

ALB

2017

TOP 15 CHINA LITIGATORS

中国十五佳诉讼律师

Litigators are duty-bound in protecting the lawful rights and interests of the parties concerned, maintaining the correct implementation of laws and safeguarding equity and justice and Asian Legal Business ("ALB") has been attaching great importance to the work of litigators. The ALB's survey team for this year has conducted the survey of the court cases for which judgments were pronounced between January 1 and December 31, 2016 as represented by all the nominated lawyers and made selection based on the influence and difficulty of the cases as well as the feedbacks from the clients and market about the cases.

诉讼律师在维护当事人合法权益、维护法律正确实施以及维护公平正义方面责无旁贷，ALB一直以来非常重视诉讼律师的工作。今年我们的调研团队调研了所有被提名的律师所代理的判决时间为2016年1月1日至2016年12月31日的诉讼案件，根据案件影响力、难度、客户和市场反馈做出评选。

Methodology

For this year's list of ALB Top 15 China Litigators, the selection committee made detailed analysis and evaluation of the candidates' litigation achievements in 2016 primarily by relying on third-party recognition as well as referring to objective information in the following aspects:

1. Typical cases provided by lawyers that showcase their major achievements in 2016; and
2. Cases that lawyers participated in and for which judgments were pronounced within 2016, the information of which is available through public channels.

The criteria for evaluating objective information in these two aspects include without being limited to:

1. Difficulty of the cases;
2. Litigation strategies employed by lawyers;
3. Influence of the cases; and
4. Innovative nature of the cases.

The list of winners below is in alphabetical order.

评选方法：

在本次的ALB中国十五佳诉讼律师的评选中，评委会主要参考以下两个方面的客观信息内容，并引入第三方的认可情况，对报名者在2016年的诉讼成就进行了详细的解析、评价：

1. 律师提供的可代表其2016年工作成就的典型案件。
2. 公开渠道可获取的该律师参与的裁判案例(注：判决时间在2016年)。

该两方面客观信息内容的评选标准包含但不限于以下几个方面：

1. 案件难易程度
2. 律师诉讼策略
3. 案件影响力
4. 创新性

以下获奖名单按姓氏字母排序。

	Lawyer 律师	Law Firm 所在律所	Practice Areas 专业领域
1	Bao Wei 包伟	Zhong Lun Law Firm 中伦律师事务所	Commercial litigation and arbitration 商事诉讼和仲裁
2	Feng Yinghui 封映辉	East & Concord Partners 天达共和律师事务所	Litigation and arbitration 诉讼和仲裁
3	Fu Gang 傅钢	Co-Effort Law Firm LLP 协力律师事务所	Intellectual property and company law 知识产权和公司法
4	Huang Tao 黄滔	King & Wood Mallesons 金杜律师事务所	Dispute resolution 争议解决
5	John Liu 刘炯	AllBright Law Offices 锦天城律师事务所	Dispute resolution 争议解决
6	Liu Yanfeng 刘艳峰	Tiantai Law Firm 天驰君泰律师事务所	Intellectual property and anti-unfair competition 知识产权及不正当竞争
7	Sun Jingze 孙敬泽	Grandall Law Firm 国浩律师事务所	Civil and commercial litigation, bad financial assets disposal 民商事诉讼和金融不良资产处置
8	Sun Yan 孙彦	Tian Yuan Law Firm 天元律师事务所	Intellectual property and dispute Resolution 知识产权及争议解决
9	Yang Ming 杨铭	Jingtian & Gongcheng 竞天公诚律师事务所	Dispute resolution 争议解决
10	Yang Peiming 杨培明	Llinks Law Offices 通力律师事务所	Dispute resolution 争议解决
11	Yao Kefeng 姚克枫	Beijing DHH Law Firm 北京德和衡律师事务所	Intellectual property,internet,electronic commerce,commercial affairs,etc. 知识产权、互联网、电子商务、商事领域等
12	Zang Hongliang 臧洪亮	Global Law Office 环球律师事务所	Air law,construction law,M&A,dipute resolution 航空法、建筑法、并购和争议解决
13	Zhao Shuzhou 赵淑洲	Wang Jing & Co. 敬海律师事务所	Dispute resolution,Maritime engineering, international trade,maritime,insurance,etc. 争议解决、海事工程、国际贸易、海商、保险等
14	Leanne Zheng 郑艳丽	JunHe LLP 君合律师事务所	Dispute resolution 争议解决
15	Jasmine Zou 邹佳铭	King & Capital Law Firm 京都律师事务所	Criminal defense 刑事辩护

ZHONG LUN LAW FIRM

Bao Wei is expert at commercial litigations and arbitrations in and outside China and has extensive experiences in practice particularly in the areas such as general commercial affairs, finance, real estate and construction, the Internet, anti-monopoly and anti-unfair competition. Mr. Bao has represented multinational corporations and financial institutions operating in China in dealing with numerous major and complex litigations and arbitrations. His representative cases include, without being limited to, representing Klynveld Peat Marwick Goerdeler ("KPMG") in participating in all litigations and overseas arbitrations involving all disputes between KPMG and Wahaha in connection with the joint venture between Danone and Wahaha, representing SOHO in dealing with the disputes relating to the Bund 8-1 plot, represented Heineken Holdings in dealing with its commercial dispute with Jiangsu Dafuhao Beer Co., Ltd. and representing Shanghai Bund de Rockefeller Group Master Development Co., Ltd. in dealing with its loan contract dispute with the Bank of China. Bao Wei believes that the beauty of commercial litigation lies in its perfect combination of the principles and rules peculiar to the law, the analysis and communication that the legal professionals are good at and the business operation logic, its creation of the most clear, concise and efficient strategy amidst complicated commercial disputes and its function of fundamentally resolving disputes, protecting rights, increasing benefit and safeguarding the unblocked and fair transactional and social order.



BAO WEI
包伟

中伦律师事务所

包伟律师擅长国内外商事诉讼和仲裁，尤其在商业、金融、房地产及建筑、互联网、反垄断及反不正当竞争等领域有着丰富的实践经验，曾作为在华跨国企业及财务机构的代理人办理了众多重大复杂的诉讼、仲裁案件。代表毕马威会计师事务所就达能与娃哈哈合资纠纷案参加KPMG与娃哈哈之所有纠纷诉讼工作及境外仲裁工作；代表SOHO处理外滩8-1地块相关纠纷；代表喜力控股公司处理其与大富豪商业纠纷；代表上海洛克菲勒集团外滩源综合开发有限公司处理其与中行借款合同纠纷等。其认为，商事诉讼之美，恰在将法律特有的原理和规则、法律人擅长的分析和沟通能力与商业运行逻辑完美结合，于错综复杂的商业争端中，创造最清晰简洁高效的策略，根止纷争、维权增益，为畅通公平的交易和社会秩序，保驾护航。

EAST & CONCORD PARTNERS

In her 26-year practice, Feng Yinghui has been active in participating in litigations and arbitrations as a litigator before courtroom. In the past year, she has represented Lotte Supermarket Co., Ltd. in several cases involving disputes over housing lease contracts, represented New Era Investment (Pty) Ltd. in the case involving the dispute over a housing lease contract and represented Conocophillips China Inc. in the appeal case involving the dispute over liability for marine pollution and damage, among other things. Apart from the professional work as a lawyer, Ms. Feng has been helping young people by sharing with them her experiences and lessons obtained from years of handling cases and has given lectures to the Beginning Lawyers organized by the Hebei Lawyers Association and the Legal Clinic of the Minzu University of China. Ms. Feng believes that litigators have the duty to discover problems and solve problems creatively and this is what the significance of being a litigator lies in.



FENG YINGHUI
封映辉

天达共和律师事务所

从业26年以来，封映辉律师一直活跃在诉讼仲裁第一线，作为出庭律师参加诉讼。在过去一年里，其代理了数起乐天超市有限公司房屋租赁合同纠纷案；新时代国际投资有限公司房屋租赁合同纠纷案；康菲石油中国有限公司海上污染损害责任纠纷上诉案等。除了律师的本职工作外，封映辉律师还将多年来形成的办案经验及教训传授给年轻人，曾在河北律协主办的律师初任及中央民族大学的法律诊所授课。封律师认为诉讼律师的本分及意义在于发现问题，并富有创意的解决问题。



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zhonglunlawfirm

CO-EFFORT LAW FIRM LLP

Fu Gang specializes in the practice and research in the areas of intellectual property and corporate laws and has extensive experiences in the litigation in such areas. He has handled numerous innovative court cases and is especially expert at offering legal services for online games, film and other pan entertainment industries. In 2016 he successfully represented the plaintiffs in the unfair competition case filed by the www.dianping.com against www.baidu.com and in the copyright infringement, trademark infringement and unfair competition case involving the online game "Miracle MU" filed by Shanghai Zhuangyou Information Technology Co., Ltd. against Guangzhou Hugenstar Information Technology Co., Ltd. and other companies and represented clients in the cases including the copyright infringement and unfair competition case involving "Super MT" filed by Beijing Locojoy Technology Co., Ltd. against Beijing Kunlun Tech Co Ltd. and others. Mr. Fu is of the opinion that litigators are supposed to apply wisdom and experiences, dig out evidence, restore facts, reason with wisdom and realize the value as lawyers while maximizing the benefits of clients.



FU GANG
傅钢

协力律师事务所

致力于知识产权和公司法领域实务与研究的傅钢律师,在上述领域有着丰富的诉讼经验,办理了大量的创新型诉讼案件,尤其擅长网络游戏、电影等泛娱乐产业的法律服务。他于2016年作为原告代理人参与的大众点评网诉百度不正当竞争案、上海壮游信息科技有限公司与广州硕星等公司“奇迹MU”网络游戏侵害著作权、侵害商标权以及不正当竞争案胜诉;代理了北京乐动卓越科技有限公司与北京昆仑万维科技股份有限公司等“超级MT”著作权侵权及不正当竞争案等。傅律师表示,作为诉讼律师,运用智慧与经验,深挖证据,还原事实,睿智审理,在实现客户利益最大化的同时实现律师的价值。

KING & WOOD MALLESONS

Huang Tao is the managing partner of the Dispute Resolution Group of King & Wood Mallesons. He specializes in international and foreign-related civil and commercial litigations and arbitrations and has either represented clients or served as an expert witness in several hundreds of cases. The important cases he has dealt with include, without being limited to: representing China's newsprint industry in applying for anti-dumping investigation of the export newsprint industries of the United States of America, Canada and Korea; representing Hyundai Insurance (China) Company Limited in the reinsurance contract dispute case against China United Insurance Holding Company and representing Dalian Shide Plastics Industry Co. Ltd. in responding to the case involving the cancellation of equity transfer agreement filed by Ningxia Dayuan Chemical Co., Ltd.. In addition, Mr. Huang is the main leader of the legal team of the Organizing Committee of the 29th Olympiad and was invited to act as the legal theme representative of the bidding committee for 2022 Winter Olympics in 2015. In the viewpoint of Huang Tao, litigators should follow the principle of "acting in favor of clients and taking the right path". They should make planning and arrangement for litigations with the vision of a master, deal with every detail with the attitude of a craftsman and acquire the sense of professional achievement with grace and dignity while realizing the ultimate purpose of clients.



HUANG TAO
黄滔

金杜律师事务所

黄滔律师是金杜律师事务所争议解决部管理合伙人，专业领域为国际和涉外民商事诉讼和仲裁，作为代理律师或专家证人参与案件数百起。黄律师代理过的重要案件包括：代表中国新闻纸产业申请对美国、加拿大、韩国的进口新闻纸产业进行反倾销调查；代表现代财产保险（中国）有限公司诉中华联合财产保险股份有限公司再保险合同争议案。代表大连实德塑胶工业有限公司应诉宁夏大元化工股份有限公司撤销股权转让协议纠纷案件等。另外，黄律师北京奥组委中国法律顾问工作组的主要负责人，并于2015年受邀担任北京2022年冬奥申会法律主题陈述人。黄律师表示，作为诉讼律师，其原则是“拉偏帮，走正道”。对待诉讼案件，应以大师的眼光来谋划布局，以匠人的态度来处理每一个细节，在实现客户最终目的的同时，有体面和尊严地收获专业成就感。

ALLBRIGHT LAW OFFICES

John Liu is the senior partner of AllBright Law Offices. He has the experience in practice for nearly 20 years and specializes in dispute resolution, especially in various new-type, complicated or cross-border commercial litigations and arbitrations. In the past year, He successfully represented clients in the first civil lawsuit involving anti-monopoly initiated by consumers in China, the first case involving recognition and enforcement of civil judgements of China in Canada, contract disputes involving the amount of controversy in as much as hundreds of millions of US dollars, several cross-border commercial arbitrations conducted in both Chinese and English, several cases involving unfair competition, copyright disputes and shareholder infringement and other contentious cases. Mr. Liu believes that a case is a mission, a fight, a baptism, a song of ice and fire and a solid step forward in the constant pursuit of equity and justice. All the cases handled impartially with attention and due diligence are the glories in the professional careers of lawyers no matter whether they bring about the joy from victory or tears from failure.



LIU JOHN
刘炯

锦天城律师事务所

作为锦天城律师事务所的高级合伙人，刘炯律师有着近二十年的从业经验，其主要执业领域为争议解决，特别是各类新型、复杂或跨境商事诉讼与仲裁。在过去一年里，刘炯律师成功代理了国内第一起由消费者提起的民事反垄断诉讼，中国民事判决在加拿大的首起承认与执行案，系争金额高达数亿美元合同纠纷，多个跨境中英双语商事仲裁案件，以及若干不正当竞争、著作权纠纷和股东侵权纠纷等案件。刘律师认为，一个案子是一份使命，一场战斗，一次洗礼，一首冰与火之歌，更是对于公平正义永恒追求的坚实一步。无论是胜利的喜悦或失败的泪水，所有用心尽力公正办理的案件，都是律师执业生涯的荣耀。

TIANTAI LAW FIRM

Liu Yanfeng has extensive experiences in the protection of corporate brands and has been providing legal services to China Gold, Baidu, Wanda and other large-sized enterprises and institutions. He successfully handled the retrial case between Caidie Bakery Co., Ltd. and Qing-Feng Steamed Dumpling Shop before the Supreme People's Court, the case involving the program "If You Are the One", the case involving Dididache, the case involving Evergrande Spring, the case involving Lei Jun electric vehicle and Xiaomi, series of cases involving China Gold and other influential cases in great number. At the same time, he has represented clients in many cases involving the recognition and protection of famous or well-known trademarks, in the project of intellectual property protection and operation of Water Cub, a 2008 Olympic Games venue, and winning the bid for the project of intellectual property protection for 2022 Winter Olympic Games venues. As seen by Liu Yanfeng, new economies are continuously emerging in China and litigators are significant in litigation because they can not only make their best to assist judges in ascertaining facts but also come up with the rules for solving problems, with such rule being accepted, on the basis of the existing laws.



LIU YANFENG

刘艳锋

天驰君泰律师事务所

刘艳锋律师在企业品牌保护方面具有丰富的经验，常年服务于中国黄金、百度、万达等大型企事业单位。成功代理了采蝶轩和庆丰包子铺最高院再审案、非诚勿扰案、滴滴打车案、恒大冰泉案、雷军电动小米案、中国黄金系列案等大量具有影响的案件。同时，其代理了大量著名、驰名商标认定与保护案件，代理了2008年奥运会场馆水立方知识产权保护、运营项目，并再次中标2022年冬奥会场馆知识产权保护项目。刘律师认为，中国新经济不断出现，诉讼律师在诉讼中除竭力协助法官查明事实外，在现有法律基础上，能够提出解决问题的规则并被采纳，意义重大。

GRANDALL LAW FIRM

Sun Jingze is a partner of Grandall Law Firm and the only lawyer who is interviewed by the World Bank and IMF for China's financial evaluation. He specializes in the handling of major and difficult civil and commercial litigations and the disposition of financial non-performing assets covering investment and financing, real estate, bankruptcy and many other areas and involving tens of billions of Chinese yuan. Mr. Sun has profound understanding of capital market as well as financial services and products and is good at employing innovative litigation thoughts and strategies. In handling cases, he has successfully broken local protectionism on many occasions and made comprehensive use of debt-to-equity swap, debt reorganization, asset swap, preservation, enforcement and other non-litigation means and litigation means. He has represented Larut Talam International Management Services Limited, a Hong Kong company, in an appeal case involving civil dispute with William Chiu, an Australian citizen and won the case in all eight retrials conducted in ten years. Mr. Sun believes that it is most significant for litigators to promote sunshine litigation, facilitate the social recognition of the professional value of litigators and make courtrooms the stage that litigators are proud of.



SUN JINGZE

孙敬泽

国浩律师事务所

作为国浩律师事务所合伙人，世行和IMF中国金融评估约谈的唯一律师。孙敬泽律师致力于重大疑难民商事诉讼和金融不良资产处置，涉及投融资、房地产、破产等多领域，涉案金额数百亿元。对资本市场、金融服务及产品有深刻认识，擅长引入创新的诉讼思维和策略，多次破除地方保护主义，综合运用债转股、债务重组、资产置换、保全、执行等非诉与诉讼手段。代理香港拉律达南公司与邱维廉的民事纠纷申诉案，历时十年，八次再审，均胜诉。在孙律师看来，诉讼律师最有意义的地方在于推进诉讼阳光化，让社会认识诉讼律师的专业价值，让法庭成为诉讼律师骄傲的舞台。

TIAN YUAN LAW FIRM

Sun Yan focuses his practice in litigations relating to intellectual property rights and dispute resolution and has represented clients in dealing with various types of intellectual property infringement cases and administrative lawsuits. Examples include representing Microsoft Corporation in the computer software copyright infringement case against Beijing Yadu Science and Technology Co., Ltd., representing Beijing Bytedance Technology Co., Ltd. (Headlines Today) in dealing with the case involving its dispute with Beijing Sohu Internet Information Service Co. Ltd. over copyright infringement and un- fair competition, representing Beijing Navinfo Technology Co.

Ltd. in the map copyright infringement case against the companies including Beijing Qihoo Technology Company Limited (360), and representing Sichuan Yema Automobile Co., Ltd. in dealing with the administrative lawsuit and infringement dispute over the trademark "Yema" between it and Ford Motor Company. Sun Yan believes that it is most significant for litigators to help clients to effectively resolve disputes, safeguard the lawful rights and interests of clients and increase the capacity of clients to prevent legal risks through litigation,



SUN YAN

孙彦

天元律师事务所

在知识产权诉讼及争议解决方面，孙彦律师曾多次代理当事人处理各类知识产权侵权案件和行政诉讼案件，如代表美国微软公司诉北京亚都科技集团公司计算机软件著作权侵权案件；代表北京字节跳动科技有限公司（今日头条）处理其与北京搜狐互联网信息服务有限公司著作权侵权及不正当纠纷案件；代表北京四维图新科技股份有限公司诉北京奇虎科技有限公司（360）等公司地图著作权侵权案件；代表四川野马汽车股份有限公司处理其与福特等公司关于“野马”商标的行政诉讼及侵权诉讼案件等。孙彦律师认为，作为诉讼律师最有意义之处是通过诉讼帮助客户有效化解争议、维护客户合法权益、提升客户法律风险防范能力。

JINGTIAN & GONGCHENG

Yang Ming focuses on the practice in the area of dispute resolution and has in recent years represented international and domestic clients in hundreds of litigations and arbitrations including some cases that have caused extensive social influence and concern. For example, in the arbitration involving the contract for the license of the trademark "王老吉", which is known as the No. 1 trademark dispute case in China, Yang Ming successfully represented Guangzhou Pharmaceuticals Corporation and recovered the right to use the trademark "王老吉". In the case involving the dispute over product quality of "Sagitar" automobiles of Faw-Volkswagen Automotive Co., Ltd., Yang Ming represented Faw-Volkswagen Automotive Co., Ltd. in more than 320 cases tried by the courts in more than ten cities across the country and won all the cases. Yang Ming has led a team of lawyers to participate in the handling of the major arbitrations and litigations involving the companies under China Resources Group in the areas of coal industry and real estate industry.



YANG MING

杨铭

竞天公诚律师事务所

杨铭律师的主要业务领域是争议解决，近年代理国内外客户百余起诉讼及仲裁案件，其中不乏具有广泛社会影响力和关注度的案件。如在被称为中国商标争议第一案的“王老吉”商标许可合同案仲裁案中，杨律师作为主办律师代理广州医药集团有限公司，获得胜诉，成功收回“王老吉”商标使用权；在一汽-大众汽车有限公司“速腾”汽车产品质量纠纷案中，杨律师代理一汽-大众汽车有限公司，在全国十余城市参与法院审理320余案，均取得胜诉结果；杨律师并作为主办律师组织律师团队参与华润集团旗下公司在煤炭业务领域和房地产业务领域重大仲裁与诉讼案件的处理。

天元争议解决业务

天元律师事务所创立于1992年，是中国设立最早和规模最大的律师事务所之一，总部位于北京，在上海、深圳、成都、香港等地设有办公室，共有100多名合伙人，500多名律师及专业人士，致力于为中外客户提供最具价值和品质的法律服务。

争议解决服务优势：

- 天元律师专注争议解决25年；
- 全面的争议解决法律服务，覆盖全部商事链的各类合同以及信贷融资、股权投资、房地产、知识产权、证券交易、劳动争议等多个领域的诉讼和仲裁；
- 争议解决业务连续六年获得Chambers的重点推荐；
- 天元律师处理的诉讼案件多次被列入最高人民法院年度典型案例和北京市高级人民法院、北京知识产权法院典型案例；
- 近百人精英团队，致力于新型争议、疑难争议、重大争议解决专家。

近期业务动态：

除了传统案件以外，天元在各类新型纠纷处理方面业绩突出，诸如：

- 代表握奇数据处理专利侵权获赔5000万元：创北京知识产权法院专利侵权判决新高，创律师费按小时计算获赔先河；
- 代表《泰囧》出品方处理与《人在囧途》出品方之间的1亿元不正当竞争纠纷案件最高人民法院二审程序：本案创影视行业竞争法纠纷最高争议金额；
- 代表和田市人民政府处理燃气特许经营合同纠纷案件：全国罕见的PPP项目引发纠纷案件；
- 代表客户参与中国证监会的行政处罚听证：依法监管与依法维权相得益彰，共创公平的中国证券市场；
- 代表客户处理与海南航空股份有限公司之间的飞机租赁协议纠纷诉讼案：飞机是否适航，人民法院有判断；
- 代表客户处理与佳兆业集团（深圳）有限公司之间的39亿元股权转让协议纠纷诉讼案：超大金额、全额胜诉、全额执结；
- 代表宏柏家电(深圳)有限公司与Water Solutions (Hong Kong) 确认涉外仲裁条款效力案：本案为中国法院查明并适用外国法律裁决的极为少见案件之一，荣获《商法》2016年度国际仲裁杰出案例。



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LLINKS LAW OFFICESX

Yang Peiming has 20-year experience of practice in dispute resolution and is expert at dealing with various types of commercial disputes involving finance, foreign investment, foreign-related economic and trade contract and equity investment, etc. In recent years, he has represented clients in several hundreds of litigations and arbitrations in various types, including the first-instance case involving the dispute over equity transfer by Sichuan Yongxiang Co., Ltd. tried by Sichuan High People's Court. In particular, he has represented more than ten publicly-raised fund companies and subsidiaries in dealing with dozens of cases involving their disputes with investors over asset management contracts and fund contracts and obtained satisfactory results. Mr. Yang believes that litigators are required to handle all cases in serious and responsible manner and try to win the cases or stop the disputes among the parties concerned. At the same time, they are supposed to be good at making summarization to prevent disputes and present the instructions or suggestions for the development and operation of the industries and fields concerned so as to give true reflection of the added value of litigators.



YANG PEIMING
杨培明

通力律师事务所

杨律师在争议解决领域具有20年的执业经验，尤其擅长于处理金融、外商投资、涉外经贸合同、股权投资等各类商事纠纷，近年来代理了各类诉讼、仲裁案件数百件，如四川省高院一审的涉及四川永祥股份有限公司股权转让的纠纷案件，尤其是代理了十余家公募基金公司及其子公司处理其与投资者之间的数十起资产管理合同、基金合同纠纷，取得了令人满意的结果。杨律师认为，做诉讼律师既要认真负责地处理好每一个案件，争取胜诉或为各方当事人定纷止争，同时更要善于进行归纳总结预防纠纷，并能提出对于该行业、该领域发展及操作的指导或建议，从而真正体现诉讼律师的附加值。

BEIJING DHH LAW FIRM

Yao Kefeng is expert at dealing with in the legal affairs in the areas such as intellectual property rights, the Internet, electronic commerce and commercial affairs. He possesses extensive experiences in litigation and has represented clients in a lot of socially influential cases, of which many have been selected excellent or typical cases by authoritative agencies. Many of the innovative opinions he has presented in numerous cases which are the first of the type in China have obtained judicial support. Examples of such cases include the first case where a spoofing mark constitutes unfair competition, the first unfair competition case where "safe harbor" exemption of liability is applied, the first case involving unfair competition by an institution providing training for taking entrance examination to postgraduate studies, the first case involving unfair competition in the sector of services for the convenience of the people, the first case where web page snapshot is deemed as justified use and liability is exempted, the first unfair competition case where a online play has the name identical to that of a variety show, the first case involving dispute over online copyright to set-top boxes and the first blog v. blog reputation right case. Mr. Yao believes that a lawyer is not an excellent litigator until the lawyer can come up with innovative line of thought, present constructive opinions and help clients to solve problems in litigation.



YAO KEFENG
姚克枫

北京德和衡律师事务所

姚克枫律师擅长知识产权、互联网、电子商务、商事领域等法律事务，其有着丰富的诉讼经验、代理了大量具有社会影响意义的案件，代理的多个案件获得权威机构评选为优秀或典型案例，其提出很多创新性意见在众多首例案件中获得司法支持，如首例恶搞标识构成不正当竞争案、首例适用避风港免责不正当竞争案、首例考研培训机构不正当竞争案、首例便民服务不正当竞争案、首例网页快照属于合理使用免责案、首例网络剧与综艺节目同名不正当竞争案、首例机顶盒网络版权纠纷案、首例博客告博客名誉权案等。在姚律师看来，在诉讼中提出创新性思路、提出建设性意见，帮助客户解决问题，才是优秀的诉讼律师。

2017 ALB TOP 15 LITIGATORS

— EXCLUSIVE INTERVIEW WITH YANG MING FROM JINGTIAN & GONGCHENG

2017 ALB 十五佳诉讼律师——竞天公诚杨铭专访



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ALB: In your view, what is considered the true philosophy of litigation and how do you practice this philosophy in your work?

Yang: I don't think I am in the position to talk about philosophy and I can only share some of my observations. Morality is what everyone should hold dear. (note: philosophy and morality share the same pronunciation in Chinese) Instead of saying the "philosophy of litigation", I think it is better to talk about how "morality" is reflected in litigation. Litigations serve to resolve disputes because they are between human beings – so the key is whether they work by upholding correct views or by sticking to biases. Finding the correct views that uphold morality is like finding the key to a lock, whereas resolving disputes with biases in mind will only complicate matters even more. It is telling that in a courtroom, the judge is seated in the middle, with the plaintiff and the defendant at each side. This shows that the judge represents the right view while both the plaintiff and the defendant come to the court with their own biases. To really solve the issues at hand, lawyers must find out the correct views in the cases, and get rid of their own biases. What lawyers should do is to try their best to see things from the right view held by the judge, rather than forcing the judge to take the side of their clients.

Some lawyers have little interest in "seeking truth from facts". However, it is exactly

because too many lawyers are not seeking truth from facts than those who do win cases effortlessly. I believe laws are for the interpretation, not the creation, of what is happening around us. When I act for a case, my only mission is to find out the correct views which are what my conscience says on a specific issue. Conscience is what people should know without thinking. It is "morality" in human hearts. Though biases triggered by selfish desires often cloud correct views a person has out of his conscience, conscience never dies. In court, both sides are trying to "make the best of their good deeds while covering up their bad deeds", which shows that correct views out of conscience are what really decide a case. What lawyers do here is to interpret and present such correct views with legalese. Therefore, the true benchmark of what is correct is whatever you say must be acceptable not only to yourself, but also to the other party, the judge and the general public. Once the correct views are found, any case, however complicated, can be solved with ease. As the old saying goes, governing a country is like cooking a small delicacy – using the moral approach, and even the devils will lose their power. If there is indeed any philosophy of litigation, I would say that is to "uphold conscience".

ALB: What kind of experience have you gained from your previous work as an in-house counsel?

Yang: Clients engage litigation lawyers not only to let them provide support in the technicality of litigation. More importantly, clients want to leverage the expertise of lawyers to review, once more and from another perspective, the legitimacy of their judgment. The ultimate purpose is always to solve problems.

Everything has its own proper place in this universe. Similarly, each case has its unique history and status quo, and will have only one future outcome that is in line with "morality". If we can look beyond a case itself, and consider it from a higher perspective or even another dimension, we may find it easier to understand its role and position in the overall picture. Therefore, sometimes temporarily forgetting my role as a lawyer helps me to be more objective in assessing the past, present and future of a case.

Q: 在您看来, 什么才是真正的诉讼之道? 您在执业过程中如何契合这一理念?

A: 不敢妄谈诉讼之道, 只说些个人感受。道也者, 不可须臾离也。与其说诉讼之道, 不如说是"道"在诉讼这件事情上的反映。诉讼是人与人的事情, 一定能解决。关键是用正见解决还是用偏见解决。符合"道"的正见就是一个, 找到它, 就找到了开锁的钥匙。若执着偏见去解决争议, 其结果只能是让问题越来越复杂。我们看法庭的布置, 法官坐在中间, 原告和被告放在两边。这就譬喻裁判者代表着正见, 原被告各自代表了一种偏见。若真解决问题, 律师需要在案子中寻找正见, 摒除"过与不及"的偏见。律师应该努力去坐到正见的位置上看问题, 而不是努力把正见拉到偏见的座位上。

某些律师会对实事求是四个字不屑一顾, 但就是因为不实事求是的律师多了, 真能做到实事求是的律师才会赢得轻松。在我看来, 法律是用来解释世界的, 而不是用来创造世界的。代理案件时, 找到唯一的正见是我的任务。所谓正见, 就是良知在具体问题上的判断。良知是人所不虑而知者, 是"道"在人心的体现。因私欲引起的偏见常会遮蔽良知发出的正见, 但良知的作用永远不会丧失。法庭上, 原被告都在"掩其不善而著其善", 可见真正决定一个案子结果的, 到底还是良知所发出的正见。律师无非是用法律的语言, 把它翻译并呈现出来。所以衡量正见的标准就是, 你所说的每句话, 既是自己认可的, 也是对方会认可的, 是法官认可的, 也是吃瓜群众认可的。只要找到正见, 无论多复杂的案子, 都会迎刃而解。所谓治大国若烹小鲜, 以道莅天下, 其鬼不神。若真有诉讼之道, 也只是做到"致良知"。

Q: 您之前从事过的法务工作对您之后的律师生涯积淀了何种经验?

A: 客户聘请诉讼律师, 不仅是让律师在诉讼本身的技术问题上给与支持, 更为重要的是要借助律师, 从多一重角度, 再度审视判断的正当性, 目的都是为了解决问题。

凡事皆有所从由, 利皆有所属。每个案子的历史轨迹是唯一的, 现状也必然是唯一的, 而未来符合"道"的走向也只能是一个。若能超越诉讼本身, 从更高的高度和甚至是维度去看待一个案子, 就会领会它在全局中的位置和作用, 有时候, 忘掉律师身份, 反而能更客观的看待一个案子的前世、今生和未来。

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Zang Hongliang specializes in aviation law, construction projects, acquisition and reorganization as well as dispute resolution. He has provided legal services to both domestic and international clients in various industries such as civil aviation, infrastructures, energy, telecommunication, manufacturing, hi-tech industry, real estate and pharmaceutical industry and handled a number of noted legal service projects in the areas such as corporate restructuring, merger and acquisition, overseas and domestic listing, purchase and lease of aircrafts, construction projects, foreign investment and dispute resolution. Examples include the project of overseas and domestic restructuring of pharmaceutical sector of China Resources Group, syndicated bank loans in connection with first-phase construction of South Water to North Project and the international arbitration in Stockholm in connection with construction of Xiaolangdi Multi-purpose Dam. In recent years, he has represented many clients in civil aviation sector including the Capital Airport Holding Company and China Airport Construction Group Corporation in dealing with cases involving the disputes over airport construction, airport freight facilities, airport advertising boards and aviation agency guarantee. Mr. Zang has said that "the handling of each case by a litigator, the comprehensive application of relevant laws, contracts, facts and usages in each case by a litigator and the results of such application will remodel the legal logics of the market."



ZANG HONGLIANG

臧洪亮

环球律师事务所

臧洪亮律师的主要执业领域为航空法、建筑工程、收购与重组和争议解决。曾为民航、基础设施、能源、电信、制造业、高科技产业、房地产及医药产业等众多领域的境内外客户提供法律服务，在公司改制并购、境内外上市、航空器购租、建筑工程、外商投资及争议解决等领域均有代表性的法律服务项目，如华润集团医药板块境内外重组项目、南水北调一期主体工程银团贷款项目、黄河小浪底水利枢纽工程瑞典斯德哥尔摩国际仲裁案件等。近年曾代理首都机场集团公司、中国民航机场建设集团公司等众多民航客户处理涉及机场建设、机场货运设施、机场广告牌、航空代理担保等相关案件争议。臧律师表示：“作为诉讼律师，每个个案的处理，每一案件相关法律、合同、事实和惯例的综合运用及其结果，将重塑市场的法律逻辑”。

WANG JING & CO.

Zhao Shuzhou has 24-year experience of practice in the areas of dispute resolution, marine engineering, international trade, maritime commerce and insurance, among other things and is generally regarded, home and abroad, as one of the top commercial lawyers in China. During his practice, he has dealt with a large number of litigations and arbitrations, successfully handled many cases that involve complicated circumstances and large amount in subject matter under disputes and accumulated rich experiences in dealing with matters involving maritime engineering, international trade, international logistics, insurance, maritime commerce and maritime affairs, foreign investment and corporate legal affairs, etc. In the viewpoint of Zhao Shuzhou, a matter becomes contentious because the parties concerned have different ideas about the matter and it is most significant for litigators to be able to help clients to see the substance of matters through phenomenon in complex disputes and protect the rights and interests of the parties concerned to the maximum extent.



ZHAO SHUZHOU

赵淑洲

敬海律师事务所

赵淑洲律师在争议解决、海洋工程、国际贸易、海商、保险等领域有着24年的执业经验，被国内外公认为中国顶尖的商事律师之一。从业至今，赵律师处理了大量的诉讼和仲裁业务，成功承办了多宗争议标的大、案情复杂的案件，在处理海洋工程、国际贸易、国际物流、保险、海商海事、外商投资及公司法律事务等方面积累了丰富的办案经验。在赵律师看来，事情之所以成讼，就是因为涉案方对事情有不同的看法。作为诉讼律师，最有意义之处就在于能够在纷繁复杂的争议中帮助当事人透过事情的表象看本质，从而最大限度地保护当事人的权益。

We are the first Chinese law firm. Our history dates back to 1979, when we became the first law firm in the PRC.

We are a leading Chinese law firm. We have long been recognized by both international and domestic league tables and legal institutions as an elite Chinese law firm.

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We are creative. Our record of legal innovation is unique in the PRC. Our expertise has helped set the agenda for change through precedents involving many of the country's 'firsts'.

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Wang Jing & Co. is headquartered in Guangzhou, and has branch offices in Tianjin, Qingdao, Shanghai, Xiamen, Shenzhen, Beijing, Nansha, Hong Kong and New York. Wang Jing & Co. is a full-service law firm applying and adhering to accepted international principles. Its core areas of practice include international trade, international logistics, offshore engineering, maritime and admiralty, investment, M&A, etc.

敬海律师事务所总部设于广州，在天津、青岛、上海、厦门、深圳、北京、南沙、香港和纽约设立分所。敬海是一家理念先进，服务卓越的综合型事务所，提供全方位的法律服务，涵盖国际贸易、国际物流、海洋工程、海事海商、投资与并购等。

JUNHE LLP

Leanne Zheng has a 20-year experience in practice and the areas of her practice cover the litigation and arbitration of civil and commercial disputes in and outside China as well as the recognition and enforcement of arbitration awards and judgments in and outside China. She is expert at dealing with various kinds of complicated civil and commercial disputes in and outside China and in particular the complicated disputes in international trade, foreign investment, corporate governance structure, architecture and real estate, banking, insurance and other civil and commercial areas as well as the administrative punishments and anti-corruption investigation by the China Securities Regulatory Commission, the China Food and Drug Administration and other relevant departments. She has represented the Hong Kong branch of a large-sized State-owned bank in the case involving the financial loan contract with a financial lease company. Ms. Zheng holds the opinion that a litigator is always at the battleground where there is no smoke of gunpowder and wisdom and sweat are the sole path to success. Litigators will have the sense of achievement to the maximum extent when they, through careful preparation, turn the tables in the cases in the absence of favorable evidence and gain the recognition of clients and the respect of judges.



LEANNE ZHENG

郑艳丽

君合律师事务所

拥有20年执业经验的郑艳丽律师，执业领域为境内外民商事诉讼与仲裁，以及境内外仲裁决和判决的承认和执行。其擅长于处理各种复杂的境内外民商事争议，主要涉及国际贸易、外商投资、公司治理结构、建筑与房地产、银行、保险和其它民商事领域的复杂纠纷，以及证监会、药监局等部门的行政处罚和反腐败调查。她代理过某大型国有银行的香港分行与某金融租赁公司的金融借款合同诉讼案等。郑律师认为作为争议解决律师，时刻身处没有硝烟的战场，智慧与汗水是通往成功的唯一途径。通过诉讼律师的精心准备，将证据处于弱势地位的案件反败为胜，获得客户的认可和法官的尊重，将体会到最大的成就感。

KING & CAPITAL LAW FIRM

Jasmine Zou specializes in criminal defense and is expert at dealing with complex and difficult cases and her defenses in many cases brought about the results of withdrawal of cases, non-prosecution, exemption from criminal punishment and changing the conviction to less serious offenses. She was the defense attorney for Li Jiaming who was suspected of murder and for Zeng Youhuan who was suspected of accepting bribes in the second-instance trial of the case. In addition, Ms. Zou, as the columnist of "Caixin·Opinion", pays close attention to the hot issues of the society and rule of law and uses her speciality to take about law through specific cases and popularize the ideas and concept of rule of law to the public. Ms. Zou believes that the law is the final resort for resolving all disputes in modern society and litigators serve as the sole social force existing in such power system of the State. Only with the effective existence of such independent and free social force, the State power that is liable to be expanded and abused in nature can be restricted and the country can gain stable and considerable development in order and freedom.



JASMINE ZOU

邹佳铭

京都律师事务所

邹佳铭律师专业领域是刑事辩护，擅长复杂、疑难案件，曾在多起案件辩护中取得撤案、不起诉、免于刑事处罚、改判轻罪的效果。她曾作为辩护律师代理了李佳明涉嫌故意杀人案；担任了曾有焕涉嫌受贿罪一案二审辩护律师。除此之外，邹佳铭还作为“财新网·观点”栏目专栏作家，关注社会法治热点问题，以自己的专长通过个案说法，向社会普及法治观念和理念。

邹律师认为现代社会，法律是解决所有纠纷的最后手段。在这个国家权力体系中，诉讼律师是唯一存在的社会力量。只有这个独立、自由的社会力量有效存在，才可能制约天性就易于扩张和滥用的国家权力，使得国家在秩序和自由中平稳、长足的发展。



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我们为什么需要刑辩律师

当一个犯罪发生，往往危害或威胁的是一个社会基本的生活或生产秩序，我们能够看到的往往是犯罪对社会的伤害：被害人伤亡、公私财产受损、社会秩序失范、公共安全受到威胁……。但是这些现象背后，还有我们可能看不到的：如果国家权力滥用，将导致个人权利受损，一个人失去未来、一个家庭离散、一个企业倒闭……。

国家可以举一国之力，全力追捕和追诉犯罪嫌疑人，而犯罪嫌疑人一旦被羁押，如果没有刑辩律师的帮助，就会陷入无助的境地。他既没有专业的法律知识，也没有调取有利证据的能力，更可怕的是，他要独自面对国家这个权威无比巨大的“利维坦”。马克思曾说，“犯罪的本质是孤立的个人反对统治关系的斗争。”其实，刑事诉讼又何尝不是孤立的个人捍卫个人权利的斗争。所以，辩护律师的设置，就是为改变控辩双方力量失衡的状态，将一个独立的、专业的社会力量配备在弱势的辩方，以期在控辩平等中实现“兼听则明”，获致一个公正的判决。

但是这种制度的安排在现实中总是遭遇到诸多质疑，最多的疑问是：律师为什么为“坏人”辩护？即使我们暂且接受罪犯是“坏人”这个假设，这个问题的提出实质上也是在定罪之前将犯罪嫌疑人等同为罪犯。但是，如果没有审判，就没有“坏人”；如果不让“坏人”说话，就没有审判；如果没有刑辩律师的帮助，“坏人”就不能充分地把话说清楚。所以，我们需要刑辩律师。

其次，以什么标准认定“坏人”。中国古代法律实际上是两元体系，一个是国家制定法，一个是“礼法”和“德法”，道德、宗教、意识形态长期在社会治理中占据重要地位。在这种文化传统中，很多时候我们认定“坏人”，不是因为他触犯了法律，而是因为他不符合常规。但是，所有的创新都需要突破常规，所有的社会进步都需要打破旧观念，如果没有自由的言论和多元的思想，社会就会止步不前。当一个声音或权威垄断了法庭，言论、思想、道德的缺失都可能成为犯罪。唯有一个不受权力控制、独立的第三方才能打破这种垄断，所



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以我们需要刑辩律师。

再次，以什么程序认定“坏人”。程序之所以重要，是因为案件的客观真实是事后无法复原的，也是我们看不见的，我们能看见的，是司法机关调取的证据。但是在调取证据的过程中，出于强烈的追诉动机，公权力最容易越过法律的界限，侵犯被追诉人的权利。古罗马诗人奥维德说：“制定法律法令，就是为了不让强者做什么事都横行霸道。”某种程度上可以说，刑事诉讼法就是规范权力运行程序的法律。法律的正义实际包括两个维度：实体正义（让真正的罪犯受到惩罚）和程序正义（以合法正当的程序追诉犯罪），美国大法官道格拉斯说：“正是程序决定了法治和恣意人治之间的基本区别。”所以，比惩治犯罪这个结果更为重要的是如何惩治犯罪这个过程。如果没有刑辩律师的参与，这个过程就会完全失去制约和控制，就无所谓程序正义，更无从建立法治。

最后，如何对待“坏人”。德国诗人歌德曾经说过一句话：“不管他应惩罚人，还是

应监护人，他必定把人当人看待。”但是，在人类社会漫长的发展过程中，“把人当人看待”却是一个艰难的历史进程。古代社会人被分成若干等级，有的人并不享有完全的权利，即使是现代社会也不能完全消除种族或阶级的差别，如果一个人被打上“坏人”或“罪犯”的标签，就更谈不上人的权利。直至17、18世纪欧洲新兴资产阶级提出“天赋人权”的观念，“人权保障”才逐渐被各国和国际社会所认同，成为现代社会的共识。我国2012年修订刑事诉讼法将尊重和保障人权列为刑事诉讼的基本任务，无罪推定、不得强迫自证其罪、非法证据排除等刑事诉讼原则和规则就是保障人权的具体措施，也是对权力的约束。但是这些法律条文，必须由刑辩律师加以运用，才能转化为保障犯罪嫌疑人或被告人权利的武器，否则，“人权保障”永远是躺在法典中的具文。所以，我们需要刑辩律师。

当我们把“坏人”当人看待，刑事诉讼的最终目的就不是惩罚，而是回归。被告人在起诉书中是一个由冰冷的法律词汇堆砌而成的抽象人，只有辩护律师一路的陪同、理解、沟通，才能挖掘到法律术语下面具体的事实，还原事实后面活生生的人。古希腊悲剧《安提戈涅》中有句名言：“法律之内，应有天理人情在。”因为这份人情，法律散发着人性和文明的光辉，召唤失散者的回归。所以，刑辩律师就象一座桥梁，桥在，就没有隔离，更没有孤岛。

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