

8.4. IP Protection (RC)

Introduction

Intellectual property has been a hot topic in China since there have been lots of violations in the past. Even while this issue is on a decline, you might lose your competitive benefit either in China or also in other markets if you do not try to protect your intellectual property, e.g. of your brand or your technology domestically and internationally.

Molds and other developments by your business partner

Due to high integration of suppliers in the value chain you might expect your supplier to develop a solution to you, e.g. Molds for producing material or also when integrating software modules in your own IT infrastructure.

Be aware that this kind of customizing his own solution might fall in an area that the supplier is creating intellectual property that might be attributed to the supplier and not to you. This can end up in a vendor lock where the company is forcing you to stay with him, despite quality problems or raising prices or even in owning him core intellectual property. When integrating a vendor in your value chain, you should try to ensure that intellectual property is yours and cannot be held hostage against you.

Intellectual property can be divided into three parts and get enforced on different levels:

- Trade secrets, which get enforced on a comparably high level
- Patents, which get enforced to a certain level
- Trademarks, which get enforced on a sub-par level

One excellent resource for researching more about this topic is the ChinaLawBlog which also states that intellectual property, that can easily be copied will be copied while more complicated issues will be copied by “learning” from the international companies.

Fake Brands

Some Chinese companies try to use your brand recognition by using parts of your Chinese name while exchanging some of the Chinese characters with others.

While it might be complicated to impossible to successfully fight that kind of copyright infringement, it might still be a viable option to take action: Companies who are not trying to defend their brands are definitely easier targets than companies who will just accept fake companies to continue the brand violation.

Copying your “Chinese” name

Protecting your English or international trademark might be enough in other markets: Due to translating international brands into Chinese characters, it might be not enough though. If you are having a famous brand with an English name or are trying to establish a brand, it is still recommended to ensure a protection of the brand that you are using with Chinese characters. In a worst case, it could happen that someone else registers a Chinese version for your brand and, in the end, you will violate this copyright in the local market.

Not being active in the Chinese market does not mean you are safe

Even if you are not active in the Chinese market, it might be a good idea to protect in China against local copycats.

Again, worst case would be that you infringe the copyright of a local brand which registered international trademarks of yours.

How to protect yourself

There are basically three possible ways that can protect you:

Register your IP if possible

China offers different options to protect your IP, e.g. registering patents and trademarks.

Contracts

With contracts you can ensure that your Chinese partner cannot suddenly use your IP or parts of it against you. This could be e.g. done with licensing agreements or trade secrecy agreements.

Technical protection

By using methods that are hard to copy, e.g. by using proprietary methods of encryption or physical properties that the partner cannot easily reproduce, e.g. with holograms or semi-finished goods provided by you that are hard to copy, you can on a physical level ensure that your IP does not get stolen.

Since this can be some kind of cat-and-mouse game where your local copying competitors want to keep up this can be a never-ending race that still can be worth it.

Some companies try to use a combination of physical products and online-authentication or additional online-services to verify products for their customers.

By this companies sometimes target the wrong audience though: If product authentication is offered or even required to make a product work, they will omit the buyers of fake products while troubling the customers who bought the real product.

Online-Authenticity-Check

When implementing a connection of Online- and Offline-Products, you should try to make sure that you are not harming your own customers that bought the real product in the official sales channels.

One way that more and more companies are implementing is a certificate of authenticity combined with a QR-Code that allows easily checking with on an official website if it is an authentic product and how often the serial number has been checked already. The customer can easily see on that website, if a counter is implemented, if the same serial number has been checked before, leaving him the option to complain at his vendor.

This decision lies with the customer though.

Further Reading

If you want to get more detailed information, use the search engine of your choice to find more about the

- Trademark Law
- Copyright Law