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# CHINA'S WINE AND LIQUOR LAWS IN THE "INTERNET PLUS" AGE<sup>1</sup>

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**Abstract:** *This article discusses China's wine and liquor laws from both the historical and contemporary perspectives. With the advent of e-commerce and the information age, China's wine and liquor economy is undergoing transformative changes, and the legal challenges this entails. In order to address these points, this article is divided into four sections. The first is a discussion of the development of China's wine and liquor laws. The second is a comprehensive overview of China's wine and liquor regulations from the two main perspectives of social control and industry promotion. The third section focuses on China's Internet Plus Strategy and e-commerce sector by means of an analysis of industry development and a discussion of the corresponding challenges that it faces in regulating the sector. The final section provides concluding remarks.*

## I. WINE AND LIQUOR LAWS IN CHINA FROM A HISTORICAL PERSPECTIVE

According to CNN, China ranks second among the "world's 10 best drinking nations".<sup>2</sup> Indeed, China has a long history of wine production and

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<sup>2</sup> Barry Neild, *World's 10 best drinking nations*, CNN(2013), available at <http://www.cnn.com/travel/article/best-drinking-nations/index.html>.

a strong wine culture. Among the oldest wine varieties is Chinese yellow wine (黄酒, *huangjiu*), records of which go back three thousand years. Wines distilled from grain such as Chinese white liquor (白酒, *baijiu*),<sup>3</sup> among others, have been the most popular alcoholic beverages throughout China's history. That said, however, Chinese wine culture is by no means confined to the aforementioned grain-based wines and liquors.<sup>4</sup> Though in ancient times most alcoholic beverages in China were grain-based, records indicate that vines were cultivated as early as the Zhou Dynasty (1046–256 BC). During the Han Dynasty (206 BC – 220 AD), vineyards cultivating Eurasian grapes for the purpose of producing grape wine were established in the country.<sup>5</sup> Despite this, grape wines were not widely recognized until the Tang Dynasty (618-907). Several renowned poets, including Wang Han, Li Bai, and Bai Juyi wrote about their affection for grape wine. For example, Wang Han wrote in his poem, *An Ode to Lianzhou*:

“With the wine of grapes the cups of jade would glow at night.  
Drinking to pipa songs, we are summoned to fight. Don't laugh if  
we lay drunken on the battleground. How many warriors ever came  
back safe and sound?”

The widespread consumption of grape wines is, however, a contemporary phenomenon influenced mainly by the popularization of Western culture in China.<sup>6</sup>

Chinese wine and liquor has a long history, and in turn, so do Chinese wine and liquor laws. China's earliest written legislation relating to wine and liquor dates back to the Zhou Dynasty. At the time, the Emperor

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3 Baijiu is China's native alcohol. It is a fiery distilled spirit made from sorghum and other grains. See Kara Newman, *Baijiu, China's Potent Liquor, Is Poised to Try to Make a Splash in the U.S.*, Bloomberg(2015) <<https://www.bloomberg.com/news/articles/2015-02-17/baijiu-china-s-potent-liquor-is-poised-to-try-to-make-a-splash-in-the-u-s>> accessed March 16, 2018.

4 Wine in Chinese history and culture has many varieties, including yellow wine and grape wine. For the purpose of this article, wine is defined, unless otherwise stated, as an alcoholic beverage made from grape and other ingredients such as grain. We understand that, in the European Union, wine is strictly defined as fermented grape juice. In this article, we base our approach on the broader US definition of wine, which encompasses fermented juice of any kind. We base our approach on the broader US definition of wine. This makes sense in terms of our analysis of the laws applied to China's alcoholic beverage industry. See Pieter Eijkhoff, *Wine in China: Its History and Contemporary Developments* (2000) <<http://www.eykhoff.nl/Wine%20in%20China.pdf>> accessed March 16, 2018.

5 Björn Kjellgren, «Drunken Modernity: Wine in China», *Anthropology of Food* (2004).

6 Yuzeng Zhu, *How Big is the Chinese Wine Market? Last Year Chinese Consumers Purchased 1,050 Million Litres and the Market Increased by 25%*, China Wine Newspaper(2010) <[http://www2.cnwinenews.com/html/201007/7/20100707094641\\_1.htm](http://www2.cnwinenews.com/html/201007/7/20100707094641_1.htm)> accessed March 16, 2018.

of the newly established dynasty noted that his ministers overindulged in alcohol. Various deaths and criminal acts were attributed to alcohol, including post-consumption acts of murder, arson and rape, as well as general madness. Emperor Zhou Gongdan deemed that it was inevitable that the situation would endanger the country, an attitude that led him to announce the "Alcohol Admonition" (酒诰, *jiugao*), the first prohibition law in Chinese history. The Admonition stipulated several provisions that tightly controlled the consumption and production of alcohol. In the first place, wine and liquor were only to be consumed at religious ceremonies and family gatherings. Daily consumption of alcohol was verboten. Second, there was an implicit consensus that eating and drinking should be done in moderation, and that people should not allow themselves to become intoxicated. Third, group-drinking was forbidden, and groups of individuals found to be drinking together were severely punished. Fourth, it was stipulated that people should cherish grain and strive to produce more of it.<sup>7</sup> Wine and liquor laws in ancient China were established to regulate wine manufacturing and to control tax and distribution. Contemporary wine and liquor laws were designed to promote the industry, but at various times in history, the purpose varied and the trajectory of law-making turned to prohibition. Reasons for this change included safeguarding social order and preventing famine due to crop failures.

## II. CHINESE WINE AND LIQUOR LAWS: SOCIAL ASPECTS AND PROMOTION OF THE INDUSTRY

China's general food laws can be seen as covering three areas: food security, food safety, and food quality.<sup>8</sup> Food security focuses on ensuring that there is enough food available to prevent the occurrence of supply-related phenomena such as famine. Food safety laws are concerned with how the consumption of foodstuffs relates to human health. These two approaches are concerned with social control policy and health-related aspects of food regulation. Food quality, on the other hand, is mainly concerned with food promotion policy.<sup>9</sup> In a contemporary context, Chinese

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<sup>7</sup> Cheng Shuijin, *Introduction to Alcohol Admonition*, *Guangming Daily*, 2 – p. 22, 2012.

<sup>8</sup> Yuzeng Zhu (n 6).

<sup>9</sup> The primary author has discussed wine law in China with regard to these three broad areas of food regulation elsewhere. See: Pinghui Xiao, *Wine Law in China*, in *Global Wine Regulation* (Matt Harvey & Vicki Waye eds., 2013). 503-9.

wine and liquor laws can, in a broad sense, be conceptualized in terms of two factors: social control and industry promotion.

## 1. SOCIAL CONTROL

Social control has gained more traction in recent years, and constantly reshapes the industry. It is primarily concerned with guaranteeing the product safety and social safety of wine. As a developing nation, China is, given the alarming rise in the number of food safety scandals, which often involve wine and liquor products, facing challenges in regard to ensuring alcohol product safety. In recent years, driving under the influence has been widely scrutinized and targeted in China, and a growing emphasis is being placed on responsible sales, in an attempt to prevent alcohol being sold to minors. China utilises criminal and administrative penalty mechanisms in order to promote responsible drinking and sales. The so-called “three public consumptions”, comprised of business trip expenses, official car costs, and public dining expenses have long been criticized as “sources of corruption and waste” in the Chinese government. In light of public sentiment, Chinese government officials are subject to scrutiny, and the use of public funds for the purchase of wine products is, in the light of anti-corruption legislation, virtually forbidden. This anti-corruption social control mechanism is a phenomenon unique to China’s present situation, and has a profound influence on the domestic wine industry. Wine and liquor can be promoted as a revenue-generating channel, as has been the case since ancient times. Historically speaking, numerous Chinese emperors firmly believed in the taxation of wine production and sales as an effective means of generating government revenue.

### 1.1 – PRODUCT SAFETY

In 2008, China’s dairy industry was involved in a wide-ranging food safety scandal, resulting in the hospitalisation of thousands of victims and the deaths of a number of infants. The episode came as a heavy blow to the industry and to Chinese brands in general. In 2009, the government enacted its first Food Safety Law in 2009 (hereinafter referred to as 2009 FSL).<sup>10</sup> There followed a series of food safety scandals associated with wine products. For instance, in 2010, grape wine producers in Changli County, Hebei Province, an emerging grape wine region in China, which

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<sup>10</sup> Pinghui Xiao, China’s Milk Scandals and Its Food Risk Assessment Institutional Framework, *EJRR* No. 2 (2011).

produces a third of China's domestic grape wine, were found to use water and chemicals to make wine labeled and sold as counterfeits of famous brands. The scandal was listed among the Top 10 Food Safety Criminal Cases of 2010 by China's Ministry of Public Security.<sup>11</sup> Wine experts believed that the products posed serious risks to people consuming them because they contained chemicals rather than grape juice.<sup>12</sup> In recent years, there have been several fatal cases. For example, in 2017, a bar in Heyuan, Guangdong Province, was found to be selling fake liquor products containing methyl alcohol. Twenty-two people suffered the effects of poisoning, and one eighteen year-old man died.<sup>13</sup>

The Chinese Government has established licensing and regulation mechanisms to combat the proliferation of fake and inferior wine in China's wine market.<sup>14</sup> Technical benchmarking – namely, wine standardization, on the one hand, and alcohol licensing schemes, on the other – has been introduced to ensure alcohol product safety. China's wine standardization and licensing approaches go hand-in-hand to ensure alcohol product safety. Whereas wine standards remain relatively unchanged, the licensing system for wine products has been revised within the framework of China's reforms to its general food regulation system.

As alcoholic beverages are generally considered to be foods, the general food regulatory system is also applied to wine products. This means that the China Food and Drug Administration (hereinafter referred to as the CFDA) is involved in regulating such products, especially when the product safety of alcoholic beverages becomes an issue. To this end, China has a long-standing licensing system for the wine sector designed to oversee wine production and sales. Prior to 2013, two agencies were involved in China's alcohol licensing system, namely, the General Administration of Quality Supervision, Inspection and Quarantine (hereinafter referred to as AQSIQ), and the Ministry of Commerce (hereinafter referred to as MoC), with the former administering production licensing under the so-called QS (Quality and Safety) licensing system, and the latter administering the alcohol

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11 Pinghui Xiao (n 9).

12 *Unmask the Fake Wine*, cctv.com(2010), <<http://news.cntv.cn/program/jiaodianfangtan/20101223/110473.shtml>> accessed March 17, 2018.

13 *A bar sold fake wine products in Heyuan, Guangdong and 22 people were poisoned*, Newsgd.com <[http://hy.southcn.com/content/2017-11/26/content\\_179134972.htm](http://hy.southcn.com/content/2017-11/26/content_179134972.htm)> accessed March 17, 2018.

14 See e.g., Shanshu Feng, *Fake Imported Wines Flood Guangzhou*, Nanfang Daily, September 1, 2011. 2011.; Yanggen Chen, *How Can Fake Wines Be Dressed as Exotic*, Today Morning Express, 29 Sep. 2011.

distribution licensing system.<sup>15</sup> Nevertheless, in 2013, the State Council announced a further consolidation of the Chinese food safety regulation system. The former State Food and Drug Administration (hereinafter referred to as SFDA), previously a junior ministry, was “upgraded” to become a Ministry-level agency affiliated to the State Council, resulting in the creation of the current the CFDA<sup>16</sup>. Under the Amendment to FSL in 2015 (hereinafter referred to as the 2015 FSL Amendment), responsibility for regulating wine production was transferred from the AQSIQ to the CFDA. The CFDA has also reformed its licensing system by consolidating wine production licensing into general food production licensing. Today, China has established a more consolidated system for food production licensing by abolishing the previous QS system. The CFDA has since introduced a so-called SC licensing system, which applies to wine and liquor production.<sup>17</sup> The AQSIQ still has a significant role to play in regard to industrial goods other than foods. It is responsible for administering the QS Licensing Scheme, in which industrial goods are grouped and classified according to their specific nature and production methods, and different requirements pertain when business operators apply for specific licenses.<sup>18</sup> This idea is respected and retained by the CFDA in its current SC licensing.<sup>19</sup> SC licenses for wine production are issued on the condition that these specific requirements, designed for wine and liquor products, are met.<sup>20</sup> In addition, because responsibilities for wine and liquor distribution were integrated into the CFDA in the wake of the 2015 FSL Amendment, the MoC’s alcohol distribution licensing system was abolished in 2016. Ultimately, China’s alcohol beverage industry is considered to be part of the general food sector and is almost entirely controlled by the CFDA, which means wine and liquor regulation is far more streamlined than before.

Since the enactment of FSL, it is clear that the Chinese Government has placed an emphasis on product safety. The 2015 FSL Amendment further consolidated penalty mechanisms for food safety violations on the basis

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15 Pinghui Xiao (n 9). 508-9.

16 Qiwei Huang, *From Fingers to Fist – China’s New Food Supervision Regime*, European Food and Feed Law Review (2013).

17 “SC” represents the first two capital letters of Chinese characters for production in Pinyin.

18 Measures to Implement Regulations on Administration of Production of Industrial Products (Promulgated by Inspection and Quarantine, General Administration of Quality Supervision, 2014).

19 Pinghui Xiao (n 9). 508-9.

20 Management Measures of Food Production Licensing, § 16 (Promulgated by the China Food and Drug Administration, 2015).

of the 2009 FSL. According to Article 148 of the 2015 FSL Amendment, food producers and distributors violating the FSL will incur civil liabilities in the case in which any consumer is harmed by food that does not comply with food safety standards. In the event that any manufacturer produces food that does not conform to food safety standards or distributes food while aware of its nonconformity with food safety standards, the customer can demand that the producer or distributor pay a penalty of 10 times the amount paid, or 3 times the loss, in addition to compensation for the loss thereof. If the additional compensation is less than 1,000 RMB, it is increased to 1,000 RMB, unless the defects are indicated in labels and instructions of food that neither affect food safety nor mislead consumers<sup>21</sup>.

In addition to these administrative penalties, Article 123 of the 2015 FSL Amendment stipulates that, food producers or distributors producing or distributing food with non-food ingredients or adding chemicals other than food additives that may be hazardous to human health shall be subject to a fine of between fifteen and thirty times the total value of the commodity if the total value of the commodity exceeds RMB 10,000. In serious cases, their business license may be revoked and the principal of the business may be detained for five to fifteen days by the public security authorities. In other words, if wine and liquor producers add illegal chemicals to alcohol products, or if anyone distributes those products, they may face the most severe of administrative penalties.

## 1.2 – RESPONSIBLE SALES AND DRINKING

Responsible alcohol consumption campaigns are ongoing around the world. These campaigns aim to promote responsible sales and drinking.<sup>22</sup> If they sell alcohol to a minor or an apparently intoxicated person, businesses can face serious fines or even criminal charges. The same goes for driving under the influence. With the progress of social civilization in China, increasing importance is attached to responsible alcohol sales and drinking. To this end, the Chinese government has introduced relevant laws and policies in recent years.

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21 For example, someone buys a bottle of water for 5 RMB from a supermarket. If the water is found to be non-complaint and inferior, the supermarket has to pay compensation of 1,000 RMB, rather than 50 RMB. However, if there are defects in food labels and instructions that neither affect food safety nor mislead consumers, the supermarket is not liable for any compensation.

22 See D J Young & T W Likens, *Alcohol Regulation and Auto Fatalities*, 20. International Review of Law and Economics (2000). World Health Organization, Global Status Report: Alcohol Policy (World Health Organization. 2004).

Underage sales have become an issue in China. According to data gathered between 2013 and 2014 and published by the Chinese Center for Disease Control and Prevention, 52.5% of middle school students drink alcohol. In order to prevent the situation from being exacerbated and to promote the responsible sale of alcohol, China has enacted the Youth Protection Law, and amended it several times with a view to upgrading levels of protection. According to the law, the sale of tobacco and alcohol to minors is prohibited, and business operators must post a notice stating that cigarettes and alcohol will not be sold to minors. In cases in which it proves difficult to determine whether specific individuals are minors, legitimate ID must be shown before purchases are made. In addition, it is prohibited to smoke or drink in classrooms, dormitories, playrooms or other places in primary and secondary schools, kindergartens, and nursery schools where minors gather. Offenders receive official warnings and are sometimes given administrative penalties.<sup>23</sup>

This law was enforced in a landmark case. In February 2012, a number of minors dined in a restaurant in Beijing. During the dinner, a quarrel broke out, and a fight ensued. One of the boys hit one of his companions with a beer bottle causing him severe injuries and sending him into a coma. In 2013, the owner of the restaurant was prosecuted in the local court because he violated laws by selling beer to minors. He was then ordered by the court to pay the victim over 100,000 RMB. This was China's first lawsuit against a wine and liquor business operator selling alcohol products to minors.<sup>24</sup>

For a long time, driving under the influence was not seriously criminalized. Those who engaged in irresponsible drinking and drink driving were punished either with fines or detention. Having deemed that imposing fines was not enough to deter people from drink driving, urban drag racing and other dangerous behaviour that endangers social safety, the government proceeded to criminalize drink driving by introducing relevant provisions in its Criminal Law in 2011, with the specific intent of cracking down on the problem. The criminal provisions stipulate that anyone drinking and driving shall be sentenced to criminal detention and shall also be fined. People who

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23 Youth Protection Law of the People's Republic of China (promulgated by the Standing Committee of the National People's Congress, 1991).

24 See Wang Xiaofei, *First lawsuit against wine and liquor business operator selling alcohol products to minors in China*, China Economy (2013) <<http://legal.people.com.cn/n/2012/1217/c42510-19913970.html>> accessed March 17, 2018; Lei Juanli, *Owner of a restaurant was ordered to pay 100000 RMB to the victim because of selling alcohol to minors*, Youth.cn(2013) <[http://news.youth.cn/sh/201307/t20130710\\_3501454.htm](http://news.youth.cn/sh/201307/t20130710_3501454.htm)> accessed March 17, 2018.

engage in drink driving and other crimes shall be convicted and punished to the full extent of the law.<sup>25</sup> In addition, China also revised the Road Traffic Safety Law, which stipulates that driving a motor vehicle while drunk may result in the temporary seizure of the motor vehicle driving license for six months, and a fine of between 1,000 and 2,000 RMB. Obliging guests at a banquet to drink alcohol is deeply embedded in Chinese culture, while in the West it is considered impolite to try to convince those who prefer not to drink to partake in alcohol. People sharing alcohol with friends in good faith generally do not bear civil liability for any untoward incidents. But, in the case of any of the following improper acts, such individuals shall bear legal responsibility for:

- 1) forcing someone to drink when he or she is drunk or unconscious.
- 2) forcing someone to drink in the knowledge that, due to a medical condition, it would be dangerous for that person to consume alcohol.
- 3) failing to ensure that intoxicated individuals are escorted home or, where necessary, hospitalized.
- 4) Failing to dissuade an intoxicated individual from driving; the person who allows such an individual to drive under the influence shall jointly bear legal responsibility for any accidents or damage resulting therefrom.<sup>26</sup>

China has a blood alcohol concentration (hereinafter referred to as BAC) testing standard.<sup>27</sup> Any driver with a BAC of equal to, or more than 20 mg/100 ml and less than 80 mg/100 ml will be considered to be an offender of generic drink driving. On the other hand, any driver with a BAC of equal to or more than 80mg/100ml will be considered to have committed a serious drink driving offense, which could result in criminal charges.

### 1.3 – ANTI-CORRUPTION

A far-reaching anti-corruption campaign was initiated following the 18<sup>th</sup> National Congress of the Communist Party of China (hereinafter referred to as CPC) in 2012. The campaign, led by Xi Jinping, General Secretary of the CPC, was the largest of its kind in the history of Communist Party

25 Criminal Law of the People's Republic of China (Promulgated by National People's Congress, 1979), Article 133.

26 Zhang Ruying, *A drunk man died and his friend paid his family 60,000 RMB in compensation*, Taizhou Evening News, December 17, 2017.

27 GB/T19522-2010, *Vehicle Drivers' Blood and Exhalation Alcohol Concentration Threshold and Testing Standards*, (Inspection and Quarantine, General Administration of Quality Supervision, 2010).

rule in China. Upon taking power, Xi vowed to crack down on “tigers and flies”, meaning that both high-level and grassroots officials were to be investigated and removed from office if they were found guilty of bribery.<sup>28</sup> As of 2017, over 125,000 officials have been indicted for corruption.<sup>29</sup> The CPC central leadership also launched a frugality campaign in December 2012, adopting the so-called “Eight-point Rules” and “Six-point Injunctions”, designed to improve officials’ working practices and to curb extravagance and corruption.<sup>30</sup> Among the violations of the above laws and policies are misuse of public funds on travel, gift-giving, and banquets. Tens of thousands of tons of wine and liquor flowed into the market in this way in the period between 2002 and 2012, which coincided with the golden age of China’s wine and liquor industry. This was partially driven by extravagant government spending on official banquets. For instance, prior to 2012, more than half the consumption of liquor (mainly Chinese white liquor) was accounted for by government banquets. In the wake of the campaign, sales of expensive Chinese white liquor, which was once a “must-have” for government functions, declined steeply.<sup>31</sup> It also triggered a powerful chain reaction. High-end wine and liquor products faced inventory pressure and a reduction in demand. For instance, Chinese white liquor sales in 2013 were eight times those of 2003, whereas the annual growth in profits was only 37%.<sup>32</sup> The combination of these factors led to the high-end liquor bubble bursting, and China’s wine and liquor market has since taken on a new configuration.

## 2. INDUSTRY PROMOTION

In the contemporary context, both the Old and New Worlds have placed an emphasis on adapting their Geographical Indication systems (hereinafter referred to as GIs) for the grape wine industry. Wine products

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28 *How to Discipline 90 Million People*, The Atlantic (2015), <<https://www.theatlantic.com/international/archive/2015/04/xi-jinping-china-corruption-political-culture/389787/>> accessed March 17, 2018.

29 Hu Yongping, *Five year anti-corruption: achievements*, china.com(2017) <[http://www.china.com.cn/19da/2017-10/19/content\\_41758950.htm](http://www.china.com.cn/19da/2017-10/19/content_41758950.htm)> accessed March 18, 2018.

30 “Eight-point Rules” and “Six-point Injunctions” of the Communist Party of China, china.com] (2013), <<http://news.china.com/focus/fdpzlf/11135258/20130123/17649773.html>> accessed March 18, 2018.

31 Li Yu & Peng Chao, *Alcohol industry faces challenges amid anti-graft campaign*, China Daily, <[https://www.chinadaily.com.cn/food/2014-04/02/content\\_17400084.htm](https://www.chinadaily.com.cn/food/2014-04/02/content_17400084.htm)> accessed March 18, 2018.

32 Ibid.

with well-protected GIs are considered to be of high quality; consequently they achieve better market recognition and enjoy higher margins. The function of wine GIs is to guarantee the quality of wine products. As a result, all sorts of wine promotion policies and laws established to strengthen the image of the high quality of wine are visible in China today. A wine classification system is being introduced to promote the wine industry in China. This system is being administered by China's local governments with the intention of increasing both the visibility and sales of the wine and liquor from certain localities. As alluded to above, wine and liquor have a long history in China and have been promoted as a government revenue generating mechanism for generations. The industry operates on a large scale and China establishes policy and laws to drive its development. Though China is a centralised bureaucratic state, policy and laws associated with the promotion of the wine and liquor industry are established at both central and local levels. In order to boost the reputation of the country's wines and liquors, the government has introduced a range of quality promotion schemes like GIs and classification. These schemes are reflected in China's general and specific wine laws enacted both by central and local governments. Whereas GIs are generally run by the central government, local governments increasingly propose all kinds of classifications and local specialty schemes to further increase the quality of Chinese wines.

## 2.1 – PROMOTION SCHEMES UNDER CENTRAL GOVERNMENT: THE GI SYSTEM

China introduced the Trademark Law in 1982 and signed up as a contracting party to the Paris Convention for the Protection of Industrial Property in 1985, the year in which the country China started to crack down on the production and sale of goods bearing false indications as to their source or the identity of their producer. Henceforth, in accordance with the Convention, labels had to indicate the industrial property from which goods came. In February 1993, the Trademark Law was reviewed for the first time. Following this review, in December 1994, the State Administration for Industry and Commerce (hereinafter referred to as the SAIC) enacted the Measures on the Registration and Administration of Collective Trademarks and Certification Trademarks, thereby implementing the Trademark Law. In the same year, China began to protect indications concerning provenance, which have been registered as names of origin in the form of certification trademarks since 1995. In 2001, in order to fulfil WTO commitments, the Trademark Law was amended for the second time, and the GIs were officially recognized and protected under

the aegis of China's trademark protection system. In addition, in 2005, the AQSIQ enacted the Rules on GI Protection to implement the Product Quality Law and similar legislation. In 2007, the Ministry of Agriculture (hereinafter referred to as the MoA) promulgated the Measures for the Administration of Geographical Indications of Agricultural Products to implement the Agricultural Law. Ultimately, there are three parallel systems to protect GI products, including wine products.<sup>33</sup> It is widely recognized that the trademark protection system and the *sui generis* system are the most popular mechanisms adopted worldwide for wine GI protection.<sup>34</sup> The US does not recognize GIs as a special separate class of intellectual property and it protects GIs under trademark laws. The EU, however, has developed a *sui generis* process to grant GI protection.<sup>35</sup>

China's GI protection system is complex. In general, China's GIs are granted protection in two regards, namely general and specific laws. On the one hand, China has established general law regulations including passing-off laws and consumer protection legislation in order to protect GIs. This is made possible by protecting consumers from misleading information, thus removing information asymmetry between consumers and business operators. This general law merely provides general protection. On the other hand, more specifically, China has also established both trademark protection and *sui generis* systems to protect GIs. In effect, China's GI protection laws are somewhere between those of the US and the EU. Both trademark protection and *sui generis* systems provide registrations protecting GIs. Wine and liquor GIs are encompassed by those systems.<sup>36</sup> In other words, in terms of GI protection, specific laws in China are concerned with GI registrations. However, as explained later in this article, duplications are possible.<sup>37</sup>

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33 Pinghui Xiao (n 9) 512.

34 See *Geographical indications and TRIPs: 10 Years Later...A roadmap for EU GI holders to get protection in other WTO Members*. (2005) 12-6; T Josling, «The War on Terror: Geographical Indications as a Transatlantic Trade Conflict», *Journal of Agricultural Economics*, 57 (2006).

35 Ibid. 343-9.

36 See *Comprehensive Feasibility Study for Possible Negotiations on a Geographical Indications Agreement between China and the EU*. (2009). Xiaobing Wang & Irina Kireeva, *Protection of Geographical Indications in China: Conflicts, Causes and Solutions*, 10, JWIP (2007).

37 In other words, GIs are registered under three parallel registration schemes, which together create, at least to some degree, duplications in terms of China's GI system. This means that a single product may have three GIs registered by different institutions, which can be a cause of confusion.

In practice, parallel registration of GIs covering the same products are simultaneously organized by three separate agencies, namely the SAIC, the AQSIQ and the MoA. Ultimately, there are three GI registration schemes in China's GI system.<sup>38</sup> This has the potential to create confusion, from which wine and liquor are not exempt. A number of wines and liquors have been obliged to establish duplicate registrations in order to maximize levels of protection. Thus far, for instance, the Daze Mountain Grape from Qingdao, Shandong Province has been registered in all three schemes, while Yongan Jishan Wine is registered by both the AQSIQ and the SAIC. These examples serve to demonstrate that multiple GI registrations exist in the wine and liquor sector. The registration requirements applied to schemes run by the three agencies differ from one another. Whereas the AQSIQ carries out GI registrations on the basis of certain technical standards specifically designed for the GI in question, the SAIC has a different *modus operandi*. For instance, among China's most well-known white liquors is Kweichow Maotai. Shaoxing Yellow Wine is one of the most famous yellow wines produced in Shaoxing, Zhejiang Province. Maotai and Shaoxing Yellow Wine are both recognized as GIs under AQSIQ rules. Two distinct standards were introduced for Maotai and Shaoxing Yellow Wine, respectively GB/T18356-2007 and GB/T 17946-2008. These standards, however, are different from the technical standards promulgated by the AQSIQ for the purpose of food safety, in the sense that GB/T18356-2007 and GB/T 17946-2008 are standards enacted to improve quality, or, in other words, are usually positioned above the food safety threshold.<sup>39</sup>

## 2.2 – PROMOTION SCHEMES ORGANIZED BY LOCAL GOVERNMENT: CLASSIFICATIONS AND LOCAL SPECIALTIES

Historically, due to the vastness of the country and its varied geographical conditions, China has had many small-scale, artisanal and localized agricultural concerns. Local governments take the lead in developing various local rules and regulations to protect local specialty products.

**Wine classification in Ningxia.** In 2012, the Ningxia Hui Autonomous Region enacted the Ningxia Helanshan Donglu Wine Region Regulation designed to protect the Helanshan Donglu (or Helan Mountain East) wine region. This was the first local regulation of its kind in China designed with

38 Pinghui Xiao (n 9) 510-16.

39 *Ibid.* 507.

the intention of promoting the local wine industry by enhancing GIs, among other things.<sup>40</sup> In 2013, the Ningxia Hui Autonomous Region enacted the Interim Measures on the Administration of Winery Classification within Ningxia Helan Mountain East Wine Region (hereinafter referred to as Interim Measures), which were intended to establish China's first winery classification system. The system is modelled on the Bordeaux 1855 Classification System, taking into account local characteristics.<sup>41</sup> In recent years, the Ningxia Helan Mountain East Wine Region has been considered one of the best in China, gaining the attention of consumers from all over the world. The Interim Measures were promulgated with a view to standardizing wine production in an effort to help the region to consistently produce high-quality wine.<sup>42</sup> According to the Interim Measures, all the wineries in the region can be assessed within the framework of a five-tier classification system. That means that wineries in the region are ranked from First Growth at the very top to Fifth Growth at the bottom.<sup>43</sup> Every two years, the region conducts a review, but those evaluated as First Growth, the top level of the classification, are re-assessed every ten years.<sup>44</sup> The evaluation is organized by the International Association for Ningxia Helan Mountain East Region Grape and Wine, which convenes an Evaluation Committee comprised of enologists, wine critics, industry observers, consumer representatives and the like to conduct independent assessments.<sup>45</sup>

The Interim Measures also define criteria for those selected for the classification process, under which a winery must meet the following quality and quantity requirements, including, but not limited to:

1) The estate to be classified should be located in the officially recognized region; it should plant its own grapes; possess on-site production and bottling facilities; and have a designated venue and facilities for wine tourism.

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40 Ibid. 517.

41 Liz Thach, *Chinese Wine Region Establishes Classification Modeled on Bordeaux's: Ningxia hopes to encourage quality and grab attention by creating a ranking of estates*, Wine Spectator (2014) <<http://www.winespectator.com/webfeature/show/id/49539>> accessed March 17, 2018.

42 Sylvia Wu, *Ningxia announces wine classification system*, Decanter(2016) <<https://www.decanterchina.com/en/news/ningxia-announces-wine-classification-system>> accessed March 17, 2018.

43 *Ningxia Hui Autonomous Region, Interim Measures on Administration of Winery Classification within Ningxia Helan Mountain East Wine Region – Ningxia Hui Autonomous Region* (2013), Articles 2 and 3.

44 Ibid. Article 4.

45 Ibid. Article 5.

2) A "classified" winery should plant its vines by variety, with 90% of its vines planted in the same area being of the same grape variety; furthermore, the yield for grapes should be between 500 and 800 kilograms per mu (7 to 11 tons per hectare, roughly 57.7 to 92.3 hl/ha for red wine).

Once a winery is classified and recognized within the system, the winery in question may be labeled as such. A certificate of classification is issued by the Ningxia Forestry Bureau. Wines officially classified may enjoy certain preferential policies from the local government. They will be also given more advertising opportunities.<sup>46</sup> The Interim Measures are legally harsh in that they encompass penalty provisions. There is a serious punishment mechanism for violations. The authorities may, from time to time, conduct unannounced inspections. If classified wineries are found not to respect certain quality controls or to commit deception in the evaluation process, their classification is revoked. In the case in which a winery is responsible for a serious quality or safety incident, or is found to have been producing counterfeit wines, its certificate of classification is revoked, and, upon such infringements, the winery will be given a permanent injunction against applications for classification.<sup>47</sup>

**Kweichow Moutai.** Kweichow Moutai is a brand of Chinese white liquor, produced in the town of Maotai in China's Kweichow (Guizhou) Province. This kind of Chinese white liquor is predominately produced by the state-owned Kweichow Moutai Company. Kweichow Maotai as a geographical name that has been registered as a liquor GI under the AQSIG GI sub-system. However, Maotai itself is a registered trademark. Chairman Mao Zedong had it served to Richard Nixon during his visit to China in 1972. Over the last decade, demand for Maotai in China has exploded and it has become a luxury good, its price increasing almost ten-fold. Although demand has been heavily affected by the recent anti-corruption campaign led by President Xi Jinping, it is still regarded as a national drink.<sup>48</sup> One of the most important industries in the Kweichow economy, the Kweichow Moutai Company accounts for 75% of the liquor

46 Ibid. Articles 13-4.

47 Ibid. Articles 3, 15-6.

48 Yue Wang, *How China's Kweichow Moutai Is Intoxicating Liquor Market*, Forbes(2017) <<https://www.forbes.com/sites/ywang/2017/04/13/how-chinas-kweichow-moutai-is-intoxicating-liquor-market/#704d320126e4>> accessed March 17, 2018.

produced in Kweichow Province.<sup>49</sup> Simply put, Maotai is a symbolic kind of liquor and a highly visible GI in China. To protect this heritage, Kweichow Province promulgated the Kweichow Maotai-flavor Liquor Technical Standard System in 2014. This is a local technical rule designed to protect local specialties such as Maotai. The local rule complements the Maotai GI standard, GB/T18356-2007 introduced within the framework of the AQSIG GI scheme, as mentioned above. It is an ensemble of sixty-five technical and management standards comprised of a general standard, standards for ingredients and production technology, product and testing standards, standards for packaging, transportation and storage, and standards for protection and sales services. The rule is one of the most comprehensive liquor quality guarantee systems in China. It covers the entire liquor production chain, emphasizing the local tradition's role in the selection of ingredients, as well as other processes encompassed in the traditional preparation of wine-making.

### III. CHINA'S WINE AND LIQUOR REGULATIONS IN THE AGE OF INTERNET PLUS

#### 1. CHINA'S INTERNET PLUS STRATEGY AND THE INCREASED VALUE OF LIQUOR E-COMMERCE

In her recent TED talk entitled "How China is Changing the Future of Shopping", Angela Wang argued that the country is a vast laboratory for Internet and e-commerce,<sup>50</sup> accounting for 500 million Chinese consumers, the equivalent of the combined populations of the United States, the United Kingdom and Germany. This new business model makes it possible to shop for practically any item in an ultra-convenient, ultra-flexible and ultra-social way.<sup>51</sup> China's middle class is expected to exceed 600 million people

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49 Wang Xin, *Kweichow Maotai-flavor Liquor Technical Standard System was officially went into force*, People.com.cn(2015) <<http://gz.people.com.cn/n/2015/0910/c222152-26313366.html>> accessed March 17, 2018.

50 In this article, the terms "online trading" and "e-commerce" are used interchangeably unless otherwise specified. However, it should be noted that while "online trading" is an official legal notion adopted in China's food law, "e-commerce" is widely used in the industry. Neither of them has so far been defined in Chinese law.

51 Angela Wang, *How China is changing the future of shopping*, TED(2017) <[https://www.ted.com/talks/angela\\_wang\\_how\\_china\\_is\\_changing\\_the\\_future\\_of\\_shopping](https://www.ted.com/talks/angela_wang_how_china_is_changing_the_future_of_shopping)> accessed 17 march 2018.

by 2022, which is larger than the total population of Canada and the US combined. In 2016, China became the largest retail market in the world, with spending topping US\$4.84 trillion.<sup>52</sup>

In 2015, the Chinese Government introduced the so-called "Internet Plus Strategy" announced by Premier Li Keqiang during the 3<sup>rd</sup> session of the 12<sup>th</sup> National People's Congress in China.<sup>53</sup> The same year also saw the State Council announce the *Opinions on the Development of E-commerce to Accelerate the Development of New Economy* with a view to boosting the ever-growing Chinese e-commerce sector, including the food and wine sectors.<sup>54</sup> The State Council's *Opinions* is regarded as China's E-commerce Plus Scheme, under which, the country is determined to establish a single, open, rule-of-law-based, competitive and secure e-commerce market. E-commerce will be further integrated into other industries and will provide a solid platform from which to generate innovation and jobs and improve people's livelihoods. In sum, the scheme recognizes that e-commerce will play a key role in further industrialization, urbanization and agricultural modernization. To this end, China will make further efforts to develop rural e-commerce by strengthening the standardization of fresh agricultural products and promoting e-commerce sales of agricultural products bearing GIs. In addition, China is currently moving to promote cross-border e-commerce. In particular, pilot programs, such as the China (Hangzhou) Cross-border E-commerce Comprehensive Pilot Area, are set to be established.

In 2017, the MoC promulgated the *Opinions on Promoting the Distribution of Alcoholic Beverages for Sustainable Development during 13<sup>th</sup> Five-Year Plan*.<sup>55</sup> In the framework of this document, to consolidate China's wine and liquor distribution system, e-commerce is to be prioritized in China's 13<sup>th</sup> Five-Year Plan from 2016 to 2020. To this end, the industry is encouraged to innovate in terms of wine and liquor e-commerce business models and to establish all kinds of cross-border e-commerce platforms.<sup>56</sup>

52 Adam Najberg, *Alibaba invites Canada business to explore China opportunity*, Alizila (2017) <<http://www.alizila.com/alibaba-invites-canada-businesses-explore-china-opportunity/>> accessed March 17, 2018.

53 Pinghui Xiao, «China's rising online food trading: Its implications for the rest of the world», in *Resource Security and Governance: Globalisation and China's Natural Resources Companies* (Xinting Jia & Roman Tomasic eds., 2017). 124.

54 *Opinions on the Development of E-commerce to Accelerate the Development of New Economy*, State Council (2015).

55 *Opinions on Promoting the Distribution of Alcoholic Beverages for Sustainable Development during 13th Five-Year Plan*, Ministry of Commerce (2017).

56 Ibid.

## 2. WINE AND LIQUOR BUSINESS MODELS AND REGULATIONS

At present, there are two types of online wine and liquor trading in the market. The first can be termed “Internet plus wine and liquor”, the other “Wine and liquor plus Internet”. The former is usually associated with Internet and e-commerce giants like Alibaba, JD, and the like which have no brick-and-mortar wine and liquor shops, but are involved in wine and liquor businesses via the Internet. The latter is associated with wine and liquor business operators making the transition from traditional business approaches to online trading. Examples of the latter include Changyu’s Jiuxianfeng (which translates literally as “wine pioneer”), and Maotai’s eMaotai.

According to Statista, the Chinese firms Baidu, Alibaba and Tencent (jointly known as the elite “BAT” group), along with JD, are among the top ten Internet companies in the world. All four companies are either directly or indirectly involved in the food and wine sector. Baidu is China’s largest search engine. It is natural for it to be involved in the food and wine sector, where it provides a platform for online advertising. In addition, it has set up Baidu Waimai<sup>57</sup> to provide food delivery services targeted at the middle class, and Baidu Nuomi, a group-buying catering site. Both Baidu Waimai and Baidu Nuomi deliver wine and liquor, although it is not their main focus. Alibaba is now the biggest player in online food and wine sales. As a social media platform, Tencent is no longer directly involved in e-commerce. However, it cooperates closely with JD, another major player in online food and wine sales. (Indeed, in China, only Alibaba is able to compete with Alibaba.<sup>58</sup> All in all, Alibaba finds itself in a dominant position in the sector.

Twenty years ago, the impact of the Internet in China paled into insignificance compared with the influence it enjoyed in the United States. This was especially true of e-commerce in food and wine. In the mid-1990s, Jack Ma, after visiting the US for the first time, became aware of the Internet and its potential. He learnt from the US and acted quickly by creating

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57 However, Ele.me, one of China’s largest food delivery service providers officially announced the purchase of its rival Baidu Waimai in 2017. See Fan Feifei, *Ele.me swallows up Baidu Waimai*, China Daily (2017) <[http://www.chinadaily.com.cn/business/2017-08/25/content\\_31084147.htm](http://www.chinadaily.com.cn/business/2017-08/25/content_31084147.htm)> accessed March 17, 2018.

58 Under a comprehensive cooperation agreement, Tencent purchased an additional 5 percent stake in JD.com. In return, JD expected to increase traffic thanks to the 272 million active users of Tencent’s WeChat messaging service. JD will also acquire Tencent’s Paipai e-commerce platform. See Steven Musil, *Tencent to take stake in JD.com to challenge Alibaba*, CNET(20) <<https://www.cnet.com/news/tencent-to-take-stake-in-jd-com-to-challenge-alibaba/#!>> accessed March 17, 2018.

the Alibaba Group, which now comprises some of the world's largest e-commerce platforms. The most striking aspects of Ma's platforms are their all-in, comprehensive features. Alibaba, unlike the other Internet giants, develops its own all-in features in the e-commerce eco-system, including listings, ratings, payment systems, and logistics. In addition, the products it sells encompass a vast range of everyday items, including clothes, home appliances, furniture and, naturally, wine and liquor. Alongside this offer, Alibaba's platforms share a unique characteristic, namely that they are all based on an online marketplace model, meaning that they primarily serve as intermediaries rather than direct business operators. As Alibaba grew, it adopted a differentiation strategy; new platforms gradually emerge, including, to date, Taobao, Tmall, Tmall.hk, Ali Health.

The business model and marketing strategy described above, combined with an unprecedentedly large market, make Alibaba a huge arena for both large companies and SMEs to do business in. Because online marketplaces in Alibaba's eco-system have no walls or borders, firms are able to do business there whether or not they are located in China. Finally, at the G20 Summit in Hangzhou, China in 2016, Jack Ma announced his vision of e-WTP ("Electronic World Trade Platform") and invited world leaders from the WTO and similar organizations to join his initiative.

Since Alibaba is a key player in online food and wine trading in China, it serves as a key to understanding how the sector is regulated. Indeed, the Chinese Government has introduced specific laws in regard to Internet food sales, elaborating legal provisions specially targeting so-called "Third Party Online Food Trading Platforms". The term Third Party Online Food Trading Platform was introduced in the 2015 FSL Amendment. In lay terms, it essentially describes online marketplaces for foodstuffs, including wine and liquor. Only two articles were introduced in the 2015 FSL Amendment, and both focus exclusively on online marketplaces. Hence, in the end, Alibaba and all other online platforms providing marketplaces have become laboratories in which Internet food and wine legislation in China is put to the test.

Consequently, at the core of China's legislation on the Internet wine and liquor sector we find a desire to regulate online wine and liquor marketplaces. To this end, marketplaces like Taobao, Tmall and JD, to name but a few, are granted powers to supervise and monitor food business operators in online marketplaces during the entire business lifecycle. If the marketplaces fail to ensure that those operators comply with food safety regulations, the marketplaces are punished with penalties ranging from fines to suspension or revocation of licenses.

It is also worthwhile noting that, according to the FSL, business models for online food and wine trading are, by implication, categorised according to whether foods are sold online via third party platform websites or self-built websites. Different rules apply in the two cases. The first approach is often referred to the “platform model”, the second as the “self-built model”. The distinction between the two models was officially and explicitly endorsed in the CFDA’s rules. In those rules, self-built sites for online food trading are characterized by the fact that food business operators use sites they have developed themselves. On the other hand, platform sites for online food trading are owned by third parties. The most obvious example is Alibaba’s Taobao.<sup>59</sup> As mentioned above, platforms are marketplaces, which do not sell food and wine *per se*, but serve as an intermediary matchmaker and meeting point for, on the one hand, food and wine business operators, and, on one hand, consumers, enabling them to trade within the platform. The latter is comparable to traditional food and wine business operators.<sup>60</sup> Recent years have witnessed the rise of the self-built model, examples of which include Jiuxian, Yesmywine, and 1919 Wine. An online wine and liquor marketplace like Tmall can, for theoretically understandable reasons, provide unlimited Stock Keeping Units (SKUs). However, while the self-built site model has the disadvantage of having far fewer SKUs, it is nevertheless recognized as offering consumers a more reliable, more professional purchasing experience.<sup>61</sup> It can currently be observed that the two models are moving closer together, showing signs of merging to form a hybrid model. In other words, online wine and liquor trading sites often accommodate features from both the self-built and platform models. For example, Alibaba’s Tmall not only serves as a marketplace for wine and liquor business operators, but also sells wine and liquor itself via the site.

### 3. e-WTP AND DIGITAL SILK ROAD FOR WINE AND LIQUOR

China’s innovations in the fields of the Internet and e-commerce have created a market of unprecedented size. Thanks to this phenomenon,

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59 There are good reasons that the early stages of Chinese e-commerce have proved such a boon for online platforms. It is due to the technical barriers faced by most businesses. Because of lack of click-rate, it is also difficult for most businesses attract enough a sufficient number of visitors to their websites. These factors make platform sites a preferred choice for online businesses.

60 Pinghui Xiao (n 53) 126.

61 China E-commerce Research Center, *The difference between products as sold from self-built sites and those from platform sites*, Sohu (2018) <[http://www.sohu.com/a/218966717\\_468675](http://www.sohu.com/a/218966717_468675)> accessed March 17, 2018.

the country's e-commerce and Internet giants, like Alibaba and JD, have developed a huge arena in which both large companies and SMEs can trade in a vast range of commodities, including wine and liquor. In particular, online marketplaces within Alibaba's eco-system have no walls and borders, so firms can do business there 24/7, whether or not they are based in China.

In October 2013, the Chinese Government introduced an ambitious blueprint called the Belt and Road Initiative. During the G20 Summit in Hangzhou on 4–5 September 2016, Jack Ma presented an e-WTP initiative.<sup>62</sup> In all China's efforts to develop e-commerce strategy in a global context, there is a happy marriage between the public and private initiatives described above, which together represent a substantial step toward the so-called Digital Silk Road initiative.<sup>63</sup> All these factors combine to create a tremendous business opportunity for global players in the wine and liquor sector. Tmall launched the first 9.9 Wine & Spirits Festival at 9am on September 9, 2016,<sup>64</sup> just four days after the 2016 G20 Summit. Between September 1 and September 9, 2016, 100 million people visited the site, with nearly half of them buying wine and liquor for the first time at Tmall. On the first day of the Festival, wine and liquor sales were ten times greater than they had been in the entire year of 2015. According to Alibaba's CEO, Mr. Zhang Yong, Tmall is a genuine Digital Silk Road for the world's wine and liquor sector.<sup>65</sup> Almost at the same time, JD launched a similar event, this one focusing on Chinese wine and liquor including Chinese white liquor and high-end international wine brands. However, the JD event was less successful in terms of its size and the volume of sales it generated.

Jack Ma had the idea for the 9.9 Wine & Spirits Festival when he was in Verona for Vinitaly in 2016. In April, he announced the new Festival

62 Bryan Michael Galvan, "G20 on Trade: 'Open Sesame'", *Beijing Review* (2016) <[http://www.bjreview.com/Business/201609/t20160908\\_800067302.html](http://www.bjreview.com/Business/201609/t20160908_800067302.html)> accessed March 17, 2018.

63 Zhang Rui, *E-WTP facilitates SMEs go global via digital Silk Road*, CCTV English(2017) <<http://english.cctv.com/2017/05/16/ARTIOKa4mf3hfjPH5qiBd6M170516.shtml>> accessed 17 march 2018.

64 The particular time and date for the launching of the festival are chosen obviously for good reasons. The number "9" in Chinese literally sounds like "wine", so ultimately, 9 o'clock on September 9 was chosen to launch the Festival.

65 *During Tmall Global Wine Festival, China Wine Net had a Great Success*, Huanqiu.com (2016) <<http://china.huanqiu.com/co-release/2016-09/9427377.html> > accessed March 17, 2018.

in China, claiming that it would feature wine and liquor businesses from around fifty countries and regions including France, Italy, Spain, Australia, Japan and the US. The Festival has become an annual event for Alibaba's Tmall to promote wine and liquor sales on its platforms. Alibaba and Vinexpo announced a partnership in June 2017 and together pre-launched the second Tmall 9.9 Wine & Spirits Festival.<sup>66</sup>

#### 4. LEGAL CHALLENGES BROUGHT BY CHINA'S GROWING LIQUOR E-COMMERCE

Wine festivals and events created by online platforms in China generate huge business opportunities for both international alcoholic beverages like, on the one hand, grape wine, cognac, whiskey and other drinks, and, on the other, their Chinese counterparts, including Chinese white liquor and yellow wines. For some considerable time, Alibaba ran a Legal Department and a Platform Governance Department to ensure that its products complied with industry standards. The Platform Governance Department, which is Alibaba's anti-counterfeit unit, works closely with Chinese authorities to crack down e-commerce related crimes. Nonetheless, there are still growing concerns and challenges that online wine and liquor trading faces in China.

Enforcing social control is a challenge for the wine and liquor e-commerce sector. This is particularly true as far as responsible sales are concerned. As previously mentioned, the Youth Protection Law prohibits wine and liquor businesses selling alcoholic beverages to minors. But the degree to which this law is respected by online wine and liquor business operators and e-commerce platforms is unclear. Indeed, their approaches to achieving compliance in this regard are uncertain. Some sites feature age-related warnings on their home pages, such as: "Please make sure you are not below the legal drinking age before purchase"; "Our site does not sell any alcohol products to anyone under the age of 18." However, according to news reporters, in reality a lack of substantial measures to prevent minors from buying alcohol products from these sites is an issue.

For instance, one reporter registered as a new user on a wine and liquor site. The reporter discovered during the registration process, which

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<sup>66</sup> See Tom Brennan, *Vinexpo partners with Tmall to boost China profile*, Alizila (2017) <<http://www.alizila.com/vinexpo-partners-with-tmall-to-boost-china-profile/>> accessed March 17, 2018; *Alibaba's Tmall Becomes Official Sponsor Of Vinexpo*, European Supermarket Magazine(2017) <<https://www.esmmagazine.com/alibabas-tmall-becomes-vinexpo-sponsor/44832>> accessed March 17, 2018.

included filling in the order form and providing a shipping address, that there were no questions concerning the buyer's age. Simply put, the provisions concerning responsible sales outlined in the Youth Protection Law are not adequately respected as far as online wine and liquor trading in China is concerned.<sup>67</sup>

In addition, when it comes to Internet shopping, counterfeit grape wine is an issue. In this regard, the most likely target is imported wine. There are several kinds of wine and liquor counterfeiting. In the past, a common type was referred to as "rogue counterfeiting". The practice concentrated on cheap imitations, sometimes involving harmful chemicals and sweeteners intentionally added to make wine and liquor for the low-end market. Again, this issue is linked to the social control aspect of China's wine and liquor laws, particularly to product safety. Rogue counterfeiting is absolutely unacceptable in China; producers and distributors involved in the practice violate Article 123 of the 2015 FSL Amendment, incurring very serious administrative penalties, as mentioned above.

Another, more contemporary form of counterfeiting – referred to as "subtle counterfeiting" – involves the use of fake labels. Cheap alcohol products are relabeled as more expensive brands in order to achieve higher margins.<sup>68</sup> Such a practice violates both China's trademark laws and GI laws in general, coming under the aegis of IP laws and consumer protection. "Subtle counterfeiting" is currently one of the most common types of wine and liquor fraud in China.<sup>69</sup> As a report from China E-commerce Research Center reveals, there is an increasing number of complaints about counterfeit wines sold via the Internet.<sup>70</sup>

In 2017, Shanghai police seized 14,000 bottles of counterfeit Penfolds wine, which is considered to be "the most expensive wine directly sold from

67 Liu Jun, *There are fake wines with speculative prices and minors can purchase alcohol*, Sohu (2013) <<http://business.sohu.com/20131015/n388199399.shtml>> accessed March 17, 2018.

68 Aoife Boothroyd, *Panfaids or Penfolds? Wine counterfeiting in China on the rise*, Food Magazine (2013) <<https://foodmag.com.au/panfaids-or-penfolds-wine-counterfeiting-in-china-on-the-rise/>> accessed March 17, 2018.

69 Pamela Ambler, *China Is Facing An Epidemic Of Counterfeit And Contraband Wine*, Forbes (2017) <<https://www.forbes.com/sites/pamelaambler/2017/07/27/china-is-facing-an-epidemic-of-counterfeit-and-contraband-wine/#33934afb5843>> accessed March 17, 2018.

70 Liu Hongli, *Internet is likely to be one the most important channel and complaints about fake wine are increasing*, China News (2015) <<http://www.chinanews.com/wine/2013/05-13/4809966.shtml>> accessed March 17, 2018.

a winery in the world”.<sup>71</sup> The fake wine was being sold through Alibaba’s online flea market, Taobao, as well as in pubs and karaoke bars. Penfolds’ iconic top-of-the-line Grange labels, which can retail for upwards of a thousand dollars, were found to be available for sale on Taobao for as little as 40 dollars. The Alibaba Platform Governance Department reported this to the Chinese authorities and worked closely with them, eventually tracking down those responsible.<sup>72</sup>

But among the most staggering cases so far is the VIPshop Fake Kweichow Maotai scandal, which broke in 2015. In early December 2015, VIPshop, a Chinese e-commerce platform, mainly selling clothing, shoes and hats,<sup>73</sup> entered the food and wine market by holding a liquor festival on the VIPshop’s platform. However, a few days later, a substantial number of consumers registered complaints against VIPshop on the grounds that the Kweichow Maotai products they purchased there were counterfeit. As a listed company, VIPshop responded quickly in a statement promising that it would pay all victims of consumer fraud compensation to the tune of ten times the value of the Maotai they had purchased. Over 900 individuals had been defrauded. As mentioned above, Kweichow Maotai is a high-end brand in China and alcohol products sold under the brand are expensive. Ultimately, VIPshop paid out a substantial amount of compensation. The CFDA threatened to launch an investigation into the case. VIPshop realized that any action brought against it would focus on violations of Article 123 of the FSL Amendment, as well as other, similar provisions, which could result in enormous administrative penalties. But later, the sample of fake Maotai in question was sent to a third party laboratory for further tests. Results showed that the counterfeit Maotai was in compliance with quality and safety requirements as established in the Kweichow Maotai GI standard, GB/T18356-2007. In other words, counterfeit Maotai from VIPshop was finally proven to be an example of “subtle”, rather than “rogue”

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71 *World’s Most Expensive Wine: Penfold’s Debuts \$168,000 Bottle Enclosed In Glass*, Huffpost (2012) <[https://www.huffingtonpost.com/2012/06/28/worlds-most-expensive-wine\\_n\\_1634523.html](https://www.huffingtonpost.com/2012/06/28/worlds-most-expensive-wine_n_1634523.html)> accessed March 17, 2018.

72 See Zhou Wenting, *Chinese police snare traders selling fake Penfolds wine*, China Daily(2017), <[http://www.chinadaily.com.cn/china/2017-11/15/content\\_34572032.htm](http://www.chinadaily.com.cn/china/2017-11/15/content_34572032.htm)> accessed March 17, 2018; Yael Brender, *‘Absolutely critical issue’: China raid uncovers 14,000 bottles of fake Penfolds wine and highlights vulnerability of winemakers to counterfeit products*, Daily Mail (2017) <<http://www.dailymail.co.uk/news/article-5091497/Police-seize-14-000-bottles-fake-Penfolds-wine-China.html>> accessed March 17, 2018.

73 VIPshop, based in Guangzhou – Guangdong, (China), specializes in online discount sales. It was listed on the New York Stock Exchange on March 23rd, 2012.

counterfeiting. Simply put, it mainly violated China's IP laws rather than the FSL. The CFDA did not step in as it found no legal basis to do so in the context of the results of the tests.

The market margins of well-known brands are often higher than those of their low-end counterparts. Consequently, counterfeiting such brands is more profitable. And, indeed, due to the staggering profits they generate, counterfeits of expensive brands proliferate. To this end, examples of technical progress in the counterfeiting process can be observed. For instance, in the gray market, Maotai packaging and (empty) bottles sometimes go for 30 dollars. Similar gray market practices are applied to expensive foreign wine and liquor. These authentic but empty bottles can be filled with counterfeit wine and liquor and relabeled as well-known brands. Currently, counterfeit wines and liquors are more often marketed on online platforms because those sold virtually are difficult to trace and consumers enjoy less protection than in other markets.<sup>74</sup>

#### IV. CONCLUSION

In China, wine and liquor laws were first introduced in the Zhou Dynasty (1046–256 BC). In ancient times, they served a variety of purposes, for example, maintaining social order. However, in the contemporary context, Chinese wine and liquor laws can be analyzed from two perspectives: social control and industry promotion.

As far as social control is concerned, three sub-aspects should be taken into account. First and foremost, social control is concerned with product safety. Since wine and liquor products are considered to be foods, the FSL, enforcement of which has been prioritized in China, is applied to them. This means those intentionally adding illegal chemicals to wine and liquor products, a now relatively rare practice that can be labeled as "rogue counterfeiting", will face the most stringent penalties, as defined in the FSL. In addition, with a view to protecting young people and ensuring road safety, the government is increasingly focusing on monitoring responsible sales and drinking. China has promulgated relevant laws and there have been a number of landmark cases in this regard. Last, the government

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<sup>74</sup> Li Yang, *With 100% genuine product guarantee, why fake products proliferate in e-commerce*, *Chongqing Economic Times* <[http://www.chinacqsb.com/html/2016-03/03/content\\_9056.htm](http://www.chinacqsb.com/html/2016-03/03/content_9056.htm)> accessed March 17, 2018.

has introduced laws on government functions regarding the quantities of wine and liquor served. These laws were introduced within the framework of the frugality and anti-corruption campaign launched after President Xi Jinping took office.

Since Chinese wine and liquor are promoted as a revenue-generating industry, industry promotion law and policy is applied to the sector at both the central and local levels. China has a GI system featuring three parallel registration schemes organized by three central government agencies. However, this system means that GI registrations are often duplicated. Relevant industry players, including wine and liquor operators, are obliged to apply for multiple GI registrations, a process that can cause confusion. In addition, some local governments also introduce local regulations and policies to increase the quality of wine and liquor and to protect the local industry and its specialist products. The foremost examples of this phenomenon are the Ningxia Hui Autonomous Region and Kweichow Province. The former introduced China's first wine classification system modeled on the Bordeaux 1855 Classification System. The latter established the Kweichow Maotai-flavor Liquor Technical Standard System to complement its existing Kweichow Maotai GI standard with a view to further promoting Maotai's local specialty.

China's approaches to social control and, in particular, its responsible drinking and anti-corruption campaign impose a number of restraints on the wine and liquor industry. However, these restraints are compensated for by China's growing e-commerce sector. The growing use of the Internet and of e-commerce have a considerable influence on China's wine and liquor sector. Online platforms, serving as marketplaces, do not sell wine and liquor products but provide intermediary services and have become influential players in wine and liquor businesses. Jack Ma, founder of China's e-commerce giant Alibaba, introduced the notions of e-WTP and the Digital Silk Road for wine and liquor by creating alcoholic beverage festivals on his online marketplace, Tmall. In theory, online marketplaces have the capacity to host a huge number of wine and liquor businesses. Consequently, they provide significant opportunities for both local and international alcoholic beverage players.

However, the growth in wine and liquor e-commerce also presents challenges in terms of wine and liquor law enforcement. Though China has introduced specific provisions to regulate online food and wine marketplaces, these rules are created to correct market failure in case of product safety violations under the FSL. Nonetheless, there has been

a rise in the number of cases of "subtle counterfeiting" involving fake labels violating trademark and GI laws. Because the Internet is virtual and counterfeiting in e-commerce is less visible than it is on other platforms, there is still a long way to go to in terms of successfully addressing the issue of counterfeiting.

**Keywords:** China – wine and liquor regulations – food safety – Internet sales

