

Interpretation of the Supreme People’s Court on the Application of Punitive Damages in the Trial of Civil Disputes over Intellectual Property Infringement (JI2021 VS JI2026)

	Judicial Interpretation 2021		Judicial Interpretation 2026
Preamble	<p>In order to correctly implement the punitive damages system for intellectual property rights, lawfully punish serious infringements of intellectual property rights in accordance with the law, and comprehensively strengthen the protection of intellectual property rights, this interpretation is formulated in accordance with <i>the Civil Code, the Copyright Law, the Trademark Law, the Patent Law, the Anti-Unfair Competition Law, the Seed Law, the Civil Procedure Law</i> and other relevant legal provisions of <i>the People's Republic of China</i>, and in combination with judicial practice.</p>	Preamble	<p>In order to correctly implement the punitive damages system for intellectual property rights, lawfully punish serious infringements of intellectual property rights in accordance with the law and <u>strictly implement the punitive damages system for</u> comprehensively strengthen the protection of intellectual property rights, this Interpretation is formulated in accordance with <i>the Civil Code , the Copyright Law , the Trademark Law , the Patent Law of People's Republic of China, the Anti-Unfair Competition Law , the Seed Law , the Civil Procedure Law</i>, and other relevant legal provisions of <i>the People's Republic of China</i>, and in combination with judicial practice.</p>
Article 1	<p>Where the plaintiff claims that the defendant willfully infringes the intellectual property rights legally owned by the plaintiff and the circumstances are serious, and requests that the defendant be ordered to bear punitive damages liability, the people's court shall examine and handle the case in accordance with the law.</p> <p>The term “willfully” indicated in this interpretation includes “bad faith” as stipulated in Paragraph 1 of Rule 63 of <i>the Trademark Law</i> and in Paragraph 3 of Rule 17 of <i>the Anti-Unfair Competition Law</i>.</p>	Article 1	<p>Where the plaintiff claims that the defendant willfully infringes the intellectual property rights legally owned by the plaintiff and the circumstances are serious, and requests that the defendant be ordered to bear punitive damages liability, the people's court shall try examine and handle the case in accordance with the law.</p> <p>The term “willful” indicated in this interpretation includes “bad faith” as stipulated in Paragraph 1 of Rule 63 of the Trademark Law and in Paragraph 3 of Rule 17 of the Anti-Unfair Competition Law.</p>

<p>Article 2</p>	<p>Where the plaintiff claims punitive damages, the plaintiff shall, at the time of filing the lawsuit, specify the amount of damages, the method of calculation, and the facts and grounds on which the claim is based.</p> <p>Where the plaintiff adds a claim for punitive damages before the conclusion of oral proceedings at first-instance, the people's court shall grant it; Where a claim for punitive damages is added during the second-instance proceedings, the people's court may conduct mediation based on the principle of voluntariness of the parties. If the mediation fails, the court shall inform the parties to file a separate lawsuit.</p>	<p>Article 2</p>	<p>Where the plaintiff claims punitive damages, the plaintiff shall, at the time of filing the lawsuit, specify the amount of damages, the method of calculation, and the facts and grounds on which the claim is based.</p>
		<p>Article 3</p>	<p>Where the plaintiff adds a claim for punitive damages before the end of the debate in the court of first-instance, the people's court shall grant it; Where a claim for punitive damages is added during the second-instance proceedings, the people's court may conduct mediation based on the principle of voluntariness of the parties. If the mediation fails, <u>the claim shall not be supported</u> the court shall notify the parties to file a separate lawsuit.</p>
		<p>Article 4</p>	<p><u>Where the plaintiff, in an intellectual property infringement lawsuit, claims ordinary damages but not punitive damages, and still fails to do so after the people's court has provided clarification, any subsequent separate lawsuit seeking punitive damages based on the same infringing fact after the conclusion of the previous lawsuit shall not be accepted by the people's court.</u></p>
		<p>Article 5</p>	<p><u>Where the plaintiff claims punitive damages against a defendant for willful unfair competition conduct other than trade secret infringement, the people's court shall not support such claim, unless otherwise provided by law.</u></p>
<p>Article 3</p>	<p>When determining whether the infringement of intellectual property rights was committed willfully, the people's court shall comprehensively consider factors such as the type of the intellectual property right infringed, the status of the right, the reputation of the relevant products, and the relationship</p>	<p>Article 6</p>	<p>For the determination of willful infringement of intellectual property rights, the people's court shall comprehensively consider factors such as the type of the intellectual property right infringed, the status of the right as well as its the reputation of the relevant products, and the relationship between the defendant and the plaintiff or the interested parties.</p>

<p>between the defendant and the plaintiff or the interested parties.</p> <p>Under the following circumstances, the people's court may preliminarily determine that the defendant has the intent to infringe the intellectual property rights:</p> <p>(1) where the defendant, even after being notified or warned by the plaintiff or an interested party, continues the infringing act;</p> <p>(2) where the defendant, or his/her/its legal representative or manager is the legal representative, manager, or actual controller of the plaintiff or an interested party;</p> <p>(3) where the defendant has an employment, labor service, cooperation, licensing, distribution, agency, representative or any other relationship with the plaintiff or an interested party, and has had access to the infringed intellectual property rights;</p> <p>(4) where the defendant has business dealings with, or has engaged in negotiations for reaching a contract, etc, with the plaintiff or an interested party, and has had access to the infringed intellectual property rights;</p> <p>(5) where defendant engages in piracy or counterfeiting of registered trademarks; or</p> <p>(6) Other circumstances that may be considered willful.</p>		<p><u>Where the defendant falls under any of the following circumstances, the people's court may preliminarily determine that the defendant has the intent to willfully infringe the intellectual property rights, unless the party provides contrary evidence sufficient to refute such determination:</u></p> <p>(1) where the defendant, even after being <u>duly notified</u> or warned by the plaintiff or an interested party, continues the infringing conduct;</p> <p>(2) where the defendant, or his/her/its legal representative or manager is the legal representative, manager, or actual controller of the plaintiff or an interested party, <u>and knew or should have known of the infringed intellectual property rights;</u></p> <p>(3) where the defendant has an employment, labor service, cooperation, licensing, distribution, agency, representative, or any other relationship with the plaintiff or an interested party, and has had access to the infringed intellectual property rights <u>based on the aforementioned relationship;</u></p> <p>(4) where the defendant has business dealings with, or has engaged in negotiations for reaching a contract, etc, with the plaintiff or an interested party, and has had access to the infringed intellectual property rights <u>based on the aforementioned relationship;</u></p> <p>(5) where defendant engages in piracy or counterfeiting of registered trademarks <u>or counterfeiting others' patents;</u></p>
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<p>Article 4</p>	<p>For the determination of serious circumstance of intellectual property infringement, the people's court shall comprehensively consider factors such as the means and frequency of the infringement, the duration, geographical scope, scale and consequences of the infringing act, and the infringer's conduct during litigation.</p> <p>Where the defendant falls under the following circumstances, the people's court may determine that the circumstance is serious:</p> <p>(1) Committing the same or similar infringing act again after having been administratively punished or held liable by a court judgment for infringement;</p> <p>(2) Committing infringement of intellectual property rights as a business;</p>	<p>Article 7</p>	<p>For the determination of serious circumstance of intellectual property infringement, the people's court shall comprehensively consider factors such as the means and frequency of the infringement, the duration, geographical scope, scale and consequences of the infringing act, and <u>the infringer's awareness of and basic attitude towards the infringement</u> the infringer's conduct during litigation.</p> <p>Where the defendant falls under <u>any of</u> the following circumstances, the people's court <u>shall</u> may determine that the circumstance is serious:</p> <p>(1) Committing the same or similar infringing act again after having been administratively punished or held <u>legally</u> liable by a court judgment for infringement;</p> <p>(2) Refusing to fulfill a preservation order <u>without justifiable reason</u>;</p> <p>(3) Forging, destroying or concealing evidence of infringement;</p>

	<p>(3) Forging, destroying or concealing evidence of infringement;</p> <p>(4) Refusing to fulfill a preservation order;</p> <p>(5) Making enormous profits from the infringement or causing substantial damage to the right holder;</p> <p>(6) Endangering national security, public interests or personal health with the infringing act;</p> <p>(7) Other circumstances that can be considered as serious.</p>		<p>(4) Committing infringement of intellectual property rights as a business, <u>such as by taking infringing acts as its principal business activity, or relying on infringement gain as its principal source of profit;</u></p> <p>(5) Making enormous profits from the infringement or causing <u>serious damage to the rights holder's goodwill, market share, etc. substantial damage to the right holder;</u></p> <p>(6) Endangering <u>or possibly endangering</u> national security, public interests or <u>the public interest</u> personal health with the infringing act;</p> <p>(7) Other circumstances that <u>should</u> can be considered as serious.</p>
<p>Article 5</p>	<p>When determining the amount of punitive damages, the people's court shall, in accordance with relevant laws, take the amount of the plaintiff's actual loss, the amount of the defendant's illegal gains or the benefits obtained due to the infringement as the calculation basis. Such basis does not include the reasonable expenses paid by the plaintiff to stop the infringement; Where the law provides otherwise, such provisions shall prevail.</p> <p>If the amount of actual loss, the amount of illegal gains or the benefits obtained due to the infringement as indicated in the preceding paragraph are all difficult to calculate, the people's court shall reasonably determine the calculation basis by reference to the multiple of the license fee for the right in</p>	<p>Article 8</p>	<p>When determining the amount of punitive damages, the people's court shall, in accordance with relevant laws, take the amount of the plaintiff's actual losses, the amount of the defendant's illegal gains or the benefits obtained due to the infringement as the calculation basis. <u>Calculation</u> Such basis does not include the reasonable expenses paid by the plaintiff to stop the infringement; Where the law provides otherwise, such provisions shall prevail.</p> <p>If the amount of actual loss, the amount of illegal gains or the benefits obtained due to the infringement as indicated in the preceding paragraph are all difficult to calculate, the people's court shall reasonably determine <u>the basis for calculating the amount of the punitive damages</u> the calculation basis by reference to the multiple of the license fee for the right in accordance with the law, and use the same as the basis for calculating the amount of the punitive damages.</p>

	<p>accordance with the law, and use the same as the basis for calculating the amount of the punitive damages.</p> <p>If the people's court, in accordance with the law, orders the defendant to provide account books and materials relating to the infringing conduct that are under its control, and the defendant refuses to provide without justifiable reasons or provides false books and materials, the people's court may determine the calculation basis for punitive damages by reference to the plaintiff's claims and evidence. Where the circumstances fall under Rule 111 of the Civil Procedure Law, legal liability shall be pursued in accordance with the law.</p>		<p><u>The statutory damages cannot serve as the basis for calculating the amount of punitive damages.</u></p> <p>Article 9 <u>Where the defendant's illegal gains or profits from infringement are used as the basis for calculating punitive damages, the basis may be determined by reference to the operating profits. Where the defendant engages in intellectual property infringement as a business, the basis may be determined by reference to the sales profits. Where the profit margin cannot be determined, the calculation may be made by reference to the average profit margin in the same industry during the same period published by statistical authorities or industry associations, etc., or the profit margin of the right holder.</u></p> <p>Article 10 <u>If the people's court, in accordance with the law, orders the defendant to provide account books and materials, etc., relating to the infringing act that are in the control of the defendant, but the defendant refuses to provide them without justifiable reasons or provides false books and materials, etc., the people's court may, in accordance with the law, determine the calculation basis for punitive damages based on by reference to the plaintiff's claims and evidences on file. Where the circumstances fall under Article 114 111 of the Civil Procedure Law, legal liability shall be pursued in accordance with the law. <u>Where the law provides otherwise, such provisions shall prevail.</u></u></p>
Article 6	<p>When determining the multiplier of punitive damages in accordance with the law, the people's court shall comprehensively consider factors such as the degree of the defendant's subjective fault and the seriousness of the infringing conduct.</p>	Article 11	<p><u>When determining the multiplier of punitive damages in accordance with the law, the people's court shall comprehensively consider factors such as the degree of the defendant's subjective fault and the seriousness of the infringement. The multiplier of punitive damages shall be determined within the statutory range and may not necessarily be an integer.</u></p>

	<p>Where, for the same infringing act, the defendant has already been subject to an administrative fine or a criminal fine that has been fully enforced, and the defendant claims reduction or exemption from liability for punitive damages, the people's court shall not uphold such claim; however, such circumstances may be taken into account when determining the multiplier as indicated in the preceding paragraph.</p>	Article 12	<p><u>The total amount of damages determined by the people's court through the application of punitive damages shall not exceed five times the calculation basis. Reasonable expenses paid by the right holder to stop the infringement shall be calculated separately from this total amount.</u></p>
		Article 13	<p>Where, for the same infringing act, the defendant has already been imposed to an administrative fine or a criminal fine that has been fully enforced, and the defendant claims reduction or exemption from punitive damages liability, the people's court shall take this not uphold such claim; however, such circumstances may be taken into account when determining the multiplier of punitive damages as indicated in the preceding paragraph.</p>
Article 7	<p>This interpretation shall come into force on March 3, 2021. Where relevant judicial interpretations previously issued by the Supreme People's Court are inconsistent with this interpretation, this interpretation shall prevail.</p>	Article 14	<p>This interpretation shall come into force on <u>May 1, 2026</u> March 3, 2021. Where relevant judicial interpretations previously issued by the Supreme People's Court are inconsistent with this interpretation, this interpretation shall prevail.</p>
		Postscript	<p><u>Upon the implementation of this interpretation, the "Interpretation of the Supreme People's Court on the Application of Punitive Damages in the Trial of Civil Cases over Intellectual Property Infringement" (Judicial Interpretation [2021]No.4) shall be repealed simultaneously.</u></p> <p><u>For cases where a final judgment has been rendered before the implementation of this interpretation, if a party applies for retrial or a retrial is ordered under the trial supervision procedure after the implementation of this interpretation, this interpretation shall not apply.</u></p>