

WHAT CAN BRANDS EXPECT WHEN LITIGATING IN CHINA?

Many brands experience interference in China. This stretches from me-too products, through look-alikes and copycats, to straight counterfeits. When tackling look-alikes and copycats, litigation is an increasingly powerful tool. But what can you expect if you go to court in China?

KEY STATISTICS

Average statutory compensation in civil trade mark infringement cases (2006-2018)

| PLAINTIFF | CASES | WIN RATE | AVERAGE STATUTORY COMPENSATION | | PERCENTAGE AWARDED |
|-----------|--------|----------|--------------------------------|-----------|--------------------|
| | | | CLAIMED | AWARDED | |
| DOMESTIC | 10,345 | 94% | USD16,791 | USD3,916 | 23% |
| FOREIGN | 959 | 95% | USD45,470 | USD12,230 | 26% |

Hatty Cui, Head of Trade Marks at Rouse China:



"Many marks free riding on a brand's reputation are not identical. A well-rounded portfolio effectively supports enforcement. Brand owners should include in their portfolio defensive marks designed primarily for enforcement purposes. These can be used to tackle bad faith actors using similar marks to interfere with their brand."

Historically, litigation win rates were high but statutory compensation rates low. With the 2019 Trade Mark Law amendments the maximum statutory compensation is CNY5 million (USD700,000) and awards over CNY1 million (USD140,000) are now common."

CITIES WITH THE HIGHEST AVERAGE STATUTORY COMPENSATION AWARDS

