

Analysis Report on Trademark Litigation of European Enterprises in China

Executive Summary

This report analyzes the trademark litigation environment for European businesses in China. It covers the legal framework, common disputes, litigation trends, challenges, strategies, key court decisions, and external perspectives.

China's "first-to-file" trademark system, governed by the Trademark Law, makes early registration vital. The law includes provisions against bad-faith registrations, a common issue where entities register foreign brands preemptively. European companies often face infringement, counterfeiting, and bad-faith filing disputes. Enforcement options include administrative actions (fast, low-cost, no damages), civil litigation (allows damages, including punitive, handles complex issues), and criminal prosecution (severe cases). Specialized IP courts aim to improve adjudication.

Statistics show high win rates (often over 70-80%) for foreign plaintiffs in Chinese courts, suggesting judicial impartiality. Damage awards are increasing, supported by higher statutory limits and punitive damages for malicious acts. However, challenges include evidence gathering difficulties, procedural complexities, potential local protectionism, and proving bad-faith intent.

Effective strategies involve proactive early and broad trademark filing (including Chinese versions) and monitoring. Reactive strategies include using opposition, invalidation, non-use cancellation, and increasingly, unfair competition lawsuits against bad-faith actors.

Landmark cases (Siemens, Lego, Lafite) show courts tackling infringement and bad faith, awarding significant damages. New complexities include Anti-Suit Injunctions (ASIs) in global licensing disputes (prompting EU WTO challenges) and the Anti-Foreign Sanctions Law (AFSL), which allows IP seizure as a countermeasure, adding geopolitical risk.

European business groups highlight ongoing practical enforcement difficulties despite legal reforms. Success requires understanding the legal and practical landscape, experienced local counsel, and adaptable strategies considering commercial and geopolitical risks.

I. The Legal Framework Governing Trademarks in China

A. Core Tenets of the PRC Trademark Law for Foreign Entities

China's Trademark Law (amended most recently in 2019) governs trademark protection.¹ It aims to administer trademarks, protect exclusive rights, ensure quality, maintain brand credibility, and protect consumers.¹ Registered trademarks cover goods, services, collective marks, and certification marks.¹ Registration grants exclusive use rights.¹ Any entity, including foreign ones, must apply for registration to gain these rights.¹

The law mandates good faith ("honesty and credibility") in application and use (Article 7).¹ Article 4 specifically targets bad-faith applications not intended for use, allowing CNIPA to reject them proactively.¹

Certain signs cannot be registered, including state symbols, discriminatory signs, deceptive signs, and those detrimental to socialist morality or lacking distinctiveness (e.g., generic terms, purely functional shapes) unless secondary meaning is acquired.¹ Geographical names are also generally restricted.²

Foreign entities without a habitual residence or business office in mainland China must appoint a local trademark agency.⁹ Those with established operations (WFOEs, JVs, etc.) can file directly.¹⁰ Consistent Chinese translations of names/addresses are advised, and foreign documents need Chinese translations.⁹

China's membership in international agreements like the Paris Convention, TRIPs, and the Madrid System facilitates protection for foreign entities, granting national treatment and allowing international registration routes.¹⁰

B. Registration Procedures and Considerations (National vs. International)

European companies can register trademarks via direct **national filing** with CNIPA or **international registration** via the Madrid System.

National filing involves submitting specific documents (application, mark representation, applicant details, goods/services list per CNIPA's classification, power of attorney) directly to CNIPA.⁷ CNIPA's unique subclass system is crucial.¹³ The process includes formality review, substantive examination (absolute grounds, prior rights conflicts), publication for opposition (3 months), and registration if successful.⁹ National filing is generally faster.¹³

International registration uses the Madrid System. A home country registration/application allows filing with WIPO, designating China.¹⁰ WIPO forwards it

to CNIPA for examination under Chinese law, considering CNIPA's subclass system implicitly.¹⁰ While convenient, Madrid filings based on broader Nice classes might leave gaps compared to CNIPA's detailed subclasses, potentially exposing brands to squatters in specific niches.¹³ National filing allows more precise tailoring to CNIPA's system.¹³

Priority can be claimed within six months of an earlier filing in a Paris Convention country or based on use at a recognized international exhibition in China.⁹

C. Enforcement Avenues: Administrative, Civil, and Criminal Pathways

Registered trademark owners have three main enforcement routes:

Administrative Enforcement: Pursued via local Administrations for Market Regulation (AMRs).⁶ AMRs can conduct raids, seize goods, and issue fines and cease-and-desist orders.¹ Advantages: relatively fast and low-cost, good for clear counterfeiting.⁶ Disadvantages: AMRs cannot award damages to the rights holder, fines may be low, injunctions are often geographically limited, and concerns exist about transparency and local protectionism.¹⁵ Can be useful for evidence gathering.¹⁵

Civil Litigation: Handled by People's Courts, increasingly specialized IP Courts.⁶ Offers broader remedies: injunctions, monetary damages (based on losses, profits, or royalties; statutory damages up to RMB 5 million), and destruction orders.¹ Punitive damages (1-5 times compensatory amount) are available for malicious infringement.¹ Preferred for complex cases, seeking substantial damages, or tackling bad-faith registration via unfair competition claims.¹⁵

Criminal Prosecution: Reserved for severe infringement (especially counterfeiting meeting specific thresholds).¹ Handled by Public Security Bureau (PSB) and Procuratorate, leading to fines and imprisonment.¹ Offers the strongest deterrence but is harder to initiate.⁶ Criminal IP enforcement actions increased significantly in 2024.²³

Choosing the route requires strategic evaluation, balancing speed, cost, available remedies, and desired deterrence.¹⁵

D. The Role of CNIPA and Specialized IP Courts

CNIPA (China National Intellectual Property Administration) is the central authority for trademark registration and administration, handling applications, oppositions, cancellations, and invalidations.¹ It also formulates IP policy and targets

malicious filings.³⁰ Its website offers resources like databases and guidelines.¹²

Specialized IP Courts (in major cities like Beijing, Shanghai, Guangzhou, and tribunals elsewhere) and the SPC IP Court (for certain appeals) were established to handle complex IP disputes.⁶ They aim to improve adjudication quality, consistency, and efficiency, potentially benefiting foreign litigants by concentrating expertise and reducing local protectionism concerns.³⁵

E. The Anti-Foreign Sanctions Law (AFSL): A New Dimension of Risk for IP Assets

The Anti-Foreign Sanctions Law (AFSL), enacted in 2021 and detailed further in 2025 regulations, allows China to impose countermeasures against foreign entities involved in sanctions deemed harmful to Chinese interests (including sovereignty, security, or development interests).⁴⁰

Countermeasures are extensive and include visa denial, asset seizure/freezing, and restricting transactions within China.²³ Crucially, the 2025 regulations explicitly state that seizable assets include **intellectual property rights**.²³ Prohibited activities can span science/technology, legal services, trade, etc..⁴⁰

This means European companies complying with foreign sanctions impacting China could face AFSL countermeasures.⁴⁰ Valuable IP assets in China are potentially vulnerable to seizure as a geopolitical tool, not just in standard IP disputes.⁴¹ This adds significant political risk to IP management, requiring companies to assess this vulnerability beyond traditional legal factors, especially in sensitive sectors or if their home country imposes sanctions on China.⁴⁰

II. Prevalent Trademark Disputes Involving European Companies

European firms commonly face trademark infringement, bad-faith registrations, and counterfeiting.

A. Understanding Trademark Infringement in the Chinese Context

Infringement under Article 57 of the Trademark Law includes unauthorized use of identical or similar marks on identical or similar goods likely to cause confusion, selling infringing goods, counterfeiting marks, altering marks, facilitating infringement, etc..¹

Counterfeiting (making/selling goods with fake marks) is a major issue, often tackled via administrative raids.⁶

The **likelihood of confusion** standard is key for similar marks/goods.¹ **Well-known marks** receive broader protection beyond registered goods/services if recognized during a dispute, but using the term "Well-Known Trademark" in advertising is banned.²

Original Equipment Manufacturing (OEM) for export presents complexities, as manufacturing occurs in China and can conflict with domestic trademark rights, even if goods are sold abroad.⁸ The scale of China's market and manufacturing amplifies infringement impacts globally.⁶

B. Bad-Faith Registrations: A Persistent Threat

Bad-faith registration involves preemptively filing trademarks known to belong to others, exploiting China's "first-to-file" system.⁷ Motives include extortion, legitimizing counterfeits, free-riding on reputation, market blocking, or malicious litigation.⁷ This is a widespread problem.⁷

Legal tools to combat bad-faith marks include:

- **Opposition/Invalidation Grounds:** Article 4 (no intent to use), Art. 7 (good faith), Art. 44 (improper means), Art. 15 (agent preemption), Art. 32 (prior use/rights), Art. 13 (well-known marks).¹ Relative grounds challenges usually have a 5-year limit.⁷
- **Non-Use Cancellation:** If a mark isn't genuinely used for 3 consecutive years, anyone can apply for cancellation.⁷ Often simpler than proving bad faith.
- **Civil Litigation (Unfair Competition):** Increasingly used against patterns of bad-faith conduct, allowing damages and broader injunctions.²²

CNIPA also actively rejects/invalidates malicious filings.³¹ Despite efforts, the problem persists due to high application volumes and sophisticated squatters.⁴ Proving prior use/influence or bad faith remains challenging, emphasizing the need for early registration.⁷

C. Counterfeiting Challenges

Counterfeiting involves making/selling goods with identical/indistinguishable marks.⁶ It's often linked to bad-faith registration, where the squatter uses the registration to shield counterfeit operations.⁴⁶ Enforcement uses administrative raids, civil suits (injunctions, damages), and criminal prosecution for severe cases.¹ E-commerce platforms present new challenges requiring online monitoring and takedowns.⁴⁸ Difficulties include scale, traceability, counterfeiter sophistication, and sometimes

insufficient penalties.⁶

III. Trademark Litigation Outcomes: Statistical Insights (Past 5-10 Years)

A. Litigation Volume and Foreign Party Involvement Trends

IP litigation in China has surged.³⁵ Patent cases rose dramatically pre-2018 ²⁴, while trademark cases remain dominant (58% of IP cases in 2022) despite a recent dip.³⁸ CNIPA receives millions of trademark applications annually.⁴ Foreign entities are significantly involved and growing, comprising ~10% of SPC IP Court cases and 30-40% at Beijing IP Court.³⁵ However, foreign cases are a small fraction of the total IP activity, driven partly by non-market factors like subsidies.⁸

B. Comparative Win Rates: European vs. Domestic Litigants

Data consistently shows high win rates for foreign plaintiffs in Chinese IP courts, suggesting judicial impartiality in infringement cases.

- Foreign plaintiffs often win 70-80%+ of infringement cases against domestic defendants.¹⁴
- Success rates can be comparable to or even higher than domestic plaintiffs vs. domestic defendants.³⁵
- High win rates might reflect strong case selection by foreign firms.

Table 1: Comparative IP Litigation Win Rates in China

Case Type Scenario	Plaintiff Win Rate (%)	Data Source / Period	Snippet ID(s)
Foreign Plaintiff vs. Domestic Defendant (Patent)	77%	Unspecified Study	38
Domestic Plaintiff vs. Domestic Defendant (Patent)	74%	Unspecified Study	38
Domestic Plaintiff vs. Foreign Defendant (Patent)	63%	Unspecified Study	38

Foreign Plaintiff vs. Domestic Defendant (General IP)	~77%	Beijing Chaoyang Court (2014-22)	35
Foreign Litigant (Overall, vs. Domestic)	68%	Beijing IP Court (Period Unspec.)	35
Foreign Plaintiff vs. Domestic Defendant (Software Copyright)	85.3%	CIELA Database (2010-19)	20
Domestic Plaintiff vs. Domestic Defendant (Software Copyright)	93.2%	CIELA Database (2010-19)	25

Note: Win rates definitions and methodologies may vary between sources.

C. Damage Award Analysis: Trends, Calculation, and Punitive Measures

Damage awards in Chinese IP cases are trending significantly upwards.¹⁹

- Calculation follows a hierarchy: rights holder's losses -> infringer's profits -> reasonable royalties .
- Statutory damages (if others hard to prove) increased to RMB 5 million (approx. USD 700k) in 2019.¹⁸
- Punitive damages (1-5 times calculated amount) are increasingly applied for malicious infringement.¹ The SPC provides guidance on application.⁵⁴
- Evidentiary hurdles for proving losses/profits remain ²⁴, but evidence obstruction rules allow courts to make adverse inferences.²⁶
- Foreign plaintiffs in software cases received much higher average damages than domestic ones.²⁰

Table 2: Notable Trademark and Related IP Damage Awards in China

Case Name/Brand	Year	Court Level / Body	IP Type	Award Amount (Approx.)	Key Factors Noted	Snippet ID(s)
Siemens AG vs.	~2023	SPC (Appeal)	Trademark Infringeme	RMB 100 million	High reputation	26

Qishuai et al.			nt / Unfair Comp.	(~USD 13.8M)	, Bad faith, Evidence obstruction, Shell company	
New Balance vs. New Boom	2017	Court (Unspec.)	Trademark Infringement	RMB 10 million (~USD 1.5M)	Logo similarity, Confusion	
Lego vs. Lepin	~2018/19	Court (Unspec.)	Copyright / Trademark Infringement	Damages awarded (amount unspec.)	Blatant copying, Raids/Seizures	
Château Lafite Rothschild vs. Nanjing Jin XX	Post 2016	Court (Unspec.)	Trademark Infringement (post-inval.)	Damages awarded (amount unspec.)	Well-known mark, Bad faith registration previously invalidated by SPC	26
Xiaomi vs. Zhongshan Povos et al.	~2020	Jiangsu High Court	Trademark Infringement / Unfair Comp.	Punitive damages applied	Malicious infringement	54
Synthes GmbH vs. Double Medical	~2023/24	SPC (Appeal)	Patent Infringement	> RMB 20 million	Foreign plaintiff success	35
Limagrain (Heng XX Seed) vs. Henan Jin XX	2025	SPC IP Court	New Plant Variety Rights	> RMB 53 million	Highest PVR award, Punitive damages applied	60

EV Trade Secret Case (Unnamed Parties)	~2024	Court (Unspec.)	Trade Secret Misappropriation	RMB 640 million (punitive)	Mentioned in SPC Work Report, High punitive award (though defendant bankrupt)	²¹
Trade Secret Case (Ref: (2023) 最高法知民终1590号)	2023	SPC IP Court	Trade Secret Misappropriation	RMB 605 million (~USD 89M)	Record high damages	²⁸
Trade Secret Case (Ref: (2022) 最高法知民终1816号)	2022	SPC IP Court	Trade Secret Misappropriation	RMB 201.5 million (~USD 28M)	Significant damages	²⁸

Note: Some details like specific court levels or exact years may be inferred or approximate based on snippet context. Currency conversions are approximate.

IV. Obstacles and Challenges in Trademark Enforcement

A. The Evidence Conundrum: Gathering and Admissibility

Securing sufficient, admissible evidence is a major hurdle, especially for calculating damages.²⁴ China lacks broad pre-trial discovery.¹⁵ Rights holders rely on administrative raids, private investigators, or court-ordered measures.¹⁵ Evidence obstruction rules allow courts to make adverse inferences if infringers refuse to provide data.²⁶ Notarization and legalization/apostille requirements for foreign evidence add complexity and cost.¹⁹ Proving subjective bad faith or prior use/influence requires substantial, often hard-to-get, evidence.⁷

B. Navigating Procedural Complexities and Timelines

The multi-pathway system (administrative, civil, criminal) and specialized courts create procedural complexity.⁶ Choosing the right venue/route is critical.⁶ Jurisdiction

rules must be followed . Timelines vary: administrative is fastest ¹⁵, civil litigation takes months to years.²⁰ Strict adherence to deadlines and formal requirements (including notarization/apostille) is essential.⁷

C. Addressing Discretionary Enforcement and Potential Bias

Concerns persist about discretionary enforcement, especially administrative actions where local protectionism may influence outcomes.¹⁵ While some businesses worry about judicial bias favoring local firms ⁶¹, statistics show high win rates for foreign plaintiffs in IP courts.³⁵ Bias seems less likely in formal judgments (especially IP courts) and more likely in administrative discretion or a chilling effect from the broader politicized business environment.¹¹

D. Proving Malice: The Difficulty of Establishing Bad Faith

Proving subjective bad faith (knowledge, intent to free-ride/extort, lack of use intent, squatting pattern) for claims under Art. 4, 7, 15, 32, 44 or for punitive damages is inherently difficult.¹ Squatters use tactics to hide intent.¹⁸ While success rates in challenges have reportedly improved ¹⁸, the high evidentiary burden often pushes rights holders towards non-use cancellation, which focuses on objective lack of use.⁷

V. Effective Strategies for European Trademark Protection and Defense

A. Proactive Measures: Filing Early, Broadly, and Strategically

Early registration is the best defense due to the "first-to-file" system.⁷ File **broadly** across relevant classes and CNIPA's specific **subclasses** . Register **Chinese language versions** of the brand. Consider defensive filings cautiously, balancing coverage with genuine use intent.¹ Conduct **vigilant monitoring** of databases and the market.⁷

B. Tackling Bad-Faith Marks: Tactical Use of Opposition, Invalidation, and Non-Use Cancellation

Use these administrative tools strategically:

- **Opposition:** File within 3 months of publication if a problematic application is found .
- **Invalidation:** File after registration (within 5 years for relative grounds, anytime for absolute grounds).⁷ Success rates reportedly improving.¹⁸
- **Non-Use Cancellation:** Apply if a mark isn't used for 3 consecutive years; often simpler than proving bad faith.⁷

These actions can be used defensively, e.g., filing invalidation to counter an infringement suit by a squatter.⁴⁶

C. Civil Litigation as a Tool Against Squatters (Unfair Competition)

Use unfair competition lawsuits against patterns of bad-faith conduct (hoarding, vexatious litigation) . Advantages include potential **damages** and **broader injunctions** prohibiting future squatting.²² Cases like InSinkErator and BRITA show success.²² Requires proving prior rights and defendant's bad faith.²²

D. Strategic Selection of Enforcement Routes

Choose based on infringement type, complexity, scope, desired remedy (cessation vs. damages), infringer profile, and resources . Admin: fast, low-cost, good for simple counterfeiting.¹⁵ Civil: complex cases, damages, punitive damages, unfair competition claims.¹ Criminal: severe cases, maximum deterrence.¹ Often, a combined approach works best.¹⁵ Experienced local counsel is vital.⁶

E. The Role of Monitoring, Negotiation, and Settlement

Continuous **monitoring** is essential.⁴⁶ **Negotiation** is possible but requires caution with bad-faith actors who may stall or demand high prices; CNIPA may reject transfers of bad-faith marks.⁷ **Settlement** is common.³⁷ **Re-branding** is a costly last resort.⁷

VI. Landmark Rulings and Their Implications

A. Key Court Decisions Impacting European Brands

- **Siemens AG v. Qishuai et al.:** Landmark RMB 100M damage award upheld by SPC for blatant infringement/unfair competition. Showed potential for high damages, use of evidence obstruction rules, and piercing shell companies.²⁶
- **Lego Group v. Lepin:** Successful combined administrative, criminal, and civil actions against large-scale counterfeiter .
- **Château Lafite Rothschild v. Nanjing Jin XX:** SPC supported cancellation of bad-faith mark infringing well-known unregistered "LAFITE" and Chinese equivalent "拉菲".²⁶
- **Arredo 3 S.r.L. v. Ai Le Duo:** Successful invalidation based on prior use/reputation and bad faith used defensively against squatter's infringement claims.⁴⁶
- **InSinkErator & BRITA Cases:** Established patterns of bad-faith registration as actionable unfair competition, allowing damages and broader injunctions.²²

- **Synthes GmbH v. Double Medical:** Example of significant damages (>RMB 20M) awarded to a foreign plaintiff in patent infringement.³⁵

B. Case Law Shaping Bad Faith, Damages, and Prior Rights Doctrines

Courts are increasingly tackling **bad faith** using various legal grounds and unfair competition law.²² **Damage awards** are rising, guided by evidence obstruction rules and punitive damages principles (e.g., Xiaomi case⁵⁴), though proving amounts remains challenging.²⁷ **Prior rights** (Art. 32, including unregistered marks with influence, copyright) are recognized, but require proof of reputation in China.⁷ SPC Guiding/Typical Cases enhance predictability.³⁹

C. The Evolving Landscape of Anti-Suit Injunctions (ASIs) and Global Licensing Disputes (WTO Cases)

Chinese courts have issued **Anti-Suit Injunctions (ASIs)** prohibiting foreign SEP holders (e.g., Nokia, Ericsson) from litigating elsewhere, while asserting jurisdiction to set global FRAND royalty rates.⁶¹ The EU argues this violates TRIPS, unfairly pressures European firms, and gives Chinese manufacturers cheaper tech access.⁷¹ The EU has initiated **WTO dispute settlement cases** against China over ASIs (DS611) and global rate setting. Outcomes will significantly impact global SEP licensing and IP governance.

VII. Synthesizing External Reports and Analyses

A. Perspectives from European Trade Bodies (EU Chamber, EU SME Centre)

The **EU Chamber of Commerce in China** consistently reports member concerns about practical IPR enforcement challenges, market access barriers, an uneven playing field, and a politicized business environment, contributing to declining confidence despite acknowledging legislative progress.⁴ The **EU SME Centre** provides practical resources and highlights SME-specific issues like IPR protection.¹⁰ Both note a gap between reform pledges and practical implementation.⁴

B. Insights from IP Organizations (INTA, China IP SME Helpdesk)

INTA reports (based on member surveys) show the 2019 Trademark Law amendments provided tools against warehousing, but bad-faith squatters adapted, making evidence collection harder.⁴ While opposition/invalidation success rates improved, concerns remain.¹⁸ INTA tracks case law trends.²³ The **China IP SME Helpdesk** offers free, practical advice and resources for SMEs on IP protection and enforcement in

China, translating complex rules into actionable guidance.²⁸

C. Key Takeaways from Legal and Business Consultancies/Other Sources

Law firms, consultancies, government agencies (e.g., USPTO), and international bodies (WIPO, EPO) provide analyses . They acknowledge China's legislative efforts and specialized institutions ¹ but consistently highlight persistent practical challenges (enforcement difficulties, bad-faith filings) ⁷ and emerging geopolitical risks (AFSL, ASIs).⁴⁰

VIII. Comprehensive Analysis and Future Outlook

A. Current State of Play for European Trademark Litigation in China

China presents a dichotomy: a sophisticated legal framework with specialized courts and stronger tools against bad faith/infringement ¹, BUT persistent practical challenges (bad-faith registrations, evidence gathering, enforcement inconsistencies) ⁷ and new geopolitical risks (AFSL allowing IP seizure, ASI/global rate setting disputes).⁴⁰

B. Critical Strategic Considerations and Actionable Recommendations

1. **Proactive Registration:** File early, broadly (subclasses, Chinese names), with genuine intent [V.A].
2. **Monitor:** Continuously watch databases and markets [V.A, V.E].
3. **Flexible Enforcement:** Use administrative, civil, criminal routes strategically [V.D].
4. **Combat Bad Faith:** Use opposition, invalidation, non-use cancellation; consider unfair competition suits.
5. **Prepare Evidence:** Plan gathering, anticipate difficulties, use obstruction rules [IV.A].
6. **Use Local Counsel:** Essential for navigating complexities [VI.D].
7. **Assess Geopolitical Risk:** Factor in AFSL/trade tensions [I.E].
8. **Negotiate Cautiously:** Be wary of bad-faith tactics [V.E].

C. Anticipated Legal Reforms and Market Developments

Expect continued legal refinement (bad faith, damages, online issues), potential shift to quality over quantity in filings, more SPC guidance, increased tech/platform/SEP disputes, evolving AFSL/ASI application, and ongoing tension between attracting investment and national priorities shaping the business environment [22, 31, 50, 58, 59, 60, 63, 87, 88, I.E, VIII.C].

Success requires proactive, adaptable IP strategies, local expertise, and awareness of legal, commercial, and political risks.

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