

IPR in the Tourism Industry in China

According to the United Nations World Tourism Organization, China is the fastest growing tourism source market in the world, as Chinese middle class is getting more affluent and it is increasingly able to afford traveling abroad. At the same time, China's domestic tourism market is also growing in a fast pace, boasting 10% average annual growth rate.¹ Furthermore, as Chinese Government is committed to developing the tourism sector, plenty of business opportunities can arise for the European SMEs.

However, there are some significant restrictions for foreign-invested companies wishing to engage in Chinese 'outbound' tourism market, as all foreign-invested entities need to apply for a special license with the China National Tourism Administration. The application process is lengthy and currently only few foreign-invested companies are allowed to operate on China's outbound tourism market.

At the same time, according to the EU SME Centre there are also some interesting opportunities for European SMEs in the inbound tourism market, "where expats, foreign visitors and the high-end segment of the Chinese market have a demand for creative and service-oriented packages".²

SMEs engaged in tourism need to pay special attention to protecting their intellectual property rights, because IP infringements are still relatively common in China. IP rights are a key factor for business success and neglecting to register them in China could easily end SMEs' business endeavor in the country. Thus, a robust IPR strategy is needed, when entering the promising market of China.

Brand Protection – the Cornerstone of IP Protection in Tourism Sector

Branding is crucial for the tourism sector, as it allows companies to differentiate themselves from the rest, creating a niche market and an individual appeal that will translate into more tourist arrivals. In tourism sector 'destination branding' is equally important to company branding. Destination branding often relies on a logo and a tagline, the examples being the Swiss resort St. Moritz using the tagline 'Top of the World' or the China National Tourist Offices campaign 'China like Never Before'.

SMEs are strongly advised to register their logo and tagline as a trade mark in China to protect their brand because IP rights are territorial and European trade marks do not enjoy automatic protection in China.

¹ The Tourism Market in China- EU SME Centre - http://www.ccilc.pt/sites/default/files/eusme_centre_report_-_tourism_market_in_china_update_-_sept_2015.pdf

² Ibid

China adopts the ‘first-to-file’ system, meaning that the first person to register a trade mark owns that mark. It is particularly important for the SMEs to register trade mark in China because trade mark piracy due to ‘bad faith’ registration is a serious problem. ‘Bad faith’ registration means that a third party, not owning the trade mark, registers European SME’s trade mark, thereby preventing the legitimate owner from registering it. These unscrupulous companies normally try to resell the trade mark to its owner at an inflated price.

When registering a trade mark in China, SMEs should keep in mind that trade mark registration classes (according to Nice Classification) are further divided into sub-classes in China. It is important to register the trade mark for the correct class and subclasses. If sub-classes are not designated in the application, the China Trade Mark Office (CTMO) examiner will decide which subclasses registration the applicant will receive, which might not be the most desired one for the applicant. Furthermore, if an SME forgets to register in all of the relevant subclasses, unscrupulous companies may register the SME’s trade mark in these subclasses themselves.

Don’t Forget to Protect your Brand Also in Chinese Language

As the registration of a trade mark in original Roman characters does not automatically protect the trade mark against the use or registration of the same or similar trade mark written in Chinese characters, it is highly advisable to additionally register a version of your trade mark also in Chinese characters. Furthermore, if there is no existing name for SME’s brand in Chinese, it is possible that one will be adopted by local consumers either by way of translation or by transliteration, and not necessarily with the right connotations or image that the SME would wish to convey.

As Chinese language has its unique characteristics, therefore, SMEs’ local equivalent trade mark should be carefully developed with the help and guidance of trade mark, marketing and PR experts, as well as native speakers and translators.

Consider Also Protecting your Internet Domain Name

Most companies engaged in tourism rely on websites to attract customers and thus protecting online domain name is of utmost importance for the SMEs. It is advisable to register internet domain names in China because a registered Chinese domain name will prevent others from using that company name or brand name as their website name. Internet domain name registration is also important because problems like ‘cybersquatting’ still persist in China. Cybersquatting means that a third party registers a domain name that is identical to European company’s product or trade mark name, with the purpose of selling the domain names back to the rightful owner at a premium price.

Internet domain names can be registered with the China Internet Network Information Centre (CNNIC) and this should be done as soon as the company envisages doing business in relation to

China because internet domain name registration also functions under the ‘first-to-file’ system. Internet domain name registration process takes a few weeks and currently costs €50-€100 year, much cheaper than having to solve domain name disputes.

It is advisable to monitor similar domain names and protect your domain name in case of confusion or cybersquatting, as registered Chinese domain names are often the key to business growth locally and thus cybersquatting and other online IP infringements can seriously hurt SMEs’ business.

Always Enforce your Rights

Entering a new market and protecting IP also means being ready to enforce or defend these rights in order to ensure that business objectives are met and therefore budget planning for enforcement is the key to a successful business strategy. When European SMEs identify an infringement, they should actively enforce their rights in China through the various avenues available. If SMEs manage to build a reputation for ‘being litigious’ then unscrupulous companies will be less likely to infringe their rights in the future.

There are 3 main enforcement options in China: administrative actions, civil litigation and criminal sanctions. Administrative actions are normally a fast and cost-effective way of dealing with IP infringements and are thus a viable option, particularly for SMEs facing budget constraints.

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Please include the attached by-line after the article:

*The **China IPR SME Helpdesk** supports small and medium sized enterprises (SMEs) from European Union (EU) member states to protect and enforce their Intellectual Property Rights (IPR) in or relating to China, Hong Kong, Macao and Taiwan, through the provision of **free information and services**. The Helpdesk provides jargon-free, first-line, confidential advice on intellectual property and related issues, along with training events, materials and online resources. Individual SMEs and SME intermediaries can submit their IPR queries via email (question@china-iprhelpdesk.eu) and gain access to a panel of experts, in order to receive **free and confidential first-line advice within 3 working days**.*

The China IPR SME Helpdesk is co-funded by the European Union.

To learn more about the China IPR SME Helpdesk and any aspect of intellectual property rights in China, please visit our online portal at <http://www.ipr-hub.eu/>.