

China Trademark Registration for Foreign Companies: File Before Someone Else Does | Dan Young Business Consultancy

Dan Young Business Consultancy — www.danyoungcpa.com

Unofficial English translation prepared for reference only. The official Chinese text prevails.

Contents

How the Filing System Actually Works	1
The Classification Trap	2
What Can and Cannot Be Registered	2
Enforcement: What a Registration Gets You	2
Trademark Squatters and Bad Faith Filings	3
The Cost of Being Late	3

There is a particular kind of panic I have seen more times than I can count. A foreign company has been selling products in China for a few years, usually through a distributor or a trading partner. Business is growing. They decide to formalize their presence — set up a WFOE, hire local staff, invest in marketing. And then their trademark application gets rejected because someone else already registered their brand name in China six months earlier.

Sometimes it is a distributor who saw an opportunity. Sometimes it is a factory they worked with who figured they would never find out. Sometimes it is a completely unrelated third party who happened to notice the brand was gaining traction without a Chinese registration. The result is the same: the brand you built is now legally owned by someone else in the world's second-largest market, and getting it back will cost you far more than registering it would have.

China operates on a first-to-file trademark system. This is the single most important thing to understand. Unlike the United States, where trademark rights generally arise from actual use in commerce, Chinese trademark rights arise from registration. Whoever files first gets the rights. Whether they ever sold a single product under that name does not matter. Whether they are a legitimate business or a trademark squatter does not matter until you prove otherwise, and proving otherwise is expensive.

How the Filing System Actually Works

Trademark registration in China is administered by the China National Intellectual Property Administration, or CNIPA. The process follows a predictable path, though the timelines have been improving as the agency has invested in digitization and staffing.

You file an application. This can be done directly with CNIPA or through the Madrid System if your home country is a member. The application goes through a formalities examination — are all the fields filled out, is the fee paid, are the goods and services classified correctly under the Nice Classification system that China uses. If the formalities check out, CNIPA publishes the application, opening a three-month opposition period during which anyone with prior rights can challenge it.

Then comes the substantive examination. CNIPA examines whether the mark is distinctive, whether it conflicts with prior registrations, whether it contains prohibited elements like national emblems or deceptive terms. If the examination passes, the mark is registered and a certificate is issued.

From filing to registration, the process typically takes 12 to 18 months. That timeline has been shrinking — straightforward applications in classes with fewer filings sometimes get through in nine months — but it is still a long enough window that companies who delay filing leave their brands exposed.

One advantage of China's system: registration creates a rebuttable presumption of validity. If you hold a Chinese trademark registration and someone else is using a confusingly similar mark, you have a significantly easier path to enforcement than you would relying on unregistered rights. The registration certificate is your starting point in any dispute, and courts and administrative agencies take it seriously.

The Classification Trap

China uses the 45-class Nice Classification system, but the way classes are subdivided matters more in China than in many other jurisdictions. CNIPA breaks each class into subclasses, and goods or services in different subclasses within the same class may not be considered similar. This means a trademark registration that covers "clothing" in Class 25 might not automatically protect against someone registering the same mark for "footwear" in Class 25 if CNIPA considers them to be in different subclasses.

The practical advice is straightforward: when you file in China, list your goods and services as broadly and specifically as the system allows. Do not assume that a general category description covers everything in that category. Work with someone who knows which subclasses matter for your industry and who can draft the specification to maximize your coverage. The filing fee is low enough — officially 300 RMB per class for up to 10 items — that skimping on the specification is a false economy.

What Can and Cannot Be Registered

Chinese trademark law permits registration of words, devices, letters, numbers, three-dimensional signs, color combinations, sounds, and combinations of these. This covers most of what foreign companies need to protect. Logos, brand names in Latin characters, brand names in Chinese characters, slogans, and even sounds can all be registered.

What cannot be registered includes marks that are identical or similar to state names, national flags, or emblems; marks that are deceptive about the quality or origin of goods; marks that are generic or merely descriptive without acquired distinctiveness; and marks that are identical or confusingly similar to a prior registration for the same or similar goods.

For foreign brands, the Chinese-character version of your brand name deserves special attention. Many foreign brands discover, sometimes years into their China operations, that their brand has acquired a Chinese name in the market — something customers and distributors started using organically. If you do not register that Chinese name yourself, someone else can. And if the Chinese name your customers actually use is registered by a third party, you have a problem that is sometimes harder to solve than losing your English-language mark.

The smarter approach is to develop your Chinese brand name intentionally. Pick something that sounds reasonably close to your original name, has positive connotations in Chinese, and is distinctive enough to register. File it at the same time you file your English-language mark, or file a series of marks together. The cost of an additional application is trivial compared to the cost of litigation to recover a Chinese name that someone else registered first.

Enforcement: What a Registration Gets You

A Chinese trademark registration gives you several enforcement tools, and the landscape has improved significantly over the past decade.

Administrative enforcement through local Administration for Market Regulation offices is often the fastest and cheapest option. If someone is selling counterfeits or using a confusingly similar mark on the same goods, you can file a complaint with the local AMR office where the infringement is occurring. The AMR can raid the premises, seize infringing goods, and impose fines. This does not produce monetary compensation for you, but it stops the infringement quickly.

Civil litigation through the specialized IP courts in Beijing, Shanghai, Guangzhou, and other designated cities is available for damages and injunctions. Chinese courts have become more sophisticated in IP matters, and damage awards have been increasing — though the largest awards still tend to go to well-known Chinese brands rather than foreign plaintiffs. The key advantage of litigation is the injunction: a court order that the infringer must stop using the mark, backed by contempt powers.

Customs recordation is an underused tool. You can record your registered trademark with China Customs, and if customs officers discover suspected infringing goods during an inspection, they will detain the goods and notify you. If you confirm the goods are infringing, customs can seize and destroy them. This is especially valuable for companies whose products are counterfeited for export, because the goods get stopped before they leave China.

Online enforcement has become an important part of the picture. Major Chinese e-commerce platforms, including Alibaba's Taobao and Tmall, JD.com, and Pinduoduo, have takedown procedures that accept registered trademark certificates as a basis for removing infringing listings. The quality of enforcement varies by platform, but having a Chinese trademark registration is the price of admission — without one, the platforms will not act on your complaint.

Trademark Squatters and Bad Faith Filings

The 2019 amendment to the Trademark Law introduced explicit provisions targeting bad faith filings. Article 4 was amended to state that trademark applications filed in bad faith without intent to use shall be rejected. Article 68 was amended to provide that bad faith trademark applications filed for the purpose of seeking improper benefits, disrupting the trademark registration order, or engaging in other improper acts, may be subject to administrative penalties.

These provisions have made a difference. CNIPA has been more willing to reject applications that appear to be filed by known squatters, and the opposition and invalidation processes have become somewhat more accessible. But the first-to-file principle remains the foundation of the system, and the best defense against a squatter is still your own earlier filing. A squatter cannot register your exact mark for your exact goods if you already did.

For companies that discover their brand has been squatted, the options are cancellation based on non-use if the squatter has not actually used the mark for three years; invalidation based on bad faith if the filing was clearly made with knowledge of your prior rights and without genuine intent to use; or assignment — buying the mark from the squatter, which is often the fastest resolution but sets a terrible precedent and rewards bad behavior.

The Cost of Being Late

I have a client who spent 40,000 RMB registering their full trademark portfolio across all relevant classes when they entered China. They grumbled about the cost at the time. Two years later, a competitor in their industry spent more than 800,000 RMB in legal fees trying to recover a brand name that a former distributor had registered out from under them, and they still had not resolved it.

The numbers speak for themselves. A comprehensive Chinese trademark filing — multiple classes, Chinese and English versions, logo and word mark — costs a few thousand RMB in official fees and professional costs. Litigation to recover a mark from a squatter routinely runs into hundreds of thousands of RMB, takes years, and has no guaranteed outcome.

If you are even thinking about entering the Chinese market, file your trademarks now. Not when you set up the WFOE. Not when you sign the distributor agreement. Now. A trademark application is one of the cheapest insurance policies you can buy for your China business.

This article is provided by Dan Young Business Consultancy for general informational purposes only and does not constitute legal advice. For assistance with trademark registration, brand protection, or IP enforcement for your WFOE or subsidiary in Shenzhen, Guangzhou, Foshan, or Dongguan, please contact us directly.