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# Intellectual Property in China

As British companies pursue commercial opportunities in China it is important to identify and mitigate risks, including around intellectual property (IP). The IP risks of doing business in China are genuine and should be considered in the early stages of any business opportunity. But China's IP and legal systems have now developed to a level where risks can be mitigated in most cases.

Intellectual property (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, common types of IP rights owned by UK businesses in China include trade marks, patents, design rights, copyright and trade secrets.

## Trade marks

Registered trade marks for mainland China are granted by the China National Intellectual Property Administration (CNIPA). Trade mark applications can be made through the [Madrid system](#) for the international protection of trade marks, or filed directly with the CNIPA. The CNIPA emphasises the "first to file"

principle, with relatively little weight placed on the use of an unregistered mark.

## Patents, utility models and design rights

Patents, utility models and design rights are also administered by the CNIPA. Chinese patent Law defines three types of patent right: invention patents, utility model patents and design patents.

**Invention patents** are broadly analogous to patents in the UK and require a full examination by CNIPA before grant. This process typically takes around 2 to 4 years, though accelerated examination may be available in certain circumstances. China is a signatory to the international [Patent](#)

## Unauthorised, pre-emptive trade mark applications

**China has a large and systemic problem with bad-faith trade mark applications.** Unauthorised, pre-emptive applications – including “trade mark squatting” – is the single most common business irritant that UK companies raise with the British Embassy in Beijing. 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. Global brands without extensive previous use in Mainland China are particularly vulnerable. China has made efforts to tackle the bad-faith trade mark applications since 2019, although the situation remains serious.

**The best way to prevent trade mark squatting is to be the first to apply for trade mark protection in China.** Trade mark applications in China are relatively inexpensive. Buying back a mark will generally costs tens of times more than application costs. More detailed information on this topic is available in our [Bad-faith Trade marks in China](#) business factsheet.

[Cooperation Treaty \(PCT\)](#). This means that international applications can be converted into Chinese invention patent applications in accordance with usual procedures.

The UK Intellectual Property Office (IPO) and CNIPA have concluded a pilot [Patent Prosecution Highway](#) (PPH) to accelerate examination of patents where equivalent patents are filed in both countries. The PPH allows applicants who have been successful in obtaining a patent at one office to request accelerated processing of a corresponding application at the other. The second office can make use of the work undertaken by the first office to process the application more quickly and efficiently.

**Utility model patents** are sometimes called “mini-patents” and require a lower level of inventiveness. The UK does not operate a utility model system, but this does not mean companies should ignore them in China. Applications for utility model patents in China are not substantively examined, and are typically granted in less than a year. Utility model patents can be a useful way to secure protection quickly for mechanical and electrical inventions.

**Design patents** are similar to registered designs elsewhere, including in Europe. Applications for registered designs in China are also not substantively examined, and are typically granted in 3-9 months. Unregistered designs receive very limited protection in China, under the Anti-Unfair Competition Law.

### **Copyright**

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 copyright recordal to help prove

copyright ownership in infringement and other official actions. More information on this topic is available in our business factsheet [Copyright Recordal in China](#).

### **Trade secrets**

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. For more see our [Trade Secrets in China](#) factsheet.

### **Domain names**

It is a fairly straightforward process to register domain names with the China Internet Network Information Centre (CNNIC). CNNIC also operates a dispute resolution system to address bad-faith domain name registrations. For more information on this and other related topics – including how to deal with domain name scams or “slamming” – please see the guide [Registering and Protecting Chinese Domain Names](#) published by the China IPR SME Helpdesk.

### **Structuring business deals to mitigate IP risk**

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 and other contacts should be enforceable against counterparties in mainland China (including having jurisdiction of Chinese law and Chinese courts if this is most appropriate).

### **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 a range of channels for enforcing IP rights:

- **Civil litigation:** IP cases involving foreign entities will usually be heard at 1<sup>st</sup> instance at 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:** Local government authorities conduct administrative enforcement. It is most effective in straightforward cases. Administrative enforcement is fast, inexpensive and typically ends with a fine and/or an order to stop infringing activity.
- **Customs enforcement:** IP rights should also be registered with China customs in order to benefit from border enforcement. Most IP seizures made by China customs are for goods being exported from China.
- **Criminal enforcement:** Cases that exceed criminal thresholds defined in the Chinese Criminal Law can be investigated by Public Security Bureau (PSBs). Administrative or customs cases that exceed thresholds can be transferred to PSBs. Typically rights holders will support criminal investigations, and charges can be brought for trade mark counterfeiting, copyright piracy, illegal business operation and offenses related to product safety/quality. Successful criminal prosecutions can result in prison sentences and/or fines.
- **IP enforcement at trade fairs and exhibitions:** Enforcement at trade events should be carefully planned in advance, including preparing all necessary paperwork. Advice should be sought from experienced legal professionals. One strategy is to use a trade fair to gather evidence for administrative or legal action. For more information see this guide on [How to Secure Evidence at Trade Fairs](#) from the China IPR SME Helpdesk.
- **E-commerce:** E-commerce and social commerce is popular and growing quickly in China. Major websites operate notice-and-takedown procedures where infringing links can be removed quickly. The [China-Britain Business Council](#) (CBBC) has entered into a series of agreements with major e-commerce and social media platforms in China to help increase the level of online IP protection. Areas of enhanced cooperation under these agreements include preventative filtering to stop infringing links being posted on platforms and detailed investigations into large-scale infringements aimed at linking on- and off-line enforcement. For more information on these programmes please contact the [CBBC](#).
- **Other enforcement and dispute resolution channels in China:** These include cease-and-desist letters (which should only be sent following advice from qualified legal professionals); and arbitration in China or overseas 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@fcdo.gov.uk](mailto:Commercialmail.beijing@fcdo.gov.uk).

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