

Protecting the Intellectual Property Rights Before, During and After an Exhibition in China



CHINA

The year 2023 marks the recovery of fairs and exhibitions in China following the official end of the COVID-19 epidemic. China is a key player in this field with several major flagship fairs and exhibitions each year, such as the “China Import and Export Fair” (better known as the Guangzhou Fair), the “China International Import Expo” (CIIE), the “China International Fair for Trade in Services” (CIFTIS), the “China International Hi-Tech Fair” (CHTF) and the “China International Consumer Products Expo” (CICPE), etc¹...

The purpose of these exhibitions is not only to enable exhibitors from all countries to present their latest products, research findings and innovative technologies to professional visitors, but also to facilitate the exchange of information and business negotiations. It is also an excellent opportunity to promote their brands with hopes of developing within the Chinese market.

However, these exhibitions also present numerous challenges, particularly those related to intellectual property rights (IPRs). In fact, it may happen that during an exhibition, an exhibitor discovers that one of his IPRs (trademark, copyright, design, utility model, patent, new plant variety, integrated circuit diagram, trade secret, etc.) has been used by a third party without authorization for advertising or commercial demonstration purposes, thus constituting an infringement of his rights. For this reason, we strongly recommend that exhibitors implement the IPRs protection strategy described below, to enable them to limit as far as possible the risks of infringement of their rights before, during or after participation in an exhibition held in China.

First of all, it is worth recalling a few fundamental principles regarding IPRs:

- Most IPRs are governed by a principle known as territoriality. Under this principle, a trademark or patent is protected only in the territory in which it is registered. To benefit from protection in China, they must be specifically registered in China.
- As an exception to the above principle, copyright enjoys extraterritorial protection. However, in practice, copyright registration in China is a prerequisite for effective legal action in China in the event of counterfeiting or copyright infringement.
- Finally, China has introduced a first-to-file system, which means that IPRs are generally granted to the first person to file an application for registration.

I. Before Exhibition

Before participating in an exhibition in China, we recommend the following actions:

- Identify the IPRs, check whether they are already protected in China, and if not, register them in China whenever possible. To this end, exhibitors can contact professionals familiar with Chinese IP laws and regulations, who can help them to identify key IPRs and propose a strategy for filing. Once an IPR has been registered in China, it enjoys protection in the country, and can therefore be used on the one hand to prevent a third party from registering its own IPR under its name, and on the other hand to take defensive action in the event of infringement.

1. In 2023, China welcomed a total of 3,923 trade fairs with a total exhibition area of 141 million m². Over 3,400 exhibitors and 394,000 professional visitors registered for the 6th CIIE in 2023, with an exhibition area of about 367,000 m². The 134th Canton Fair in 2023 had 198,000 overseas buyers with a total exhibition area of 1.55 million m², while the total exhibition area of the CICPE reached 100,000 m² at the 2023 session. (Source: “China Exhibition Economy Development Report 2023” <https://www.ccpit.org/image/1641603198017880066/d921631cbc2a43b195a10a2890bc09c0.pdf>)

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- Read the exhibition participation contract carefully, and if necessary, have specific clauses inserted in it concerning the protection of your IPRs, as provided for in the “Guidelines for the Protection of IPRs at Exhibitions”¹(hereinafter referred to as the “Guidelines»). The Guidelines provide that the contract must specify the measures taken by the organizer to protect IPRs, as well as the procedure to be followed in the event of IPR infringement.
- Check whether the exhibition organizer will set up a workstation dedicated to the protection of IPRs during the exhibition, as required by the Guidelines. In fact, at the request of the organizer, the intellectual property administration may dispatch qualified personnel to the dedicated workstation to collect and deal with any complaints about IPR infringements occurring during the exhibition. If this is not the case, the organizer must provide exhibitors with the contact details of the local IP administration office, or display them in a visible place on the exhibition site.

II. During Exhibition

If, during the exhibition, an exhibitor discovers the presence of products likely to infringe his IPRs, he can submit a complaint directly to the dedicated workstation and within the competence of the administrations/persons present on site, or ultimately to the local office of the intellectual property administration.

For example, for exhibitions held at the NECC (National Exhibition and Convention Centre) in Shanghai, the local Intellectual Property Office of the Administration for Market Regulations of Qingpu District is competent; for those organized at the New International Expo Center in Pudong New Area of Shanghai, a dedicated workstation run by Intellectual Property Office of Pudong is set up in the exhibition hall, and, for the first time in China, is competent to handle disputes concerning patents, trademarks and also copyrights. Qualified officers and mediators are usually present throughout the exhibition, and can provide advice on the protection of IPRs, or in the event of complaints from exhibitors or visitors. It also offers the possibility of on-site mediation with the immediate signing of mediation agreements. As for the 134th Canton Fair, it established the «Intellectual Property and Trade Disputes Complaints Reception Station» located in zones A, B, C and D of the exhibition pavilions. These workstations were staffed by nearly 170 experts from the National Intellectual Property Administration and local offices divided into different groups specialized by different legal expertise (patents, trademarks, copyrights, geographical indications, etc.), enabling a more effective and professional protection of IPRs.

In practice, the most common complaints are for infringements of design and utility model rights, as well as trademark rights; given the technical nature of invention patents, it is generally more difficult to judge quickly on site whether or not an invention patent has been infringed. In addition, disputes concerning copyright on stand design are also frequent; stand designers consider that certain exhibitors have used their copyright-protected stand design without their authorization.

In the event of a complaint lodged at an exhibition, the Guidelines explicitly specify that the defense period granted to the defending party is 24 hours, which is relatively reasonable in practice given that a major exhibition generally lasts between 3 and 5 days. If the defending party does not submit a complete and legally backed file in support of its defense within this time limit, the officials present at the workstation will coordinate with the exhibition organizer to decide on the actions to be taken. These may include ordering the defendant to withdraw the articles/objects in question from the stand, to cover the part infringing the third party's IPRs, or to destroy and replace the promotional material and display panels presenting the articles/objects affected by the infringement.

III. After Exhibition

Following the conclusion of the exhibition, the organizer shall make statistics on the handling of IPR complaints and disputes arising during the exhibition and submit such statistics to the local intellectual property administration office. The statistics may be utilized as a reference for assessing exhibitors' qualifications for future editions of the same exhibition.

1. Published in July 2022

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In the event that the dedicated workstation officials are unable to reach a decision during the exhibition, the local intellectual property administration office at the exhibition venue may transfer the complaint to the intellectual property administration office at the Chinese exhibitor's place of registration for further handling of the case. The latter must notify the exhibition organizer, the plaintiff and the defendant of its final decision.

Conclusion

By understanding the intellectual property protection mechanism before, during and after the exhibition, exhibitors must, on the one hand, avoid infringing the IPRs of others and, on the other hand, make good use of the IPR protection rules at the exhibition to protect their own IPRs in China in a prompt and timely manner, as well as to safeguard their own legitimate rights and interests. For this purpose, we suggest that exhibitors consult legal advisors to assist in preparing for filing a complaint with the stand/workstation during the exhibition or with the intellectual property administration after the exhibition, or to file a lawsuit with the People's Court after the exhibition.



For any additional information, please contact:

CHEN Xiaoyun
Associate - Beijing Office
chenxiaoyun@dsavocats.com

12, December 2024