

## Back to the Basics Series: The realities of doing business in China – Copyrights and Trade Marks

China's intellectual property rights (IPR) system has come a long way in the past 30 years, and development continues – a revision of the trade mark law came into force in May, paving the way for more thorough protection for rights holders. Although China is now coming into line with international IPR standards, there are still many ways in which the system differs from the European one. Below, the China IPR SME Helpdesk takes a look at two major types of intellectual property rights, trade marks and copyright, and considers how these differ from European standards.

### Copyrights

The Chinese system for copyrights is very similar to that used in Europe. Copyrights last for 50 years from the date of creation, or the lifetime of the author plus 50 years, and it protects a range of creations, such as artistic works, books, websites, or computer software. As in Ireland, copyrights are automatically protected as long as the creator can be clearly identified; however, unlike most countries in Europe, China also offers copyright registration for owners, a process handled through the Copyright Protection Centre of China (CPCC).

Registration is not necessary to enforce copyrights, but it can help greatly where ownership needs to be proven. As a general rule, Chinese courts and administrative agencies prefer as much paperwork as possible relating to the rights in question in an enforcement case and a Copyright Registration Certificate will prove ownership in the absence of any conflicting evidence. Copyright can also be a good back-up to other types of IPR in enforcement cases; for instance, the visual design of trade mark can be protected under copyright. It is also advisable because registration is granted relatively quickly (around 30 days) and inexpensively.

### Trade marks

Issues relating to trade marks are by far the most common type of IP problems that businesses bring to the Helpdesk. Copying a company's trade mark means stealing and harming its reputation, and this is vital to the competitiveness of most businesses. Therefore it cannot be understated how beneficial it is to register a trade mark as early as possible.

As in Europe, trade marks can be registered through the 'national or 'international' system. Foreign applicants without residency or place of business in China must submit trade mark applications through a local Chinese trade mark agent who will deal directly with the Chinese Trade Mark office (CTMO). As in Europe, the type of goods or services that need protection should be stated in applications by choosing

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the appropriate 'classes'. However, a separate application must be made for each class of the same trade mark.

As the registration of a trade mark in a western alphabet does not automatically protect the trade mark against the use or registration of the same or similar trade mark written in Chinese, it is also highly advisable to register a Chinese version of a foreign trade mark. If there is no existing Chinese Character name for a foreign brand, it is very likely that one will be adopted by local customers – probably a phrase that sounds similar, but may not convey the image the company wants.

Although trade marks that are normally registered at the intellectual property offices in European countries are not protected in China, the international system is available under the Madrid protocol through the World Intellectual Property Organisation (WIPO). A business can file an application with the national trade mark office stating which countries it wishes to have protection in, which then passes the application to WIPO. The WIPO will conduct a formality examination and will notify all Madrid Protocol members that the applicant stated. Although this route is in theory as effective as the national route, it is advisable to undertake the registration in China if possible as local agents may be able to give better advice on the details of what to register, in light of possible conflicts.

## Think ahead

The changes to the Chinese system that continue to take place are bringing it closer to European standards and a thus a safer place to do business. However, the real business environment remains quite different, with much greater potential for intellectual property theft than in Europe. This is not to say that China is a market to be avoided for European SMEs, only that companies must be more careful: identifying and assessing the value of all of their IP, having a clear strategy, and registering their rights much earlier.

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*The **China IPR SME Helpdesk** supports small and medium sized enterprises (SMEs) from European Union (EU) member states to protect and enforce their Intellectual Property Rights (IPR) in or relating to China, Hong Kong, Macao and Taiwan, through the provision of **free information and services**. The Helpdesk*

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*provides jargon-free, first-line, confidential advice on intellectual property and related issues, along with training events, materials and online resources. Individual SMEs and SME intermediaries can submit their IPR queries via email ([question@china-iprhelpdesk.eu](mailto:question@china-iprhelpdesk.eu)) and gain access to a panel of experts, in order to receive **free and confidential first-line advice** within **3 working days**.*

*The China IPR SME Helpdesk is an initiative by the European Union*

*To learn more about the China IPR SME Helpdesk and any aspect of intellectual property rights in China, please visit our online portal at <http://www.ipr-hub.eu/>.*