

Protect your Product Designs in China: Know Before You Go

Product design is often one of the most important aspects of a consumer product - the way companies shape and package their goods plays a crucial role in customers purchasing decisions. Distinctive and easily recognisable visual design carries the identity and reputation of a particular brand across the globe, including the vast Chinese market. Expanding into China represents an exciting opportunity for European SMEs to reap additional profits, but **how can enterprises simply and inexpensively protect their designs?** The most common types of intellectual property relevant to the design of the goods themselves are design patents and copyright, while packaging can be protected in China under additional types of IP law, such as the Trademark Law, the Patent Law, the Copyright Law and the Anti-unfair Competition Law.

Given the variety of options available, it is recommended to carefully plan a strategy of combined and layered protection through registration of IP. Depending on your specific business and your specific budget needs, your SME **may choose to opt for only one kind of registration or may choose to combine different registrations** as a bundle of rights for more comprehensive protection. While products themselves and technical features of packaging can be protected as utility models or invention patents, packaging and aesthetic features of industrial products are most commonly protected under **design patent** registration. Design patents include any of the following external features of a product that are rich in aesthetic appeal and are fit for industrial application:

1. The shape of a product
2. The pattern of a product
3. The shape and pattern of a product
4. The shape and colour of a product
5. The shape, pattern and colour of a product

The colour of a product alone cannot constitute the design of a product unless the change of colour can be regarded as a pattern.

It is also worth noting that you have 6 months from the date you first publicly use or publish a design, or apply for a design patent in Europe to file **an international patent application**. Therefore, it is strongly recommended that you consider whether or not you wish to seek design patent protection for your design before you publicly use or publish it. Currently, it takes approximately 9 months to 1 year to obtain a design patent in China. Once granted it will give you the exclusive right to use or allow others to use your design in China for 10 years.

Copyrights can be a useful means to protecting creative works on its own or adding another layer of protection to compliment other IP rights. Copyright can be an interesting option for protecting the exclusive rights of packaging in China: as the object of copyright protection is broad it can also cover original shapes and ornamental features or works of applied art or fine art (such as 2-D or 3-D visual works). Unlike in Europe, China offers a registration system for copyright. Copyright registration through the Copyright Protection Centre of China (CPCC) is easy, cost-effective and as presumptive evidence of ownership, it greatly reduces the preparation of evidence should you need to enforce your copyright.

Copyrightable works include architectural or engineering drawings, works of fine art, applied art, literary works, music or sound recordings, dramatic or cinematic works, compilations, software, etc. However, it is important to remember that **copyright protects only the expression of an idea, not the idea itself**. Given this, it is vital to keep evidence of creation and ownership so that you can prove ownership. Always indicating the author's name, date of creation, and using the © symbol on the work are simple steps you can take. Having a copy of your work notarised by a Chinese notary is also an easy and relatively inexpensive way to establish admissible evidence of creation and authorship.

Additionally, it is wise to ensure any contracts with third parties stipulate comprehensive provisions; for example, when creating works for others or commissioning others to create works for you, make sure that your contract clearly states who owns the copyright to the works. Unlike in many other countries, **in China the commissioned party owns the copyright to the works unless the contract states otherwise**.

The point to remember above all is to register your intellectual property, and make sure this is done before it is publicly used. Consider the minimum level of protection available and then consider the ways in which you can assign layered protection. Taking early preventative steps is a far easier and more cost-effective strategy for protecting your product designs; for further information on design patents, copyright and the enforcement proceedings available download the Helpdesk guides for free from www.china-iprhelpdesk.eu/publications



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