



# Copyright Infringement and Technology Theft in the Chinese Market

A report on preconceptions and opportunities in IP in China

By Dutch Sino Business Promotions (March 2016) | Text: Jeroen Van Der Lee | Design: Kamassan Kaisiepo

## All Chinese do is copy stuff!

As a business developer at Dutch Sino Business Promotions I reach out to prospective clients in the Netherlands about opportunities in China daily. This week I received an interesting reply from the CEO of a successful SME. It was a short and blunt message declining our proposal ending with the following parting words: "...and all the Chinese do is copy stuff!". Needless to say, we did not end up partnering with the company or even initiating a constructive correspondence.

I found it astounding that a general bias like this would stop an entrepreneur from even considering the opportunity in front of them. When we approach potential Western partners with proposals for co-operation with Chinese firms, they are in some cases hesitant to even explore the opportunity due to the fear of exposing their hard earned intellectual property to the risk of being stolen or copied. These reservations definitely have a strong foundation in reality as there are plenty of widely known cases of blatant brand theft and copyright infringements by Chinese copycat companies. However, these fears are amplified by a lack of understanding of intellectual property rights in China. In addition, it is not fair to the majority of Chinese firms that do respect intellectual property rights. I think that with more understanding of the IPR situation in China these fears could be mitigated and a lot more opportunities would be taken. If you don't register your IPR in the West properly the same could happen to you here. Why is it so different in China? As with all things, thorough planning is half the battle. With

a little bit of preparation, it becomes a lot easier to deal with possible copyright infringements when moving your business to China. In this article, I aim to shed some light on the current IPR situation in China and what measures you can take to reduce the risks of IPR infringements for your company.

## Making the Most of Local Bureaucracy

The first step towards understanding China's IPR system is to accept that your copyrights and trademark registrations outside of the country have no weight. Foreign courts have little to no influence in China, so you want to take all measures possible to make it easy for the local law to protect you. We recommend all foreign companies to register their IP locally as soon as possible, if possible even before moving into the market. China's trademark and copyright registration system works on a first-to-file basis.<sup>1</sup> This means that a crafty copycat could register your trademarks after spotting you on the market, if you failed to register them before, regardless of the trademark or copyright's original

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DSBP is a consultancy company with headquarters in Rotterdam, offering consultancy, business support and matchmaking services to Dutch organisations doing business in China and vice versa.

 [www.dutchsino.com](http://www.dutchsino.com)  
 [dspb@dutchsino.com](mailto:dspb@dutchsino.com)  
 +31 (0)10 310 0829



owner outside of China.

An additional way to protect valuable inside information that doesn't count as intellectual property is to have your employees and business partners sign non-disclosure agreements.<sup>2</sup> These documents should, of course, be based in the local law to ensure enforcement. Finally, should you ever find out that a local company is copying your products, realize that in order for evidence of copyright infringement to be eligible in a Chinese court it needs to be notarized.<sup>3</sup> This means that you need a local lawyer or notary to witness and establish that the copyright infringement has taken place (for example: by sitting the notary down in front of your computer and opening up the Taobao page of the copycat for him or her to see). Then they can produce a notarized document that can be used to sue. Notarized evidence of copyright infringement is your most concrete weapon against the perpetrators. It is recommended to establish the notarized evidence before notifying the copycat of your intentions to sue, as they could get rid of all traces of the infringement before you are able to make an official record of it, and risk showing up in court empty-handed.

### **Protecting Your Technology**

Understanding the local IPR law can help you successfully sue in a worst case scenario of actual theft. However, what can you do to prevent your technology/intellectual property from getting stolen in the first place, especially when you are moving into China with a local partner that you will be sharing your tech with? Stanley Chao recommends two methods for protecting your intellectual property.<sup>4</sup>

The first lies in the choice of a suitable partner.<sup>5</sup> Moving production to China might have the promise of lower costs, but when you train the local engineers that will oversee production, there is not much preventing them from improving or slightly altering the tech, registering a new patent and/or trademark, and suddenly they don't need you anymore. If the cost tradeoff is worth it, it is recommended to consider looking for a distributor as a partner that can manage logistics, sales and customer support and keep production at home. Chao's second method to protecting your IP<sup>6</sup> in the

case of producing at home not being an option, is to not introduce the newest generation of your technology to the Chinese market. Provide older tech, of one or two generations prior. In this way you limit your IP's exposure.

### **Employ an Intermediary**

Our experience as Dutch Sino Business Promotions is that the key to protecting your IP in the case of co-operation with a Chinese party lies in finding the right partner. We have overseen many successful co-operations between Dutch and Chinese parties where there were clear agreements on IPR were fully respected during the duration of the partnership.

As an intermediary/consultancy firm we have a stake in both the Dutch and the Chinese clients establishing a mutually beneficial relationship. Since our reputation depends on it, we can only afford to work with trustworthy and fully legal Chinese companies. Additionally, when the communication between the Dutch and Chinese parties is clear and thorough a win-win situation is established, where there is no benefit to either side in attempting any form of counterfeiting. Our company employs a unique mix of Dutch and Chinese natives with strong knowledge of each other's language, culture and business style. In this way we can make sure that we are translating the nuances both ways, allowing less room for miscommunication. Employing a reputable intermediary/consultancy to handle the matchmaking provides is an independent party whose interests are only in the success of the partnership.

### **References:**

1. Van de Bovenkamp, Judith. 5 Tips Voor Omgaan met Intellectueel Eigendom in China. 2013. <http://china2025.nl/5-tips-voor-omgaan-met-intellectueel-eigendom-in-china/>
  2. Van de Bovenkamp. 2013.
  3. Van Malenstein, Reinout. Zonder Genotariseerd Bewijs Geen Prijs. 2016. < <http://china2025.nl/zonder-genotariseerd-bewijs-geen-prijs/>>
  4. Chao, Stanley. Selling to China. A Guide to Doing Business in China for Small- and Medium-Sized Companies. 2012. 140-142.
  5. Chao. 2012. 141.
  6. Chao. 2012. 142.
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