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## GUIDE

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# IP Strategy for European SMEs at Trade Fairs in China

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# 1. Introduction

This guide provides a comprehensive overview to Intellectual Property (IP) strategy and protection before, during and after a trade fair or exhibition in China.

From a prevention point of view, although attending a trade fair or exhibition in China can reap substantial benefits, SMEs should be aware of associated IP risks and should understand that protecting IP at a trade fair requires preparation – often months in advance of the event.

From an enforcement point of view, European SMEs often report seeing counterfeit versions of their products displayed at exhibitions and want to act to prevent this infringement from taking place. However, if you discover that your product is being infringed – despite the fact that enforcement action is often available at trade fairs – using the opportunity to collect evidence for later action can be more effective than ‘catching’ the distributor at the fair. This is because the exhibitors present may not be the source producer.

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 Prevention:

As with tangible assets such as stock or real estate, you can only use legal channels to protect IP that you own. As is the case in the EU, your key IP rights 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. In terms of trade mark and patent registration, a foreign registration has no legal effect in China. Depending on the type of IP, the registration process can vary from several months (e.g. copyright or design patent) to several years (e.g. invention patent), so advanced planning before market entry is needed. Read more information on IP registration in China from other Helpdesk publications (see Section 7: related links and additional information).

## 2.2 Enforcement:

### Determine your strategy well in advance of the trade fair

Do you want to take enforcement action at the trade fair or will you merely use the fair as an opportunity to gather evidence? In addition to preparing for the trade fair, 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.

### Prepare the required documents

Leave sufficient time to prepare your documents, since all foreign language documents must be translated into Chinese. Some certificates may also need to be notarised and legalised which can take up to two months. These documents include:



### Certificate of IP right ownership:

**Patents:** Patent certificate; text of published patent (copy of the Patent Gazette on which the involved patent is published); 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 current year have been paid.

**Trade marks:** Trade mark certificates (for an international registration through the Madrid Protocol indicating China, you need to separately apply for a Trade Mark Registration Certification from the China National Intellectual Property Administration (CNIPA) Trade Mark Office); 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 in China, the certification of the copyright, and documents certifying the identity of the copyright owner are required. Although copyright is an automatic right, China offers voluntary copyright registration which provides proof of ownership. A voluntary copyright registration is not a prerequisite for enforcing your copyrights but it will make the enforcement process much easier. If no copyright registration is made, you may need to bring the original work showing the

author's name and the date of creation or first publication.

- **Photographic evidence** of any known infringements where possible (e.g. screen shots from E-commerce sites, brochures containing counterfeit goods or trade mark misuse).
- **Notarised and legalised Power of Attorney (POA)** in favour of the person seeking to enforce the IP rights at the trade fair and the POA holder's identification (passport).
- **Basic information regarding suspected infringers** that 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.**

Use our checklist to make sure you have all necessary documents (see Section 7: related links and additional information).

### Research the exhibition's IP complaint centre

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

### Some facts about IPR complaint centres

The national regulation Measures for the Protection of IPR During Exhibitions (2006) requires organisers of trade fairs/exhibitions lasting three days or longer to set up IP complaint centres. Generally, the local Intellectual Property Office (IPO) sends staff members to manage such centres and provide services to exhibitors. In case a trade fair does not have an active IP complaint centre, the organiser should support exhibitors by clearly displaying relevant regulations and local IP authority contact information.

Sometimes, the IP complaint offices are located in an exhibition booth or in a separate office within the exhibition venue. You can find its location in the exhibition manual or check with the fair organisers.

In most jurisdictions (some IPOs such as Guangdong have greater authority than most others for seizing goods at trade fairs), the resident IP official has the authority to take the following actions to resolve an IP complaint during the fair: mediation; removal/covering of infringing products; seizing infringing products and forwarding the case to responsible IP administrative departments. However, no penalties or fines can be imposed during the exhibition.

If there is no complaint centre present, check to see if the local IP authorities can 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. Any action that you take should be instigated as early as possible, and all

necessary documentation should be presented in a clear and orderly fashion well in advance – ideally by a lawyer that specialises in the relevant area of IPR (trade mark lawyer, patent lawyer, etc.).

### Research the exhibitors

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

### 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 trade association or local chamber of commerce should consider lobbying the organisers to secure appropriate sanctions.

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

Note that at a number of trade fairs in China, including the Canton Fair, pre-registration of both exhibitors and visitors is required due to the huge numbers of attendees.

## 3. Enforcement at the trade fair: be pro-active, not reactive

### Start actions early

Visit the booth of known, past or suspected infringers as early as possible during the fair, during the set-up stage if possible. This will provide more time to complete evidence collection and/or enforcement procedures. Be aware that some experienced infringers cleverly exploit a legal loophole by displaying goods but not technically 'offering these for sale' at the fair; instead conducting sales transactions 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.

### Visit the IP office

On the first day of the trade fair, spare some time to visit the IP complaint office. This is important firstly, to make yourself familiar with the location of the office in case there is any urgent need to return there during the following exhibition days, and secondly, in order to make yourself known to the authorities before any potential issues arise. It is advisable to consult with them on specific issues that may apply to a particular event as early in your visit as possible.

### Collect and notarise evidence

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.

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 searching for a 'notary public' on Chinese internet search engines.

If you just want to initiate a complaint during the trade fair, the evidence of infringement can be as simple as a picture, brochure, promotion materials showing the alleged infringing exhibits, or just a sample. Also, if you plan to use the evidence collected at trade fairs for later enforcement actions, a notarised purchase is highly recommended. A notarised purchase is a purchase made in the presence of one or two Chinese notaries depending on the notary public's requirements. The notaries would issue a notarised statement of the facts related to the purchase.

### Consider your best strategy

It may be more sensible 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.

Even 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.

## 4. How to file a complaint at a trade fair

- Go to the complaint centre and complete a form concerning your complaint (at some trade fairs it is available in both English and Chinese). If no English form is provided, you then need to seek help from your Chinese agent, colleague or hired translator to complete the form in Chinese. As many complaint centres do not have their own photocopier, we recommended that you take several copies of your documentation with you to the fair.
- Discuss and present your information with the IP Officer present (there may also be a lawyer present invited by the organiser who you should also consult). 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 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).
- 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. It may take several hours for the IP Officer to review your documentation and decide whether your complaint is valid so be patient with the process.
- 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 centre. It also illustrates the importance of filing the complaint as early as possible at the trade fair.
- 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. Enforcement after the trade fair: act on the information you have gathered

If action was taken at the trade fair, maintain contact with the authorities and conduct follow up investigations to check if the infringer has halted the infringing activities.

If no immediate enforcement action against the infringer was taken, and depending on the strength of your case and the evidence collected, you could consider the following actions:

- Send cease & desist (C&D) 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. The exact nature of the claims in the warning letter will depend on the strength of your evidence, and of course on the strength of your IP rights. 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 lawsuit against the recipient or the possibility of the recipient claiming libel).
- Keep records of all new information, and evidence gained through the trade fair and store them safely.
- The evidence gathered at the exhibition can be used to initiate follow-up investigations into the infringer and then, if the combined evidence warrants it, you might consider taking administrative enforcement actions or civil litigation. Read our Enforcement of IP in China guide for more information.

Despite your efforts you may need to manage your expectations and accept more modest victories – enforcement against traders who can easily move and do not own assets or carry stock is always going to be challenging.

## 6. Other trade fair risks

### 6.1 Prevention: Loss of novelty

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.

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 the current patent law provides a grace period, meaning that an innovation does not lose its novelty if an invention patent application is filed within six months of when it was first exhibited at a trade fair recognised by the Chinese Government.

The Trade Mark Law states that if a trade mark is used for the first time at an international exhibition sponsored or recognised by the Chinese government, the trade mark may be registered in China using the date of the trade fair as a 'right of priority'. In practice this means that if a third party tries to

register your mark after seeing it at the fair you can prove to the China Trade Mark Office (CTMO) that you used the trade mark first and the trade mark will be granted to you. This is a strong benefit provided by the Trade Mark Law as in most other situations China is a 'first-to-file' country, meaning the first applicant for a trade mark will be granted it, without any consideration of who used it first. Check with your lawyer if you are unsure of what constitutes 'publication'.

### 6.2 Enforcement: Rejected complaint

In certain circumstances as listed below, your case may not be accepted by the complaint office at trade fairs:

- You have already filed a litigation with the People's Court concerning the same IP infringement;
- Your patent is in the process of being subject to invalidation;
- The ownership of the involved IP is currently subject to the procedures of the People's Court or to the mediation procedures of an administrative department.



#### Take-Away Message – Enforcement

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.

## 7. Related links and additional information

China IPR SME Helpdesk guides:

Guide to Trade Mark Protection: <https://www.china-iprhelpdesk.eu/sites/china-hd/files/public/Guide%20to%20Trade%20Mark%20Protection%20in%20China.pdf>

Guide to Patent Protection: [http://www.china-iprhelpdesk.eu/docs/publications/China\\_IPR\\_Guide-Guide\\_to\\_Patent\\_Protection\\_in\\_China\\_EN-2013.pdf](http://www.china-iprhelpdesk.eu/docs/publications/China_IPR_Guide-Guide_to_Patent_Protection_in_China_EN-2013.pdf)

Guide to Copyrights in China: [http://www.china-iprhelpdesk.eu/docs/publications/EN\\_Copyright\\_guide\\_Aug\\_2010.pdf](http://www.china-iprhelpdesk.eu/docs/publications/EN_Copyright_guide_Aug_2010.pdf)

[https://www.china-iprhelpdesk.eu/sites/all/docs/publications/EN\\_Enforcement\\_Mar-2016.pdf](https://www.china-iprhelpdesk.eu/sites/all/docs/publications/EN_Enforcement_Mar-2016.pdf)

Enforcement of IPR in China: [https://www.china-iprhelpdesk.eu/sites/all/docs/publications/EN\\_Enforcement\\_Mar-2016.pdf](https://www.china-iprhelpdesk.eu/sites/all/docs/publications/EN_Enforcement_Mar-2016.pdf)

Related links:

Protection Measures for Intellectual Property Rights During Exhibitions: [http://www.wipo.int/wipolex/zh/text.jsp?file\\_id=182340](http://www.wipo.int/wipolex/zh/text.jsp?file_id=182340)



# 8. Checklist

All documents can be submitted in photocopy but need to be notarised and chopped (stamped with official seals). Additionally you may be asked to produce the originals for inspection so carry them with you to the fair.

## Enforcement : Checklist for documents needed for IP complaint at trade fairs

	Document needed	Note
<input type="checkbox"/>	<b>Identity certification of the complaint</b>	The identity needs to be consistent with the applicant of the IP certificate. Foreign evidence needs to be notarised and legalised, which takes several weeks.
<input type="checkbox"/>	Business license for company complaint	
<input type="checkbox"/>	ID card/passport for individual complaint	
<input type="checkbox"/>	<b>Power of Attorney</b>	Require notarisation and legalisation, taking several weeks.
<input type="checkbox"/>	<b>IP ownership certification</b>	
	<b>Trade mark</b>	
<input type="checkbox"/>	Trade Mark Certificate	Applications for trade marks take around one year. To apply for Trade Mark Certification for a Madrid registration indicating China takes about 3 months. See our Trade Mark Guide
<input type="checkbox"/>	Trade Mark Certification by CNIPA	
<input type="checkbox"/>	Trade mark renewal document	
	<b>Copyright</b>	
<input type="checkbox"/>	Copyright registration	Applications for copyright registration take about one month. Foreign evidence requires notarisation and legalisation, which takes several weeks. See our Copyright Guide
<input type="checkbox"/>	Other document to certify copyright ownership	
	<b>Patent</b>	
<input type="checkbox"/>	Patent Certificate (a set of document including patent image, description, claim etc.)	Applications for inventions take 2-3 years; about 1 year for utility model (UM) and several months for design.  Due to no substantial examination applied in the application of UM and design, a patent evaluation report issued by CNIPA is needed during enforcement.  See our Patent Guide
<input type="checkbox"/>	Patent publication text	
<input type="checkbox"/>	Patent evaluation report	
<input type="checkbox"/>	Latest invoice for patent annuity fee	
<input type="checkbox"/>	<b>Infringement evidence</b>	
<input type="checkbox"/>	Basic information on the alleged infringer (name, booth number)	Check the exhibitor list published by the fair organiser
<input type="checkbox"/>	Information on the alleged infringing products (promotional material, picture, sample etc.)	
<input type="checkbox"/>	<b>Complaint letter</b>	
<input type="checkbox"/>	Complaint form	Available from the Complaint Centre
<input type="checkbox"/>	Other explanations	

**Disclaimer:** In line with the Protection Measures of IPR during Exhibitions, the above 'check-list' only covers routine documents usually required by IP complaint centres. In the event of a particular scenario, for instance, you own a trade mark via license agreement, there will be additional requirements for documents. Please consult the Helpdesk or your local experts for details.

# IP Strategy for European SMEs at Trade Fairs in China

Download Guide



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<sup>1</sup>The language offer will depend on the specific service and experts' availability.

If you have any queries on how to protect your Intellectual Property in China contact our Helpdesk service:

If you want more information on additional free services offered by the Helpdesk contact the coordination team:

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