

Purchasing power is increasing in China and many SMEs are now experiencing increasing demand for their products in China. Both selling and distributing to the Chinese market entails IP risks.

Below are some initial issues you need to consider in relation to IPR when selling and distributing products in China.

Make sure IP rights are in place

A thorough study of the company's IPR situation is needed to ensure that IP rights and related know-how to be licensed are identified. From this assessment you should be able to answer the following questions:

- What is already registered?
- What needs to be registered?
- Who is currently responsible?

Make sure that everything that needs to be registered, is registered. In this way your company can ensure that the right IP protection is in place before entering a licensing agreement in China. To find out how to perform an IP audit, see the 'IP Audit' section above.

A Chinese trademark

A Chinese name for your product to be introduced in the Chinese market is often a necessity – especially considering products sold to consumers. However, unlike other countries, not having a Chinese name entails an IP risk. Please see the 'Business Promotion' section below for more information.

Prevent loss of IPR through misuse

When working with sales and distribution, it is very important to ensure that the sales employees (or external partners if that is the case) understand how to use the company's trademarks. The way in which a trademark is registered is very specific and it will only be protectable if it is used in the form that it is registered. Wrong usage can eventually mean that you lose your trademark. A systematic approach and guidelines should be developed to ensure that the sales and distribution team are able to comply.

Sales personnel & conflicts of interest

One of the issues that SMEs have experienced in China is that their own sales personnel also work for a competitor or infringer. It has been experienced that the sales personnel carry two sets of sales material, one from the original producer and one from an infringer. It is therefore important that the SME make proper agreements with the sales representatives and distributors in China, as well as prepare educational material to minimise this risk.

Sales staff are the first to identify a problem

Sales personnel are often the first to become aware of counterfeiting and are a useful resource for the early detection of a counterfeiting problem. They should therefore be informed of how to act when they discover counterfeit products and/or counterfeit manufacturers in the market place, in order for your company to be able to react quickly and effectively.