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IP SME HELPDESK

Case Study: Trademark Search and Trademark Registration Via National Route in China

SME details

Location of headquarters: Europe

Industry: Food and Beverage (Sangria in Aluminium Can)

Status in China: Planning to Enter The Market

✓ Case Background

The SME is a producer of sangria in an aluminium can. They were considering registering their trademark in China for their product. While already aware of the fact that a trademark registered in the EU will not be protected in China, the SME wished to learn more about the trademark protection landscape in China, including the cost, time, and registration routes. Therefore, they approached the China IP SME Helpdesk to navigate trademark protection in China.

Trademark protection in China takes effect when the trademark is registered, not when the application has been submitted. The protection term in China is the same as in the EU, which is 10 years. Without registration, the SME will not receive full protection.

It is recommended to wait until obtaining trademark registration in China before starting to use the trademark. Otherwise, after the delivery of goods to China, the SME's brand will become known to the public in China, which could lead to counterfeiting. In this situation, without the registered trademark, the SME would only have limited options available to fight the counterfeits. Moreover, the SME could also record their registered trademark with the China customs and inform the Customs officials about their brand. The China Customs will be helpful because they can detain imported and exported counterfeits.

In terms of registration options, the SME could file the trademark application either directly with the China National Intellectual Property Administration (CNIPA), or via the Madrid system international trademark registration route.

The main differences between the national filing route and the international filing route are as follows:

The national filing route can only provide protection in China. All the documents need to be filed in Chinese, and therefore the SME must hire a trademark attorney in China. The CNIPA further divides the Nice classification of goods and services into subclasses, thus the SME will need a local Chinese trademark agent to advise which subclasses should be covered by the trademark application. Once the trademark is successfully registered, the trademark certificate issued by the CNIPA is directly enforceable in China. Timewise, a straightforward trademark registration takes about 6-12 months and costs around 40 Euros in official fees, plus additional trademark attorney fees.

The Madrid system filing route allows the SME to file one application and extend it to different countries including China. As all documents can be filed in English, it can be managed by the SME or their counsel in Europe. However, the certificate issued by the World Intellectual Property Organization (WIPO) will not be directly enforceable in China, so the SME would need an additional application with the CNIPA to issue the Chinese certificate. A straightforward international registration via the Madrid System takes about 18 months, while the official registration fees could be over 700 Euros.

Before filing the trademark application, it is important to run a trademark search. The SME in question wished to file a trademark application including the wording and a logo (a composite trademark). The China IP SME Helpdesk assisted the SME with a trademark search regarding the wording. In case of the composite mark, wording is more important when deciding whether the mark is similar to other trademarks. When it comes to the logo, it is highly possible that the CNIPA might cite different prior similar logos to refuse the registration of the trademark. However, as long as the wording of the prior trademarks is different from the SME's trademark, it is very likely that the CNIPA will grant the registration after they file a review against the refusal, which would cost an additional 600-1,000 Euros. The Helpdesk also recommended asking the trademark agency to run another trademark search right before the application, in case any new marks will have been registered in the meantime. If the SME has a tight budget, they should consider just registering the wording part to obtain protection as soon as possible and to avoid potential refusals along the way.



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Actions Taken

The SME decided to proceed with a national filing directly with the CNIPA, to protect their composite trademark, with the assistance of the China-based IP experts.

Outcome

4 months after the trademark application was submitted, the registration was refused by the CNIPA on the grounds that the logo part was similar to the previously registered logo marks. The SME decided to file a review of refusal, to persuade the CNIPA that the SME's trademark was not similar with the existing trademarks, considering the wording was different. It takes time (around a year) for the CNIPA to make the decision, but the SME is very optimistic about their chances.


Lessons Learnt

- If you enter the market without prior trademark registration, you may face the risks of trademark squatting, counterfeiting, being detained by the China Customs, etc. Therefore, it is important to have a strategy to protect your trademark, before coming to the China market.
- In China, there are millions of trademark filings every year, so it is easy to encounter similar trademarks when you file your application, which will block the registration procedure of your trademark. Remember to conduct prior trademark searches before filing your trademark application as it can help you discover any similar marks that might become obstacles in your registration process. Accordingly, choose a suitable trademark strategy to match your budget and your business plan.
- China is one of the Madrid System contracting parties, which means that international trademark registration is available in China. European companies can choose to file an international trademark with the WIPO and then extend it to China and other countries.
- There are many important differences between the national filing and the international filing route for trademark applications. Choose a suitable one based on the needs of your business. When in doubt, consult with the IP experts.
- Trademark registration in China might not be very straightforward, seek the assistance of IP experts, when in doubt. The China IP SME Helpdesk can assist you in devising your trademark protection strategy in China as well as support you with conducting prior trademark searches.

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@chinaiphelpdesk

 question@china-iprhelpdesk.eu



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