



Intellectual  
Property  
Office



British Embassy  
Beijing



# Intellectual Property in China

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UK-China trade and investment is expanding rapidly. As British companies pursue commercial opportunities in China it is important to identify and mitigate risks, including around intellectual property (IP). It is possible to protect and enforce IP in China. However, challenges remain and elements of China's IP system are different to the IP system in the UK and other countries.

## Protecting IP in China

IP rights are typically territorial. Registered IP rights in the UK, EU, Hong Kong or elsewhere will not provide effective protection in Mainland China. As in the UK, the main types of IP in China are trade marks, patents, design rights, copyright and trade secrets.

Registered **trade marks** for Mainland China are issued by the China Trademark Office (CTMO). Trade mark applications can be made through the Madrid system for the international protection of trade marks, or filed directly with the CTMO. Trade marks in China are granted on a "first to file" basis, with less emphasis placed on the use of a mark.

### Pre-Emptive Trade Mark Applications

Bad-faith trade mark applications – including “trade mark squatting” – are the single most common IP issue that British companies raise with the Embassy. Typically, a company or individual will apply for a trade mark intending to sell back the right to use the mark to its original creator, or to piggy-back on its international reputation. Pre-emptive trade mark applications are most common in consumer retail industries, but can affect all sectors.

**The best way to prevent trade mark squatting is to be the first to apply for Chinese trade mark protection.** Trade mark applications in China are relatively inexpensive. Buying back a mark will generally cost tens of times more than application costs. The options to fight a bad-faith application are limited. The Chinese Trademark law does not currently require applications to be made in good faith. Global brands without extensive previous use in Mainland China are particularly vulnerable.

**Patents & design rights** protection is administered by the Chinese State Intellectual Property Office (SIPO). SIPO defines three types of patent right in China: (a) invention patent (b) utility model (c) design patent. Chinese **invention patents** are broadly analogous to patents in the UK and require a full examination by SIPO before grant. This process takes around 2 years. China is a signatory to the international *Patent Cooperation Treaty* (PCT). This means that international applications can be converted into Chinese invention patents in accordance with usual procedures.

**Utility models** are sometimes called "mini-patents" and require a lower level of inventiveness. The UK does not operate a utility model system. Applications for utility models in China are not substantively examined, and are typically granted in 3-6 months. Utility models can be a useful way to secure protection cheaply and quickly for technological, mechanical and electrical products.

**Design patents** are similar to registered designs in Europe. Applications for registered designs in China are also not substantively examined, and are typically granted in 3-6 months. Unregistered designs receive significantly less protection in China than in the UK.

China is a signatory to the Berne Convention, so **copyright** arises automatically for any work created inside or outside of China, without requiring registration for protection. However, it is recommended that rights owners consider voluntary registration to help prove ownership in infringement actions.

**Trade secrets** may be protected under China's Anti-unfair Competition Law. Companies should seek advice from legal professionals on using employee contracts and setting up internal systems to protect against trade secrets leakage, and to improve chances of recourse should a problem occur.

Commercial arrangements can also be used to limit the likelihood and impact of IP infringements. For example, manufacturing processes can be disaggregated. Due diligence should be taken ahead of any joint venture, and IP licensing agreements prepared that take due account of Chinese Law.

## Enforcing IP in China

When IP rights have been secured in China, it is important to monitor the market for infringements. Should an infringement be detected, there are five main channels for enforcing IP rights. Jurisdiction is generally determined by location of the defendant or where the infringement occurred.

- **Civil litigation:** IP cases involving foreign entities will typically be heard at 1<sup>st</sup> instance at local Intermediate People's Courts, the 2<sup>nd</sup> level of a four-tier civil court system. Judicial decisions are usually issued within 6-12 months, and both injunctions and damages can be awarded.
- **Administrative enforcement:** Administrative enforcement is conducted by local government authorities. It is most effective in straightforward cases. Administrative enforcement is fast, inexpensive and typically ends with a fine and/or an order to stop the infringing activity. Compensation to the rights-holder cannot currently be awarded through this channel.
- **Criminal enforcement:** Cases that exceed fixed criminal thresholds can be investigated by Public Security Bureau (PSBs). Administrative cases that exceed thresholds should be transferred to PSBs for criminal investigation. Typically rights holders will support criminal investigations.
- **Customs enforcement:** IP rights should also be registered with China customs in order to benefit from border enforcement of IP infringements. Almost all IP seizures made by China customs are for goods being exported from China.
- **Non-official/informal channels:** These include online take-down procedures provided by e-commerce platforms and other websites; cease-and-desist letters (which should only be sent following advice from qualified legal professionals); and arbitration based on dispute resolution clauses in contracts.

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For more information – or to arrange a discussion of a particular case based on our experience working with other companies in China – please contact [commercialmail.beijing@fco.gov.uk](mailto:commercialmail.beijing@fco.gov.uk).