

# IP Case Study: Keeping Trade Secrets

## China IPR SME Helpdesk



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Nearly all businesses in all industries and sectors possess trade secrets. Trade secrets are a valuable and highly useful form of intellectual property that are nevertheless often undervalued and overlooked by their owners. This is not least the case in the service sector where the relative value of trade secrets as intangible assets can be extremely high. For example, a logistics firm may not hold any patents or few trade marks and substantial copyrights, but the value of its operations could heavily derive from information contained within client lists and standard procedures.

A considerable advantage for trade secrets is that unlike some other forms of IP rights, such as patents and copyrights that have a finite term, trade secrets can theoretically enjoy an infinite term of protection so long as the trade secret remains just that - a secret. The main difference between protecting something by patent or as a trade secret is that, while technical information is publicly disclosed in patents, it is kept away from the public eye in trade secrets. A trade secret can last forever as long as the confidentiality measures that protect it continue to work. An invention patent typically expires after 20 years.

On the other hand, legal protection of trade secrets is easily lost. Once the information becomes public information, it no longer enjoys any legal protection. As a result, *prevention* is the golden rule when it comes to protecting your trade secrets, because once your secret is out, there is usually very little that you can do about it. China, like most other countries, provides a legal framework for the protection for trade secrets, and the law provides for remedies in the event that your trade secrets are unlawfully disclosed.

### **Case Study**

The Dutch SME Wuvio is a market leader in producing chemicals to combat dust for construction sites, energy producers, mining and dry bulk companies. Wuvio works with unique solutions, which require a structured approach to intellectual property (IP). Rob te Braake, Wuvio representative in China, shares his experiences and gives some practical tips for any business looking to protect this kind of intellectual property portfolio.

Wuvio had been active in Europe for 11 years when they decided it was time to make the move to China. “Many companies active in the same industry claim to offer what we offer, but are either not as effective, more expensive or not biodegradable. This gives us a strong advantage in China”, Rob states

confidently. “We first set up a limited company in Hong Kong in 2011, and then branched out into Mainland China in 2013.”

Wuvio carefully developed a Chinese trade mark and registered this in China, but according to Rob, the most important part of the company’s IP strategy are their trade secrets: “We have no patents registered in Europe or in China, because we don’t want our chemical solutions to become available to the public in 20 years time. We also don’t like to depend on enforceable rights because as an SME we simply don’t have the resources to keep chasing infringements. Prevention is key for us.”

“We are currently importing the products from the Netherlands, but even when we will move production to China, we will always keep the production of the critical components in the Netherlands, because they are key to our products”, Rob continues. “We’ve checked ourselves if the formula of our solutions can easily be retrieved through reverse engineering, but successive attempts have not been successful. I am therefore confident that our solutions are adequately protected this way.”

As a final recommendation, Rob says that it’s important to work with a qualified lawyer that knows the Chinese IP system, and that doing business in China requires a long breath: “Getting familiar with the Chinese business world, cultural differences and the distance between your head office in Europe and the office in China may be difficult at first, but you will get used to it as you go. You just need to be confident and find the right people to work with.”

#### **Lessons learnt:**

- Assess if your innovations and technology would be better protected as trade secrets or as a registered patent.
- Don’t disclose any valuable information unless absolutely necessary.
- Build a strong network of trusted business partners and employees and have them sign well-drafted contracts, non-disclosure and non-competition agreements.

## CHINA IPR SME HELPDESK

The **China IPR SME Helpdesk** supports small and medium sized enterprises (SMEs) from European Union (EU) member states to protect and enforce their Intellectual Property Rights (IPR) in or relating to China, Hong Kong, Macao and Taiwan, through the provision of **free information and services**. The Helpdesk provides jargon-free, first-line, confidential advice on intellectual property and related issues, along with training events, materials and online resources. Individual SMEs and SME intermediaries can submit their IPR queries via email ([question@china-iprhelpdesk.eu](mailto:question@china-iprhelpdesk.eu)) and gain access to a panel of experts, in order to receive **free and confidential first-line advice** within **3 working days**.

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