

Prevention not cure: online IPR in China

China IPR SME Helpdesk



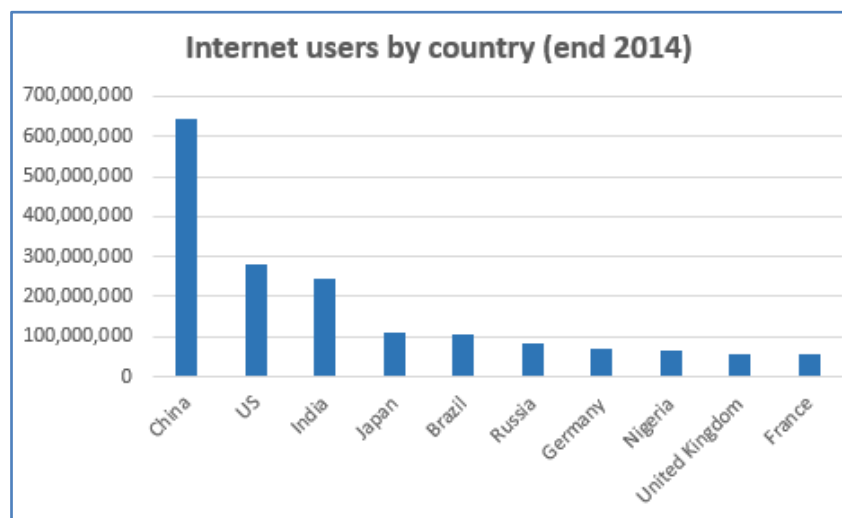
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CHINA IPR 
SME HELPDESK

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China possesses a population of over 1.3 billion people;¹ of these, there were 632 million internet users in China by the end of 2014 – this is approximately half the population of China and three times the number of internet users in South-East Asia.²

The share of internet users in China now equals 46.03% according to the state-administered China Internet Network Information Center (CNNIC).³ Trends also suggest that internet use in China is set to experience further growth in coming years.



E-commerce is well developed in China today, and is predicted to account for around 10% of total retail purchases by the end of 2015, in contrast with 6 to 8% in Europe.⁴ Furthermore, a study undertaken by KPMG predicts that as wealth, internet penetration, brand awareness and loyalty spread, online retail in China is also set to expand.⁵

What does this mean for your business?

There are undoubtedly many reasons to be cheerful at the prospect of rising e-commerce trends in China. Not only will this provide European SMEs with opportunities to expand in a region with rising consumer demands, but it also offers the chance to do this relatively cheaply, without the start-up costs associated with opening a physical office.

However, there are several challenges that European SMEs should be aware of when establishing their virtual gateway into the China market.

¹ <http://www.tradingeconomics.com/china/population>

² <http://www.chinainternetwatch.com/whitepaper/china-internet-statistics/#ixzz3hAlXXo2p>

³ <http://www.internetlivestats.com/internet-users/>

⁴ <https://www.kpmg.com/CN/en/IssuesAndInsights/ArticlesPublications/Newsletters/China-360/Documents/China-360-Issue15-201401-E-commerce-in-China.pdf>

⁵ <https://www.kpmg.com/CN/en/IssuesAndInsights/ArticlesPublications/Newsletters/China-360/Documents/China-360-Issue15-201401-E-commerce-in-China.pdf>

Domain name infringement

Domain name infringement exists in many forms. The most common ways that third parties tend to infringe domain name/s are:

- **Cybersquatting:** Registering domain names that are identical to your company's product or trade mark names, with the purpose of selling the domain names back to you (the rightful owner) at a premium price.
- **False affiliation:** Criminals presenting themselves as authorised resellers.
- **Phishing:** Attempting to acquire credit information and usernames via electronic communication (fraudulent e-mails containing fake links). The term 'phishing' is a portmanteau of 'password' and 'fishing'.
- **Slamming:** Fraud whereby resellers of domain name registrars contact European companies, claiming that another client of theirs has requested the registration of domain names identical to your trade mark or company name. Their objective is to encourage you to place a domain name registration using their company.
- **Traffic diversion:** Using a typosquarred domain name to redirect traffic intended for your website.
- **Typosquatting:** Registering domain names that are either visually similar to your domain name or are mistyped (one key off on the keyboard). E.g. If www.Europe.eu is the domain name, www.europ.eu could be the typosquatted domain (visually similar); or if www.Europe.eu is the domain name, www.Euripe.eu could be the variant (the letter 'i' is close to 'o' on the keyboard and might thus be a common misspelling). Omitting or doubling characters also counts as typosquatting.

Case Study: IKEA's domain name dispute in China⁶

The first foreign domain name dispute in China took place in June 2000, when Beijing CINET Information Co., Ltd. (CINET) registered the domain name www.ikea.com.cn with the CNNIC.⁷

Inter Ikea Systems B.V. (IKEA), a world-renowned Dutch home accessories company, already owned several trade mark registrations under the name IKEA in China, and had been using these trade-marks commercially in China for several years. IKEA filed a suit against CINET as soon as the company found out that CINET had been using a domain name incorporating its company name. IKEA requested that CINET's domain name should be suspended.

⁶ Original case report: <http://www.ccpit-patent.com.cn/News/2000062301.htm>

⁷ <http://www.ccpit-patent.com.cn/News/2000062301.htm>

Outcome

The Beijing Second Intermediate People's Court held that since domain names were increasingly related to trade marks with the rise of e-commerce, CINET had acted illegally – knowingly using a well-known trade mark to conduct commercial activity. The use of IKEA's name was also held to constitute unfair competition and trade mark infringement.⁸ Furthermore, the panel discovered that CINET also held several other domain names, many of which used other famous commercial names, including Cartier, Tiffany and Hertz. As a result, CINET was accused of having registered www.ikea.com.cn in bad faith.⁹

This decision, has been hailed as a valuable case providing important guidelines in dealing with cyber-squatting in China. It also demonstrates that foreign parties are able to enforce their IP rights in Chinese courts.

Take-away messages for EU SMEs

- Register domain names in potential future markets in China Asia *before* establishing your business there. This can save considerable time and money later on, and can also act as a value-adding business strategy;
- Domain names in China generally operate under a first-to-file (F2F) system, which grants the right to a domain name to the person who files it first – regardless of the date of its invention);
- To save time and money it is advisable to do some research on domain name arbitration before entering China;
- A domain name registration typically costs EUR 50-100 per year; the price of one domain name dispute typically equals the price of 10 domain name registrations.

Learn how to register a domain name, choose a registrar, and recover an infringed domain name in China using our e-learning module and our guide to online IPR in China.

⁸<http://www.inta.org/GlobalPortal/Lists/INTA%20Policy%20%20Advocacy%20Activities/DispForm.aspx?ID=75&ContentTypeld=0x01006ADC9BFF76D0D64792A9645606E436C5>

⁹<http://www.ccpit-patent.com.cn/News/2000062301.htm>



*The **China IPR SME Helpdesk** is a European Union co-funded project that provides free, practical, business advice relating to China IPR to European SMEs. To learn about any aspect of intellectual property rights in China, including Hong Kong, Taiwan and Macao, visit our online portal at www.china-iprhelpdesk.eu. For free expert advice on China IPR for your business, e-mail your questions to: question@china-iprhelpdesk.eu. You will receive a reply from one of the Helpdesk experts within three working days. The China IPR SME Helpdesk is jointly implemented by DEVELOPMENT Solutions, the European Union Chamber of Commerce in China and European Business Network (EBN).*