

Trade Fairs in China: Steps to Protect You IPR

Trade fairs are an excellent opportunity for a business to showcase their new products and scout out business partners for manufacturing, promotion, and distribution. Unfortunately, in China these exhibitions are a common prowling ground for infringers, so it is of utmost importance to ensure all intellectual property precautions are undertaken. It is not sufficient to merely gain intellectual property rights for a company's assets – steps should be taken before, during and after a trade fair to ensure maximum protection. This article takes a look at some of the steps foreign businesses should take.

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

Determine your strategy in advance of the trade fair. Do you want to take enforcement action at the fair, or only use the fair as an opportunity to gather evidence? If you are not certain about securing all necessary evidence and paperwork to carry out an action at the fair, gathering evidence there first may be a better strategy.

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

- Certificates of IP right ownership (notarisation and legalisation strongly recommended, and in the case of some Chinese authorities, required) of patents, trademarks and copyrights (if registered).
- Photographic evidence of 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.
- A catalogue of 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.

Visit the trade fair's website, or contact the organiser, to gain information on any complaint centre that there 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 if the local IP authorities are authorised to enter the trade fair to enforce IP rights. Furthermore, 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 stall numbers prior to the trade fair.

Carefully read the exhibitor contract. Are there measures in place to be taken 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.

Use experienced agents or lawyers and obtain any necessary entry passes for them. 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 do not have stated business at the fair.

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

Where possible, visit the trade fair during the set-up phase and visit known, past or suspected infringers. Infringers may be selling to customers outside of the fair even if they are not openly displaying infringing goods. It is wise to collect business cards, brochures and other information from any suspicious individuals. While infringers may appear in various guises with different company names, they usually provide the same mobile phone number.

Know where the relevant IP authorities are located and in particular, it is prudent to make yourself known to the authorities before any potential issues arise and consult with them on specific issues at a particular event. If you decide to file a complaint at the IP Office of a trade fair, the alleged infringer is usually given a certain amount of time to respond, therefore it is important to file any complaints as early as possible at the trade fair.

Remember, displaying products at trade fairs can (but not in all circumstances) constitute 'publication' which may affect their novelty value. For example, 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. 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.

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.

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.

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

- Follow up on evidence gathered or actions taken at the trade fair.
- 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.
- Send cease & desist (C&D) letters to known infringers prior to the next trade fair.

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, the exhibitor may not be the main target (they may be a small reseller or trading company), so it might make sense to obtain evidence at the trade fair and investigate the exhibitor afterwards so that more substantial targets, a manufacturer or even infringing networks can be disclosed or pursued.

CHINA IPR SME HELPDESK

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