

Contrary to widespread belief, the People's Republic of China has a Trademark Law that generally complies with the international treaties for intellectual property protection in which China is a member, e.g. the World Trade Organization's (WTO) TRIPS and several agreements handled by the World Intellectual Property Organization (WIPO). Trademark protection in China can and must be taken care of, and should be a key point in every business' China strategy to avoid misuse by competitors.

Basic Characteristics: Trademarks serve to distinguish your products or services from those of a competitor, and can consist of words, letters and numbers, combinations of colors, three-dimensional signs, logos and design images, and combinations of these elements. With the protection of your trademarks, you ensure that competitors do not benefit from or harm your reputation and marketing efforts.

Registration Process: Trademarks can be registered either with the State Trademark Office (STO) in China or via the Madrid Agreement of the WIPO if the applicant resides in a member state. Upon international registration, the protection can then be extended to China.

A first-to-file system is applied in China, i.e. in general, the applicant who first filed the trademark application will be granted exclusive ownership despite the fact that another party might have been the first to use the trademark. Therefore it is advisable to register relevant trademarks as soon as possible in China.

Foreign individuals have to employ an official trademark agent to file the application, and the registration process will take approximately 18-24 months. Upon registration, the STO will publish the trademark application in the trademark gazette and opposition may be raised within 3 months.

➔ **Required Documents for Trademark Registration:**

- Details on the applicant
- Classes of goods and services in which the trademark should be protected: a maximum of 10 items per class can be selected.
- Specimen of the trademark
- Power of Attorney

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→ *The trademark owner has the exclusive rights to use the trademark in the registered classes. He further has the rights to*

- **Transfer** the trademark to another party with a trademark assignment agreement filed with the STO
 - **License** the trademark to others with a licensing agreement (a copy must be provided for the STO)
- Trademark protection is generally granted for a period of 10 years and can be further extended. However, if a trademark has not been used for 3 consecutive years (burden of proof on the trademark owner), a cancellation request can be filed with the STO by a third party.

Step up Protection: An additional grade of protection can be achieved by registering trademarks with the General Administration of Customs (GAC). If Chinese customs find products that infringe on registered trademarks during routine checks, they will then hold the shipment and inform the registrant. Although cargo that is suspected to infringe can always be stopped on request and payment of a security deposit, registration with the GAC allows for a certain degree of “stand by” protection, is cheap and therefore a good way to impede export of counterfeits out of China.

Enforcement: To counter trademark infringement, the trademark owner can send a letter of demand (lawyer letter) to the infringer, address government bodies or file a case with the courts. The local Administrations of Industry and Commerce (AIC) can perform raids upon request, seize and destroy infringing products, and pose a fine on the infringers. Litigation further allows for compensation of the plaintiff. The sum eligible for compensation is calculated in relation to the losses suffered from the infringement. In case losses are difficult to determine, the courts may award a sum they consider reasonable for compensation (up to CNY 500,000).