



*December 2011*

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## **Business News**

### ***Retail***

#### **Coach places confidence in China**

U.S. handbag maker Coach Inc. was said it is on track to reach US\$300 million in sales in China by the end of this year and aims to reach US\$500 million in sales from China by 2014. Coach posted China sales of US\$185 million in 2010. Currently, it is pushing for China to become its No. 1 market by opening about 30 stores each year primarily in what are known as China's second- and third-tier cities or fast-growing urban areas.

#### **Tmall Raises Price**

Tmall, the largest internet retailer in Asia founded by Alibaba in 2003, has disclosed a new set of rules regarding the charge of annual technical service fees and security deposits. The new rules have been announced following threats of legal action and online rioting by around 7,000 store owners. The new fee rules will reduce the price increases by around 50%.

### ***Technology***

#### **Samsung Seeks Approval for a New Chip Factory in China**

Samsung Electronics is seeking government approval to set up a flash memory manufacturing plant in China to meet strong demand for smart phones and tablet computers. Samsung's move to set up a chip-manufacturing plant in China highlights the increasingly competitive nature of the capital-intensive memory-chip industry and also comes as China is expected to become the world's largest market for high-tech electronics, such as smart phones, tablet devices and even flat-screen TVs in a few years.

#### **China's R&D Investment Increases**

China has overtaken Japan to become the world's second biggest spender on industrial research and development (R&D), trailing only the United States, according to a report by the United Nations. Investment into R&D, driven by China's businesses, its

state-funded universities and foreign invested enterprises, easily outstripped money poured in by Germany, France and Britain, countries that were near the top of the list two decades ago. Chinese investment in R&D rose to 12.8 percent of the world total in 2009, up from just 2.2 percent in 1993. The report also showed sharp rises in the number of Chinese applications for patents and trademarks.

### **Lenovo to launch Internet TVs**

Chinese personal-computer maker Lenovo Group Ltd. said it would soon unveil a "smart TV" product called "LeTV" as well as a new cloud-computing strategy, as it competes with others to diversify and address growing demand for Internet-connected devices. Lenovo didn't provide details on the capabilities of "LeTV", but it comes as others have released smart TVs, which are expected to have computer-style features and could allow companies to directly sell movies, TV shows and other content.

### **Apple Gets Praise in China for Environment Protection Plans**

Apple Inc. has launched audits of 15 suppliers previously accused of polluting. And it had completed reviews of 11 of the suppliers. Apple said it will aim to promote more environmentally conscious manufacturing of printed circuit boards—a process that creates large amounts of waste water, and will take environmental issues into consideration when awarding contracts. Chinese environmental leaders offered cautious praise for Apple's attempts to meet their concerns, commending its efforts to increase scrutiny of suppliers.

### **China Outstrips U.S. in Smartphone Market**

China has overtaken the U.S. as the world's largest smartphone market. Deliveries of smart phones to operators and retailers in China grew 58% in the third quarter from the previous quarter to 24 million units. That surpassed 23 million units delivered to the

U.S. market, down 7% from the previous quarter. The surging Chinese demand was fuelled by aggressive subsidies offered by operators of expensive models such as Apple Inc.'s iPhone, as well as the growing availability of low-cost models running Google Inc.'s Android platform.

## ***Agriculture***

### **Rural poverty drops after 10-year drive**

A white paper issued by the State Council said nearly 27 million people remained below the poverty line in rural China at the end of last year after a decade of efforts to alleviate deprivation in the countryside. The figure is down from 94 million in 2000, as a result of government efforts to restructure rural economies, reform of agricultural taxation and subsidies, increased direct support for low-income families and the elderly, and the boosting of educational opportunities. Meanwhile, the paper highlighted that 20 million poor mainlanders also benefited from foreign aid provided through some 110 development projects.

### **Rural Areas Have Highest Consumer Confidence**

China's smaller cities and towns offer the greatest potential for retail growth, because of the country's urbanization process and rising incomes in rural areas. Consumers in the rural areas expressed the highest level of confidence, with a one-point increase in the third quarter, followed by citizens of Beijing and Shanghai.

## ***Resources***

### **China to Launch Invoice System for Rare Earths**

China currently produces more than 90 percent of the world's rare earth metals, but its rare earth reserves only account for about

one-third of the world's total. In order to further crack down on the illegal mining and over-exploration of rare earths, China will introduce a special value-added tax invoice for the rare earth sector soon.

## **Legal News**

### ***Competition***

#### **Conditional Clearance Offers Further Insight on MOFCOM's Concerns**

The Ministry of Commerce recently posted Notice 73 to its website announcing the clearance of a proposed concentration between Penelope Co Ltd and Savio Macchine Tessili SpA on certain conditions. In its preliminary investigation the ministry found the possibility that the concentration may eliminate or restrict competition in the market. Therefore, the ministry confirmed Alpha V, Penelope's wholly-owned controlling shareholder, must fulfill the following conditions for clearance: 1) transfer its equity in Uster to one or more independent third parties within six months; 2) inform the ministry of the identity of transferee, the transaction volumes and the trading date; 3) refrain from participating in or influencing Uster's business operations before the transfer; 4) appoint an independent supervising trustee to supervise the equity transferee.

#### **Drug Firms Face Monopoly Fines**

On June 6, Shuntong and Huaxin signed sole-agent agreements with two national providers of pro-methazine hydrochloride, a raw material used to make compound reserpine tablets. They stipulated that the two suppliers couldn't sell the substance to any other company without their permission. Four large domestic companies make these tablets, supplying about 75 percent of the market. When the four were unable to get the necessary raw materials, they were forced to turn to Shuntong and Huaxin. The National Development and Reform Commission (NDRC) said that the behaviors of the two companies forcing makers of the drug to buy higher-cost raw materials and telling the actual manufacturers what retail price to charge patients for the tablet constituted a monopolistic practice and

inflicted great harm on the medicine-pricing system. It is expected that the NDRC will impose large fines on both companies.

### **Unicom, Telecom Request Halt of Competition Probe**

The National Development and Reform Commission launched an investigation into China Telecom and China Unicom in early November over suspected monopolistic practices in the broadband access business. The probe is aimed at their pricing of internet-dedicated leased-line access services. Now the two companies have applied to end this investigation. In exchange, each company has pledged to substantially enhance broadband access speeds, expand optic-fiber access and further lower broadband costs for public internet access in the period through 2015.

### ***Intellectual Property***

#### **Court Decides that OEM Activities Do Not Constitute Trademark Infringement**

Upon receiving a complaint from Crocodile Garments Limited of Hong Kong based on its "CROCODILE" trademark registered in class 25 in China, Shanghai Customs detained 3,500 pairs of trousers marked with "CROCODILE" which had been made by Everton Wuxi International Trading Company Limited through the Customs port for export to Korea. Because Everton Wuxi was the OEM (original equipment manufacturer) of those trousers, Customs was not able to decide whether the detained goods infringed the trademark rights of Crocodile Garments. The Court finally ruled in favor of Everton Wuxi because the order was placed by a consignor in Korea whose authority was from Crocodile International Private Limited of Singapore which has registered "CROCODILE" in Korea, the use was in Korea, the OEM activities in China complied with the request of the consignor, the garment tags identified the consignor and all the OEM products were for

export to Korea. Crocodile Garments appealed, however, the appeal court has now confirmed the rule of the lower court. Many judges in higher courts and academics have criticized this decision, and emphasized that it should be limited to its set of facts – from time to time, interesting decisions of this nature appear in various cities in China, however a closer analysis of the facts often leads one to conclude that political factors or "good faith" or "fairness" principles have led to the conclusions and findings in the case. For further details as to the background to this case, please contact our office.

#### **Agreement on IP Co-operation with HK**

The State Intellectual Property Office (SIPO) and the Intellectual Property Department of the Hong Kong Special Administrative Region Government (IPD) signed their first agreement in Hong Kong to strengthen co-operation in the area of intellectual property. Areas of co-operation covered in the agreement include exchange of information on laws, publicity and education activities as well as automation services; provision of staff training by the SIPO upon the IPD's request; exchange of information and publications of both places; promoting the concepts and trends of intellectual property trading to facilitate the restructuring and upgrading of enterprises; and co-organizing exhibitions, seminars, technical exchanges and conferences.

#### **A New Trademark Law for 2012, perhaps**

The Legislative Affairs Office of the State Council ("LAOSC") published the second version of the draft third amendments to the Trademark Law on September 2, 2011. The draft law (which is very similar to previous draft) extends the scope of acceptable trademarks to single color and sound trademarks; allows multi-class and electronic applications; a major change in substantive examinations that the applicant will be entitled to submit a response to the Examiner's intended refusal within 30 days;

provides different opposition procedures in different situations; strengthens protection against hijacking applications; and higher statutory compensation limits. It is anticipated that this draft will become law in 2012.

### **Taiwan Trademark Act to Change Soon**

On May 31 2011 the Legislative Yuan passed an amendment to the Trademark Act. The amended act includes 111 articles, compared to the 94 articles in the existing Act and can be considered the first major revision of the Act since 2003. Since the amendment involves so many changes, the Taiwan Intellectual Property Office is planning to amend the corresponding legislation regarding the Act's enforcement rules, examination criteria, application forms and computer systems. Once all of these measures have been revised, the Executive Yuan is expected to announce the new Act in July 2012.

### **When Trade Secrets Are Stolen Overseas, Can the Thief Compete in the U.S.?**

In the case of *TianRui Group v. ITC*, Amsted Industries engaged Datong ABC Castings, a Chinese company, to make cast-steel railway car wheels using Amsted's secret process. To facilitate the process, Amsted trained several Datong employees at its U.S. facility. Amsted was later approached by TianRui Group, another Chinese manufacturer. TianRui sought to license the Amsted process, but failed. Then it hired nine employees of Datong, including some whom Amsted had trained in the U.S., had been informed by Datong of their obligation not to disclose Amsted's trade secrets, and eight of the nine had signed confidentiality agreements to protect those secrets. Notwithstanding these safeguards, TianRui soon started making train wheels using Amsted's secret process and exporting them to the U.S. in direct competition with Amsted. The Federal Circuit recently said the International Trade Commission may ban the import items made abroad using improperly

obtained trade secrets even if the trade secrets are no longer in use in the United States, despite the Supreme Court's refusal to apply U.S. law to protect U.S. patents from potentially infringing activity abroad.

### **Governance**

#### **New Rule on Bribery**

The Supreme People's Procuratorate and the Ministry of Public Security have issued the "Provisions (II) of the Supreme People's Procuratorate and the Ministry of Public Security on the Standards for Filing Criminal Cases under the Jurisdiction of the Public Security Organs for Investigation and Prosecution". It adds an Article 11-1 involve in the case of bribing foreign civil servants or international community organization officers. It provides that: "With regarding to bribing foreign civil servants or international community organization officer for obtaining improper commercial interests, it shall be filed for prosecution when personal bribe amount is above RMB10,000 or unit bribe amount is above RMB200,000".

#### **Australian Sentenced to 13 Years for Bribery**

A court in Guangzhou has jailed an Australian businessman for 13 years on bribery and embezzlement charges. China's media said the case against Matthew Ng, an executive working for travel services group Et-China in Guangdong province, relates to his role in Et-China's battle with a Guangzhou government-owned travel company for control of domestic travel agency GZL, one of the largest in southern China. Ng told the judge presiding over his case at the Guangzhou Intermediate People's Court that he had been sacrificed for a larger game. Ng is likely to appeal the sentence.

## **Corporate**

### **Taiwan Signs Investment Agreement with Japan**

Japan's Interchange Association and Taiwan's Association of East Asian Relations executed the Agreement between the Interchange Association and Association of East Asian Relations for the Mutual Cooperation on the Liberalization, Promotion and Protection of Investment. With regard to investment promotion, the agreement permits unfettered inward and outward remittances of the parties' funds, and there can be no mandatory ratio of local raw materials or quotas on local directors and managers. With regard to trade protection, under the agreement disputes between investors and the local government may be submitted to international arbitration. In relation to trade liberalization, the agreement includes national treatment and most-favored nation provisions under which investment from one party may enjoy treatment no less favorable than that afforded to local investors or to foreign investors by the other party.

### **New Implementation Guidance for Securities Lending Law Requires**

At the end of October, the China Securities Regulatory Commission issued *Trial Measures for the Regulation of Securities and Loan Lending*. It became effective at the same day. In accordance with the Trial Measures, securities financing companies may raise

funds through private borrowing or by publicly selling corporate bonds. Meanwhile, *Measures for the Administration of Margin Trading and Short Sale of Securities of Securities Companies* and *Guidelines for the Internal Control of Margin Trading and Short Sale of Securities of Securities Companies* were amended by the Securities Regulatory Commission and commencing operation on 26 October 2011 as well.

## **Taxation**

### **Hong Kong and France DTA in Effect**

The "Agreement between the Government of the Hong Kong Special Administrative Region and the Government of the French Republic for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital and the Prevention of Fiscal Evasion" was formally signed on 21 October 2010. The Agreement has become effective on 1 December 2011 and has effect in Hong Kong, according to paragraph 2 of Article 28 of the Agreement, for any year of assessment beginning on or after 1 April 2012.

*This update is aimed at keeping our clients informed of developments in Greater China. Whilst every care has been taken to ensure the accuracy of this update, it should not be relied upon before individual advice is obtained. The MMLC Group is an international legal and corporate advisory group.*

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