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# HELPDESK UPDATE

## Issue 7 - Focus on Domain Name Protection

### Helpdesk News

Newest E-learning module on patents now available on the web portal

### About Domain Names in China

Learn about why domain names are so important to your business and how you can protect them from cybersquatters

### Case Study

Learn what you can do if you find out that another person has registered for your domain name

## Helpdesk News

The Patents E-learning module, the third in a series of E-learning modules from the Helpdesk is now available here. Written by Helpdesk experts, the 30-minute online training assists SMEs in learning about the three different types of patents in China, understanding the registration procedure and gaining practical information on the enforcement process.

[Click here to enter the Patents E-learning module](#)

## About Domain Names in China

### 1. Why is domain name protection so important?

Companies operating in China face an increasing number of online threats which may not only lead to consumer confusion or lost web traffic but it could also result in lost E-mails, lost business, and in some cases, lawsuits from consumers against (genuine) IPR holders.

### 2. What are the risks of domain name infringement?

In recent years, monetisation of domain names has become quite common. This is registering domain names with misspellings or typos of famous brands. If an Internet user mistypes the URL – i.e., [www.euroap.eu](http://www.euroap.eu) instead of [www.europa.eu](http://www.europa.eu), the user reaches the website of [www.euroap.eu](http://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. Monetisation of domain names is a key factor in the rapid growth of domain name registrations globally and in China.

### 3. How can I protect my IP assets online and mitigate these risks?

Domain name disputes and other IPR lawsuits in China can often be a costly and time-consuming process. Therefore, it is strongly recommended that you proactively protect your company name, product names, services and trademarks through domain

name registrations under the Chinese top level domain .cn and the new top level domain name .中国, which means .china.

### 4. How can I apply for .cn and .中国 domain names?

As a foreign company, you may register for a .cn domain name only if you have majority ownership of a Chinese subsidiary. However, your Chinese subsidiary must be the registrant and the contact person must be a Chinese national.

On 28 April 2010, the China Internet Network Information Centre (CNNIC) announced that the .中国 (or .china) domain names were officially ready for use. While government-related organisations were automatically given the Chinese character equivalent domain name of their existing .cn domain names, registration requirements for brand new .china domain names have yet to be announced. However, it is expected that the requirements will be the same as that of .cn domain names.

It is still possible for foreign companies to register the .cn domain name using a European registrar, as long as your Chinese subsidiary is the registrant. If you do not have a Chinese subsidiary, you may want to consider using a trustee or 'local presence' service such as a Chinese law firm to register Chinese domain names on your behalf.

## 5. If I find that the domain name I want is already registered, what can I do?

CNNIC has implemented a domain name dispute policy, which costs approximately RMB 4,000 to pursue, exclusive of attorney fees. It is strongly recommended you seek guidance from IP law firms with expertise in domain name disputes. To recover an infringing domain name, you must prove a prior right to a domain name. The main criteria are:

- The disputed domain name is identical to or confusingly similar to your brand name or mark
- The disputed domain name holder has no right or legitimate interest in the domain name
- The disputed domain name has been registered in bad faith

A domain name dispute must be carried out within two years after the initial registration of the domain name. After this period, you must go through the legal system, which can be a timely and costly affair. You may apply for arbitration with the China International Economic and Trade Arbitration Commission (CIETAC) in Beijing or at the Hong Kong International Arbitration Centre. Many European SMEs have been known to favour the Hong Kong International Arbitration Centre due to its extensive experience in dealing with foreign company arbitrations.

## Case Study

### Background

TC is a Danish company with a staff of approximately 100 people. It is a trading company that primarily covers the demand for automotive spare part systems in car trade. TC is quite active in China, although it does not have a Chinese subsidiary.

In 2009, TC discovered that someone had registered the domain name TC.cn in 2007, which is a domain name the SME was hoping to use for future activities in China.

### Action Taken

TC immediately contacted a law firm who helped them file a domain name dispute at the Hong Kong International Arbitration Centre within the two year time frame required for a domain name dispute case. The law firm prepared for the case by investigating the background of the registrant of the domain name.

TC and the law firm built up their case by noting that TC.cn infringed on TC's registered trademark. In addition, the TC name was already quite well-known within the industry, which means the domain name registrant should have known about the existing trademark before registering the domain name. They also argued that the domain name registrant had actually applied for trademark registrations of at least four other existing European companies, strongly suggesting that they acted in bad faith.

Additionally, the TC.cn domain name had yet to be used by the registrant, which suggested that the registrant had no legitimate interest in the domain name.

### Outcome

The arbitration panel ruled in favour of TC, determining that the domain name registrant had registered the TC.cn domain name in bad faith. TC waited to see if the bad faith registrant would appeal the case but they did not. TC has since then engaged the same law firm to facilitate the transfer of the domain name to the rightful owner.

### IP Lessons Learned

- Register your company name, trademark, brands and product names as domain names in both Latin and Chinese characters right away, even if your company is not operating in China yet but plan to.
- If your company wins a domain name dispute case, be sure to follow up and arrange for a domain name transfers to your company right away.
- China no longer allows foreign companies to register for .cn domain names unless you have a local presence in China. Even if you do not have a local presence yet, you may register for a .cn domain name by entering trustee agreements. You should strongly consider this option to prevent others from registering the domain names you may want eventually before you.

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