



## Understand China's **Intellectual Property Rights Environment**

As your business expands globally, it is important to understand that intellectual property rights (IPR) are territorial, meaning that an intellectual property (IP) right in one market (the United States, for example) does not guarantee protection in foreign markets. Protecting IP in China is critical to ensuring that IP owners have the means to fully protect themselves from others seeking to exploit that IP without permission.

U.S. patent and trademark registrations confer no legal rights outside the United States. Risks abound in China, with an estimated loss to American businesses of billions of dollars a year due to trademark counterfeiting, copyright piracy, and other IPR infringements stemming from counterfeit goods.

### **The first to file is the legal IP right holder in China**

China's intellectual property system differs greatly from that of the United States. For example, China uses a "first to file" system for trademarks registrations, meaning that the party who files for the registration first gets the trademark. The U.S., on the other hand, uses a "first to use" system, wherein a party filing for a trademark must be the first to use the trademark in the U.S. marketplace to get protection in the United States.

If your product or service is in the Chinese marketplace and you have not registered your trademark, one of your competitors, distributors, or partners may register the trademark before you and, as a result, prevent you from using your mark in China.

Can you afford that risk?





Let us help you

## Create a Sound IPR Strategy

### Gain Insight Into China's IP Environment

The U.S. Embassy's IPR Toolkit for China ([bit.ly/U8IF9w](http://bit.ly/U8IF9w)) provides insight on the current IPR environment, protection through prevention, China's IPR enforcement system, and other information resources.

Hear from private sector experts on recorded webinars covering various elements of IP protection, risk mitigation, and enforcement strategies in China ([go.usa.gov/4x2e](http://go.usa.gov/4x2e)).

### Assess your IP Risk

Visit the [stopfakes.gov](http://stopfakes.gov) Online Intellectual Property Training Module ([go.usa.gov/4xTV](http://go.usa.gov/4xTV)) to gain a better understanding of your IP risk and find resources that can help.

Gauge your overall IP awareness with the U.S. Patent and Trademark Office's IP Awareness Assessment Tool ([go.usa.gov/4xYP](http://go.usa.gov/4xYP)).

### Seek out Expert Consultation

Set up a one-on-one consultation with a U.S. Government IP expert at 1-866-999-HALT.

Take advantage of a one-hour free consultation with a volunteer attorney through the International IPR Advisory Program ([go.usa.gov/4xYz](http://go.usa.gov/4xYz)), sponsored by the American Bar Association.

### Take Action to Protect Your IP

Most recourse is only available to legal IP rights holders. In addition to seeking expert consultation, consider the following actions:

- Register your domain names, trademarks, and patents with the relevant Chinese authorities. Many U.S. businesses find it essential to retain local counsel in China or an IP agent to do so.



- Stop counterfeits at the U.S. border and record your registered trademarks or copyrighted works with U.S. Customs & Border Protection ([apps.cbp.gov/e-recordations](https://apps.cbp.gov/e-recordations)).
- Record your mark with China's General Administration of Customs ([go.usa.gov/4x4T](https://go.usa.gov/4x4T)) to stop counterfeits from leaving China.
- Monitor trade shows and internet commerce websites to detect the presence of IPR Infringing products and services.

### **Protect Your Trade Secrets**

Many U.S. companies rely on trade secret protection for Important Innovations and Information, including sales methods, distribution methods, consumer profiles, advertising strategies, lists of suppliers and clients, and manufacturing processes.

The World Intellectual Property Organization has more information on trade secret protection specifically designed for small and medium-sized enterprises ([bit.ly/VROov2](https://bit.ly/VROov2)). Trade secret theft is an increasingly important issue for U.S. companies. Ensure that reasonable measures are in place to maintain the confidentiality of your trade secrets, and consider discussing the complexities of protecting trade secrets in China with legal counsel.

### **Combat IP Theft**

Benefit from a free legal consultation through the International IPR Advisory Program or the U.S. Small Business Administration's Export Legal Assistance Network ([exportlegal.org](https://exportlegal.org)) to determine the best plan of action.

Through International Trade Commission Investigations ([go.usa.gov/4xTJ](https://go.usa.gov/4xTJ)), rights holders can pursue a "Section 337 Investigation" as a means to prevent unfair methods of importation into the United States, including specifically the infringement of a U.S. registered patent, trademark, or copyright, as well as a valid trade secret. If successful, a Section 337 investigation can result in an administrative order that stops infringing imports from entering the United States.

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