions arise between an apology and the elimination of adverse effects (EAE) because both measures are often enforced by the nearly identical vehicle—the wrongdoer's publication of a written letter in a news outlet or digital media. However, these two statutory measures are distinct legal reliefs to serve related but different objectives. Apology affirms a sense of guilt and shows remorse to the victimized recipient for the harm caused by the wrongdoer. When properly delivered, an apology has the benefits of relieving the mental suffering and/or repairing the damage to the ego of the injured. By contrast, an EAE directs the wrongdoer to publicly affirm the truthful facts with the objective of restoring the name or reputation of the injured. Chinese laws provide for both apology and EAE as independent legal remedies of civil liability. For instance, the Civil Code lists “Apologies” and the “EAE” in the same

⁸¹ See Duan Weili, *supra* note 53, at 23-24.

⁸² See Yao Hui & Duan Rui, *On the Apology: Its Alienation and Regress*, 2 J. RENMIN UNIV. OF CHINA 104, 104, 109, 111 (2012).

⁸³ See Sun Zun-hang, *On Theory of Abolishment of Coerced Apology*, J. OF SICHUAN POLICE COLL. 56, 56-60, 58-59 (Dec. 26, 2014). [Chinese citation:

孙尊航：“被迫的赔礼道歉”应当废除。《四川警察学院学报》2014年第26卷第6期56-60。]

⁸⁴ See Fan Jiqiang, *supra* note 36.

sentence as parallel civil measures.⁸⁵ Other laws treat these two measures in a similar manner.⁸⁶ The statutes make clear that apologies and EAEs can be applied in the same litigation separately or jointly as conditions require. And the courts will mete out one or both measures in the same litigation depending on the plaintiff's petition and the circumstances.⁸⁷

C. *Comparison with American Law and Perspectives*

America has a complicated reality when it comes to apologies. Apologies are almost as familiar to Americans as apple pie,⁸⁸ and American culture values apologies.⁸⁹ Children are raised to say “sorry” when committing minor aggressions toward siblings and friends. Adults are accustomed to apologizing when offending another's feelings. Family members routinely apologize to each other to make things up and get along. In the public spheres, apology stories and episodes are spread through the newspapers, radios, TV, and the internet. Big stories grab national headlines. To illustrate, movie star Will Smith, who slapped Chris Rock at the 2022 Oscars for insulting his wife, apologized to Mr.

⁸⁵ Art. 1000 reads: “An actor that assumes civil liabilities of *elimination of adverse effects*, rehabilitation of reputation, and *extending a formal apology* (emphasis added), among others, for infringing upon the personality rights shall assume liabilities equivalent to the specific manner of the acts and the scope of influence.

⁸⁶ There are several examples: art. 52 of the Copyright Law People's Republic of China (2020), which states in part: “He who commits any of the following acts of infringement shall bear the civil liability for such remedies as ceasing the infringing act, *eliminating the effects of the act*, *making a public apology* (emphasis added) or paying compensation for damages, depending on the circumstances . . . art. 23 of the Regulation on the Protection of Computer Software (2013 amendment), which reads in part: “Except where otherwise provided in the Copyright Law of the People's Republic of China or these Regulations, anyone who commits any of the following acts of infringement shall, in light of the circumstances, bear civil liability by means of ceasing infringements, *eliminating ill effects*, *making an apology* (emphasis added), or compensating for losses . . .” and art. 15 of the Tort Laws (2010) (now superseded by the Civil Code of 2020)) says in part: “The methods of assuming tort liabilities shall include: 1. cessation of infringement; 2. removal of obstruction; 3. elimination of danger; 4. return of property; 5. restoration to the original status; 6. compensation for losses; 7. *apology*; and 8. *elimination of consequences* (emphasis added) and restoration of reputation. The above methods of assuming the tort liability may be adopted individually or jointly.

⁸⁷ For example, the court in *GMAC v. New Oriental School* [(2003)高民终字第1391号, Dec. 27, 2004] ordered both an apology and the elimination of adverse effects against the defendant (see Part III for details); by contrast, the court in *Real Networks, Inc. v. Beijing Baofeng Wangji Technology Co., Ltd.* [(2009) 高民终字第1924号, decided Nov. 26, 2009] allowed an elimination of adverse effects relief in lieu of an apology.

⁸⁸ See Xuan-Thao Nguyen, *Apologies as Intellectual Property Remedies: Lessons from China*, 44 CONN. L. REV. 883, 885 (Feb. 2012).

⁸⁹ *Id.*

Rock in a YouTube video.⁹⁰ The Boeing Company issued a full-page apology in the *Wall Street Journal* for its 737 Max's mechanical failures, which killed hundreds of passengers plus crew members.⁹¹ United Airlines ran a full-page advertisement in the *USA Today* to apologize for brutally dragging a passenger off the plane.⁹² Fox News offered an apology (and \$20 million) to the host Gretchen Carlson to settle a sexual harassment lawsuit against the company.⁹³

Occasionally, politicians have to apologize for their behaviors. For instance, Ralph Northam, former Governor of Virginia, offered apologies to Virginians for dressing in racist blackface in a school yearbook photo.⁹⁴ Eliot Spitzer, former Governor of New York, held a press conference to apologize to his family and New York citizens for patronizing prostitution.⁹⁵ Even former President Donald Trump, who is known as a fighter and nearly never admits a fault, offered apologies for his lewd comments on women in the *Access Hollywood* tape scandal.⁹⁶ For government wrongful actions, the U.S. Congress apologized to Chinese-Americans for passing Chinese exclusion laws (e.g., Chinese Exclusion Act of 1882) that discriminated Chinese nationals and barred their immigration to the U.S. for over sixty years.⁹⁷ In foreign relations, President Bill Clinton offered "sincere" and repeated apologies to China for

⁹⁰ See ABC7, "My Behavior 200as Unacceptable." Will Smith Addresses Oscars Slip, Apologizes to Chris Rock, YOUTUBE (July 29, 2022), available at <https://rb.gy/78hsp> (last visited Apr. 17, 2024).

⁹¹ See *A progress report on the 737 MAX, on Boeing, on safety*, WALL ST. J., Oct. 25, 2019, at A7. The statement reads in part, "We are truly sorry."

⁹² See Oscar Munoz, *Actions Speak Louder Than Words*, USA TODAY, Apr. 27, 2017, at 8A. The apology reads in part, "We can never say we are sorry enough for the shameful way one of our customers was treated aboard United flight 3411."

⁹³ See David Folenlink, *Former Fox Host Gretchen Carlson Gets Apology, \$20M Settlement*, NPR (Sept. 6, 2016, 12:01 PM), available at <https://rb.gy/k9rg5> (last visited Apr. 17, 2024).

⁹⁴ See Richard Gonzales, *Calls for Resignation As Va. Governor Apologizes for Racist Image In 1984 Yearbook*, NPR (Feb. 1, 2019), available at <https://www.npr.org/2019/02/01/690862933/virginia-governor-displayed-racist-image-in-1984-medical-school-yearbook#:~:text=Virginia%20Gov.,a%20Ku%20Klux%20Klan%20robe>. (last visited Apr. 17, 2024).

⁹⁵ See *Public Apology Central: Governor Eliot Spitzer*, PUB. APOLOGY CENT., available at <https://publicapologycentral.com/apologia-archive/political-2/eliot-spitzer/> (last visited Apr. 17, 2024).

⁹⁶ See Robert Farley, *Trump's Rare Apology*, FACTCHECK.ORG (Dec. 12, 2017) available at <https://www.factcheck.org/2017/12/trumps-rare-apology/> (last visited Apr. 17, 2024).

⁹⁷ S. Res. 201-A, 112th Cong., (2012); see also H.R. Res. 683, 112th Cong. (2012).

erroneously bombing the Chinese embassy in Belgrade, Yugoslavia and killing diplomats there.⁹⁸

Meanwhile, the U.S. legal culture discourages apologies,⁹⁹ and apologies are rare in civil litigation.¹⁰⁰ A number of reasons and factors can explain withholding one's apologies. The primary reason may be the concern to avoid potential liabilities against the apologizer.¹⁰¹ No federal legislation recognizes or adopts apologies as a legal measure of civil liability. On the state level, there was a rash of legislation during the 1986-2009 period; 35 states passed statutes to encourage apologies in civil disputes by providing "safe harbors" to offenders in the hope of promoting reconciliation, mediation, and settlement.¹⁰² Such state statutes are, by design, quite different from Chinese apology laws; the latter legalize and codify apologies into normal civil remedies to be enforced by the courts.

The lack of formal apology remedies in the U.S. may be due to several factors, such as the legal tradition and culture, constitutional constraints, and advocacy strategies. Besides legislation, American courts and judges have taken a wide range of approaches toward apologies through the common law regime; while some courts disfavor and reject apologies, others welcome such measures.¹⁰³ The rejection of apologies may be based on several grounds, such as an apology's inability to right moral wrongs; a lack of equitable powers in the courts to grant apologies; an apology's insufficiency to rectify the harm done; and First Amendment concerns regarding the defendant's freedom to stay silent.¹⁰⁴ By contrast, some courts embrace and affirm apologies in certain types of cases, including perjury, wrongful discharge of employment, First Amendment violations, and attorney disciplinary actions.¹⁰⁵

⁹⁸ Andrew Glass, *Bill Clinton Apologizes to Jiang Zemin for NATO Bombing*, POLITICO (May 14, 2013), available at <https://www.politico.com/story/2013/05/this-day-in-politics-091279> (last visited Apr. 17, 2024).

⁹⁹ See Jennifer K. Robbennolt, *Apologies and Legal Settlement: An Empirical Examination*, 102 MICH. L. REV. 460, 461 (2003).

¹⁰⁰ See John Council, *In Litigation, Sometimes All It Takes Is Saying 'Sorry'* Texas Lawyer, N.J.L.J. (Mar. 1, 2017), available at <https://www.law.com/texaslawyer/almID/1202779050706/> (last visited Apr. 17, 2024).

¹⁰¹ *Id.* ("Apologies are unusual in tort cases for a variety [of] reasons, chief among them that defendants are loath to offer anything more than broad condolences to a plaintiff that has sued them for fear of admitting liability").

¹⁰² See Michael B. Runnels, *Apologies All Around: Advocating Federal Protection for the Full Apology in Civil Cases*, 46 SAN DIEGO L. REV. 137, 151-57 (2009).

¹⁰³ See Xuan-Thao Nguyen, *Apologies as Intellectual Property Remedies: Lessons from China*, 44 CONN. L. REV. 883, 899 (Feb. 2012).

¹⁰⁴ *Id.* at 899-900.

¹⁰⁵ *Id.* at 901.

A long-running history of apology research in the U.S. has established a multi-disciplinary field that examines all imaginable subjects and dimensions, such as business, politics, family life, interpersonal relations, benefits and limitations, ethical, psychological, social-economic, and philosophical aspects. In the legal area, apology research is believed to have begun in and around the 1980s, when some scholars published essays in the *Law & Society Review* comparing Japan-U.S. apology laws and cultures.¹⁰⁶ Following those papers, many books and law reviews have been written in the ensuing decades, according to one apology scholar.¹⁰⁷ A leading investigator, Jennifer Robbennolt, a University of Illinois law professor, has undertaken much research in this field with a lasting impact.¹⁰⁸ For her, the primary benefits of apology lie in that apology can lead to reconciliation by “resolving conflicts, repairing relationships, and finding reconciliation in many different types of conflicts.”¹⁰⁹ She says:

When injury occurs, people often want to understand what has happened and why. They may seek accountability. And they often want to make sure that similar harm doesn't happen—to them or to others—ever again. At their best, apologies can speak to these needs. *Apologies can demonstrate respect for their recipients, affirm their dignity, and acknowledge their suffering.*¹¹⁰

Incidentally, Chinese apology law scholarship took off following the American research. The collective body of American literature of apologies has had some influence on Chinese scholars' thinking, and some commentators in China cite leading American (and other foreign) authors and works in their own research.¹¹¹ Despite the nearly four decades of

¹⁰⁶ See Hiroshi Wagatsuma & Arthur Rosett, *The Implications of Apology: Law and Culture in Japan and the United States*, 20 L. & SOC'Y REV. 461, at 461 (1986); John O. Haley, *Comment: The Implications of Apology*, 20 L. & SOC'Y REV. 499, 504-05 (1986).

¹⁰⁷ See Xuan-Thao Nguyen, *supra* note 104, at 891-97.

¹⁰⁸ Robbennolt's publications are too many to be listed here. A few examples include: *Apologies and Legal Settlement: An Empirical Examination*, 102 MICH. L. REV. 460, 460-516 (2003); *What We Know and Don't Know about the Role of Apologies in Resolving Health Care Disputes*, 21 GEO. ST. UNIV. L. REV. (2005): 1009-1028; *Bankrupt Apologies*, 10 J. EMPIRICAL LEG. STUDIES, 771, 771-96 (2013); *Attorneys, Apologies, and Settlement Negotiation*, 13 HARV. NEGOT. L. REV. 349, 349-98 (Spring 2008); and *To Err Is Human, to Apologize Is Hard: The Role of Apologies in Lawyer Discipline*, 34 GEO. J. OF LEG. ETHICS 513-66 (2021).

¹⁰⁹ See Jennifer K. Robbennolt, *The Power of an Appropriate Apology*, ABA (Sep. 13, 2021), available at https://www.americanbar.org/groups/dispute_resolution/publications/dispute_resolution_magazine/2021/dr-magazine-reconciliation-is-it-really-possible/the-power-of-an-appropriate-apology/ (last visited Apr. 17, 2024).

¹¹⁰ *Id.*

¹¹¹ See e.g. Huang Zhong, *supra* note 37, at 120 (quoting Robbennolt's “Apologies and Legal Settlement: an Empirical Examination,” in *Mich. Law Review* 102 (2003) 460-516); Ge

extensive apology litigation, very little has been written or understood of the Chinese experiment beyond China. To illustrate, a literature search on Westlaw conducted in Summer 2023 turned up only a handful of American law review articles, all of which were written by one commentator about fifteen years ago.¹¹² Given the critical importance of Chinese law to American businessmen and lawyers dealing with China, it is surprising to see this level of paucity in the scholarship of Chinese law and practice.

D. Apology as Intellectual Property Remedy in Chinese Law

1. Evolution of Chinese IP Law of Apologies

Despite ongoing criticism, periodically accompanied by U.S. sanctions, China remains a global superpower of innovation and intellectual property creation. Patent applications are filed and granted by the hundreds of thousands annually, millions of trademarks are approved for registration, and tens of thousands of literary and artistic works are given copyrights. For instance, in 2021, 1.5 million patent applications and 11 million trademark applications were filed in China, ranking first in the world in both categories.¹¹³ In that same year, nearly 700,000 new patents were granted, bringing the total number of Chinese patents in effect to 3.5 million. That makes China the world leader in the number of patents in force.¹¹⁴

The General Principles of the Civil Law (hereafter GPCL), approved in 1986, is the predecessor to the Civil Code adopted in 2020. The GPCL formally introduced apologies as a form of civil remedies into a major piece of legislation to address infringement of personality rights.¹¹⁵

Yunsong, *supra* note 81, at 115 (quoting Brent T. White, *Say You're Sorry: Court-Ordered Apologies as a Civil Rights Remedy*, 91 *CORNELL L. REV.* (Sept. 2006): 1261-1311); and Duan Weili, *supra* note 53, at 19 (quoting Susan Daicoff's *Apology, Forgiveness, Reconciliation & Therapeutic Jurisprudence*, in 13 *PEPP. DISP. RESOL. L. J.* 131-180 (2013)).

¹¹² Between 2012-2014, Professor Xuan-Thao Nguyen published three pieces on Chinese apologies as remedies in intellectual property law, which introduced Chinese apology law to the U.S. These articles are: *Trademark Apologetic Justice: China's Trademark Jurisprudence on Reputational Harm*, 15 *UNIV. OF PA. J. BUS. L.* 131-168 (2012); *Apologies as Intellectual Property Remedies: Lessons from China*, 44 *CONN. L. REV.* 883-923 (Feb. 2012); and *China's Apologetic Justice: Lessons for the United States*, 4 *COLUM. J. RACE L.* 97-128 (2014).

¹¹³ See *Intellectual Property Statistical Country Profile 2022: China* WORLD INTELL. PROP. ORG., (Dec. 2023), available at <https://rb.gy/df872> (last visited Apr. 17, 2024).

¹¹⁴ *Id.*

¹¹⁵ See General Principles of the Civil Law of the People's Republic of China (《中华人民共和国民事诉讼法通则》) (promulgated by Order No.37 of the President of the People's Republic of China, on Apr. 12 1986, effective Jan. 1 1986) art. 120 (: "If a citizen's

Additionally, the GPCL unambiguously enumerated apologies as normal civil remedies in the same class as restoration to the original conditions, compensation for loss, and payment of damages.¹¹⁶ For intellectual property protection measures, the law listed “cessation of infringement, elimination of adverse effects, and compensation for losses,” without a specific mention of apologies.¹¹⁷ The GPCL’s adoption, followed by passages of the *Copyright Law* (1990) and other statutes legalizing apologies, ushered in a new era of apology litigation in China.

Like the rest of the Chinese legal system, intellectual property law in China fully embraces apologies as a civil remedy, and such has been codified into some key IP and IP-related laws and regulations. For instance, apologies initially entered into the *Copyright Law* in 1990,¹¹⁸ followed by inclusion in the Regulation on the Protection of Computer Software in 1991.¹¹⁹ Apologies were also included in the Interpretation of the Supreme People’s Court on Certain Issues Concerning Adjudication of Copyright Civil Disputes in 2002,¹²⁰ and a similar measure was made into the Regulation on the Protection of the Right to Publicly Communicate Works on Information Networks in 2013.¹²¹ The apology provisions

right of personal name, portrait, reputation or honor is infringed upon, he shall have the right to demand that the infringement be stopped, his reputation rehabilitated, the ill effects eliminated, and an *apology* (emphasis added) made; he may also demand compensation for losses. The above paragraph shall also apply to infringements upon a legal person’s right of name, reputation or honor.”)

¹¹⁶ *See id.* art. 134 (“The methods of bearing civil liability shall be: (1) Cessation of infringement; (2) Removal of obstacles; (3) Elimination of dangers; (4) Return of property; (5) Restoration to original conditions; (6) Repair, reworking or replacement; (7) Compensation for losses; (8) Payment of damages for breach of contract; (9) Elimination of adverse effects and rehabilitation of reputation; and (10) *issuance of apology* (emphasis added).”)

¹¹⁷ *See id.*; *see also id.* art. 118, (“When a citizen’s or legal person’s rights of authorship (copyrights), patent rights, rights to exclusive use of trademarks, rights of discovery, rights of invention or rights for scientific and technological research achievements are infringed upon by such means as plagiarism, alteration or imitation, they shall have the right to demand that the infringement be stopped, its adverse effects be eliminated and the damages be compensated for.”)

¹¹⁸ Copyright Law of the Peoples Republic of China (promulgated by Order No.31 of the President of the People’s Republic of China, on Sep. 7, 1990, effective Sep. 7, 1990) art. 45-46.

¹¹⁹ Regulations for the Protection of Computer Software (promulgated by Order No.31 of the President of the People’s Republic of China, May 4, 1991, effective Oct. 1, 1991) art. 30.

¹²⁰The Interpretation of the Supreme People’s Court Concerning Several Issues on Application of Law in Hearing Correctly the Civil Copyright (promulgated by 1246th Meeting of the Adjudication Committee of the Supreme People’s Court, (Oct. 12, 2002), effective Oct. 15, 2022) art. 17.

¹²¹ *See* Regulation on the Protection of the Right of Communication to the Public on Information Networks (信息网络传播权保护条例 [已被修订]) (promulgated by Decree No.

contained in these laws and regulations remain effective today after these laws and rules have gone through several rounds of revisions in the last few decades.

2. *Current Status of Apologies in Chinese IP Law*

The current state of apologies as intellectual property remedies in China is described in Table 1 below. The inclusion of the Civil Code in the chart needs some explanation. Although the Civil Code is not an intellectual property statute *per se*, there are important reasons for treating it this way. First, the Civil Code is a fundamental law governing all matters civil. A whole title of the Civil Code is devoted to “personality rights,” covering the rights to one’s name, image or likeness, reputation, and honor.¹²² Incidentally, these same rights are protected by the Copyright Law,¹²³ and Anti-Unfair Competition Law.¹²⁴ Second, the Civil Code clearly identifies and recognizes intellectual property rights as part

634 of the State Council, Jan. 30, 2013, effective Mar. 1, 2013) Art. 18. (“Whoever commits any of the following infringements in violation of the provisions of this Regulation shall, depending on the circumstances, assume civil liability by ceasing infringement, eliminating effects, *making an apology* (emphasis added), or paying damages; in the case of any damage caused by the infringement to the public interest, the copyright administrative department may order cessation of infringement, confiscate any illegal proceeds, and impose a fine of not less than one nor more than five times the amount of illegal operation if the amount of illegal operation is 50,000 yuan or more or a fine of not more than 250,000 yuan according to the seriousness of the circumstances if there is no amount of illegal operation or the amount of illegal operation is less than 50,000 yuan; if the circumstances are serious, the copyright administrative department may confiscate computers and other equipment mainly used to provide network services; and if the infringement constitutes a crime, the offender shall be held criminally liable in accordance with the law:

- (1) Providing the public with works, performances, or sound or audio-visual recordings of others on an information network without their consent.
- (2) Intentionally circumventing or compromising technological measures.
- (3)-(5) (omitted”)

¹²² See Civil Code, *supra* note 40, (promulgated by the Thirteenth Nat’l People’s Cong., May 28, 2020, effective Jan. 1, 2021), Book IV, (China).

¹²⁴ See Copyright Law of the People’s Republic of China] (promulgated by the Seventh Nat’l People’s Cong., Sept. 7, 1990, amend. By the 24th Meeting of the Committee of the Ninth Nat’l People’s Cong., Oct. 27, 2001), art. 10, (China) which states: “Copyright” shall include the following personal rights and property rights: (1) the right of publication, that is, the right to decide whether to make a work available to the public; (2) the right of authorship, that is, the right to claim authorship in respect of, and to have the author’s name mentioned in connection with, a work; (3) the right of revision, that is, the right to revise or authorize others to revise a work; (4) the right of integrity, that is, the right to protect a work against distortion and mutilation.”

¹²⁵ DAWO LAW FIRM, *Another Tool in your IPR Toolbox: China’s Anti-Unfair Competition Law*, DA WO LAW FIRM SHANGHAI (Apr. 22, 2019), available at <<https://shorturl.at/ySUY3>> (last visited Apr. 17, 2024); see also FANG CHEN, ESSENTIAL KNOWLEDGE AND LEGAL PRACTICES FOR ESTABLISHING AND OPERATING COMPANIES IN CHINA, 743 (Springer eds., 1st ed. 2022).

of civil rights.¹²⁵ Third, the Civil Code and its apology provisions therein are often cited together in Chinese civil litigation and intellectual property cases, so the Civil Code is well known among citizens and professionals interested in apologies and the law. Last, the Civil Code remains the primary legal foundation for academic discourse of Chinese apology law in general and intellectual property apologies in particular.¹²⁶

Table 1. Apology Provisions in Current Chinese Intellectual Property Law

	Title	Article No.	Amendment
1	Copyright Law	52	11/11/2020
2	Regulation on the Protection of Computer Software	23 -24	1/30/2013
3	Regulation on the Protection of the Right to Publicly Communicate Works on Information Networks	18	1/30/2013
4	Interpretation of the Supreme People's Court on Issues Concerning Adjudication of Copyright Civil Disputes	17	12/29/2020
5	Civil Code	995, 1000	5/28/2020

3. Intellectual Property Apology Cases: The Good, the Bad, and the Ugly

The Chinese legal system keeps pace with technology innovations and intellectual property generation by active legislation and consistent enforcement. As Table 2 below illustrates, hundreds of thousands of IPR cases involving Chinese citizens and businesses are filed and adjudicated by the courts each year, making China the world's busiest destination of IPR litigation.

¹²⁵ Aaron R. Wininger, *China's National People's Congress Releases English Translation of Civil Code Including Intellectual Property Law Articles*, SCHWEGMAN LUNDBERG WOESSNER (May. 2, 2021), available at <<https://shorturl.at/cdiko>> (last visited Apr. 17, 2024).

¹²⁶ Ge Yunsong, *supra* note 58.

Table 2. Adjudication of IP Cases by Chinese Courts in 2022

All New Cases Accepted	Cases That Were Concluded Adjudication	Foreign Cases That Were Concluded Adjudication at Trial Level
526,165	543,379 ¹²⁷	9,000

Source: Intellectual Property Court of the Supreme People's Court—Intellectual Property Protection by Chinese Courts (2022), at 2 and 17.

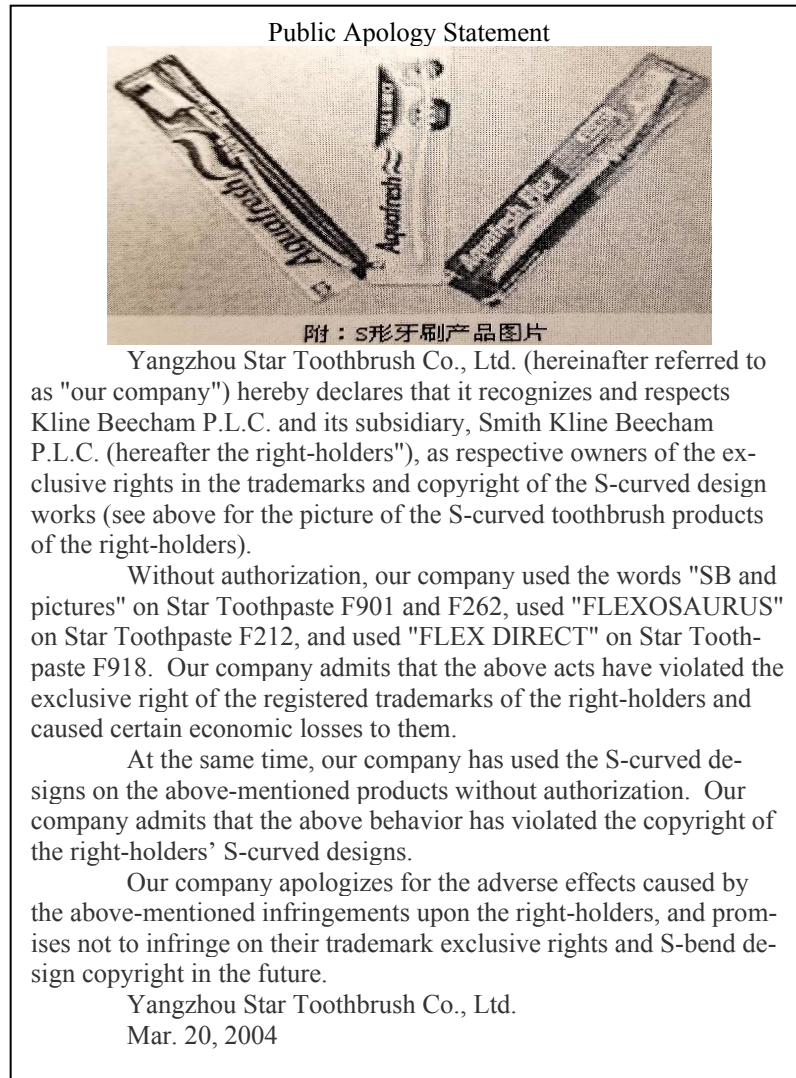
Chinese courts handle a large number of IP disputes when an apology remedy is pursued. From January 1990 to July 2023, a volume of 27,093 IP apology disputes were decided.¹²⁸ Naturally, many of those decisions did not approve an apology relief sought by the plaintiffs,¹²⁹ and the successful cases granting apologies faced enforcement issues. Ideally, the defendant's apology should be timely, issued to admit the harm caused the plaintiff, express guilt or remorse, and promise not to commit the wrong again. Such an ideal apology can be found in Figure 2 below.

¹²⁷ This number includes newly accepted cases and old cases carried over from the preceding year of 2021.

¹²⁸ Chinalawinfo.com, *supra*, note 15.

¹²⁹ In a small sample of 115 apology cases examined, apology success rate is only 13%. See Table 6 for details.

Figure 2. A Public Apology Statement¹³⁰



Source: PEOPLE'S DAILY (overseas edition), Mar. 20, 2004, at 3.

However, ideal apology outcomes are few and far between, while bad apology outcomes are quite common. For instance, well-known writer Ye Xing was ordered by the court to apologize to another author whose work Ye copied and plagiarized extensively. Mr. Ye had initially refused to apologize and fought the charges vehemently in court. After

¹³⁰ This is a translation of the original document in Chinese (on file with author).

the judgment was issued, Ye delivered a terse apology letter to the plaintiff in which he simply stated that he “unknowingly” infringed on the plaintiff’s work due to his publisher’s fault.¹³¹ In another apology case, Chinese internet search engine giant Sohu was ordered to apologize to eLong Company for copyright infringement, with the apology to be posted at Sohu’s website for twenty-four hours.¹³² Since Sohu did not apologize within the allotted timeframe, eLong applied to the court to enforce the measure. However, eLong was outraged when it discovered that Sohu’s apology was just a one-line tiny spot without admitting any guilt. eLong rejected the apology and threatened to sue Sohu again. Some apology outcomes are even worse. In the case of author Guo Jingming, Guo was found guilty of copyright infringement and ordered to pay the plaintiff RMB 200,000 yuan in damages and to publish a written apology in a national newspaper. Guo delivered the payment, but refused to apologize, so the court ended up publishing the judgment in the newspaper at a cost of RMB 14,000 yuan to be paid by Guo.¹³³ Guo eventually published an apology online six years after the judgment. Another extreme apology case involved the defamation by Zou Henpu, a prominent scholar at a top Chinese university. After Zou was found guilty of defaming Peking University by false accusations against senior administrators, he resolutely refused to apologize. Thus, the Court published the judgment in the newspaper *People’s Courts Reporter*.¹³⁴

III. APOLOGIES IN IP LITIGATION: AMERICAN EXPERIENCES

“In trademark and copyright infringement cases, Chinese law recognizes the universal norm of apology and incorporates it as a form of remedy—in addition to injunctive relief and damages.”¹³⁵

A. *China’s Intellectual Property Litigation Landscape*

Protecting intellectual property through the courts has become more common in China as the country emerges as a global leader in IP litigation. A modern judicial system has been implemented to handle ever-growing volumes of intellectual property disputes. The regime consists

¹³¹ Duan Ping, *Ye Xing Apologized to Me*, BA NA 1, 43-45 (2006).

¹³³ Beijing Times, *eLong Company Might Sue Sohu Again, Found Apology Letter Unacceptable*, Sina (Mar. 17, 2002), available at <https://tech.sina.com.cn/i/c/2002-03-17/107078.shtml> (last visited Apr. 17, 2024).

¹³³ See Chase Shê, *Guo Jingming and Yu Zheng Apologize for Plagiarism Following Industry Boycott*, DRAMAPANDA (Jan. 2, 2021), available at <<https://shorturl.at/rtxZ8>> (last visited Apr. 24, 2024).

¹³⁴ See Legal Network, *supra* note 7.

¹³⁵ Xuan-Thao Nguyen, *supra* note 104, at 922.

of three layers of courts; the *Intellectual Property Court of the Supreme People's Court of China* (the Intellectual Property Court, or IPC) sits on the top,¹³⁶ four intellectual property courts located in Beijing, Shanghai, Guangzhou and Haikou are in the middle;¹³⁷ and at the bottom are twenty-seven (27) intellectual property tribunals at provincial levels, together with 558 basic courts having jurisdiction to hear IP cases.¹³⁸ A standing judicial body under the Supreme People's Court, the IPC primarily hears cases on appeal over patent and other IP rights involving professional technologies throughout China. The IPC aims to further unify the trial criteria of IP cases in the country.¹³⁹ Since its founding in 2019, the IPC has accepted 13,863 cases and concluded adjudication of 11,148 of the cases as of 2022.¹⁴⁰ The IPC continues to stay busy; in 2022 alone, the IPC accepted 6,183 IP cases, concluding adjudication in 3,468 of them.¹⁴¹ Together, Chinese courts adjudicate hundreds of thousands of intellectual property cases annually. In all Chinese courts, 543,379 IP cases were adjudicated in 2022.¹⁴² While the vast majority of the lawsuits are between Chinese individuals and businesses, a significant number of disputes are between foreign and Chinese litigants. For instance, Chinese courts heard 9,000 cases involving foreign right-holders in 2022,¹⁴³ and the IPC alone accepted 396 foreign cases (9% of the IPC's total caseload).¹⁴⁴ Additionally, the IPC accepted a total of 1,257 foreign cases from 2019 to 2022 (9.1% of the IPC's aggregate caseload).¹⁴⁵

Among foreign IP owners, the United States, Japan, the Republic of Korea (ROK), Germany, France, and the United Kingdom are the leaders

¹³⁶ The Intellectual Property Court of the Supreme People's Court of China, *available at* <<https://enipc.court.gov.cn/en-us/index.html>> (last visited Apr. 24, 2024).

¹³⁷ Beijing Intellectual Property Court, Guangzhou Intellectual Property Court, and Shanghai Intellectual Property Court were established in 2014, and Hainan Free Trade Port Intellectual Property Court was established in 2020.

¹³⁸ See Pan Xutao, *Protecting Intellectual Property, the World Trusts China*, PEOPLE'S DAILY (overseas edition), April 26, 2023, at 5.

¹³⁹ *Introduction to the Intellectual Property Court of the Supreme People's Court*, THE INTELLECTUAL PROPERTY COURT OF THE SUPREME PEOPLE'S COURT OF CHINA, *available at* <https://enipc.court.gov.cn/en-us/news/view-136.html> (last visited Apr. 17, 2024).

¹⁴⁰ See Annual Report of the Intellectual Property Court of the Supreme People's Court (2022), THE INTELLECTUAL PROPERTY COURT OF THE SUPREME PEOPLE'S COURT OF CHINA, *available at* <https://ipc.court.gov.cn/zh-cn/news/view-2268.html> (last visited Apr. 17, 2024).

¹⁴¹ *Id.* at 4.

¹⁴² See the Intellectual Property Court of the Supreme People's Court (editor), "Intellectual Property Protection by Chinese Courts (2022)," at 2 (on file with author).

¹⁴³ *Id.* at 17.

¹⁴⁴ See Annual Report of the Intellectual Property Court of the Supreme People's Court (2022), *available at* <<https://ipc.court.gov.cn/zh-cn/news/view-2268.html>> (last visited Apr. 24, 2024).

¹⁴⁵ *Id.*

as to the number of Chinese patents, trademarks, and industrial designs (see Table 4 below). It is most likely that these same countries have the most IP litigation lawsuits in China among all foreign right-holders. Because of the importance of Chinese IP law and litigation, the United States Patent and Trademark Office (USPTO) holds public, quarterly webinars on Chinese IP legislation and litigation updates, the University of California-Berkley holds an annual conference on Chinese IP litigation (now in its 5th year), and Stanford University ran an influential China Guiding Cases Project from 2011 to 2021.¹⁴⁶

Table 3. Chinese Patent and Trademark Applications in 2021—Selected Foreign Countries

Country of Origin	Patent Applications		Trademark Applications	
	Quantity	Share of Foreign Filings	Quantity	Share of Foreign Filings
Japan	47,010	29.8%	30,194	11.8%
U.S.	42,266	26.8%	66,782	26.1%
ROK	17,691	11.2%	18,214	7.1%
Germany	16,481	10.4%	17,549	6.9%
France	4,962	3.1%	XXX	XXX
UK	XXX	XXX	24,964	9.8%

Source: WIPO: *Intellectual Property Statistical Country Profile 2021 – China*.

B. American IP Litigation and the Apology Remedy

American intellectual property owners regularly file and litigate disputes in Chinese courts. In fact, the United States holds the largest share of Chinese adjudications among all foreign IP owners because the U.S. is a top trading partner, investor, and technology supplier with China. Among all foreign states, the U.S. ranks first in the number of Chinese trademark applications in 2022 and ranks second in the volume of Chinese patent applications the same year (see Table 3). To identify and locate relevant American intellectual property cases decided by Chinese courts, a Beijing-based bilingual database—Chinalawinfo—was searched.¹⁴⁷ The investigation targeted those judgments in which an

¹⁴⁶ See *Stanford's China Guiding Cases Project*, STANFORD LAW SCHOOL, available at <https://rb.gy/20qk4> (last visited Apr. 17, 2024).

¹⁴⁷ Chinalawinfo (known as 北大法宝 in China) is a Chinese-English bilingual database of full-text Chinese laws, court cases, academic journals, and legal news. Developed and

American IP owner was present (as plaintiff or defendant) and where an apology remedy was considered by the court.¹⁴⁸ That search retrieved a total of 528 cases, including: 312 decisions of the first instance, 197 decisions of the second instance, two re-trial decisions, and 19 decisions of simple litigation procedures. After the use of filters, a majority of the retrieved cases were taken out of the search results due to their failure to meet one of the pre-determined criteria.¹⁴⁹ This yielded a net of 115 decisions for further examination and analysis (see Table 5 below.) It is worth noting that those 115 cases are only those containing an apology demanded by the plaintiffs, which may be requested along with other measures, like injunction and/or payment of damages. These 115 decisions represent a small fraction of all American litigation in Chinese courts. For example, Microsoft has filed numerous IP cases in China, but it has only eight apology cases listed under its name (see Table 4).

owned by Peking University, this company has operated continuously since 1985 and become a leading legal information provider in China. Its subscribers and customers include Chinese government agencies and courts, large law firms, and major universities in China, North America and around the world. Chinalawinfo is the equivalent of West Law or LexisNexis for Chinese legal information among Chinese lawyers, judges, scholars, government officials, and professionals.

¹⁴⁸ Specifically, Chinese language searching was performed in Chinalawinfo.com on and around June 24, 2022, using structured queries in fields 美利坚 (“United States” in full document), 美国 (“America” in party field), 赔礼道歉 (“apology” in cause of action), and 知识产权与竞争纠纷 (“intellectual property and competition” in classification).

¹⁴⁹ There are two criteria for inclusion: (1) one of the parties must be an American entity incorporated in the U.S., including an American subsidiary incorporated in China; (2) the decision must be final after the exhaustion of appeals allowed under Chinese law.

Table 4. American IP Apology Cases in China: 1995-2022¹⁵⁰

	Name of American Entity	Apology Granted	Statement Granted	Apology Denied	Total
1	3M			2	2
2	20th Century Fox			1	1
3	Adobe Systems			2	2
4	AFC Enterprises	1			1
5	Alt-N Technologies			14	14
6	American Petroleum Institute			5	5
7	American Power Conversion			1	1
8	Anheuser-Busch [aka Budweiser (China)]	1	4		5
9	ARBO Industries			1	1
10	Autodesk	1		4	5
11	Bausch & Lomb		1		1
12	Bloomberg		1		1
13	Blizzard Entertainment	2		1	3
14	Charleston International			1	1
15	Discovery		1		1
16	Educational Testing Service (ETS)	2			2
17	E. I. Du Pont			1	1
18	Eli Lilly			2	2
19	Getty Images			2	2
20	GMAC	1			1
21	Gold Eagle		1	1	2
22	Google			1	1
23	Live-Right		1		1
24	Levi Strauss		1	15	16

¹⁵⁰ This chart summarizes IP litigation in Chinese courts in which an American company is either the plaintiff or the defendant. The cases are alphabetically listed by company names. A normal company name spelling stands for the plaintiff, whereas an italicized name indicates the party may be the defendant or plaintiff or both. The bolded name indicates a company having litigated five or more IP cases in China. In all the cases the plaintiff demands that the court order a public *Apology* and/or a public *Declaration* from the defendant as a legal remedy.

25	Microchip Technologies			1	1
26	Microsoft			8	8
27	Nike			1	1
28	Nvidia			1	1
29	Paramount Pictures			1	1
30	Pfizer			3	3
31	Philip Morris	1			1
32	PNY Technologies	1			1
33	Real Networks		1		1
34	Rhino Software			12	12
35	Sesame Workshop			1	1
36	SI Group		1		1
37	Standard Performance Evaluation (SPEC)			2	2
38	Starbucks	1			1
39	Symantec			1	1
40	Universal City Studios			1	1
41	Walt Disney	3		2	5
42	WordPerfect Corp.	1			1
	Total	15	12	88	115

From the above chart, it seems clear that American entities won an apology remedy in only fifteen out of 115 IP cases, whereas they lost on this count in eight-eight IP decisions. The businesses with the most IP apology litigation in China are: Levi Strauss (16), Alt-N Technologies (14), Rhino Software (12), Microsoft (8), American Petroleum Institute (5), Autodesk (5), and Walt Disney (5). However, the leader in securing most apology awards in Chinese litigation is Walt Disney, which succeeded in winning three apology decisions. Disney is followed by Blizzard Entertainment and the Educational Testing Service (ETS), each of which won two apology judgments in IP litigation. Meanwhile, American companies secured twelve statement (remedy) judgements in lieu of an apology, even as they lost the quest for apology (see Table 5 for details.) Overall, the apology remedy is granted in only 13% of all American IP cases, whereas the rate of denial of apology by Chinese courts is much higher at 76%.

Table 5. Disposition of American IP Apology Cases in China: 1995-2022

Disposition by Court	Number of Cases	Percentage %
Apology denied	88	76.52
Apology granted	15	13.0
Statement granted	12	10.43
Total	115	100

What kind of IP cases are the favorite candidates for an apology remedy? Table 7 below gives a breakdown of the types of American cases decided. Among the 115 IP apology cases, 66 are copyright cases, 43 are disputes of trademark and unfair competition, and only six are patent decisions. Overall, the courts declined to order an apology measure in 88 cases, whereas they granted the same relief in only 15 judgments. It appears that an apology remedy was most frequently ordered in disputes concerning copyright (eight grants) and trademark & unfair competition (seven approvals), while an apology remedy was denied in all the patent cases. Additionally, the courts granted a statement remedy in one copyright case and 11 trademark and unfair competition disputes. However, a statement measure was never granted in any of the patent cases.

Table 6. Breakdown of American IP Apology Cases in China: 1995-2022

Disposition by Court	Total	Copyright	Trademark, Trade Secret & Unfair Competition	Patent
Apology Denied	88	57	25	6
Apology Granted	15	8	7	0
Statement Granted	12	1	11	0
Total	115	66	43	6

As shown above, Chinese courts can approve or support the plaintiff's application for an apology remedy in two types of intellectual property cases: copyright in one category, and trademark and unfair competition (TUC) in the other. Individual cases vary in their circumstances, but the apology laws are general and vague, which contributes to the courts'

considerable discretion on whether to support an apology. What follows is a brief summary of these American IP apology cases in China. The collection of these case summaries shines lights on the factors and reasoning that affect the determinations of Chinese courts.¹⁵¹

C. *Affirming an Apology Remedy by Chinese Courts*

1. *Copyright Decisions*

i. *Autodesk, Inc. v. Beijing Longfa Construction & Decoration Engineering Co.*¹⁵²

Autodesk, Inc. is California-based multinational software corporation. According to the company's website, "Our technology spans architecture, engineering, construction, product design, manufacturing, media, and entertainment, empowering innovators everywhere to solve challenges big and small. From greener buildings to smarter products to mesmerizing blockbusters, Autodesk software empowers innovators to design and make a better world for all."¹⁵³ Beijing Longfa Construction & Decoration Engineering Co. (hereafter Longfa) is a Chinese firm engaged in the business of residential and office interior designs and construction. Autodesk held U.S. copyrights to a series of computer software packages. Longfa, without Autodesk's consent, appropriated and installed such software on Longfa's computers and networks. Autodesk filed a copyright infringement suit with Beijing Second Intermediate People's Court, seeking the following remedies: Longfa be barred from further infringement, Longfa pay a sum of RMB 1.73 million yuan for damages, and Longfa publish an apology simultaneously in *Beijing Evening News* and *Beijing Youth Daily*. The Court first found that Autodesk's software packages were protected by Chinese law due to the Berne Convention for the Protection of Literary and Artistic Works of 1886 (hereinafter Berne Convention), under which China is obliged to treat and protect U.S. copyrighted works as if they were China's own. Next, the Court decided that Longfa committed copyright infringement against Autodesk with a blatant malicious intent since it had previously been fined by the Beijing government for illegally appropriating the same software packages

¹⁵¹ For ease of tracking and comparison, the Chinese case name is included, along with its docket number, such as this: "(2003) 高民终字第1310号." Additionally, the ID number assigned by the database company is attached.

¹⁵² *Autodesk, Inc. v. Beijing Longfa Construction & Decoration Engineering Co.*, Beijing High People's Court (Dec. 29, 2003), available at Chinalawinfo.com (last visited Apr. 17, 2024).

¹⁵³ See *Corporate Info*, AUTODESK, available at <https://www.autodesk.com/company/newsroom/corporate-info> (Corporate Info (last visited Apr. 17, 2024)).

owned by Autodesk. Therefore, reasoned the Court, it was proper to impose an apology relief on Longfa besides other measures because of Longfa's intentional infringing acts. Citing the Copyright Law, Articles 47-48, the Regulation on the Protection of Computer Software, Articles 5 and 24, and the Interpretation of the Supreme People's Court on Several Issues Concerning Adjudication of Copyright Disputes, Article 21, the Court mandated Longfa to apologize to Autodesk in *Beijing Evening News* within 30 days of the judgment, in addition to being enjoined from future infringement and paying damages in the amount of RMB 1.49 million yuan. Under the order, the content of Longfa's apology had to be pre-approved by the Court; after which the Court would go forward to publish the main portion of this judgment in the local paper at Longfa's expenses should Longfa fail to apologize within 30 days of the decree. Longfa appealed the decision to the Beijing High People's Court but withdrew the appeal after reaching a settlement with Autodesk. Consequently, the trial court's apology and other remedies were sustained.

ii. *Blizzard Entertainment, Inc. v. Beijing Fenbo Times Network Technology Compan*¹⁵⁴

Blizzard Entertainment, Inc. (hereafter Blizzard) is an Irvine, California-based video game developer and publisher. Blizzard created popular video games such as the *Warcraft*, *Diablo*, *StarCraft*, and *Overwatch* series, in which it held U.S. copyrights. Beijing Fenbo Times Network Technology Company (hereafter Fenbo) is a Chinese video game developer and operator. In a lawsuit filed with the Guangzhou Intellectual Property Court, Blizzard accused Fenbo of copyright infringement by illegally copying, distributing and exploiting Blizzard's artistic works in the World of Warcraft games covering the characters, cosmetics, and designs. Blizzard requested the Court to hold Fenbo liable for copyright violations and grant several remedies which included: enjoining Fenbo from future copyright violations, recovering damages in the amount of RMB 5 million yuan, and ordering Fenbo to apologize to eliminate harmful effects on the plaintiff. Blizzard suggested that the apology be posted on the defendant's website and another popular video games website for the public's view.

The Guangzhou court agreed with Blizzard. Finding Fenbo liable for copyright infringement, the Court held that Fenbo violated the plaintiff's right of attribution in the concerned video games, and that the circumstances surrounding such violations were serious enough to warrant

¹⁵⁴ *Blizzard Entertainment, Inc. v. Beijing Fenbo Times Network Technology Co.*, Beijing High People's Court (Dec. 17, 2017), CHINA LAW INFO (2016), available at <http://china-lawinfo.com> (last visited Apr. 17, 2024).

an apology relief under the law. Relying on the *Copyright Law* (Articles 48-49), the *Tort Law* (Articles 8, 9 and 15), and the *Interpretation of the Supreme People's Court on Several Issues Concerning Adjudication of Copyright Cases* (Articles 25-26), the court ordered that Fenbo cease infringing upon Blizzard's copyrighted video games, pay a sum of RMB 4 million yuan in damages, and post an apology with 30 days of the effect of the judgment on Fenbo's website and another popular video games website. The judgment noted that the apology's content must be pre-approved by the court.

On appeal, the High People's Court of Guangdong Province affirmed the apology and other measures in the trial court's decision.

iii. *Educational Testing Service (ETS) v. New Oriental School (NOS)*¹⁵⁵

Educational Testing Service (ETS), a New Jersey-based company, develops and administers the widely used graduate school entrance exam known as the GRE. ETS registered and owns the U.S. copyright to the GRE tests. Additionally, the GRE was registered in China as a trademark to be used on all GRE test prep courses and study materials. The Beijing-based firm New Oriental School (NOS) provides Chinese citizens with foreign language training and study abroad preparation services. For many years, the NOS copied and sold GRE tests and prep materials to Chinese users without ETS's consent. In litigation filed with the Beijing First Intermediate People's Court, ETS accused NOS of copyright and trademark infringement. The Court agreed with both charges, citing Articles 2, 51-52, and 52 of the Copyright and Trademark Laws. Specifically, the Court rejected the NOS argument that tests were not covered by Chinese copyright law, reasoning that GRE tests were creative works eligible for protection under Chinese law. Consequently, the Court ordered the defendant to destroy infringing materials and prohibited future infringement. Additionally, the defendant was required to pay the ETS compensation in the amount of RMB 3.95 million and make a public apology in the *Legal Daily* within 30 days of the judgment's effective date.

On appeal, the Beijing High People's Court affirmed the judgment of copyright infringement but reversed the trademark violation because the defendant's use of the GRE mark was for a descriptive purpose without a trademark meaning. The higher court upheld the damages award with a slight reduction from RMB 3.95 million yuan to RMB 3.90 million

¹⁵⁵ *Educational Testing Service (ETS) v. New Oriental School.*, CLI.C.11792, (Guangzhou Intellectual Property Court, Dec. 27, 2004) (China).

yuan. Importantly, the apology remedy was sustained in part due to the defendant's intentional, continuing illegal copying after it had assured the Beijing authorities to the contrary. According to the Court, the content of the apology must be approved by the Court before publication, with the proviso the Court would go ahead and publish the main section of the judgment in the *Legal Daily* at the defendant's expense should the defendant fail to comply within 30 days.

iv. *Educational Testing Service (ETS) v. New Oriental School*¹⁵⁶

Educational Testing Service (ETS), a New Jersey-based company, develops and administers college and graduate tests and prep materials. ETS registered and owns copyright to the Test of English as a Foreign Language (TOEFL). ETS registered the TOEFL in China as a trademark on TOEFL study and test prep courses and material. The New Oriental School (NOS), a Beijing-based Chinese firm, provides foreign languages training and study broad preparation services to Chinese citizens. The NOS and ETS signed a license agreement that allowed the NOS to distribute TOEFL tests cassettes and related study materials to its customers. However, the NOS distributed such items to the public at large beyond the allowable scope of the license, and the NOS continued copying and distributing such materials after the license expired. In litigation filed with the Beijing First Intermediate People's Court, ETS alleged both copyright and trademark infringement against the NOS. Relying on the Copyright Law (Articles 2 and 52), the Trademark Law (Articles 51 and 52), and the Berne Convention, the Court found both copyright and trademark violations committed by the NOS. Therefore, the NOS was ordered to follow these measures: discontinue infringement, turn over the infringing materials to the Court for destruction, pay compensation to ETS in the sum of RMB 5 million yuan, and apologize in the *Legal Daily* within 30 days of the judgment becoming effective.

On appeal, the Beijing High People's Court affirmed the copyright infringement claim but dismissed the trademark infringement. The Court reduced the damages award to RMB 3.74 million yuan. The apology remedy was sustained for copyright infringement because, in the High Court's opinion, the NOS knowingly committed such acts for years after it had assured the local authorities that it would not infringe further. In consequence, the NOS had to publish an apology in the *Legal Daily* within 30 days of the judgment becoming effective, and the apology's content required pre-approval by the Court. Additionally, if the NOS

¹⁵⁶ *Id.*

does not comply with this order, the Court will publish the main section of the judgment in *Legal Daily*, with the defendant bearing the cost.

v. *GMAC v. New Oriental School*¹⁵⁷

The Graduate Management Admission Council (GMAC), a Virginia-based global association of leading graduate and business schools, owns and administers the Graduate Management Admission Test (GMAT). The GMAT symbol is a registered trademark under U.S. copyright law, and it is also protected under Chinese law due to the 1886 Berne Convention between China and the United States. For many years, NOS copied, published, and sold GMATs and prep materials not only to its enrolled students, but also on the internet, without GMAC's consent. In a complaint lodged with the Beijing First Intermediate People's Court, GMAC accused NOS of copyright and trademark violations in connection with the illegal use of the GMAT tests and the GMAT trademark. The Court found that GMAC tests were creative works eligible for copyright protection under Chinese copyright law Citing Articles 2 and 47 of the Copyright Law and Articles 51 and 52 of the Trademark Law, the Court found that NOS violated GMAC's copyright and trademark rights related to the GMAT tests and the GMAT indicia. Consequently, NOS was required to discontinue further infringement, submit the infringing materials and production equipment to the Court for destruction, pay damages in the sum of RMB 410,000 yuan, and apologize in the *Legal Daily* within 30 days of the judgment.

On appeal to the Beijing High People's Court, the defendant's copyright violation was sustained, but the trademark infringement claim was dismissed because the NOS used the GMAT in a descriptive manner only without using it in the trademark sense. The damages award was lowered to RMB 298,538 yuan. Despite promising not to violate GMAC's intellectual property rights again, NOS continued its illegal acts, according to the High Court. Thus, NOS's violation was intentional and repetitive. NOS pointedly argued that the apology should not be made in a national newspaper like the *Legal Daily* because the tests and prep materials were sold only to a local market outside the classroom. The High Court rejected this argument and directed NOS to publish an apology in the *Legal Daily* within 30 days of the judgment, and the apology's content must be approved by the Court with the proviso that the Court would go forward to publish the main section of the judgment at NOS's expense should the defendant fail to do so.

¹⁵⁷ *GMAC v. New Oriental School*, (Beijing High People's Court, Dec. 27, 2004) (China).

- vi. *PNY Technologies, Inc. v. Beijing Innovation and Beyond Technology Company*¹⁵⁸

PNY Technologies is a New Jersey based global technology manufacturer of consumer and commercial electronics. The company owns the PNY+ trademark registered in Taiwan and the US.. Due to many years of promotion and extensive marketing and sales in China, the company gained name recognition in the Chinese market, and its products were recognized as high-quality among Chinese customers and users. Beijing Innovative Technology Corporation (BITC) is a developer of computer graphic cards and equipment. BITC registered and owned the PNY as a word trademark in China. BITC, without permission of PNY Technologies, employed and prominently displayed on its official website both *PNY* word + graphic and PNY Technologies on computer graphic cards in the *PNY Quadro* series. The BITC website was deep linked to PNY Technologies' website, without authorization. By print and digital advertisement, BITC falsely held itself out as the authorized agent of PNC Technologies. In a lawsuit filed with the Beijing First Intermediate People's Court, PNY Technologies claimed that BITC infringed upon its copyright in the *PNY* + graphic trademark, and that BITC unfairly competed by misappropriating the company's tradename and related fame and intentionally misleading consumers. The Court agreed with the plaintiff. In the Court's opinion, the *PNY* + graphic mark was an artistic work created by the plaintiff and thus was protected by the copyright law; meanwhile, because PNY Technologies is the plaintiff's trade name entitled to the protection of Chinese trademark law, BITC's illegal use of such on its own website and through linking of both websites had created a false impression of affiliation between the two companies. Consequently, the Court held that BITC committed copyright infringement and unfairly competed against the plaintiff based on the Copyright Law (Articles 2, 11, 47 and 48), Berne Convention for the Protection of Literature and Artistic Works (Article 3(1)(a)), and Anti-Unfair Competition Law (Articles 2, 5, 9 and 20), and the Interpretation of the Supreme People's Court on Several Issues Concerning Adjudication of Unfair Competition Civil Cases (Article 6). Thus, the Court ordered BITC to stop using the *PNY* + graphic insignia and required the defendant pay damages in the amount of RMB 50,000 yuan. To remove any harmful effect caused by BITC to the plaintiff's reputation, the Court directed BITC to post an apology on its own website for three consecutive days and to publish an

¹⁵⁸ *PNY Technologies, Inc. v. Beijing Innovation and Beyond Technology Company*, CLI.C.158435, (Beijing High People's Court, Nov. 28, 2008) (China).

apology in the industry magazine *Computer Commerce Intelligence Report* within 30 days of the effect of the judgment.

On appeal to the Beijing High People's Court, the lower court's decision was affirmed entirely.

vii. *Walt Disney Company v. Beijing Publishing Press*¹⁵⁹

This case is most likely the first Chinese intellectual property apology decision involving a foreign plaintiff. Walt Disney Company, a California-based corporation, filed a copyright infringement claim with the Beijing First Intermediate People's Court and succeeded in obtaining a court-ordered apology against a Chinese publisher. Disney owned U.S. copyrights in well-known cartoon characters, such as Mickey Mouse, Cinderella, and Snow White. Disney was also the copyright owner of a book series called the Classic Value Series, which consisted of *Bambi*, *Peter Pan*, and seven other books. Beijing Publishing Press, along with several Chinese publishers, distributors, and bookstores, illegally published, exploited, and distributed Disney's famous cartoon characters and the Classic Value Series. In litigation at the Beijing court, Disney claimed copyright infringement against the Chinese firms, seeking an injunction and damages. Disney additionally requested the defendants to issue a written promise not to infringe again and to publish an apology in a Chinese newspaper of nationwide circulation. The Court held that, under the 1992 Sino-U.S. agreement on the protection of intellectual property rights (the MOU), American copyrighted works are within the scope of protection of the Copyright Law (Article 46) and the General Principles of the Civil Law (Article 106). The defendants infringed upon Disney's copyrights, so found the Court. For relief, the Court prohibited any further publishing and sales of Disney's books by the defendants and ordered Beijing Publishing Press to pay RMB 227,094 yuan for Disney's lost revenue. Significantly, the Court required Beijing Publishing Press to apologize in a nationally circulated Chinese newspaper within 60 days of the judgment. However, the Court declined Disney's request for a written promise from the defendants not to infringe again, reasoning that such was not a remedy for civil liability.

On appeal, the Beijing High People's Court affirmed the apology remedy and most of the other measures mandated by the lower court.

viii. *WordPerfect Corporation v. Beijing Giant Computer*

¹⁵⁹ *Walt Disney Company v. Beijing Publishing Press*, CLI.C.18366, (Beijing High People's Court, Dec. 19, 1995) (China).

*Company*¹⁶⁰

This case is one of the earliest Chinese IP apology decisions in which an American company successfully secured an apology remedy for copyright infringement. WordPerfect Corporation (WordPerfect), a Utah-based software developer, was owner of WordPerfect software (Version 5.2) and held U.S. copyright to this registered software package. Beijing Giant Computer Company (Giant Computer), a Chinese company that developed and sold computer programs, installed WordPerfect software (V. 5.2) on the computer units it assembled and distributed, without WordPerfect's permission. Before the Beijing First Intermediate People's Court, WordPerfect alleged that Giant Computer infringed upon its copyright and damaged its reputation by illegally copying, displaying and installing such software for profit. WordPerfect asked the Court for an injunction against the defendant, a public apology, and payment of \$20,000 in damages. The Court ruled in favor of WordPerfect, citing the *General Principles of Civil Law* (Article 118), the *Copyright Law* (Article 46), and the *Regulation on the Protection of Computer Software* (Article 30). In finding Giant Computer liable, the Court barred the defendant from further copyright violation and mandated the defendant to pay RMB 54,792 yuan to WordPerfect. Importantly, Giant Computer was directed to make a public apology to the plaintiff in two publications - the *Legal Daily* and *China Computer Reporter* within thirty days of the judgment becoming effective at the defendant's expense. The purpose of the apology was to eliminate negative effects on WordPerfect's reputation caused by the defendant, according to the Court.¹⁶¹

2. Trademark and Unfair Competition Decisions

i. *Anheuser-Busch (China) v. Red Dimond Hotel Inc. in Zhangpu City*¹⁶²

Anheuser-Busch, LLC, markets and distributes American brewed beers in China under the trade name Budweiser (China) Distribution. Both American trademark Budweiser and its Chinese trademark counterpart 百威 were registered in China. And the company's original trade name ABInbev (and its Chinese counterpart 百威英博) was protected under Chinese law. Through years of promotions and marketing, both 百

¹⁶⁰ *WordPerfect Corporation v. Beijing Giant Computer Company*, CLI.C.95639, (Beijing First Intermediate People's Court, April 16, 1996) (China).

¹⁶¹ This decision became final and appears, based on the author's extensive search of public court decisions, never to have been appealed.

¹⁶² *Anheuser-Busch (China) v. Red Diamond Hotel Inc. in Zhangpu City*, ChinaLawInfo, CLI.C.96532997, (Zhangzhou Intermediate People's Court, Nov. 30, 2018) (China).

威 and 百威英博 became distinctive marks associated with the Budweiser brand and enjoyed a high level of recognition in China. 百威 was officially recognized as a famous mark by China's trademark registration office. The Red Dimond Hotel Inc. in Zhangpu City (hereinafter Red Dimond Hotel) is a Chinese company selling Chinese beers and products. Lizhen Company, the co-defendant, is the supplier of beers and beverages to Red Dimond Hotel. Bringing a lawsuit with the Zhangzhou Intermediate People's Court, Anheuser-Busch accused both Red Dimond Hotel and the Lizhen Company (co-defendants) of infringing upon its trademark rights in 百威 and 百威英博 marks by using them in their stores, displays, advertising materials and other ways. Plaintiff requested the Court to bar the defendants from further infringement, to award damages in the amount of RMB 1 million yuan, and to destroy all promotional materials bearing its Chinese mark(s). Importantly, the plaintiff sought for the defendants' apology to be published in three news outlets, for the purpose of restoring its damaged reputation. Relying on the Trademark Law (Articles 48 and 57), the Anti-Unfair Competition Law (Article 6), and the Interpretation of the Supreme People's Court on Several Issues Concerning Adjudication of Unfair Competition Civil Cases (Article 6), the Court found trademark infringement by the defendants and approved a reduced award for damages in the sum of RMB 120,000 yuan. On the apology request, the Court held that because the defendants infringed upon the plaintiff's personality right and caused negative effects to the plaintiff's reputation, the defendants should be responsible for eliminating ill effects of their actions. However, continued the Court, the request for publishing an apology in three newspapers was overly broad in scope and unnecessary; it was sufficient to publish the apology in *China Consumers News* only.

Thereafter, one of the defendants appealed the decision to the High People's Court of Fujian Province. However, the appellant entered into a settlement with the plaintiff and withdrew the appeal.

ii. *Blizzard Entertainment, Inc. v. Beijing Fenbo Times Network Technology Company, Ltd.*¹⁶³

This is the sister case of the *Blizzard Entertainment Inc. v. Beijing Fenbo Times Network Technology Company*, discussed above. The parties and the facts are identical to those in the companion case. In the other lawsuit, Blizzard alleged copyright infringement, whereas here Blizzard's suit was on the grounds that *Fenbo Times* committed unfair competition and false advertising. In particular, Blizzard claimed that *Fenbo Times*, in connection with its own developed video games, illegally utilized Blizzard's trade name and trade dress associated with the World of Warcraft game; and that *Fenbo Times* was engaged in false advertisement on its website(s) and through other digital channels (i.e., WeChat and Weibo) by describing its own videogame in a way that was misleading with regard to its affiliation with Blizzard. Blizzard sought to enjoin *Fenbo Times* for future unfair competition and misrepresentation, and requested damages in the amount of RMB 5 million yuan. Significantly, Blizzard asked the Court to order *Fenbo Times* to publish, which should be posted on *Fenbo Times*' website and another popular videogame website, an apology to eliminate negative impact on Blizzard's reputation. The Court agreed with Blizzard in returning a judgment. Citing the Tort Law (Articles 8, 9 and 15), the Anti-Unfair Competition Law (Articles 5, 10, and 20), and the Interpretation of the Supreme People's Court on Several Issues Concerning Adjudication of Unfair Competition Cases (Article 17), the Court ordered that *Fenbo Times* must stop unfair competition in connection with all Blizzard's trade and trade dress associated with its videogames, pay RMB 2 million yuan in damages, and publish an apologetic statement¹⁶⁴ on *Fenbo Times*' website and another popular videogame site within thirty days of the judgment becoming effective, with the content of such statement having been pre-approved by the Court.

On appeal, the lower court's decision was affirmed by the High People's Court of Guangdong Province.

¹⁶³ *Blizzard Entertainment, Inc. v. Beijing Fenbo Times Network Technology Company, Ltd.*, ChinaLawInfo.com, CLI.C.10666043, (High People's Court of Guangdong Province, Dec. 17, 2017) (China).

¹⁶⁴ Although the judgment misses the word "apology" without explanation, that meaning can be clearly inferred from reading the entire judgment and the plaintiff's initial request for an apology. Compare this with the explicit usage of "apology" in the sister judgment. 【(2016) 粤民终1719号】

iii. *Philip Morris Company v. Shanghai General Lighters Co.*¹⁶⁵

In a very early Chinese trademark apology case involving a foreign party, Philip Morris Company was successful in extracting a court-mandated apology for trademark infringement against the Chinese firm Shanghai General Lighters Co. (General Lighters), the lead defendant, and with two other Chinese co-defendants. Philip Morris owned the *Marlboro* trademark in the U.S. in connection with the company's cigarettes, tabaco products and related packaging. Philip Morris registered in China a combined English-Chinese word mark, *Marlbor* 万宝路, which was attached to its cigarettes, lighters, and tabaco appliances sold in China. General Lighters made and distributed lighters in and out of China, and it was supported by the co-defendants for production supplies and marketing. The firm, without Philip Morris' permission, engraved the *Marlboro* 万宝路 word and graphic to the metal shells and packaging of its lighters produced and sold, among other things. In a trademark infringement claim at a Shanghai court, Philip Morris sought to hold the Chinese entities liable. The Court ruled in favor of Philip Morris on the trademark infringement claim. The defendants were forbidden to further production, marketing, using or other actions in relation to the trademark *Marlboro* 万宝路, and General Lighters was ordered to pay RMB 570,464 yuan in damages. Importantly, the defendants were directed to publish an apology in the Shanghai newspaper *Xinmin Evening News*, with the requirement that the content of the apology must be approved by the Court in advance.

On appeal to the Shanghai Second Intermediate People's Court, the lower court's decision was affirmed. The appellate court relied on the *Trademark Law* (Articles 3 and 38) and the *General Principles of the Civil Law* (Article 63) for its decision.

iv. *Shanghai Starbucks Coffee Co., Ltd. v. Shanghai Xingbake Coffee Co., Ltd.*¹⁶⁶

In a widely celebrated early trademark decision, Shanghai Starbucks Corp. (Chinese name: 上海统一星巴克咖啡有限公司), a subsidiary of the Seattle-based Starbucks Co., successfully held a Chinese coffee company—Shanghai Xingbake Coffee Co.—(Chinese name: 上海星巴克咖啡有限公司)—liable for trademark infringement and made the defendant change its trade name. In 1996, Shanghai Starbucks registered the

¹⁶⁵ *Philip Morris Company v. Shanghai General Lighters Co.*, CLI.C.68704, (Shanghai Second Intermediate People's Court, April 15, 1997) (China).

¹⁶⁶ *Shanghai Starbucks Coffee Co., Ltd. V. Shanghai Xingbake Coffee Co., Ltd.*, CLI.C.77579, (Shanghai High People's Court, Dec. 20, 2006) (China).

English version of Starbucks trademark and the Starbucks graphic with the Chinese government. In 1999, the company registered a Chinese version of its trademark “星巴克” (pronounced “Xingbake”) in China. Shanghai Starbucks operated multiple coffee houses in Shanghai and other Chinese cities, and its trademarks acquired extensive fame and recognition among Chinese consumers. Shanghai Xingbake, a local coffee house started in 2000, sold coffee, beverages and Western-style food and wines. The Chinese firm adopted and displayed “Shanghai Xingbake Coffee Company, Ltd.,” “Shanghai Xingbake Coffee Shop,” “Xingbake Coffee Shop,” and “Xingbake Brand Coffee Starbucks Coffee” on the windows, screens and receipts throughout its coffee shops. Additionally, a logo similar to that of Starbucks was displayed at coffee shops operated by the Chinese firm. Shanghai Starbucks sued the Chinese firm for trademark infringement and unfair competition, seeking reliefs including an injunction, damages, change of name, and an apology to be published in two newspapers.

The Court found the defendant liable for trademark infringement and unfair competition. Citing the Trademark Law (Articles 14, 52 and 56), the General Principles of the Civil Law (Articles 4, 118 and 134), and the Anti-Unfair Competition Law (Articles 2 and 20), the Court held that the defendant, by registering a trade name identical to the plaintiff’s trademark(s), exhibited a malicious intent to ride on the plaintiff’s fame and reputation and intentionally misled the public about its affiliation with the plaintiff. Therefore, the Court mandated an injunction, removal of “Xingbake” from the defendant’s trade name, and a damages award in the sum of RMB 500,000 yuan (\$62,500). Moreover, the defendant was required to publish an apology to the plaintiff in *Xinmin Evening News* within thirty days of the judgment becoming effective, with the content of such apology to be approved by the Court in advance.

v. *Shandong Dezhou Chicken Company v. AFC Enterprises, Inc.*¹⁶⁷

Shandong Dezhou Chicken Company (Chinese name: 山东德州扒鸡总公司 -hereafter Shandong Dezhou), located in Shandong Province, China, brought a joint suit for trademark infringement against a Chinese

¹⁶⁷ 【Chinse title: 山东德州扒鸡总公司等与美国AFC企业公司侵犯商标权上诉案, (2000) 沪高知终字第63号. Chinese text of the case is available in Chinalawinfo.com, citation no.: CLIC.155493. 】
Shandong Dezhou Chicken Company v. AFC Enterprises, Inc.
(山东德州扒鸡总公司等与美国AFC企业公司侵犯商标权上诉案), Chinalawinfo.com (Shanghai High People’s Court 2001).

firm - Shanghai Deji Fast Food Company (Chinese name: 上海德积快餐有限公司, and the Atlanta-based AFC Enterprises, Inc. (AFC)- which licensed its “*Texas Chicken*” trademark for Shanghai Deji’s use in China. Shandong Dezhou registered the Chinese word mark 德州⁶⁸ (spelled *DeZhou* in Pinyin) and used the mark on its cooked meats and foods. Shanghai Deji operated a fast-food franchise in China, and the company adopted and used three trademarks on its products and restaurants: one Chinese word mark “德州炸鸡” (translation: “*DeZhou Fried Chicken*”), another Chinese word mark “美国小骑士 (文字) 德州炸鸡” (translation: “*American Young Cowboy (word) - DeZhou Fried Chicken*,”), and the Chinese graphic and word mark “美国小骑士 (图形) 德州炸鸡” (translation: “*American Young Cowboy (graphic) - DeZhou Fried Chicken*.”). The Atlanta-based AFC, owner of a U.S. fast-food restaurant chain, sold chicken dishes. AFC held a common law trademark in “*Texas Chicken*,” which was licensed to Shanghai Deji to be used on the latter’s foods and advertisement in China. At the Shanghai Second Intermediate People’s Court, Shandong Dezhou alleged that the co-defendants infringed upon its registered word mark “德州” (i.e., *DeZhou*) by adopting a similar mark “德州炸鸡” (*DeZhou Fried Chicken*). The Court decided that the Chinese defendant committed a trademark violation. However, the Court ruled that AFC was not infringing because its “*Texas Chicken*” mark was, in spelling and shape, significantly different from the plaintiff’s trademark; and AFC never expressly authorized the Chinese defendant to use the plaintiff’s mark “德州炸鸡.” The Court thus ordered Shanghai Deji to stop further infringement, pay RMB 100,000 yuan in damages, and offer a written apology to the plaintiff to eliminate negative effects on the plaintiff’s reputation.

On appeal to Shanghai High People’s Court, both Shandong Dezhou and Shanghai Deji argued that AFC should be held liable for playing a

¹⁶⁸ 德州 is a Chinese city in Shandong Province. The locale is well known partly due to its reputation for making flavorful chicken. A two-character combination, 德州 is romanized as *DeZhou* in Pinyin (a phonetic and spelling system of the Chinese language.) The English “Texas” is translated into Chinese “德州” (pronounced *DeZhou*), meaning the State of Texas. Likewise, “Texas Chicken” is normally transliterated into “德州炸鸡” (*DeZhou Fried Chicken*). Chinese characters – 德州 – and the Chinese translation of “Texas” – “德州,” are identical words, but they refer to drastically different places - one Chinese city and one American state. When “德州” is combined with the word *chicken*, the resulting phrases can cause much confusion among Chinese speakers about the source of the product. Some unscrupulous businesses may intentionally exploit this type of confusion to their commercial advantage.

role in causing the infringement and for financially benefiting from the underlying transaction. The Appellate Court rejected the appeal and affirmed the lower court's judgment.

*Walt Disney Company v. Jinjiang Kunxing Shoes Company*¹⁶⁹

Walt Disney Company, owner of the cartoon character Mickey Mouse, registered that graphic image as a trademark in China in 1987 and attached the mark to any children's shoes and hats distributed in China. Disney brought a trademark infringement claim against Jinjiang Kunxing Shoes Company (hereinafter Kunxing), a Chinese producer of shoes and apparel, and two co-defendants: a Kunxing majority shareholder Lin Kunmin and an unrelated vendor Zhang Ansheng. A Mouse graphic mark that resembled Disney's Mickey Mouse graphic mark was attached to children's shoes made by Kunxing. At the Guangzhou Intermediate People's Court, Disney alleged that the defendants violated its trademark rights in the Mickey Mouse mark, seeking an injunction, RMB 1.92 million yuan in damages, and a public apology to be published in *Guangzhou Daily* for three consecutive days. The Court agreed that Disney's trademark right was violated because there was substantial similarity between Kunxing's trademark and Disney's registered Mickey Mouse image. The Court determined that the defendants profited from sales of their merchandise by intentionally passing off their lower-priced products as Disney's, which damaged Disney's reputation. In reliance on the General Principles of Civil Law (Articles 118 and 234), Trademark Law (Articles 52 and 56), and the Interpretation by the Supreme People's Court on Several Issues Concerning the Application of Law in Adjudication of Trademark Disputes (Articles 13 and 16), the Court barred the defendants from further infringement and ordered them to pay damages and Disney's legal fees in the aggregate of RMB 480,000 yuan. Additionally, the Court held that Kunxing and Lin must publish a court-approved apology to Disney in the *Guangzhou Daily* within ten days of the judgment becoming effective.

On appeal, the High People's Court of Guangdong Province affirmed the lower court's judgment. As to the apology remedy ordered, the High Court explained that Disney's Mickey Mouse was a registered trademark enjoying a high degree of recognition among Chinese consumers, and that Kunxing, by producing and selling a huge volume of Mickey

¹⁶⁹ 【Chinese title:

晋江昆兴鞋业有限公司等与迪士尼企业公司(美国)侵犯注册商标专用权上诉案, (2010)粤高法民三终字第274号, citation no.: CLI.C.346702.】. *Walt Disney Company v. Jinjiang Kunxing Shoes Company* (晋江昆兴鞋业有限公司等与迪士尼企业公司(美国)侵犯注册商标专用权上诉案), Chinawininfo.com (High People's Court of Guangdong Province 2021).

Mouse counterfeits, damaged Disney's commercial reputation and disrupted the normal market order. Thus, reasoned the High Court, the apology remedy ordered by the lower Court was legal and proper and must be sustained.

vi. *Walt Disney Company v. Jinjiang Kunxing Shoes Company*¹⁷⁰

In a sister case based on nearly identical facts decided just a few days apart,¹⁷¹ Walt Disney succeeded in holding Jinjiang Kunxing Shoes Company and its two co-defendants liable for infringing on the *Mickey Mouse* graphic trademark. Unlike in the companion case, however, here Kunxing adopted and employed word marks, such as “米奇宝贝” “MICKEY BABY,” “MICKEY BABY” and “MICKEY BAOBEI” in connection with children's shoes produced by the company, and those indicia substantially resembled the *Mickey Mouse* trademark. In the litigation, Disney sought an injunction against the defendants, RMB 1.92 million yuan in damages, and a public apology to be published in *Guangzhou Daily* for three consecutive days. The Court agreed with Disney in finding trademark infringement. Furthermore, the judgment barred defendants from further violation and required payment for damages and Disney's reasonable litigation costs in the aggregate of RMB 480,000 yuan. Moreover, the defendants were ordered to publish a court-approved apology to Disney in the *Guangzhou Daily* within ten days of the judgment becoming effective.

On appeal, the High People's Court of Guangdong Province affirmed the injunction and the apology based on the same laws and reasoning stated in the companion case. However, the High Court dismissed the damages payment to avoid duplicative awards because the same remedy had been granted in the sister case (which had substantially similar facts).

D. Patent Litigation and Apologies

Under current laws and practice, apologies are not applicable in patent infringement cases because patent infringement usually violates the owner's property rights without damaging his or its “personality rights” as defined by the Civil Code of 2020 (e.g., personal honor, dignity, or

¹⁷⁰ 【Chinese title:

晋江昆兴鞋业有限公司等与迪士尼企业公司(美国)侵犯注册商标专用权上诉案, (2010)粤高法民三终字第276号, citation no.: CLIC.346313. 】

¹⁷¹ See *Walt Disney Company v. Jinjiang Kunxing Shoes Company* (Decided by the High People's Court of Guangdong Province, 10/25/2010).

reputation) or causing emotional pain. The current Patent Law (2020 amendment), and the law's previous versions, contain no apology provisions, which is clearly different from other IP laws (e.g., Copyright Law) covering apology measures. Before 2003, however, some Chinese courts had periodically exercised free discretion to approve apology remedies in patent infringement decisions.¹⁷² After 2003, the judicial practice of granting apologies in patent infringement litigation was largely discontinued, as the Supreme People's Court of China issued clear instructions to the effect that apologies should not be approved in patent infringement disputes.¹⁷³

E. Apology-Affiliated Cases in Intellectual Property Litigation

In some Chinese IP litigation, plaintiffs seek an apology, among other remedies, but the courts order the defendants to publish an announcement instead (aka a declaration or notice) for to “eliminate adverse effects” (EAE) caused to the plaintiff's honor or reputation by the defendant's illegal action. This is true of the American IP litigation in China, and there are at least twelve such EAE decisions identified in this study (see Table 7 for details).

For a Court to issue an EAE remedy, it must rely on one or more of the following statutes and rules as the legal basis: the Civil Code,¹⁷⁴ the *Copyright Law*,¹⁷⁵ the Regulation on the Protection of Computer Software,¹⁷⁶ and the Anti-Unfair Competition Law.¹⁷⁷ These are the same

¹⁷² See Ge Yunsong, *supra* note 39, at 94-95 (giving examples of the courts ordering apologies in patent infringement decisions).

¹⁷³ *Id.*

¹⁷⁴ Art. 995 describes liability for intellectual property infringement and remedies, art. 1000 describes civil liability and remedy of apology; see Republic of China, *art. 995, 1000, CIVIL CODE OF THE REPUBLIC OF CHINA* (2020), available at <https://shorturl.at/krY19> (last visited Apr. 17, 2024).

¹⁷⁵ Art. 52 describes what constitutes infringing conduct. See, *art. 52, COPYRIGHT LAW OF THE PEOPLE'S REPUBLIC OF CHINA* (2020), available at <https://wilmap.stanford.edu/node/31101> (last visited Apr. 17, 2024).

¹⁷⁶ Art. 23 describes the liability imposed on those who committed infringement. Art. 24 describes the apology and other civil liability actions the court can take. See, *art. 23-24, PEOPLE'S REPUBLIC OF CHINA REGULATION ON COMPUTER SOFTWARE PROTECTION* (2013), available at <https://www.wipo.int/wipolex/ar/text/455377> (last visited Apr. 17, 2024).

¹⁷⁷ Art. 23 describes when a business causes damage to the goodwill or product reputation of a competitor in violation of art. 11 of this Law, the supervisory inspection department shall order it to cease the illegal act and eliminate adverse effects, and impose a fine of not less than 100,000 yuan nor exceeding 500,000 yuan or if the circumstances are serious, a fine of not less than 500,000 yuan nor more than three million yuan. See *art. 23, PEOPLE'S REPUBLIC OF CHINA ANTI-UNFAIR COMPETITION LAW* (2019), available at http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/12/content_1383803.htm (last visited Apr. 17, 2024).

laws (sometimes even mentioned in the same articles) that are relied on by the Courts to order apologies. Because both measures are executed similarly through some kind of writing, this situation may cause confusion between them. For example, a court may require a defendant to issue an “announcement” to “apologize”; and a Court may order a defendant to “apologize” to “eliminate adverse effects.” Because court decisions do not always explain or elaborate on why they choose an EAE measure in lieu of an apology sought by the plaintiff, it is reasonable to suspect that some courts do not truly distinguish an EAE from an apology and rather use these two measures interchangeably.

F. Some Observations: Key Elements for Success in Seeking Apologies

An analysis of the American cases reveals some commonalities and offers a few clues for a successful litigation strategy. Plaintiffs will invariably assert an infringement claim and, if proven, demand injunctive relief with damages. An apology is often a supplemental remedy to an injunction and monetary compensation, which work together to shame the wrongdoer and deter future violations. To secure an apology, the plaintiff must ensure the existence of the following conditions. First, the case is supported by a relevant statute (e.g., the Copyright Law, and the Civil Code) that spells out apologies as a measure of civil liability. In this regard, copyright infringement claims, which may involve illegal copying, publishing, disseminating, and/or distributing of writings, images, music, movies, video games, and computer software, are the strongest candidates for an apology measure. Second, because there are no apology measures spelled out in the Trademark Law or the Anti-Unfair Competition Law, an apology request in trademark infringement and unfair competition cases should be based on the Civil Code’s “personality rights,” under which the reputational harm suffered must be established to make an apology relief approvable. Third, for the plaintiff to persuade the court to issue apology relief, sometimes it may be necessary to prove the wrongdoer’s knowledge and intention (or malice), which is especially true in trademark and unfair competition cases. Finally, the geographical scope of a violation may be relevant to the kind of media used to deliver an apology. For instance, if an infringement’s effect is limited to a particular city, a local newspaper may be the suitable venue for publishing an apology; however, if a wrongful act’s impact is widespread, the apology should be announced in a national newspaper to reach every targeted audience. Likewise, for online infringement acts, a digital platform, like the defendant’s official website, may be an appropriate place for delivering the measure. However, the courts are very reluctant to order a

defendant to apologize in multiple outlets due to considerations of proportionality, fairness, and expenses to be incurred by the defendant.

CONCLUSION

What happens in China has critical implications for the U.S. and the world. The apology laws and litigation profoundly affect businesses, personal interactions, and other aspects of life in China. This raises imminent and continuous challenges to American businessmen and right-holders doing business in China. The examination of American IP cases in China demonstrates that American right-holders are adapting to Chinese laws and customs, using apologies as a supplemental measure to protect IPRs in the country. There are at least two lessons that can be learned from past experiences. First, apologies offer an additional tool against intellectual property rights violators in China, and this remedy may be useful due to its effects in shaming and possible deterrence. Right-holders should work with their local counsel to evaluate the strengths of their case carefully before initiating litigation and should request apologies only when there is a reasonable likelihood of the Court's approval. The Chinese law of apologies is broad and sketchy, leaving the courts with much discretion. Chinese courts seem more willing to approve apologies in certain copyright, trademark, and unfair competition disputes than in other types of litigation, for example, patent cases. The key to securing a successful apology determination depends on proof of reputational harm to the right-holder; the defendant's intent is also relevant. Second, making apologies properly and timely, especially when ordered to do so by the court, can repair or improve a business' image and public relations in society. China is an immensely competitive market, and businesses and consumers highly value personal dignity and pride. It is very common for Chinese to go to court and seek apologies against wrongdoers, domestic and foreign alike, when people believe that their dignity or pride is injured. Increasingly, Chinese citizens file litigation and seek apologies from American and other foreign businesses for intellectual property infringement. When the courts approve an apology measure against a foreign party, such a party should comply with the apology order in a timely and proper manner; otherwise, it will risk further reputational damage and public embarrassment.

*Appendix A. Making of Apology Laws in China 1979-2020:
A Chronology*

	Title: In English and Chinese	Article No.	Enactment
1	Criminal Law 【刑法】	32	7/6/1979
2	Answer of the Supreme People's Court to Certain Issues Concerning the Adjudication of Cases Involving the Right of Reputation 【最高人民法院关于审理名誉权案件若干问题的解答】	10	8/7/1983
3	General Principles of the Civil Law 【民法通则】	118, 120, 134	4/12/1986
4	Copyright Law 【著作权法】	45-46	9/7/1990
5	Regulation on the Protection of Computer Software 【计算机软件保护条例】	30	6/4/1991
6	Consumer Rights Protection Law 【消费者权益保护法】	43	10/31/1993
7	State Compensation Law 【国家赔偿法】	30	5/12/1994
8	Law Governing Judges 【法官法】	45	2/28/1995
9	Law Governing Public Procurators 【检察官法】	48	2/28/1995
10	Interpretation of the Supreme People's Court on Certain Issues Concerning Judicial Compensation in Civil and Administrative Litigation 【最高人民法院关于民事、行政诉讼中司法赔偿若干问题的解释】	13	9/16/2000
11	Regulation on Telecommunications 【电信条例】	74-75	9/25/2000
12	Interpretation of the Supreme People's Court on Certain Issues Concerning the Ascertainment of	1, 8	2/26/2001

	Compensation Liability for Emotional Harm in Civil Torts 【最高人民法院关于确定民事侵权精神损害赔偿责任若干问题的解释】		
13	Interpretation of the Supreme People's Court on Certain Issues Concerning Adjudication of Copyright Civil Disputes 【最高人民法院关于审理著作权民事纠纷案件适用法律若干问题的解释】	17	10/12/2002
14	Public Security Administration and Punishment Law 【治安管理处罚法】	117	8/28/2005
15	Civil Servants Law 【公务员法】	103	4/27/2005
16	Regulation on the Protection of the Right to Publicly Communicate Works on Information Networks 【信息网络传播权保护条例】	18	5/10/2006
17	Tort Liability Law 【侵权责任法】	15	12/26/2009
18	Criminal Procedure Law 【刑事诉讼法】	277	3/14/2012
19	General Provisions of the Civil Law 【民法总则】	179	3/15/2017
20	Anti-Unfair Competition Law 【反不正当竞争法】	17, 23	11/4/2017
21	Civil Code 【民法典】	995, 1000	5/28/2020