

INTELLECTUAL PROPERTY INFRINGEMENTS AT COMMERCIAL FAIRS: TIPS, PRECAUTIONS AND RISKS.

By Rosario Di Maggio



提示

Copies are common in China, from T-shirts and toys to medicines and even finished cars. There are no goods immune from unscrupulous "business" people willing to make easy money at the expenses of others in this still little regulated jungle that is the China market place.

There have been many cases where foreign manufacturers visiting China for the first time have found somebody has been replicating their products, including their brands, sometimes with the aim of infiltrating the original products supply chain. Indeed, copying does not merely apply to finished goods; we have seen cases where so called "ghost manufacturers" were producing semi finished products, such as internal valves, semiconductors, auto parts and so on. Contrary to what you can expect, it is not always the case

that the original company has or has ever had any business or relationship with China but still, somehow the IP infringer has acquired the sample to replicate a product, maybe by attending some international fair abroad or by simply picking the sample from internet.

The risk, however, becomes more likely when the foreign brand actually starts to source from or sell to China. That's why, before starting any business with Chinese companies, a foreign company should make sure that their IP is protected in China. Although the process is pretty long, the regulation protects the first applicant to fill the IP registration and related cost are relatively small. The Chinese Trademark Office (CTMO) is the designated institute in China to process such applications and registrations.

Although registering ones

IP still does not "protect" a company's products from being infringed, it entitles you to use all legal means defined by law in case of infringements.

A natural place where foreign companies might find their copied product exposed for sales, are trade fairs. It is therefore worth knowing that Chinese trade organisers are obliged to set up a complaint center for IP issues when the fair lasts at least three days. It is practical to pay a visit to this complaint center before the trade fair or exhibition start and figure out what legal means they have in case of infringements. For example, address the complaint center with questions such as:

- How will they react to a case infringement?
- What evidence and in what form is necessary to document a case of infringement?
- What are the possibilities of forcing an infringer to stop exhibiting an infringing product?
- What are the time frames for the infringer to react to a complaint?
- What are the chances to use the means of preliminary injunction?
- What amount of down payment would be required in the case of a preliminary injunction?

Other action a company can take prior to a trade fair is to spend some time checking

the websites of the competitors in advance as these might reveal potential infringements and allow more time to prepare adequate enforcement action. China exhibition organisers usually provide exhibitor information on their websites. On the other hand, a company should also consider what kind of information it makes available on its own website, as well as in brochures or samples, as these could serve as an inspiration or instruction manual for potential illegal copies.

Dealing with infringements

In cases where a potential infringing product is detected, the first important step is to obtain as much information as possible about the exhibitor and the product. A digital camera or a camera-phone might

be useful to secure evidence. Brochures, business cards and other types of literature are all helpful to support enforcement action. Secondly, after detecting a potential infringer, the rights holder has to decide whether to take immediate action or to further monitor the development. If immediate action is taken the rights holder should not act hastily, e.g. write a letter with vague accusations, as this can cause a long lasting legal battle with sometimes bad results for the rights holder. The rights holder should always thoroughly contemplate how to proceed; that is carefully decide which legal means could and should be used to fight the infringer according to the information received from the local enforcement authorities and own local lawyer.



Dezan Shira & Associate is a professional consulting practice with 10 offices and 170 consultants in China that assists clients with legal, tax, accounting, HR and payroll services. // For more information or assistance, please contact Rosario Di Maggio at rosario.dimaggio@dezshira.com or visit www.dezshira.com

提示

BIZ TIPS

TIPS

aqualcotta
Ristorante Pizzeria Bar

OLD TRADITIONS IN MODERN TIMES
传统与现代美食的完美结合

OPENING HOURS: 7 DAYS FROM 11AM TILL LATE
营业时间: 全天候营业, 从早上11点至凌晨

PH: 34258159 Add: NO 69 Binjing dong Road, Haizhu Bandao Garden, Haizhu, Guangzhou
地址: 广州市海珠区滨江东路69号 (海珠半岛花园)