

the brief

TRUSTICS
RealTime Global Counsel

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The Trustiics Journey:

Waves of change

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About us



Trustiics.com is an online platform where international businesses and individuals such as expats can access direct, convenient and affordable legal services provided by well-trained English-speaking legal professionals from China.

We seek to improve, through the use of information technology and the Internet, the efficiency of the legal services market for the benefit of international SMEs doing business in China and elsewhere. We want to break down geographic, linguistic and financial barriers for businesses looking for top-notch legal counsel.

Our Best Wishes

Under the impact of COVID-19, the world is practising “social distancing,” but people are still choosing to stay connected and to support each other in different ways. We wish everyone around the globe good health and wellbeing!

Free Webinar

Join us on March 26 at 9:00 – 10:30 am EDT to hear first-hand from some of the top legal and tax experts from mainland China and Hong Kong on critical legal issues and impacts faced by many international businesses in China because of COVID-19.

Whether you have concerns related to preventing and solving contractual disputes, are struggling with your future corporate strategy in China or are curious about the tax break/incentives that the Chinese government has made available for businesses to apply for, we encourage you to tune in.



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**FREE
WEBINAR**

**COVID-19: Impacts on Business
in China & Key Legal Issues for
Canadian Companies to Consider**



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The Trustiics Journey:

Waves of change



Wiley Wu, Chief Software Architect & Co-founder


Especially in times such as these, we are thankful for instantaneous communications, ready access to research, and global efforts at reducing harm and increasing the good. We are all acutely aware of how the Internet has revolutionized communications and collaborative efforts across oceans and across cultures.

Today's youth perhaps take for granted the technological tools at their disposal; almost as all-pervasive as the air they breathe, the digital environment into which they were born is their natural medium. However, those of us who grew up alongside, rather than after, the advent of the Internet may remember that it came in waves – some gradual, some more sudden and forceful. And the ripple effects continue, pushing ever outwards towards greater innovation and influence. We now use the Internet not merely for communications and collaboration, but also for all manner of e-commerce transactions, and for the provision of services in health care, education and a multitude of other fields. Tomorrow's applications remain to be seen. The Trustiics journey has both mirrored the Internet's voyage and, we hope, is helping to advance it.

After high school I was fortunate enough to be accepted into my dream program of Computer Software Engineering at an outstanding Chinese university. Upon graduation I worked as a software engineer, devoting myself to my passion for coding and to the satisfying accomplishment of creating line upon line of code! Gradually I became involved in the

new challenges of software architecture, expanding my understanding of software systems. Seeing beyond the code to the communication and cooperation among modules, systems and platforms, I also began to consider the relationships among systems, function, personnel, and cost.

My sea change in perspective happened about a decade ago, in the recognition that software systems exist in order to enable and improve products, products that meet real people's needs, enriching their private and corporate lives – products such as Google, LinkedIn, Facebook and WeChat. By 2019 I had co-founded two start-ups: a mobile internet company and a big data analysis company. Responsible for the technology side of both these companies, I was seeing my early labours in coding come to fruition in useful products for the real world. During this period I had met up again with my old high school friend Tianpeng Wang, who by this time had become a partner at one of Beijing's top law firms and had gained significant expertise and recognition in his field of private

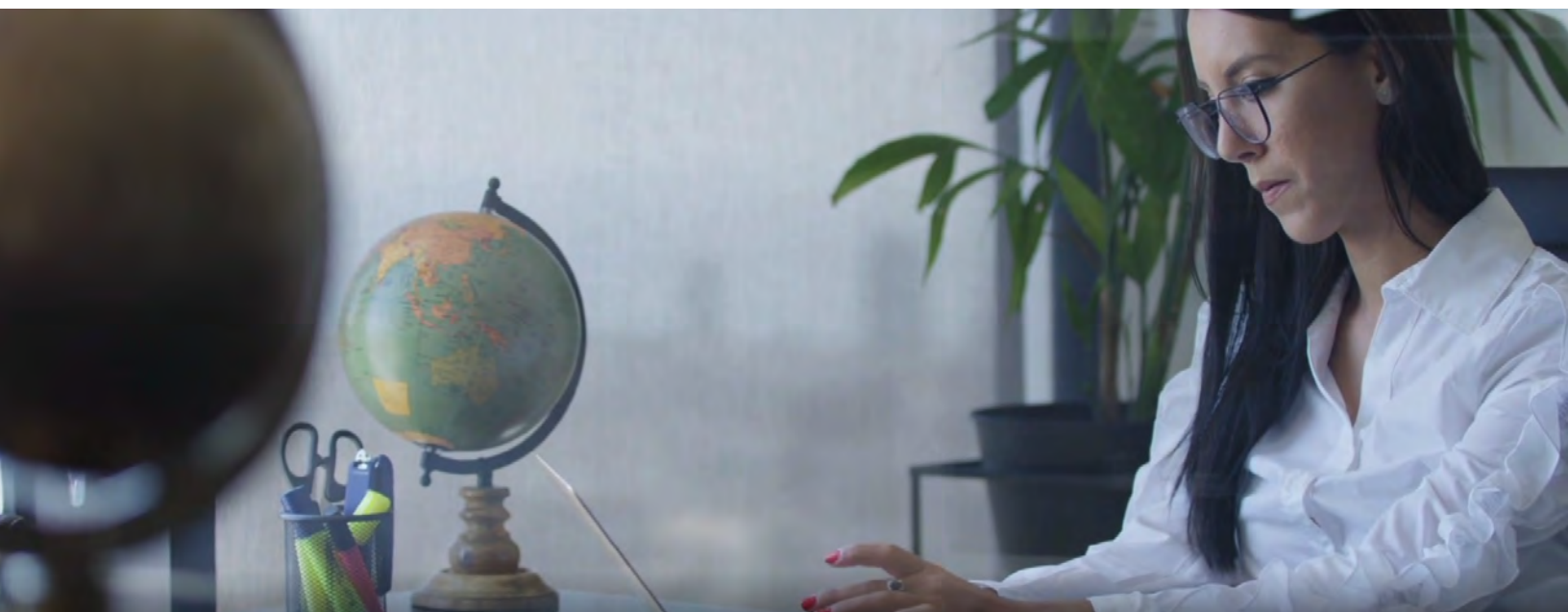


The Trustiics journey has both mirrored the Internet's voyage and, we hope, is helping to advance it.

equity and venture capital investments. Tianpeng offered his professional expertise as my new company was fundraising, and his assistance was invaluable.

Tianpeng's vision for Trustiics, which he shared with me last year, compelled me from the start. The product concept fills a market need, now more than ever: to provide international SMEs with high-quality English-language legal services in a foreign jurisdiction. Asked to co-found this venture, I readily agreed.

Interested in history and philosophy, I have always been keen to learn from the wisdom of the past and carry it into the present and future. There is a Chinese proverb which says, "The wise predict the trend, and the well-prepared seize the momentum." Ingenuity has always been one of my key principles as a software engineer, and it is a requirement for our development team at Trustiics. Trustiics may have been born in 2020, but it is the result of years of formative influences, and it will continue to grow alongside technological innovations and the needs of our users.



Featured Counsel

Counsel registered on Trustiics are among the best English-speaking lawyers and legal translators in China. They have worked at the most reputable legal service firms and legal departments in China and around the world. In each issue of *The Brief*, we will present one legal expert as our “Featured Counsel.”

Mr. Hong Zheng, Partner of Tee & Howe in Beijing; Registered Counsel and Member of the Quality Assurance Panel on Trustiics

Hong is a China qualified lawyer specializing in intellectual property law. He is a legal expert in IPR with 18 years of experience, and ranked as a “Top 10 Trademark Lawyer in China” in 2019. He has extensive experience in advising international businesses on protecting their IPRs in China, including guiding clients in all administrative and judicial processes as well as through prosecutions and enforcement. Hong started his career as an IP lawyer in the leading law firm King & Wood Mallesons in 2003, joined Tee & Howe Intellectual Property Attorneys in 2007, and has since been practising at Tee & Howe in Beijing.



Hong’s areas of practice cover counseling on trademark, domain name, copyright, unfair competition law and patent infringement, including advising on securing and defending IP rights; taking legal actions against bad-faith applications, counterfeits and infringing acts; negotiating for

acquisition of trademarks; and handling UDRP actions. Hong is particularly experienced in the areas of trademark enforcement and litigations and has been representing many well-known brand owners and MNCs such as Deere & Company, Google, Sika AG, Lenovo, and Baidu in developing their branding strategy and protecting their IPRs in China.

Hong has represented many leading companies in over 170 civil and administrative litigations in China, some of which were widely recognized as landmark cases in the IP field. The latest notable cases were 29 AmCham trademark series disputes between the American Chamber of Commerce in Beijing (AmCham) and The American Club, in which Hong acted for AmCham and successfully secured all its AmCham trademarks. In view of the great importance of AmCham trademarks, The Embassy of the United States of America in Beijing expressed significant concerns over the disputes and delivered a letter to the Beijing High People's Court. The case series attracted wide attention in the IP circle, for which Hong published an article elaborating on the application of Article 44 of PRC Trademark Law (*China Intellectual Property News* October 19, 2018).



Expert Insight

An Overview of Trademark Protection in China

By Hong Zheng, Partner of Tee & Howe in Beijing

China has boasted the world's largest number of trademark applications for 17 consecutive years. Statistically, annual trademark filings in China have exceeded seven million and the total valid trademark registrations are up to approximately 24.8 million to date. While business entities are attaching increasing importance to IPR protections in China, many of them have also encountered a bothersome issue — bad-faith filings. Fortunately, the Chinese government has been stepping up its efforts to combat bad-faith filings. I started my IP law career in 2004, focusing on trademark prosecutions and enforcement, and I would like to share with you the basic know-how on trademark protection in China.

1. First-to-file principle

As China uses the first-to-file instead of the first-to-use principle in trademark protection, one can never overemphasize how important it is to file your trademark applications as early as possible to obtain earlier filing dates. If you encounter prior bad-faith filings, you may have to spend considerable time and financial resources removing prior obstacles. As an 18-year veteran, I have handled numerous cases in which clients would not follow our advice to file earlier, and then had to spend a lot of money getting their trademarks back in the end. Comparatively early filing is the cheapest way to get your brands protected in China.

2. Process of trademark registrations

Trademark filing normally takes around 1-2 months from the filing date for the China National IP Administration (CNIPA) to conduct formal examinations and issue a Notification of Acceptance, and then another 5-6 months to make a substantive examination. If no prior identical/similar marks are cited, the application will be published for three months and then mature into registration if no opposition is filed during that period. That is to say, it takes approximately one year from filing to registration, assuming no official actions occur.

However, if the trademark application is refused due to prior citations, you may file an appeal with CNIPA, which will take around nine months. If the CNIPA decision is not in your favour, you may file administrative lawsuits: with Beijing IP Court for the first instance lawsuit, and up to an appeal with the Beijing High People's Court for final judgment. At the same time, you can take actions to remove the citations, such as filing non-use cancellations against the citations, negotiating with the owners of the citations to obtain Letter of Consent (LOCs), etc. The whole process takes around two to three years.



3. Actions against bad-faith filings

If you encounter bad-faith filings, the following actions might be your options:

4. Oppositions/invalidation actions

You may file oppositions against the bad-faith filings when they are published or file invalidation requests if the marks have already been granted registrations. If your trademarks have been extensively used in China or you had contact with the applicants of the bad-faith filings through business or other circumstances prior to the filing dates of the bad-faith applications, your chance of success for the oppositions or invalidations would be promising. Please always bear in mind that the invalidation requests should be filed within five years of the registration dates of the bad-faith registrations; otherwise, you cannot defeat the bad-faith applications or registrations unless you can prove

that your prior marks have been so extensively used in China that they shall be protected as well-known trademarks and the registrants had bad faith in seeking the registrations as well. Such proof, in actual practice, is extremely difficult to obtain.

5. Negotiate to get the bad-faith filings back

If you have never used your trademarks nor had any ties with the applicants of the bad-faith applications prior to their filing dates, you may have to negotiate with the trademark squatters to purchase your trademarks back.

Strategically, we approach and negotiate with the owners of bad-faith filings without disclosing the identities of our clients, in order to minimize assignment fees. If the prices are acceptable to our clients, we will have the trademarks assigned to some unknown entities prior to having them re-assigned to our clients.

6. How to have your registered trademarks enforced

Trademark rights in China are enforceable either by administrative means or by judicial means. “Administrative means” implies that administrative authorities, mainly MSAs (Market Supervision Administrations), at the petition of trademark owners, investigate and even raid infringers’ premises to stop their infringing acts by seizing the relevant goods. As a peculiar means in China, it is commonly adopted by many international brands to have their trademark rights efficiently and effectively protected. “Judicial means” refers to lawsuit proceedings before competent courts.

The advantages of administrative means include: 1) high efficiency. It generally takes a couple of weeks for administrative authorities to accept, inspect and conclude complaints from trademark owners, and some administrative

officers can even take raid action against infringers immediately or within a couple of days of receipt of petitions; 2) cost savings. Compared with administrative means, filing a civil lawsuit is much more costly.

Normally, if a trademark owner simply wishes to stop infringement, administrative means are highly recommended. However, if the trademark owner wishes to pursue damages, litigation will be advisable since no compensation can be obtained via administrative means; the administrative authorities just impose fines and other penalties on infringers. Certainly the trademark owner can file administrative petitions first to stop infringing acts immediately and then opt to file a civil lawsuit to claim damages.

7. Guard against non-use cancellations

If your trademark has been granted registrations for three

years, it will become vulnerable to non-use cancellations. Non-use cancellation cases have increased drastically in recent years, partly from later applicants removing registrations blocking their applications, and partly from competitors knocking down other registrations to gain a more competitive edge. You should always have use evidence such as business contracts, invoices, delivery orders and bills of lading properly preserved to protect your marks from attacks of non-use cancellations.

8. Judicial systems independent from Hong Kong, Macau and Taiwan

Even if you have trademark registrations in Hong Kong, Macau and Taiwan, it is still essential for you to file and register your trademarks in Mainland China, which uses independent judicial systems distinct from those in the above-mentioned areas.

It should also be mentioned that evidence in Hong Kong, Macau and Taiwan mostly will not be used by trademark authorities or courts in Mainland China except in some peculiar cases in which the applicants experienced sheer bad-faith acts.

This article simply functions as a very brief introduction to basic trademark systems in China, and trademark protection strategies vary greatly from case to case. If you have any specific issues or questions, please feel free to submit your requests on Trustiics or drop me an email at zhenghong@teehowe.com.

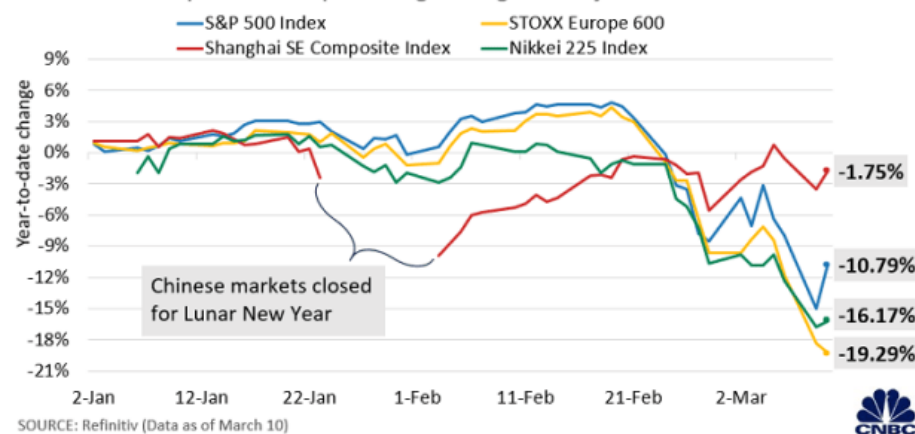
Market News

COVID-19 impacts on world economy

As we enter another week of the coronavirus outbreak, many of us are uncertain about what the future will hold. Every day brings forth new challenges, forcing governments, corporations and of course citizens to adapt to the rapidly changing situation. The uncertainty and unprecedented nature of the outbreak are causing markets to fluctuate, and the virus pandemic is becoming one of the biggest threats to financial markets and the global economy.

Sell off in stock markets

Chart shows the year-to-date percentage changes in major stock indexes



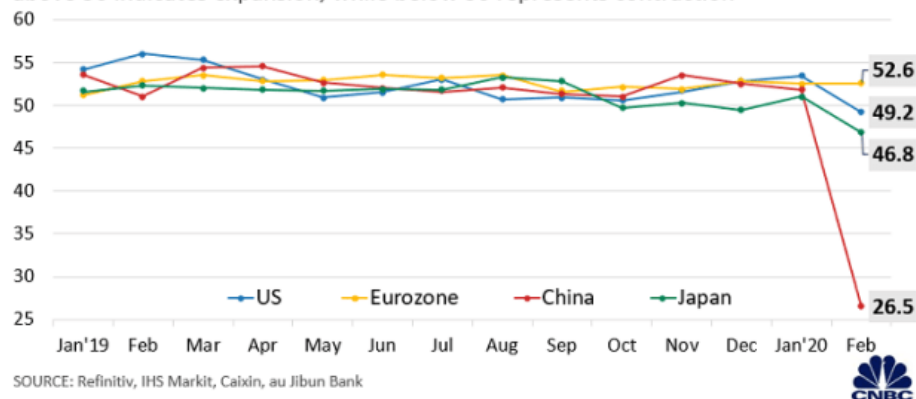
(Source: CNBC, March 11, 2020)

Many banks and institutions have cut their forecasts and interest rates, and a number of industries have requested financial aid to help them through the crisis. As the outbreak continues to threaten our health and wellbeing, many countries are taking preventative measures to increase protection and safety. From domestic shutdown of public spaces to the

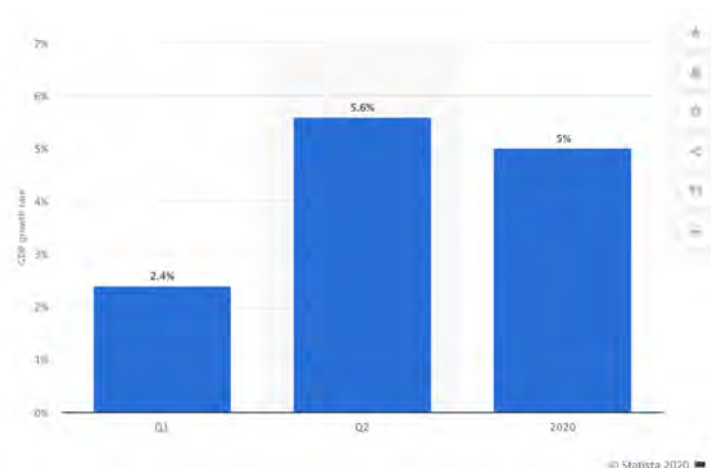
closing of borders, containment measures around the world are disrupting business and contributing to a global economic slowdown.

Services activity in major economies

The Purchasing Managers' Index (PMI) is an indicator of economic activity. A reading above 50 indicates expansion, while below 50 represents contraction



China was the first country to be affected by the virus, and while it was quick to implement measures to contain it, significant damage has been done. Automobile sales sank a record 80% in February, and exports dropped by 17.2% in January and February. As the world's second-largest economy and the global leader in manufacturing, disruptions to Chinese operations will have long-lasting effects that will be felt around the world. Economists are forecasting that China's economic growth could reach its lowest point since 1990, with GDP dropping as low as 2.4% in Q1 and 5% for the whole year.



Your Free Template

In this issue we are providing a consulting agreement template for the reference of our registered users.

This consulting agreement is in a simple form and is intended to be used between affiliated companies, with the subsidiary in China providing consulting services to its parent company overseas. If you intend to use this agreement in a different situation where the parties are not affiliates, certain clauses need to be adjusted and added. For example, in a typical situation between non-related parties, a well-drafted confidentiality clause should be included, the scope of service should be described in detail and the payment mechanism is usually in a more complicated structure.



Please note that this document is for your reference only and you should always consult an experienced lawyer, and possibly a tax advisor in relation to calculation of service fees, before you sign this type of agreement. In addition, you are advised to have a professional review the consistency if you need to sign the agreement in two languages because legal translation is a very special type of translation, requiring years of training and practice.



Click here to download the free consulting agreement template

Contact information

If you have any questions or comments, please send email to the attention of the following people:

Customer support:

support@trustiics.com

Marketing:

troy@trustiics.com

China Market:

ines@trustiics.com

Counsel Relationship:

sarine@trustiics.com

General:

tianpeng@trustiics.com

ADDRESS:

Suite 401, 2211 Riverside Drive,
Ottawa ON K1H 7X5, Canada

OFFICE LANDLINE:

+1 613 366 1677

