

## EXHIBITIONS AND IPR IN CHINA

While commercial exhibitions and trade fairs are excellent ways to connect with the Chinese market, they are also potential arenas for intellectual property rights (IPR) infringement. When planning participation in any such exhibition, IPR consideration must be an essential part of the preparation.

Recent regulations and measures issued by Chinese authorities provide a good framework enabling PRC rights holders to react to IPR infringement at exhibitions in a quicker and more effective manner.

However, to fully benefit from the existing IPR protections channels, it is important to be proactive and begin preparing well in advance. Do your homework on China IP, and consider seeking expert advice in drafting a comprehensive strategy best suited to your particular needs.

### THE BASICS

The basis of any IPR protection action taken in China is the registration of your rights in the early stages of planning the entry into the Chinese market. The following basic actions provide a firm foundation for a good IP strategy:

#### TRADEMARKS

- Apply for registration of your trademarks in China. The process takes about two to three years.
- If you have a valid international trademark registration covering China, you must obtain a Chinese confirmation certificate, before IPR enforcement action can be taken. The process takes about three months.
- It is important to note that where a trademark is first used for goods in an international exhibition sponsored or recognised by the Chinese Government, the applicant for the registration of the trademark may enjoy a six month priority right from the date of exhibition of the goods. Written claims for this priority should be made when the trademark is filed in China and evidence of such use submitted within 3 months. Failure to do so, it will negate any priority rights.

#### COPYRIGHTS

- China is a member of the Berne Convention. Any copyright from Berne Convention countries

will be automatically protected in China. Check to see if this applies to you. However, before direct IPR enforcement can be based on copyright at exhibitions, a recordal of the copyright is necessary. The process in China takes about one month.

## PATENTS

- Apply for registration of your patents in China. The process for registering a Design Patent takes less than one year, registration of a Utility Patent takes approximately 2 years, and an Invention Patent takes approximately 2-3 years.

## IPR PROTECTION MEASURES AT EXHIBITIONS

The PRC “Measures Regarding Intellectual Property Rights Protection at Exhibitions and Trade Fairs” went into effect on March 1, 2006 and cover exhibitions, trade fairs, and conventions operating within the realm of trade and technology. The measures apply to the protection of trademarks, copyrights and patents and provide a framework for handling IPR violations observed during exhibitions.

An important aspect of the Measures is the regulation obligating the organizers of any exhibition that lasts longer than three days to set up an IP Complaints Office if required. This Complaints Office is intended to deal directly with infringements. The Complaints Office staff can obtain samples of suspected infringing goods as evidence on location.

Complaints received by the Office must be passed to the relevant local IP authorities within 24 hours of reporting. The authorities are then required to issue a decision according to the relevant laws and regulations, and promptly bring it to the attention of the parties as well as the exhibition organizers. Cases not finalized during the exhibition can be transferred to the relevant authorities for continued investigation.

Possible punishment decisions against infringement based on IP complaints can include an order to stop infringing activities, confiscating or destroying the infringing goods and promotional materials, or imposing of fines. Exhibitors that commit infringements twice will be banned from participating in further exhibitions.

Please note that when not personally present at the exhibition, foreign rights holders can entrust a local agent with the submission of complaints.

## DOCUMENTS TO PREPARE

In order to take action against IPR infringements found at exhibitions, you should prepare the necessary documentation in advance. Exhibitions are usually short in length, which makes it difficult to supplement any missing documents on the spot.

The following documents are required in order to submit complaints to the Complaints Office at exhibitions:

1. A legitimate and effective certificates of IPR ownership as follows:
  - **Trademark:** copy of any PRC trademark registration certificate or any PRC trademark confirmation certificate confirmed by means of the signature or seal affixed by the

complainant and identity certification of the trademark owner (such as a Business Registration Certificate);

- **Copyright:** effective Copyright recordal notice (ideally PRC), identity certification of the copyright owner
  - **Patent:** PRC patent certificate, text of patent announcement, identity certification of the patent owner, certification on the legal status of the patent
2. The basic information about the parties as suspected to have committed any infringement;
  3. The reasons and evidences for any suspected infringement;
  4. Where an agent is entrusted to file a complaint, the relevant Power of Attorney shall be submitted.

Please note that foreign rights holders may also be asked to provide official Chinese language versions of the relevant documents. Always have them prepared in advance.

Importantly, notice that if an agent is entrusted to act on behalf of the rights holder, a notarized and legalized Power of Attorney must be provided. The notarization and legalization processes can take several weeks. Take this into consideration when planning and preparing for exhibitions and trade fairs in China.

#### **OTHER PRECAUTIONS**

Apart from preparing for possible action against infringement at the fairs, IPR considerations should also affect the overall design of the exhibitor's exhibition area.

Particularly where new designs and technologies are presented, it is important to be selective in how much is shown, and who it is shown to. Similarly, consider carefully what samples should be given to visitors. At present, it is common to set up enclosed booths, where visitors can be screened and the exhibits are not freely visible to all passers-by.

It is also important to have competent staff, including local experts, present at the exhibition and ready to deal with any arising issues promptly.

IPR notices can also be set up around any exhibition areas warning potential infringers of action against them and highlighting rights owned by exhibitors. This notice should be in several languages.

#### **FURTHER INFORMATION**

From 2007, representatives of Schmitt zur Höhe & Ferrante will be present at many events organized by Reed Exhibitions China Ltd. to advise on intellectual property matters on location. We welcome you to visit the Schmitt zur Höhe & Ferrante booths and meet our experts.

We also invite you to contact us by email or telephone for all IP matters.

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## 在中国的展览会及知识产权保护

虽然商业会展和商品交易会是进入中国市场的良途，但它们也为侵犯知识产权提供了舞台。在筹划参与此类会展时，如何保护好知识产权也须加以考虑。

中国有关部门新近发布的规章措施为权利人及时有效应对知识产权侵权行为提供了良好的框架性方案。

然而，要充分利用这些知识产权保护措施，积极主动和做好事前的准备工作十分重要。做好中国知识产权方面的功课，并考虑聘请专业人士拟定最符合您特殊情况的全面方案。

## 基础工作

您在筹划进入中国市场时对权利进行注册登记，是知识产权在中国获得保护的基础。以下基本举措将为知识产权保护方案提供坚实基础：

### 商标：

- 在中国申请注册您的商标。该程序约需 2 年到 3 年。
- 已取得商标国际注册的，若要获得知识产权强制程序的保护，则需在中国取得商标注册证明。该程序约需 3 个月。
- 需注意的一个重要问题是商标在中国政府主办的或者承认的国际展览会展出的商品上首次使用的，自该商品展出之日起六个月内，该商标的注册申请人可以享有优先权。要求优先权的，应当在提出商标注册申请的时候提出书面声明，并且在三个月内提交使用该商标的证据等证明文件；未提出书面声明或者逾期未提交证明文件的，视为未要求优先权。

### 著作权：

- 中国是《伯尔尼公约》的成员国。任何产生于《伯尔尼公约》成员国的著作权在中国是自动取得的。请核实此条件是否对您适用。不过，要以展会上的著作权为基础申请强制保护，则须进行著作权登记。在中国，该程序约需 1 个月。

### 专利：

在中国申请注册您的专利。外观设计专利的注册程序所需时间不超过 1 年。实用新型专利的注册所需时间约 1 年，发明专利的注册所需时间约 2 年到 3 年。

## 展会知识产权保护办法

2006 年 3 月 1 日生效的《展会知识产权保护办法》涵盖了展示会、交易会以及各类经济技术贸易展览会。该《办法》适用于商标权、著作权和专利权保护，为处理展会中发生的各类知识产权侵权行为提供了框架。

该《办法》的一个重要举措是规定对于会期在三天以上的展会，主办方应设立解决侵权问题的知识产权投诉机构。该投诉机构能够直接处理侵权行为。该投诉机构人员有权对涉嫌侵权的展品现场取样。

投诉机构收到投诉后，应于 24 小时内移交地方知识产权主管部门。地方知识产权主管部门应及时依据相关法律法规就此做出决定并及时通知各方当事人以及展会主办方。案件于展会结束时尚未处理完毕的，可交由相关部门继续调查。

对基于知识产权投诉的侵权行为的处罚措施包括责令停止侵权行为，没收、销毁侵权展品及其宣传材料，罚款。两次侵权的参展方将被禁止参加下一届展会。

注意，未出席展会的外国权利人可以委托当地代理人提出投诉。

## 需准备的材料

如欲针对展会上发现的侵权行为采取行动，则应事先将必要材料备齐。展会通常持续时间较短，如文件材料有缺漏，难以当场补交。

以下是向展会投诉机构投诉时需提交的材料：

(一) 合法有效的知识产权权属证明：

- 商标：商标注册证或商标注册证明，并由投诉人签章确认，商标权利人身份证明(比如企业登记证明)；
- 著作权：有效的著作权权利证明（最好是中国的）、著作权人身份证明；
- 专利：应当提交专利证书、专利公告文本、专利权人的身份证明、专利法律状态证明；

(二) 涉嫌侵权当事人的基本信息；

(三) 涉嫌侵权的理由和证据；

(四) 委托代理人投诉的，应提交授权委托书。

注意，外国权利人还可能被要求附送相关文件的正式中文译文。务必提前备妥。

还有一个重要问题需注意，委托代理人的，需提交经公证认证的授权委托书。公证认证程序可能需几个星期。在筹划和准备参加在中国的展会时应把这些情况考虑在内。

## 其他提示

除了准备采取有关措施应对展会上的侵权之外，还应考虑知识产权对展位的总体设计的影响。

尤应注意新设计和新技术在何处展示。对于展示程度和展示对象详加区分是很重要的。同样，向参观者提供哪些样品亦需审慎考虑。目前通行的做法是搭建可以将参观者区隔开来从而不致使任何路过者均能自由查看的封闭展位。

安排包括本地专家在内的适当人员亲赴现场以及时应对出现的问题也是十分重要的。

知识产权告知信息可以摆放在展位周围以警示潜在的侵权者并强调展品的权利人。此类告知应以几种语言公示。

## 补充信息

从2007年开始，Schmitt zur Höhe & Ferrante 公司将派代表参与由励展博览集团中国公司（Reed Exhibitions China Ltd.）组织的多种活动并就知识产权问题提供现场咨询。我们欢迎您造访我们的展位并会晤我们的专业人士。

我们也欢迎您通过电话或电子邮件与我们就所有知识产权问题进行交流：

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