

This article was published in the *International Law Office IP Newsletter* on January 28, 2013.

Intellectual Property - Taiwan

Civil litigation should not be transferred to civil court if criminal defendant acquitted

Contributed by Lee and Li Attorneys at Law

When an IP rights holder files a criminal complaint for IP rights infringement with the criminal division of a court, the rights holder will usually initiate a civil suit alongside such a criminal action for damage claims to avoid the litigation fees.

According to the Code of Criminal Procedure, if a court decides that the defendant of a criminal case is either not guilty or exempt from prosecution, or if the criminal case is rejected, then in order to prevent the civil suit from being dismissed the rights holder may require the civil action to be heard by the civil division of the court. However, in a 2012 copyright infringement case, the IP Court dismissed an application to transfer such a civil action to the civil division of a court and also rejected the claim for civil damages according to the IP Case Adjudication Act, where the defendant in the copyright infringement criminal case was acquitted.

The IP Court pointed out that, according to the Code of Criminal Procedure, if in criminal proceedings the court finds the defendant not guilty or exempt from prosecution, or rejects the case, then the court should not dismiss the civil action alongside such criminal proceedings filed by the plaintiff and should transfer the civil action to the civil division of a court for trial on the plaintiff's request. However, the IP Case Adjudication Act should prevail over the Code of Criminal Procedure for trial of the IP dispute. According to the act, when a defendant is found not guilty, the civil claim should be directly rejected without transferring the civil case to the civil division of the court for trial.

The Taichung District Court cited and adopted the same position as the IP Court in a similar trademark infringement case later in 2012, and rejected the application to transfer the civil claim to the civil division of the court for trial.

The IP Court's opinion diverges from that of other courts in the past, but such a new position has also been recognised by other courts.

For further information on this topic please contact [Ruey-Sen Tsai](#) at Lee and Li Attorneys at Law by telephone (+886 2 2715 3300), fax (+886 2 2718 7099) or email (rueysentsai@leeandli.com).