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1. Introduction: China and the Internet

Internet usage continues to boom in China. With more than 649 million 'netizens' (December 2014), China connects more people to the Internet than any other country. In fact, every fifth person on the Internet is from China. Moreover, the growing trend towards online shopping for products and services mean that the Internet is now both a way to communicate with customers and, for many companies, their main sales channel.

Although the Internet acts as a gateway for European SMEs, it is unfortunately also an ideal platform for infringers to sell counterfeit products and commit fraud. The Internet provides a low cost method of reaching consumers around the world without revealing identity or origin of operation, meaning that infringers can operate anonymously. One main risk includes losing control of your intended domain name in China. As the internet grows in importance, the ability of your customers, but also for infringers, to easily access your website increases.

2. Domain name risks in China

Your domain name often represents the first point of contact between you and your customers: it conveys your brand reputation and acts as the main online access point to product and contact information and, often, for sales. As such, having control over your first choice domain name is the initial, and most important step in managing your online presence. Loss of your domain name can

easily lead to consumer confusion, lost web traffic and emails, and it can also result in loss of reputation and lost business.

The omnipresent nature of the Internet means that even EU SMEs operating exclusively in their home markets cannot ignore the risks that domain name infringement may pose to their business, even if these activities originate in China.

Forms of domain name infringement

The classic form of domain name infringement is known as 'cybersquatting', which is when a person or entity with no legal rights to a particular domain name consciously (i.e. in bad-faith) registers a domain name identical or similar to a third party company name, product name or trade mark with the end goal of selling the domain name back at a high price. The cybersquatter is taking advantage of the first-to-file principle that applies to domain name registrations (i.e. the first person to file the domain name owns it). While cybersquatting continues to occur frequently, this is no longer the main motivation for infringers who register domain names infringing on third parties.

In recent years, 'monetisation' of domain names has become increasingly common. Typically, this involves registering domain names with misspellings, or typos of famous brands or company names. The registrant, or the 'domainer', benefits from the traffic generated when people mistype a URL into a browser. If an Internet user mistypes the URL - e.g. www.euroap.eu instead of www.europa.eu - the user reaches the website of www.euroap.eu, where the domainer can place a number of sponsored links. If the Internet user then clicks on one of those exposed links, the registrant of the domain name receives a portion of the advertising revenue paid by the advertiser. This practice of registering domain names with either legitimate attractive generic domains or infringing misspellings of brand names

has increased exponentially, and is a key factor in the growth of domain name registrations globally and in China. This is known as 'typosquatting'.

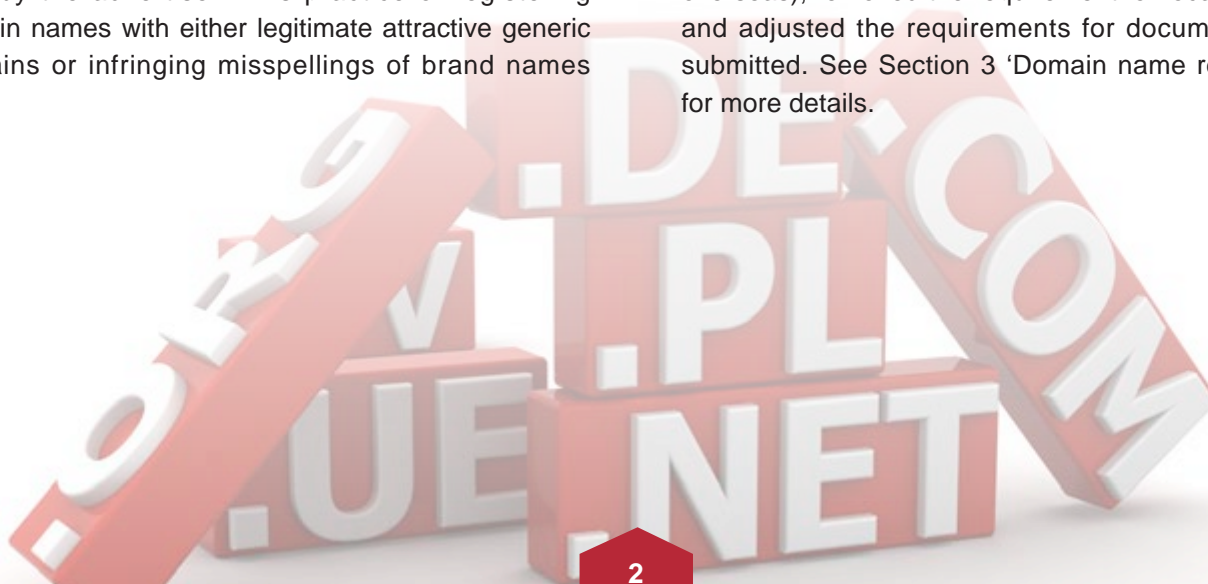
Regulatory changes

Before December 2009 several factors made it easy and attractive for domainers to register domain names, both legitimate and illegal, in China:

- .cn domain names were very inexpensive compared to other top level domain (TLD) names
- .cn domain names were relatively easy to register following a fully automated registration process that required little validation
- .cn was divided into 34 regional TLDs such as bj.cn for Beijing and sh.cn for Shanghai and uses both Latin and Chinese characters e.g. .cn or .中国.
- The Internet experienced a boom period and spending on online advertising increased significantly.

From December 2009 – May 2012, in an effort to curb the number of bad-faith registrations resulting from the automated registration process, the Chinese domain name registry, **China Internet Network Information Centre (CNNIC)**, implemented stricter requirements for registering .cn domain names including a requirement for a local presence in China for foreign companies and restrictions on private individual registrations. As a result of the CNNIC's measures, as many as 11 million .cn domain names were deleted or not renewed.

In May 2012, CNNIC enacted new implementing rules (currently valid) for .cn domain name registration which aimed to encourage .cn TLD registration and improve the registration process. The new rules again allowed private individual registrations (both Chinese and overseas), removed the requirement for local presence and adjusted the requirements for documents to be submitted. See Section 3 'Domain name registration' for more details.



Prevention strategy to mitigate risks

Domain name disputes and other IPR-related lawsuits in China can often be a costly, time-consuming and complicated process. Therefore, it is strongly recommended that companies proactively formulate a defensive domain name strategy to prevent problems from arising in the first place.

When creating and implementing an IPR protection strategy in China, online brand protection is just as important as protecting trade marks, patents, copyrights, etc. It is essential to protect company name, product names, services and trade marks through domain name registrations under the Chinese top level domain .cn. In addition, from the summer of 2010, China began to offer a new Chinese top level domain name ‘.中国’ (.china) . In May 2014 CNNIC introduced another two, i.e. ‘.公司’ (.company) and ‘.网络’ (.net). Altogether, these four Chinese TLDs are available in both simplified (.中国) and traditional (.中國) characters, and allow Internet users to access websites and E-mail addresses in non-Latin local Chinese script, which is popular with Chinese consumers.

We recommend EU SMEs make a careful analysis of their target market and consumers and take full advantage of the available Chinese TLDs and, budget permitting, register both domains they wish to use and domains they would prefer to keep control of.



3. Domain name registration

According to CNNIC 2012 Implementing Rules for Domain Name Registration, almost any native Chinese person or organisation can apply for .cn domain name registration. With the removal of local presence requirements, now European SMEs can also register for .cn or another of the three Chinese TLDs using their European company data and business certificates.

Registration process

- 1) You must first check if the particular .cn domain name is available for registration. You can use the CNNIC domain name registry to search for the availability of your desired .cn domain name at: <http://www1.cnnic.cn/index.htm>.
- 2) Enter the desired domain name in the search field at the upper left corner.
- 3) If the result shows ‘你所查询的信息不存在’ (the info does not exist) that means you can go on the following steps to register your targeted domain name.
- 4) Domain name registration must be completed through an accredited .cn registrar. Lists of accredited international registrars can be found here: <http://www1.cnnic.cn/index.htm>

Lists of Chinese registrars can be found here: <http://www.cnnic.cn/>

While registrars may vary in cost, it is strongly recommended that you choose a registrar you know and trust. Should you choose an unreliable registrar that suddenly ceases operation, your domain name could be lost and/or temporarily deactivated. However, you do not have to go directly to a Chinese registrar. In most cases, your local domain name provider will have ties with accredited registrars in China and also offer .cn domain name registrations.

- 5) Your chosen registrar will provide a registration form which will include the following fields:
 - Intended domain name;
 - Contact details of the registrant: name, address, telephone, e-mail;

- The registrant's administrative contact, technical contact, billing contact and purveyor contact;
- Domain name registration term
- The following documents are required:
 - Company: a copy or scan of local business certificate in your home country; a copy of passport or other official ID of the authorised contact person of the company
 - Individual: a copy or scan of passport, driving licence or other official ID

It is recommended that you should add your signature (for individual registrant) or official company stamp (for company registrant) to your ID documents.

- 6) After receiving the documents mentioned above, your registrar will verify the authenticity and accuracy of the information and submit it to the CNNIC within one working day.
- 7) Unlike trade mark registrations where there is a period of three months when third parties may object to an application, .cn domain names will be registered within a few days without any opposition period.

The price of a .cn domain name is quite affordable, ranging from EUR 50 to EUR 100 per .cn domain name per year at European registrars. Some registrars offer an option for registering domain names for five or ten years at a time, which may be a cheaper option in the long term.

Registration scams

It is worth noting that a number of Chinese domain name providers, typically resellers of accredited registrars, are trying, in bad-faith, to encourage European companies to register a number of Asian domain name extensions. These providers typically claim that they have received a registration request from another company who wishes to register domain names similar or identical to your company name. This is a well-known scam known as 'slamming'. The Chinese domain name provider is simply trying to persuade you to register a number of domain names in order to profit from such an order.

If you receive such an E-mail, you have four options:

- Ignore the E-mail

- Reply saying that you will report this E-mail to CNNIC as 'slamming' and an attempt at fraudulent activity
- Forward the E-mail to CNNIC at service@cnnic.cn and supervise@cnnic.net.cn
- Register some of those domain names you may have already considered registering through your local or usual registrar.

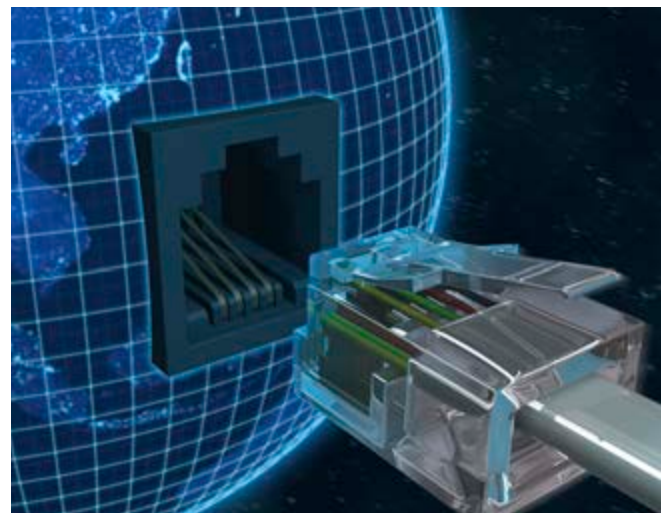
4. Domain name dispute resolution

Following the revised Implementation Rules for Domain Name Registration in 2012, CNNIC also updated the domain name dispute resolution policy and rules in June 2014.

In line with these rules, domain name registrants can file a complaint against registrars for violations either before or after domain name registration. Complaints can be made by contacting CNNIC via email (supervise@cnnic.cn), fax (+86 10 58813000) or a 24 hour hotline (+86 10 58812666-1). A Chinese 'Complaint Form' (<http://cnnic.cn/ggfw/fwzx/gjymtscl/201410/P020141008446525133969.pdf>) is available on CNNIC's website to download. English language files (such as slamming emails) can be submitted to support the complaint.

Within two years of the initial registration, other domain name dispute cases can be filed with either of the two CNNIC accredited dispute resolution institutions:

- China International Economic and Trade Arbitration Commission (CIETAC); or
- Hong Kong International Arbitration Centre (HKIAC).



The cost for a domain name arbitration case involving one domain name is approximately RMB 8,000 , exclusive of attorney fees. The language of the domain name dispute resolution proceedings must be Chinese, unless otherwise agreed by the parties or determined by the arbitration panel.

The characteristics of the arbitration process are the following :

- Arbitration is relatively simple (written complaint and written defence), low cost and decisions are made quickly. This is preferable for SMEs.
- Although decided on a case-by-case basis, arbitration panels usually make decisions to support prior users against those who have acted in bad faith, so long as the prior use can be proved.
- Before, during or after the complaint undergoes arbitration, the interested parties always can file a lawsuit concerning the same dispute with the Chinese court.
- The defendant can delay the arbitration decision by successfully filing a lawsuit within 10 days.

After the initial two years, disputes must be handled via litigation through the People's Courts, which can be a timely and costly affair. In case litigation is an option, it is recommended that you seek assistance from IP law firms, either Chinese or international, with expertise in domain name disputes. The main criteria for proving a prior right to a domain name are:

- The disputed domain name is identical with, or confusingly similar to, the complainant's name or mark in which the complainant has civil rights or interests.
- The disputed domain name holder has no right or legitimate interest in respect of the domain name or major part of the domain name.
- The disputed domain name holder has registered or has been using the domain name in bad-faith.

In addition, the Dispute Resolution Rules also introduce bad-faith scenarios, for example:

- Registration purpose is to sell, rent or transfer to obtain unjustified benefits
- Multiple domain name registrations
- Conducting business activities for the purpose of damaging others' reputation and misleading the public.

5. Check-list: Build your domain name strategy

The Helpdesk recommends formulating and implementing an online brand protection strategy that is aligned with your general IPR and business strategies. In building the best domain name strategy for your company, you may consider the following questions. We recommend you also discuss the strategy with your lawyer:

Domain Name Strategy

- What is the purpose of registering a domain name(s)?
Reasons might include:
 - Protection of IP
 - Increasing visibility (online marketing)
 - Infrastructure requirements (E-mails, websites, intranet)
 - Security (risk mitigation – avoiding lost E-mails, lost traffic, etc.)

Domain Name Audit

- Which domain names do we want to register?
 - .com .com.cn .net.cn .cn .中国
 - .公司 other _____
- How are these domain names being used or how will they be used by our company?
 - web content E-mails other _____

Domain Name Policy

- Which domain names and keywords should we register?
 - company name trade mark name product name other, e.g. typo of these names

Monitoring

- Which possibly infringing domain names are registered by third parties?
- Which websites are selling our products or eroding our brand?

Enforcement

- Should we recover a third party domain name?
 - evidence sufficient to prove my prior right/the other party acted in bad faith
 - weak/no evidence
- Should we attempt to remove an infringing website?
 - involves domain name infringement
 - involves content infringement(For more details refer to the Helpdesk Copyright guide and Remove Counterfeits from Online guide)
- What kind of legal action should we take, if at all?
 - if registration within the previous 2 years - dispute arbitration
 - if registration exceeding 2 years - litigation

Case Study

A European SME 'EUXYZ', based in Brussels, provides multilingual translation service to worldwide customers. They have their trade mark registered in Europe but not yet in China. With more and more translation requests from the China market, in 2014, the company wanted to register the domain name 'euxyz.cn' to better promote their services and serve Chinese customers. However, they found another company from China already registered the 'euxyz.cn' domain name in 2013. To regain control of the domain name, the management team had a heated discussion, "can we recover the domain name if we don't have a trade mark registration in China?"

After consulting experienced lawyers, the company was advised that:

The domain name www.euxyz.cn was registered one year ago and the company is still within the two year limit to seek resolution through arbitration.

After carefully considering the options and the best strategy, EUXYZ selected a Chinese agent to negotiate with the Chinese company and had the domain name transferred at a reasonable cost. In the end, this course of action saved the company significant time and money in comparison with arbitration or litigation and the 'buy-back' price was lower than if an arbitration panel had made a decision in favour of the defendant.



Take away messages

It is recommended that European companies not only actively promote their business in China by using .cn domain names, but also protect IPR by defensively registering domain names under .cn and other Chinese TLDs such as .中国. By defensively protecting domain names, monitoring for infringements and enforcing their rights, SMEs can prevent a significant amount of illegal online activities in China at a reasonable cost.

Related links and additional information

China IPR SME Helpdesk guides:

- Copyright Protection in China: http://www.china-iprhelpdesk.eu/sites/all/docs/publications/EN_Copyright_guide_Aug_2010.pdf
- How To Remove Counterfeits from E-Commerce Websites: http://www.china-iprhelpdesk.eu/sites/all/docs/publications/China_IPR_Guide_on_How_to_Remove_Counterfeit_Goods_from_E-Commerce_Sites_in_China.pdf

Related links:

- CNNIC: <http://www1.cnnic.cn/>
- CNNIC User FAQ (.cn): <http://www1.cnnic.cn/IS/CNym/cnymyfaq/>
- CNNIC Policy and Regulation: <http://www1.cnnic.cn/PublicS/fwzxxgzcfg/>
- China International Economic and Trade Arbitration Commission (CIETAC): <http://dndrc.cietac.org/static/english/engfrmain.html>
- Hong Kong International Arbitration Centre (HKIAC): <http://www.hkiac.org/en/hkiac>

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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, including Hong Kong, Macao and Taiwan, 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.

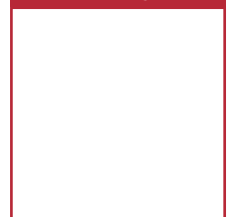
Online Services: Our multi-lingual online portal (www.china-iprhelpdesk.eu) provides easy access to Helpdesk guides, case studies, E-learning modules, event information and webinars.

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