IP Considerations for Marketing Consumer Goods in China

Speaker: Bei Li

25 June 2026

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Ms. Bei Li, has been engaged as Legal Counsel at the Rödl Shanghai office for more than 20 years, now is Associate Partner and the head of IP (China). Rödl is a German leading law firm.

She has significant experience in intellectual property portfolio management, IP protection strategies, enforcement of IP rights, and IP-related contracts. She advises a large variety of German and other European enterprises in production, trading and service sectors for the IP issues in China. She is a native Chinese speaker. Her working languages are Mandarin, German and English.

She graduated from Shanghai International Studies University with a Bachelor Degree and further educated at University of Mannheim with a LL.M Degree in Germany. Before joining Rödl, she worked for a famous German retailing enterprise.

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About us

- 5 offices in China: Beijing, Shanghai, Taicang, Guangzhou, Hong Kong (SAR)
- Over 30 years as trusted partner and trailblazer in a complex and dynamic environment
- Over 150 experienced experts on site

Clients

- Over 600 clients in nearly all provinces in China
- 80% subsidiaries of German companies and corporations
- 20% subsidiaries of international companies and corporations

Industries

- Automotive
- Mechanical and plant engineering
- Energy industry
- Industrial production
- Pharmaceuticals and medical technology
- Chemicals
- Retail/consumer goods
- Robotics and cyber
- and many more…

Principle for IP Protection in China and Typical Pitfalls

- **1. Dispelling Misunderstanding: Clarifying the "First-to-File" Principle in China**
  - China adopts the "First-to-File" principle;
  - Overseas registered trademarks, designed or patents do not automatically take effect in China.

- **2. Identifying Typical Pitfalls for European SMEs**
  - Certain European SMEs face risks of Chinese trademarks (transliteration of their house mark in Latin) and trade names being squatted;
  - Failure to monitor IP rights (trademark watch) on regular basis and miss golden opportunities to take actions;
  - Distribution Agreement ≠Trademark Licence Agreement;
  - Copyright infringement when using Chinese Fonts & Images in online marketing materials.

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Practical Tips for IP Protection

- **3. Practical Tips for IP Protections**
  - Protection of SMEs' Chinese trademarks and trade name for core products and related categories for defensive purpose;
  - Conducting copyright recordal for SMEs' logo or stylized font;
  - Monitoring of IP rights (market watch/trademark monitor) and preserving trademark use evidence, to help build an IP firewall.

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IP Infringement Action Guide (Roadmap)

- **Step 1: Discovery of infringement**
  - Proactively identify infringement clues through regular online searches and market watch;
  - Verify infringement facts, assessing the scale of infringement, figure out whole infringement chain (manufacturing → wholesale → distribution → retail/online sales).
  - Monitor the booths of competitors and infringers when attending trade fairs.
- **Step 2: Evidence collection and preservation**
  - Conduct evidence preservation via blockchain-based technology (timestamp);
  - Proactively collect evidence and entrust an investigator during the trade fairs.
- **Step 3: Comprehensive self-assessment of existing IP rights and the ones of infringer before taking any legal action**
  - File supplementary trademark applications or copyright recordal ASAP, if necessary;
  - Potentially file opposition, invalidation or non-use cancellation actions against the infringer's trademark rights in due time.
- **Step 4: Taking multiple approaches flexibly, depending on the specific situation**
  - Online takedown (for rapid removal action) and lawyer's letter (Cease & Desist Letter);
  - Administrative complaints to market regulators for quick investigation and punishment;
  - Judicial litigation proceedings to claim economic compensation and pursue other infringement liability (such as injunction).

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