



Please rest assured that Taiwan IPO and our firm have been maintaining normal operation as the coronavirus pandemic spreads throughout the world.

When faced with the severe global health crisis triggered by the pandemic, please take good care of your health and stay healthy.

## **TIPLO News**

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*This news mail distributed in Japanese and English from time to time provides updates on the development of law in Taiwan with focus on intellectual property rights law. For more information about the status of intellectual property right protection and practice in Taiwan, please visit our website [www.tiplo.com.tw](http://www.tiplo.com.tw)*

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## E220512Y2

### 01 Infringers of “洪瑞珍” mark sentenced to six months in prison

The second-generation business operator of the famous store, Hung Rui Chen Sandwich, HONG Chun-Sheng, who is the proprietor of the store’s Chinese character mark, “洪瑞珍” and other relevant registered marks, filed a trademark infringement lawsuit against his cousin, HONG Yu-Shan and the cousin’s husband, CAI Zhi-Ming (hereinafter “Hong and Cai”), for the couple had been using the Chinese character mark, “洪瑞珍”, the stylized mark consisting of the three Chinese characters, “洪瑞珍” in a circle, and the English mark, “HUNG RUI CHEN” (hereinafter the “marks at issue”) on the branch stores located in Xinzhuang and Taipei Main Station run by the couple under the name, “Ho Family Hung Rui Chen Sandwich Shop” (Chinese: 洪家手作). After indicted by the prosecutor, both Hong and Cai were tried and convicted of Trademark Act violation by the New Taipei District Court and were sentenced to six months in jail. This judgment is appealable.

According to the reasoning of the judgment, Hong and Cai already signed a settlement agreement with HONG Chun-Sheng early on August 1, 2018. However, Hong and Cai still had used the marks at issue and other Chinese descriptions, such as, “洪瑞珍三明治” (meaning “Hung Rui Chen sandwich”), “洪瑞珍二代概念店” (meaning “second-generation concept store of Hung Rui Chen”), and “洪瑞珍洪家手作三明治” (meaning “Ho Family Hung Rui Chen Sandwich”) for the above mentioned two branch stores for a period from August 1, 2018 through April 2020. The three Chinese characters, “洪瑞珍” were used in the couple’s physical storefronts or used on website in the manners or on the spots that are easily and readily seen by consumers, such as, signboards, in-store bulletin, advertising icon on fan page, packaging of all kinds of products, receipts, business cards, and web page for delivery, etc.. Moreover, Hong and Cai used the three Chinese characters, “洪瑞珍” in the manners that would cause general consumers to realize that the stores are run by HONG Chun-Sheng or run under licensing by HONG Chun-Sheng. Besides, these Chinese descriptions, such as, “洪瑞珍三明治” (meaning “Hung Rui Chen sandwich”), “洪瑞珍二代概念店” (meaning “second-generation concept store of Hung Rui Chen”), and “洪瑞珍洪家手作三明治” (meaning “Ho Family Hung Rui Chen Sandwich”) all represent that the products or services provided by Hong and Cai come from “Hung Rui Chen” and therefore amount to trademark use.

The judgment also indicated that the Chinese character mark, “洪瑞珍” is widely and highly known in Taiwan. As such, Hong and Cai’s continued use of the marks at issue, for profit-seeking purpose and without due authorization, on identical or similar products and services after the settlement with HONG Chun-Sheng not only forms consumers’ confusion and thus disorders market order, and ultimately undermines the system and policies implemented for IPR protection in Taiwan. In addition to the foregoing, the New Taipei District Court imposed six-month imprisonment on Hong and Cai each also because Hong and Cai had been engaged in the trademark infringement for more than 1 year and also denied the offense alleged against them and have failed to reached a settlement with or compensate HONG Chun-Sheng up to date. (Released 2022.05.12)

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## E220527Y3

### 02 Amendment to Copyright Act passes legislative three readings to cope with distance education

In response to the development of digital technology and the needs of educational

policy and pandemic control nowadays, on May 27, 2022 the Legislative Yuan adopted the amendment to partial provisions of the Copyright Act by a third reading, and the amended provisions are concerning the fair use of copyrighted works in distance education as an extension of the classroom, which will allow schoolteachers to give instruction without worrying about infringement. Also for fitting in with digital education policies, the amendment incorporates provisions that allow textbook preparers to transmit the digital files of textbooks or educational materials to both schoolteachers and students to form e-schoolbags that will alleviate the burden of students' heavy schoolbags. Besides, to actualize cultural development of the country, the amendment also introduces provisions that permit the National Central Library to reproduce its collections in digital forms under specific conditions for readers' online viewing in the library.

Key points of the amendment are summarized as follows.

### 1. Schools' fair use of copyrighted works in distance education to enrolled students

Currently schoolteachers are legally allowed to print and distribute to students copyrighted teaching materials, within a reasonable scope, only for face-to-face teaching at schools. Now due to technological development and to enable schoolteachers to provide remote education as they do in classrooms, the amendment adds provisions allowing teachers to provide students with reference materials or information via the Internet within the necessary scope of teaching at schools so as to cope with the needs of remote education when schools shut down due to the pandemic and to enhance teaching efficiency and to keep abreast with international trends and technological development. In addition, in order to avoid excessive infringement upon copyright holders' rights and interests, the amendment also requires schools to take reasonable technical measures (such as, account passwords) to prevent those students who do not take the course from accessing it. Moreover, as distance education involves public interest, schoolteachers will not be required to pay for authorization for using any other persons' copyrighted works (amended Article 46).

### 2. Fair use of copyrighted works for non-profit distance education on condition of payment of remuneration

In regard to distance education for general public (e.g. not-for-profit massive open online courses (MOOCs) education platform eDX), the current law regulates only televised education, like national open university and provides no provisions governing fair use of copyrighted works by online education. In this regard, the amendment introduces regulative provisions that permit and govern schools' or educational institutions' fair use of copyrighted works for distance online teaching, which involves more channels of transmission and target audience, including not only traditional broadcasting and TV but also synchronous or asynchronous transmission directed to general public different from enrolled students as mentioned above. Hence, fair use of copyrighted works within the necessary scope of education is legally allowed on condition of remuneration payment to copyright holders so as to ensure their rights and interests. On the other hand, for profit-seeking distance education (e.g. online education provided by cram schools), due authorization is also required for involving no public interest in order to protect copyright holders' rights and interests (amended Article 46-1).

### 3. Digital copies transmission by textbook preparers to schoolteachers and students for the need of e-schoolbags

According to current stipulation, for textbook examination and compilation, textbook preparers may use copyrighted works and can provide schoolteachers and students

with only paper copies of textbooks for their use, which is unable to meet the needs of students' use of e-schoolbags in the digital era. In consideration of the foregoing, the amendment is drafted to additionally set forth regulation allowing and governing textbook preparers' digital transmission of textbooks for teachers' and students' fair use. Likewise, remuneration payment is required for the authorized fair use of copyrighted works in the aforesaid situation (amended Article 47).

4. National Central Library's digital reproduction of collections and availability of collections to libraries' intranet

For the purpose of cultural development, the amendment introduces new provisions that allow the National Central Library to digitally reproduce its collections in advance to avoid their loss or damage so that the National Central Library can preserve contemporary works. Moreover, the amendment also provides that the National Central Library or general libraries may allow readers to access their collections on the libraries' intranet under certain restrictions, in lieu of the lending or viewing of paperbacked collections. This will facilitate not only the digitalization of library services but also preservation of physical library collections (amended Article 48).

The Ministry of Economic Affairs emphasized that digital development leads to use of copyrighted works in diverse ways and that distance education turns into an important form of education as a result of the pandemic impact. As such, the Legislative Yuan greenlighted this amendment in response to the technological developments that have been enhancing educational effects, the use of e-schoolbags, and also facilitating libraries' collections preservation and digitalized services. This amendment will tally with Taiwan's education policies in the digital era, forward diversified developments of education, and establish substantial and positive significance for knowledge distribution. (Released 2022.05.27)

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**E220520Y4**

**E220520Y9**

### **03 Legislature approves amendment to National Security Act to protect national core technology**

Legislative Yuan passed the amendment to the National Security Act in its third reading on May 20, 2022 with partial provisions thereof setting forth that any persons shall not acquire the trade secrets involving any national core critical technologies for any foreign countries, China and Hong Kong, Macao, and hostile foreign forces in such inappropriate manners as theft, misappropriation, fraud, coercion, unauthorized reproduction, nor further use or disclose such trade secrets. Convicted offenders shall face imprisonment for a minimum period of 5 years and a maximum period of 12 years and, in addition thereto, a fine of TWD5 million to TWD100 million.

The amendment also introduces the offense of extraterritorial misappropriation of the trade secrets involving aforesaid national core critical technologies, and the offense is punishable by a prison sentence of 3 to 10 years and in addition thereto a fine of TWD5 million to TWD50 million; the punishment is applicable also to an attempt.

Under the amendment, current or retired military personnel, civil servants, teachers, and employees of state-owned institutions who commit the aforesaid offense must forfeit their rights to apply for their pensions, and for those who have received the pensions will be required to return them.

For coping with the massive commercial interests that might be involved in infringed

trade secrets, the amendment states that the maximum amount of the fine to be imposed on the offender may be adjusted or increased to an amount 2 to 10 times the amount of the offender's undue profits gained in his/her offense where the undue profits exceed the maximum fine.

The amendment also includes provisions governing procurement of military projects, products or services, according to which, delivery of military projects, products, or services provided by China or any foreign hostile forces will incur a penalty of up to 7 years in jail and in addition thereto a fine of up to TWD30 million. Also, delivery or provision of counterfeit military weapons, ammunition, and military supplies in war will be punishable by a penalty of a jail term up to 10 years and in addition thereto a fine of up to TWD50 million; the amount of the fine imposed may multiply based on the undue profits gained therefrom.

In addition, according to this amendment, a specialized tribunal or division will be established to handle the cases in violation of the National Security Act. (Released 2022.05.20)

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## **E220503Y9**

### **04 Commodity Labeling Act amendment passes three readings to establish e-commerce labeling regulation**

The amendment to the Commodity Labeling Act had successfully proceeded through its three readings as of May 3, 2022, which officially includes e-commerce platforms under the regulative coverage of the Commodity Labeling Act, introduces provisions that empower local competent authority to impose an administrative fine of up to TWD200,000 on serious violation and on products that are immediately dangerous to consumers' health, and also add relevant provisions to increase flexibility of labeling requirements in response to development of technology.

Key points of the amendment are summarized as follows.

1. Amendments that respond to technological development and keep abreast with international standards

1.1 E-labeling permissible for certain commodities: New provisions are incorporated to stipulate that the central competent authority may determine in terms of relevant technological, industrial, and economic developments and announce the types of commodities on which e-labeling may be used, so as to meet the needs of the industry.

1.2 Required format for labeling of date of manufacture revised: Date of manufacture is required to be marked as "Year, Month" or "Year, Week" in line with international labeling practices. For the commodities that have a shelf life, expiry date must be presented as "Year, Month, Date" on labels, in addition to the date of manufacture.

1.3 Certain required labeling presented in line with international standard formats or in English or other foreign languages: In light of current international and domestic regulative practices, the amendment stipulates that "centimeter" labeled as "cm" or the mathematic symbol "±" for indicating tolerance of quantity is allowed for certain items of required labeling, and that the central competent authority may announce some items of labeling may be labeled in English or in other foreign languages without prejudice to the correct labeling of commodity and consumers rights protection.

2. Amendments that increase labeling flexibility in terms of commodity attributes

(1) Specific commodities to be exempted from required labeling: The central competent authority may announce and specify the specific commodities that may be exempted from the required labeling if it is difficult for those specific commodities to follow the labeling regulations as required by the Act due to their attributes or because there have been specific methods of labeling existing for those commodities.

(2) New provisions introduced to regulate the change of manufacturer information for the commodities that have been available on the market: In view of the foreseeable difficulty that may arise from the changes, if any, of manufacturer's name or address on labels for general commodities that have been launched in a wide variety of distribution channels, this amendment introduces new provisions stipulating that the change of manufacturer's information may be made publicly known in a manner that is readily available or known to consumers at any time so as to seek a balance between consumer protection and business operation efficiency.

3. Amendments that increase inspection sites in addition to sales premises and include e-commerce platforms under regulation:

Due to the rise of online shopping and in order to reinforce regulation of the products sold online, this amendment incorporates new provisions that local competent authority may conduct inspection on the sites of the manufacturers, contract manufacturers, importers, re-packers of such products or other sites where such products are manufactured, stored, or repacked. In addition, this amendment sets forth e-commerce platform operators' obligations to provide information regarding the posters, suppliers, and sellers and the fines to be imposed on those who fail to fulfill the obligations.

4. Amendments that allow immediate punishment for serious violation

According to the current Act, a prior notice for correction of violation is required before penalty. In consideration of public interest and consumers' health and safety, this amendment introduces new provisions that allow immediate imposition of penalties if serious violations of the Act occur or any products cause immediate danger to consumers' health. (Released 2022.05.03)

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