



## **TIPLO News**

**MARCH 2023 (E275)**

*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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Attorneys-at-Law

**E221228Y1**

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**01 Getac Technology Corp. and Getac, Inc. settle design patent infringement action commenced by Panasonic in the U.S.**

Getac Holdings Corporation announced on December 27, 2022 that its subsidiaries, Getac Technology Corp. and Getac, Inc. have reached a settlement with Panasonic Holdings Corporation (hereinafter "Panasonic") for the design patent infringement lawsuit Panasonic filed against Getac Technology Corp. and Getac, Inc. (hereinafter collectively, "Getac") on June 5, 2019 in the U.S., and a settlement agreement containing confidential terms and conditions has been duly executed by and among the parties. The parties should perform the terms and conditions of the settlement agreement and all relevant pending legal proceedings should be withdrawn as required in the agreement. This settlement agreement shall be kept in strict confidentiality for involving confidential matters. (Released 2022.12.28)

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**E221206Y3**

**E221206Y4**

**02 LDC Hotels & Resorts's victory reaffirmed in case against Sheraton Taitung for copying room design after remand**

For the case LDC Hotels & Resorts (hereinafter "LDC") brought against Sheraton Taitung Hotel (hereinafter "Sheraton Taitung") for the latter's infringement upon the copyright of the interior design of the hotel rooms at the Palais de Chine Hotel, LDC received a monetary award of TWD5 million in the previous court decisions each in the first and second instance proceedings. Sheraton Taitung appealed this case to the Supreme Court, which vacated the second-instance decision in favor of LDC and remanded this case back to the Intellectual Property and Commercial Court (hereinafter "IPC Court"). After the remand, the IPC Court disaffirmed the occurrence of copyright infringement but sustained Sheraton Taitung's violation of the Fair Trade Act, which is still a decision favorable to LDC.

The IPC Court did not sustain LDC's copyright infringement claim on the grounds summarized as follows. From the perspective of the overall interior design of the hotel room in question at Palais de Chine Hotel, the interior design has originality because the design and selection of furniture indeed present the uniqueness of interior artistic aesthetics and also make consumers feel the Art Nouveau style or atmosphere expressed by the designer. However, furniture and furnishings are movable items and separable from the room structure and the artistic aesthetics formed by furniture and furnishings is not related to the nature of an architectural work. That is to say, furniture and furnishings do not constitute an internal structure of a building or an integral and inseparable part of it, and thus, they are not eligible for protection as an architectural work.

Besides, in terms of the characteristics of tourism hotel industry and consumers' trading habits, the furniture, comfort, or even the style of interior design of hotel rooms serve as not only the important criteria for evaluating a hotel but also the important factors for consumers' choice of accommodation. That is why all hotel owners have invested much thought and money in room design to create comfortable and unique room design so as to attract consumers. If the rooms of two different hotels have the same interior design style presented by identical or highly similar room design and such similarity is able to cause relevant consumers to mistakenly believe that the two hotels are affiliates or have franchisee/franchisor or licensee/licensor relationships, Fair Trade Act violation may have occurred. Therefore, in this case, the IPC Court determined Sheraton Taitung's violation of the Fair Trade Act and dismissed its appeal.

### **E221202Y3**

#### **03 Infringer ordered to pay TWD370,000 to Nintendo for selling infringing game consoles pre-installed with pirated Nintendo games**

A woman surnamed Su (hereinafter “Su”) had been purchasing from Alibaba website (in China) more than 1,000 sets of 400-in-1 handheld game consoles at a low price of TWD150 each for resale at the price of TWD199 each on Shopee throughout March 2020. Police online patrols found that these game consoles came with 26 pre-installed Nintendo games, for which Su was sentenced to three months in prison commutable to a fine payment for the offense of distributing the copies of a work that infringe upon another’s economic rights, and Su should also pay TWD379,100 to Nintendo therefor.

Nintendo’s attorney represented Nintendo to initiate a civil action against Su and claim damages in a total amount of TWD1.3752 million. For Su’s economic right infringement, Nintendo sought damages payment of only TWD900,000 as opposed to the total value of TWD1.404 million involved in Su’s copyright infringement, which should be calculated by the unit price of each game, TWD450, multiplied by 120 consoles each sold with 26 Nintendo copyrighted game software pre-installed therein. In addition to copyright infringement, Nintendo also sought damages payment of TWD475,200 for Su’s trademark infringement upon Nintendo’s 9 registered trademarks occurring in each game console, and the damages sought for each infringed trademark was in an amount equivalent to 200 times the retailing price of each infringing console, TWD264. That is to say, Nintendo claimed damages against Su in a sum of TWD1.3752 million.

According to the judgment, the amount of damages to be awarded should be assessed separately with respect to Su’s trademark infringement and economic right infringement. For trademark infringement, the damages awarded is TWD179,100, the amount calculated by 100 times the average retailing price of each infringing console, namely TWD199 for a total of 9 infringed trademarks, while the damages awarded for economic right infringement was TWD200,000. Therefore, the total amount of damages awarded to Nintendo is TWD379,100. This judgment is appealable. (Released 2022.12.02)

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