

CHINA 華牌 BRAND®

ANTI-COUNTERFEITING IN CHINA: QUESTIONS AND ANSWERS

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Q: Is the fight against Chinese counterfeiting and piracy worth the effort or do we rather risk to tilt at windmills?

A: Not if it is based on a solid approach and carried out professionally. This requires sound strategies as well as linked and coordinated actions. Such a holistic system can help to effectively and sustainably combat not only Chinese but also international counterfeiting. The professionalization of the Chinese authorities and IP courts is a further contributing factor.

Q: Do we jeopardize our business in China if we fight the counterfeiters of our products?

A: Quite the opposite. Today's Chinese consumers and business clients attach particular importance to high-quality original goods. The brand owners' fight against product piracy is not only appreciated, but also expected. The Chinese government, too, is cracking down on counterfeiting and product piracy on a large scale.

Q: How much does the fight on counterfeiting and piracy cost?

A: The cost of effective anti-counterfeiting depends on the dimension of the case, the cleverness of the counterfeiters and the urgency of the situation. It can stay within a small limit if experienced and practiced service providers are consulted. The fact that original manufacturers achieve relatively high compensation payments now in China must be taken into consideration when budgeting.

Q: What kinds of damages are caused by counterfeiting?

A: We distinguish between short-term, medium-term and long-term damages. In the short run, counterfeiting will lead to a drop in sales for the original manufacturer; many companies expect a rate of 3%. In the medium run, secondary markets with cheap counterfeit products will emerge, which leads to a price erosion (e.g. 25% for textile machinery) in the overall market and to losses of market share for the original manufacturer. In the long run, down trading will damage the brand and the reputation of the manufacturer. In some cases it can even lead to unjustified claims for compensation by deluded buyers.

Q: How can we set a signal in the counterfeiting market?

A: Setting a signal is not enough. One-time actions cannot ensure a sustainable effect. Chinese counterfeiters briefly vanish into thin air and, once the coast is clear, they continue their daily business. This is not about winning a battle, but winning a war. It requires combined strategies and actions that complement and reinforce their impact.

Q: Which strategies can we use for the sustainable fight against counterfeiting?

A: We differ between 20 standard strategies approximately, which we adapt case-specifically and combine with each other. These include preventive and reactive legal measures, the termination of supplier relations and distribution channels, the showcase of counterfeit certificates and public relations. Publishing Chinese counterfeiters' defeats should not be underestimated, since losing face is their biggest fear. That is what makes the publication of their defeats a powerful tool of deterrence.

Q: Which measures are most effective?

A: A regular legal approach is still the most effective one: focused undercover investigations to clarify the facts and to secure evidence by qualified IP detectives, the notarized purchasing of samples, the initiation of raids and the conduction of court cases.

Q: Are IP detectives trustworthy?

A: In fact, the number of reports has increased about "black sheep" who collude with counterfeiters and, for example, report about successful raids that actually have never taken place. A trusting relationship with the investigators is crucial. That is why we have been working with our reliable Chinese partners for 15 years.

Q: Are such investigations legal?

A: As long as the investigations serves the clarification of civil and criminally relevant facts – including infringements of industrial property rights – they are completely legal and common practice in China.

Q: What remedies can we make use of in China?

A: The main remedies are proceedings against unfair competition and copyright, trademark and patent infringement as well as nullity cases against patents in bad faith and oppositions against infringing trademark applications.

Q: Are raids against counterfeiters worth the effort or are they just a drop in the ocean?

A: Raids alone have no lasting effect. However, they have a deterring and stigmatizing effect and function as a previous conviction in subsequent court cases. In the course of a raid, the authorities may also confiscate accounting documents and invoices, which can be used to

uncover entire networks, determine the size of their business, and claim for compensations. Sometimes even the masterminds get arrested.

Q: What are the chances of winning a civil lawsuit against a counterfeiter in China?

A: If professionally prepared, foreign original manufacturers have great chances now to win against counterfeiters and product pirates. The chances of winning IP processes today are 70-80%. China's legal system for the protection of intellectual property is now very well developed and the Chinese state is vigorously taking legal actions against counterfeiting. In terms of IP protection, China's standards today are in no way inferior to the West.

Q: Do Chinese courts favor local companies?

A: With a few exceptions, local protectionism plays no role in the prosecution of counterfeiting and piracy. At most in rural areas, chances are that influential forgers are punished only on a small scale for their property rights violations. We solve this problem with the so-called "forum shopping", the intentional transfer of the jurisdiction to neutral IP courts - for example in Beijing, Shanghai or Guangzhou.

Q: Is the deletion of online offers of counterfeits not sufficient?

A: This strategy has a rather small impact, because it tackles the end of the supply chain and does not eradicate the source itself. Once offers are deleted, the counterfeiters continue their business on other online platforms. Hence, the problem is rather postponed than solved.

Q: What is the point of technical protective measures?

A: Technical measures can be used in certain industries to identify counterfeits and track original products in mass markets. Supply chains can be monitored and the smuggling of copies can be detected. When it comes to industrial goods, these measures can be helpful for the protection of know-how and the securing of trade secrets. However, their implementation is usually time-consuming and costly because the entire production and distribution system must be modified by hardware, software, contracts and training. In addition, Chinese counterfeiters also forge protection technologies very quickly.

Q: How can technical protection measures be evaluated and the right ones selected?

A: We analyze and evaluate technical protective measures in workshops together with the specialists and executives of the original manufacturer. In doing so, we use a rating system that identifies values for each technology in terms of cost, compatibility, system integration capability

or copy security. The company-specific weighting of the individual criteria gives each technology a score. Those protection technologies that score the highest are of particular interest to the company.

Q: Are there any possibilities of political influence on officials and authorities?

A: Lobbying can be used in China in a very successful way. However, solid preparation and professional implementation are crucial.

Q: Which preventive measures can we use to counteract or even prevent counterfeiting?

A: The most effective preventive measure is to apply for sufficient intellectual property rights in China and the central sales markets. Moreover, it is important that the owners of IP rights are always well informed about the current situation with regard to the counterfeiting of their products. Therefore, we recommend online research and the monitoring of trade fairs on a regular basis.

Q: How do we organize the fight against piracy in our company?

A: We recommend setting up a task force that includes the legal department, the patent department, the marketing department and external service providers such as patent attorneys or IP consultants. Besides, the integration of compliance and data security is increasingly growing in significance.

Q: Should we involve our Chinese subsidiary in the fight against counterfeiting?

A: Basically yes, but with sound judgment. Experience has shown that Chinese branches tend to be overwhelmed with the difficult and complex topic of anti-counterfeiting and rather cause more damage with unprofessional or inefficient actions. The headquarters loses track of what is happening. In some cases, Chinese employees even cooperate with counterfeiters or set up so-called “mirror factories”, identical replicas of the original factories. However, completely excluding the branch can cause tensions and conflicts.

Further Information and Contact

Find further information about our services on the fight on counterfeiting here:

Flyer Anti-Counterfeiting in China

<https://www.chinabrand.de/en/competencies/counterfeiting-and-piracy.html?file=files/content/en/competencies/counterfeiting-and-piracy/Anti-Counterfeiting-in-China.pdf>

Flyer Investigation in China

<https://www.chinabrand.de/en/competencies/counterfeiting-and-piracy.html?file=files/content/en/competencies/counterfeiting-and-piracy/Investigation-in-China.pdf>

Flyer Research and Analysis of Chinese Patents

<https://www.chinabrand.de/en/competencies/intellectual-property-and-know-how.html?file=files/content/en/competencies/intellectual-property-and-know-how/Research-and-Analysis-of-Chinese-Patents.pdf>

Flyer Intellectual Property Competitive Intelligence

<https://www.chinabrand.de/en/competencies/innovation-and-competition.html?file=files/content/en/competencies/innovation-and-competition/Intellectual-Property-Competitive-Intelligence.pdf>

Video Counterfeiting and Product Piracy in China– Trends and Strategies of the Forgers (in German)

<https://www.youtube.com/watch?v=wBwECsY60vg&t=3s>

Video Fighting Chinese Counterfeiting and Piracy (in German)

<https://www.youtube.com/watch?v=f3EcR7bQq8Q&t=1s>

Video Research and Analysis of Chinese Patents (in German)

<https://www.youtube.com/watch?v=7QOWvJsBEqQ&t=166s>

Blog Counterfeiting Takes Off

<https://en.blog.chinabrand.de/2018/01/11/counterfeiting-takes-off/>

Blog Camouflage and Deception: The New Routes of Counterfeiters

<https://en.blog.chinabrand.de/2017/10/15/camouflage-and-deception-the-new-routes-of-counterfeiters/>

Blog The UAE – a Hub of Chinese Counterfeiting

<https://en.blog.chinabrand.de/2017/11/20/the-uae-a-hub-of-chinese-counterfeiting/>

Blog Anti-Counterfeiting Trends 2018

<https://en.blog.chinabrand.de/2017/08/18/anti-counterfeiting-trends-2018/>

Blog E-waste and Counterfeiting

<https://en.blog.chinabrand.de/2017/10/05/e-waste-and-counterfeiting/>

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