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Dear readers,

October started with a week of celebrations for the 75th anniversary of People's Republic of China and a new GossIP number!

You might have heard that recently Fabbri entered the very exclusive "club" of foreign companies having a famous packaging that enjoy a "certain (high) reputation" in China.

Read how HFG managed to win the litigation and helped Fabbri to gain the recognition.

The second article deal with the important agreement on Geographical Indication finally signed, after 8 years, between Europe and China. The agreement will ensure a protection of 100 EU geographical indications in China, and 100 China GI's in Europe.

Loads of data-based information products have fully integrated in our daily life, and a law that can manage and supervision the data security and protection is required. In July 2020 the Draft of the Data Security Law has been published, putting forwards clear requirements for the security.

The last article is about all you must know on prepackaged food labeling standards. There are some interesting news regarding definitions, nutrition value and labeling contents, that contribute to make this Draft for comments a more precise and stricter list of rules for the national food safety.

Enjoy the reading! Stay warm and safe!

Fabio Giacoppello

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## BUSINESS

### Fabbri's Packaging recognized "famous" in China



With decision issued on July 29 2020 and notified to the parties on August 11 2020 Shanghai Yangpu District People's Court (herein refer to as the Court) has recognized Fabbri's packaging -bearing the famous blue-and-white "faentino" decoration- as enjoying high reputation to the extent of art. 6.1 of Anti-Unfair Competition Law ("AUCL").

In November 2019 Fabbri (Shanghai) Food Trading Co., Ltd. (herein referred to as Fabbri Shanghai) has initiated a civil litigation against Yi Pai Chocolate (Tianjin) Co., Ltd. (herein refer to as Yipai) and Beijing Jin Mai Xing Long Food Co., Ltd. (herein referred to as Jinmai) claiming the violation of the art. 6.1 of Anti-Unfair Competition Law due to a slavish imitation of its famous packaging.

The Italian century-old Fabbri brand has set up a company in Shanghai in the year 2009 and since then has constantly developed the Chinese market.

In the year 2019, Fabbri Shanghai sued Yipai and Jinmai for use of packaging with decorative features with a "blue-and-white theme" which are confusingly similar to those used in the Fabbri's packaging.

The case at issue relates to the packaging of certain Fabbri products such as ice cream preparations.

Herein a photo of the original Fabbri packaging where the distinctive faentino decoration has been applied to the side of the packaging.



The photo herein on the contrary shows the use done by Yipai of the similar unregistered decoration.



Reading the Court decision, we found that the judges approached the decision through a three steps reasoning.

#### ① Is Fabbri Shanghai's product packaging enjoying certain influence in the Chinese market?

The court held that, due to Fabbri Shanghai's long-term and extensive promotion as well as a large number of marketing and selling activities, Fabbri packaging enjoys certain influence.

#### ② Is Yipai product packaging similar to Fabbri Shanghai's product packaging?

The court held that based on overall visual effects, Yipai product packaging is similar to Fabbri Shanghai's product packaging.

#### ③ Would there be confusion among the relevant public?

The court held that relevant public might confusingly believe that there are connections between the defendants and Fabbri Shanghai due to the similarity of both parties' product packaging.

#### ✓ Comments

It is worth mentioning that a typical bottle neck in such kind of cases is the difficulty to obtain the recognition by the Court that the packaging is largely known to consumers.

Under the previous legislation (in force until 2017) it was required that the object of protection was "famous". Under the current AUCL the word "famous" has been substituted with the sentence "enjoy certain (high) reputation".

To prove such high reputation, it is necessary to provide the court with a large amount of evidence of use. Therefore, in such kind of cases the plaintiff has to contribute with a massive work of evidence collection starting from the time in which the company entered the market and with special focus on the last 3-5 years.

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Overall, we wish also to comment that cases decided by Chinese Courts under art. 6.1 of Anti-Unfair Competition Law due to a slavish imitation of unregistered product/ packaging shape or passing off are rare and even more rare are cases in which foreign companies are awarded with such kind of protection.

We might be not-perfectly exhaustive due to certain characteristics of the publication system of the Court decisions, but we are only aware of the following prior cases involving foreign companies:

- ✓ Ferrero Rocher (2006),
- ✓ L'Occitane (2019),
- ✓ Crocs (2013),
- ✓ Foreo (2019)
- ✓ Lego Friends (2017),
- ✓ Ferrero Kinder Joy (2019).



A very exclusive club in which a Shanghai Court - with a fair and clever judgement - has welcomed Fabbri Faentino decoration in the Covid summer of 2020.

HFG Law Firm represented Fabbri in the case.

**Fabio Giacopello and Summer Xia**  
**HFG Law&Intellectual Property**



## NEWS

### 100-100 GI Agreement China – EU: finally official!



On 20 July 2020, the EU Council adopted an agreement on Geographical Indications (GIs), namely the “*Agreement between the European Union and the Government of the People’s Republic of China on cooperation on, and protection of, Geographical Indications*”.

This agreement, which took eight years to be negotiated, is the first comprehensive and significant bilateral agreement signed between the EU and China in this field.

The agreement is of milestone significance for economic and trade cooperation between China and the EU. It will ensure that 100 EU GIs, such as Asiago, Prosciutto di Parma, and Soave, are protected in China, and 100 China GIs, such as Anji White Tea, Pixian Bean Paste and Yantai Apple, are protected in the EU (for a full list please refer to List of Geographical Indications).



Further, the scope of protection will expand from 100 GIs to 275 GIs from each side after the agreement comes to force for four years. The agreement also has a mechanism which allows expansion of protectable GIs<sup>i</sup>. European Commission Trade Commissioner Phil Hogan said that the agreement is a double win<sup>ii</sup>.

**It will help strengthen trade relations between Europe and China, benefit the agriculture and food industries as well as consumers on both sides.**

The signature of the agreement has significant meanings.

First, the agreement shows that China-EU economic and trade relations have entered a stage of high-quality development. Both the EU and China have a long history of food culture with enriched agriculture industries and high-quality GIs.

For a long time, the scale of trade in agriculture and agricultural products between the EU and China is increasing steadily and quickly. The signature of the GIs agreement will bring more trading opportunities.

The agreement shows a win-win spirit in bilateral trade relations.

Second, the agreement will benefit consumers by guaranteeing the origin, quality and authenticity of the product. GIs indicate goods that originated or produced in special areas and with certain conditions, such as special temperature, humidity, soil and so on. Thus, the goods produced there can have a special quality.

For example, only whiskeys that distilled and matured in Ireland can be labelled as “*Irish Whiskey*” and sold to China.

Further, according to this agreement “*Once a geographical indication is protected under this Agreement, the products covered by that geographical indication may bear the official symbols of the geographical indication of the other Party in the territory of that Party*”<sup>iii</sup>. Symbols of GIs, especially from local authorities, help consumers to quickly identify high quality goods.

**Third, the agreement shows that China has made positive progress in intellectual property rights protection. In China, GIs are mainly protected as certification and collective marks by the “China National Intellectual Property Administration” (“CNIPA”). This is a widely used form of protection in many countries.**

There are also two other ways for GIs registration namely through the General Administration of Quality Supervision, Inspection and Quarantine of the People’s Republic of China or the Ministry of Agriculture.

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However, after the agreement comes to force, GIs trademarks protected by this agreement can be protected under its identical or similar designated goods, even without registering in any of the above three regulatory bodies<sup>iv</sup>.

In sum, the Agreement demonstrates the efforts made by both China and the EU to protect GIs and promote trade between the two sides.

It is foreseeable that the signing of the Agreement will provide stronger protection for GIs by both the CNIPA and the EU IP Offices and courts.

The Agreement is expected to enter into force by the end of 2020, we look forward to the implementation of it.



**Summer Xia**  
**HFG Law&Intellectual Property**

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<sup>i</sup>. Agreement between the European Union and the Government of the People's Republic of China on cooperation on, and protection of, geographical indications, Article 3 and Article 10 (3).

<sup>ii</sup>. [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_19\\_6200](https://ec.europa.eu/commission/presscorner/detail/en/IP_19_6200)

<sup>iii</sup>. Agreement between the European Union and the Government of the People's Republic of China on cooperation on, and protection of, geographical indications, Article 5.2.

<sup>iv</sup>. Agreement between the European Union and the Government of the People's Republic of China on cooperation on, and protection of, geographical indications, Article 5.3 and Article 6.

## TECHNOLOGY

### Big step of data - the draft of Data Security Law



Digital payments, face recognition, search engines, all kinds of APP, 4G / 5G communication networks and a series of data-based information products have fully integrated in our daily life.

While we are enjoying the convenience brought by information technology, the we also shall think to the risks of data leakage, illegal acquisition and utilization of personal information, and intrusion of cyberspace information are also facing great challenges.

In July 2020, "Draft of the Data Security Law" (the "Draft") was published and publicly solicited for opinions. For the first time, the Draft limits the object of regulation to "data" and defines it as "any record of information in electronic or non-electronic form", instead of using words such as "information" or "network", which clearly defines the boundary of "data".

We summarized the following points which we believe are interesting to our readers.

#### Management & Supervision of Data Security

Firstly, the Draft defines the top-level design of data security governance in China, and the central national security leading organization is responsible for the decision-making and overall coordination of data security work (Article 6).

Secondly, the Draft stipulates the main responsibility of all regions and departments, which is not only responsible for data security, but also runs through the whole process of data generation and processing.

Meanwhile, the regulatory responsibilities of the industry competent departments and public security (National Security) for data security in their respective fields are clarified, and the national network and information department is responsible for the overall coordination of data security (Article 7).

#### Data classification and protection system

The Draft clearly defines the importance and harm degree of data in economic and social development, and implements classified protection of data at different levels.

At the same time, it is required that all regions and departments shall determine their own important data protection catalogue and focus on the protection of the data listed in the catalog. It can be seen from this provision that the definition and scope of important data shall be subject to the data protection catalogue issued by each region or department.

However, the Draft does not clearly specify the levels and classification of data, and what kind of protection should be adopted for different levels or categories.

Therefore, we hope that the Draft or subsequent relevant explanations can provide more specific contents (Article 19).

#### Risk Assessment of Data security

The Draft clearly indicates that the state should establish high-quality data security risk assessment, reporting, information sharing and other mechanisms.

For important data processors, they should regularly carry out risk assessment on data activities and make reports. The report should include the type, quantity, collection, storage, processing and use of data etc (Article 28).

#### Agent Service of Data Transaction

The Draft for the first time makes it clear that the agent service institutions engaged in data transaction shall require the data provider to explain the data source, examine the identity of both Parties to the transaction, and keep the transaction records.

This article is more inclined to the formal review of the data provided, only requires the description of the data source, not the legality of the data.

Secondly, if the agent fails to fulfill the above obligations, resulting in data transaction from illegal sources, the maximum penalty is RMB 1 million (Article 30 and 43).

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## Government Data Opening

As early as 2015, the document *"Plan for Promoting the Development of Big Data"* issued by the State Council pointed out that *"by the end of 2018, a unified and open platform for national government data should be built, and it should take the lead in the fields of credit, transportation, medical care, health, employment, social security, geography, culture, education, science and technology, resources, agriculture, environment, safety supervision, finance, quality, statistics, meteorology, oceanography, enterprise registration and supervision Public data resources should be reasonably and moderately opened to the public"*.

On the basis of existing relevant policies or rules, the Draft further puts forward clear requirements for the security and openness of government data this time, including improving the scientificity, effectiveness and timeliness of government data, collecting and using data by state organs according to law, improving data security management system, and entrusting others to store or process data according to legal procedures etc (Article 34 – 40).



Although the Draft still has some issues from the perspective of legislation, such as too broad or vague.

However, as a whole, it is also a great progress to upgrade the data security to the level of law for protection.

And it also reminds governments, enterprises and individuals at all levels that only by collecting, operating and using data according to law they can enjoy the convenience brought by information technology more safely.

**Karen Wang**  
HFG Law&Intellectual Property



## FOOD LAW

### All you must know about new prepackaged food labeling standard



A series of drafts for comments of laws and regulations have been released by relevant government authorities recently and we prepared a series of “discussion” on these hot topics.

This article is on the National Food Safety Standard “General Measures for Nutrition Labelling of Prepackaged Food (Draft for comments)” (the “Draft for Comments”) in the “Letter on Soliciting Opinions on 16 national food safety standards (Limit of Contaminant in Food, etc.) (Draft for comments)” (Shi Biao Mi Fa [2020] N.16) released by Secretariat of National Food Safety Standard Review Committee on August 27th, 2020. Rules in “General Measures for Nutrition Labelling of Prepackaged Food (Draft for comments)” is particularly important to nutrition component labeling. Food manufacturer and food operator should follow this standard in nutrition component labeling for both prepackaged and non-prepackaged food products.

Here below are some highlights we summarized.

Gentle reminder: deadline of suggestion and comments collection is October 20th, 2020.

#### ✓ Scope

This standard specifies the description and explanation of food nutrition information and characteristics on the nutrition label of prepackaged food, it is applicable to the nutrition label of prepackaged food directly sold to consumers. Nutrition label on prepackaged food not directly sold to consumer and nutrition label on food storage & transportation packaging should also follow this standard.

Draft for Comments expanded the scope of application to include prepackaged food not directly sold to consumer and food storage & transportation packaging which require nutrition labeling.

#### ✓ Energy

**Adding:** 2.3 Definition of energy and Energy calculation coefficient of energy supplying nutrition component.

ENERGY refers to the energy produced by protein, fat and carbohydrate in food during human metabolism.

#### Highlights:

Content of Q&A of GB 28050 was moved in the text of this standard.

ENERGY is mainly calculated by adding together the products of content of main energy supply components and corresponding energy conversion coefficient.

#### ✓ Energy conversion coefficients of main energy supply components as below:

Protein 17kJ/g; Fat 37kJ/g; Carbohydrates 17kJ/g; Dietary Fiber 8kJ/g.

#### ✓ Energy conversion coefficients of other energy supply components as below:

Ethanol 29kJ/g; Organic Acids 13kJ/g; Sugar alcohols (including D-Mannitol, maltitol, lactol, sorbitol, xylitol) 10kJ/g.

#### ✓ Nutrient and nutrition component

**Highlights:** definitions of nutrients and nutrients were revised to make the expression easier to understand.

In addition to following terms and definitions of nutrients and nutrition components, others shall be referred to GB/Z 21922 Basic Terms for Nutrition Components of Food.

**NUTRIENTS** refer to substances in food, including protein, fat, carbohydrate, minerals and vitamins, which have specific physiological functions and are helpful to maintain the body's growth/ development / activity / reproduction and normal metabolism.

**NUTRITION COMPONENTS** refer to the nutrients contained in food and other ingredients beneficial to physiological function.

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## ✔ Definitions of protein, fat and fat acids, carbohydrates, sugar

**Highlights:** definition of protein, fat and fat acids, carbohydrates, sugar were added. Part of the contents are consistent with those in GB 28050, however when the food ingredients contain ethanol, organic acids, sugar alcohols and other energy supply components, and energy conversion is required, the calculation of carbohydrate also needs to subtract the content of these components.

## ✔ Nutrient Reference Value (NRV)

**Highlights:** application scope, calculation method and significance of NRV were expanded based on the definition of nutrient reference value.

The basic reference value for comparison of nutrient content level in the nutrition label of prepackaged food is applicable to foods for all people over 4-year-old. Formulation of NRV is based on “*Chinese Residents Dietary Reference Intakes*”.

**NRV percentage (NRV%)** refers to the percentage of certain nutrient content in the NRV per 100g, per 100mL or per portion in the edible part of certain food. When NRV% is 100%, which means that it can meet the daily nutrient requirement of individuals over 4-year-old.

## ✔ Content claim

Content claim is the description and explanation of the level of energy or nutrient content in food. Terms of content claims include “*containing*”, “*source of*”, “*high*”, “*rich*”, “*low*”, “*thin*”, “*none*”, “*not containing*”.

**Highlights:** definition of content claims was revised, and terms of content claims were added.

## ✔ Comparison claim

Comparison claims refer to the claims that describe and explain the increase or decrease of the energy or nutrient content of food after comparing with food of the same kind well known to consumers. Comparison claims include “*increase*” or “*decrease*”.

**Highlights:** definition of comparison claim was revised.

## ✔ Reference value per portion

**Highlights:** article 2.9 Reference value per portion was added according to USA federal code 21CFR101.12 and the domestic prepackaged food market condition.

## ✔ Nutrient reference value

The nutrition information table shall be clear, eye-catching and durable, and shall be marked in the form of a “*box list*” (except for special circumstances). The box list shall be vertical to the baseline of the package, the header shall be “*Nutrition Information Table*”.

The nutrient content of food shall be indicated with specific values. The format of nutrition label shall be standardized and unified.

Food enterprises can choose one of the formats according to the nutritional characteristics of food, size and shape of packaging area. The nutrition label shall be placed on the package of the smallest sales unit provided to consumers. The outer packages of food for transportation are not required to be labeled with nutrition label.

**Highlights:** outer packages of food for transportation are not required to have nutrition labels.

## ✔ Compulsory labeling content

Compulsory labeling content on all prepackaged food include energy, protein, fat, saturated fat (or saturated fatty acid), carbohydrate, sugar, sodium and their percentage in the nutrient reference value percentage (NRV%). The nutrient reference value (NRV) is listed in Appendix A.

**Highlights:** saturated fat (or saturated fatty acid) and sugar were added to the compulsory labeling content.

In the early stage of revision in 2018, it was proposed to add saturated fat (acid), sugar, vitamin A and calcium as compulsory labeling content. While collecting opinions from the industry, enterprises had different opinions due to the testing cost and technical stability. Considering above factors, vitamin A and calcium were not added in the later stage of revision.

## ✔ Optional labeling content

**Nutrition component:** in addition to the above compulsory labeling contents, vitamin A, vitamin B1, vitamin B2, calcium, iron, zinc, and other components listed in Table 1 are encouraged to be listed in the nutrition component table.

**Labeling based on portion:** the content of energy and nutrition components in prepackaged food can also be indicated by the specific value of each edible portion, and the mass or volume of each portion shall be indicated on the same page. The quality or volume of each portion can refer to the reference value of food portion recommended in Appendix E according to its category.

Enterprises and markets are guided to gradually use the expression of “*portion*” properly.

*Other supplementary information:* graphics and texts can be put on the front of the package to provide supplementary information to the nutrition component table to help consumer to understand.

*Description of food energy:* Chinese character “*千卡*”, “*qian ka 千卡*” and “*卡路里*” are allowed to be used for explanation.

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**Description of sodium content:** “salt”, “low salt” and other words are allowed.

Enterprises are encouraged to use the figure of “*dietary pagoda for Chinese residents*” and the core information of “*dietary guide for Chinese residents*” to promote rational diet and reduce the intake of oil, salt and sugar.

### ✔ **Determination of labeled value of nutrition component content**

The labeled value of nutrition component content can be determined according to the current effective national standard method and can also be calculated by the composition of raw materials according to the “*Chinese Food Composition Table*”. While judging the accuracy of the labeled value of the nutrition information table, the method of determining the labeled value shall be considered.

**Highlights:** the “*Chinese Food Composition Table*” is the authoritative database.

### ✔ **Prepackaged food exempted from compulsory nutrition labeling**

Due to uncertainty of ingredients or other considerations, following prepackaged foods may not be labeled with nutrition labels:

- ✔ prepackaged fresh food or prepackaged food made of primary agricultural products;
- ✔ simply prepared or cleaned single raw products or dried products, such as rice, flour powder, minor grains;
- ✔ bulk food or ready-to-eat food;
- ✔ packaged drinking water;
- ✔ alcoholic beverages with ethanol content  $\geq 0.5\%$  and sugar content  $< 0.5\%$ ;
- ✔ prepackaged food or seasoning using single raw material with daily consumption  $\leq 10\text{g}$  (mL);
- ✔ food with total package surface area  $\leq 150\text{cm}^2$  or maximum surface area  $\leq 40\text{cm}^2$ ;
- ✔ food reusing glass (porcelain) bottles as package and on which label information cannot be printed;
- ✔ other prepackaged food that nutrition label is not required according to stipulations in laws, regulations and standards.

This standard shall be followed if any nutrition information appears on the package of the prepackaged food exempted from the nutrition label.

**Highlights:** please pay attention to the newly added stipulations in bold letters.

### **Standard terms for functional claims of energy and nutrition components**

Newly added	Deleted	Revised
Protein is helpful to the growth and intenance of muscle. Protein is essential for the normal growth and development of children's bones.	Deleted “Can make blood holesterol heighten” from “trans fatty acid”	Changed “Excessive sodium intake is harmful to health” to “Long term high salt intake is harmful to health”

Newly added	Deleted
$\alpha$ -linolenic acid is an essential fatty acid.	Cholesterol: total intake of cholesterol in the daily diet of adults shall not exceed 300mg.
Long term high sugar intake is harmful to health.	Carbohydrates shall account for about 60% of the energy in the diet.
Vitamin A helps to maintain normal vision. Vitamin A helps to maintain the normal physiological function of the immune system.	Folic acid contributes to normal fetal development.

#### **New added:**

- ✔ Vitamin D can promote the utilization of calcium. Vitamin D can promote the absorption and utilization of phosphorus.
- ✔ Vitamin K is an indispensable component to maintain normal coagulation function.
- ✔ Vitamin B6 contributes to normal energy metabolism. Vitamin B helps to maintain normal physiological function of nervous system.
- ✔ Vitamin B12 contributes to normal energy metabolism. Vitamin B12 helps to maintain the normal physiological function of the nervous system.
- ✔ Biotin helps to maintain skin and hair health.
- ✔ Choline is an important component involved in lipid metabolism.
- ✔ Calcium is essential for normal nerve and muscle function.
- ✔ Phosphorus helps to maintain the normal function of cell membrane. Phosphorus helps to maintain bone and tooth health.
- ✔ Potassium is an essential element to maintain the balance of water and electrolytes. Potassium helps to maintain normal muscle juvenile function.
- ✔ Magnesium helps to maintain normal muscle function.
- ✔ Zinc is an important component of energy metabolism and tissue formation. Zinc helps to maintain the normal physiological function of the immune system.
- ✔ Iodine is essential for the development of the nervous system.
- ✔ Selenium has antioxidant effect, Selenium helps to maintain the normal physiological function of immune system.

**Continue reading**

## Reference value of prepackaged food in portion

Table E.1 Reference Value of Prepackaged Food in Portion (g or ml)	
Name	Reference Value
Soy sauce, sauce, pickle, base, soup	10g
Cooked dried meat product (meat floss, dried meat, preserved meat, etc)	10g
Dried fruit products	10g
Nut products	10g
Cereal bars	30g
Western style decorative cakes (pie, cake)	30g
Meat sausage products (sausage, western ham, etc.), ham products, fermented ham products, cured meat products	30g
Milk powder (whole milk powder, skimmed milk powder, partially skimmed milk powder, formulated milk powder)	30g
Ready-to-eat cereal meal, meal replacement powder	30g
Biscuits	30g
Puffed food, potato chips, rice crust, sliced Chinese bread	40g
Bread and fermented flour products (steamed bread, rolls)	50g
Eggs (eggs, preserved eggs, salted eggs, spicy corned eggs, eggs preserved in rice wine, etc.)	50g
Ice cream	50g/ml
Instant noodles (noodles)	100g
Fermented milk	120g/ml
Liquid milk (pasteurized milk, formulated milk, sterilized milk)	200ml
Beverages	200ml
Soybean milk	200 ml

Based on above comparison between current “*General Measures for Nutrition labeling of Prepackaged Food*” and the new “*Draft for Comments*”, we can find the national food safety standards become stricter and more precise.

It is taken into consideration to make it easier for consumers to understand and to promote lifestyle with

healthier nutrition, as well as food enterprises’ operation and testing cost.

We will follow up the revision progress closely and keep you updated.

Leon Zheng  
HFG Law&Intellectual Property