

How to Protect Interior Designs of Shops in China

When Brent Hoberman, founder of online interior design and furniture store Mydeco.com, made a trip to China one man was particularly keen to meet him. When they met, the man explained that he wanted to launch a web business but had no idea how to do it until he found Mydeco.com and copied it. He only wished to express his appreciation personally to Mr Hoberman.

In 2011 the residents of Kunming, a city in the South-Western region of China were delighted to find an IKEA shop there. The copycat store is an enormous, multi-level shop that sells modern IKEA-like furniture and even copies the distinctive blue and yellow branding. The residents realized it was a fake, but have little choice as the closest real IKEA is in Chongqing, 940km away.

Picture source: [brandchannel](#)

Store layouts, colours and designs become synonymous with a brand, so imitation of a store interior is very damaging to companies. At times it is increasingly difficult to separate the real from the fake.

There is a saying in China, 山高皇帝远 (shāngāo huángdìyuǎn), which means *the mountains are high and the emperor is far away*, a saying that perfectly encapsulates the reason why some counterfeiting still happens in China, particularly in faraway places such as Kunming.

For companies which focus on the interior design of shops, there are three types of intellectual property protection available to businesses: trade dress, copyright and design patents.

Trade dress covers the theme and elements of the interior design of a commercial space. It must be unique with distinctive characteristics so as to be able to signify the source to consumers. It is contentious as to whether a design is source designating or just decorative, as this is usually determined by the reaction of customers. So if a theme is not distinctive, then it is necessary to show that the interior design has become distinctive in the minds of consumers who associate it with the source. China's Anti-unfair Competition Law provides some protection for unregistered trade dress, as well as trademarks, packaging, and trade secrets.

Copyright covers instructions, architectural designs and industrial and graphic designs. Unlike patent and trademark protection, copyrighted works do not require registration for protection. China grants protection to people from countries belonging to international copyright conventions of which China is a member. However, copyright owners may wish to register voluntarily with China's National Copyright Administration (NCA) to establish evidence of ownership, should enforcement action become necessary.

Design patents cover ornamental designs of functional items, such as furniture. Unlike in Europe, no protection is offered to unregistered designs in China; it is a first-to-file jurisdiction. On top of that designs must be novel. This means the design cannot have been

disclosed to the public before the application is filed, otherwise it could be invalidated later. Therefore if you plan to apply for a design patent in China make sure your design is treated as a trade secret and not made public in any country before the application has been made.

Despite imitation being the highest form of flattery, the number of counterfeit shops is diminishing and there is greater emphasis on the need for creativity and authenticity. Chinese consumers are more discerning and affluent than ever before and want to display that by buying genuine, not fake, products. This at least should inspire some confidence in European businesses thinking about entering China, and reassure them that if they put in place the right IP strategy then it more often than not will pay off.