1. Introduction

With more and more European SMEs having awareness of the importance of intellectual property (IP) and the necessity of IP registration in China, their needs of IP services is increasingly growing. As stated in China’s IP laws, foreigners need to hire local Chinese agencies to file for registration of IP rights and attend to other trade mark or patent related matters such as prosecution, invalidation, renewal etc. Therefore, there is a vast market for IP services involving foreign businesses which in turn is attracting more and more local IP businesses to join this lucrative market. However, the quality and level of services offered by practitioners differ significantly. In addition, the language barrier has made it necessary for foreign SMEs to make use of local agencies to register their IP. Coupled with the lack of sufficient translation of key information on obtaining IP rights and registration procedures, this made it very easy for some agencies, lacking in professional ethics to devise various scams to trick foreign companies or use irresponsible methods to attract customers. This guide aims to provide European SMEs with tips on how to distinguish IP scams, where to find the correct information on IP services and what action can be taken to avoid or mitigate scams.

2. How to identify typical IP scams

The most popular type of scam is called ‘threat from a third party’ – you will receive an e-mail sent from “XX” trade mark agency who warns you that your trade mark or your company name will be registered by a third party in China (or occasionally from abroad) either as a trade mark or a company name or an ‘online trade mark/e-trade mark’ (often confused with ‘domain name’). These e-mails also mention that if you don’t respond to them then it will be assumed that you consent to the application of the trade mark filed by the third party and your company will be unable to use the mark in China henceforth. In many cases, when a European company first receives such message, it often panics in the face of potential loss of its long-owned brand in the huge market China represents; where the company happens to be very conscious about IPR then it will be apt to believe the e-mail and follow the guidance in the e-mail to contact the sender.

Related links and additional information

For free, confidential, business-focused IPR advice within three working days E-mail: question@china-iprhelpdesk.eu

© China IPR SME Helpdesk 2016
A potential scam email:

Dear Sir or Madam,

This is XY from www.cntrademarkoffice.com, an intellectual property firm specialized in trademark protection and other IP matters in China.

Here I have something to confirm with you. We formally received an application on July 18th, 2014 that a company claimed ‘… Company’ were applying to register ‘XYZglobal’ as their Net Brand and trade mark through our firm.

Now we are handling this registration, and after our initial checking, we found the name were similar to your company’s name ‘XYZ’, so we need to check with you whether your company has authorized that company to register these names. If you authorized this, we would finish the registration at once. If you did not authorize, please let us know within 7 workdays, so that we could handle this issue better. After the deadline we will unconditionally finish the registration for ‘… Company’

Looking forward to your prompt reply.

Best Regards,

XY
It is possible that you have already received similar ‘fishing’ emails, or you may wonder how to determine that the information (in the email) is false. Before we explain the reasons please see the following features of such kind of email scams.

A. Unsolicited approach – the email is often sent to a general mailbox of your company or an email which is widely used for marketing which can be easily found on your website or via an internet search.

B. The company name of the agency is usually vague, lacking strong identity and sounds like a unit of Chinese government authority, e.g. china patent and trade office (or in some cases just use a website www.xxpatentandtrademarkoffice.com, instead of the company name). Occasionally, the sender will even claim itself to be an ‘authorised’ local unit associated with the China Trade Mark Office (CTMO).

C. The wording used in the email is intended to create the illusion that the registration will be granted and the targeted foreign company will be blocked, for instance, ‘... we will approve the application...’ ‘... we can finish the registration immediately’. Not every company is familiar on the registration process in China and these tricksters capitalise on this, intending to cause panic.

This type of scam is also used with regards to domain name registration when the agency takes advantage of foreigner’s lack of knowledge of domain name policy in China to lure them into using them to complete the registration. More details can be found in our Domain Name Protection guide, available for download free of charge from the China IPR SME Helpdesk website: http://www.china-iprhelpdesk.eu/sites/all/docs/publications/China_IPR_SME_Helpdesk-domain_name_Guide.pdf

Generally, there are two reasons for doubting any IP scam e-mail or unsolicited approach from a service provider:

1) There is no government authority that has the obligation to monitor application status, market status for specific trade marks or domain names (IP rights are private rights), therefore the IP monitoring work are usually done by specific interested parties, for instance the law firm who is paid by clients to do so or the company itself.

2) A registrar or other private entity doesn’t have an incentive to proactively contact you and protect your business interested by warning you regarding your IP assets if it has already stated that it is working for another company with conflicting interests. If this company actually received the application requesting to register the similar or identical trademark/domain name as yours by a third party then this agency should not be trusted by you or qualified for handling your registration. As a formal agency who is bound by regulations to maintain the secrecy of client’s information, the company is clearly releasing sensitive information and also acts in benefit of a competitor. For a respectable registry or firm, filing the registration of the original clients is more beneficial than spending time on a potential new client.
Another type of IP scam is the ‘empty promise’ – where the agency promises you, if you use them to file the trade mark registration, then your rights can be granted in a shorter time frame due to the soliciting company’s special relationship or network (‘guanxi’ in Chinese) with the relevant authority, thus guaranteeing the registration. In reality, at the China Trade Mark Office, all applications are randomly transferred to examiners in the five examination departments assigned with specific classes of goods and services, usually a second examination is applied by a different examiner to ensure examination quality. Consequently, prior to the registration, it is unknown who will be the examiner during the first examination and then during the second examination, thus the guaranteed registration promised by trade mark agency is entirely illusory. Furthermore, the standard trade mark registration process includes search, application, formal examination, substantial examination, preliminary publication and approval publication. It is stated in the new Trade Mark Law enacted in 2014 that the examination process shall not take more than nine months, but in practice this timeline is often extended due to the large amounts of trade mark application as well as backlog from previous years. Due to this uncertainty regarding the timeline, such promises of priority handling or express service are unrealistic.

Some other forms of scam include but are not limited to ‘fee cheating’ – charging separately for different service items, e.g. urgent request (as explained above which is impossible), or printing certificates. For example, the Notice for Accepting the Registration (受理通知书) which is issued by C TOMO upon acceptance of the application as well as a formal registration certificate (商标注册证). These documents are included in the official application fee and you should not be charged extra fee for obtaining these files.

‘Blind filing’ – Some companies offering ‘rush’ services do so without first completing thorough search and registration risk assessments. For these unscrupulous companies, it does not matter whether or not the application/opposition action is approved as they charge only for the completion and submission of the relevant paperwork. For the applicant however, this can represent a significant loss of time and resources which could have been avoided through a thorough and professional search and analysis.

---

**Precautions for patents**

As patent applications are rather complex compared to trade mark or domain name registrations, EU SMEs need to be cautious about the qualification of the agency and the agent. In compliance with laws, only qualified agents (the qualification can be found via official website, listed below) are allowed to process patent applications. In the experience of the China IPR SME Helpdesk, unsolicited emails or other IP scams are rather rare in relation to patents however.

**Precautions for copyrights**

With regards to copyright please keep in mind that copyright registration is available in China but is entirely voluntary and the registration is not mandatory to enforce your copyrights. However copyright registration is very useful in order to prove your ownership of copyright before a court, administrative agencies or customs authorities. The voluntary copyright registration (for works and for computer programming software) is relatively straightforward and can be handled on your own with sufficient understanding of Chinese (at time of writing all online formalities are only available in Chinese). Agency services in this regard are merely an added convenience to you or your company and it is not mandatory for such actions to be taken by a licensed Chinese agent.
3. Where to find the right information

First, the official website of the relevant IP administration should be the main source to use. Chinese IP administrative departments usually publish the list of recorded/accredited agencies for the public to choose from on their websites. The official websites will also give you clear information on the official fee schedules and procedures etc. Unfortunately, as many European companies have little knowledge of the relevant Chinese IP administrations, their portfolios and contacts etc., it has become popular for less scrupulous agencies to impersonate such authorities for their online dealings. As such, a simple internet search will often lead the uninformed to a fake ‘official’ website. Below you can find the list of major IP administrations in China with their official websites for your reference.

<table>
<thead>
<tr>
<th>IP type</th>
<th>IP Authority</th>
<th>Abb.</th>
<th>List of agencies /registrars</th>
<th>Searchable database</th>
</tr>
</thead>
<tbody>
<tr>
<td>Copyright</td>
<td>Copyright Protection Centre <a href="http://ccopyright.com.cn/cpcc/index.jsp">http://ccopyright.com.cn/cpcc/index.jsp</a></td>
<td>CPCC</td>
<td>N/a</td>
<td>N/a</td>
</tr>
</tbody>
</table>
4. Next steps

The issues of trademark scams, and illegal patent agencies have already drawn the attention of the Chinese government and it has already begun to adjust relevant laws and rules to address these issues. For instance, the current revision of the Patent Law of China has inserted clauses prohibiting illegal agencies. Similarly, local authorities are taking action, for example, a local regulation issued by Huizhou of Guangdong Province requires all patent applications to be filed through the online platform (only qualified agencies are granted access to the platform), and the Shanghai Administration of Industry and Commerce (AIC) published a series of news on trademark agency scams through their Weibo accounts (Chinese micro-blog platform) to raise public awareness in this regard.

Therefore, when you receive unsolicited messages regarding IP registrations, it is advised not to reply immediately, but consider the tips mentioned and complete further checks to verify the authenticity of the agency. Usually, you can just ignore the email once you believe it is a scam or, if you wish to take a proactive stance, you can report them to the local AIC which is responsible for tackling business frauds and ensuring market order. On a more positive note, these alarming emails may also give you a welcome reminder to attend into your IP matters in China. However, please use the right sources, and select proper, qualified agencies to avoid the pitfalls mentioned above.

Attaching importance to IP issues is key to protecting your business and innovations in China and having various forms of ‘free’ or ‘complementary’ services can be beneficial as well. The key point is to be reasonable on what can be expected for free and to keep your mind on potential scams and sharpen your eyes to find out the tricks. Remember the tools or sources where you can find the right information.

Finally, if you still unsure on whether or not a message you have received is fraudulent or not, feel free to get in touch with the Helpdesk and our experts will be happy to advise you, free of charge.
Additional information and useful links

China IPR SME Helpdesk guides:

Mainland China Factsheet

Online Protection – Domain Name Protection Guide

How to Find and Intellectual Property Agent

External sources:
http://www.sipo.gov.cn/zldbc/gdbctxdz/201310/t20131023_823923.html
The China IPR SME Helpdesk provides free, confidential, business-focused advice relating to China IPR to European Small and Medium Enterprises (SMEs).

**Helpdesk Enquiry Service:** Submit further questions to the Helpdesk via phone, email (question@china-iprhelpdesk.eu) or in person and receive free and confidential first-line advice within three working days from a China IP expert.

**Training:** The Helpdesk arranges training on China IPR protection and enforcement across Europe and China, tailored to the needs of SMEs.

**Materials:** Helpdesk business-focused guides and training materials on China IPR issues are all downloadable from the online portal.

**Online Services:** Our multi-lingual online portal (www.china-iprhelpdesk.eu) provides easy access to Helpdesk guides, case studies, E-learning modules, event information and webinars.

*For more information please contact the Helpdesk:*

Room 2480, Beijing Sunflower Tower No. 37 Maizidian Street
Chaoyang District Beijing 100125, P.R. China
Tel: +86 (10) 8527 5705
Fax: +86 (10) 8527 5708

www.china-iprhelpdesk.eu

Project implemented by:

**Disclaimer:**

The contents of this publication do not necessarily reflect the position or opinion of the European Commission. The services of the China IPR SME Helpdesk are not of a legal or advisory nature and no responsibility is accepted for the results of any actions made on the basis of its services. Before taking specific actions in relation to IPR protection or enforcement all customers are advised to seek independent advice.