

MAKING YOUR MARK IN CHINA

WHAT YOU NEED TO KNOW

There is, perhaps, no global market more intriguing and full of promise than China. Once an economic backwater, China today is one of the fastest-growing economies in the world.

Over the past decade, the Chinese economy has experienced explosive growth as it has accelerated its transformation from a centrally controlled economy to a market economy begun in 1978.

Today, China has the fourth-largest economy in the world in terms of gross domestic product (GDP), with an economic output of \$2.68 trillion (USD, 2006). It's also the fastest growing economy in the world, with 10.7% GDP growth in just the past year (source: China Daily). This explosive economic growth is, in turn, generating an unprecedented increase in China's emerging consumer class. Urban boulevards once packed with workers in grey and black tunics riding bicycles are today increasingly filled with automobiles and young entrepreneurs dressed in the latest fashions and chatting on cell phones. In Beijing alone, it is estimated that 1,000 new cars hit the road every day.

Steady increases in Chinese consumer spending— together with China's population base of 1.3 billion— offer the potential for exciting market opportunities for companies in a wide range of industries.

However, before wading into this most dynamic of world markets, understanding China's unique trademark landscape is crucial to protecting your hard-earned brand equity.



REUTERS/Tim Chong

IP IN CHINA

While western countries have well developed IP infrastructures developed over centuries, China's IP infrastructure is relatively young and evolving. IP infringement, piracy and counterfeiting continue to be a problem in China, though significant advances have been made in recent years to strengthen its IP regulations, enforcement and remedies. In 2001, China instituted important reforms to its IP laws to comply with the World Trade Organization's (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Over the past two decades, trademark registrations have increased dramatically in China. In 1983, China had 20,000 new trademark registrations, 1687 of which were of foreign origin. In 2006, new trademark applications exceeded 700,000, and the number of approved trademarks reached 260,000 according to the latest statistics from China's State Administration for Industry and Commerce (SAIC). In 2006, the SAIC handled 33,900 cases of trademark infringement; 7,439 of these involved a trademark of foreign origin.



Today, China has a total of 2,760,000 registered trademarks. About a fifth of all registrations are of foreign origin and cover 129 countries and regions, with the United States, Japan and Germany ranked first.

REGISTER OR RISK

China has a “first to file” system of trademark registration. This contrasts with systems in the U.S. and some other countries, where the first to demonstrate commercial use of a trademark generally enjoys protection. This difference has significant implications for companies—including those with no immediate plans to do business in China.

If a trademark is not already registered in China, virtually anyone can register the mark and use it to manufacture and/or market products or services in the Chinese market. This “trademark squatting” is entirely legal under China’s first-to-file system. Unless you register your trademark in China first, you could be leaving your brand vulnerable to its legal use, or misuse, in China by someone else.

In addition to blocking your use of your own trademarks in China, trademark squatting increases the chances of counterfeit products, sold legally under your trademark in China, seeping into the U.S. and other markets. In addition to diverting revenue, this can significantly damage your brand equity.

Given these realities, registering your mark in China should be viewed as a critical risk mitigation strategy for any company considering doing business there within the next few years (this is because trademarks registered in China are subject to cancellation if not used for a period of three consecutive years).

CREATING A MARK

The first step in registering your trademark in China is creating a Chinese equivalent that ensures your brand identity doesn’t get lost in translation. Failing to create a Chinese equivalent could weaken or even harm your trademark’s meaning and equity. The following examples illustrate what can happen if you simply leave it up to the market:

- Local consumers of Quaker Oatmeal products linked the Quaker man logo with the nickname “Lao Ren Pai” which literally means “old man brand.”
- The Ralph Lauren Polo company discovered that their mark is known in China as “San Jiao Ma” which translates as “three legged horse.”

Given the unique characteristics of the Chinese language, an equivalent should be carefully developed with guidance from trademark and marketing professionals, translators and native speakers. When creating a Chinese version of your trademark, you have three options:

- 1) **Create a literal translation.** This is possible only in the case of trademarks with a distinctive meaning. Examples of translated marks:
 - Apple Computers: “Ping Guo,” Chinese for “apple.”
 - Microsoft: “Wei Ruan,” a combination of the exact translation of “micro” and “soft.”
 - Palmolive: “Zong Lan” a combination of the exact translation of “palm” and “olive.”

- 2) **Create a transliteration or phonetic translation.** Transliterating a trademark involves choosing Chinese characters that represent the same sound as the original foreign trademark. For western pronunciation, characters can be expressed phonetically using Pinyin, the official Chinese phonetic alphabet that uses Latin characters.

Note that certain Chinese characters may also be pronounced in different ways in the different dialects. Furthermore, certain sounds that occur in a foreign language can have an absurd meaning or negative connotation in Chinese.

Examples of transliterated trademarks:

- McDonald’s = “Mai Dang Lao”
- Ferrari = “Fa La Li”
- Cartier = “Ka Di Ya”

- 3) **Combine literal and transliteration.** It is possible in some cases to create a name that sounds similar to the foreign trademark and simultaneously refers to the qualities of the product. Some examples:
 - Coca Cola = “Ke Ku Ke Le” which means “allowing the mouth to rejoice.”
 - Pepsi Cola = “Bai Shi Ke Le” which means “everything makes you happy.”

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LEARN MORE

To learn more about Thomson CompuMark’s comprehensive China trademark research and protection solution, contact us today at (800) 692-8833.

Regardless of which approach you take, it is crucial to address the following questions:

What meaning does the Chinese equivalent have? Making sure your trademark has no negative meanings is a critical step to avoiding enormous potential problems.

Can the trademark be understood by the various dialect groups? The national language in China is Mandarin, the dialect of Beijing. In Chinese, this dialect is known as Putonghua, literally meaning “common language.” However, there are many other Chinese dialects, including Cantonese, Hokkien and Shanghainese. In addition, Taiwan, Hong Kong and Singapore use their own dialects.

Should you use simplified Chinese characters or traditional Chinese characters? While simplified Chinese characters offer their advantages, the more complex traditional Chinese characters are also used in other parts of Asia. In making this and other translation decisions, getting advice from local, native-speaking trademark specialists is critically important.

The example below illustrates why local knowledge is crucial. These two trademarks appear similar in Pinyin, yet are in fact dissimilar, because their composing characters differ both in their visual appearance and in their meaning.

In Pinyin these Chinese characters read ‘Mei Yan’. ‘Mei’ means ‘beautiful’ and ‘Yan’ means ‘amorous’.

Also these characters read ‘Mei Yan’, however pronounced in a slightly different way. As a consequence, the meaning changes. In this case, ‘Mei’ means ‘plum’ and ‘Yan’ stands for ‘wild goose’.

YOUR PARTNER IN CHINA

As the Chinese economy continues to grow in both size and importance, it is destined to become a major, global economic market for a wide range of consumer and business products and services. However, given the complexity of the Chinese language and China’s cultural and commercial differences, developing comprehensive brand creation, extension and protection strategies are absolutely critical to success. Thomson CompuMark can help, with a comprehensive solution for establishing and protecting your brand in China.



REUTERS/Claro Cortes IV

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TAKING THE NEXT STEPS

Once you have created your Chinese trademark, the next important steps are:

- 1) Clear the availability of the trademark
- 2) Register the mark with the Trademark Office within China’s State Administration for Industry and Commerce (SAIC)
- 3) Protect this valuable asset with ongoing Trademark Watching

Due to the complexity of the Chinese language, it is very important that the company conducting the trademark availability search and the watching service engage local experts who take into account the various aspects of the language and the local legislation.

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