1. THE FACTS: Business in Hong Kong for EU Companies

(Source: DG Trade / EU Delegation to Hong Kong)

**Size of Market**
- EU exports to Hong Kong: EUR 33.5 billion
- EU imports from Hong Kong: EUR 10.5 billion
- Total trade in goods: EUR 44 billion

Hong Kong is the EU’s 20th largest trading partner overall.
The EU is Hong Kong’s 2nd largest trading partner overall (after China).

**Key Industry Sectors:**
- EU exports to Hong Kong mainly consist of machinery and transport equipment, telecommunications equipment, chemicals and other semi-finished products.
- Hong Kong’s key export items to the EU include machinery and transport equipment and telecommunications equipment.
2. IPR in Hong Kong for SMEs: BACKGROUND

Intellectual Property Rights for SMEs: Why is this RELEVANT to you?

Intellectual Property (IP), as intangible assets, are a key factor in the competitiveness of your business in the global economy. Protecting IP is a primary method for securing a return on investment in innovation and is particularly relevant to Small and Medium-sized Enterprises (SMEs) as they internationalise their business to areas such as Hong Kong. Although SMEs often have limited time and resources, it is important to be aware of how IP can be valuable to your business. Not only a way to help you protect your innovations from competitors, IP assets can also be an important source of cash-flow for SMEs through licensing deals or selling IP, as well as a significant pull-factor when attracting investors.

Infringement is one of the most common concerns for businesses when dealing with countries across Asia, and its impact on your company could be substantial. It can lead to loss of business, revenue, reputation and competitive advantage, which affects SMEs both abroad and in their core domestic markets, and the inadequate protection of inventions and creations can jeopardise prospects for maintaining a competitive advantage.

How does Hong Kong’s IP legal framework compare to INTERNATIONAL STANDARDS?

Hong Kong has a well-established and comprehensive IP legal framework, and is generally considered as one of the most sound in the East Asian region. Hong Kong is a party to the following international agreements in relation to IPR: the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literacy and Artistic Works, the Universal Copyright Convention, the Nice Agreement Concerning the International Classification of Goods and Services, the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of their Phonograms, the Patent Cooperation Treaty, the Convention establishing the World Intellectual Property Organization (WIPO), Copyright Treaty and the WIPO Performances and Phonograms Treaty. However, Hong Kong is not a party to the Madrid Protocol which allows for a one-time registration of trade marks across multiple jurisdictions. To enjoy protection there, trade marks must be registered directly in Hong Kong.

As a Special Administrative Region of the People’s Republic of China, Hong Kong has a high degree of autonomy and will retain its own legal system until 2047. Under the basic law, for intellectual property purposes, Hong Kong remains as a separate jurisdiction from the rest of China. Hong Kong’s legal system and IP laws are separate and significantly different to those of Mainland China. Therefore IPR registered or protected in Hong Kong will not automatically extend to Mainland China and vice versa.

IP TIPS and WATCH-OUTS in Hong Kong

- Hong Kong operates under a ‘first-to-file’ system, meaning that the first person to file an IP right within the Hong Kong jurisdiction will own that right once the application is granted.

- Hong Kong maintains a separate legal system from Mainland China. To gain broad protection proprietors must register in both Hong Kong and Mainland China. To obtain protection in Hong Kong and the Mainland, proprietors must register in each region separately.

As a Special Administrative Region of the People’s Republic of China, Hong Kong has a high degree of autonomy and will retain its own legal system until 2047.
3. IP Rights in Hong Kong THE BASICS

A. Copyrights

WHAT are Copyrights?
Copyright is the right given to owner of an original work. This right can subsist in literary works such as books and computer software, musical works, dramatic works, artistic works, sound recordings, films, broadcasts, cable programmes and the typographical arrangement of published editions of literary, dramatic or musical works, as well as artists' performances.

Copyrights in Hong Kong: What you need to know
For copyright to subsist and be protected by the copyright laws, the original work must be reduced into a material form of expression i.e. a tangible form. A mere idea in a person’s mind, however ingenious and elaborate, is not protected by copyright.
If the idea is orally communicated to another person who writes it down, copyright will belong to the person who exerts skills and efforts in writing it down.

The copyright owner has the exclusive right to exploit their work for commercial gain and in particular to copy the work, issue copies of the work to the public, rent copies of the work to the public, make available copies of the work to the public, perform, show or play the work in public, broadcast the work or include it in a cable programme service or to make an adaptation of the work.

In addition, the author of a literary, dramatic, musical or artistic work and the director of a film enjoys moral rights, i.e. the right to be identified as the author or director.

HOW do I register?
There are no formalities required to obtain or register copyright protection for works in Hong Kong. Copyright is an automatic right that arises upon the creation of the work by the author. Works of authors from any place in the world, or works first published anywhere in the world, qualify for copyright protection in Hong Kong. Since there is no general registration system for copyright works, it is recommended that copyright holders keep good records of the process of creating the work as this record is useful evidence for enforcement purposes and also in defending against claims of copyright infringement.

How LONG does legal protection last?

<table>
<thead>
<tr>
<th>Nature of work</th>
<th>Duration of Copyright</th>
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<tr>
<td>Literary, dramatic, musical and</td>
<td>50 years from the end of the year in which the author dies</td>
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<td>artistic works</td>
<td>Where the author is unknown, 50 years from the end of the year in which the work is</td>
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<td>made, or 50 years from the end of the year in which it is made available</td>
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<td></td>
<td>For joint ownership, 50 years after the death of the last author</td>
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<tr>
<td>Sound recordings</td>
<td>50 years from the end of the year in which it is made or 50 years from the end of the</td>
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<td></td>
<td>year in which it is released</td>
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<tr>
<td>Films</td>
<td>50 years from the end of the year after the last of the principal director, author of</td>
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<td>the screenplay, author of the dialogue or composer of music specially created for and</td>
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<td>used for the film dies</td>
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<tr>
<td>Broadcasts and cable programmes</td>
<td>50 years from the end of the year in which the broadcast was made or the programme was</td>
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<td></td>
<td>included in a cable programme service</td>
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<tr>
<td>Typographical arrangements</td>
<td>25 years from the end of the year in which the typographical arrangement was first</td>
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<td>published</td>
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</table>
B. Patents

WHAT are Patents?

Patents are an exclusive right granted by a government to an inventor to manufacture, use, or sell an invention for a certain number of years. A patent gives the inventor an exclusive right to use his invention. An invention which is new and involves an inventive step can be patented in Hong Kong by registration as long as it can be ‘industrially applied’ and does not belong to the excluded classes of inventions. A patent protects the patent owner by giving the patent owner a legal right to prevent others from manufacturing, using, selling or importing the patented invention.

Patents in Hong Kong: What you need to know

There are two types of patents granted in Hong Kong, namely standard patents and short-term patents. The grant of a standard patent in Hong Kong is based on the registration of a corresponding patent granted by one of the three designated patent offices, i.e. the PRC State Intellectual Property Office, European Patent Office or United Kingdom Patent Office. To register a standard patent in Hong Kong requires a formal examination only, however, once granted they are independent of the corresponding patents granted by the relevant designated patent offices and are enforceable before the Hong Kong Courts. Registration of a standard patent usually takes about six to nine months (as this is merely a re-registration of the corresponding patent granted by the PRC, EU or UK Patent Offices).

The Patent Ordinance also provides for grant of short-term patents for inventions with a shorter commercial viability. Applications are made directly to Hong Kong Patent Registry and are granted subject to a formal examination only. Applicants for short-term patents in Hong Kong can enjoy a right of priority in respect of their corresponding applications in a Paris Convention country or WTO member; protection therefore exists from the date of filing. A short-term patent may be registered in under 6 months assuming all relevant formalities are complied with upon application. Please note that the short-term patents for inventions granted in Hong Kong are not the same as the utility models available for registration in Mainland China, but protection may serve a similar purpose.

Hong Kong’s existing patent system for standard patents is a system of re-registration, and short term patents are not required to undergo the ‘substantive examination’ process which is more thorough. This means that a patent grant will not be refused on the grounds that the invention is assessed to be not patentable. However, the Registrar can refuse to record and grant the patent if the publication or working of the invention is contrary to public order.

How LONG does legal protection last?

Standard patents in Hong Kong have a term of protection of up to 20 years from the date of filing, subject to payment of annual renewal fees starting from the end of the third year.

Short-term patents in Hong Kong have a protection term of up to eight years from the date of filing, subject to payment of renewal fees at the end of the fourth year.

HOW do I register?

The grant of a standard patent in Hong Kong is based on the re-registration of a patent granted by one of three designated patent offices. An application for a standard patent is made in two stages:

(i) A ‘request to record’ the designated patent application within six months after the date of publication of the corresponding patent application. The request should be filed on form P4. The filing fee is due within one month of application. Form P4 and a fee listing are available at http://www.ipd.gov.hk/eng/forms_fees/patents.htm.

(ii) A ‘request for registration’ and grant within six months after the date of grant of the corresponding patent by the designated patent office or publication of the request to record in Hong Kong. The request should be made on Form P5. Form P5 and a fee listing are available at http://www.ipd.gov.hk/eng/forms_fees/patents.htm.

The grant of a short-term patent in Hong Kong is based on filing a search report from an international searching authority or one of the three designated patent offices. A short-term patent application is made by filing a request for grant supported by documents and information as specified in the Hong Kong Intellectual Property Department (IPD) website. The application should be made on Form P6. Form P6, P6A and listing of the current filing fee are available at http://www.ipd.gov.hk/eng/forms_fees/patents.htm.

Please refer to the IPD website (www.ipd.gov.hk) for details and further information on the application and registration process. Registrations can be filed by post or in person at the address below:

Patents Registry, Intellectual Property Department
24/F, Wu Chung House, No. 213 Queen’s Road East, Wanchai, Hong Kong China
+852 2838 6315

WHO can register?

The owner(s) of the invention can apply for a patent. If the person filing the Request to Record or Registration of Grant of a standard patent is not the same as the applicant for the designated patent, a statement setting out the person’s entitlement to file should be included upon the request. If the person making the application for a short-term patent is not the inventor, a statement of his entitlement to apply for grant of the patent should be included upon application. There are no restrictions as to nationality or residency of the applicant. However, a Hong Kong address must be provided for service, to which correspondence from the Registry will be sent.

An invention is patentable if it is novel, involves an inventive step, and is industrially applicable.
C. Trade Marks

WHAT are Trade Marks?
A trade mark is a sign that distinguishes the goods and services of one trader from those of others. Typically a trade mark can be words (including personal names), indications, designs, letters, characters, numerals, figurative elements, colours, sounds, smells, the shape of the goods or their packaging or any combination of these. A sign must be capable of being represented graphically in order for it to be registered as a trade mark.

Trade Marks in Hong Kong: What you need to know
In order to be eligible of being registered as a trade mark, the mark must be:

- A sign such as words (including personal names), indications, designs, letters, characters, numerals, figurative elements, colours, sounds, smells, the shape of the goods or their packaging or a combination of such signs.
- Capable of being represented graphically.
- Capable of distinguishing the goods and/or services of the applicant from those of other undertakings.
- Inherently or factually distinctive of the goods or services.

A trade mark is not registrable if:

- It is descriptive i.e. consisting exclusively of signs that designate the kind, quality, quantity, intended purpose, value, geographical origin, time of production of goods or rendering of services or other characteristics of the goods or services. ‘Apple’ for example may be used for electrical products but not for fruits.
- It is a term that is generic of the goods or services.
- It is contrary to accepted principles of morality or likely to deceive the public.
- Its use is prohibited in Hong Kong under or by virtue of any law.
- Its application was made in bad faith.
- It contains the national/regional flag or emblem or design or the flag of any country that is a party to the Paris Convention.
- It is identical to an earlier filed trade mark for identical goods/services.
- It is identical or similar to an earlier filed trade mark for identical or similar goods/services.

Which LANGUAGES can I use?
Applications for patent registrations may be made in English or Chinese but the title and abstract of the patent application must be shown in both English and Chinese.

How much does it COST?
Please refer to the IPD website for information on patent application forms and fees (http://www.ipd.gov.hk/eng/forms_fees/patents.htm).

<table>
<thead>
<tr>
<th>Fee for Standard Patent</th>
<th>HK S</th>
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<tbody>
<tr>
<td>Application for request to record</td>
<td>$380 for application, $68 for advertisement</td>
</tr>
<tr>
<td>Application for registration and grant</td>
<td>$380 for application, $68 for advertisement</td>
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<tr>
<td>Renewal</td>
<td>$540 per year</td>
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<table>
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<tr>
<th>Fee for Short-term Patent</th>
<th>HK S</th>
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<tbody>
<tr>
<td>Application</td>
<td>$755 for application, $68 for advertisement</td>
</tr>
<tr>
<td>Renewal</td>
<td>$1,080 per year</td>
</tr>
</tbody>
</table>

Patent WATCH-OUTS in Hong Kong
To ensure the evolution of the patent system in Hong Kong and to facilitate the development of Hong Kong into a regional innovation and technology hub, the Hong Kong government has commenced a comprehensive review of the patent system. In February 2013, the Hong Kong government announced the following key developments to be made to the local patent system:

1. An Original Grant Patent (‘OGP’) system is to be introduced, with substantive examination outsourced to other patent offices in the initial stage, and gradually building up an indigenous substantive patent examination capacity
2. Retention of the current re-registration system for grant of standard patent
3. Retention of the short-term patent system subject to certain refinements, such as making a substantive examination of short-term patents after granting a pre-requisite to commencement of infringement proceedings
4. Development of a full-fledged regulatory regime on patent agency services in the long run

The government plans to implement the OGP system in 2016/17 at the earliest.
similar goods/services or identical goods/services respectively and is likely to cause confusion to the public.

- It is identical or similar to a well-known trade mark.

A mark which consists of a sign that exclusively designates geographical origin is not registrable in Hong Kong unless it has acquired distinctiveness as a result of use. Names of countries and major cities around the world are unlikely to be able to acquire distinctiveness through use.

How LONG does legal protection last?
Trade marks are registered for a period of 10 years from the date of filing and may be renewed for further periods of 10 years upon payment of renewal fee.

Protection begins from the date of registration which upon grant is backdated to the filing date. However, no infringement proceedings may be commenced until the date the registration is entered into the register – i.e. the date of grant.

HOW do I register?
The applicant must submit to the Trade Mark Registry a completed form (Form T2), together with the applicant’s name and address, a clear graphical representation of the trade mark, a list of goods and/or services for which registration is sought, classified according to the International Classification of Goods and Services for Registration prescribed by the Nice Agreement, a statement about whether the trade mark is being used or intended to be used and the prescribed fee. A copy of Form T2 and fee listing is available at http://www.ipd.gov.hk/eng/forms_fees/trademarks_559.htm.

There are four stages in the process of examining an application for registration, (i) deficiency checking, (ii) substantive examination against the requirements under the Trade Marks Ordinance, (iii) acceptance of application and publication for opposition and (iv) registration and issue of certificate of registration.

If there is no problem in the application and all requirements for registration are met, the application will be accepted for registration. The particulars of the trade mark will be published in Hong Kong’s Intellectual Property Journal for opposition for a period of 3 months, and a certificate of registration will be issued to the applicant thereafter.

The average time to register a trade mark in Hong Kong is between six and nine months: Six months if no issues or objections are raised, nine months if there are minor deficiencies or office actions.

Please refer to the IPD website (www.ipd.gov.hk) for details and further information on the application and registration process. Registrations can be filed by post or in person at the address below:
Trade Mark Registry, Intellectual Property Department
24/F, Wu Chung House, No. 213 Queen’s Road East, Wanchai, Hong Kong China

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<tr>
<th>Fee</th>
<th>HK$</th>
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<tbody>
<tr>
<td>Application fee</td>
<td>$2000 plus $1000 per each additional class</td>
</tr>
<tr>
<td>Renewal fee</td>
<td>$2670 plus $1340 per each additional class</td>
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</table>

WHO can register?
The owner of a trade mark can make an application for a trade mark. There are no restrictions as to nationality or residency of the applicant. However, a Hong Kong address must be provided for service, to which correspondence from the Registry will be sent. Where the trade mark application is submitted by an agent, a Hong Kong address where the agent resides or carries on business activities must be provided.

Which LANGUAGES can I use?
Applications for trade mark registrations maybe made in English or Chinese.

How much does it COST?

Separate laws and systems regulate the registration of company names, business names and trade marks in Hong Kong. A company name registration with the Companies Registry or a business name registration with the Inland Revenue Department is not the same as a trade mark registration with the Trade Marks Registry. A business or company name registration is not an indication of trade mark rights or the rights to use the name as a trade mark in promoting or dealing in goods or services.

![Trade Marks WATCH-OUTS in Hong Kong](https://www.ipd.gov.hk/eng/intellectual_property/trademarks/how_to_classify.htm)
D. Registered Designs

WHAT is a Registered Design?
A registered design covers features of shape, configuration, pattern or ornament applied to an article by an industrial process. Two-dimensional designs such as those appearing on textiles or wallpaper may also be registered provided that they appeal to and can be judged by the eye in the finished product.

The owner of a registered design has the right to stop others from using his design to manufacture, import, use, sell or hire without his consent. A registered design right therefore assists the owner in protecting his market share. The right may also be licensed or assigned to third parties for a fee or royalty.

Registered Designs in Hong Kong: What you need to know
In order to be registered, the design must (i) be new, which means that, at the date of application for registration, the design must not be the same as a design registered or published in Hong Kong or anywhere in the world, or differ from such a design in immaterial details or features which are variants commonly used in the trade, and (ii) have an appearance that appeals to and can be judged by the eye. The following are not registrable as designs:

- A method or principle of construction.
- Features of shape or configuration of an article which are dictated solely by the function the article has to perform or are dependent upon the appearance of another article of which the article is intended by the designer to form an integral part.
- Articles where the appearance is not material i.e. aesthetic considerations are not taken into account to a material extent by persons acquiring or using the articles and would not be taken into account if the design were to be applied to the article.
- Designs where the publication or use of which would be contrary to public order or morality.
- Computer programs and protected layout-designs (topographies).
- Designs for works of sculpture (other than casts or models used or intended to be used as models or patterns to be multiplied by any industrial process), wall plaques, medals and medallions, and printed matter of a primarily literary or artistic character.

It is possible to claim the filing date of an earlier application filed in a country that is a member of the Paris Convention or WTO for protection of the same design, provided that the Hong Kong application is filed within six months of the earlier application. Therefore you should ensure that your design is not disclosed to others until an application has been filed.

Average time to register designs in Hong Kong is less than three months assuming all formalities are correct upon filing.

How LONG does legal protection last?
The registration of a design lasts for five years beginning from the filing date. It may be extended for additional periods of five years, up to a maximum of 25 years from the filing date.

HOW do I register?
To file an application, the applicant must submit to the Designs Registry a completed application form (Form 1 is available at http://www.ipd.gov.hk/eng/forms_fees/patents.htm), a set of clear images of the design, and payment of the filing fee and advertisement fee.

Although there is no substantive examination of a design application, the Registry has the power to refuse an application after examination if the application does not satisfy the formal requirements, or if the design appears not to be new or is not registrable for any other reason. The applicant will be given the chance to correct deficiencies.

Once the Registry is satisfied that the application is in order, it will register the design, publish the registration in the Hong Kong Intellectual Property Journal and issue a certificate of registration.

Please refer to the IPD website (www.ipd.gov.hk) for details and further information on the application and registration process. Registrations can be filed by post or in person at the address below:

Designs Registry, Intellectual Property Department
24/F, Wu Chung House, No. 213 Queen’s Road East, Wanchai, Hong Kong China
(852) 2838 6315

WHO can register?
Only the owner of a design is entitled to register a design. There are no restrictions as to nationality or residency of the applicant. However, a Hong Kong address must be provided for service, to which correspondence from the Designs Registry will be sent.

Which LANGUAGES can I use?
Applications for design registrations maybe made in English or Chinese.
A trade secret is a commercially valuable piece of information that is not known, or readily ascertainable, and gives the holder an economic advantage over competitors and customers.
4. Using CUSTOMS to block counterfeits

WHAT are Customs?
Hong Kong Customs and Excise Department (Hong Kong Customs) is responsible for enforcing the criminal aspects of infringement of intellectual property rights. It specifically investigates complaints alleging infringement of trade marks and copyright, and complaints alleging use of false trade descriptions. Hong Kong Customs helps IPR owners to enforce their rights in relation to copyright and trademark goods through border enforcement measures. Please note that according to the competences expressly declared by the Hong Kong Customs complaints alleging infringements of all kind of patents are not included in its competence.

Hong Kong Customs is made up of five branches including the Intellectual Property Investigation Bureau, which, as its name suggests, is focused on IP enforcement matters.

Customs in Hong Kong: What you need to know
Hong Kong Customs has wide powers of search and seizure, powers of arrest and discretion on whether to prosecute an infringer. Hence, the powers of Hong Kong Customs exceed those of customs departments in other regions/countries, as Hong Kong Customs carries out all of the above procedures without encountering bureaucratic conflict with other government departments. It can seize counterfeit goods from anywhere in Hong Kong, not only in harbour or border areas. However, Hong Kong Customs can only take enforcement action against transhipment of counterfeit goods – meaning goods that are unloaded or reloaded in some way, or overall shipments that are added to. It cannot take enforcement action against goods in transit – meaning shipments that are only passing through a port without additional loading or unloading. Because there is no official recordal system via which IPR owners can request that Hong Kong Customs monitor and notify you of suspected infringing goods which are being imported into Hong Kong, IPR owners should not rely on Hong Kong Customs to discover or monitor such shipments on their behalf. Instead IPR owners need to be proactive about monitoring this on their own.

WHAT can be registered?
There is no official recordal system in Hong Kong. However, IPR owners can report copyright infringement and trade mark counterfeiting activities by giving written notice to Hong Kong Customs.

How LONG does legal protection last?
The IPR owner must file a written notice to Hong Kong Customs to inform them of each suspected shipment.

HOW do I register?
The relevant registration involves the submission of a standard form to Hong Kong Customs which contains information of the IPR owner, information including proof of the alleged infringement, details of the authorised licensees/manufactures of the relevant products in Hong Kong or elsewhere, particulars of the expected import, authorisation of an agent (where applicable) and appointment letter in regard to a competent examiner to conduct subsequent seizure identification and undertake to give evidence and testify in court.

E-mail: customsenquiry@customs.gov.hk
Customs and Excise Department, Complaints Investigation Group, Departmental Complaints Officer 3/F, Customs Headquarters Building, 222 Java Road, North Point, Hong Kong
Complaints Hotline: (852) 8100 3553 (office hours); or Duty Controller: (852) 3759 2288 (outside office hours);

WHO can register?
The owner of a trade mark or copyright in a copyright work or their authorised agents.

Which LANGUAGES can I use?
The complaint can be lodged in Chinese or English.

How much does it COST?
There is no fee charge for lodging a written notice with Hong Kong Customs.

As Hong Kong Customs plays a significant role in facilitating the enforcement of trademarks by way of criminal action against infringers, it is important for trademark owners to work closely with Hong Kong Customs by providing as much information as possible. Such details will provide Hong Kong Customs with information to enable it to conduct meaningful investigations and to take the appropriate measures to seize the alleged infringing goods when found and commence prosecutions.

Hong Kong Customs has wide powers of search and seizure, powers of arrest and discretion on whether to prosecute an infringer.
5. Enforcing your IP

In the case of your IP assets being infringed in Hong Kong, there are three main avenues of enforcement which you can consider: civil litigation, criminal prosecution, and customs seizures (customs are described separately in Part 4 above).

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<tr>
<th></th>
<th>Civil</th>
<th>Criminal</th>
<th>Customs Actions</th>
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<tr>
<td>Copyrights</td>
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<td>Patents</td>
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<td>Trade marks</td>
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<tr>
<td>Registered designs</td>
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<td>Trade Secret</td>
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### Civil Litigation

Civil litigation proceedings may be instituted for patent, registered designs, copyright or trade mark infringements, and for breach of contracts involving trade secrets and confidential information. In addition, actions based on passing-off may assist in relation to infringing packaging and get-up. The Courts in Hong Kong are sophisticated and well equipped to deal with intellectual property disputes. The remedies which the Court may award include damages (or an account of profits), injunctions, and disposal of infringing goods. Furthermore, successful parties in civil litigation in Hong Kong may be awarded a portion of their legal costs from the unsuccessful party. Whilst civil litigation may at times be lengthy and costly, there are also other shorter and cheaper avenues available in clear cut cases. These may include actions for interim injunctions, summary judgment or default judgment.

### Criminal Prosecution

This applies mainly to the Copyright Ordinance, Trade Mark Ordinance and Trade Description Ordinance which provide criminal penalties against infringers. The Customs and Excise Department is responsible for enforcing the criminal aspects of infringement of intellectual property rights. Customs is very efficient in Hong Kong and has jurisdiction over both border areas and criminal IP infringements within Hong Kong.

### Enforcement WATCH-OUTS in Hong Kong

Criminal enforcement appears attractive to IPR holders since it is funded by the government and may result in criminal sanctions (i.e. fines and imprisonment). However, IPR holders will have little control over the process and Hong Kong Customs will generally act only in the most clear-cut cases. For more complex cases, civil litigation may be the only viable option. Furthermore, damages, award of legal costs, injunctions and other remedies are only available through civil litigation. Litigation can however, be complex and professional advice should be sought if you intend to commence proceedings.

The Patent Ordinance, Copyright Ordinance and Trade Marks Ordinance contain provisions against making groundless threats of infringement. Therefore, any proposed demand letter should be carefully drafted to make clear the legal basis upon which your potential infringement claim is premised. A statement which merely notifies the other party of the existence of a patent, copyright or trade mark does not constitute a threat of proceedings.

**If your IP assets are being infringed in Hong Kong, there are three main avenues of enforcement which you can consider: civil litigation, criminal prosecution, and customs seizures.**
6. RELATED LINKS and Additional Information

› Visit the China IPR SME Helpdesk website for further relevant information, such as how to deal with business partners in China

› Visit the Helpdesk blog www.yourIPinsider.eu for related articles on IP in South-East Asia and China

› World Intellectual Property Organisation (WIPO) – http://www.wipo.int/

› Intellectual Property Department of Hong Kong (IPD) – http://www.ipd.gov.hk/

› Customs and Excise Department of Hong Kong – http://www.customs.gov.hk/

› Hong Kong Trade Development Council – http://www.hktdc.com/
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.

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