

Interpretation of the Supreme People's Court on the Application of Punitive Damages in the Trial of Civil Disputes over Intellectual Property Infringement

- Preamble In order to lawfully punish serious infringements of intellectual property rights in accordance with the law and strictly implement the punitive damages system for intellectual property rights, this Interpretation is formulated in accordance with *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*, and other relevant legal provisions of the *People's Republic of China*, and in combination with judicial practice.
- Article 1 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 the case in accordance with the law.
- Article 2 Where the plaintiff claims punitive damages, the plaintiff shall specify the amount of damages, the method of calculation, and the facts and grounds on which the claim is based.
- Article 3 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, the claim shall not be supported.
- Article 4 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.
- Article 5 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.
- Article 6 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, the

status of the right as well as its reputation, and the relationship between the defendant and the plaintiff or the interested parties.

Where the defendant falls under any of the following circumstances, the people's court may 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:

- (1) where the defendant, even after being duly notified by the plaintiff or an interested party, continues the infringing conduct;
- (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, and knew or should have known of the infringed intellectual property rights;
- (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 based on the aforementioned relationship;
- (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 based on the aforementioned relationship;
- (5) where defendant engages in piracy, counterfeiting of registered trademarks or counterfeiting others' patents;
- (6) where the defendant, after reaching a settlement with the plaintiff and agreeing to cease the infringement, commits the same or similar infringing conduct again;
- (7) where the defendant conceals the actual controlling relationship by establishing affiliated companies, changing legal representatives or controlling shareholders, operating through nominee companies, or other means, or signing liability waivers in order to evade legal liability for infringing the intellectual property rights at issue;
- (8) Other circumstances that may be considered willful.

Article 7 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 awareness of and basic attitude towards the infringement.

Where the defendant falls under any of the following circumstances, the people's court shall determine that the circumstance is serious:

- (1) Committing the same or similar infringing act again after having been administratively punished or held legally liable by a court judgment for infringement;
- (2) Refusing to fulfill a preservation order without justifiable reason;
- (3) Forging, destroying or concealing evidence of infringement;
- (4) Committing infringement of intellectual property rights as a business, such as by taking infringing acts as its principal business activity, or relying on infringement gain as its principal source of profit;
- (5) Making enormous profits from the infringement or causing serious damage to the rights holder's goodwill, market share, etc.;
- (6) Endangering or possibly endangering national interests or the public interest with the infringing act;
- (7) Other circumstances that should be considered as serious.

Article 8 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. Calculation basis does not include the reasonable expenses paid by the plaintiff to stop the infringement; Where the law provides otherwise, such provisions shall prevail.

If the amount of actual loss, the amount of illegal gains or the benefits obtained due to the infringement are all difficult to calculate, the people's court shall reasonably determine the basis for calculating the amount of the punitive damages by reference to the license fee for the right in accordance with the law.

The statutory damages cannot serve as the basis for calculating the amount of punitive damages.

Article 9 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.

Article 10 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 the plaintiff's claims and evidences on file. Where the circumstances fall under Article 114 of the Civil Procedure Law, legal liability shall be pursued in accordance with the law. Where the law provides otherwise, such provisions shall prevail.

- Article 11 When determining the multiplier of punitive damages, 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.
- Article 12 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.
- Article 13 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, the people's court shall take this into account when determining the multiplier of punitive damages.
- Article 14 This interpretation shall come into force on May 1, 2026.
- Postscript 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.

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.

This is a reference translation prepared by Shangcheng.

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