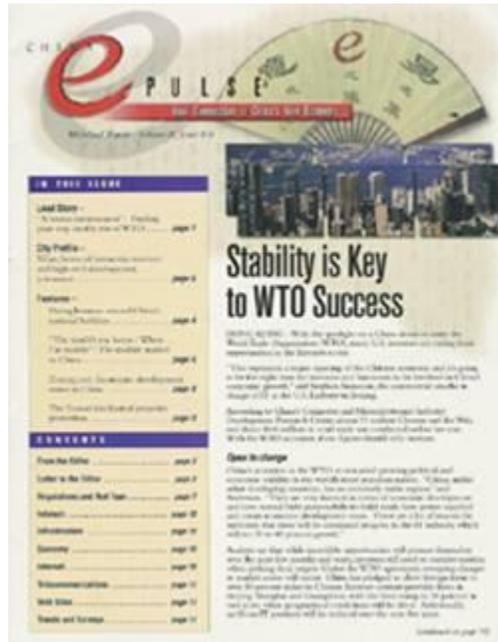


International Intellectual Property Protection
*The Dao of Intellectual Property Protection: Chinese Trademarks and
Other Intellectual Properties*

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International Intellectual Property Protection

Steps into China: Chinese Trademarks and Other Intellectual Properties

Just as the Chinese character and concept of Tao (Dao) has no direct equivalent in English, there is, perhaps no single “road” or “way” to doing business in China. There are, however, some practical steps that can be identified and followed.

Step One: Think About China as a Source and a Sale

There is a Chinese saying, “Those” that go to China to kill will be killed. Those who have tried to take advantage of China's market without “buy-in” from the same understand this proverb only too well. The idea here is to think about how your business can benefit from China and how China can benefit from your business.

Step Two: Create a Product Protection Plan

Even a relatively small market share in China amounts to huge potential sales.

A 5 percent market share of China's 1.2 billion people is about 50 million people - roughly equivalent to one-fifth of the population of the United States.

Think about not just getting into China, but how to stay there. Registering your important trademarks in the Chinese language, for example, is one effective way of building a foothold in the emerging Chinese market.

In addition to considering your long-term strategy, the most effective second step into China is the formal legal protection of your products and technology.

China is on the leading edge of international and domestic legal developments, offering tremendous potential protection for those doing or planning to do business in China. China's membership in the World Intellectual Property Organization (WIPO) is one exciting recent development. Many of the legal protections outlined below are becoming even more valuable as China moves ever closer to legal harmonization of world intellectual property legal protection standards. With that said, caution is still advised.

An overlapping portfolio of copyright protection, product design protection, trademark protection and patent protection helps assure one's competitive advantage in China, Hong Kong and, indeed, the world. Intellectual property registrations in other areas of the world, especially in key markets such as the United States, can be used to help bolster product protection in China. Steps three through six outline some important elements of a product protection plan.

Step Three: Trademark Protection Plan

A trademark is used to promote and identify one's goods and services. Trademarks also enable the purchasing public to distinguish goods and services sold by different manufacturers. A trademark may be any sign that is visually perceptible and capable of being represented graphically and may, in particular, consist of words, personal names, letters, numerals, figurative elements or combination of colors, and include any combination of such signs. Chinese character trademarks are available to foreign companies in China too. Additionally, U.S. trademark registrations can be used to stop unauthorized (pirated or copycat) goods from entering the United States.

Step Four: Copyright Protection in China

Copyright protects creativity. The efforts of writers, artists, designers, software programmers and others need to be protected so that hard work can be rewarded. Copyrights, like patents and trademarks, are an effective tool against unauthorized manufacture, use, sales or imports

of one's creative expression, including package design and, in some cases, product configuration securing the necessary intellectual property rights protection, including copyright protection, helps assure your competitive advantage in China, Hong Kong and the world. Also, with the help of the United States Customs and copyright registrations, unauthorized (pirated or copycat) goods can be stopped at U.S. orders.

Step Five: Registered Product Designs In China

Product designs can be registered in China and Hong Kong to stop unauthorized manufacture, import, use, sale or hiring of your product designs in China and Hong Kong. Licensing product designs is another possibility once designs have been registered.

Designs not registered in China and Hong Kong may still be protected under copyright law for articles produced from your original design drawings. Protection under copyright law is for 15 years from first marketing of the article. But protection under copyright law has limitations. You cannot take legal action for copyright infringement where another person independently produces a similar design. If a design is registered, a similar design will infringe, even if it was independently created! It is also easier to defend against pirates when a design is registered.

Additionally, internal policies, agreements and forms can be leveraged to help assure a company's rights in intellectual property developed by its employees, contractors or partners.

Step Six: Patent Protection

Patent protection is helpful in stopping unauthorized manufacturing, use, sales or imports of your invention in the countries where the patent has issued.

Patent protection is required in China and, Hong Kong, for example, to stop unauthorized manufacture, use or sales of your invention in China

and Hong Kong. Likewise, patents in China and Hong Kong are important if you intend to license someone else to manufacture, use, sell or import an invention Hong Kong. Applying for a patent elsewhere in the world does not automatically give you patent protection in China and Hong Kong.

Step Seven: Licensing and Other Contracts

License agreements and other contracts can be used to help bolster your rights in the Chinese market. Technology is frequently commercialized by an entity other than its creator. Licensing a technology can give a company quick access to new market niches, and this has been the basis for many successful technology start-ups. Licensing also provides revenue to the technology's creator, which can be a research lab or a company with technology outside its own focused niche.

Step Eight: Research and Collaboration

Sometimes it helps to have a partner. Many companies chose to collaborate with Chinese businesses to develop or improve technologies or products through joint research effort. The respective rights of the collaborators vis-à-vis new developments must be protected through well-crafted research and/or collaboration agreements.

Step Nine: Organizational Structures

In some cases, it helps to have a business entity in China. This is becoming less important as China harmonizes its trade laws in conjunction with its participation in WIPO Nevertheless, establishing an appropriate organizational structure for your business, high-tech. start-ups or otherwise, can be an important part of any “road to China.” Typically, one consider corporations, partnership agreements, single proprietorships, Limited Liability Companies (LLCs), joint ventures and off shore entities.

Navigating the “way” into China may seem as complicated as mastering the quiet profundities of Laozi's Dao De Jing, but the nine steps outlined above should help in simplifying the journey.