

Enforcement at the Canton Fair: Challenges faced by rights owners seeking to assert IP rights

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Rouse

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For those seeking to source products in China, the biannual trip in April and October to the China Import & Export Fair (or Canton Fair) is becoming more of an imperative. By the same token, an increasing number of local trading companies are aware of the types and designs of products that are in global demand. Arguably, this offers an opportunity to potentially copy those same products for export where they feel they can compete on price. Such practices serve to undermine long held misconceptions of rights owners that they are immune from a potential flood of cheap knock-off products in their home markets simply by choosing not to source or sell directly into China.

Foreign rights holders (who may not have a presence in China) should be reminded of the fact that they have a large role to play themselves in minimising such risk. But it will require taking active steps to protect their brands and designs.

Register what you can, when you can

China is a first-to-file jurisdiction for patent and trade marks in general with no evidence of prior use or ownership required. Given China's significance as a major manufacturing base, a small investment now in registering or recording the IP rights of core products makes good commercial sense.

Strategy

Preparation is key, thus it is important to devise a strategy for protection of IP at the Canton Fair from the outset. This could represent an annual or biannual visit to monitor the Fair itself to:

- identify potential infringers;
- use the opportunity to discreetly get information on the scale of their activities/markets/nature and perhaps the source of infringement;
- collect (through notarisation) important evidence for use in follow up administrative or civil action;
- interrupt the ability of infringers to create new or supply existing global markets by being in a position to make a valid complaint;
- even where there are no registered or recorded rights in China, make enquiries as to where they might be exhibiting next - to facilitate the taking of preventative action; and
- carry out a tailored cease and desist letter campaign targeting known infringers (sent within two months prior to the following session of the Canton Fair) to help in dissuading infringement to all but hardened infringers.

IP Complaint Centre

Following implementation of the *Protection Measures for Intellectual Property Rights during Exhibitions* (effective March 1 2006), the organisers of trade exhibitions (such as the Canton Fair) set up purpose built stations staffed by members of administrative authorities such as the Administration of Industry and Commerce and the patent and copyright bureaus. Here, rights owners can (with sufficient evidence of their registered rights and the infringement) submit formal complaints against certain exhibitors. If accepted, action can be taken.

Complaint procedure

- The rights owner (or their designated IP agent) can submit a complaint with the IP Complaint Centre;
- The submission and supporting documentation are scrutinised to ensure that the relevant IP rights are valid (at which stage many submissions would have been rejected on the grounds of insufficient or incomplete evidence preparation);
- The IP Officer would schedule a time to inspect the suspected infringer's booth and inform them of the complaint filed against them;
- The suspected infringer has a certain period of time to respond to a complaint;
- After the allotted time elapses, if the IP Officer agrees the complaint has merit the infringing items can be ordered to be removed or covered;
- Before the conclusion of the particular phase of the Canton fair, the petitioner (or their agent) is notified of the result.

Challenges

- Penalties recorded against the registrant of a booth rather than actual occupier (i.e. subletting of booths to infringer) resulting in deterrence being minimised;
- Despite the volume of IP related complaints, a shortage of enforcement staff at the complaint centre;
- Penalties often not sufficiently severe as officials present have used their discretion to not confiscate infringing items but simply order them to be taken down;
- General reluctance on the part of the fair organisers to inhibit trade by excluding exhibitors found to be infringing - despite their discretion to do so under their latest guidelines.

Preparation

In order to maximise the chances of a complaint being accepted, foreign rights holders should:

- acquire IP rights in China;
- determine their strategy before the Fair and prepare accordingly;
- conduct advance preparation of required documents - formalities can take several months i.e. notarisation, legalisation, translation;
- conduct consistent monitoring - are previous infringers attending? - to gauge impact of their strategy;
- prepare for the unexpected - arrange for a Chinese notary public to be on standby during the trade fair; and
- prepare multiple copies of documentation, as often the complaint centres do not have their own office facilities.

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