



ADMINISTRATIVE IP ENFORCEMENT IN CHINA

Contents

- Overview
- IPO Enforcement
- CAC Enforcement
- AIC Enforcement
- Customs Enforcement
- Pro & Con Conclusion



OVERVIEW

Administrative Authorities

Authorities	Responsible Areas
IPOs Intellectual Property Offices	- Patent infringement and counterfeiting
AICs Administrations for Industry & Commerce	- Trademark infringement and counterfeiting - Unfair competition
CACs Copyright Administrations of China	- Copyright infringement and counterfeiting
Customs	- Patent infringement and counterfeiting - Trademark infringement and counterfeiting - Copyright infringement and counterfeiting

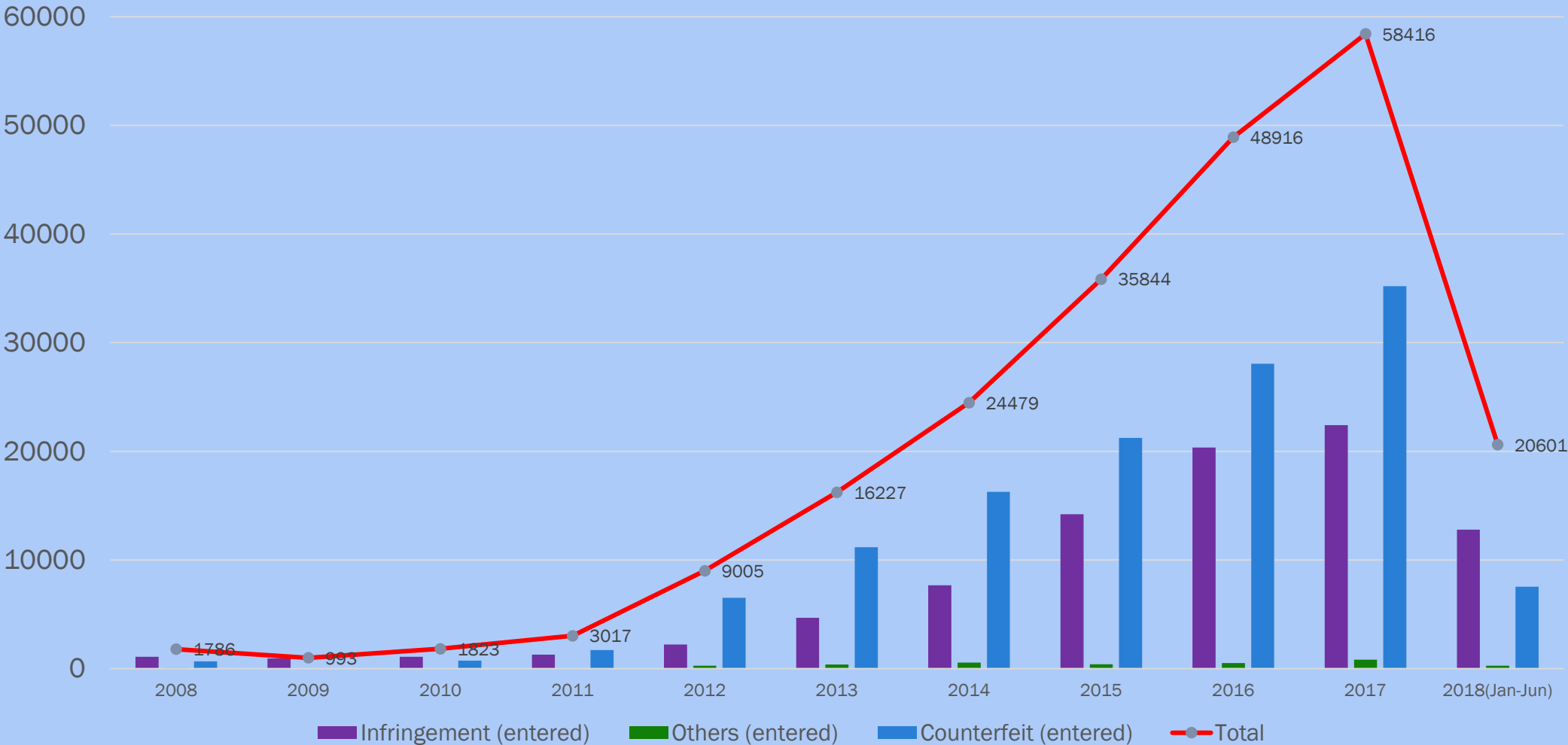


IPO ENFORCEMENT

Patent Enforcement by IPOs

- Ex official and/or at request
- Raid and investigation
- Administrative punishment including
 - *Administrative injunction*
 - *Confiscating and destroying infringing goods, producing equipment & molds*
 - *Imposing fine*

Patent Enforcement by IPOs



Data source: SIPO Patent Annual Reports

Patent Enforcement by IPOs

Case 1. Honda Motorcycle Design Patent Enforcement

In 2017, Shanghai IPO, in response to the complaint of Honda, investigated the case of a Shanghai company suspect of infringing Honda motorcycle design patent and found all the design features of the patent involved were reflected in the alleged infringing products manufactured, sold and offered to sell by the Shanghai company. The Shanghai company was ordered to cease infringement immediately.

Patent Enforcement by IPOs

Case 2. Enforcement of Invention Patent Concerning “Product Quality Tracing & Anti-Counterfeiting System and Its Methods”

In 2017, Beijing IPO, in response to the complaint of an invention patent holder, investigated a liquor company and a local magazine, and found that the “product tracing platform” label used by the liquor company and the tracing & anti-counterfeiting method supported by a product tracing platform hosted by the magazine were identical with all the technical features of the claims of the patent involved. thus the infringement constituted. Beijing IPO ordered the two parties to cease infringement immediately.

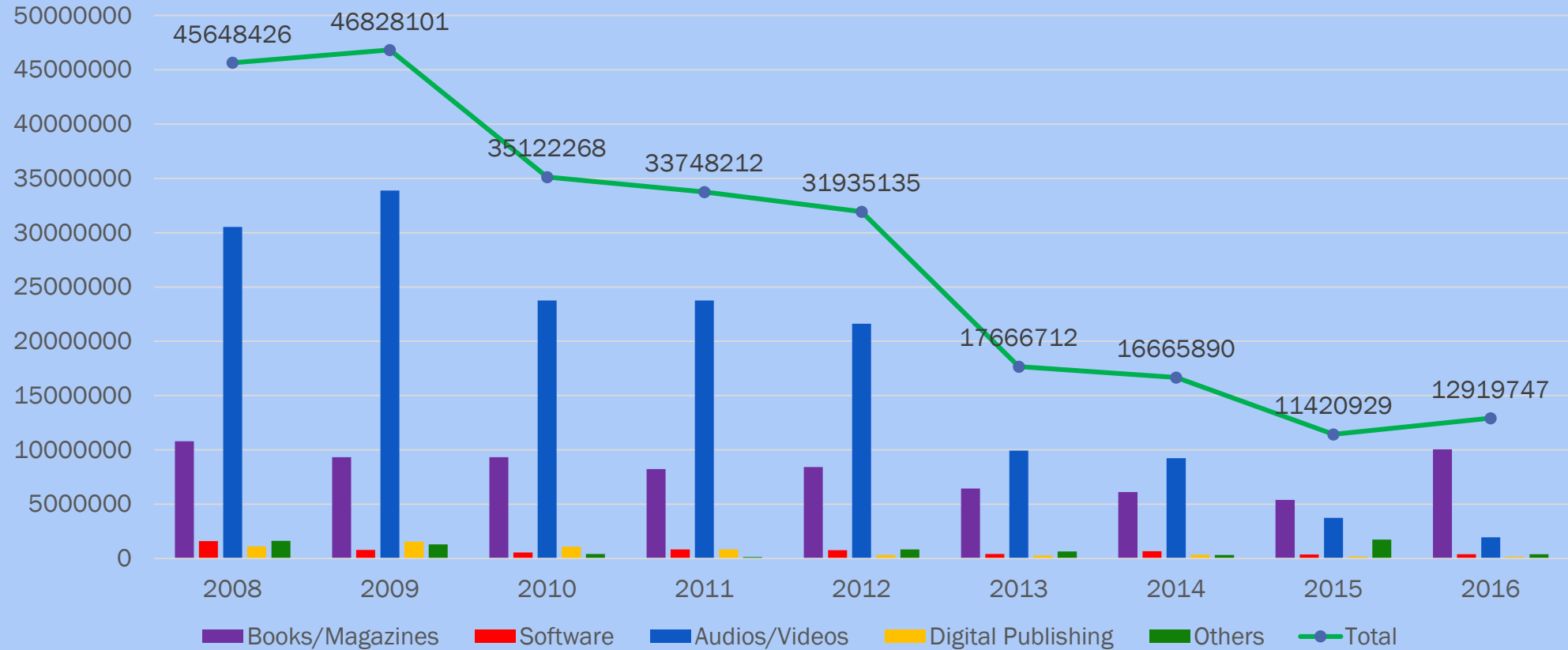


CAC ENFORCEMENT

Copyright Enforcement by CACs

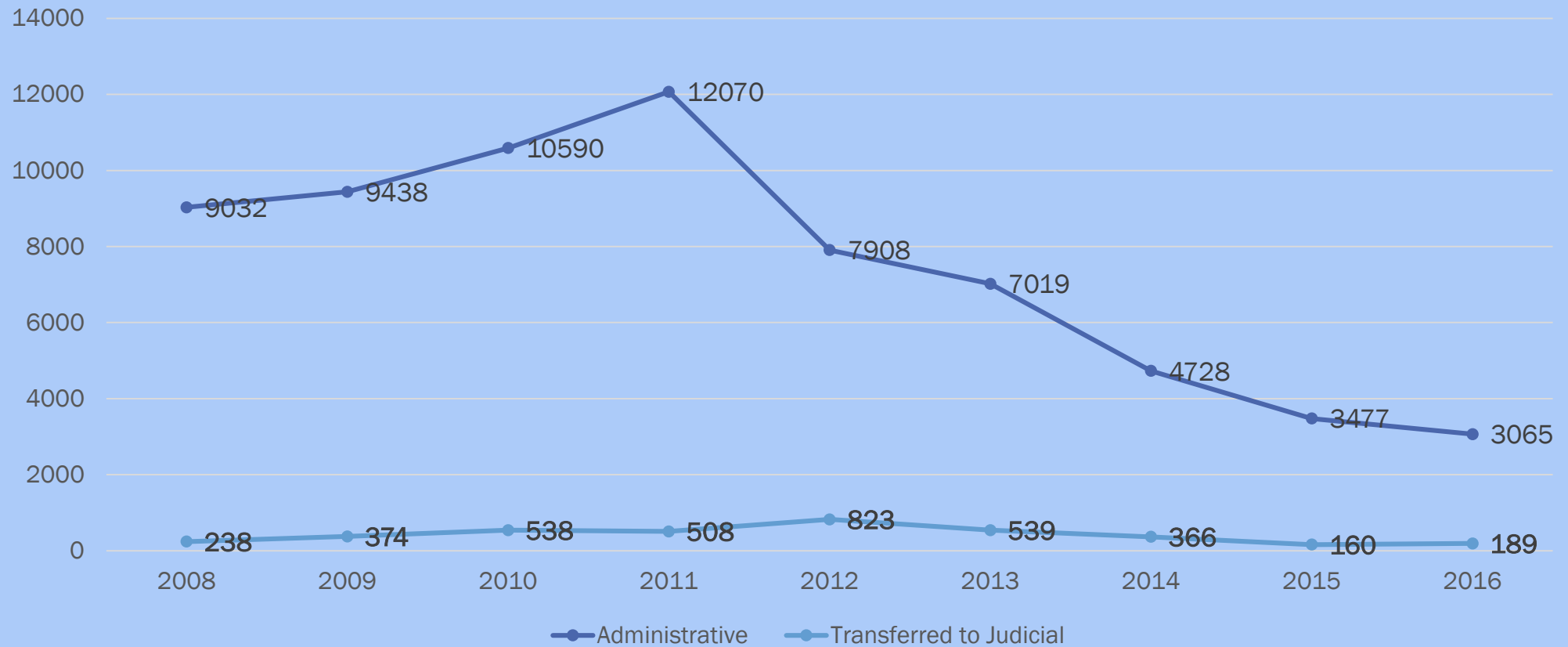
- Ex official and/or at request
- Raid and investigation
- Administrative punishment including
 - *Administrative injunction*
 - *Confiscating and destroying pirate goods*
 - *Confiscating illegal income*
 - *Imposing fine*

Pirate Copies Seized by CACs (pieces)



Data source: Annual Copyright Enforcement Statistics on CAC Website

Copyright Enforcement by CACs



Data source: Annual Copyright Enforcement Statistics on CAC Website

Copyright Enforcement

Case 1. Copyright enforcement concerning movies and TV works

In March 2017, in response to the complaints of the Motion Picture Association of America (MPAA), Beijing Cultural Market Administrative Law Enforcement Team investigated against Beijing Orange VR Technology Co. and found the company provided on-demand films and TV series through their own VR APP without permission since July 2016. An administrative fine of 30,000 yuan RMB was imposed on the company.

Copyright Enforcement

Case 2. Copyright enforcement concerning written works

In December 2017, Shanghai Cultural Market Administrative Law Enforcement Team investigated against Shanghai Zhiqi Investment Consulting Co. Ltd. and found the company uploaded 45 official securities research reports onto its servers without permission of the right holders and earned over 280,000 yuan from readers who paid for the articles. An administrative fine of 100,000 yuan was imposed on the company.

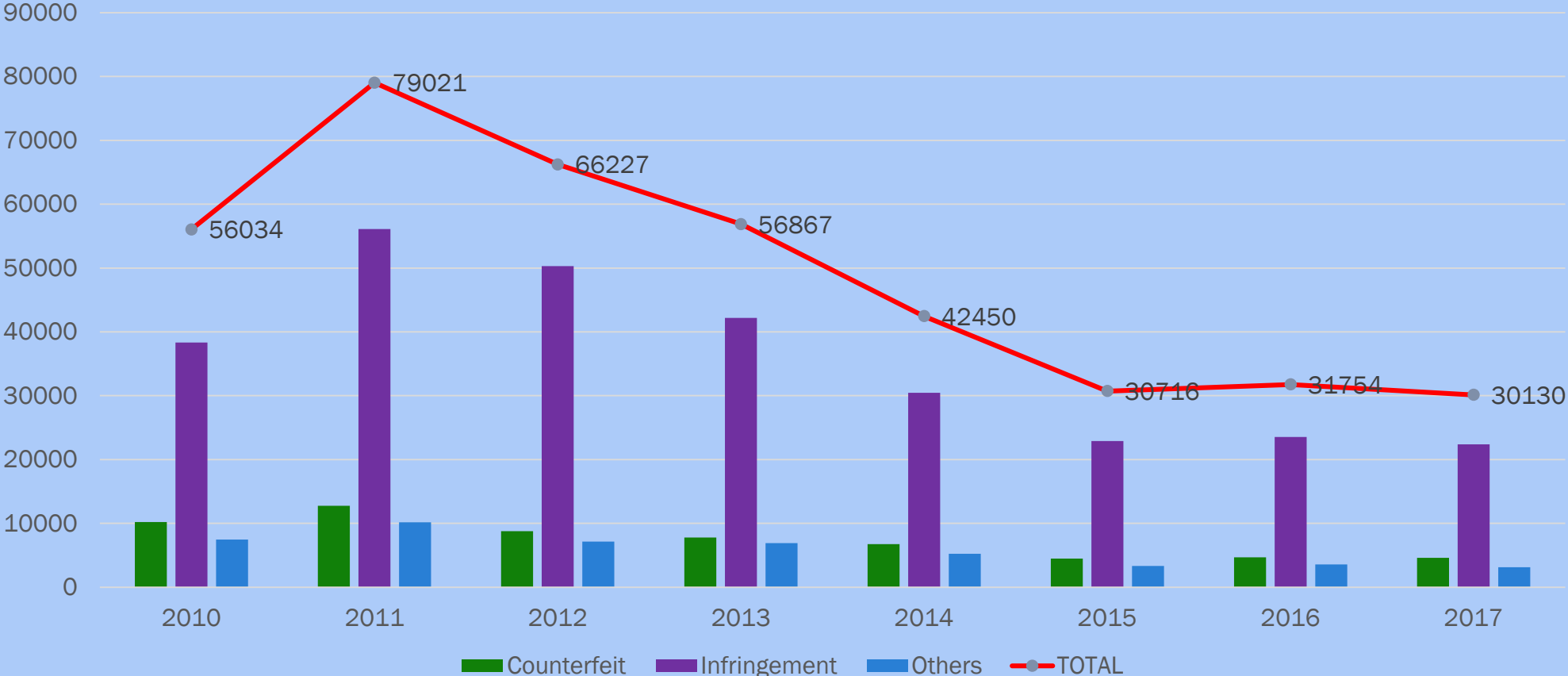


AIC ENFORCEMENT

Trademark Enforcement by AICs

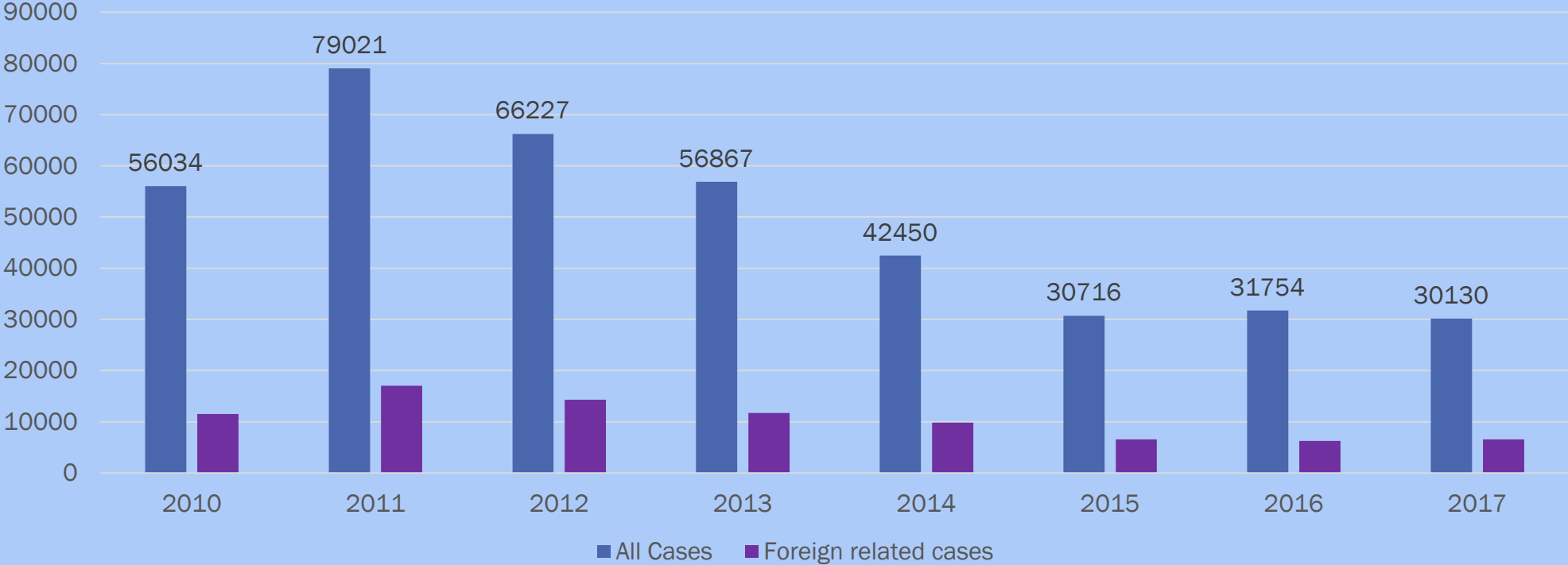
- Ex official and/or at request
- Raid and investigation
- Administrative punishment including
 - *Administrative injunction*
 - *Confiscating and destroying infringing goods, producing equipment & molds*
 - *Imposing fine*

Trademark Enforcement by AIC



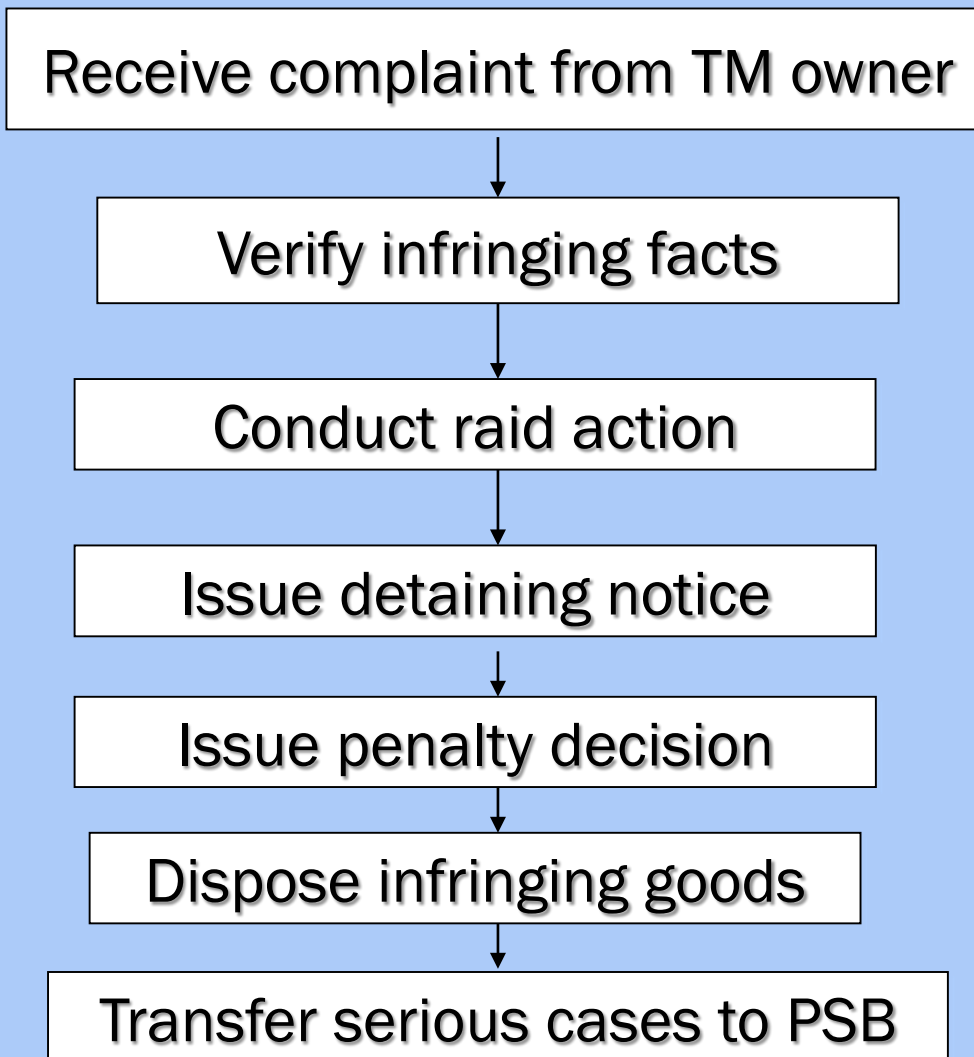
Data source: Trademark Office of SAIC Annual Reports

Trademark Enforcement by AICs (Total v. Foreign Related)



Data source: Trademark Office of SAIC Annual Reports

Trademark Enforcement by AIC



AIC Raid Action



AIC Raid Action



AIC Raid Action



AIC Raid Action



AIC Raid Action

AIC Notice of Detainment

**工商行政管理机关
扣留(封存)财物通知书**

合工商新扣字(2009)第07号

张云:


经查,你(单位)涉嫌 销售商标侵权物品 的行为,本局根据 中华人民共和国商标法第五十七条 的规定,决定对有关财物予以扣留(封存)(详见《财物清单》第07号)。

如对扣留(封存)措施不服,可在收到本通知之日起六十日内向 北京市海淀区工商局 申请复议;也可以向人民法院起诉。

上述财物,未经本局同意,不得隐匿、销毁或转移。

附:《财物清单》第07号

2009年3月3日



**工商行政管理机关
财 物 清 单**

第07号

编 号	财物名称	规格(型号)	单 位	数 量	特 征	备 注
1	箱包		个	7	含标识	
2	皮鞋		双	19	同上	
3	衬衣		件	22	同上	
4	毛衣、T恤		件	36	同上	
5	棉衣		件	11	同上	
6	领带		个	19	同上	
7	白裤		件	10	同上	
8	裤子		条	5	同上	
9	帐本、材料盒		本	4		

当事人/保管人: 张云 承办人: 王太李 陈海新

2009年3月3日

AIC Raid Action

AIC Penalty Decision

北京市工商行政管理局海淀分局

行政处罚决定书

京工商海处字(2009)第126号

正本

当事人:米武 性别:男 年龄:23岁 所在单位:无
住 址:北京市房山区窦店镇二街村六区52号

经查:当事人于2008年12月30日在北京市海淀区海淀大街3号鼎好电子市场地下二层C011号,未办理营业执照经营数码产品及配件。至2009年1月6日被查获时止共取得经营收入50元,无正式票据与帐目。另查: 拥有 注册商标专用权,核定使用商品为第9类。当事人于2009年1月5日从一个上门推销人员手中购进标有 注册商标的MDR-Q38LW型耳机4个进行销售,标价20元/个。至2009年1月6日被查获时止,尚未售出。上述 注册商标耳机经 授权的北京集佳知识产权代理有限公司鉴定为侵犯其注册商标专用权的商品。上述事实以询问笔录、营业执照复印件、情况说明、鉴定报告、照片等有关材料为证。

本局于2009年1月20日向当事人送达了《行政处罚告知书》,当事人在规定的期限内未进行陈述、申辩。

当事人的上述行为,根据《无照经营查处取缔办法》第四条第一款第(二)项之规定,已构成无照取得许可证或者其他批准文件即可取得营业执照而未依法取得营业执照,擅自从事经营活动的无照经营行为。依据《无照经营查处取缔办法》第十四条第一款的规定,决定给予当事人予以取缔、没收违法所得、罚款的行政处罚;另:当事人的上述行为同时属于《中华人民共和国商标法》第五十二条第(二)项规定的侵犯注册商标专用权的违法行为,依据《中华人民共和国商标法》第五十三条及《中华人民共和国商标法实施条例》第五十二条之规定,决定给予当事人责令立即停止侵权行为

的处罚。据此,对无照经营行为予以取缔,责令当事人立即停止侵权行为,并决定处罚如下:

- 1、没收侵犯SONY注册商标专用权的MDR-Q38LW型耳机4个;
- 2、没收违法所得50元;
- 3、罚款500元。

当事人应当自收到处罚决定书之日起3个月内到就近银行(非税收代理收缴银行:北京银行、建设银行、交通银行、光大银行、中信银行)缴纳罚没款。逾期不缴纳,每日按罚款数额的3%加处罚款。

如不服本处罚决定,可自收到本处罚决定书之日起60日内向北京市工商行政管理局或者海淀区人民政府申请复议,也可以于3个月内直接向人民法院起诉。

北京市工商行政管理局海淀分局
二〇〇九年二月一日



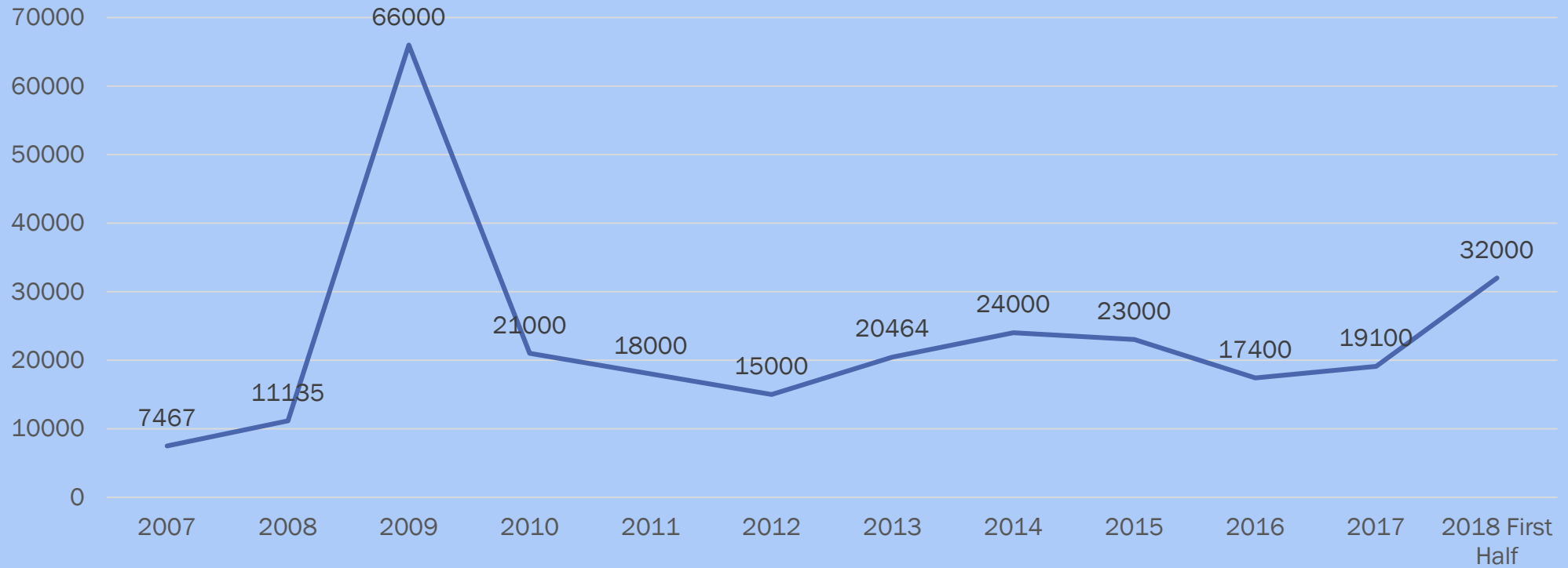


CUSTOMS ENFORCEMENT

Customs Enforcement

- Recordation of Chinese Registered IP rights
- Ex officio and/or at request
- Administrative punishment including
 - *Administrative injunction*
 - *Confiscating and destroying infringing goods, producing equipment & molds*
 - *Imposing fine*

Customs Enforcement



Customs Enforcement – ex official

Customs notify IP right owners for authentication



IP right owner applies for detainment in 3 business days & pay bonds



Customs investigate and make decision in 30 business days

Customs Enforcement – upon request

IP right owners requests Customs to detain infringing goods



Customs issues detainment notice



Customs release the suspect goods if

- A court notice for detainment assistance is not received within 20 business days
- A counter bond is provided by the shipper or recipient
- No infringement is found

Customs Protection

Notification of Customs Seizure

中华人民共和国义乌海关

处理结果通知书

义关知字[2010]第8-2号

北京集佳知识产权代理有限公司：

对深圳市拓金贸易发展有限公司出口的侵犯你公司（代理）“ ” 商标权货物一案，我关经调查，已经作出没收侵权货物并处罚款人民币31000元的决定。现根据《中华人民共和国海关关于〈中华人民共和国知识产权海关保护条例〉的实施办法》第三十条的规定，将有关情况通知如下：

- （一）货物名称和数量：太阳镜 6000 副
- （二）收发货人名称：深圳市拓金贸易发展有限公司
- （三）申报进/出口日期：2009 年 10 月 17 日
- （四）海关扣留日期：2010 年 1 月 13 日
- （五）海关行政处罚生效日期：2010 年 2 月 9 日
- （六）货物启运地：浙江义乌
- （七）货物指运地：阿根廷

特此通知。





PROS & CONS



PROS	CONS
<ul style="list-style-type: none">• Time saving (2-6 months)• Cost saving• Evidence preservation for potential civil action• Inner incentives	<ul style="list-style-type: none">• No damage granted to IP right owners• Not applicable for complicated infringement cases• Local Protection in some areas• Customs – counter bond



CONCLUSION

Thank you!

Speaker: Dan Chen
Partner
Unitalen Attorneys at Law
www.unitalen.com
Email: dan.chen@unitalen.com
Telephone: 925-789-7213