



China IPR SME Helpdesk

欧盟中小企业中国知识产权服务处

Experiences of EU SMEs with IP protection in Digital Economy when internationalizing to China

欧盟中小企业在中国数字经济领域知识产权保护的经验分享

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Michele has **20 years of experience** assisting western brands protecting and enforcing their IP rights in China.

费岚清先生20年来一直致力于为欧美在华企业提供知识产权保护方面的建议。

He has been involved in **high-profile litigation**, including before the Supreme People's Court. He is regularly invited to **comment on draft legislation** and contribute to **high-level policy meetings** with Chinese and foreign authorities on topics of IP protection.

费岚清先生曾多次处理一些备受瞩目的诉讼案件，包括最高人民法院审理的案件。他经常受邀就立法草案发表专业意见，并多次应邀出席中外政府举办的知识产权保护领域的高级别政策会议。

Ferrante Intellectual Property is a full-practice **registered PRC Law Firm specialized in IP and Trademark Agent.**

Ferrante知识产权律师事务所是一家在中国注册的业务全面的知识产权事务所，Ferrante致力于在知识产权和商标代理等方面为客户提供广泛的法律服务。

With **over 40 professionals** and **3 locations** across China, it offers comprehensive legal services on all aspects of **IPRs, licensing, unfair competition, consumer protection, anticounterfeiting and e-commerce.**

Ferrante知识产权律所在北京、上海和香港三地设有办事处，拥有一支由超过40位优秀专业人才组成的专家团队，为客户提供知识产权保护、许可、不正当竞争、消费者保护、反假冒和电子商务等方面的服务。

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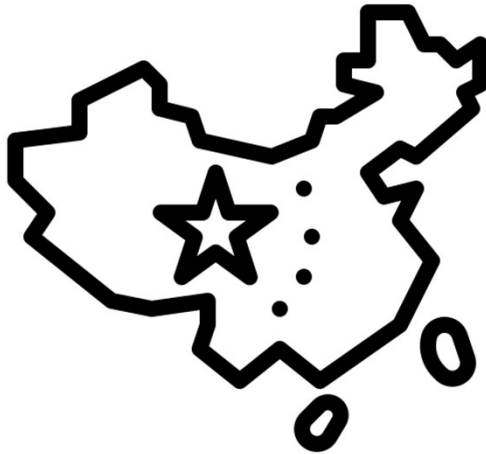
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European
Commission

Internationalising to China: What Does it Include?

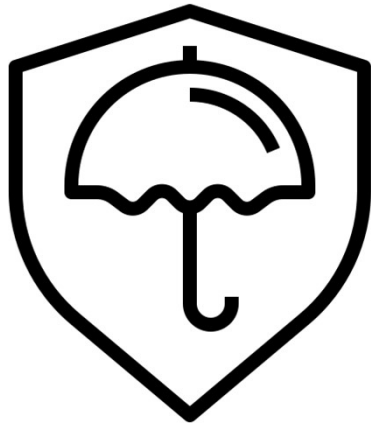
进入中国的商贸活动



- Doing R&D and/or Manufacturing in China
- 在中国研发及/或生产
- Marketing a Product/Service in China (online or offline)
- 在中国营销产品或服务 (线上/线下)
- Participating in Trade Fairs (online or offline)
- 参加线上/线下交易会
- Offering a product for sale in China (including with no specific marketing campaign)
- 进口海外商品 (包括无特定营销活动的商品)

What Are the Main IP-related Challenges?

与知识产权相关的主要挑战



- Pre-emptive Registrations
- 抢先注册
- Squatting and Counterfeiting
- 抢注和假冒
- Unauthorized use of IP Rights or Technology
- 未经授权使用知识产权或技术
- Unauthorized Sales
- 未经授权进行销售
- Unauthorized use or hijacking of Merchandising and Packaging
- 未经授权使用或仿冒产品及包装
- Unauthorized Import and Exports
- 未经授权进出口
- Hijacking of a brand's appearance (e.g. store layout)
- 仿冒品牌外观 (如商店布局)
- Fake Malls
- 未授权店

Building a Comprehensive China Strategy for IP Protection in the Digital Economy

构建数字经济时代中国知识产权保护的综合战略

- 1. The Bottom Line: Register your IP Rights**
- 2. Build Connections with Authorities and Experts**
- 3. Secure Your Contracts**
- 4. Collaborate with the Online Selling Platforms**
- 5. Enforce and Protect your IP Rights**

- 1. 关键：申请知识产权**
- 2. 与政府机构和专家建立联系**
- 3. 保护合同权益**
- 4. 与线上销售平台合作**
- 5. 实施和保护知识产权**

1.

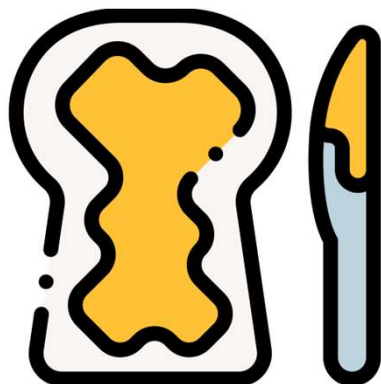
The Bottom Line: Register!

关键：注册



Registration: the Bread & Butter of IP Protection

注册：知识产权保护的必要条件



- Trademarks 商标
- Patents 专利
- Copyrights 版权
- Domaine Names 域名

It is advisable to register your IP rights before internationalising to China

进入中国前，最好率先完成知识产权注册。

New Rules against Trademark Squatting

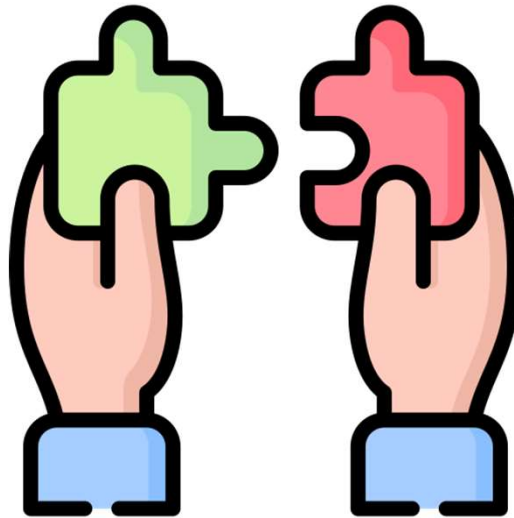
打击商标抢注的新规定

- Trademark Law has been amended at the end of 2019
商标法已于2019年底进行修订
- Bad-faith applications can be stopped
恶意申请行为可被制止
- Bad-faith registrations can be invalidated
恶意注册可被裁定无效
- Acting upon infringement is essential: administrative and civil remedies
对侵权行为采取必要的行政处理和民事救济
- Arbitration/Mediation can be considered as ADRs
仲裁调解可视为替代性争议解决机制 (ADR)

2.

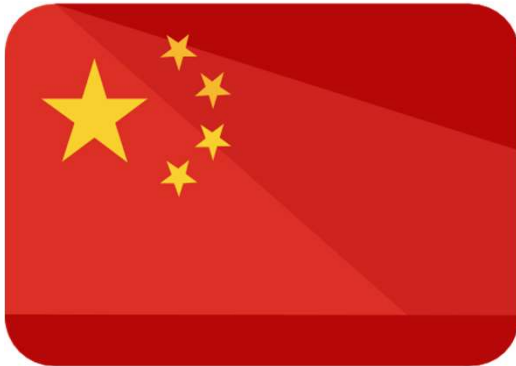
Building Connections with Authorities

与政府机构建立联系



Authorities at National Level: Some Examples

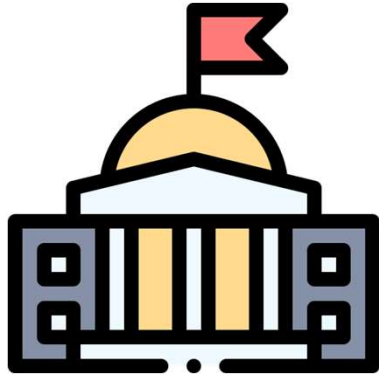
中央机构 (部分)



- The National Intellectual Property Administration (CNIPA)
国家知识产权局
- General Administration of Customs of the People's Republic of China (GAC)
中华人民共和国海关总署
- General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ)
国家质量监督检验检疫总局
- Market Supervising Administration (MSA)
国家市场监督管理总局

Foreign Authorities and Offices : Some Examples

国外机构和办事处（部分）



- Embassies
大使馆
- Delegation of the European Union to China
欧盟驻中国代表团
- National and International Chambers of Commerce
各国和国际商会
- CHINA IPR SME Helpdesk
欧盟中小企业中国知识产权服务处

3.

Secure Your Contracts

保护合同权益



Contracts that shall Contain IP Protection Clauses: Some Examples

合同应包含知识产权保护条款：例子



- Contracts for manufacturing
制造业合同
- Contracts for the use/licence of technology/IP Rights
技术/知识产权使用/许可合同
- Distribution Agreements
分销协议
- Tenancy Agreements
租赁协议

Types of Clauses Dealing with IP Protection : Some Examples

知识产权保护条款类型：例子

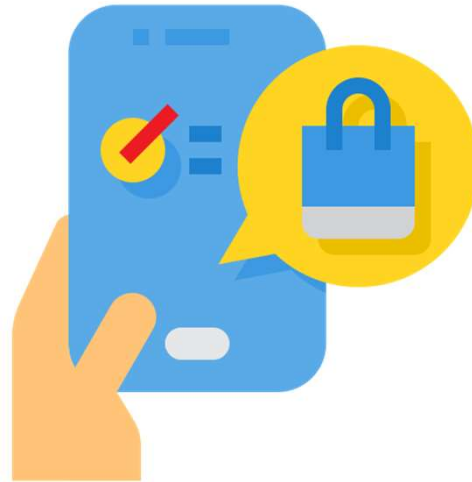


- Territorial Validity 地域效力
- Sub-licencing 转许可
- Exclusivity 排他性
- Regulation of Parallel Imports/Exports 平行进出口监管
- Ownership of IP Rights (in R&D) 知识产权所有权 (研发)
- Duration of use 使用期限
- Payment (Royalties) 支付方式 (版权)
- Sanctions for violations 对违规行为的制裁
- Dispute resolution methods (including Arbitration and/or Mediation) 争议处理方式 (包括仲裁/调解)

4.

Collaborate with the Online Platforms

与线上平台的合作



The Chinese Online Market is Growing Exponentially

中国互联网市场增速迅猛

- **Size of the Market** *市场规模*
 - 800+ million internet users
超8亿互联网用户
 - Online Retail Transaction (2019) : 1,5 Trillion USD (source: McKinsey)
2019年,中国网上零售交易额将达1.5万亿美元(数据来源:麦肯锡)
- **Specific Sale Channels** *独特的销售渠道*
 - Social media *社交媒体*
 - Online Platforms (e.g. Taobao, Tmall) *线上平台(如淘宝、天猫)*
- **Specific Consumer Habits** *独特的消费者习惯*
 - "Singles Day" sale for Alibaba - 2018 : 30.8B USD & 2019 38.4B USD
2018年阿里巴巴集团“双十一”销量: 308亿美元(2018) & 384亿美元(2019)
 - O2O – Online to Offline
线上到线下模式

The New E-Commerce Law (2019) Introduced Tools to Strengthen IP Protection: Examples

新《电子商务法》（2019）强化知识产权保护措施：案例



- Established trend even before the new E-Commerce Law
新《电子商务法》出台前，知识产权保护就已是大势所趋
- Under the new Law , online platforms shall:
- 根据新《电子商务法》，线上平台应：
 - Establish their IPR protection rules
建立自身的知识产权保护机制
 - **strengthen cooperation** with IPR holders
加强与知识产权持有人的合作
 - Act in accordance with a **duty of care** if they “know or should have known” of IP infringement
对于明知或应知的知识产权侵权行为，应履行注意义务

What Are the Practical Steps to protect IP rights?

知识产权保护流程

- Monitoring programs
监控程序
- Communication with platforms about risks and infringements
与平台沟通风险及侵权事宜
- Platforms shall take necessary measures in case they detect IP infringement :
平台发现知识产权侵权时，应采取必要措施：
 - Deletion and/or blocking of the link
删除/封锁链接
 - termination of transaction and service
终止交易和服务
- Joint and several liability of the platform and the seller
平台与卖方连带责任

5.

Enforce Your IP Rights

加强知识产权保护



Enforcing IP Rights is the Less Costly Alternative

加强知识产权保护是成本较低的方案

- Preserving the value of trademarks, copyrights and other IP Rights is key
关键是保护商标、版权和其他知识产权的价值
- Leaving infringements unpunished dilutes the value of IP rights
对侵权行为的纵容会削弱知识产权的价值

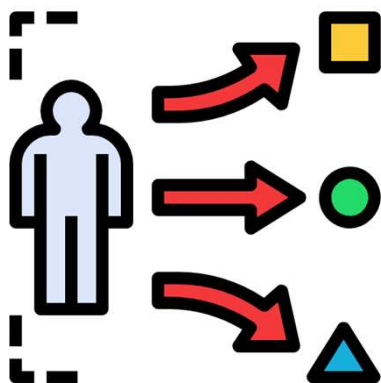


With the assistance of **experts**,
build an enforcement strategy that is
cost-effective and preserves the value of the rights

专家可以帮助制定一个具有成本效益并保护知识产权价值的实施方案

What Are the Options for Enforcement?

实施方案



- Administrative Claims
行政诉讼
- Civil Litigation
民事诉讼
- Custom Seizures
海关扣押
- Raid Actions
突击行动
- Arbitration or mediation (e.g. for complex contractual disputes)
仲裁或调解 (如复杂的合同纠纷)

Summary of Tips

总结

- 1. Register your IP Rights**
- 2. Build Connections with Chinese and Foreign Authorities**
- 3. Secure Your Contracts**
- 4. Collaborate with the Online Selling Platforms**
- 5. Enforce and Protect your IP Rights**
- 6. Work with Experts**

- 1. 注册知识产权**
- 2. 与中国及其他国家政府机构建立联系**
- 3. 保护合同权益**
- 4. 与线上销售平台合作**
- 5. 保护知识产权**
- 6. 与专家合作**

Q&A?

Thank You!

谢谢

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IP Factsheet: Mainland China



1. THE FACTS: Business in Mainland China for EU Companies
(Source: DG Trade)



SIZE of Market:
Key **INDUSTRY SECTORS**

2. IPR in Mainland China for SMEs: BACKGROUND
Intellectual Property Rights for SMEs: Why is this RELEVANT to you?
How does Mainland China's IP legal framework compare to INTERNATIONAL STANDARDS?

3. IP Rights in Mainland China THE BASICS
A. Copyright
B. Patents
C. Trade Marks
D. Geographical Indications (GIs)
E. Trade Secrets

4. Using CUSTOMS to block counterfeits

5. Enforcing your IP
Administrative actions
Civil Litigation
Criminal Prosecution

6. RELATED LINKS and Additional Information

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Protecting Your Trade Secrets in China

Prevention is the key to protection.



WHAT EXACTLY CAN BE A TRADE SECRET

SOMETHING THAT

1. Is not publicly known
2. Has commercial value
3. You took measures to keep secret

expressions of ideas

know-how, manufacturing or design techniques

status of products or services under development

valuable business information, lists, cost and price information

TRADE SECRETS

KEEP IT SECRET, KEEP IT SAFE

It is important to remember that once trade secrets become publicly known, they can no longer be protected as trade secrets.



CONFIDENTIAL

DON'T FORGET YOUR EMPLOYEES

- Limit access and copying rights to the personnel who actually need it.
- Require all employees to sign an employment agreement with strict confidentiality provisions.
- Be sure to hold exit-interviews and have them return documents, materials, computers, and files.
- Establish an internal management system for trade secrets. Training and clear written guidelines are essential.

DEALING WITH THIRD PARTIES

Business dealings or negotiations with third parties, potential partners, suppliers, contractors, licensees, or customers

monitor your partners, suppliers or licensees to make sure they are complying with your trade secrets protection policy

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Internal Market, Industry, Entrepreneurship and SMEs

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