1. Introduction

1.1 China: from “world furniture factory” to “world furniture market”

In recent years, China has been transforming from a “world furniture factory” to a “world furniture market”. This phenomenon can be easily explained by the rapid growth of China’s emerging middle class’ purchasing power and the improving living conditions of Chinese citizens.

The National Bureau of Statistics of China recently released figures indicating that the urbanisation rate in China reached 56.1% in 2015, which constitutes an average rise of roughly 1% per year. The vast urban population together with rural migrants who have settled in urban areas have now become major consumers of furniture products. Furthermore, estimations state that 37.6 million households will undertake renovations by 2020, leading to an ever-greater demand of furniture. This stems from government led urbanisation projects in shantytowns as well as reconstruction projects across the country.

1.2 Characteristics of the furniture sector that increase the need of IP protection

In China, the most prominent issue facing the furniture sector is the risk of copycats, either through design imitation and/or brand counterfeit. The aforementioned growth in demand represents a challenge for the furniture industry as brands need to rapidly create new items with new styles and designs for interested consumers. The new models are then presented to the public, retailers and buyers during trade fairs or inside showrooms. At the same time, the increase of production causes the level of advertising and marketing communication to rise, through detailed catalogues, mass-media and online channels. This increase in production and communication activities augments the exposure of a brand and
ultimately raises the risk of “copycats” of exclusive designs by competitors.

In this regard, it is essential for industries operating in the furniture sector to develop a strategy to protect their intellectual property rights (IPR).

2. Protection of rights:

2.1 The protection under the Patent Law:

There are three different types of patents: invention patents, utility models, and design patents. Regarding the furniture industry, products should be protected by either one or a combination of these patents. The shape of a furniture product—such as a sofa or a chair—will be protected by a design patent. The technical function of a product like a folding sofa, can be protected by a utility model patent and/or an invention patent if some technical solutions are introduced in the product.

A) Design patents:

A design patent protects the new design of a product: its shape or structure, or the combination of its colour, shape and/or structure, provided that the features are suitable for industrial application or use and are of aesthetic effect not for technical or functional effect. An example of something that can be protected under design patents would be the characteristic shape of a chair. A normal design of a chair entails four legs with a flat seat and a back. For a design patent to be registered it must be different from the normal design. For example, instead of having four legs with a flat seat and back, the design does not have any legs, instead it has a rounded bottom like a ball (this would allow the chair to rock forward and back). The chair would still have the same function, but the design (which shows the shape of the chair) has changed.

B) Utility model patents:

Utility Model Patents apply to new technical solutions related to the shape or structure of a product or a combination thereof. Utility model patents focus on the shape for its technical effect. This differentiates from design patents which focus on shape for its aesthetic effect and invention patents focus on the technical function. For a utility model to be registered, the use for the object must be shown to be different than the original designed use. An example of a utility model is a sofa which is used as a sofa but the seats can fold out so that the sofa can also be used as a bed. Therefore there are two uses for the sofa, adding the second usage means there is a different utility which could be registered. The protection is of the technical aspect (the design stating what the sofa can do and how it does it) rather than what the sofa looks like. It is a utility model because it uses an existing shape or structure of a product for a new functionality.

In practice, the novel technical function protected by a utility model could also be simultaneously protected by an invention patent.

C) Invention patents:

An invention patent is granted for a new technical solution or improvement to a product or process, provided that the technical solution has practical applicability. The difference between product, process, and invention will be illustrated by using the example of a chair.

The first part, the product, refers to the creation of a new product; the first person to invent a chair for example could have registered the chair to protect themselves from other people coming up with that invention.

The process refers to the way in which the chair has been made (its manufacturing). You could register the machines and the individual steps taken when creating the chair, granted they are novel.

An improvement is when the product is adapted to be better than it was before. For example, if chairs did not have any padding, adding padding to make the chair more comfortable would be an improvement. This improvement could be registered with an invention patent.
The Chinese Patent Law does not expressly state whether all textures and materials can be registered as designs. However, in practice, if the texture or material is sufficiently original, it will be automatically protected by copyright. In addition, it is possible to register a texture or material as a utility model patent, knowing that the validity of the patent may be challenged in the future by a third party as there is no examination for granting such patent.

For more information, please refer to our Guide on Patent Protection and our Design Patent Guide.

2.2 Protection under the Trademark Law:

Chinese Trademark Law also protects design rights and those related to industrial furniture products.

A design can be protected as a 3D trade mark as long as it is distinctive enough to identify the products/services protected by the trade mark. This means that the design should represent the aesthetic characteristics of the product itself, but should also have a distinctive characteristic able to distinguish the design from the related product. For example: a particular and distinctive shape that it’s introduced in all the furniture of a particular brand as their trade mark.

An example of a 3D trade mark could be the words COCA-COLA when it is written in 3D on a drinking glass. The trade mark usually appears on the product or its packaging as a way of identifying it and distinguishing it from other products. Distinguishable characteristics may include, but are not exclusive to; symbols, letters or a design.

It is also possible to register a Certification Trademark. According to Chinese Trademark Law, a Certification Trademark is a sign controlled by an organisation capable of monitoring certain goods or services for use by other organisations to certify the geographical origin, material, mode of manufacture, quality or other specific characteristics.

Some examples of certification marks:

- **Genuine Leather Mark**: China National Leather Association
- **FSC® Certification**: Forest Stewardship Council® (FSC) Forest Management Certification: China Environmental Labelling Mark: 中国环境标志认证 issued by the China Environmental United Certification Centre: mainly for kitchen furniture.

For more information on Trade Marks please refer to our Guide to Trade Mark Protection.

2.3 Protection under Copyright Law:

A) the protection of images and design through copyright:

Another important way to protect the rights related with images and designs in China is through copyright.

In the case of furniture, copyright protection covers the shape of products, models, catalogues and websites. However, Copyright does not cover industrial products. There is a difference between the definition of design and copyright: the first one is the aesthetic value of a
product, the second one the intellectual achievement in a unique work.

This means that the outer shape of industrial products can be registered as a copyright when it can be considered as a “work of fine arts”. In practice, work of fine arts usually refers to a pure work of fine art or a work of applied art. A work of fine art includes painting, sculpture, calligraphy etc. and applied art refers to work used for living and production purposes, for instance ceramics, carved furniture, jewellery etc.

No registration is needed for the author of the work to hold the right to an original work, as copyright arises the moment a work is created. However it is strongly recommended to proceed with the voluntary copyright registration as it is more convenient and would save time and money if a dispute arises. For more details on copyright registration, refer to the Helpdesk guide on How to Register a Copyright.

B) the importance of copyright protection at dual level: furniture design + ornamental components

Copyright Law related to the furniture sector protects two different types of works, furniture designs and ornamental components.

The moment the design of a furniture product is drawn, even before production, it is considered as design work and therefore protectable under Copyright Law. Designers also often add ornamental designs (carved patterns, painted pictures, etc.) as a finishing touch to their product. These are also protectable through Copyright so as to better protect the entirety of the product.

3. Protection of non-registrable rights:

3.1 The residual protection of the design under the Anti-unfair competition Law

The Chinese Unfair Competition Law provides protection to the names, packaging or decoration distinct to well-known goods and provides an avenue to protect non-registered designs. The design must represent the “trade-dress” of a product; that is the visual appearance of a product or its packaging. In the case of furniture items, protection under the Unfair Competition Law extends to the shape of a product’s design when it has a decorative function, and therefore can be considered as a “trade-dress”.

Design features of a product with pure aesthetical value, with no technical effect or function are protectable under Unfair Competition Law – from the moment they can be used as a decorative element and when their shape has become widely known to the Chinese public. Due to ambiguity when this exact moment takes place – which can easily be disputed by third parties – the Helpdesk recommends you to register your Design nonetheless.

3.2 Trade secrets: common issues for the furniture industry

Trade secrets are included under anti-unfair competition protection. Any information referring to a specific manufacturing or industrial process or information with a commercial purpose can be regarded as a trade secret. The most important aspect in this regard is that such information has to be kept secret. A famous example being the recipe for Coca-Cola which has been closely guarded for decades. In the furniture industry trade secrets often comprise the marketing strategies and business plans, the technical designs, the industrial formulas, the technical methods for production, the know-how and also the list of customers.

The protection of trade secrets does not require any kind of registration. To receive judicial protection, it is necessary to demonstrate that the stolen information represents a trade secret and the circumstances under which the information has been stolen. Most importantly, it must be demonstrated that physical, technical and contractual measures were taken to protect the trade secret which was stolen. Physical barriers can include keeping the secret locked away in a safe, or marking documents confidential. Technical barriers require the use of IT to protect trade secrets stored in electronic files on your servers. Contractual barriers generally involve the use of non-disclosure – non-use – non-circumvention (NNN) or confidentiality agreements.


4. Enforcement of your rights:

4.1 The administrative way of protecting your rights: powers and competences in cases of furniture industry IP infringements

Administrative enforcement through the Administration of Industry and Commerce (AIC) provides a quick and effective way to confiscate any infringing products and impose a
fine to the infringer. In case of violation of trade secrets, the AIC may order the infringer to cease its actions and impose a fine between 10,000 and 200,000 RMB. For more information on enforcement, please refer to our Guide on Enforcement.

4.2 The recording of the IP rights with Chinese Customs:

It is possible to fight against counterfeiting of products also through the control of suspected or infringing goods operated by Chinese customs. It is possible to register intellectual property rights with the General Administration of Customs (GAC). This registration is not mandatory, but highly recommended. The GAC uploads the registered IPR in its database, available to all the customs offices of China. Please refer to our Guide on Recording IP with Customs for more information.

4.3 What to do in case of online infringement?

As the market of e-commerce continues to grow, also the numbers of counterfeit products sold online continues to rise. It is possible to submit a complaint directly to the e-commerce platforms like Alibaba or Taobao when infringement is discovered.

According to Chinese law, Internet platforms are liable for IP infringements if they are notified of the infringement and do not take down the links to the infringing websites.

Notification and take down procedures are a very cheap and efficient way to take down online infringements. At the same time, it has been noted that after a website has been taken down, a new site pops back up. Therefore, it is highly recommended to monitor potential infringing activity against your product.

You may refer to our guide on "How to Remove Counterfeit Products from E-commerce websites"

The Helpdesk has other publications with specific introduction on IP enforcement, IP customs protection, removing online counterfeit etc., for more information please check them in the ‘Related Links’.

5. Case Study

Kartell is an Italian high-end plastic furniture maker, and a symbol of the “Made in Italy” design philosophy. In 2013, Kartell opened its first store in Beijing and almost immediately had to deal with counterfeit issues. A Chinese company, Taizhou Donghong Furniture Manufacture Co. Ltd., started to produce and sell imitations of Kartell’s products, hence infringing Kartell’s intellectual property rights. First, Kartell has filed a litigation with the Court of Taizhou, and subsequently the two companies reached an agreement through a mediation process in 2015, which established that the infringer will stop manufacturing and selling products similar to those of Kartell, and will also help Kartell to gather information on other local companies that are involved in the counterfeiting of Kartell’s products.

Two points enabled Kartell to win this contention – even before a Court getting involved. First, the capability to retrace all the purchases of fake products made on the infringer’s websites. Second, the involvement of the State Intellectual Property Organization (SIPO) to which a request was submitted on the validity of the litigious models. More specifically, Kartell had pre-obtained an “assessment report”, as provided by the Chinese Patent Law, which confirmed the status of the design patents registered. This document played a double role by discouraging the counterpart to start an administrative action to declare the invalidity of Kartell’s patent and, consequently, it helped in avoiding a civil procedure.

Lessons learnt:
• IP rights are territorial. Register your trademark, patents and designs in Mainland China as soon as it starts to be popular in the original country, even if they are not popular yet in China.
• Copycats are the biggest risk faced in the furniture industry. Make sure to set up optimal protection of your designs, under the Patent Law, Trademark Law, Copyright Law, Anti-Unfair Competition Law, and/or with the General Administration of Customs.
• Submitting a request to SIPO asking for an attestation of the validity of models before going to the Court may constitute a means to avoid going before the judge – in deterring the other party from suing you.
Take-Away Messages

- Enterprises engaged in the furniture business in China must be alerted about the ease of copying of their exclusive designs by competitors; fighting against it is necessary for a stronger IP protection.

- The combination of three possible types of patents would grant a solid protection to a furniture product: design patent for the shape, utility model for the technical function and invention patent for new technical solutions.

- A design can be registered as a 3D trademark when it represents the aesthetic characteristics of the product itself and when it has a distinctive character able to abstract the design from the related product.

- The design is the aesthetic value of a products, a copyright is the intellectual achievement in a unique work.

- Both the design of a furniture itself and its ornaments are protected by copyrights to better protect the entire product.

- Shape of products, models, catalogues and websites can be protected as copyrights; the outer shape of industrial products can be registered as a copyright when it can be considered as a “work of fine arts”.

- It is possible to register intellectual property rights with the General Administration of Customs (GAC). This registration is not mandatory, but highly recommended.

- The Supreme People’s Court has extended the definition of “decoration” of a product to the shape of a product’s outer design.

- In the furniture industry, trade secrets often comprise marketing strategies and business plans, technical designs, industrial formulas, technical methods for production, know-how and also the list of customers.

- In case of online IP infringement, it is possible to submit a complaint to the e-commerce platform provider; it will then become liable if it does not take any action in response to the infringement notification.

7. Related Links

Helpdesk publications:


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.ipr-hub.eu) provides easy access to Helpdesk guides, case studies, E-learning modules, event information and webinars.

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