

HD Trade mark protection in **China**: Key considerations for Australian businesses

BY Stuart Green

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Brand protection in the People's Republic of **China** for Australian businesses Services:
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As Australia's largest trading partner, the importance of the People's Republic of **China** to the Australian economy is beyond dispute. Yet despite this clear reality and an eagerness on the part of Australian business to engage with **China**, many Australian businesses fail to take the basic and essential steps required to protect their trade mark rights in **China**.

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This article identifies the key branding considerations for Australian companies engaged, or intending to engage, in business with **China**.

Know your limits

One of the more frequent mistakes made by Australian trade mark owners is to assume that their Australian trade mark registration provides a monopoly to use of that trade mark around the world.

Registration of a trade mark in Australia only grants the owner of a trade mark a monopoly to use that trade mark in relation to the goods and services listed in the trade mark specification in Australia. Accordingly, if goods are manufactured or **sold**, or services provided, under a trade mark applied in **China**, Australian businesses should seek trade mark protection in **China**.

Act early

China is a first to register jurisdiction so seek registration as early as possible.

Given that it can take years to obtain a trade mark registration in **China**, it is crucial that Australian businesses that manufacture or sell goods in **China**, apply to register their trade marks in **China** at the earliest possible opportunity - ideally, prior to commencing trade.

Beyond English

As some of the world's most well-known brands have discovered, the consequences of failing to attain **Chinese** trade mark protection can be significant and costly. Not only could a business' entire manufacturing and supply chain be disrupted, but a business could be prevented from using its trade mark in **China**.

Should a third party obtain registration of the trade mark in **China**, the owner of the **Chinese** trade mark registration could request that **Chinese** customs authorities seize and detain branded goods that infringe their trade mark, preventing their import or export.

Australian businesses should also consider seeking trade mark registration in **Chinese** characters. Many Australian businesses assume that the trade marks that should be protected in **China** should be the same (being in English) as those marks protected in Australia.

While in some cases seeking protection in English will be the logical way to proceed if the business is manufacturing in **China** and importing goods back to Australia, if the intention is to sell to **Chinese** consumers, then seeking protection for a badge of origin directed towards a **Chinese** audience is likely to be more productive than seeking protection in English.

Although there are a number of different approaches to formulating a trade mark in **Chinese** characters, the most common methods include:

transcribing the **Chinese** characters according to the English pronunciation of the relevant trade mark

translating the meaning of the relevant trade mark or providing a favourable meaning that consumers will ascribe to the goods/services provided by the Australian business, or

combining the two methods to develop a wholly unique identity.

Experience has established that if the owner of a product or service does not provide a **Chinese** name for the trade mark, **Chinese** consumers and the **Chinese** market will allocate a name to the goods. If this is allowed to occur, a business may lose control over the allocated name given it did not formulate it.

To avoid missing out on the significant growth and emerging spending power of the **Chinese** middle classes, Australian businesses should also consider whether products, marketing and advertising literature is appropriately labelled so as to be understood by **Chinese** consumers.

For instance, the quality of Australian wine is especially well-regarded in **China** which has led to many Australian wine producers targeting **Chinese** consumers by including dual English/**Chinese** labelling on the wines exported to **China**.

With the advent of **China**'s revised Trade Mark Law scheduled to come into force in May 2014, if your **company** is already engaged or is soon to be engaged with **China** and has yet to seek protection in the People's Republic, 2014 is the year to consider protecting your trade marks in **China**.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Mr Stuart Green

DibbsBarker

Level 8 Angel Place

123 Pitt Street

Sydney

2000

AUSTRALIA

Tel: 282339500

Fax: 282339555

E-mail: dora.antoniou@dibbsbarker.com

URL: www.dibbsbarker.com/site/Home/Industry_Focus.aspx

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