

The Background and Basics of Trademark Law in China

Hey everyone and welcome back to our video series helping you take your brand to the next level with international trademark advice.

This week we're crossing the ocean to China. China has the fastest growing economy in the world, with the highest number of trademark applications per year. So if you're curious about taking your business worldwide, this is the perfect video for you.

China is a country rich in culture and history, so we're taking you back in trademark time to learn the basics you need to understand their trademark landscape. All you have to do is sit back, relax and enjoy the ride.

The People's Republic of China began in 1949. At that time, the registration of Chinese trademarks was administered by the Central Bureau for Private Enterprises and the Central Administration for Industry and Commerce successively. Yeah, we know, that's a bit of a mouthful!

Once the State Administration for Industry and Commerce took over in 1978 -- and I'll call it the SAIC from now on, I promise -- the Chinese Trademark Office (CTMO) was established, reporting directly to the SAIC.

Under the Trademark Law of the People's Republic of China, passed in 1982 and amended twice since that time, the Trademark office handles national trademark registration and administration. The Trademark Review and Adjudication Board is responsible for dealing with trademark disputes.

Today, over more than 2 millions trademarks are filed in China every year -- so the CMTO has a pretty big job on their hands.

Interestingly, China's oldest trademarks came into play long before the People's Republic of China was founded. In fact, they go as far back as the Jiajing period of the Ming dynasty.

The oldest known trademark in Shanghai, lasting 289 years, was Luxiang Garden Gu Embroidery. This trademark was used for the beautiful embroidered art made with a special technique created by the Gu family itself.

However, the oldest trademark that is still in use in Shanghai is Wuliangcai, founded in 1719 and still producing high quality eyeglasses for customers today.

Well, story time's over, so now let's get to business. It's time to open your eyes and get another coffee, because Chinese trademarking is very, very complicated. How complicated? Well . . .

The CTMO is made up of 24 divisions, with 8 divisions entirely devoted to examination alone, employing 300 examiners because of the backlog of applications. To ensure accuracy, there are departments designed to evaluate the evaluation quality of *other* divisions! Before you can get to the official examination, your application is even pre-screened for acceptance first.

And that's just what's going on behind the scenes. Front and centre is you and the trademark that you want to register in China. Before you get started there are a few things you need to know:

1. Trademark registration is mandatory to do business in the big-time Chinese markets and E-commerce markets. So make sure you file your application in China before you take your products overseas.

The second thing you need to know is:

Chinese trademark registration works on a "first to file" basis and there are no common law trademarks. This means that you do not have to prove that you are currently using the trademark in order to get registered. Whoever reaches the finish line first wins in this case.

However, this leaves the door open for trademark squatters and counterfeiters to apply for your trademark name in China before you can get there. Yikes.

That's what happened to Martin Guitars when a manufacturer in China decided to put the Martin logo on their own instruments to boost sales. Luckily, Martin had a trademark in the U.S. and the counterfeit guitars were halted at American customs. Even still, it took 10 years for Martin Guitar to get their trademark back in China.

Speaking of world famous brands like Martin Guitars, you should also know:

World-famous brands aren't afforded any special treatment in China, unless they are famous marks local to the country. This means that well-known brands don't enjoy the same security as they do in other countries. They need to be first to file just like everybody else.

I mean, we all know Apple and their infamous iPad, right? Well, when Apple entered the iPad into the Chinese market in 2010, they discovered that the iPad name had been trademarked by Proview, a small tech company, who had been using the name honestly for years. Since the CMTO refused to deregister the mark, Apple ended up paying \$60 million to Proview for ownership of the iPad name in China. Even for a major corporation, that's a hefty price to pay!

That said, it's still useful to register your trademark elsewhere before applying to the CMTO. While it's not much help if your mark is already registered by someone else, it may allow you to receive a priority filing date in China to speed you through the process.

Now, if someone is squatting on your trademark, but has not used it in three years, you can apply to void the mark. Proof of use is not a foreign concept in China, and they do take steps to protect legitimate trademark holders.

All of this might look pretty bleak and overwhelming to western business owners. The question you may be asking yourself is: why on earth would I register my mark in China? Why should I even do business there?

Well, as to business, it's just what I said before: China is the world's second largest economy and it's growing every day. They are also the number one country for trademark filing. Any company with an eye for global expansion needs to plant their feet in the Chinese market.

If you want to do business successfully in China, you'll need to register your trademark there. And the faster you register, the better your chances of avoiding trademark competition, squatters, or counterfeiters.

By securing your trademark registration in China you ensure the good faith of your brand worldwide and appreciate all of the benefits of owning a trademark in the innovative, flourishing Chinese market.

With this information under your belt you are prepared to take the next step: applying for your Chinese trademark registration. But we'll save that for next time, so be sure to check out our next video to learn everything you need to know about the trademark application process in China.