

Courts Begin to Embrace Injunctions

By Peiming Yang and Eve Zhang

The use of interim injunctions is well developed in the common law system and helps to prevent the occurrence or aggravation of infringements and damages. However, in China no such guidelines were given until the *PRC Civil Procedure Law* (中华人民共和国民事诉讼法), after two modifications in 2007 and 2012, finally incorporated “injunction” rules on 1 January 2013. These serve to further protect parties’ litigation rights.

A Case Study

On 30 November 2012, Guangzhou Pharmaceutical filed a suit against JiaDuoBao Beverage (JDB) in the Guangzhou Intermediate People’s Court. The former claimed damages of Rmb10 million (US\$1.6 million) for false advertising and unfair competition as JDB advertised that Wong Lo Kat or “the nation’s leading red-canned herbal tea” had been “renamed as JiaDuoBao”. Guangzhou Pharmaceutical applied for an interim restraining order requesting JDB to stop using such slogans, and paid Rmb5 million as security for the application. Under the injunction rules mandated by Article 100 of the Civil Procedure Law, on 31 January 2013 the court ordered JDB to stop advertising using any slogans insinuating that Guangzhou Pharmaceutical’s Wong Lo Kat was the same product as JDB’s as the result of a name change.

Court Rulings

Article 100 of the Civil Procedure Law provides that, if enforcement of a judgment is likely to be difficult or a party is likely to suffer other damages due to the conduct of the opposing party, the court may, upon the party’s application, issue an order to preserve the opposing party’s property, either to carry out or prohibit a particular act. The court may also order such injunctive measures without the application of the parties when necessary. The court may also order the applicant to provide security for taking such measures and may dismiss the application upon failure to provide security. Once it accepts an application, the court must issue a ruling within 48 hours in urgent circumstances. Such injunction rulings shall be enforced immediately.

如果您需要本出版物的中文本，请与下列人员联系：

郭建良: (86 21) 3135 8756
Publication@llinkslaw.com

If you would like other Llinks publications, please contact:

Roy Guo: (86 21) 3135 8756
Publication@llinkslaw.com

Llinks Law Offices
www.llinkslaw.com

Courts Begin to Embrace Injunctions

The Process

Under Article 100 of the Civil Procedure Law, more subjects can be preserved. A party may apply for preservation of not only the opposing party's property (property preservation), but also his actions (injunction). The injunction rules can be divided into two categories: ordering the counterparty to carry out a certain act and restraining him from a particular act. Like for property preservation, the parties may apply for injunction rules to the court either before or during litigation or arbitration. If applied before, the party shall provide security. If applied during, the court shall decide. Once the court accepts the application, it will determine whether or not to issue the injunction in the form of an effective order.

Once an order is issued, the party must handle the opposing party's refusal to follow the court order and ensure the order is properly enforced. According to Article 111 of the Civil Procedure Law, if a litigation party refuses to enforce an effective court judgment or order, the court may impose a fine or detention according to the severity of the circumstances; and the party may be subject to criminal liability with suspicion of any crime. If the party is an entity, the penalty is placed on the primary individual in charge or the directly liable individuals of the entity.

However, the current compulsory measures against the counterparty may not be enough to protect the actual enforcement of an injunction order. We may also refer to Article 60 of the *Provisions on Several Issues Concerning the Enforcement Work of People's Courts (Trial Implementation)* (最高人民法院关于人民法院执行工作若干问题的规定(试行)), which states that if the party subject to enforcement refuses to perform the legally designated act, the court may compel the party to do so. As for substitutive acts performed by others, the court can engage the relevant entity or individual to perform the act in the party's stead, the cost of which shall be assumed by the party subject to enforcement.

Although the Civil Procedure Law's incorporation of the injunction rules is a huge improvement, the use of injunctions will continue to build on its legislation and enforcement to guarantee an effective and comprehensive protection of the rights of parties.

Courts Begin to Embrace Injunctions

Contact Details

If you would like to know more information about the subjects covered in this publication, please feel free to contact the following people or your usual Llinks contact.

Shanghai	
David Yu Tel: (86 21) 3135 8686 David.Yu@llinkslaw.com	Charles Qin Tel: (86 21) 3135 8668 Charles.Qin@llinkslaw.com
Ming Zhang Tel: (86 21) 3135 8777 Ming.Zhang@llinkslaw.com	Peiming Yang Tel: (86 21) 3135 8787 Peiming.Yang@llinkslaw.com
Beijing	
Charles Qin Tel: (86 10) 8519 2266 Charles.Qin@llinkslaw.com	

This article was first published in *China Law & Practice*, March/April 2014, Volume 28, Number 2.