

INSIDE



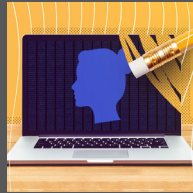
P2 BUSINESS

Bordeaux wins landmark case over counterfeits in China



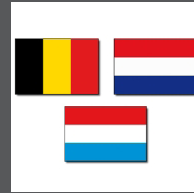
P4 HIGHLIGHT

Draft Opinion by SPC on Copyright Protection



P6 WATCH OUT

The Legal Trend of Personal Information Protection



P9 NEWS

HFG launched Benelux Desk



P10 NEW LAW

Brief on Administrative Measures for Food Operation Licensing



Dear readers,

We finished August Gossip issue with a glass of (real) Cognac, now let's start this September with a glass of wine.

Bordeaux is one of the most famous, important and good wine in the whole world. That's why it has faced several counterfeit issues: the last one showed Bordeaux becoming the first collective brand to win a victory in criminal proceedings in China.

Still in August Supreme People's Court has published Draft Opinion regarding "Enhancing Protection on Copyright and its Related Rights". Such Opinion would be of great value for IP practitioners to predict the legislative and judicial direction in the future: you can read the comments in the third article.

Let's take you to learn about the main legislation of personal information protection in China: the "Personal Information Protection Law" (the "PI Law") is being studied and drafted and the NPC Standing Committee will continue to review it in 2020.

We have a big news also in our office with the creation of the HFG Benelux Desk, which offers a wide range of legal services with customized solutions in the Intellectual Property field in English and Dutch: meet the leader Reinout van Malenstein.

In the last article you can learn about the Draft for comments on "Administrative Measures for Food Business Licensing" that not only improves the operation environments of food operators but also imposes heavier penalty.

Enjoy the end of summer and keep reading!

Fabio Giacobello

HFG

LAW &
INTELLECTUAL
PROPERTY



BUSINESS

Bordeaux wins landmark case over counterfeits in China



Reported by the Conseil Interprofessionnel du Vin de Bordeaux (“CIVB”), on June 4, 2020, the People’s Court of Shanghai Pudong New Area issued a criminal judgment on the case of Shanghai Feitong Trading Co., Ltd. infringing the “BORDEAUX/波尔多” Geographical Indication collective trademark.

The counterfeiter has been found guilty and given an 18-month suspended prison sentence by the Court. In addition to the suspended prison sentence, the conviction also included a fine of 100,000 RMB for the company involved and 50,000 RMB to be paid by the guilty individual, for a trademark counterfeiting offence involving a batch of nearly 10,000 bottles, the CIVB said.

“Bordeaux became the first collective brand to win a victory in criminal proceedings in China (for both Chinese and foreign brands)”, announced the CIVB.



Fake products from WeChat Account of Shanghai Pudong New Area Intellectual Property Office -Link: <https://mp.weixin.qq.com/s/pP4gjAM5tUjJ3ols3tRm0g>

In February of 2019, the defendant Mr. Zhuge commissioned others to design and produce the label bearing “BORDEAUX” affixed to the package of the company’s filled wine bottles without the authorization from CIVB. Later in March of 2019, the fake Bordeaux wines had been showcased at the Chengdu Wine Fair, which were removed after mediation by Chengdu authorities.

Later the case was passed to Shanghai from Chengdu authorities, with the CIVB offering technical support.

“Since the company has brought the products to the exhibition, they are likely to have a certain scale of production and are still committing infringements”, as mentioned by PAN Chunsen, the person in charge of the Enforcement Inspection Division of the Intellectual Property Office of Shanghai Pudong New Area.



Storage environment from WeChat Platform of Shanghai Pudong New Area Intellectual Property Office. Link: <https://mp.weixin.qq.com/s/pP4gjAM5tUjJ3ols3tRm0g>

After several inquiries, according to the address and an inconspicuous phone number on the bottle body, it was found that the actual business location, warehouse and defendant’s residence were located in different area of Shanghai. The enforcement actions were launched simultaneously against 3 locations. Finally, the illegal facts on producing and selling infringing wines were seized.

“The CIVB congratulates the investment and determination of the Chinese authorities in bringing this case to a successful conclusion”, said CIVB president Bernard Farges.

Criminal sanctions for trademark infringement actors

In accordance with article 57 of Trademark Law, *Any of the following conducts shall constitute an infringement of the exclusive right to use a registered trademark: Using a trademark that is identical with a registered trademark on the same goods without the licensing of the trademark registrant; ...Counterfeiting or arbitrarily forging others' registered trademark, or selling the counterfeited or arbitrarily forged trademark...*

Undoubtedly, the production and sale of infringing goods by the parties have already constituted an infringement of the exclusive right to use a registered trademark. However, does the act meet the standard for criminal prosecution?

Continue reading

In accordance with article 213 and 214 of Criminal Law, *Whoever, without permission from the owner of a registered trademark, uses a trademark which is identical with the registered trademark on the same kind of commodities (art. 213), or Whoever knowingly sells commodities bearing counterfeit registered trademarks shall, if the amount of sales is relatively large (art. 214), if the circumstances are serious, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined.*

Furthermore, according to the relevant judicial interpretation, the starting standards for the crime of counterfeiting registered trademarks and the crime of selling commodities bearing counterfeit registered trademark is that the amount of illegal business (sales amount) reach over 50,000 yuan.



Fake products from WeChat of Shanghai Pudong New Area Intellectual Property Office.
Link: <https://mp.weixin.qq.com/s/pP4gjAM5tUjJ3ols3tRm0g>

In view of the large number of goods (nearly 10,000 bottles) involved in the subject case and the large value of the amounts, which reached the standards of criminal prosecution, therefore, the criminal responsibility should be investigated.

A major milestone in a decade-long battle against counterfeits

Bordeaux gained 'geographical indication' status in China in 2015, and 45 Bordeaux appellations (GIs) were officially recognized by the Chinese government in 2016.

According to Agence France-Presse, China is the largest market for Bordeaux wines, accounting for 23% of total sales (27% of total value). Counterfeit Bordeaux wine is a stubborn problem around the whole world, also in the Chinese market, and it is of great significance for the Chinese officials to stop counterfeiting.

"This case could act as a catalyst and encourage the various Chinese authorities to pursue similar cases and bring them to a successful conclusion. Prison sentences will constitute a significant deterrent for counterfeiters", CIVB representative said in a statement.

Indeed, China has gradually become the main market of wines. Not only BORDEAUX, but also Champagne and other winemakers are seeking greater trademark protection, working in coordination with Chinese officials. Undoubtedly, the wining of Bordeaux has set a favorable precedent for them and also future cases.

Last year, the EU and China concluded the negotiations on a bilateral agreement to protect 100 European Geographical Indications (GI) in China and 100 Chinese GI in the EU against imitations and usurpation.

The wining of Bordeaux on GI collective trademark coincided with the bilateral agreement and also demonstrated the determination of China to strictly and equally protect intellectual property rights.

Ariel Huang
HFG Law&Intellectual Property

HIGHLIGHT

Draft Opinion by SPC on Copyright Protection



On August 5th, 2020, the Supreme People's Court ("SPC") released for public comments a draft of the Opinion regarding Enhancing Protection on Copyright and its Related Rights ("*the Draft*", <http://www.court.gov.cn/zixun-xiangqing-246041.html>).

Though such opinion is not legally binding provision, it would be of great value for IP practitioners to predict the legislative and judicial direction in the future. A few comments shall be noted.

Shorten the trial period

Article 2 provided the courts shall vigorously shorten the trial period for copyright and its related rights. Specifically, SPC mentioned that the courts shall improve the evidence rule on IPR litigations, supporting the litigants to preserve and submit evidence through blockchain and timestamp.

The court should also effectively adopt interim measures (act preservation, evidence preservation and property preservation) in order to protect IPR owners' legitimate rights in civil litigations.

Presumption rules

Articles 3-7 made illustration on the presumption rules to alleviate IPR owners' enforcement costs. The courts illustrated that copyright owners' right, after preliminarily evidence, shall be presumed valid without contrary evidences. Specifically:

- a.** The court shall presume copyright's attribution based on authorship (signature). Any natural person or entity who made indication of authorship in a usual manner, shall be presumed as the copyright (and its related rights) owner of the work without contrary evidence.
- b.** To alleviate right owners' burden of evidence, when the right owner claims the existence, licensing and infringement of his rights, if such infringer fails to provide contrary evidence and the ownership of the rights can be presumed based on authorship, right owner's burden of providing licensing agreements or other written evidences shall be exempted.
- c.** Burden of proof for fair use exemption shall be on the accused infringing parties. The accused infringing parties shall provide evidence of license or its use constitute fair use exemption regulated under Copyright Law or other related regulations.

Cyberspace and emerging fields.

Articles 7-9 made illustration on copyright protection on cyberspace, physical markets, and emerging fields.

- a.** The court shall make verdict on right owners' application, asking the ISP to delete, shield, and disconnect certain links. Under circumstances where ISP did not take proper measures, ISP shall also be held liable for extended damage after right owner's notice.
- b.** Marketplace provider shall be held liable based on the degree of its fault and its conduct (failed to perform inspection and management duties effectively for infringements conducted by operator inside the market place.
- c.** The court shall also positively respond to the new demands appears in the emerging fields like Internet, AI and big data, etc. The court need to coordinate the relationship between the relative closure of the object of copyright and the relative openness of rights, to promote the healthy development of the emerging fields.

Eliminate the risk of infringement and effectively prevent the occurrence of infringement

- a.** Art. 10 provides that the court shall rule for the destruction of manufacturing equipment if evidence provided that such equipment is mainly used for infringement and such equipment exists.
- b.** Art. 11 furtherly illustrate the court shall fully make up for the right owner's damage. The amount of legal compensation shall be determined by consideration of below factors: the type of right to be protected, the market value and the subjective fault of the infringer, the nature and scale of the tort, and the severity of the consequences of the damage, etc.
- c.** For infringers who used to be ruled as infringement by the court or previously reached settlement agreements with the right owner, the court shall consider such factors when determining the civil liability.

Honest litigation

a. Art. 13 – 14 stated that litigants can be informed of legal responsibilities for dishonest behaviors by execution of undertaking. For dishonest behaviors like submitting falsified or altered evidence, concealing or destroying evidence, making false statements, giving false testimony or making false identification, the court could adopt compulsory measures like reprimands, fines or detentions.

b. Art. 15 provided that speculative litigations shall not be advocate. For IPR owners who insist on suing distributors dispersedly yet not suing the manufacturing parties, the court shall make illustration to the IPR owner and limit the damage based on the infringing scale of such distributors.

Fredrick Xie
HFG Law&Intellectual Property



WATCH OUT

The Legal Trend of Personal Information Protection



I believe that most people have received a variety of sales, fraud calls, and these calls usually accurately state your name, working unit, and sometimes even home address. We always doubt that our personal information is being known and used by strangers, how to protect the personal information effectively has become the issue of the daily lives.

On May 14th, 2020, the Commission of Legislative Affairs of the National People's Congress said that the "Personal Information Protection Law" (the "PI Law") is being studied and drafted. At present, the draft has been formed and has been included in the legal cases that the NPC Standing Committee will continue to reviewed in 2020.

Let's take you to learn about the main legislation of personal information protection in China.

The "Cyber Security Law", formally implemented in 2017, has made systematic provisions on network information security.

First of all, the major network operators hold a large number of users' personal information, which must be properly kept and strict establish the information confidentiality system.

Secondly, network operators must follow the principle of necessity, that is, they must not collect personal information irrelevant to the services they provide.

Moreover, the collection and use of the user's personal information must be based on the user's consent, and the personal information collected should not be disclosed, tampered with and damaged.

For the network operators, network products or service providers who violate the relevant laws and regulations, they will be ordered to correct, be warned according to the seriousness of the circumstances, confiscate the illegal income or impose a maximum fine of less than one million yuan.

Article 111 of *the General Provisions of the Civil Law*, which was formally implemented in 2018, stipulates that the personal information of natural persons shall be protected by law.

Any organization or personality that needs to obtain other people's personal information shall ensure the information security according to law, and shall not illegally collect, use, process or transmit other people's personal information,

or illegally sell, provide or disclose other people's personal information. It can be seen that on the issue of personal information security, the legislative tendency of protection in Chinese laws is very clear.

To this extent, there are 2 GB regulations already in force tackling specifics aspects of treatment of personal information. They are:

- a. Information Security Technology which regulates the security measures to be applied when handling Personal Information in networks.
- b. Security Information Guidance on Protection of Personal Information of Public and Commercial Service Information System

In addition, there is another GB standard being draft it at the moment (**Information Security Technology—Guidelines for Security Assessment of Data Cross-border Transfer**), which will regulate in detail the acts of transmission of personal information overseas.

It is worth mentioning that the Civil Code just passed this year has made more specific provisions on the protection of personal information.

Article 1034

Personal information of natural persons is protected by law.

Personal information is a variety of information recorded by electronic or other means, which can identify a specific natural person individually or in combination with other information, including name, date of birth, ID number, biometric information, address, telephone number, e-mail, health information, tracking information, etc.

The provisions on the right of privacy shall apply to the private information in the personal information; in the absence of such provisions, the provisions on the protection of personal information shall apply.

Continue reading

We have noticed that compared with the definition of personal information in the network security law, the Civil Code has added "health information", which may be related to this year's epidemic situation, and the protection of personal information in public health emergencies has gradually attracted attention.

Meanwhile, the third paragraph of this article clearly stipulates that "the provisions on the right of privacy shall apply to the private information in personal information", which means that the right of personal information is not equal to the right of privacy, and only the part defined as private information can be applied to the provisions of the right of privacy.

According to the Civil Code, the definition of privacy usually focuses on "private space, private activities and private information that are not willing to be known to others"; while "unwilling to be known to others" will be identified according to specific cases in practice.

Article 1035

The processing of personal information shall follow the principles of legality, legitimacy and necessity, and shall not be excessively processed, and the following conditions shall be met:

1. Obtain the consent of the natural person or his guardian, except as otherwise provided by laws and administrative regulations.
2. Rules for public processing of information.
3. Express the purpose, method and scope of information processing.
4. No violation of the laws and regulations of both parties.

The processing of personal information includes the collection, storage, use, processing, transmission, provision and disclosure of personal information.

The similar content of this article is also stipulated in the network security law, but it only regulates the network operators, while the Civil Code does not specify the subject of regulation, which shows that the Civil Code has expanded the regulation of the subject processing the personal information.

Article 1036

In case of any of the following circumstances when processing personal information, the actor shall not bear civil liability:

1. Acts reasonably carried out within the scope agreed by the natural person or his guardian.
2. Reasonably handle the information disclosed by the natural person or other legally disclosed information, except that the natural person explicitly refuses or processes the information to infringe on his or her major interests.
3. Other acts reasonably carried out in order to safeguard public interests or the legitimate rights and interests of the natural person.

This article provides for the exemption of processing personal information, but it does not specify the specific circumstances of the application of this article. We hope there will be a clearer judicial interpretation of it.

Article 1037

A natural person may consult or copy his / her personal information from the information processor according to law; if he / she discovers that the information is wrong, he / she has the right to raise objection and request necessary measures such as correction to be taken in time.

If a natural person discovers that the information processor has handled his / her personal information in violation of the provisions of laws, administrative regulations or the agreement of both parties, he / she has the right to request the information processor to delete his / her personal information in a timely manner.

In addition to the right of correction and deletion specified in the network security law, the article also specifies that natural persons have the right to query or copy their personal information.

Article 1038

The information processor shall not disclose or tamper with the personal information it collects and stores; it shall not illegally provide its personal information to others without the consent of a natural person, except for those who cannot identify specific individuals after processing and cannot be recovered.

The information processor shall take technical measures and other necessary measures to ensure the safety of the personal information it collects and stores, and prevent the information from being disclosed, tampered with or lost; if the disclosure, alteration or loss of personal information occurs or is likely to occur, it shall take remedial measures in a timely manner, inform the natural person in accordance with the provisions and report to the relevant competent department.

Article 1039

State organs, statutory bodies with administrative functions and their staff members shall keep confidential the privacy and personal information of natural persons known in the course of performing their duties, and shall not disclose or illegally provide them to others.

Generally speaking, it is easier to collect personal information for state organs and their staff, such as bank staff, because of the convenience of their positions.

Continue reading

Although it is generally considered necessary and safe for the above personnel to collect personal information, however, it is undeniable that in practice, it is common for the staff of state organs to divulge the collected personal data and seek illegal interests by taking advantage of their positions. This article only stipulates the obligations of the above-mentioned personnel, but does not specify the corresponding responsibilities for violation of the provisions of this article.

Due to the particularity of identity, it is still questionable whether the corresponding responsibility should be regulated by the Civil Code.

The provisions on the protection of personal information in the Civil Code are mostly in principle and abstract. In practice, we can refer to the GB / T 35273-2017 - "*Personal Information Security Specification for Information Security Technology*" issued in 2017, which has more specific provisions on the collection, storage, use, processing, transfer, public disclosure of personal information, as well as the responsible departments and personnel.

At the same time, we wait for the Personal Information Protection Law to be released soon!

Karen Wang
HFG Law&Intellectual Property



NEWS

HFG launched Benelux Desk



Along with our Italian Desk and LatinAm&Spanish Desk, HFG Law&Intellectual Property has launched its Benelux Desk.

HFG Benelux Desk offers a wide range of legal services with customised solutions in the Intellectual Property field, such as Trademarks, Patents, Copyright, Trade Secrets, Geographical Indications, Design Rights, Technology Transfer, Data Protection, Contracts, Litigation and Corporate Law.



Reinout van Malenstein, head of the Benelux Desk, is Senior Counsel at HFG Law & Intellectual Property in China.

As a lawyer at a Chinese law firm, with great expertise in intellectual property rights in China, he advises companies on trademarks, copyright, patents, trade secrets, technology transfer, data protection, litigation and corporate law in China.

Reinout is the National Vice-Chair of the IPR Working Group of the European Union Chamber of Commerce in China, the secretary of MARQUES China team, and IP expert for the European Commission. He regularly publishes articles on IP and speaks on IP at international conferences, universities, governments and business associations.

Before joining HFG, Reinout has worked on intellectual property for the European Commission in Greater China. Before that he was the head of the China practice at a leading Dutch law firm and a lawyer in the Netherlands on intellectual property at Freshfields Bruckhaus Deringer LLP.

Having worked as a lawyer at leading law firms in Europe, and China, and having graduated with honours in the Netherlands (Bachelor/Master of Laws in Dutch/EU law from Utrecht University) as well as summa cum laude in China (Master of laws in Chinese law from Peking University), Reinout is well positioned to advise clients on intellectual property cases with a European/Chinese dimension.

He is admitted to practice law in the Netherlands and has developed a strong experience in both the Chinese and the European legal system, jurisprudence and practice (including China's Supreme People's Court and the Court of Justice of the European Union).

Reinout is fluent in Chinese (Mandarin), Dutch, English and conversational in German.

HFG represents Chinese companies doing business in the Benelux, as well as Benelux companies doing business in China.

HFG Law&Intellectual Property

NEW REGULATION

Brief on Administrative Measures for Food Operation Licensing



A series of drafts for comments of laws and regulations have been released by relevant government authorities recently and we prepared a series of “brief” on these topics. This article is on the “*Administrative Measures for Food Business Licensing (draft for comments)*” (abbr. Draft for Comments) released by State Administration for Market Regulation (SAMR) on August 6th, 2020.

Rules in Draft for Comments not only improve the operation environments of food operators but also impose heavier penalty. It also affect the application of food operation licenses and operation model. Here below are the highlights we summarized.



Conditions that food operation licensing is NOT required

1. Food producer that already got food production license sells food products on its production site or via internet.
2. Selling edible agricultural products.
3. Catering service operator opens affiliated stores, such as dessert station, near its main store and all the food products are supplied by the main store and the affiliated store sells the food directly with no further processing.
4. Food operator that already got food production and operation license sells its food products in temporary trading places such as exhibition, trade fair, expositions, etc.
5. Medical institutions and drug retailers sell special total nutrition formula food in the special medical purpose formula food products.
6. Other conditions that food operation licensing is not required stipulated by law and regulations.



Principle “One site One license”



Exception to principle “One site One license” is stipulated that principle “One site One license” is not applicable to food operation using automatic equipment.

Food operation using automatic equipment should submit documents, such as qualification certificate of automatic equipment, specified location of each equipment, way of demonstration of food operation license, food safety risk control system, etc.



Electronization of license

Informatization construction of food operation licensing is being promoted and following practices will be gradually implemented:

- a. online processing of license application, acceptance, examination, issuing and inquiry;
- b. issuing of digital certificate of food operation license;
- c. publicizing food operation license items and food operation license data on official website for public inquiry.

Food operation license information should be recorded under the name of food operator and publicized by National Enterprise Credit Information Publicity System.

Same as the electronization of business license, digital certificate of food operation license issued by market regulation departments is of same legal validity as printed food operation license.



No multiple choice for Main Type of Operation

Main type of operation can be divided into food selling operator, catering service operator, staff canteen. No multiple choice for main type of operation.

Food operator doing business or wholesales through automatic equipment should make remarks in the brackets after main type of operation.

Central kitchen, delivery unit of group meal, catering service management company should be listed in the brackets after main type of operation.

Continue reading

Catering service provider that opens affiliated stores, such as dessert station, should list names and addresses of all its affiliated stores in the brackets after main type of operation.



Adjustment of Operation Items

Operation items can be divided into pre-packaged food sales (refrigerated food and frozen food included), bulk food sales (refrigerated food and frozen food included), special food sales (health food, special medical purpose formula food, infant/children formula milk powder, other infant/children formula food), semi-finished food production and sales, hot food production and sales, cold food production and sales, eaten-raw food production and sales.

Bulk cooked food sales are divided in bulk food sales, cold processed cake and pastry production and sales; and fresh squeezed vegetable/fruit juice production and sales in cold food production and sales should be listed in the brackets after type of operation.

If only simple practice of operation and sales, such as simple heating, unsealing, placing in a plate, seasoning, are included in hot food, cold food, eaten-raw food production and sales, remarks “*simple production and sales*” should be listed in the brackets after type of operation.

The Draft for Comments deleted “*refrigerated food and frozen food not included*” in pre-packaged food sales and bulk food sales. Semi-finished food product operation and sales was added. Cake and pastry production and sales and homemade beverage production and sales are deleted and added to hot food and cold food production and sales.

Other kind of food production and sales is deleted, and the scope of food production and sales are expanded.

Catering service provider and staff canteen that already obtained license on operation projects of food production and sales can carry out operation projects of pre-packaged food sales directly and no need to apply licensing for it.



Electronic Signature is acceptable

Applicant should honestly submit relevant documents and report facts to market regulation departments and be responsible for the authenticity of application materials. Applicant should sign or stamp on the documents such as application forms and electronic signature is acceptable. Such practice can greatly reduce the trouble and time used to find proper person to sign.



Acceptance of application

Acceptance notification should be issued if market regulation department decided to accept the applicant’s application.

Acceptance notification is NOT needed if license can be approved and issued on the spot. If application is rejected, notification of rejection should be issued.

Reason of rejection should be listed on the notification of rejection and applicant should be notified the right of applying for administrative reconsideration or bringing administrative litigation. Procedure of license application is stipulated in this clause.



Notification Commitment System

For following food operation licensing, notification commitment system should be imposed, administrative licensing decision should be made on the spot and implementation scope of commitment system should be notified:

- a. new license application only on pre-packaged food sales;
- b. application of license renewal (limited to no change on operation condition, deduction or no change of operation projects);
- c. application of license extension (limited to no change on operation condition, deduction or no change of operation projects).

For food operator that obtained food operation license through notification commitment, county level and above local marketing regulation departments should carry out supervision and examination within 30 days after the applicant obtained food operation license.

The examination should focus on whether the operation realities is consistent with commitment, whether the food operation situation conforms to the food safety requirement, etc. Under the premise of ensuring food safety, extending scope of notification commitment system on low risk food operator should be explored.

Original stipulation “*On-site audit can be exempted for application only for pre-packaged food sales (refrigerated food and frozen food not included) and food operation license renewal with no change on facility nor layout*” is revised to notification commitment system.



Compressing time limit

Inspectors should complete on-site examination of the operation site within 5 working days upon receipt of on-site examination assignment. The time limit was compressed from 10 days to 5 days.

Decision should be made whether the administrative licensing is approved or not within 10 working days upon receipt of application. If the time limit needs to be extended due to special reasons, time limit can be extended for 5 working days with approval from head of relevant authorities.

So, the regular time limit was compressed from 20 working days to 10 working days and time limit of extension was compressed from 10 working days to 5 working days.



Simplification of content specified in license

Food operation license should specify:

- name of operator;
- unified social credit code;
- legal representative (person in charge);
- residence;
- operation site;
- main type of operation;
- operation projects;
- license code;
- period of validity;
- telephone number of complaint reporting;
- issuing authorities;
- issuing date and QR code.

Following content are deleted:

- daily supervision and management authorities;
- daily supervision and management staff;
- signer of license;
- ID number of self-employed operators.



Display of electronic license

In prefecture where food operation licensing electronic certificate management is promoted, food operator can display the original food operation license printed by itself or display in electronic form.

Food operation carried out by automatic equipment, photocopy of food operation license and contact information should be posted on prominent position of the automatic equipment.

Affiliated stores, such as dessert station, should display photocopy of main store's food operation license and contact information on prominent position.



Timely renewal and extension

When License items change, food operator should submit license renewal application timely to the market regulation department which issued original license. Time limit changed from 10 days to timely, supervision is strengthened.

New stipulations were added that food operator should report to the market regulation department which issued original license within 10 days after following changes happened:

- important changes on main equipment facility layout and operation process;
- change of offsite warehouse address;
- change or adding of location of automatic equipment.

For extension of period of validity of legally obtained food operation license, application should be submitted to the market regulation department which issued original license 20 working days before the expiry date of original license. Time limit changed from 30 working days to 20 working days.



Operation beyond permitted scope

New stipulation was added that following operation without permission will be penalized according to Food Safety Law of P.R.C Clause 122:

- operation beyond permitted scope of operation or main type of operation;
- conducting food operation beyond period of validity of license; or
- changing operation site without applying for license renewal as per required.

Expertise required to judge operation beyond permitted scope!

Market regulation department which issued original license can revoke the administrative licensing and impose administrative penalties according to Administrative Licensing Law of P.R.C Clause 69, 78 and 79, and impose fine on the relevant legal representative, main person in charge, direct liable executives and other directly liable person according to the Implementing Regulations of Food Safety Law Clause 75:

- license applicant concealed fact and provided false information to apply for food license;
- licensee obtained the food operation license through cheating, offering bribe or other illegal method.

New stipulation was added that fine will be imposed on relevant legal representative, main person in charge, direct liable executives and other directly liable person.



Illegal Transfer

County level or above local market regulation departments should command correction, give warning and impose a fine (over RMB10,000 but below RMB30,000) on food operator who forged, altered, sold, leased, lent or illegally transferred its food operation license in other ways. Those who committed crime will be handed over to the police.

“Illegally transferred in other ways” was added, so, the scope of illegal transfer is expanded.



Definition of “Central kitchen”

Central kitchen is a kind of catering service provider set up by food operator with independent site, equipment and facilities, which centralize finished food production or semi-finished product processing and deliver to its own chain stores for further processing and then offer to consumers.

Food product can only be delivered to its own chain stores. It will violate the regulation if delivered to other units. Companies running central kitchen, please pay attention to the compliance of your central kitchen!



Special medical purpose food

Specific total nutrition formula food in special medical purpose formula food should be sold to consumer through medical institutions or drug retailers.

Based on above comparison between current “Administrative Measures for Food Operation Licensing” and the new “Draft for Comments”, we can find that market regulation authorities adopted a more open and tolerant attitude towards the development and innovation of food industry and the supervision focused more on details in a timely manner.

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