Can a US Enforcement Judgement against Chinese Infringers be applied in China?

Research and Analysis: China’s Laws and Regulations on the Execution of Foreign Judgement

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The Research Background and Legal Issues

The development of e-commerce has made it even more convenient for Chinese companies and individuals to sell their products not only to the domestic market but globally. The launch of ALIEXPRESS, the dedicated global platform belonging to Alibaba Group has not only opened a new market for Chinese sellers but exposed them to facing serious intellectual property infringement investigation from abroad.

If the holder of the intellectual property rights in the United States files a lawsuit against infringers from China in American courts, and then obtain favorable judgment the question I will address in the following article is: Will the Chinese courts execute the judgment or not?

Answer in Brief

From my research and further outlined below the brief answer is: The People’s Court of China will probably not execute the judgment made by American courts and the people’s court will reject the application due to the lack of reciprocity requirement.

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Civil Procedure Law of the People’s Republic of China

Article 281: Where an effective judgment or ruling of a foreign court requires recognition and enforcement by a people’s court of the People’s Republic of China, a party may apply directly to the intermediate people’s court of the People’s Republic of China having jurisdiction for recognition and enforcement or apply to the foreign court for the foreign court to request recognition and enforcement by the people’s court in accordance with the provisions of an international treaty concluded or acceded to by the People’s Republic of China or under the principle of reciprocity. If the judgment or ruling violates the basic principles of the laws of the People’s Republic of China and the sovereignty, security and public interest of the People’s Republic of China, the people’s court shall not grant recognition and enforcement.

2015 Interpretation of the Supreme People’s Court on the Application of the Civil Procedure Law of the People’s Republic of China

Article 543: Where the applicant applies to the people’s court for recognition and enforcement of an effective judgment or ruling of a foreign court, the applicant shall submit a written application, to which the original or the certified error-free duplicate and Chinese translation of the effective judgment or ruling of the foreign court shall be affixed. Where an international treaty concluded or acceded to by the People’s Republic of China has otherwise provided for the submission documents, the relevant provisions shall apply.

Article 544: Where a party applies to an intermediate people’s court of the People’s Republic of China having jurisdiction for recognition and enforcement of an effective judgment or ruling of a foreign court, the home country of the foreign court has neither concluded or jointly acceded to an international treaty nor has a relationship of reciprocity with the

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People's Republic of China, the court shall rule to dismiss the application, unless the party applies to the people's court for recognizing an effective divorce judgment rendered by a foreign court.

If the application for recognition and enforcement is dismissed, the party may institute an action in a people's court.

Article 549: Where a court of a country, which has neither concluded a judicial assistance convention nor has the relationship of reciprocity with the People's Republic of China, directly requests the people's court to provide judicial assistance without resorting to diplomatic channel, the people's court shall reject the application and state the reasons.

The Conditions for Enforcement of Foreign Judgement

The conditions for China courts’ enforcement of foreign court’s judgment are:

1. The judgment shall be an effective judgment or ruling of a foreign court.
2. The party applies to an intermediate people’s court of the People's Republic of China having jurisdiction for recognition and enforcement;
3. The court of the country has either concluded a judicial assistance convention or has the relationship of reciprocity with the People's Republic of China;
4. The judgment or ruling does not violate the basic principles of the laws of the People's Republic of China and the sovereignty, security and public interest of the People's Republic of China.

Where a court of a country, which has neither concluded a judicial assistance convention nor has the relationship of reciprocity with the People's Republic of China, directly requests the people's court to provide judicial assistance, the people's court shall reject the application and state the reasons. Under this condition, the party may file a new litigation in the corresponding level of court in China, and after making a judgment by the court, the new judgment can be executed.

The Judicial Assistance between China and America

So far, China has not participated in the international treaty in the execution of a foreign court judgment or rulings with USA. Although there is a bilateral legal agreement on criminal between China and the United States, according to the China Justice Department’s official websites, there is no bilateral judicial assistance agreement on civil and commercial aspects between China and the United States. Therefore, the relationship of reciprocity between the United States and China should be taken into consideration. If the relationship of reciprocity exists, the judgment made by the United States courts can be directly executed by China courts. If the relationship of reciprocity doesn’t exist, the people's court shall reject the application.

There is only one case between China and the United States that executed the opponent’s judgment (San Lian company case, Hubei China). The district court of California executed the judgment made by the high court of Hubei Province. Before this case, there is no preceding case similar, meaning the relationship of reciprocity did not exist. After this case, the question was therefore asked; does the relationship of reciprocity exist?

Chinese scholars and lawyers agreed that: this case is a special one, and this case is hard to set as a precedent to establish a mutual relationship of reciprocity between China and the United States. Some American Professors don’t think this case will become a landmark case about executing China courts judgment in the American, but as a special case where the judge punished the defendant on “breach of promise”, seen as making the judgment only out of sympathy for the weak, and avoiding unfair conditions.

Conclusion

In conclusion, due to China and the United States not participating in the international treaty or regional treaties regarding this matter, and there is neither a bilateral judicial assistance agreement on civil and commercial aspects, nor a relationship of reciprocity between China and the United States. Therefore, the China courts will not execute the judgment and the people’s court shall reject the application. The party may file a new litigation in the corresponding level of court in China, and after making a judgment by the court, the new judgment can be executed.

Furthermore, consideration of the protection scope of the registered trademark limited by territory needs to be taken into consideration. If the judgment made by American courts is based on the trademark right in the United States, and if a party filing a new litigation in China, the litigation and judgment cannot be based on the trademark right in the United States, but based on the trademark right in China.

In addition, China has joined the New York Convention on recognition and enforcement of foreign arbitral awards. Many of the civil and commercial disputes between Chinese and foreign choose arbitration, as the arbitral decision can obtain recognition and enforcement in China. Therefore, in practice, the vast majority of trade disputes are resolved by arbitration rather than litigation.

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