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A step by step guide to intellectual property (IP) strategy and protection before, during and after a trade fair or exhibition in China

1. A Handbook Guide to Trade Fairs in China

Trade fairs represent an opportunity for SMEs to showcase their products and act as a gateway to the Chinese market. Although attending a trade fair or exhibition in China can reap substantial benefits, SMEs should be aware of the associated IP risks. Protecting IP at a trade fair requires preparation, often months in advance. Trade fairs should not be considered as an opportunity to 'catch' infringers since the exhibitors present may not be the source producers of the infringing products. If you discover that your product is being infringed and even though enforcement action is often available at trade fairs, using the opportunity to collect evidence for enforcement action after the trade fair is just as important. Whether you decide to take enforcement action during or after a trade fair, thorough preparation before attending a trade fair should be integrated into a broader IPR enforcement and protection strategy.

2. Before the trade fair: fail to prepare, prepare to fail

2.1 As with tangible products, you can only protect the intellectual property (IP) that you own. As is the case in the EU, your key IP features can be registered, and therefore protected, in China.

- Identify your key IP assets (trade marks, patents, copyright) and register your rights in China at the earliest possible opportunity. The basic rule in China is that unless the right in question is registered,

it will not be enforceable. The concept of unregistered rights is not well-established in China.

2.2 Determine your strategy well in advance of the trade fair.

- Do you want to take enforcement action at the trade fair or only use the fair as an opportunity to gather evidence? It is recommended that you discuss your strategy with an experienced lawyer who is familiar with working at trade fairs in China. If you are not certain about securing all necessary evidence and paperwork to carry out an action at the trade fair, then gathering evidence at the fair may be a better strategy.

2.3 Prepare the required documents – some may need to be notarised and legalised which can take up to two months.

The documents include:

- Certificate of IP right ownership (notarisation and legalisation strongly recommended, and in the case of some Chinese authorities, required):

Patents: Patent certificate, text of published patent, documents certifying the identity of the patent owner (e.g. notarised and legalised certificate of incorporation appropriately translated), confirmation of the legal status of your patent (that the patent remains in force) and official receipts that confirm that the annuities for the

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current year have been paid.

Trade marks: Trade mark certificates, any renewals of the trade mark (if it is over 10 years since the original registration) and documents certifying the identity of the trade mark owner.

Copyright: If you have exercised the option to register your copyright; the certification of the copyright, and documents certifying the identity of the copyright owner.

- Photographic evidence of the alleged infringing products (where available), which are displayed at the trade fair.
- Notarised and legalised Power of Attorney (POA) in favour of the person seeking to enforce the IP rights at the trade fair.
- Catalogue basic information regarding suspected infringers who may be present at the trade fair, including company name, information about the alleged infringing products, and their contact details.
- Explanations and additional evidence of any alleged infringement.

2.4 Visit the trade fair's website or contact the organiser to gain information on any complaint centre that may be at the trade fair and if there is any IP protection information available to you.

- If there is no complaint centre present, check to see if the local IP authorities are authorised to enter the trade fair to ensure the enforcement of IP rights. Bear in mind that if there is a complaint centre, it may well be very busy and any action you take should be instigated as early as possible with your case and all the necessary documentation presented in a clear and orderly fashion in advance, by an attorney who specialises in the relevant area of IPR (Trademark lawyer, Patent lawyer etc.).

2.5 Research the exhibitors

- Take steps to research if there are any 'suspicious' organisations (i.e. those you know or suspect to be handling infringing items) expected to attend. The organiser should be able to provide a list of exhibitors with their stall numbers, prior to the trade fair.

2.6 Carefully read the exhibitor contract

- Are there measures in place if counterfeit products are identified? Will it be possible to expel exhibitors or clear stalls? If it is unclear in the contract, take steps to clarify the arrangements with the organiser. If there are no such provisions, you or your SME Association should consider lobbying the organisers to secure appropriate sanctions.

2.7 Use experienced agents or lawyers and obtain any necessary entry passes for them.

- Note that at a number of trade fairs in China, only foreigners are permitted to enter. For example, the Guangzhou Export Commodities Fair (Canton Fair) restricts admittance of Chinese nationals who are not exhibitors or do not have stated business at the trade fair.

Infringers may be selling to customers even if they are not openly displaying infringing goods. The most serious infringers are often those who have learned to avoid attention, but may deal with their regular customers outside of the fair. Being aware of the 'usual suspects' and using the fair as a chance to make in-depth investigations and gather evidence may be as valuable as an enforcement action at the trade fair.

3.2 Know where the relevant IP authorities are located and, in particular, make contact with them if your agents/lawyers have a good working-relationship with them. It is prudent to make yourself known to the authorities before any potential issues arise and consult with them on specific issues that may apply to a particular event, as early in your visit as possible.

3.3 If you're exhibiting at a trade fair, review and consider what materials you are displaying and distributing, especially if they relate to new products. Remember, displaying products at trade fairs can (but not in all circumstances) constitute 'publication' which may affect their novelty value. E.g., if you display a new product at a trade fair in such a way that its innovative elements are clearly visible and have been documented in some manner then you could be prevented at a later stage from obtaining a patent for that product or, if a patent is obtained, it may be vulnerable to invalidation. Please note that current patent law provides a grace period, meaning that an invention or creation does **not** lose its novelty if a patent application is filed within six months of when it is first exhibited at a trade fair recognised by the Chinese Government. Check with your lawyer if you are unsure of what constitutes 'publication'.

3.4 Collect business cards, brochures and other information from any suspected infringers. While infringers may appear in various guises with different company names on their business cards, the individuals involved usually provide the same mobile phone number, which may enable various front-companies to be linked.

3.5 Take a digital camera or camera phone to secure evidence. Note that while such devices are not prohibited, some exhibitors (particularly if they know they are infringing IP rights) may object to picture taking. Consider having a notary public accompany you because in most circumstances only notarised evidence will meet formal evidentiary requirements in China. Without a notary, there is scope to argue that the evidence is not genuine. Provided that you are accompanied by a Chinese speaker you can find a notary by telephone directory or by searching for a 'notary public' on Chinese internet search engines.

3.6 If you do not take any enforcement action, ensure that you maintain a database, recording the details of suspected infringers and obtain as much evidence as possible which can be used for potential enforcement later.

3. At the trade fair: be pro-active, not reactive

3.1 Visit the trade fair where possible during the set-up phase and visit known, past or suspected infringers.

4. How to file a complaint at a trade fair

4.1 Go to the complaint centre and complete a form

concerning your complaint (at some trade fairs it is available in both English and Chinese).

- 4.2 Discuss and present your information with the IP Officer present (there may also be a lawyer present who is invited by the organiser who you should also consult).
- 4.3 The IP Officer will closely examine your documents to ensure that your IP rights are valid and that you have the necessary documentation (this is where many companies fail to proceed in their action as they have insufficient documentation due to inadequate preparation).
- 4.4 If your complaint is considered valid, the IP Officer and the lawyer will go to the infringer's booth and inform them of the complaint.
- 4.5 The alleged infringer is usually given a certain amount of time to respond to the complaint. The allocated response time depends on the local administrative IP rights department and the duration of the trade fair. It is important to take this time into account when filing a case at the complaint center. It also illustrates the importance of filing the complaint as early as possible at the trade fair.
- 4.6 Once this time period lapses and if the IP Officer at the trade fair agrees, the organiser can then order the alleged infringer to remove or cover the infringing products. The extent to which an organiser can order infringers to undertake such action depends on the contract that exhibitors sign with the organiser of the trade fair.



5. Other points to consider

- The IP Officer present in the complaint centre may be different each day during the fair, therefore be prepared to explain your case again even though the file should have been handed to the new attending officer.
- The IP Officer alone does not have the power to order the infringer to remove the products. It is the organiser who has the authority to do so with the backing of the IP Officer.
- It may take several hours for the IP Officer to review your documentation and decide whether your complaint is valid.
- Many of the complaint centres do not have their own copying machine; it is therefore recommended that you take several copies of your documentation with you to the fair.

6. After the trade fair: act on the information you have gathered

Follow up on evidence gathered or actions taken at the trade fair.

- 6.1 If action was taken at the trade fair, follow up with the authorities and conduct follow up investigations to check if the infringer has halted the infringing activities.
- 6.2 Take additional / further enforcement action if necessary.
- 6.3 If no enforcement action was taken, report to your legal or IP department and add the information to your records.

7. Additional considerations

- 7.1 Send cease & desist letters to known infringers prior to the next trade fair. 'C&D' letters include an order or request to halt an activity, or else face legal action. The recipient may be an individual or an organisation. It is best to have such letters drafted by a local lawyer, as there can also be risks associated with them (e.g., a requirement to bring a suit or the possibility of the recipient claiming libel).
- 7.2 Manage your expectations and accept more modest successes – enforcement against traders who can easily move and do not own assets or carry stock is always going to be challenging.
- 7.3 It may be more prudent to wait instead of taking immediate enforcement action. Pursuing networks of manufacturers, traders and overseas customers often leads to the discovery of common links, makes priority targets clear and makes progress easier to measure. For example, enforcement action at the trade fair may not be appropriate if your rights are not entirely in order, if the case of infringement is arguable or if the IP Officer does not have the technical expertise to make a decision on infringement at the trade fair. In addition, if it is obvious that the exhibitor is not the main target (the exhibitor may be a small reseller or trading company) it might make sense to obtain evidence at the trade fair and investigate the exhibitor after the trade fair so that more substantial targets, a manufacturer or even infringing networks can be disclosed or pursued.

Take-Away Messages

IP enforcement at trade fairs should form part of your broader enforcement strategy. Information gathered and lessons learned at a trade fair can be utilised in developing or improving your IP strategy. Before you consider any of the above options, you should first make sure your rights are in place (i.e. are appropriately registered) and that you have the best protection at a reasonable cost in China.

More information on developing an IPR strategy in China and on how to secure your IP at trade fairs can be found on the China IPR SME Helpdesk website: www.china-IPRhelpdesk.eu

The China IPR SME Helpdesk provides free, confidential, business-focused advice relating to China IPR to European Small and Medium Enterprises (SMEs).

Helpdesk Enquiry Service: Submit further questions to the Helpdesk via phone, email (question@china-iprhelpdesk.eu) or in person and receive free and confidential first-line advice within seven working days from a China IP expert.

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