

GOODBYE, SHANZHAI: INTELLECTUAL PROPERTY RIGHTS AND THE END OF COPYCAT CHINA

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ABSTRACT

The unprecedented development of the Chinese economy has entered a new phase. Increasingly, China is moving away from its traditional affinity for imitation towards a strategy of aggressive innovation. This emerging evolution of Chinese industries into effective innovators is of enormous consequence for Australian businesses seeking to work alongside or compete against China. This paper traces the development of copycat culture, or 'shanzhai', and the emergence of an innovation economy in China. It explores the future of intellectual property rights in China and argues in favour of its ability to foster a legal and political system that strengthens its position as an innovation powerhouse. Part II outlines the origins of shanzhai and Part III evaluates its social and economic impact. Part IV explores China's transition from an imitation to innovation economy and Part V discusses its promising future of intellectual property protections.

I INTRODUCTION

As the home of the four 'great inventions' – the compass, gunpowder, papermaking and printing – ingenuity epitomises the early history of China.¹ In contrast, modern China has become infamous for its rampant culture of 'copycat' production. This phenomenon has been exacerbated by local protectionism and a failure to enforce fledgling intellectual property (IP) laws in a legal system weighted against foreign investors.² However, in recent years the implementation of a national innovation agenda has facilitated the arrival of strong Chinese competitors in a range of industries.³ As both a response to domestic needs and a vehicle towards achieving its global innovation ambitions, this steep trajectory is changing the face of China's future. This strategic shift is set to transform China's reputation on the world stage and redefine the character of its international interactions.

China's emerging transformation has raised a series of questions about how current technological leaders will be affected if its economy can successfully

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¹ Yinke Deng, *Ancient Chinese Inventions* (China Intercontinental Press, 2005) 11.

² Alex Low, 'To Counterfeit in China is Divine: Or is it?' (2002) 7(1) *Deakin Law Review* 21, 27.

³ Shulin Gu et al, 'China's Innovation System: Ten Years On' (2016) 18(4) *Organisation and Management* 441.

combine innovation with its incredibly competitive production costs.⁴ These rapid and far-reaching changes to the Chinese economy have encouraged a legal and political movement towards a more robust IP regime. The implications of these changes for Australian businesses and the world order alike cannot be overstated. Ultimately, these developments can be seen as active steps towards the creation of new, mutually beneficial opportunities to work with and within China.

II THE ART OF IMITATION

In modern China, to copy or parody is known as ‘shanzhai’, a term that has taken on new life as a catch-all term for low-cost copycat goods and local versions of globally branded products.⁵ The literal translation of shanzhai is ‘mountain fortress’, a reference to the remote mountain strongholds historically used by warlords to stockpile contraband and ill-gotten gains.⁶ From cell phones and digital cameras to wine and medicine, the widespread proliferation of these products has transformed shanzhai culture into a cornerstone of the Chinese economy.

According to a 2016 report released by the U.S. Chamber of Commerce Global Intellectual Property Centre, approximately 86% of counterfeit goods originate from China.⁷ Despite the emergence of several developments in IP protections, this statistic attests to the immense challenges faced by China in seeking to reform its copycat economy. In order to trace the origins and incidence of shanzhai, it is necessary to consider both ‘soft’ factors such as the social, cultural and political history of China, as well as the ‘hard’ factors of market demand and supply.⁸

A *Historical and cultural origins*

China’s counterfeit culture can be partly attributed its long history of observation and imitation, with clear historical links to the shanzhai phenomenon existing as early as a millennium ago.⁹ In the late Ming Dynasty, certain types of artwork were so highly sought after that only one in ten paintings were thought to

⁴ Tilman Altenburg et al, ‘Breakthrough? China’s and India’s Transition from Production to Innovation’ (2007) 36(2) *World Development* 325, 326.

⁵ Nicholas Schmidle, ‘Inside the Knockoff-Tennis-Shoe Factory’, *The New York Times Magazine* (online), 19 August 2010 <<https://www.nytimes.com/2010/08/22/magazine/22fake-t.html>>.

⁶ Yi-Chieh Jessica Lin, *Fake Stuff: China and the Rise of Counterfeit Goods* (Routledge, 2011) 3.

⁷ United States Chamber of Commerce Global Intellectual Property Centre, *Measuring the Magnitude of Global Counterfeiting* (November 2016) <[http://www.theglobalipcenter.com/wpcontent/themes/gipc/mapindex/assets/pdf/2016/Global Counterfeiting_Report.pdf](http://www.theglobalipcenter.com/wpcontent/themes/gipc/mapindex/assets/pdf/2016/Global_Counterfeiting_Report.pdf)>.

⁸ Price Waterhouse Cooper, *Shan Zhai: A Chinese Phenomenon* (October 2009) <<https://www.strategyand.pwc.com/media/file/Shan-zhai.pdf>>.

⁹ Ling Jiang, ‘Call for Copy – The Culture of Counterfeit in China’ (2014) 2(2) *Journal of Chinese Economics* 73, 74.

be authentic, the rest being copies.¹⁰ However, the reproduction of masterworks has historically been accepted as a valuable tool in acquiring greater knowledge and skill. Rather than being considered a moral offence, this kind of imitation is perceived as a ‘noble art’ and a ‘time honoured process’ through which admiration and reverence can be exhibited.¹¹ Moreover, Lam writes that in modern China owners of original works do not normally seek redress replications because it positively contributes towards establishing their ‘author’s master status’.¹²

As characteristics of the Confucian tradition, repetition and rote learning can also be identified in Chinese education. With a school system that rewards the ability of its students to observe and imitate, it is unsurprising that China has been historically resistant to the predominantly Western view that ideas can be the property of individuals.¹³ A testament to this is the heavy emphasis on memorisation in ‘Gaoko’, China’s notoriously difficult university entrance examination.¹⁴ This test is considered essential to the success of Chinese students and arguably represents the deep cultural entrenchment of these philosophies.

This idea of the blurred line between individual and public property lies at the heart of shanzhai. In exploring the impact of culture on the development of this phenomenon, the collectivism of China cannot be overlooked. A defining quality of individualist societies is the clear separation of the ideas of others from one’s own.¹⁵ In contrast, in collectivist cultures it is seen as the responsibility of its people to share their knowledge for the benefit of society as a whole.¹⁶ An arguable effect of these values is that the perceived need to protect IP is outweighed by the tendency towards placing collective duties above individual rights.¹⁷ This inconsistency between IP and Chinese culture has been widely considered by academics. Fung observes that ‘the concept of individuals holding exclusive rights in intellectual property or a trademark, as well as the money-seeking tendencies and excessive

¹⁰ Craig Clunas, *Superfluous Things: Material Culture and Social Status in Early Modern China* (University of Illinois Press, 1991) 122.

¹¹ Paul Midler, *Poorly Made in China: An Insider’s Account of the China Production Game* (Wiley, 2010) 72.

¹² Phillip Lam, ‘Copyright Protection of Foreign Computer Software in the People’s Republic of China: Significant Progress’ (1995) 17(4) *Loyola of Los Angeles International and Comparative Law Review* 861, 865.

¹³ Tatum Adiningrum and Salah Kutieleh, ‘How Different Are We? Understanding and Managing Plagiarism between East and West’ (2011) 5(2) *Journal of Academic Language & Learning* 88, 89.

¹⁴ Qian Chen, ‘Gaokao: An exam today determines 10 million Chinese students’ futures’, *CNBC* (online), 7 June 2018

<<https://www.cnbc.com/2018/06/07/gaokao-an-exam-today-determines-10-million-chinese-students-futures.html>>.

¹⁵ Harry Triandis et al, ‘Individualism and Collectivism: Cross-Cultural Perspectives of Self-Ingrown Relationships’ (1988) 54(2) *Journal of Personality and Social Psychology* 323, 325.

¹⁶ Shih-Chieh Chien, ‘Cultural Constructions of Plagiarism in Student Writing: Teachers’ Perceptions and Responses’ (2014) 49(2) *Research in the Teaching of English* 120, 124.

¹⁷ David Goodman and Gerald Segal, *China in the Nineties: Crisis Management and Beyond* (Oxford University Press, 1991) 78.

individualism such rights foster, are troublesome'.¹⁸ It is through this analytical lens that culture can be regarded as a primary force in the rise of shanzhai. However, as this paper will demonstrate, it would be inaccurate to claim that these cultural considerations have eliminated the prospect of a robust IP regime emerging in China.

B *Political ideology and policymaking*

The excess of imitation products in China can also be seen as a product of its political history. From the 1950s until the late 1970s, a socialist economic system meant that virtually all products were provided exclusively by the State.¹⁹ Under this regime, the State alone was entitled to own property.²⁰ As a result of this, the idea of a 'copyright' has traditionally been identified as a Western concept that related exclusively to private monopolies.²¹

If the view of Stevenson-Yang and DeWoskin is accepted, the political influence on the 'Chinese copy phenomenon' is so pervasive that shanzhai would exist even in the absence of other causal factors.²² Further, they assert that:

Piracy is not just the result of lax enforcement, but also incentives built into the structure of China's economy. The State has maintained its historical control of economic value; in that economy intellectual property protections are not in its interest and therefore not in the interest of the companies the government owns, nurtures or favours.²³

Together with the fact that its Constitution specifies that individual rights can be revoked, the structural challenges of China's relationship with IP are manifestly difficult to overcome.²⁴ However, given the relatively recent transition of China from a planned to market economy, time and experience may facilitate its ability to afford greater protection of IP rights.

In terms of policy, there has been a common thread of deregulation in China's post-Mao era.²⁵ The current state of the automotive industry is a testament to this. Although the government has focused on supporting large public enterprises such as First Auto Works, nimble private companies like BYD and Chery have been able

¹⁸ Jill Chiang Fung, 'Can Mickey Mouse Prevail in the Court of the Monkey King? Enforcing Intellectual Property Rights in the People's Republic of China' (1996) 18 *Loyola of Los Angeles International and Comparative Law Review* 613, 620.

¹⁹ Jiang, above n 9, 75.

²⁰ *Ibid.*

²¹ *Ibid.*

²² Anne Stevenson-Yang and Ken DeWoskin, 'China Destroys the Intellectual Property Paradigm' (2005) 168(3) *Far Eastern Economic Review* 9, 12.

²³ *Ibid.* 18.

²⁴ Fung, above n 18, 625.

²⁵ Gordon White, *Riding the Tiger: The Politics of Economic Reform in Post-Mao China* (Macmillan International, 1993) 21.

to establish themselves as strong competitors.²⁶ Through relatively weak and inconsistent laws, BYD has been able to grow from making cheap Toyota imitations to today existing as one of China's leading automotive manufacturers.²⁷

An analogous observation can be made in the mobile manufacturing sector. For many years, this industry was regulated by strict licensing requirements enforced by the Chinese government.²⁸ The lifting of these licensing restrictions in 2007 has since allowed a host of shanzhai enterprises to operate at the fringe of or, in some cases, with flagrant disregard for Chinese IP laws.²⁹ Moreover, the historical lack of significant penalties for infringing these laws, as well as an unwillingness to enforce them, has greatly exacerbated China's copycat culture.³⁰

C Demand and supply

Arguably the most significant elements in the spread of the shanzhai phenomenon are the demand and supply cycles of the Chinese economy. These 'hard' factors can ultimately be attributed to the economic reforms of the late 1970s known as 'Socialism with Chinese Characteristics'.³¹ In terms of demand, the introduction of market principles through these reforms gave rise to countless opportunities for new and existing businesses to leverage opportunities across different 'consumer segments, channels and geographies'.³²

Further, these emerging markets placed substantial pressure on local enterprises, often with limited experience and resources, to find new and inventive ways to operate against state-owned and foreign rivals.³³ Through a determined process of mimicking the strategies of successful multinationals, these businesses have been able to not only survive, but thrive in the Chinese economy.³⁴ This can in part be explained by the competitive advantage of shanzhai products in meeting the demands of changing consumer needs and preferences. On the supply side, the stagnancy of established industry players in responding to social and economic change has meant that shanzhai businesses have benefited from their agility and willingness to adapt.³⁵ Additionally, the low-cost manufacturing capabilities of

²⁶ Price Waterhouse Cooper, above n 8, 9.

²⁷ Ibid 5.

²⁸ Ibid.

²⁹ Anil Kumar Kanungo, 'China's Telecommunications Service Sector: Implications for the World Economy' (2015) 10(1) *Cambridge Journal of China Studies* 64, 73.

³⁰ IP Watch, *After 15 Years in WTO, China Still Weak on Many IP Rights, US Says* (10 January 2017) <<http://www.ip-watch.org/2017/01/10/15-years-wto-china-still-weak-many-ip-rules-us-says>>.

³¹ Clem Tisdell, 'Economic Reform and Openness in China: China's Development Policies in the Last 30 Years' (2009) 39(2) *Economic Analysis and Policy* 271, 275.

³² Price Waterhouse Cooper, above n 8, 9.

³³ Nicholas Lardy, 'China's Economic Reforms and Growth Prospects' (2015) 8(2) *China Economic Journal* 95, 100.

³⁴ Price Waterhouse Cooper, above n 8, 9.

³⁵ Ibid 7.

Chinese companies further reinforces the supply-side influences on shanzhai culture.

III SIZING UP SHANZHAI

As illustrated above, a range of factors have supported the survival of shanzhai in China. Before examining the more convincing view that shanzhai exists as a barrier to innovation and the development of IP rights, arguments in support of China's imitation economy should be considered. Rather paradoxically, some commentators believe that shanzhai culture can be a tool through which innovation is achieved.

A Advantages

Those in favour of copycat business models cite a range of social and economic benefits that flow from the free reign of shanzhai companies.³⁶ By increasing the choices available to consumers at lower price points, these products are suggested to disrupt inert monopolies held by major producers of more expensive products.³⁷ Further, Lin argues that 'through counterfeiting, mimicry and appropriation shanzhai culture operates as a survival tactic - an economic tool for resistance to the abuse of corporate and governmental power'.³⁸

The benefit of shanzhai as an 'economic tool' arguably extends not only to its revenue potential, but also to the creation of innovative processes and products in Chinese markets. According to Gerth:

Among the benefits of shanzhai culture are the creative possibilities found in such innovation, and the decrease in price of products such as cell phones which has made otherwise unattainable luxury products more accessible and more affordable to a growing consumer base of low-income customers. Many of these products are sold openly, with ads suggesting that buying Chinese products is patriotic.³⁹

The suggestion that the evasion of IP laws by shanzhai companies can actually lead to creative outcomes is a notable consideration. Hulme's view that copycat goods are 'creative appropriations' that can facilitate the open and transparent democratisation of ideas supports this view.⁴⁰ Further, she writes that '[shanzhai]

³⁶ Karl Raustiala and Christopher Sprigman, 'Let Them Eat Fake Cake: The Rational Weakness of China's Anti-Counterfeiting Policy' (2014) 14(10) *New York University Law and Economics Research Paper Series* 120, 122.

³⁷ Price Waterhouse Cooper, above n 8, 6.

³⁸ Lin, above n 6, 58.

³⁹ Karl Gerth, *As China Goes, So Goes the World: How Chinese Consumers are Transforming Everything* (Hill and Wang, 2011) 153.

⁴⁰ Alison Hulme, *The Changing Landscape of China's Consumerism* (Chandos, 2014) 93.

producers are grassroots entrepreneurs who take advantage of loopholes in IP laws to create their own brands and innovate from the originals.’⁴¹

The idea that supporting shanzhai industries is ‘patriotic’ is significant in a collectivist country such as China. In combination, the relative advantages of shanzhai activities and the past ambivalence of the Chinese government towards anti-counterfeiting efforts have made it unquestionably difficult for IP rights to effectively develop. However, it would be mistaken to suggest that these factors have prevented China from successfully expanding its protection of IP rights.

B *Disadvantages*

However, the more convincing view is that the tendency of shanzhai companies to infringe on IP rights inhibits the development of creativity and competitiveness. Wuwei argues that counterfeit culture is inherently harmful to economic development and to the process of modernisation.⁴² As such, the impact of shanzhai can arguably be seen as a restraint on the ability of China to pursue its ambition of becoming an innovation powerhouse.

According to Lindtner, counterfeit culture is inseparable from ‘its roots in and ongoing practices of piracy and open sharing’.⁴³ This inseparability challenges ‘any inherent link made between technological innovation and the tools, instruments, and value systems of proprietary, corporate research and development.’⁴⁴ The criticism that shanzhai companies will exploit their knowledge of the global market economy to ‘subvert and profit’ from the work of others is another convincing argument against them.⁴⁵

The shortcomings of shanzhai businesses include the fact they generally seek opportunities to make money fast rather than build meaningful consumer relationships. Consequently, they will flood the market with substandard products that both fail to satisfy consumers and blatantly disregard the IP of others.⁴⁶ However, China’s reputation as the land of the copycats may soon be a thing of the past, as this transformation from emerging economy to innovation nation may soon be fully realised.

IV FROM ‘MADE IN CHINA’ TO ‘CREATED IN CHINA’

⁴¹ Ibid.

⁴² Li Wuwei, *How Creativity is Changing China* (Bloomsbury, 2011) 34.

⁴³ Silvia Lindtner et al, ‘Designed in Shenzhen: Shanzhai Manufacturing and Maker Entrepreneurs’ (2015) 1(1) *Aarhus Series on Human Centred Computing* 85, 89.

⁴⁴ Ibid.

⁴⁵ Haochen Sun et al, *The Luxury Economy and Intellectual Property: Critical Reflections* (Oxford University Press, 2015) 276.

⁴⁶ Price Waterhouse Cooper, above n 8, 6.

Whether China can evolve into a leader in innovation is of global interest and concern. Over the past five years, a remarkable entrepreneurial and innovation ecosystem has challenged the entrenched view of China as an imitation economy. In 2015, US Vice President Joe Biden gave a speech challenging a group of cadets to ‘name one innovative project, one innovative change, one innovative product that has come out of China’.⁴⁷ A few months prior to this, the Harvard Business Review published ‘Why China Can’t Innovate’, an article that expresses the Western view of China as ‘largely a land of rule-bound rote-learners, a place where research and development is diligently pursued but breakthroughs are rare.’⁴⁸ If the opinion of former Hewlett Packard CEO Carly Fiorina is to be accepted, the reason for this is that Chinese society is ‘too homogenised and controlled to encourage imagination and risk taking’.⁴⁹ It might be easy to dismiss these views as simply a product of Western imperial bias and tunnel vision. However, a far more compelling argument can be made through clear evidence that China is well on its way to building a truly innovative future.

A *Creating an innovation economy*

Increasingly, China has come to recognise the importance of investing in scientific and technological innovation. In a 2012 report delivered at the 18th National Congress Party, it was announced that the nation would transition into an innovation-driven economy.⁵⁰ Since then, substantial progress has been made in achieving this aim. A report compiled by research firm iiMedia found that innovation centres have been appearing across China, with an estimated 5000 to be operational in the next few years.⁵¹ The impact of these centres can be measured by reference to China’s investment in turning simple ideas into actual businesses. According to a 2015 study by the Boston Consulting Group, China has surpassed the United States in spending on the research and development phase that translates discoveries into commercial products.⁵² China’s commitment to facilitating the growth and success of its up-and-coming entrepreneurs is a testament to its focus on excellence in innovation.

⁴⁷ Edward Tse, ‘What Drives China’s Innovation?’, *Forbes Magazine* (online), 8 March 2016 <<https://www.forbes.com/sites/tseedward/2016/03/08/what-drives-chinas-innovation-2/#7139f4a04dde>>.

⁴⁸ Regina Abrami, ‘Why Can’t China Innovate?’, *Harvard Business Review* (online), March 2014 <<https://hbr.org/2014/03/why-china-cant-innovate>>.

⁴⁹ Carly Fiorina, *Rising to the Challenge: My Leadership Journey* (Sentinel, 2015) 75.

⁵⁰ Wang Lei, ‘China Strives for Innovation-Driven Modern Economy’, *CGTN* (online), 19 October 2010 <https://news.cgtn.com/news/3151444d31597a6333566d54/share_p.html>.

⁵¹ John Schmid and Fei-Lin Wang, ‘Beyond National Innovation Systems: Incentives and China’s Innovation Performance’ (2017) 26(104) *Journal of Contemporary China* 280, 285.

⁵² Boston Consulting Group, *An Innovation-Led Boost for US Manufacturing* (17 April 2017) <<https://www.bcg.com/publications/2017/lean-innovation-led-boost-us-manufacturing.aspx>>.

B *Strategies for success*

China has implemented a number of strategies through which it hopes to secure its place as a world leader in innovation and technology. The new five-year plan unveiled at the last ‘Two Sessions’ summit demonstrates China’s commitment to technological advancement.⁵³ As well as a plan to develop strategic emerging industries, the government will also endorse an initiative called ‘Internet Plus’, which seeks to intertwine information technology into various aspects of Chinese society.⁵⁴

In combination with the ambitious ‘Made in China 2025’ strategy, these policies are likely to create a host of highly skilled and competitive new business ventures. ‘Made in China’ seeks to enhance the technological capabilities of its industries and to modernise existing modes of production.⁵⁵ With a record-breaking one million patent applications filed in China in 2016, such initiatives will accelerate the already rapid pace at which Chinese innovators are entering the global market.⁵⁶ In a circular issued by the State Council, the protection and application of IP rights was flagged as a fundamental tool in the long-term success of these initiatives.⁵⁷

V THE FUTURE OF INTELLECTUAL PROPERTY RIGHTS

A *Judicial reform*

In order to position itself as an innovation nation, China must first strengthen its IP regime for domestic and foreign businesses alike. Over the past few years, the improvement of IP protection can consistently be seen as a national priority. In 2014 and 2015, the first specialised IP courts in China were established in three major cities, making China one of the few countries in the world to implement this kind of judicial change.⁵⁸ Moreover, the statutory damages that courts are able to award for IP infringements have dramatically increased.⁵⁹ A study by IP House on the Beijing Intellectual Property Court found that the average damages awarded

⁵³ Charlie Campbell, ‘Five Things to Know about China’s ‘Two Sessions’, *TIME* (online), 3 March 2016 <<http://time.com/4245878/china-beijing-chinese-communist-party-two-sessions-cppcc-npc/>>.

⁵⁴ *Ibid.*

⁵⁵ Sylvia Xihui Liu, ‘Innovation Design: Made in China 2025’ (2016) 27(1) *Design and Government* 52, 54.

⁵⁶ *Ibid.* 55.

⁵⁷ *Ibid.* 58.

⁵⁸ Wolters Kluwer Patent Blog, *China’s Specialised IP Courts* (10 April 2017) <<http://patentblog.kluweriplaw.com/2017/04/10/chinas-specialized-ip-courts/>>.

⁵⁹ *Ibid.*

were almost six times greater in 2015 compared to 2012.⁶⁰ In this same period, the average number of cases decided by each judge increased threefold.⁶¹ This evidence points to the increased effectiveness and efficiency brought about by China's introduction of these courts.⁶²

The alleged prejudice of the Chinese judiciary against foreign plaintiffs has also been remedied. A series of high-profile losses in patent infringement cases by multinationals such as Apple have contributed to this perception of bias.⁶³ More recently, several studies demonstrate that foreign patent owners are successful in Chinese courts around 80% of the time.⁶⁴ Furthermore, the grant of injunctions for winning patent litigants ranges from 98% to 100%.⁶⁵ Considering these statistics, it is unsurprising that China is increasingly being selected as the forum of choice for foreign litigants.⁶⁶ Similar improvements can be identified in the area of trademark disputes. An example of this is the successful lawsuit brought by US basketball icon Michael Jordan against Chinese company Qiaodan Sports. In this case, Jordan was able to establish that his name was illegally featured on Qiaodan's range of sportswear.⁶⁷

B Policy and legislative reform

China started to establish its IP system in the late 1970s. It enacted the *Trademark Law* in 1982, the *Patent Law* in 1984, the *Copyright Law* in 1990 and the *Anti-Unfair Competition Law* in 1993.⁶⁸ Since then, it has amended the first three of these laws several times. In China, IP law reform is a complex process involving several institutions and interest groups. Changes to these laws must go

⁶⁰ IP House, *The Report on Judicial Protection from Beijing Intellectual Property Courts* (2016) <https://chinaipr2.files.wordpress.com/2016/12/bjipc_judicial-protection-data-analysis-report-20151.pdf>.

⁶¹ Can Huang, 'Recent Developments of the Intellectual Property Rights System in China and Challenges Ahead' (2017) 13(1) *Management and Organisation Review* 39, 45.

⁶² *Ibid.*

⁶³ Jerin Matthews, 'Siri Faces Threat as Apple Loses China Lawsuit Over Voice Recognition Technology', *International Business Times* (online), 9 July 2014 <<https://www.ibtimes.co.uk/siri-faces-patent-threat-apple-loses-china-lawsuit-over-voice-recognition-technology-1455907>>.

⁶⁴ Erick Robinson, Beijing East IP, 'Why you should protect and enforce your IP in China', *IP Stars* (online), 10 July 2017 <<https://www.ipstars.com/articles/article-why-you-should-protect-and-enforce-your-ip-in-china/arhfvhcw>>.

⁶⁵ *Ibid.*

⁶⁶ William Weightman, 'China's Progress on Intellectual Property Rights (Yes, Really)', *The Diplomat* (online), 20 January 2018 <<https://thediplomat.com/2018/01/chinas-progress-on-intellectual-property-rights-yes-really/>>.

⁶⁷ Tom Hancock, 'Michael Jordan claims victory in China trademark dispute', *Financial Times* (online), 8 December 2016 <<https://www.ft.com/content/e36bc798-bcfb-11e6-8b45-b8b81dd5d080>>.

⁶⁸ *Trademark Law of the People's Republic of China 1982* (PRC); *Patent Law of the PRC 1984*; *Copyright Law of the PRC 1990*; *Anti-Unfair Competition Law of the PRC 1993*.

through strict requirements administered by the State Council and the Standing Committee of the National People's Congress.⁶⁹ In Mandarin Chinese, this process has been referred to as '*qian chui ban lian*', which translated to 'going through fire and water a thousand times'.⁷⁰ Notwithstanding this difficulty, a series of new protection mechanisms have started to take shape.

Recently, the Chinese government issued a draft statute for the reform of the State Intellectual Property Office (SIPO). Under this reform, the SIPO will form part of a new 'super agency' responsible for IP.⁷¹ A key aim of this reform is to increase the strength of IP protections and the efficiency of IP-related matters. A further testament to China's commitment to reform this area of law is the launch of a nationwide IP campaign in 2017. Spanning across twelve government agencies, this far-reaching campaign specifically aimed at protecting the IP rights of foreign companies.⁷² The purpose of the campaign was to improve cooperation among enforcement bodies, encourage foreign investment and to ultimately deter future infringements of foreign IP.

VI CONCLUSION

China's incredible pace of change means that it is often misunderstood. From once being known as the 'world's factory', contrary to long-held beliefs China is now on course to becoming an intellectual property powerhouse. After evolving from a planned economic system to a thriving market economy, China's next chapter will surely be defined by its transformation from imitation to innovation. However, it remains to be seen if China will continue to embrace the importance of IP rights and become a world leader in not only innovation, but also the legal and political protection of innovation. On balance, China's increasing efforts to reflect international standards in this area foreshadows an optimistic future of IP laws and protections.

Goodbye shanzhai, hello innovation superpower.

⁶⁹ Li Mingde, 'The process of intellectual property law reform in China' (2018) 8(1) *Queen Mary Journal of Intellectual Property* 26.

⁷⁰ *Ibid* 35.

⁷¹ Squire Patton Boggs, *China Reforms its IP Administrative System* (1 June 2018) <<https://www.iptechblog.com/2018/06/china-reforms-its-ip-administrative-system-with-the-creation-of-a-new-super-administration/>>.

⁷² Frank Tang, 'China launches campaign to protect intellectual property rights' *South China Morning Post* (online), 20 September 2017

<<https://www.scmp.com/news/china/economy/article/2111929/china-launches-campaign-protect-foreign-intellectual-property>>.